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LEGAL ISSUES AND REGULATORY DEVELOPMENTS

This chapter provides information on some important legal issues and recent regulatory developments in the fields of transport and trade facilitation, together with information on the status of the main maritime conventions. Important issues include the entry into force of the 2006 Maritime Labour Convention (MLC 2006) (effective 20 August 2013), and of the 2002 Athens Convention relating to the Carriage of Passengers and their Luggage by Sea (PAL 2002) (effective 23 April 2014), as well as a range of regulatory developments relating to maritime and supply-chain security and environmental issues.

To assist in the implementation of a set of technical and operational measures to increase energy efficiency and reduce greenhouse gas (GHG) emissions from international shipping, which entered into force on 1 January 2013, additional guidelines and unified interpretations were adopted at the International Maritime Organization in October 2012 and May 2013. In addition, a Resolution on Promotion of Technical Cooperation and Transfer of Technology relating to the Improvement of Energy Efficiency of Ships was adopted in May 2013, and an agreement was reached that a new study will be initiated to carry out an update to the GHG emissions estimate for international shipping. The issue of possible market-based measures (MBMs) for the reduction of GHG emissions from international shipping remained controversial, and discussion was postponed.

Results from UNCTAD's research on national trade-facilitation implementation plans illustrate that trade facilitation remains a challenge but is also seen as a priority area for national development by the developing countries themselves. By identifying the major areas of non-compliance with a future WTO trade-facilitation agreement, the report offers insights into the range of time and resource requirements and the needs for technical assistance and capacity-building for the developing countries.

A. IMPORTANT DEVELOPMENTS IN TRANSPORT LAW

1. Entry into force of the 2006 Maritime Labour Convention

Following ratification by the Russian Federation and the Philippines on 20 August 2012, the MLC 2006 enters into force on 20 August 2013.¹ The Convention, which had been adopted in 2006 under the joint auspices of the International Labour Organization (ILO) and the IMO, consolidates and updates more than 68 international labour standards relating to seafarers, setting out their responsibilities and rights with regard to labour and social matters in the maritime sector. It is considered an important fourth pillar, complementing three major IMO conventions, namely the International Convention for the Safety of Life at Sea (SOLAS), 1974, the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1978, and the International Convention for the Prevention of Pollution from Ships (MARPOL).

The MLC 2006 aims to achieve both decent conditions of work for the world's more than 1.2 million seafarers and to create conditions of fair competition for shipowners. Following its entry into force, seafarers working on around 70 per cent of the world's international shipping tonnage will be covered by the new Convention. The Convention establishes minimum requirements for almost all aspects of working conditions for seafarers, and a strong compliance and enforcement mechanism based on flag State inspection and certification of seafarers' working and living conditions.

The Convention comprises three different but related parts: the Articles, the Regulations and the Code. The Articles and Regulations set out the core rights and principles and the basic obligations of Member States ratifying the Convention.² The Code contains detailed information on the implementation of the Regulations. It consists of part A (mandatory standards) and part B (non-mandatory guidelines).³ The Regulations and the Code are organized into general areas under five titles containing groups of provisions relating to a particular right or principle, including (a) minimum requirements for seafarers to work on a ship; (b) conditions of employment; (c) accommodation, recreational facilities, food and catering; (d) health protection, medical care, welfare and social security protection; and (e) compliance and enforcement.⁴

The MLC 2006 also imposes certain documentary obligations on Member States. Thus, each Member State shall require its ships of over 500 GT that are involved in international voyages to carry and maintain a maritime labour certificate, as well as a declaration of maritime labour compliance, conforming to a model prescribed by the Code.⁵ The working and living conditions of seafarers that must be inspected and approved by the flag State before certifying a ship are as follows:

- Minimum age;
- Medical certification;
- Qualifications of seafarers;
- Seafarers' employment agreements;
- Use of any licensed or certified or regulated private recruitment and placement service;
- Hours of work or rest;
- Manning levels for the ship;
- Accommodation;
- On-board recreational facilities;
- Food and catering;
- Health and safety, and accident prevention;
- On-board medical care;
- On-board complaint procedures;
- Payment of wages.

Two handbooks have recently been issued by ILO to assist Member States in implementing their responsibilities under the MLC 2006 (ILO, 2012a; ILO, 2012b). The first contains a model for legal provisions that implement MLC 2006, and is intended as an aid for national legislators. The second covers issues of social security for seafarers by providing both the necessary background on the subject and practical information related to the implementation of the Convention. Also worth highlighting is guidance for ship operators on Port State Control that has been issued by the global shipowners' organization, the International Chamber of Shipping (ICS) (ICS, 2013).

It should also be noted that a Special Tripartite Committee, mandated to keep the Convention under continuous review, is set to meet in early 2014 to discuss, inter alia, proposed amendments to the Code of the Convention to address the issue of financial security for crew members/seafarers and their dependents with regard to compensation in cases of personal injury, death and abandonment.⁶

2. Entry into force of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002

The 2002 Protocol to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea (PAL PROT 2002) achieved the required 10 ratifications⁷ on 23 April 2013 and is set to enter into force one year later, on 23 April 2014.⁸ The 2002 Protocol revises and updates the 1974 Athens Convention relating to the Carriage of Passengers and their Luggage by Sea (PAL 1974),⁹ which established a liability regime in respect of passenger carriage, including personal injury or death at sea. The PAL 1974 as amended by the PAL PROT 2002 is referred to as the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002 (PAL 2002).¹⁰

The PAL 2002 introduces some important changes to the liability regime. Key elements¹¹ include the following:

- (a) PAL 2002 replaces the fault-based liability system of the 1974 Convention with a strict liability system for shipping-related incidents (that is, collision, stranding, explosion, fire, and defects in the ship), subject to very limited exceptions for force majeure-type incidents.

Thus, the carrier will be held liable in cases of personal injury or death of a passenger, irrespective of fault, up to a limit amounting to 250,000 Special Drawing Rights (SDR) per passenger on each occasion; if loss or damage exceeds this limit, the carrier is liable for an overall amount of up to 400,000 SDR per passenger, on each occasion, unless the carrier can prove that the incident was not due to fault or neglect on the part of the carrier, or his servants.¹² By way of comparison, under PAL 1974 the carrier's limit of liability for death or personal injury was set at 46,666 SDR per passenger. An "opt-out" clause enables States Parties to retain or introduce higher limits of liability (or unlimited liability) in the case of carriers that are subject to the jurisdiction of their courts.

- (b) To ensure that claims are not frustrated, carriers are required to maintain insurance or other financial security to cover the limits for strict liability under the Convention in respect of death of and personal injury to passengers. The limit of the compulsory

insurance or other financial security shall not be less than 250,000 SDR per passenger on each distinct occasion. Any passenger ship trading within an area where the PAL 2002 applies will have to be issued with a certificate attesting that insurance or other financial security is in force; where a vessel is either uninsured or a certificate is not obtained, fines will apply.¹³

- (c) Regarding loss or damage to luggage, the carrier's limit of liability varies under the PAL 2002, depending on the type of luggage (cabin luggage, vehicle and luggage carried in or on such vehicles, and other luggage).¹⁴
- (d) PAL 2002 introduces the tacit acceptance procedure for amending the limits of liability, so that any future increase in limits can enter into force more easily.¹⁵

The entry into force of the PAL 2002 significantly strengthens the international passenger liability regime, in particular in respect of personal injury and death. However, pending more widespread adoption of PAL 2002, the international legal framework remains complex. In this context it should be noted that PAL 1974 will remain in force for Contracting States to that Convention that have not yet acceded to the PAL PROT 2002;¹⁶ some of these States had reserved their right to exclude the application of the 1974 Convention, and apply their own limits of liability, when both the passenger and the carrier were nationals of that State.¹⁷ Moreover, it should be noted that a number of States have not ratified or acceded to PAL 1974, but have adopted a similar limitation regime, as a matter of domestic legislation, albeit with higher liability limits.¹⁸

B. REGULATORY DEVELOPMENTS RELATING TO THE REDUCTION OF GREENHOUSE GAS EMISSIONS FROM INTERNATIONAL SHIPPING AND OTHER ENVIRONMENTAL ISSUES

1. Reduction of greenhouse gas emissions from international shipping and energy efficiency

A key development, reported in the 2012 edition of the *Review of Maritime Transport* (UNCTAD, 2012a), was the adoption of a set of technical and operational

measures¹⁹ to increase energy efficiency and reduce emissions of GHGs from international shipping (IMO, 2011a, Annex 19). The new measures, introducing the Energy Efficiency Design Index (EEDI) for new ships and the Ship Energy Efficiency Management Plan (SEEMP) for all ships,²⁰ were adopted by way of amendments to MARPOL Annex VI, through introduction of a new Chapter 4, and entered into force on 1 January 2013. According to the Second IMO GHG Study 2009 (IMO, 2009), technical and operational measures have a significant potential for the reduction of GHG emissions from international shipping.²¹ Issues related to the reduction of GHG emissions from international shipping continued to remain one of the main areas of focus of the work of the IMO's Marine Environment Protection Committee (MEPC) at its sixty-fourth and sixty-fifth sessions²² held during the current reporting period. Further information about relevant deliberations and outcomes is presented below.

Energy efficiency for ships

Complementing four sets of guidelines (IMO, 2012a, Annexes 8–11), which had been adopted earlier, the MEPC, at its sixty-fourth session, adopted additional guidelines and unified interpretations for the smooth implementation of the mandatory regulations on energy efficiency for ships, set out in Chapter 4 of MARPOL Annex VI. In particular, the MEPC adopted amendments to the “2012 Guidelines on the method of calculation of the attained EEDI for new ships”, relating to the calculation of shaft-generator power and shaft-motor power (IMO, 2012b, Annex 8). The MEPC also approved the following guidance and interpretations (IMO, 2012b, Annex 7):

- Unified interpretation for the definition of “new ships” for phases 1, 2 and 3 of the EEDI framework under Regulation 2.23 of MARPOL Annex VI;
- Unified interpretation of the phrase “major conversion” under Regulation 2.24 of MARPOL Annex VI;
- Unified interpretation on the timing for existing ships to have on board a SEEMP under Regulations 5.4.4 and 22.1 of MARPOL Annex VI;
- Unified interpretation on the appropriate category to be applied for dedicated fruit-juice carriers;
- Unified interpretation for section 2.3 of the supplement to the International Air Pollution Prevention (IAPP) certificate.
- In addition, the MEPC approved:
 - Subject to concurrent decision by the ninety-first session of the Maritime Safety Committee (MSC), the draft MEPC–MSC circular for the interim guidelines for determining minimum propulsion power to maintain the manoeuvrability of ships in adverse conditions (IMO, 2012c, Annex 2);
 - Interim guidelines for the calculation of the coefficient “fw” for decrease of ship speed in representative sea conditions for trial use (IMO, 2012c, Annex 3);
 - An amendment to the “2012 Guidelines on survey and certification of the EEDI”²³ (IMO, 2012b, Annex 9).

At its sixty-fifth session in May 2013, the MEPC:

- Approved draft amendments to MARPOL Annex VI, with a view to their adoption at the sixty-sixth session of the Committee. The amendments envisage: (a) extending the application of EEDI to ro-ro cargo ships (vehicle carriers, Liquefied Natural Gas (LNG) carriers, cruise passenger ships having non-conventional propulsion, ro-ro cargo ships and ro-ro passenger ships; (b) exempting ships not propelled by mechanical means, and platforms including Floating Production Storage and Offloading Facilities (FPSOs), Floating Storage Units (FSUs) and drilling rigs, regardless of their propulsion, as well as cargo ships having ice-breaking capability (IMO, 2013c, Annex 13);
- Adopted amendments to update the “Guidelines for calculation of reference lines for use with the Energy Efficiency Design Index (EEDI)”, including the addition of ro-ro cargo ships (vehicle carriers), ro-ro cargo ships, ro-ro passenger ships, and LNG carriers (IMO, 2013c, Annex 14);
- Noted, with a view to adoption at MEPC 66, the finalized amendments to the “2012 Guidelines on the method of calculation of the Attained Energy Efficiency Design Index (EEDI) for new ships”;
- Approved amendments to unified interpretation MEPC.1/Circ.795, to update the circular with regards to requirements for SEEMP, to exclude platforms (including FPSOs and FSUs), drilling rigs, regardless of their propulsion, and any other ship without means of propulsion;
- Adopted the “2013 Interim guidelines for determining minimum propulsion power to maintain the manoeuvrability of ships in adverse conditions”, which are intended to assist administrations and recognized organizations in verifying that ships,

complying with the EEDI requirements set out in Regulation 21.5 of MARPOL Annex VI, have sufficient installed propulsion power to maintain the manoeuvrability in adverse conditions (IMO, 2013c, Annex 16);

- Approved the “2013 Guidance on treatment of innovative energy efficiency technologies for calculation and verification of the attained EEDI”, which are intended to assist manufacturers, shipbuilders, shipowners, verifiers and other interested parties related to the EEDI of ships to treat innovative energy-efficiency technologies for calculation and verification of the attained EEDI, addressing systems such as air lubrication, wind propulsion systems, high temperature waste heat recovery systems, and photovoltaic power generation systems (IMO, 2013d);
- Adopted the “2013 Guidelines for calculation of reference lines for use with the Energy Efficiency Design Index (EEDI) for cruise passenger ships having non-conventional propulsion” (IMO, 2013c, Annex 17);
- Adopted amendments to the “2012 Guidelines on survey and certification of the Energy Efficiency Design Index (EEDI)” (IMO, 2013c, Annex 18), to add references to measuring sea conditions.

The MEPC also endorsed an updated work plan to continue its work on development of the EEDI framework for ship types and sizes, and propulsion systems not covered by the current EEDI requirements, and to consider guidelines on propulsion power needed to maintain the manoeuvrability of the ship under adverse conditions (IMO, 2013e, Annex 9).

Finally, it should be noted that the MEPC decided to establish a new sub-item under its agenda item 4 (“Air pollution and energy efficiency”) for the discussion of further technical and operational measures to enhance the energy efficiency of international shipping; a working group will be established under this sub-agenda item at the MEPC’s sixty-sixth session (IMO, 2013c, paragraphs 4.136–4.147). The decision followed discussions related to an amended proposal for the establishment of attained energy-efficiency standards for new and existing ships through a phased approach, starting with a data-collection phase.²⁴

Technical cooperation and transfer of technology

Chapter 4 of MARPOL Annex VI, adopted in July 2011, includes Regulation 23 on “Promotion of technical cooperation and transfer of technology

relating to the improvement of energy efficiency of ships”. Under this regulation, administrations, in cooperation with IMO and other international bodies, are required to promote and provide, as appropriate, support, directly or through IMO, to States, especially developing States that request technical assistance. The regulation also requires administrations to cooperate actively with one another, and, subject to their national laws, regulations and policies, “to promote the development and transfer of technology and exchange of information to States, which request technical assistance, particularly developing States, in respect of the implementation of measures to fulfill the requirements of Chapter 4 [of MARPOL Annex VI]”.

