

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT
Geneva

***REVIEW OF MARITIME
TRANSPORT
2007***

Report by the UNCTAD secretariat

**UNITED NATIONS
New York and Geneva, 2007**

Chapter 6

LEGAL ISSUES AND REGULATORY DEVELOPMENTS

This chapter provides information on recent legal developments in the fields of transport and trade facilitation, together with information on the status of the main maritime conventions.

A. NEGOTIATIONS ON TRADE FACILITATION AT THE WTO

Having been suspended in mid-2006, the negotiations on trade facilitation at the World Trade Organization (WTO) were resumed in February 2007, together with the other negotiations that form part of the Doha Development Round. Since then, the Negotiating Group on Trade Facilitation (NGTF) has continued its work on technical trade facilitation issues, as well as on issues related to special and differential treatment (S&D) and technical assistance and capacity-building.

The technical issues that are being discussed in the NGTF cover a wide range of trade facilitation measures. Textual proposals for inclusion in a possible future WTO agreement on trade facilitation cover, inter alia, the following topics related to the GATT Article VIII on fees and formalities for the importation and exportation of goods and Article X on publication and administration of trade regulations:

- Publication and notification of trade regulations and of penalty provisions, including Internet publication, and the establishment of single national enquiry points;
- Interval between publication and entry into force;
- Advance rulings;
- Right of appeal and appeal mechanism in a Customs union;
- Specific parameters for fees and charges, their publication and notification, and periodic review;
- Periodic review of formalities and documentation requirements, aiming at their reduction;
- Acceptance of commercially available information and of copies;
- Single window and one-time submission;
- Phasing out mandatory use of Customs brokers;

- Uniform forms, documentation requirements and procedures relating to import clearance within a Customs union;
- Prohibition of consular fees and transaction requirement;
- Coordination of activities and requirements of all border agencies;
- Expedited shipments;
- Pre-arrival processing, risk management and post-clearance audit, as well as the separation of release from clearance procedures;
- Authorized traders;
- Establishment and publication of average release and clearance times;
- Objective criteria for tariff classification.

Further proposals are related to the improvement and clarification of Article V on freedom of transit. While some of the issues covered in those proposals are similar to those aimed at clarifying and improving Articles VIII and X, a number of measures proposed aim more specifically at improving transit systems and operations. They include the following:

- Promotion of regional transit agreements or arrangements;
- Simplified and preferential clearance for certain goods in transit, and limitation of inspections and controls;
- Bonded transport regimes and guarantees;
- International, regional or national Customs guarantee system;
- Quota-free transit regimes.

Meetings of the NGTF held in 2007 were very much geared to the development and discussion of text-based (or “third generation”) proposals that would eventually form part of the anticipated agreement.

Another issue that has been high on the agenda of the NGTF is technical assistance and capacity-building, as well as special and differential treatment. According to the modalities for negotiations on trade facilitation, as defined in Annex D of the 2004 WTO “July package”, developing countries are not expected to implement

commitments unless they have the capacity to do so. The capacity acquisition is further linked to the provision of adequate technical assistance as well as to S&D provisions that go beyond the granting of traditional transition periods for implementing commitments.

B. LEGAL ISSUES AFFECTING TRANSPORTATION

Overview of recent developments relating to maritime and supply chain security

(1) World Customs Organization

As reported in UNCTAD’s *Review of Maritime Transport, 2006*, the Framework of Standards to Secure and Facilitate Global Trade (SAFE Framework)³⁵ was unanimously adopted by the World Customs Organization (WCO) in June 2005. It outlines broad, overarching principles concerning security and facilitation of the global supply chain, and is based on two main “Pillars”, namely Customs-to-Customs cooperation and Customs-to-business partnership. Its four core elements are as follows:

- Harmonizing advance electronic cargo information requirements concerning inbound, outbound and transit shipments;
- Developing and implementing a common risk management approach;
- Using non-intrusive detection equipment to conduct inspection of high-risk containers and cargo;
- Defining benefits for businesses that meet minimal supply-chain security standards and best practices.

As of January 2007, 144 WCO members had expressed their intention to implement the SAFE Framework. According to information supplied by WCO, its capacity-building programme, which was launched in January 2006 to assist in the implementation of the new security framework (Columbus Programme), has so far been successful, including in relation to needs assessment of WCO members’ capacities and implementation activities, and monitoring of the programme.³⁶

The SAFE Framework envisages the certification of Authorized Economic Operators (AEOs), who are entitled to participate in simplified and rapid customs procedures. In June 2006, the SAFE Framework

Authorized Economic Operator (AEO) Guidelines³⁷ were adopted at the WCO; they provide technical guidance for the implementation of AEO programmes at the global level, and support the effective application of the relevant standards broadly outlined in Pillar II (Customs-to-business partnership) of the SAFE Framework. These Guidelines also allow for the inclusion of supplemental national criteria that may be required by any given Customs administration.

The AEO Guidelines document identifies certain Customs-identified best security standards and best practices, which members of the trade and business community aspiring to AEO status are expected to adopt, based on risk assessment and AEO business models. A number of elements that need to be satisfied are listed, each of them accompanied by specific detailed requirements applicable to AEOs or Customs, or to both. These elements include:

- Demonstrated compliance with Customs requirements;
- Satisfactory system for management of commercial records;
- Financial viability;
- Consultation, cooperation and communication;
- Education, training and awareness;
- Information exchange, access and confidentiality;
- Cargo security;
- Conveyance security;
- Premises security;
- Personnel security;
- Trading partner security;
- Crisis management and incident recovery;
- Measurement, analyses and improvement.