At the time of the adoption of Chapter 4, MEPC agreed to develop a resolution linked to the implementation of Regulation 23, and of the other energy-efficiency measures. Following extensive deliberations over the course of several working sessions, the work was completed, and resolution MEPC.229(65) on “Promotion of technical cooperation and transfer of technology relating to the improvement of energy efficiency of ships” (IMO, 2013c, Annex 4), was adopted during the sixty-fifth session of the MEPC. In its preamble, the resolution makes reference both to the IMO principles of non-discrimination and no more favourable treatment,²⁵ and to the principle of common but differentiated responsibilities and respective capabilities under the UNFCCC and its Kyoto Protocol.²⁶

The resolution requests the IMO, through its various programmes, to provide technical assistance to its Member States to enable cooperation in the transfer of energy-efficient technologies to developing countries in particular, and further assist in the sourcing of funding for capacity-building and support to States, in particular developing States, which have requested technology transfer.²⁷

The resolution also urges Member States, subject to their ability, and subject to their respective national laws, regulations and policies, “to promote the provision of support especially to developing States ... including, but not limited with regard to:

1. Transfer of energy-efficient technologies for ships;
2. Research and development for the improvement of energy efficiency of ships;
3. Training of personnel, for the effective implementation and enforcement of the regulations in Chapter 4 of MARPOL Annex VI; and

4. The exchange of information and technical cooperation relating to the improvement of energy efficiency for ships.”

In relation to technical cooperation and capacity-building, it should also be noted that the IMO Integrated Technical Cooperation Programme (ITCP) and the Korean International Cooperation Agency (KOICA) have recently concluded an agreement for implementation of a project on “Building capacities in East Asian Countries to address GHG emissions from ships”. A comprehensive portfolio of training material for capacity-building activities on energy efficiency for shipping has been produced under that agreement. In addition, a series of capacity-building workshops and training courses have been implemented in countries including Bulgaria, Indonesia, Malaysia, the Philippines, the Republic of Korea, Thailand, Uruguay, and Viet Nam, and IMO is seeking additional funding from various sources including the Global Environment Facility (GEF) to scale up these activities.²⁸

Market-based measures and related matters

Despite improvements in the fuel-efficiency of ships, GHG emissions from maritime transport are projected to increase rapidly over the coming decades. To address their growth, market based measures (MBMs) for the reduction of GHG emissions from international shipping²⁹ have been proposed to complement technical and operational measures already adopted. While discussions on different proposals for possible MBMs have been ongoing for some years under the auspices of the IMO, the issue remains one of the most controversial on the MEPC agenda.³⁰

One of the main issues in the debate on MBMs at the IMO has been their impact on developing countries and especially on remote economies. Worth mentioning in this context is a recent study (Climate Strategies et al., 2013) that quantifies the economic impacts of MBMs for 10 case-study economies as well as globally.³¹ According to the study report, the case-study economies were selected in the expectation that they would be relatively highly impacted because of their remoteness or dependence on international aviation or maritime transport. The key findings of the report – reflected here for the purposes of information only – are as follows:

- (1) Economic impacts of Market Based Measures (MBMs) for International Shipping and Aviation on Developing Countries considered in this study, and globally, are small. The reductions in GDP are less than 0.01 per cent on average and less than 0.2 per cent

for all but a few of the case study countries. MBMs which raise more revenues have a larger impact.

- 2) The volume and certainty of CO₂ reductions achieved by the MBMs considered for the time frame (2015–2025) in this study are comparable to each other, although emission reductions from project-based emissions reductions (offsets) are the most significant. In the longer term, innovations in fuel-efficiency may decrease in-sector emission reductions costs and the associated in-sector CO₂ reductions could be more significant.

- 3) In most cases, aviation MBMs have larger economic impacts than those associated with the implementation of shipping schemes. Aviation has larger impacts on tourism, and shipping is less responsive to price increases and less carbon intensive.

- 4) Countries with a higher dependency on tourism and trade are likely to experience greater economic impacts. Some of these countries are small island developing states that are also vulnerable to climate change impacts.

- 5) Undesired economic impacts can be addressed. However, since the factors that cause these vary between countries, applicable measures vary as well. Instead, a combination of appropriate measures could be taken to address the impacts in question. Exemptions, lump-sum rebates, investments in infrastructure efficiency and into the development of more efficient ships and aircraft could be considered.

At the IMO, discussions related to market-based measures have been ongoing for several years, but are moving only slowly. A number of revised and updated proposals were submitted at the sixty-fourth session of the MEPC. However, due to time constraints, the Committee agreed to postpone relevant detailed debate to the sixty-fifth session. In addition, the co-sponsors³² of one of the submissions (IMO, 2012d) suggested that high priority should be given to the development of an MEPC resolution to ensure that financial, technological and capacity-building support from developed countries for the implementation of regulations on energy efficiency for ships by developing countries. Hence, they considered that all further decisions on MBMs must await the adoption of this resolution, and that future consideration of MBMs must fully take into account potential impacts of those measures on developing countries. As a result, pending the adoption of the resolution, during its sixty-fifth session, the MEPC agreed to suspend discussions on market-based measures and related issues to a future session.³³

Update of the GHG emission estimate for international shipping

The MEPC, at its sixty-third session, had noted that uncertainty existed in the estimates and projections of emissions from international shipping and agreed that further work should take place to provide reliable and up-to-date information for the Committee to base its decisions on. At the sixty-fourth session of the MEPC, an outline document regarding the need for an update of the GHG emissions estimate for international shipping prepared by the IMO Secretariat was considered (IMO, 2012e). The outline document highlights the need for an updated GHG inventory, as the current estimate contained in the *Second IMO GHG Study 2009* (IMO, 2009) does not take into account the economic downturn experienced globally since 2008.³⁴ In addition, analytical work undertaken since the publication of the *Second IMO GHG Study 2009* and information obtained through analysis of the Automatic Identification System (AIS), as well as other sources for ship activity data, indicate that some of the assumptions used at that time may need to be reconsidered. The document proposed that the update would build on the methodology developed under the *Second IMO GHG Study 2009* and would be based on available data on fleet composition and size as well as on other technical ship-specific data. The inventory would include current global emissions of GHGs and relevant substances emitted from ships of 100 GT and above engaged in international transport.

In the context of consideration of the IMO Secretariat document, the MEPC report (IMO, 2012b) expressly notes the following views from delegations:

- An update of the GHG estimate for international shipping must be undertaken in a fair, open and transparent manner and in coordination with the Subsidiary Body for Scientific and Technological Advice of the UNFCCC, whose agenda includes a specific item for the consideration of emissions from fuel used for international aviation and maritime transport, and that this work should take into consideration the methodological work developed by the Intergovernmental Panel on Climate Change (IPCC);
- Further consideration is needed to be given to ensuring the estimates related to those made by other international organizations, that the work is scientifically based, equitable and balanced, which will be tasked to undertake the work, how the data will be used and the methodology to be used;
- There is an urgent need for information on the actual fuel consumption of ships and hence highlighted the need of moving forward with a bottom-up (ship activity)

approach of the GHG emissions estimate as well as top-down analysis which has been used in the past; and

- Monitoring and reporting of data was also important.³⁵

Following further discussion at an expert workshop³⁶ held in early 2013, the MEPC at its sixty-fifth session, approved the terms of reference³⁷ for an Update GHG Study, and agreed that (a) the Update Study should focus on global inventories (as set out in paragraph 1.3 of the terms of reference) and, resources permitting, should also include future scenarios of emissions (as set out in the chapeau and paragraph 1.10 of the terms of reference); (b) its primary focus should be to update the CO₂ emission estimates for international shipping, and subject to adequate resources, the same substances as those estimated by the *Second IMO GHG Study 2009* should also be estimated; (c) a steering committee should be established that should be geographically balanced, should equitably represent developing and developed countries and should be of a manageable size.³⁸ The final report of the Update Study is expected to be submitted to the MEPC at its sixty-sixth session, in March 2014.

WTO-related issues

Related to the issue of possible MBMs for international shipping, the MEPC during its sixty-fourth session considered a submission³⁹ that argued that MBMs show incompatibility with the WTO rules (IMO, 2012f). The document also considers that the conclusion of the third Intersessional Meeting of the Working Group on GHG Emissions from Ships (GHG-WG 3) – that MBMs are, in principle, compatible with the WTO rules – was premature, since most of the MBM proposals were not yet sufficiently elaborated to support that conclusion.

At the request of the IMO Council, comments were sought from WTO on the above document, and note was taken of the response by the WTO Secretariat (IMO, 2013h) during the sixty-fifth session of the MEPC. In its response, the WTO Secretariat indicated that it was not authorized to interpret WTO rules, as this was the exclusive prerogative of WTO members. However, it had prepared a neutral document which set out the WTO disciplines most relevant to the types of MBMs that the IMO was considering.⁴⁰

Matters concerning the United Nations Framework Convention on Climate Change

With respect to matters concerning UNFCCC, during its sixty-fourth and sixty-fifth sessions the MEPC noted a number of documents.⁴¹ The Committee

also noted the latest status reports as contained in Annex 11 of IMO (2012b) and Annex 20 of IMO (2013c), by the UNFCCC Secretariat on the current state of negotiations in general and on bunker fuels in particular.

2. Ship-source pollution and protection of the environment

(a) Developments regarding the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996, as amended by its 2010 Protocol

As may be recalled, in 2012 a report with a focus on ship-source oil pollution was published by the UNCTAD secretariat. The report, entitled *Liability and Compensation for Ship-Source Oil Pollution: An Overview of the International Legal Framework for Oil Pollution Damage from Tankers* (UNCTAD, 2012b) was prepared to assist policymakers, particularly in developing countries, in their understanding of the complex international legal framework and in assessing the merits of accession to the latest of the relevant international legal instruments.⁴² As noted in the report, accession could offer considerable benefits to a number of coastal developing States that may be vulnerable to oil pollution from tankers.

While the report focuses on the international liability and compensation framework for oil pollution from tankers, known as the International Oil Pollution Compensation Fund (IOPC Fund) regime,⁴³ it also highlights some of the key features of two important related international conventions that provide for liability and compensation in respect of other types of ship-source pollution. These are the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001 (2001 BOPC),⁴⁴ which covers bunker oil spills from ships other than oil tankers, and the 1996 International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (1996 HNS Convention), which deals with liability and compensation arising in connection with the carriage of a broad range of hazardous and noxious substances (HNS). An amending Protocol to the 1996 HNS Convention had been adopted in April 2010⁴⁵ to address a range of practical problems that had prevented many States from ratifying the 1996 Convention.

While the 2001 BOPC is in force internationally, the 1996 HNS Convention, as amended by its 2010 Protocol (2010 HNS Convention) has not yet attracted the required number of accessions for its entry into force. Thus, at present, no international regime is in force to provide for liability and compensation arising in connection with the carriage of HNS cargos. This is a matter of concern, given the potential for coastal pollution, as well as personal injury and death that may be associated with an incident involving the carriage of chemicals and other HNS cargos.

The 1996 HNS Convention is modelled on the IOPC Fund regime and establishes a two-tier system for compensation to be paid in the event of pollution incidents involving HNS such as chemicals. Tier one provides for shipowner liability, backed by compulsory insurance cover. Tier two provides for compensation from a fund, financed through contributions from the receivers of HNS in cases when the shipowner's insurance does not cover a given HNS incident or is insufficient to cover the claim.

One of the major obstacles to ratification of the 1996 HNS Convention had been difficulties regarding one of the key requirements under the Convention, the submission of reports on "contributing cargo", that is, on HNS cargo received in each State. Other obstacles appeared to be related to the setting up of a reporting system for packaged goods and the difficulty of enforcing payment, in non-States Parties, of contributions to the liquefied natural gas account established under the Convention. By addressing these problems, the 2010 Protocol to the 1996 HNS Convention was considered an important development towards the strengthening of the international liability framework for ship-source pollution. The 2010 HNS Protocol was open for signature from 1 November 2010 to 31 October 2011 and thereafter has been open for accession.

While so far no State has yet acceded to the Protocol, it should be noted that a set of guidelines for reporting contributing cargo under the 2010 HNS Convention (IMO, 2013j) was agreed by delegates from 29 States at a workshop on reporting of HNS organized in late 2012 by the IMO in cooperation with the IOPC Funds.⁴⁶ The guidelines are intended to assist States with the Convention's accession or ratification, and were endorsed by the Legal Committee of the IMO during its 100th session, in April 2013. In so doing, the Legal Committee expressed the following views:

- The guidelines were the result of the work of a large number of Member States and observers;
- It was of paramount importance that the Convention be applied uniformly and the guidelines could assist this process;
- The guidelines were not binding, but were merely intended to facilitate the implementation and entry into force of the 2010 HNS Protocol, particularly States' submissions of contributing cargo to the Secretary-General of IMO, on ratification, or accession to the HNS Protocol;
- The proposed solutions in the guidelines should not exclude the use by implementing States of other options which were also provided for in the HNS Protocol.⁴⁷

It is hoped that the international community's collective efforts towards the entry into force of the 2010 HNS Convention will continue and eventually be successful, thus closing an important regulatory gap.

(b) Liability and compensation issues connected with transboundary pollution damage from offshore oil exploration and exploitation

The Legal Committee during its 100th session noted information on the outcome of the second International Conference on Liability and Compensation Regime for Transboundary Oil Damage Resulting from Offshore Exploration and Exploitation Activities, held in Bali in November 2012 (IMO, 2013k), as well as a submission containing principles for guidance on model bilateral/regional agreements or arrangements on liability and compensation issues connected with transboundary pollution damage from offshore exploration and exploitation activities (IMO, 2013).

The Committee recalled its previous decision to analyse further 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.⁴⁸ It agreed that assistance should be provided to those States which are in need of guidance for bilateral and multilateral agreements. Member States were invited to send examples of relevant legislation and, in particular, examples of existing bilateral and regional agreements to the secretariat.⁴⁹

(c) Other developments at the International Maritime Organization

During its sixty-fourth and sixty-fifth sessions, the MEPC approved draft amendments and adopted guidelines related to MARPOL Annex VI Regulation 13 on nitrogen oxides (NO_x), the NO_x Technical Code, 2008 and the implementation of the revised MARPOL Annex V "Prevention of pollution by garbage from ships". It also adopted two sets of guidelines, which together with the four sets of guidelines previously adopted, complete the development of all guidelines referred to in the text of the Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships, 2009 (Hong Kong Convention). The MEPC also granted basic and final approval to a number of ballast water management systems that make use of active substances, approved a draft resolution to facilitate the smooth implementation of the 2004 International Convention for the Control and Management of Ships' Ballast Water and Sediments (BWM Convention), and issued a number of ballast water management circulars. A more detailed overview of relevant issues is presented in the following sections.

(i) Air pollution from ships

In addition to striving to reduce its carbon footprint from international shipping, IMO is working on regulations to reduce emissions of other toxic substances from burning fuel oil, particularly sulphur oxides (SO_x) and NO_x. These significantly contribute to air pollution from ships and are covered by Annex VI of MARPOL,⁵⁰ which was amended in 2008 to introduce more stringent emission controls.⁵¹

Sulphur oxide emissions

As reported in the 2012 edition of the *Review of Maritime Transport*, with effect from 1 January 2012, MARPOL Annex VI established reduced SO_x thresholds for marine bunker fuels, with the global sulphur cap reduced from 4.5 per cent (45,000 parts per million (ppm)) to 3.5 per cent (35,000 ppm). The global sulphur cap will be reduced further to 0.50 per cent (5,000 ppm) from 2020 (subject to a feasibility review in 2018).⁵² Annex VI also contains provisions allowing for special SO_x Emission Control Areas (ECAs) to be established where even more stringent controls on sulphur emissions apply.⁵³ Since 1 July 2010, these ECAs have SO_x thresholds for marine fuels of 1 per cent (from the previous 1.5 per cent); from 1 January 2015, ships operating in these areas

will be required to burn fuel with no more than 0.1 per cent sulphur. Alternatively, ships must fit an exhaust gas cleaning system,⁵⁴ or use any other technological method to limit SOx emissions.

The European Union has recently revised its directive on sulphur in fuels, generally including MARPOL Annex VI provisions. According to the new directive, the limits for the sulphur content of marine fuels used in designated SOx ECAs (SECAs) will be 1 per cent until 31 December 2014, and 0.1 per cent from 1 January 2015. In addition, the IMO sulphur limit of 0.5 per cent will become mandatory in waters of European Union Member States by 2020.⁵⁵ The inclusion of this fixed entry-into-force date (2020) has raised concerns about possible inconsistency with the IMO provision which makes such a date dependent on the outcome of the 2018 feasibility study (Platts, 2012).

As noted in the previous *Review of Maritime Transport*, the shipping industry, while supportive of the 2008 amendments, has expressed concerns about some aspects of the implementation of the requirements. This includes in particular the availability of compliant low-sulphur fuel to meet the new demand (MarineLink.com, 2012).

During its sixty-fourth session, the MEPC discussed proposals (IMO, 2012i;⁵⁶ IMO, 2012j⁵⁷) related to a review on the availability of compliant fuel oil to meet the requirements set out in MARPOL Annex VI, Regulation 14 on emissions of SOx from ships.

A number of delegations recognized that a preliminary study for the assessment of the availability of compliant fuel oil in 2020 could provide further information to industries, and that it would be important in identifying sooner rather than later what action is necessary to ensure availability of compliant fuel oil. Other delegations expressed the view that the preliminary study could not provide additional certainty with respect to the availability of compliant fuel oil due to the difference in sulphur limits of the fuels to be studied and the specific geographic location in which the ECA-compliant fuel oil was to be used, and observed that the assessment methodology already developed by the correspondence group contains proven models that do not need revalidation. The MEPC agreed to revisit the matter of a review at a future session, and invited relevant submissions to its sixty-sixth session in 2014.

The MEPC also noted that, based on the monitoring of the worldwide average sulphur content of marine fuel oils supplied for use on board ship, in 2011 the average sulphur content of residual fuel worldwide

was 2.65 per cent, and that of distillate was 0.14 per cent (IMO, 2012k).

Emissions of nitrogen oxides

In addition to SOx, ship engines emit elevated levels of the harmful compounds of the general formula NOx, which have negative effects that include GHG formation in the atmosphere and damage to respiratory health. Progressive reductions in NOx emissions from ship engines have also been agreed at IMO. For specified ships that operate in ECAs,⁵⁸ the strictest controls are applicable to ships constructed on or after 1 January 2016. Such ships must produce NOx emissions below a level known as “tier III”. For ships operating outside such areas, tier II controls apply.⁵⁹ Unlike SOx, where emission reductions can be achieved fairly simply, albeit at some cost, by switching to low-sulphur fuels or installing exhaust gas SOx scrubbers, major adjustments are needed to ensure compliance with NOx tier III requirements.

According to a correspondence group report (IMO, 2013m) on technology availability submitted at the sixty-fifth session of the MEPC, technologies identified that may be used to achieve the tier III NOx limits included the following:

- Selective catalytic reduction (SCR);
- Exhaust gas recirculation (EGR);
- LNG, either in a dual-fuel or alternative-fuel arrangement;
- Other technologies: direct water injection; humid air motor, scrubbers, treated water scrubber; variable valve timing and lift; dimethyl ether as an alternative fuel.

However, there was broad agreement among members of the correspondence group that SCR can meet the tier III limits as a sole emission-reduction strategy for most, if not all, marine engines and vessel applications. It is an emission reduction method that reduces NOx emissions, through after-treatment technology, by using a catalyst to chemically reduce NOx. Some marine engine manufacturers are already marketing SCR-based tier III-compliant SCR engines (IMO, 2013m).

During its sixty-fifth session, the MEPC:

- Considered and agreed to proposed draft amendments to MARPOL Annex VI Regulation 13 on NOx to amend the date for the implementation of tier III standards within ECAs to 1 January

2021, from the current effective date of 1 January 2016. The draft amendments will be circulated for consideration at the sixty-sixth session of MEPC (MEPC 66) in 2014, with a view to adoption;

- Approved, with a view to subsequent adoption, draft amendments to the NOx Technical Code, 2008, concerning use of dual-fuel engines (IMO, 2013c, Annex 7);
- Adopted guidelines in respect of non-identical replacement engines not required to meet the tier III limit (IMO, 2013c, Annex 8);
- Adopted a unified interpretation on the “time of the replacement or addition” of an engine for the applicable NOx tier standard for the supplement to the IAPP certificate (IMO, 2013c, Annex 9).

(ii) Port reception facilities and garbage management

Garbage from ships can be just as dangerous to marine life as oil or chemicals. As pointed out in the previous issue of the *Review of Maritime Transport*, amendments to MARPOL Annex V “Prevention of pollution by garbage from ships”, were adopted that entered into force on 1 January 2013 (IMO, 2011a, Annex 13). The revised Annex V prohibits the discharge of all garbage into the sea, except as provided otherwise.⁶⁰ Guidelines were also adopted to assist in the implementation of the revised MARPOL Annex V.

During its sixty-fifth session, the MEPC adopted amendments to the “2012 Guidelines for the implementation of MARPOL Annex V”, concerning electronic wastes, such as electronic cards, gadgets, computers, printer cartridges, and the like, generated on board during normal operation, maintenance or upgrading of vessels (IMO, 2013c, Annex 28). The MEPC also approved draft amendments to the form of the “Garbage Record Book” under MARPOL Annex V, to update the record of garbage discharges, for circulation with a view to adoption at MEPC 66 (IMO, 2013c, Annex 27), and an MEPC circular on adequate port reception facilities for cargoes declared as harmful to the marine environment under MARPOL Annex V (IMO, 2013n).⁶¹

(iii) Ship recycling

The MEPC, at its sixty-fourth session adopted the following:

- The “2012 Guidelines for the survey and certification of ships under the Hong Kong Convention⁶²” (IMO, 2012b, Annex 2);

- The “2012 Guidelines for the inspection of ships under the Hong Kong Convention” (IMO, 2012b, Annex 3).

These two sets of guidelines, together with the four sets of guidelines adopted earlier,⁶³ complete the development of all guidelines referred to in the text of the Hong Kong Convention. The guidelines are intended to assist ship-recycling facilities and shipping companies to introduce voluntary improvements to meet the requirements of the Hong Kong Convention, which was adopted in May 2009 but has not yet entered into force.⁶⁴

An intersessional correspondence group was re-established⁶⁵ during MEPC 65 and instructed to finalize the development of threshold values and exemptions applicable to the materials to be listed in Inventories of Hazardous Materials as well as to amend accordingly the “2011 Guidelines for the development of the Inventory of Hazardous Materials”. It will report the outcome of its deliberations to the MEPC 66.

(iv) Ballast water management

In February 2004, the BWM Convention had been adopted, under the auspices of the IMO, to prevent, minimize and ultimately eliminate the risks to the environment, human health, property and resources arising from the transfer of harmful aquatic organisms carried by ships’ ballast water from one region to another.⁶⁶ The Committee urged those States which have not yet ratified the Convention to do so at the earliest possible opportunity.

After considering the reports of the twenty-first–twenty-fifth meetings of the Joint Group of Experts on the Scientific Aspects of Marine Environment Protection Ballast Water Working Group, which took place in 2012 and the beginning of 2013, the MEPC granted basic approval to eight,⁶⁷ and final approval to six ballast water management systems⁶⁸ that make use of active substances during its sixty-fourth and sixty-fifth sessions.

The MEPC at its sixty-fifth session approved a draft Assembly resolution on the application of Regulation B-3 of the BWM Convention to ease and facilitate the smooth implementation of the Convention (IMO, 2013c, Annex 3), which will be submitted to the twenty-eighth session of the IMO Assembly⁶⁹ for approval. The draft resolution recommends that ships constructed before the entry into force of the BWM Convention will not be required to comply with Regulation D-2 (ballast water performance standard)

until their first renewal survey following the date of entry into force of the Convention. The aim of the draft resolution is to clarify uncertainty in relation to the application of Regulation B-3, through the application of a realistic timeline for enforcement of Regulation D-1 (ballast water exchange standard) and Regulation D-2 (ballast water performance standard), upon entry into force of the Convention.

The MEPC also approved:

- The BWM Circular on clarification of “major conversion”;
- The BWM Circular on Guidance on ballast water sampling and analysis for trial use;
- Amendments to the MEPC resolution (IMO, 2013c, Annex 1), on information reporting on type approved ballast water management systems;
- The BWM Circular on amendments to the Guidance for administrations on the type approval process for ballast water management systems;
- The BWM Circular on options for ballast water management for offshore support vessels.⁷⁰

Key developments in summary

As the above overview of regulatory developments shows, in the year under review, several regulatory measures have been adopted to strengthen the legal framework relating to ship-source air pollution, port reception facilities and garbage management. Moreover, different sets of guidelines have been developed with a view to facilitating the widespread adoption of the 2010 HNS Convention and the 2009 Hong Kong Convention on ship recycling; progress has also been made in respect of technical matters related to the implementation of the 2004 BWM Convention. As concerns the reduction of GHG emissions from international shipping, significant progress has been made in respect of technical and operational measures. Thus, a number of guidelines and unified interpretations have been issued to ensure the smooth implementation of the new mandatory regulations on energy efficiency for ships under Chapter 4 of MARPOL Annex VI; further technical and operational measures to enhance the energy efficiency of international shipping have been scheduled for discussion as part of the MEPC deliberations on air pollution and energy efficiency. Moreover, a study has been initiated to provide an updated GHG emissions estimate for international shipping by the spring of 2014. Particularly worth highlighting is also

the adoption of an important resolution to promote technical cooperation and the transfer of technology relating to the improvement of energy efficiency of ships. This is an issue of particular practical relevancy from the perspective of developing countries and adoption of the resolution represents an important step towards ensuring all countries have access to and benefit from energy-efficient technologies for ships.

C. OTHER LEGAL AND REGULATORY DEVELOPMENTS AFFECTING TRANSPORTATION

This section highlights some key issues in the field of maritime security and safety that may be of particular interest to parties engaged in international trade and transport. These include developments relating to maritime and supply-chain security and some issues related to piracy. Matters related to piracy will, for reasons of space, not be covered extensively here, but are the subject of a separate report by the Secretariat.

1. Maritime and supply-chain security

There have been a number of developments in relation to existing maritime and supply-chain security standards that had been adopted under the auspices of various international organizations such as the World Customs Organization (WCO), IMO and the International Organization for Standardization (ISO), as well as at the European Union level and in the United States, both important trade partners for many developing countries.

(a) World Customs Organization Framework of Standards to Secure and Facilitate Global Trade

As noted in previous editions of the *Review of Maritime Transport*, in 2005 WCO had adopted the Framework of Standards to Secure and Facilitate Global Trade (the SAFE Framework),⁷¹ with the objective of developing a global supply-chain framework. The SAFE Framework provides a set of standards and principles that must be adopted as a minimum threshold by national customs administrations. These standards are contained within two pillars – pillar 1, customs-to-customs network arrangements and pillar 2, customs–business partnerships.⁷²

The SAFE Framework has been updated and has evolved over the years as a dynamic instrument, aiming to balance trade facilitation and controls while ensuring the security of the global supply chain. It is a widely accepted instrument that serves as an important reference point for customs and for economic operators alike.⁷³

In June 2010, the WCO issued its SAFE Package, bringing together all WCO instruments and guidelines that support its implementation.⁷⁴ As part of yearly updates, the 2012 version of the SAFE Framework includes a new part 5 in respect of coordinated border management, and a new part 6 in respect of trade continuity and resumption. The text on mutual recognition has thus been moved to a new part 7; that concerning the authorized economic operator (AEO) conditions, requirements and benefits has been moved to a new Annex III, and the text of the Customs Cooperation Council resolution on the SAFE Framework has been moved to a new Annex IV. In addition, a new Annex I has been created, containing definitions, including the definition of “high risk cargo”.⁷⁵

As an important feature of the SAFE Framework, the AEOs⁷⁶ are private parties that have been accredited by national customs administrations as compliant with WCO or equivalent supply-chain security standards. AEOs have to meet special requirements in respect of physical security of premises, hidden camera surveillance and selective staffing and recruitment policies. In return, AEOs are typically rewarded by way of trade-facilitation benefits, such as faster clearance of goods and fewer physical inspections. Over the course of recent years, a number of mutual recognition agreements (MRAs)⁷⁷ of respective AEOs have been adopted by customs administrations, usually on a bilateral basis. However, it is hoped that these will, in due, course form the basis for multilateral agreements at the sub-regional and regional level.⁷⁸ As of 30 June 2013, 26 AEO programmes had been established in 52 countries⁷⁹ and seven further countries plan to establish them in the near future.⁸⁰

Capacity-building assistance under the WCO Columbus Programme remains a vital part of the SAFE implementation strategy. Implementation is further supported by Customs and private sector working bodies established within the WCO Secretariat and working in close collaboration to maintain the relevance of the SAFE Framework in a changing trade environment.⁸¹

(b) Developments at the European Union level and in the United States

For many developing countries, trade with the European Union and the United States remains of particular importance. Hence, certain relevant developments in the field of maritime and supply-chain security are also reported here.

As regards the European Union, previous editions of the *Review of Maritime Transport* have provided information on the Security Amendment to the Community Customs Code (Regulation (EC) 648/2005 and its implementing provisions), which aims to ensure an equivalent level of protection through customs controls for all goods brought into or out of the European Union’s customs territory.⁸² Part of these changes was the development of common rules for customs risk management, including setting out common criteria for pre-arrival/pre-departure security risk analysis based on electronically submitted cargo information. Since 1 January 2011, this advance electronic declaration of relevant security data has been an obligation for traders and is no longer optional; relevant security data have had to be sent before the arrival of the goods on the European Union customs territory. If such data is not sent in advance, then the goods need to be declared immediately on arrival at the border, which may delay the customs clearance of consignments at the border pending the results of risk analysis for safety and security purposes.⁸³ The Security Amendment to the Customs Code also introduced a sophisticated common Customs Risk Management Framework, encompassing detailed common risk criteria and standards. In this context, the European Commission commissioned a study to evaluate the existing strengths and weaknesses of European Union risk analysis and targeting capabilities, and assess some potential options for improvement (PricewaterhouseCoopers, 2012).⁸⁴ The study concluded that several issues required urgent action, including data quality, supply-chain modelling and certain aspects of the methodology applied.

Subsequently, in January 2013, the European Commission adopted a “Communication on Customs risk management and the security of the supply chain” (European Commission, 2013). The Communication characterizes the European Union’s current cargo risk assessment strategy as “not sufficient”, and states that “a new approach to EU risk management is needed”.⁸⁵ It sets out a strategy to enable Customs to better tackle risks associated with goods being traded

in international supply chains and suggests a number of key actions to be taken.⁸⁶ Following the adoption of the above Communication outlining the European Union's approach, concerns have been expressed by industry associations about the complexity of the current European Union advance cargo security system and about the fact that a single, unified European Union customs regime may not be a realistic option in the near term.⁸⁷ In a joint submission to the European Parliament and Council (International Air Transport Association et al., 2013), a number of major carrier and freight forwarder trade associations have drawn attention to several issues that remain to be clarified and decided through ongoing deliberations at the European Union. These include the need to define and identify what additional data elements will be required for a proper advance cargo risk assessment, who will be required to file such data, through which system and when.

Part of the changes to the European Union Customs Code was also the introduction of provisions regarding AEOs, a status which reliable traders may be granted and which entails benefits in terms of trade-facilitation measures. In this context, subsequent related developments – such as the recommendation for self-assessment of economic operators to be submitted together with their application for AEO certificates,⁸⁸ and the issuance of a revised self-assessment questionnaire,⁸⁹ to guarantee a uniform approach throughout all European Union Member States, are also worth noting.

In respect of mutual recognition of AEO programmes through agreements between the European Union and third countries including major trading partners,⁹⁰ it is worth noting that the decision between the European Union and the United States regarding mutual recognition of their “secure traders” programmes, namely the European Union AEO and the United States Customs-Trade Partnership against Terrorism (C-TPAT)⁹¹ programmes, signed on 4 May 2012 (European Union–United States Joint Committee, 2012), was fully implemented as of 31 January 2013. The final phase of the agreement that this decision represents provides reciprocal benefits to safe traders, including lower risk score and less examination by customs when shipping cargo (United States Customs and Border Protection (CBP), 2013).

It should also be noted that the CBP has recently announced that as part of their Trusted Trader Program, they are planning to join the C-TPAT and Importer Self-Assessment processes. This is intended to enable CBP to provide additional incentives to

participating low-risk partners, while benefiting from the added efficiencies of managing supply chain and trade compliance within one partnership programme. A number of participants will serve as pilots, and the implementation of the first phase of the programme is targeted to begin by the end of the fiscal year 2013.⁹²

(c) International Maritime Organization

(i) Measures to enhance maritime security

The Maritime Safety Committee (MSC), the Legal Committee (LEG) and the Facilitation Committee (FAL) of IMO cover issues related to maritime security, including piracy, as part of their agenda. In this respect, certain developments at the most recent sessions of these committees over the past year – relating to the effective implementation of SOLAS chapter XI-2 and the International Ship and Port Facilities Security (ISPS) Code, combating piracy and armed robbery, requirements related to privately contracted armed security personnel on board ships, and enhancing maritime trade recovery in the event of large-scale emergencies – are worth noting.

Maritime Safety Committee

The MSC at its ninety-first session⁹³ noted that a number of Contracting Governments were not fulfilling their obligations under SOLAS Regulation XI-2/13 on communication of information. Therefore, it urged these Governments to review their information in the Global Integrated Shipping Information System (GISIS) and update it as necessary; in this context, the intention of the secretariat to review and enhance the module's accessibility and value as an information source was also noted. The MSC further noted the current availability of the *IMO Guide to Maritime Security and the ISPS Code* (IMO sales number: IA116E; ISBN: 978-92-801-1544-4) in English and French, and its expected availability in Spanish later in 2013, and the need to follow the procedures detailed therein (IMO, 2012l).

The MSC also reviewed the latest statistics on piracy and armed robbery against ships (IMO, 2012m) and noted the encouraging downward trend in piracy attacks in the western Indian Ocean. However, it was noted that there were still many innocent seafarers held hostage in Somalia, some for more than two years. In addition, a major concern was the increase in the number of incidents of piracy and armed robbery against ships in the Gulf of Guinea, and the increasing level of violence of those attacks (IMO, 2012n, pages 59–62).

At its ninety-second session,⁹⁴ the MSC noted that a study on the human cost of maritime piracy in 2012 had just been released (*Oceans Beyond Piracy*, 2013). While referring to the issue of piracy and armed robbery against ships in the Gulf of Guinea, the Committee welcomed the regional initiative by the Economic Community of Central African States (ECCAS), the Economic Community of West African States (ECOWAS) and the Gulf of Guinea Commission, pursuant to United Nations Security Council resolutions 2018 (2011) and 2039 (2012), to develop a Code of Conduct on the repression of piracy, armed robbery against ships and other illicit activities at sea. This Code of Conduct, which complemented the integrated coastguard function network project, launched by IMO and the Maritime Organization of West and Central Africa (MOWCA) in 2006, and the African Union's Integrated Maritime Strategy 2050, was adopted at a ministerial meeting in Cotonou, Benin, in March 2013. The Code was adopted formally by the meeting in Yaoundé, attended by 13 Heads of State from West and Central African countries, and was opened for signature on 25 June, 2013.⁹⁵

Under the new Code, signatories commit to cooperate to the fullest possible extent in the prevention and repression of piracy and armed robbery against ships, transnational organized crime in the maritime domain, maritime terrorism, illegal, unreported and unregulated fishing and other illegal activities at sea with a view towards:

- Sharing and reporting relevant information;
- Interdicting ships and/or aircraft suspected of engaging in such illegal activities at sea;
- Ensuring that persons committing or attempting to commit illegal activities at sea are apprehended and prosecuted;
- Facilitating proper care, treatment and repatriation for seafarers, fishermen, other shipboard personnel and passengers subject to illegal activities at sea, particularly those who have been subjected to violence.⁹⁶

With respect to piracy and armed robbery against ships in waters off the coast of Somalia, the Committee noted that although the numbers of piracy attacks in the Gulf of Aden and western Indian Ocean had significantly reduced, it still remained a significant threat and there was no cause to relax (IMO, 2013o, page 63).

Legal Committee

The Legal Committee at its 100th session⁹⁷ received a document (IMO, 2013p)⁹⁸ in response to its earlier request for the IMO to approach agencies in those regions directly involved in combating piracy and armed robbery (primarily the European Union Naval Force Somalia (EU NAVFOR), the North Atlantic Treaty Organization (NATO) and the United Nations Office on Drugs and Crime (UNODC)) to obtain information on the number of pirates captured and handed ashore for further investigation, as well as information on the difficulties identified in the apprehension of pirates. The following views were expressed in respect of the above document and the written comments to it:

- transparency in identifying problems related to the apprehension of pirates was beneficial to all parties involved in combating piracy or struggling with the consequences of this crime;
- as the information on the number of pirates captured and handed ashore for further investigation, as well as information on the difficulties identified in the apprehension of pirates, had only been received from UNODC, the Committee was still far from meeting its goal of obtaining the information it was seeking;
- the information related to the piracy suspects/convicted pirates held in other States provided by UNODC in document LEG 100/6/1 needed to be updated following the reports provided by States attending the WG 2 piracy meeting which took place in April 2013;
- Member States and organizations in consultative status with IMO should share their experience in resolving problems related to apprehension of pirates and should provide related information to IMO;
- IMO is the primary forum within the United Nations system responsible for coordinating efforts of the wider international community in its fight against piracy; and
- it is important to include in the database States whose national law does not allow the use of Privately Contracted Armed Security Personnel (PCASP) in its territorial waters.⁹⁹

With respect to the last point, a circular containing a questionnaire¹⁰⁰ on information on port and coastal State requirements related to PCASP on board ships (IMO, 2011b), includes information on national laws on the use of PCASP, firearms and security-related equipment.

Another document was introduced, containing information on the database on court decisions related to piracy (IMO, 2013r) established by the United Nations Interregional Crime and Justice Research Institute (UNICRI).¹⁰¹ Statistics were also provided by UNICRI, drawn from its piracy analysis, including the average age of pirates, the region and clans they come from, their occupations, when attacks are most likely to occur, the number of pirates participating in individual attacks, the use of motherships, the number of casualties occurring in pirate ranks and the number and type of ships boarded. The UNICRI piracy portal also provided information on court decisions, intended to make the database more comprehensive, as well as links to other databases in different jurisdictions and regions and information on post-trial transfers. There was general support for the database and the Legal Committee agreed to collaborate closely with UNICRI with regard to piracy-related issues.¹⁰²

The Legal Committee at its 100th session, also adopted draft Guidelines on the preservation and collection of evidence following an allegation of a serious crime having taken place on board a ship, or following a report of a missing person from a ship, and on pastoral and medical care of victims. These draft guidelines focus on what can practically be carried out on board a ship to preserve and/or collect evidence and protect persons affected by serious crimes, until such time that the relevant law enforcement authorities commence an investigation. They were submitted for consideration and adoption at the twenty-eighth session of the IMO Assembly to be held in November 2013, along with a related draft resolution.

The main purpose of the draft guidelines is to assist ship masters in the preservation of evidence and in the pastoral and medical care of persons affected and, when appropriate, in the collection of evidence during the period between the report or discovery of a possible serious crime and the time when law enforcement authorities or other professional crime scene investigators take action.¹⁰³

Facilitation Committee

A number of maritime security-related measures were considered during the thirty-eighth session of the Facilitation Committee held from 8 to 12 April 2013. The Committee approved "Guidelines on measures towards enhancing maritime trade recovery related to the global supply-chain system and maritime conveyances" (IMO, 2013s). These are intended to be

a practical tool, to be used by IMO Member States and industry for the purpose of considering relevant issues to increase the resilience of the global supply chain and minimize the impact of disruptions in the event of large-scale emergencies. The guidelines consist of three parts: (a) a listing of information requirements critical to improving supply-chain resilience and facilitating trade recovery following a severe disruption to the maritime supply chain; (b) information relating to the development of communication mechanisms between parties; (c) information relevant to the establishment of industry support groups.

The guidelines take into account work done by the Asia-Pacific Economic Cooperation Trade Recovery Programme (APEC), WCO and ISO in developing guidelines for Customs administrations and organizations to improve and facilitate trade recovery.¹⁰⁴

The Committee considered a document (IMO, 2013t) that contained information related to the questionnaire (IMO, 2011b)¹⁰⁵ on port and coastal State requirements in relation to privately contracted armed security personnel on board ships. The circular urged Member Governments and, in particular, those of the coastal States bordering the Indian Ocean, Arabian Sea, Gulf of Aden and Red Sea, to raise awareness of their relevant national legislation, policies and procedures relating to the carriage, embarkation and disembarkation of firearms and security-related equipment through their territory and to the movement of PCASP, by completing the questionnaire and submitting it to the IMO.

A number of developments related to supply-chain security in the work of the Facilitation Committee are also worth noting. In particular, the Committee approved:

- "Interim guidelines for use of printed versions of electronic certificates" (IMO, 2013u). The purpose of the guidelines was limited to providing information to administrations using electronic certificates; the guidelines were only the first step in the transition to a paperless system and greater reliance on web-based electronic access to certificates. Inputs from other IMO committees were expected as well.
- "Revised IMO Compendium on facilitation and electronic business" (IMO, 2013v). The compendium provides updated information, guidance and recommended formats for electronic exchange of information required by public

authorities for the arrival, stay, and departure of the ship, persons and cargo to facilitate clearance processes.

- “List of certificates and documents required to be carried on board ships, 2013” (IMO, 2013w). Only the certificates and documents that are required under IMO instruments are listed, but not certificates or documents required by other international organizations or governmental authorities.
- “Amendments to the International Convention for Safe Containers (CSC), 1972” (IMO, 2013o, Annex 7). These include amendments relating to the safety approval plate and to the approval of existing and new containers.

(ii) Other issues

Fair treatment of seafarers

The Legal Committee at its 100th session was provided with the findings of a survey conducted by Seafarers’ Rights International (SRI), concerning respect for the rights of seafarers facing criminal prosecution (IMO, 2013x). The survey, conducted in eight languages, was carried out over a 12-month period, ending in February 2012. A total of 3,480 completed questionnaires had been submitted by seafarers from 68 different nationalities.¹⁰⁶ The findings of the survey strongly suggested that the rights of seafarers, as enshrined in the “Guidelines on fair treatment of seafarers in the event of a maritime accident”, adopted jointly by the IMO and ILO, are often subject to violation. The views expressed during the meeting included the following:

- The statistics demonstrated the need to maintain the focus on the guidelines and to keep up the pressure for their better implementation;
- Seafarers were more exposed to criminal proceedings than many other workers and therefore needed special assistance;
- Legal assistance for seafarers should, in the first place, be provided by the shipowner;
- The findings of the survey could be taken into account by the Legal Committee during the drafting of guidelines on the collation and preservation of evidence following an allegation of a serious crime having taken place on board a ship or following a report of a missing person from a ship, and pastoral and medical care of victims.

The Legal Committee expressed general support for the continuous promotion of the guidelines, and agreed that the issue of fair treatment of seafarers in the event of a maritime accident should remain on the agenda of the Committee. Delegations were invited to submit proposals for outputs to improve compliance with the guidelines to its next session.¹⁰⁷

(d) International Organization for Standardization

As pointed out in earlier editions of the *Review of Maritime Transport*, during the last decade, ISO has been actively engaged in matters of maritime transport and supply-chain security. Shortly after the release of the ISPS Code, and to facilitate its implementation by the industry, the ISO technical committee ISO/TC 8 published ISO 20858:2007, “Ships and marine technology – Maritime port facility security assessments and security plan development”.

Relevant also is the development of the ISO 28000 series of standards “Security management systems for the supply chain”, which are designed to help the industry successfully plan for, and recover from, any disruptive event that is ongoing (see box on the current status of the ISO 28000 series of standards). The core standard in these series is ISO 28000:2007, “Specification for security management systems for the supply chain”, which serves as an umbrella management system that enhances all aspects of security: risk assessment, emergency preparedness, business continuity, sustainability, recovery, resilience and/or disaster management, whether relating to terrorism, piracy, cargo theft, fraud, or many other security disruptions. It also serves as a basis for AEO and C-TPAT certifications. Various organizations adopting such standards may tailor an approach compatible with their existing operating systems. ISO 28003:2007, also a published standard in force since 2007, provides requirements for providing audits and certification to ISO 28000:2007.

A new ISO/PAS 28007:2012 that has recently been developed by ISO/TC 8 sets out guidance for applying ISO 28000 to private maritime security companies and establishes criteria for selecting companies that provide armed guards for ships. It provides guidelines containing additional sector-specific recommendations, which companies or organizations that comply with ISO 28000 can implement before they provide PCASP on board ships.

Key developments in summary

The reporting period has been characterized by continued progress made by countries and international and regional organizations, supported by Customs and the private sector, regarding the implementation of the existing framework and programmes in the field of maritime and supply-chain security. Main areas of progress include enhancements to regulatory measures on maritime security and safety, primarily under the auspices of the IMO, as well as implementation and mutual recognition of AEO programmes. For the benefit of traders compliant with internationally required supply-chain security standards, it is hoped that the increasing number of bilateral mutual recognition agreements will, in due course, form the basis for mutual recognition of

AEOs at a multilateral level. In relation to the incidence of maritime piracy, an encouraging downward trend may be observed off the Coast of Somalia, the Gulf of Aden and the Western Indian Ocean. However at the same time, the number and violence of piracy attacks has increased in the West African Gulf of Guinea area. To address the issue, a regional Code of Conduct on the repression of piracy, armed robbery against ships and other illicit activities at sea was adopted by Heads of State from West and Central African Countries in Yaoundé in June 2013. It is hoped that this Code of Conduct will serve as an effective framework for its signatory States – 22 so far – to cooperate to the fullest possible extent in the prevention and repression of piracy and armed robbery against ships, and related crimes.

Box 5.1. The current status of the ISO 28000 series of standards

Standards published:

- **ISO 28000:2007** – “Specification for security management systems for the supply chain.” This provides the overall “umbrella” standard. It is a generic, risk-based, certifiable standard for all organizations, all disruptions, all sectors. It is widely in use and constitutes a stepping stone to the AEO and C-TPAT certifications.
- **ISO 28001:2007** – “Security management systems for the supply chain – Best practices for implementing supply-chain security, assessments and plans.” This standard is designed to assist the industry meet the requirements for AEO status.
- **ISO 28002:2011** – “Security management systems for the supply chain – Development of resilience in the supply chain – Requirements with guidance for use.” This standard provides additional focus on resilience, and emphasizes the need for an on-going, interactive process to prevent, respond to and assure continuation of an organization’s core operations after a major disruptive event.
- **ISO 28003:2007** – “Security management systems for the supply chain – Requirements for bodies providing audit and certification of supply-chain security management systems.” This standard provides guidance for accreditation and certification bodies.
- **ISO 28004-1:2007** – “Security management systems for the supply chain – Guidelines for the implementation of ISO 28000 – Part 1: General principles.” This standard provides generic advice on the application of ISO 28000:2007. It explains the underlying principles of ISO 28000 and describes the intent, typical inputs, processes and typical outputs for each requirement of ISO 28000. This is to aid the understanding and implementation of ISO 28000. ISO 28004:2007 does not create additional requirements to those specified in ISO 28000, nor does it prescribe mandatory approaches to the implementation of ISO 28000.
- **ISO/PAS 28004-2:2012** – “Security management systems for the supply chain – Guidelines for the implementation of ISO 28000 – Part 2: Guidelines for adopting ISO 28000 for use in medium and small seaport operations.” This provides guidance to medium and small ports that wish to adopt ISO 28000. It identifies supply-chain risk and threat scenarios, procedures for conducting risks/threat assessments, and evaluation criteria for measuring conformance and effectiveness of the documented security plans in accordance with ISO 28000 and ISO 28004 implementation guidelines.
- **ISO/PAS 28004-3:2012** – “Security management systems for the supply chain – Guidelines for the implementation of ISO 28000 – Part 3: Additional specific guidance for adopting ISO 28000 for use by medium and small businesses (other than marine ports).” This has been developed to supplement ISO 28004-1 by providing additional guidance to medium and small businesses (other than marine ports) that wish to adopt ISO 28000. The additional guidance in ISO/PAS 28004-3:2012, while amplifying the general guidance provided in the main body of ISO 28004-1, does not conflict with the general guidance, nor does it amend ISO 28000.
- **ISO/PAS 28004-4:2012** – “Security management systems for the supply chain – Guidelines for the implementation of ISO 28000 – Part 4: Additional specific guidance on implementing ISO 28000 if compliance with ISO 28001 is a management objective.” This provides additional guidance for organizations adopting ISO 28000 that also wish to incorporate the best practices identified in ISO 28001 as a management objective on their international supply chains.

Box 5.1. The current status of the ISO 28000 series of standards (continued)

- **ISO 28005-1:2013** – “Security management systems for the supply chain – Electronic port clearance (EPC) – Part 1: Message structures.” This standard provides for computer-to-computer data transmission.
- **ISO 28005-2:2011** – “Security management systems for the supply chain – Electronic port clearance (EPC) – Part 2: Core data elements.” This standard contains technical specifications that facilitate efficient exchange of electronic information between ships and shore for coastal transit or port calls, as well as definitions of core data elements that cover all requirements for ship-to-shore and shore-to-ship reporting as defined in the ISPS Code, FAL Convention and relevant IMO resolutions.
- **ISO/PAS 28007:2012** – “Ships and marine technology – Guidelines for private maritime security companies (PMSC) providing privately contracted armed security personnel (PCASP) on board ships (and pro forma contract).” This gives guidelines containing additional sector-specific recommendations, which companies(organizations) that comply with ISO 28000 can implement to demonstrate that they provide PCASP on board ships.
- **ISO 20858:2007** – “Ships and marine technology – Maritime port facility security assessments and security plan development.” This standard establishes a framework to assist marine port facilities in specifying the competence of personnel to conduct a marine port facility security assessment and to develop a security plan as required by the ISPS code. In addition, it establishes certain documentation requirements designed to ensure that the process used in performing the duties described above was recorded in a manner that would permit independent verification by a qualified and authorized agency. It is not an objective of ISO 20858:2007 to set requirements for a contracting Government or designated authority in designating a Recognized Security Organization (RSO), or to impose the use of an outside service provider or other third parties to perform the marine port facility security assessment or security plan if the port facility personnel possess the expertise outlined in this specification. Ship operators may be informed that marine port facilities that use this document meet an industry-determined level of compliance with the ISPS code. ISO 20858:2007 does not address the requirements of the ISPS code relative to port infrastructure that falls outside the security perimeter of a marine port facility that might affect the security of the facility/ship interface. Governments have a duty to protect their populations and infrastructures from marine incidents occurring outside their marine port facilities. These duties are outside the scope of ISO 20858:2007.

Standards under development:

- **ISO 28006** – “Security management systems for the supply chain – Security management of RO-RO passenger ferries.” This includes best practices for application of security measures.

Note: For more information, including on the procedure of preparing international standards at ISO, see www.iso.org.

D. STATUS OF CONVENTIONS

A number of international conventions in the field of maritime transport were prepared or adopted under the auspices of UNCTAD. Table 5.1 provides information on the status of ratification of each of these conventions as at 30 June 2013.

Table 5.1. Contracting Parties to selected international conventions on maritime transport, as at 30 June 2013

Title of Convention	Date of entry into force or conditions for entry into force	Contracting States
United Nations Convention on a Code of Conduct for Liner Conferences, 1974	Entered into force 6 October 1983	Algeria, Bangladesh, Barbados, Belgium, Benin, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chile, China, Congo, Costa Rica, Côte d'Ivoire, Cuba, Czech Republic, Democratic Republic of the Congo, Egypt, Ethiopia, Finland, France, Gabon, Gambia, Ghana, Guatemala, Guinea, Guyana, Honduras, India, Indonesia, Iraq, Italy, Jamaica, Jordan, Kenya, Kuwait, Lebanon, Liberia, Madagascar, Malaysia, Mali, Mauritania, Mauritius, Mexico, Montenegro, Morocco, Mozambique, Niger, Nigeria, Norway, Pakistan, Peru, Philippines, Portugal, Qatar, Republic of Korea, Romania, Russian Federation, Saudi Arabia, Senegal, Serbia, Sierra Leone, Slovakia, Somalia, Spain, Sri Lanka, Sudan, Sweden, Togo, Trinidad and Tobago, Tunisia, United Republic of Tanzania, Uruguay, Venezuela (Bolivarian Republic of), Zambia (76)
United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg Rules)	Entered into force 1 November 1992	Albania, Austria, Barbados, Botswana, Burkina Faso, Burundi, Cameroon, Chile, Czech Republic, Dominican Republic, Egypt, Gambia, Georgia, Guinea, Hungary, Jordan, Kazakhstan, Kenya, Lebanon, Lesotho, Liberia, Malawi, Morocco, Nigeria, Paraguay, Romania, Saint Vincent and the Grenadines, Senegal, Sierra Leone, Syrian Arab Republic, Tunisia, Uganda, United Republic of Tanzania, Zambia (34)
International Convention on Maritime Liens and Mortgages, 1993	Entered into force 5 September 2004	Albania, Benin, Ecuador, Estonia, Lithuania, Monaco, Nigeria, Peru, Russian Federation, Spain, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Serbia, Syrian Arab Republic, Tunisia, Ukraine, Vanuatu (17)
United Nations Convention on International Multimodal Transport of Goods, 1980	Not yet in force – requires 30 Contracting Parties	Burundi, Chile, Georgia, Lebanon, Liberia, Malawi, Mexico, Morocco, Rwanda, Senegal, Zambia (11)
United Nations Convention on Conditions for Registration of Ships, 1986	Not yet in force – requires 40 Contracting Parties with at least 25 per cent of the world's tonnage as per Annex III to the Convention	Albania, Bulgaria, Côte d'Ivoire, Egypt, Georgia, Ghana, Haiti, Hungary, Iraq, Liberia, Libya, Mexico, Morocco, Oman, Syrian Arab Republic (15)
International Convention on Arrest of Ships, 1999	Entered into force 14 September 2011	Albania, Algeria, Benin, Bulgaria, Ecuador, Estonia, Latvia, Liberia, Spain, Syrian Arab Republic (10)

Note: For official status information, see <http://treaties.un.org>.

E. INTERNATIONAL AGREEMENTS ON TRADE FACILITATION

1. A trade facilitation agreement at the World Trade Organization: an opportunity for the Bali Ministerial

Trade facilitation has a long history in UNCTAD, whose mandate in this area dates from the final act of its first Ministerial Conference in 1964. The work of UNCTAD in the trade-facilitation area has taken various forms, constantly adjusting to the needs and the priorities of UNCTAD member States. An example of the work of UNCTAD in this area is the Automated SYstem for CUstoms DAta (ASYCUDA), used by more than 90 countries. With regard to the transport sector, trade facilitation is an essential element to ease the burden of international transport operations, which are often hampered by excessive and repetitive procedures, in particular at border crossing along the transport chain.

The window of opportunity for WTO members to reach a trade-facilitation agreement at the ninth WTO Ministerial Conference to be held in Bali, Indonesia (3–6 December 2013) remains open. Expectations are that the Ministerial Conference will deliver on some elements of the Doha package, including trade facilitation, a package for the LDCs and some aspects of agriculture and development issues. There are diverging views amongst the WTO membership on whether a deliverable on trade facilitation is possible, and some have questioned the desirability of focusing on only a few issues while others of high importance for developing countries, such as agriculture, may not be programmed for discussion at Bali. This lack of consensus was previously noted in the 2012 edition of the *Review of Maritime Transport*, that is, the linkage of the trade facilitation to other items of the Doha round and the need to fine tune the agreement itself to provide the appropriate balance between commitments and flexibilities (UNCTAD, 2012a).

Efforts persist on many fronts to emphasize the potential benefits of having a multilateral agreement on trade facilitation for the world economy as a whole and for developing countries in particular. In the WTO, in parallel to the negotiations on the text of the trade-facilitation agreement, there have been a series of regional and global conferences to address the practical experience of implementing trade-facilitation reforms, including their costs and benefits. These events included dedicated sessions on showcasing

trade-facilitation programmes supported by bilateral and multilateral development partners and highlighted the wealth of existing technical assistance and capacity-building programmes in the trade-facilitation area. In addition, with the launch in November 2012 of the WTO Technical Assistance Programme for National Self-Assessments of Trade Facilitation Needs and Priorities 2012-2014, the focus was once again on identifying and evaluating the gaps in the implementation capacity of developing countries, especially amongst LDCs. Ensuring that the needs of the developing countries are well matched by the assistance offered by the international community of donor countries and organizations remains the major goal and challenge of all these activities.

However, there remain some WTO members that are concerned with the lack of progress in preparing the package of deliverables for the Bali Ministerial Conference (Miles, 2013; International Centre for Trade and Sustainable Development Reporting, 2013). This need to accelerate the speed and progress in the negotiations is reflected in the establishment of an ambassador-level “friends of the chair” process to intensify the negotiations around the three articles V, VII and X, as well as on section II on “Special and differential treatment”. Although it is clear that this new approach has brought renewed vigour to the negotiations, some systemic issues remain to be closed, primarily around the notion of the level of ambition in section I and the extent of the flexibilities in section II.

Progress has certainly been made on improving the language in most of the provisions of the draft consolidated negotiating text and, especially, the provisions related to publication of and access to trade-related information, appeal procedures, penalty disciplines, release and clearance of goods, authorized operators, freedom of transit and customs cooperation.¹⁰⁸ Far from restricting the negotiations to the proposals already included in the text, in 2013 the Negotiating Group on Trade Facilitation also included a few new substantive provisions. These include a new paragraph on the electronic payment for duties, taxes, fees and charges collected by customs (article 7, paragraph 2), a new paragraph on release and clearance of perishable goods (article 7, paragraph 9) and a separate paragraph on acceptance of copies (article 10, paragraph 3).

Work is also continuing intensively on section II of the draft that contains special and differential treatment provisions for developing countries and LDCs. The

last revision, revision 16, takes into account the recent proposals tabled by a number of developing countries and illustrates some progress made in the categorization of the obligations and changing (shifting) amongst the categories after notification. In particular, shifting from categories B and C, though still subject to notification and consideration by the proposed WTO Trade Facilitation Committee, is no longer reserved for the cases with “exceptional circumstances”. The proposed grace period for the application of the WTO dispute settlement system to the LDCs is now taking a more precise form, with some suggestions for actual time periods being placed on the table. Progress has also been made on clarifying the proposal which calls on developed countries to make available annual information on the provided technical assistance and capacity-building, contact points and process and mechanisms for requesting assistance. Important gaps remain, however, including concerning the practicalities related to the notification of measures under section II and, in particular, measures in category C, where the developing countries’ commitment to the exact implementation times and schedule is dependent on the donor’s commitment to provide technical assistance and capacity-building (TACB) and the exact scope and timeframe of such aid.

It remains to be seen whether these developments alleviate the developing countries’ concerns regarding the costs and other challenges of implementing an eventual trade-facilitation agreement in WTO. In this context, some lessons can be drawn from the recent UNCTAD work on helping developing countries establish national implementation plans for the trade-facilitation measures currently considered in WTO.

2. Lessons on trade-facilitation implementation from the UNCTAD project “Implementation Plans for WTO Trade Facilitation Agreement in Developing Members” (2011–2013)¹⁰⁹

During the period 2011–2013, UNCTAD has worked closely with 26 developing countries on updating the current implementation status of the trade-facilitation measures addressed by WTO and on identifying the activities, time, resources and TACB required for achieving compliance with the measures yet to be fully implemented. This work was carried out with the financial support of the European Union, Norway,

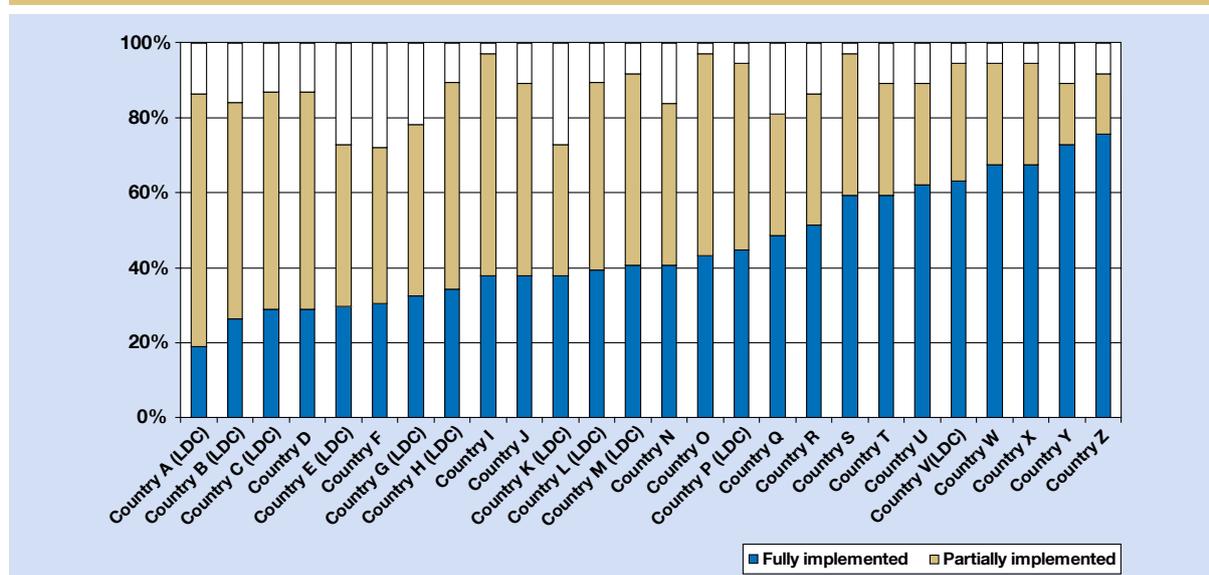
the United Nations Development Account, the United Nations Development Programme and the World Bank, and in close cooperation with other Annex D organizations, including OECD and WCO. The participating countries included LDCs, middle-income developing countries, landlocked countries, transit developing countries, and small island economies in Africa, Asia, the Caribbean and Latin America.

The consolidated results of these 26 national implementation plans shed some light on the challenges that some developing countries currently have regarding implementation of some of the modalities currently envisaged in the draft text but also on the opportunities for building the capacity to implement and sustain the measures which are currently on the table.

These national assessments have been particularly useful in highlighting the existing gaps between what is being proposed at the WTO and what is being implemented on the ground, in developing countries, and in LDCs in particular. As illustrated in figure 5.1, in the majority of the participating developing countries, less than 50 per cent of the trade-facilitation measures under discussion in the WTO are currently fully implemented. In all of the participating countries, the rate of full implementation was below 76 per cent, with the lowest implementation rate being 19 per cent. The implementation rate is even lower for LDCs, with the majority of them below the 40 per cent level. At the same time, the measures that have not yet been implemented constitute a clear minority, ranging from 3 to 28 per cent, which suggests that only a small number of the proposed trade-facilitation reforms are completely new to the developing countries.

Another conclusion from the consolidated results is that the level of full implementation of the individual trade-facilitation measures suggests that measures with the strongest customs-related component, covered by articles 4, 7, 9bis, 10, 11 and 12 are characterized by high implementation rates. At the same time, most of the cross-sectoral or cross-agency measures, such as single window, enquiry points, publication of trade-related information, disciplines on fees and charges, together with some advanced customs techniques, such as advance ruling and authorized operators, have the lowest implementation rates, especially in LDCs. This suggests that many challenging trade-facilitation measures remain to be implemented by developing countries in terms of the level of inter-agency cooperation and sophistication of the institutional, legal and regulatory frameworks.

Figure 5.1. Level of implementation of trade-facilitation measures per country



Source: Forthcoming report – *The new frontier of competitiveness in developing countries: Implementing trade facilitation*, UNCTAD, 2013.

Moreover, the national implementation plans reveal that there remain numerous obstacles to trade-facilitation reforms in developing countries (figure 5.2). The reasons offered by the trade-facilitation stakeholders in the participating countries to explain the absent or partial implementation of the trade-facilitation measures go beyond the mere lack of resources and include the gaps in the existing legal framework, lack of awareness about the benefits of the particular trade-facilitation measure both for traders and the administrations involved, information and communication technology and infrastructure issues, lack of inter-agency cooperation, and lack of organizational or institutional framework (figure 5.3). At the same time, the lack of resources remains one of the main obstacles for the implementation, especially in LDCs.

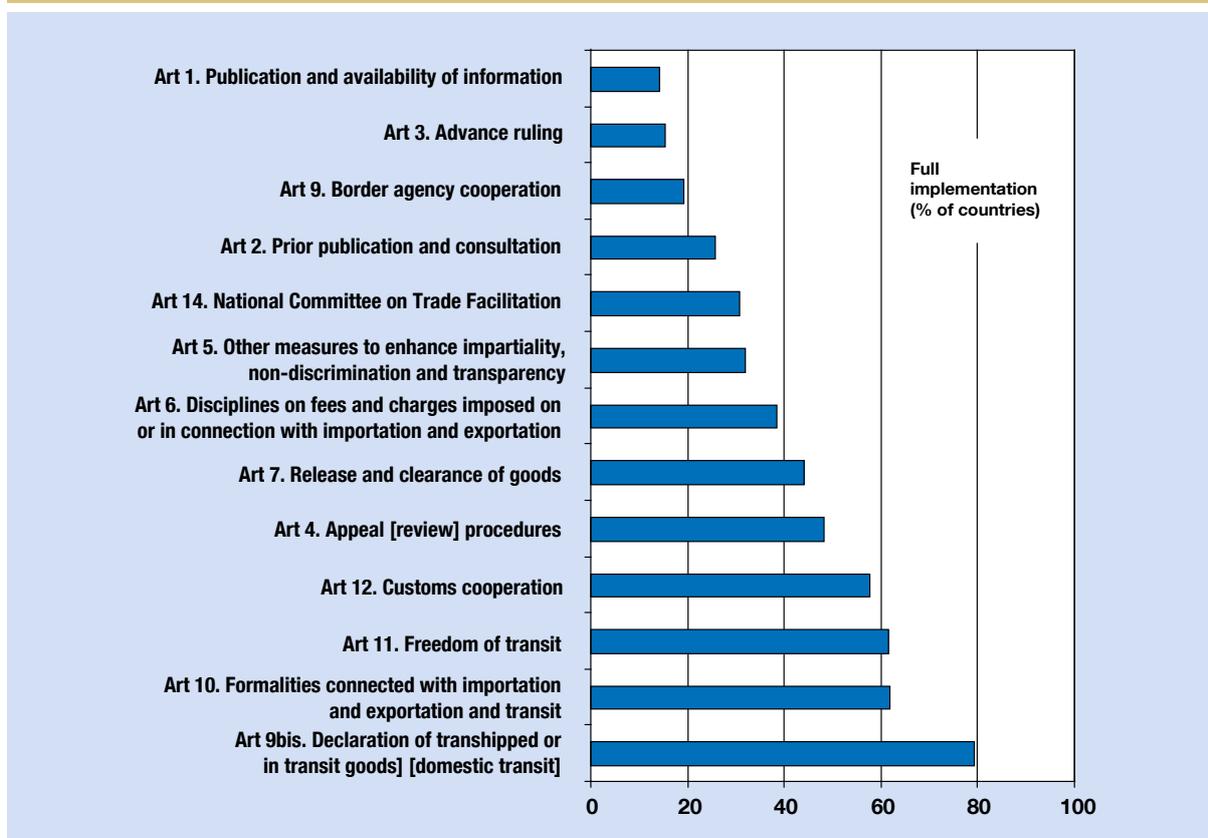
On the other hand, several encouraging developments for the trade-facilitation implementation could also be observed. One of these developments is the growing recognition in developing countries of the importance of effective trade facilitation for growth, development and investment. The trade-facilitation stakeholders in the participating countries considered most of the trade-facilitation measures as having a medium to high priority rate for the national economic development. The positive impact of trade-facilitation reforms seems to be more recognized in non-LDCs, which tend to award higher priority to the trade-facilitation measures than LDCs.

Moreover, the estimates on the time requirements for achieving the full implementation of these trade-

facilitation measures show the acceptable time parameters within which this full implementation could be achieved. The estimated implementation time for the majority of the measures was, on average, about 3 years and not higher than five years for most of the remainder of the reforms. This makes it possible for most of the countries to envisage full implementation status within a five-year period. Estimating the necessary financial resources was a much more difficult task and varied greatly depending on the country. However, in general the amount remained reasonably modest, especially in the light of the substantial and continuous increase in the international aid for trade facilitation-related TACB.

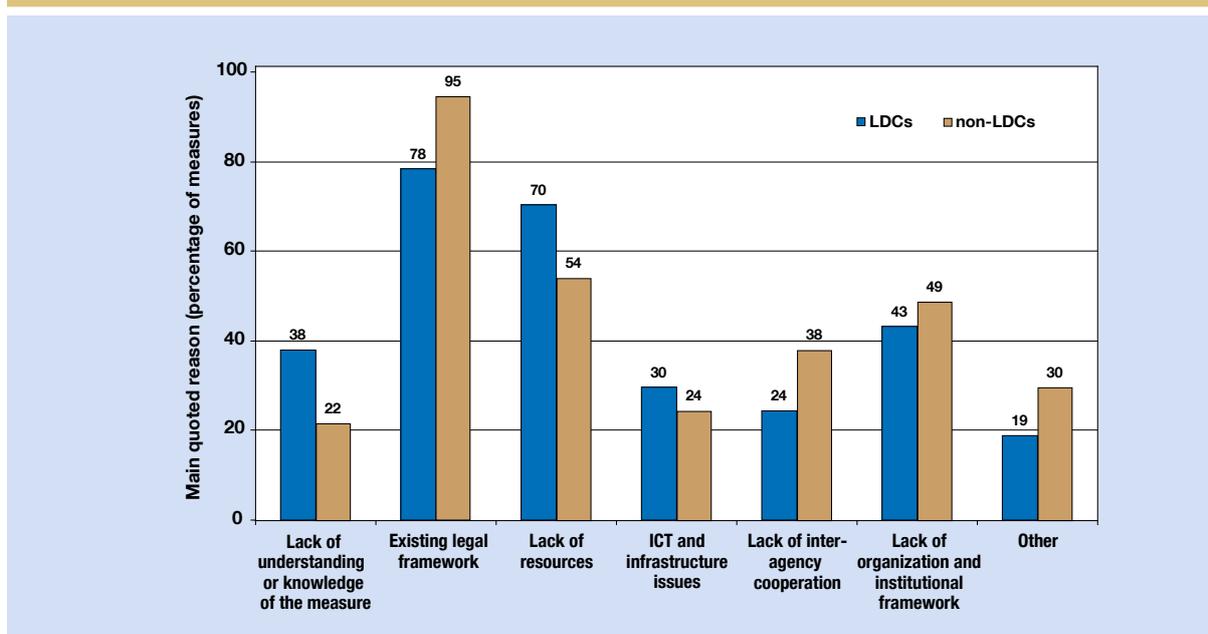
Finally, for the participating countries, it seemed possible to fully reduce the trade-facilitation implementation gap, using the flexibilities proposed in section II of the draft consolidated negotiating text. The results of the national implementation plans showed that to move forward with the trade-facilitation implementation, the developing countries expected to rely significantly on these flexibilities both in terms of the additional implementation times and the TACB which would be provided. Depending on the country, the percentage of the measures that would either require additional time, or additional time and TACB, ranges from 10 per cent to 67 per cent (figure 5.4). For the majority of the countries and for most of the LDCs, these measures constitute, at least, one third of the measures currently included in the draft WTO text.

Figure 5.2. Full implementation level per area of trade-facilitation measures



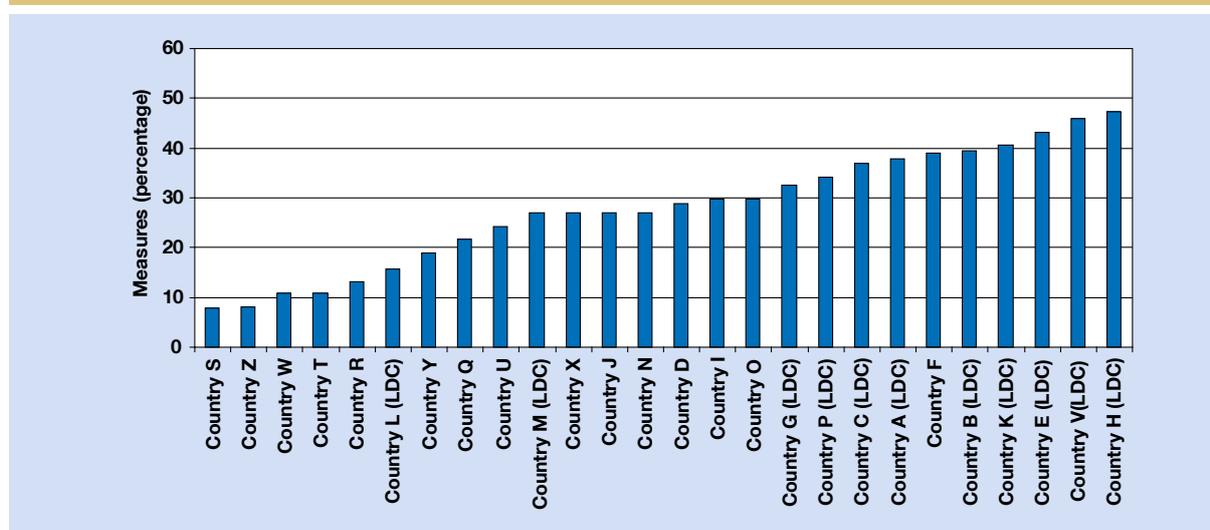
Source: Forthcoming report – *The new frontier of competitiveness in developing countries: Implementing trade facilitation*, UNCTAD, 2013.

Figure 5.3. Most-quoted reasons for non-implementation



Source: Forthcoming report – *The new frontier of competitiveness in developing countries: Implementing trade facilitation*, UNCTAD, 2013.

Figure 5.4. Percentage of the measures requiring technical assistance and capacity-building



Source: Forthcoming report – *The new frontier of competitiveness in developing countries: Implementing trade facilitation*, UNCTAD, 2013.

The need for TACB was considered to be highest for the 10 measures detailed in table 5.2, which correspond to the measures with the lowest implementation levels in the developing countries and which represent a combination of measures requiring intensive domestic or cross-border cooperation, infrastructure and information and communication technology investments, and use of advanced customs techniques.

The consolidated results of the national trade-facilitation implementation plans, developed by UNCTAD, illustrate that trade facilitation remains a challenge but is also seen as a priority area for national development by the developing countries themselves. By identifying the major areas of non-compliance, the range of time and cost requirements, and the

needs for TACB, this work offers valuable insights into the priority needs of developing countries and the national and regional ambitions in implementing trade-facilitation reforms. In this respect it provides some important guidance for both developing countries and their development partners.

3. Conclusions

On 8 July 2013, on the occasion of the fourth Global Review of Aid for Trade in Geneva, high-level representatives of 27 Governments and organizations, including UNCTAD, issued a “Joint Statement – Trade Facilitation Assistance” for trade-facilitation implementation. The statement emphasized the benefits of concluding a trade-facilitation agreement in Bali and highlighted the Governments’/organizations’ strong commitment to continue to provide support for its implementation.¹¹⁰

Much of the discourse of most multilateral and bilateral development partners continues to focus on the volume of the aid to trade facilitation. However, for potential beneficiary countries the challenge remains to effectively match not only the volume but also the scope and nature of this assistance to their needs and priorities. Indeed, the assistance required for many trade-facilitation reforms will likely have to go beyond a financial aid and will have to involve significant efforts in long-term sustainable capacities, technological and institutional infrastructure development, and training and reforms aimed at better governance.

Table 5.2. Top 10 measures with the highest estimated need for technical assistance and capacity-building

Single window (TN/TF/165/W/Rev. 16, article 10, paragraph 5)
Test procedures (article 5, paragraph 3)
Information available through Internet (article 1, paragraph 2)
Border agency cooperation (article 9)
Advance ruling (article 3)
Enquiry points (article 1, paragraph 3)
Disciplines on fees and charges imposed on or in connection with importation and exportation (article 6, paragraph 1)
Publication (article 1, paragraph 1)
Reduction/limitation of formalities and documentation requirements (article 10, paragraph 2)
Risk management (article 7, paragraph 4)

Developing countries need to carefully evaluate the specific requirements and available resources so that they can accurately plan the implementation of the trade-facilitation reforms both in terms of time, possible technical assistance and capacity-building. They should also define appropriate sequencing of actions required to ensure full compliance with their trade-facilitation commitments and programme their implementation time and scope effectively taking advantage of the flexibilities offered in section II of the draft consolidated negotiating text (Rubiato and Hoffmann, 2013).

The national implementation plans approach, developed by UNCTAD, and the WTO needs assessments are important steps in this direction, but remain one part of the whole journey, which, in the end, will rely extensively on the countries' capacity to maintain an inclusive and productive national dialogue on the trade-facilitation reforms. In this context, supporting the establishment and operationalization of national trade-facilitation committees in developing countries will prove to be an important element in effectively implementing and monitoring needs and progress under an eventual WTO agreement.

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NOTES

- ¹ The MLC 2006 enters into force 12 months after the date on which it was ratified by 30 members accounting for a total share in the world ship GT of at least 33 per cent. The Convention is now in force in 38 International Labour Organization (ILO) member States representing 69 per cent of the world ship GT. The status of ratification of the MLC 2006 is based on information on the ILO website, as of 9 July 2013. For a list of international conventions that will be revised after the entry into force of MLC 2006 see http://www.ilo.org/global/standards/maritime-labour-convention/WCMS_150389/lang--en/index.htm (accessed 17 October 2013).
 - ² The text of MLC 2006 is available at http://www.ilo.org/global/standards/maritime-labour-convention/WCMS_090250/lang--en/index.htm (accessed 17 October 2013). See also the “Explanatory Note to the Regulations and Code of the Maritime Labour Convention”, on page 12 of the International Labour Conference document above. The articles and regulations can only be changed by the Conference in the framework of article 19 of the Constitution of the International Labour Organisation (see Article XIV of the Convention).
 - ³ The Code can be amended through the simplified procedure set out in Article XV of the Convention.
 - ⁴ See MLC 2006.
 - ⁵ See MLC 2006 Regulation 5.1.3.
 - ⁶ See “Report of the Legal Committee on the work of its one-hundredth session” (IMO, 2013a), paragraph 4.4. The amendments to be discussed were based on the recommendations of the joint IMO/ILO Ad Hoc Expert Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers, adopted in 2009.
 - ⁷ The entry into force of PAL PROT 2002 followed the submission of the instrument of ratification by Belgium on 23 April 2013. Instruments of ratification had been earlier submitted by Albania, Belize, Denmark, Latvia, the Netherlands, Palau, Saint Kitts and Nevis, Serbia, the Syrian Arab Republic, and the European Union.
 - ⁸ It is worth noting that for the first time in an IMO Convention, express provision has been made for signature, approval or accession by a regional economic integration organization, conferring upon such organization “the rights and obligations of a State Party, to the extent that the Regional Economic Integration Organization has competence over matters governed by this Protocol” (see Article 19 of the Convention). The European Union acceded to the 2002 Protocol at the end of 2011. However, this does not substitute for individual ratification by its member States.
 - ⁹ PAL 1974 was adopted on 13 December 1974 and entered into force on 28 April 1987. A 1976 Protocol to the Convention introduced the SDR as the applicable unit of account, replacing the “Poincaré franc”, based on the “official” value of gold. A 1990 Protocol to the Convention was intended to raise the relevant limits of liability but did not enter into force and was later superseded by the 2002 Protocol. The PAL PROT 2002 was adopted on 1 November 2002 and will enter into force on 23 April 2014.
 - ¹⁰ Article 15(3) of PAL PROT 2002 states that Articles 1 to 22 of the Convention, as revised by the Protocol, together with Articles 17 to 25 of the Protocol and the Annex thereto, shall constitute and be called the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002 (PAL 2002).
 - ¹¹ For some further information, see also a compilation of documents on the Athens Convention, available at <http://www.gard.no/ikbViewer/Content/72411/Athens%20Convention%20and%20ratifications%20April%202013.pdf> (accessed 25 November 2013).
 - ¹² See Articles 3(1) and 7(1) of the Convention. However, it should be noted that the Convention envisages the possibility for Contracting States to enter certain reservations.
 - ¹³ See Article 4bis of the Convention.
 - ¹⁴ For loss or damage to cabin luggage, the carrier’s liability is limited to 2,250 SDR per passenger, per carriage. Liability for loss of or damage to vehicles, including all luggage carried in or on the vehicle, is limited to 12,700 SDR per vehicle, per carriage. Liability for loss of or damage to other luggage is limited to 3,375 SDR per passenger, per carriage.
 - ¹⁵ Under PAL 1974, limits can only be raised by adopting amendments to it, which require a specified number of States’ acceptances to bring the amendments into force. For instance, an earlier Protocol to PAL 1974, adopted in 1990, which was also intended to increase the liability limits, did not enter into force and was superseded by PAL PROT 2002. Under the tacit acceptance procedure, described in Article 23 of the Convention, a proposal to amend the limits, as requested by at least one half of the Parties to the Protocol, but in no case less than six, would be circulated to all IMO member States and all States Parties and would then be discussed in the IMO Legal Committee. Amendments would be adopted by a two-thirds majority of the States Parties to the Convention as amended by the Protocol present and voting in the Legal Committee, on condition that at least one half of these States shall be present at the time of voting, and would enter into force 18 months after its deemed acceptance date. The deemed acceptance date would be 18 months after adoption, unless within that period not less than one fourth of the States that were States Parties at the time of the adoption of the amendment have communicated to the IMO Secretary-General that they do not accept the amendment.
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- ¹⁶ See Article 17.5 of PAL PROT 2002. As a precondition for joining, Parties to the PAL PROT 2002 are required to denounce PAL 1974 and its 1976 and 1990 Protocols. As of 30 June 2013, PAL 1974 was in force in 35 Contracting States, representing 45.88 per cent of world GT. This will reduce to 31 States on 23 April 2014. As of 30 June 2013, PAL PROT 1976 was in force in 26 Contracting States; this will reduce to 23 States on 23 April 2014.
- ¹⁷ Relevant declarations were made by Argentina and the Russian Federation, in accordance with Article 22 of PAL 1974.
- ¹⁸ These are Canada, Denmark, Finland, Germany, Norway and Sweden. Relevant liability limits under domestic legislation are in line with or very similar to the amounts set out in a 1990 Protocol to the PAL 1974 which, however, never entered into force. It should be noted that Denmark has now ratified PAL PROT 2002 and will thus be a Party to PAL 2002. For further information on the status of these conventions as at 30 June 2013, see IMO (2013b).
- ¹⁹ The set of measures were added as an amendment to MARPOL Annex VI “Regulations on the prevention of air pollution from ships”, as a new Chapter 4 entitled “Regulations on energy efficiency for ships”.
- ²⁰ For a summary of the content of the regulations, see UNCTAD (2012a), pages 97–98. For an overview of the discussions on the different types of measures, see UNCTAD (2010), pages 118–119 and UNCTAD (2011a), pages 114–116.
- ²¹ The study suggests that, if implemented, relevant measures could increase energy efficiency and reduce the emissions rate by 25–75 per cent below the current levels. For a detailed insight on a range of the potential implications of climate change for shipping see also an edited volume, *Maritime Transport and the Climate Change Challenge*, published in May 2012 (Asariotis and Benamara, 2012). The book, a United Nations co-publication with Earthscan/Routledge, includes contributions from experts from academia, international organizations – such as the IMO, the United Nations Framework Convention on Climate Change (UNFCCC) secretariat, OECD, the International Energy Agency and the World Bank – as well as the shipping and port industries. Issues covered include the scientific background; GHG emissions from international shipping and potential approaches to mitigation; the state of play in terms of the relevant regulatory and institutional framework; potential climate-change impacts and approaches to adaptation in maritime transport; and relevant cross-cutting issues such as financing and investment, technology and energy. For further information, see the UNCTAD website at www.unctad.org/tti/legal.
- ²² The MEPC held its sixty-fourth session 1–5 October 2012 and its sixty-fifth session 13–17 May 2013.
- ²³ This amendment updated a footnote referring to the International Towing Tank Conference recommended procedure 7.5-04-01-01.2 as the preferable standard.
- ²⁴ The proposal of the United States to enhance energy efficiency in international shipping. Additional documents considered by the Committee under this item include those by: IMarEST, providing information relating to a goal-based approach to “fuel consumption measurement”; CSC, providing comments on the submissions by the United States and IMarEST, and offering additional information on the different approaches to monitoring and reporting fuel consumption and carbon dioxide (CO₂) emissions from ships; Belgium, Canada, Denmark, Germany, Japan, Norway and the United Kingdom, supporting the development of technical and operational measures to increase the energy efficiency of ships.
- ²⁵ “BEING COGNIZANT of the principles enshrined in the Convention on the Organization, including the principle of non-discrimination, as well as the principle of no more favourable treatment enshrined in MARPOL and other IMO Conventions.”
- ²⁶ “BEING COGNIZANT ALSO of the principles enshrined in the UNFCCC and its Kyoto Protocol including the principle of common but differentiated responsibilities and respective capabilities.”
- ²⁷ Several delegations made statements on the resolution, which are set out in Annex 5 of IMO (2013c). As reported by the Third World Network (Chiew, 2013), during the subsequent UNFCCC Climate Change Conference in Bonn, in June 2013, a group of developing countries have taken the express reference in the IMO resolution to the principle of “common but differentiated responsibilities”(CBDR) as a clear signal that the IMO respects the principles and provisions of the UNFCCC in its work related to climate change. An opposing view was expressed by some developed-country delegations, including Japan, asserting that the adoption of the preamble paragraph in the Resolution, which refers to “being cognizant” of CBDR should not limit the activities under the principles of the IMO, pointing out that the reiteration of this point was recorded in the MEPC 65 report.
- ²⁸ See a note by the IMO to the thirty-eighth session of the Subsidiary Body for Scientific and Technological Advice, Bonn, 3 to 14 June 2013, providing an update on the IMO work to address emissions from fuel used for international shipping, available at <http://unfccc.int/resource/docs/2013/sbsta/eng/misc15.pdf> (accessed 7 November 2013).
- ²⁹ In respect of possible MBMs, see particularly UNCTAD (2011a) pages 114 and 117–119 and UNCTAD (2012a), pages 99–101.
- ³⁰ It should be noted that a range of concerns on matters of principle and policy concerning reduction of GHG emissions and in respect of potential MBMs have been expressed by a number of developing countries’ delegations, including in particular the delegations of Brazil, China and India. For further details, see also the statements by several delegations (IMO, 2012c, Annexes 14–17).
- ³¹ The countries studied include Chile, China, the Cook Islands, India, Kenya, the Maldives, Mexico, Samoa, Togo, and Trinidad and Tobago.
- ³² Brazil, China, India, Peru, Saudi Arabia and South Africa.
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- 33 Based on a proposal by its Chair, the MEPC agreed to suspend discussions on market-based measures and related issues to a future session and consider only the following three items: (a) update of the GHG emission estimate for international shipping; (b) WTO-related matters; (c) UNFCCC matters (IMO, 2013c, paragraph 5.1).
- 34 As reported in previous issues of the *Review of Maritime Transport*, key figures in the latest (second) IMO GHG Study (IMO, 2009) estimated that international shipping emitted 870 million tons, or about 2.7 per cent, of the global emissions of CO₂ generated by human activity in 2007.
- 35 See IMO (2012b), page 36.
- 36 The expert workshop to further consider the methodology and assumptions to be used in the update of GHG emissions estimate for international shipping was held from 26 February to 1 March 2013. Its report is contained in document IMO (2013f).
- 37 The terms of reference of the Update Study are set out in the Annex to the document (IMO, 2013f).
- 38 The steering committee was subsequently established by the IMO Secretary-General on 12 July 2013 by circular letter (IMO, 2013g).
- 39 By India and Saudi Arabia.
- 40 It should be noted that the delegation of India expressed the view that the WTO Secretariat was not in a position to provide the information requested and, therefore, the information in the Annex to the document should not have been requested nor should it be considered further (IMO, 2013c, paragraph 5.20).
- 41 Documents submitted by the IMO Secretariat were as follows: IMO (2012g) on the outcome of a United Nations Climate Change Conference held in Bonn from 14 to 25 May 2012; IMO (2012h) on the first board meeting of the Green Climate Fund which was held from 23 to 25 August 2012 in Geneva, Switzerland; IMO (2013i) on the outcome of the United Nations Climate Change Conference held in Doha from 26 November to 8 December 2012.
- 42 The report highlights central features of the international legal framework and provides an analytical overview of key provisions of the most recent of the international legal instruments in force. It also offers considerations for national policymaking.
- 43 This covers the International Convention on Civil Liability for Oil Pollution Damage 1969 and its 1992 Protocol as well as the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (Fund Convention) 1971 and its 1992 and 2003 Protocols.
- 44 The convention entered into force on 21 November 2008 and as of 30 June 2013 had 70 States Parties representing 90.04 per cent of world tonnage. The convention covers oil pollution from ships other than tankers, for example, container vessels, reefers, chemical tankers, general cargo ships, cruise ships and ferries.
- 45 The 2010 Protocol to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996. The Protocol has not yet entered into force. See also UNCTAD (2010), pages 124–125.
- 46 The workshop took place in London, in November 2012. For further information see www.hnsconvention.org (accessed 11 November 2013).
- 47 IMO (2013a), pages 5–6.
- 48 Particularly following the Deepwater Horizon incident in 2010 and the 2009 incident on the Montara offshore oil platform, located in the Australian Exclusive Economic Zone, in which a well exploded, leading to a significant oil spill.
- 49 For a summary of views expressed by the delegations see IMO (2013a), pages 21–24. Also noted in the report is an informal consultative group to discuss issues connected with transboundary pollution damage from offshore exploration and exploitation activities and coordinated by the delegation of Indonesia. The online address for participating in this group is ind_offshorediscussion_imoleg@yahoo.com.
- 50 MARPOL Annex VI came into force on 19 May 2005, and as at 30 June 2013 it had been ratified by 72 States, representing approximately 94.30 per cent of world tonnage. Annex VI covers air pollution from ships, including SO_x and NO_x emissions and particulate matter.
- 51 See UNCTAD (2008), page 119.
- 52 In case of a negative conclusion of the review, the new global cap should be applied from 1 January 2025.
- 53 The first two SO_x ECAs, the Baltic Sea and the North Sea areas, were established in Europe and took effect in 2006 and 2007, respectively. The third established was the North American ECA, taking effect on 1 August 2012. In addition, in July 2011, a fourth ECA, the United States Caribbean Sea, was established. This latter area covers certain waters adjacent to the coasts of Puerto Rico (United States) and the United States Virgin Islands, and will take effect on 1 January 2014.
- 54 Also called exhaust gas SO_x scrubbers.
- 55 Directive 2012/33/EU of the European Parliament and of the Council of 21 November 2012, amending Council Directive 1999/32/EC as regards the sulphur content of marine fuels; OJ L 327, 27 November 2012, pages 1–13. Available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:327:0001:0013:EN:PDF> (accessed 12 November 2013).

- 56 This proposal by the ICS suggested that, during the period 2012–2014, the fuel-availability model proposed by the Correspondence Group on the assessment of availability of fuel oil under MARPOL Annex VI should be used to carry out a preliminary study to provide fuel availability scenarios for the period 2015–2016.
- 57 This proposal by the United States opposed the early initiation of the assessment of availability of fuel oil under MARPOL Annex VI, as the results of an earlier preliminary analysis would be of little value in assessing fuel availability in 2020, for several reasons.
- 58 So far, only the North American ECA is designated for NOx control. An application to make the Baltic Sea an ECA is being discussed by the surrounding States through the Helsinki Commission. For more information see *Lloyd's List* (2013).
- 59 Limits of tier III are almost 70 per cent lower than those of tier II, thus requiring additional technology.
- 60 For an overview of the revised MARPOL Annex V discharge provisions, see UNCTAD (2012a), table 5.1, page 104.
- 61 According to this circular, until 31 December 2015 cargo hold wash water from holds having previously contained solid bulk cargoes classified as harmful to the marine environment may be discharged outside special areas under specific conditions. The circular also urges Parties to MARPOL Annex V to ensure the provision of adequate facilities at ports and terminals for the reception of solid bulk cargo residues, including those contained in wash water.
- 62 The Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships 2009.
- 63 These are the “2012 Guidelines for safe and environmentally sound ship recycling”, (IMO, 2012a, Annex 4), the “2012 Guidelines for the authorization of ship recycling facilities” (IMO, 2012a, Annex 5), the “2011 Guidelines for the development of the Inventory of Hazardous Materials” (IMO, 2012a, Annex 3), and the “2011 Guidelines for the development of the Ship Recycling Plan” (IMO, 2011a, Annex 2).
- 64 The Hong Kong Convention has been opened for accession since 1 September 2010 and it is not yet in force. It will enter into force 24 months after the date on which 15 States, representing 40 per cent of the world’s merchant fleet tonnage, have become parties to it. As of 30 June 2013, only Norway had acceded to the Convention.
- 65 This group was initially established during the MEPC 64 to develop threshold values and exemptions applicable to the materials to be listed in Inventories of Hazardous Materials and to consider the need to amend, accordingly, the “2011 Guidelines for the development of the Inventory of Hazardous Materials”.
- 66 The BWM Convention has not yet entered into force. As of 30 June 2013, 37 States, with an aggregate merchant shipping tonnage of 30.32 per cent of the world total, have ratified it. The Convention will enter into force twelve months after the date on which no fewer than 30 States, the combined merchant fleets of which constitute not less than 35 per cent of the GT of the world merchant shipping, have become parties to it. Several delegations had indicated earlier that they were expecting to submit their instruments of ratification to IMO in the near future, since the process of ratifying the Convention is in the final or advanced stage in their countries. See also UNCTAD (2011b, page 8).
- 67 These ballast water systems were proposed by China, the Netherlands, Norway and the Republic of Korea. Details of these systems can be found in the respective documents submitted during MEPC 64 and 65, available at www.imo.org.
- 68 These systems were proposed by China, Denmark, Japan, the Netherlands and the Republic of Korea. Details of these systems can be found in the respective documents submitted during the MEPC 64 and 65, available at www.imo.org. Many types of ballast water treatment systems have been granted IMO approval in the last few years. Some of them have later been withdrawn from the market again for lack of compliant operation after installation on ships.
- 69 To be held from 25 November to 4 December 2013.
- 70 Copies of these BWM circulars (BWM.2/Circ.42–45) are available at www.imo.org.
- 71 A June 2012 updated version of the SAFE Framework can be found in document WCO (2012a).
- 72 Pillar 1 is based on the model of the Container Security Initiative introduced in the United States in 2002. Pillar 2 is based on the model of the Customs–Trade Partnership against Terrorism (C-TPAT) programme introduced in the United States in 2001. For more information on these as well as for an analysis of the main features of the customs supply-chain security, namely advance cargo information, risk management, cargo scanning and authorized economic operators (AEOs), see WCO research paper No. 18, “The Customs supply chain security paradigm and 9/11: Ten years on and beyond September 2011”, available at www.wcoomd.org. For a summary of the various United States security programmes adopted after September 11 see UNCTAD (2004).
- 73 As of 30 June 2013, 168 out of 179 WCO members had expressed their intention to implement the SAFE Framework.
- 74 See also UNCTAD (2011a), pages 121–122. The Package includes the *SAFE Framework of Standards; Customs Guidelines on Integrated Supply Chain Management; AEO Implementation Guidance; AEO Compendium; Model AEO Appeal Procedures; AEO Benefits: A contribution from the WCO Private Sector Consultative Group; Guidelines for the Purchase and Deployment of Scanning/Imaging Equipment; SAFE Data Element Maintenance Mechanism; Trade Recovery Guidelines; FAQ for Small and Medium Enterprises*. The SAFE Package is available at: http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/safe_package.aspx (accessed 25 November 2013).
- 75 For more information, see the WCO website http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/safe_package.aspx (accessed 18 November 2013).
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- 76 The SAFE Framework AEO concept has its origins in the revised Kyoto Convention, which contains standards on “authorized persons”, and national programmes.
- 77 For more information on the concept of mutual recognition in general, as well as on the guidelines for developing an MRA, included in the SAFE Package, and the WCO research paper No.18 on the issue, see UNCTAD (2012a), pages 106–107.
- 78 The first MRA was concluded between the United States and New Zealand in June 2007. As of 30 June 2013, 19 bilateral MRAs had been concluded and a further 10 were being negotiated between, respectively, China–European Union, China–Japan, Japan–Malaysia, China–Republic of Korea, Hong Kong (China)–Republic of Korea, India–Republic of Korea, Israel–Republic of Korea, New Zealand–Singapore, Norway–Switzerland and Singapore–United States.
- 79 Due to the fact that 27 European Union countries have one common uniform AEO programme.
- 80 This is according to information provided by the WCO Secretariat. For more information see the latest “Compendium of AEO Programmes” (WCO, 2012b).
- 81 For more information see WCO, 2013a, 2013b, 2013c and 2013d.
- 82 See in particular UNCTAD (2011a) which provided an overview of the major changes this amendment introduced to the Customs Code, at pages 122–123.
- 83 For more information see http://ec.europa.eu/ecip/security_amendment/index_en.htm (accessed 18 November 2013).
- 84 A redacted copy of the document has been made available to UNCTAD by the European Commission Taxation and Customs Union Directorate-General.
- 85 See European Commission (2013) page 9.
- 86 For background, see also European Commission (2012).
- 87 See article by the World Shipping Council President and Chief Executive Officer (Koch C, 2013). Members of the World Shipping Council operate approximately 90 percent of the global liner ship capacity.
- 88 According to information provided by the European Commission’s Taxation and Customs Union Directorate General, as of 25 June 2013, a total of 15,359 applications for AEO certificates had been submitted, and a total of 13,104 certificates had been issued. The total number of applications rejected up to 15 June 2013 was 1,523 (10 per cent of the applications received) and the total number of certificates revoked was 691 (5.3 per cent of certificates issued). The breakdown reported per certificate type issued as of 31 December 2012, was: AEO-F 6023 (49 per cent); AEO-C 5969 (48 per cent); and AEO-S 354 (3 per cent).
- 89 For the self-assessment questionnaire, see http://ec.europa.eu/taxation_customs/resources/documents/customs/policy_issues/customs_security/aeo_self_assessment_en.pdf (accessed 18 November 2013). Explanatory notes are also available at http://ec.europa.eu/taxation_customs/resources/documents/customs/policy_issues/customs_security/aeo_self_assessment_explanatory_en.pdf (accessed 18 November 2013).
- 90 The European Union has already concluded MRAs with Japan, Norway, Switzerland and the United States. Negotiations are ongoing with China, and will soon start with Canada. The United States, in addition to the European Union, has MRAs with Canada, China, Taiwan Province of, Japan, Jordan, New Zealand and the Republic of Korea.
- 91 Membership in the C-TPAT as of May 2013 reached 10,512 companies accounting for over 50 per cent (by value) of goods imported into the United States. As of March 2013, CBP had signed MRAs with Canada, China, Taiwan Province of, the European Union, Japan, Jordan, New Zealand and the Republic of Korea. For more information, see www.cbp.gov.
- 92 For more information see the CBP website, available at http://www.cbp.gov/xp/cgov/trade/trade_outreach/coac/coac_13_meetings/may22_meeting_dc/ (accessed 19 November 2013).
- 93 Held from 26 to 30 November 2012.
- 94 Held from 12 to 21 June 2013.
- 95 The document was signed, bringing the Code into effect for 22 signatory States: Angola, Benin, Cameroon, Cape Verde, Chad, the Congo, Côte d’Ivoire, the Democratic Republic of the Congo, Equatorial Guinea, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, São Tomé and Príncipe, and Togo.
- 96 The full text of the Code is available at <https://195.24.195.238/en/multimedia/documents/437-sommet-sur-la-piraterie-code-de-conduite-english> (accessed 19 November 2013). See also *MarineLink.com* (2013).
- 97 Held from 15 to 19 April 2013.
- 98 The document provided information by UNODC. Written comments to it were provided in document IMO (2013g). The Committee noted with regret that NATO had informed the Secretariat that it had no relevant records or information and that no response had been received from the European Union Naval Force Somalia.
- 99 See IMO (2013a), page 10.
- 100 The answers provided by member States to this questionnaire are available at the IMO website, see <http://www.imo.org/OurWork/Security/PiracyArmedRobbery/Pages/Responses-received-on-Private%20Armed%20Security.aspx> (accessed 19 November 2013).
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- ¹⁰¹ See <http://unicri.it/topics/piracy/database/> (accessed 19 November 2013).
- ¹⁰² As regards the inclusion of national legislation on piracy in the database, this information may be found in the database established by the Division for Ocean Affairs and the Law of the Sea, available at http://www.un.org/depts/los/piracy/piracy_national_legislation.htm (accessed 19 November 2013).
- ¹⁰³ For further information see IMO (2013a) pages 12–16.
- ¹⁰⁴ Relevant guidance from the WCO Trade Recovery Guidelines, the Asia-Pacific Economic Cooperation Trade Recovery Programme and ISO 28002:2011 has been consolidated and integrated into the Guidelines (IMO, 2013s).
- ¹⁰⁵ This questionnaire was finalized by an intersessional meeting of the Maritime Security and Piracy Working Group.
- ¹⁰⁶ The full text of the report is available on the Seafarers' Rights International website at www.seafarersrights.org (accessed 19 November 2013).
- ¹⁰⁷ For further information, see IMO (2013a), pages 7–9.
- ¹⁰⁸ The content of this and the following paragraphs is based on the comparison between revision 12 and revision 16 of the draft consolidated negotiating text (TN/TF/165).
- ¹⁰⁹ This section is based on the forthcoming UNCTAD report, "The competitiveness' new frontier: Implementing trade facilitation in developing countries".
- ¹¹⁰ The full text of the statement is available at http://www.wto.org/english/news_e/news13_e/fac_08jul13_e.htm (accessed 20 November 2013).
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