In line with the SAFE Framework itself, the AEO Guidelines document reiterates the idea that “Customs administrations should not burden the international trade community with different sets of requirements to secure and facilitate international commerce. There should be one set of international Customs standards developed by the WCO that do not duplicate or contradict other recognized intergovernmental security requirements.”³⁸

It further suggests that “verifiable compliance with security requirements and standards set by other intergovernmental organizations, such as IMO, UNECE, and ICAO, may constitute partial or complete compliance with applicable Customs-identified best security standards and best practices set forth below to the extent the requirements are identical or comparable.”³⁹ This would suggest that with respect to ocean carriers and port facilities, for instance, existing security and operational requirements established in the ISPS Code may be recognized for the purposes of the SAFE Framework.

Examples of benefits expected from obtaining AEO status include:

- Measures to expedite cargo release, reduce transit time and lower storage costs;
- Providing access to information of value to AEO participants;
- Special measures relating to periods of trade disruption or elevated threat level;
- First consideration for participation in any new cargo processing programmes.

In addition, there are overall benefits that the AEO status could provide in the longer term, such as enhanced security, safer work environment, increased efficiency and improved relationships between business and Customs.

The issues of procedures for authorization and validation by individual WCO members, as well as mutual recognition of AEO status internationally, are addressed in the SAFE Framework and in the AEO Guidelines document. Accordingly, the design of authorization and validation procedures, the granting of authorization and decisions on mutual recognition are within the competence of individual WCO members agreeing to adopt the SAFE Framework.⁴⁰

From the perspective of developing countries in particular, it will be important that operators that obtain AEO status in one country will be recognized elsewhere, so that they can enjoy the benefits outlined in the SAFE Framework and be able to participate in international trade on equal terms.

A global system of mutual recognition of AEOs may, however, not be easy to achieve. Even if the investments

required from private operators and Customs administrations are made in order to restructure, modernize and unify relevant procedures and standards, and to ensure AEOs' compliance with the relevant criteria for certification, mutual recognition of the AEO status at the international level will depend on confidence and trust between individual Customs administrations. This whole process is likely to be challenging, particularly for developing countries.

With respect to mutual recognition, the AEO Guidelines state as follows: "just as it has been suggested that the SAFE Framework be implemented in a progressively "phased approach", so too should be the expectations for the future application of mutual recognition of Customs systems of control for partnership programmes. Bilateral, sub-regional or regional initiatives are being developed as useful stepping stones toward such global system."⁴¹

Moreover, according to the WCO Director of Compliance and Facilitation, "it is well understood by all that mutual recognition is evolutionary rather than revolutionary in character. It will develop over time, probably first through bilateral agreements which can mature into multilateral and even groups of interconnecting multilateral pacts. Until then, it is left to each administration to foster its own population of Authorized Economic Operators. Perhaps through the execution of pilot projects or some other means of their choosing, these populations can be recognised by other Member administrations."⁴²

Clearly, progress on the issue of mutual recognition of AEO status remains an important challenge and will be critical in the longer term, particularly from the perspective of developing countries.

(2) *European Union*⁴³

At the European Union level, a new Commission Regulation (EC) No.1875/2006⁴⁴ was adopted on 18 December 2006. By way of amendments to the Community Customs Code, it introduces a number of measures aimed at increasing the security of shipments entering or leaving the EU, including detailed rules regarding AEOs. The AEO Certificate will be granted to reliable economic operators as of 1 January 2008.

The main conditions and criteria for achieving the status of AEO, in accordance with EC Regulation 1875/2006, include the following:

- Place of establishment in the Customs territory of the Community. However, an exception applies for airlines or shipping companies established elsewhere, but with a regional office in the Customs territory of the Community, and for recognized AEOs established in a third country with which the Community has entered into an international agreement on mutual recognition;⁴⁵
- Record of compliance with Customs requirements (no serious infringement of Customs rules by responsible persons);
- Satisfactory system of managing commercial and, where appropriate, transport records (accounting system, access to records, developed logistical system, internal control system, handling of licences, archiving of records, informing Customs in cases of compliance difficulties, information technology security);
- Financial solvency;
- Security and safety requirements (buildings constructed of resistant materials, appropriate measures for control of access to shipping and cargo areas, measures for the protection of cargo units, handling of import and/or export licences connected with prohibited or restricted goods, clear identification of business partners, security screening of prospective security employees and their participation in security awareness programmes, etc.).⁴⁶

Other measures introduced in the new Regulation include:

- A risk management framework for better risk analysis of goods crossing EU borders;
- Rules on advance electronic information on goods brought into, or out of, the European Community, effective as of 1 July 2009;
- Rules requiring Customs authorities to exchange information electronically on exports between the Customs offices involved in the procedure (export control system). Full implementation of this measure is expected by 30 June 2007.

Like the SAFE Framework, the new Regulation provides that "if the applicant for AEO status is the holder of an internationally recognised security and/or safety certificate issued on the basis of international conventions,

of a European security and/or safety certificate issued on the basis of Community legislation, of an International Standard of the ISO, or of a European Standard of the ESO, the criteria provided for in paragraph 1 shall be deemed to be met to the extent that the criteria for issuing these certificates are identical or correspond to those laid down in this Regulation.”⁴⁷

This would suggest that certificates such as the International Ship Security Certificate issued pursuant to the requirements of the ISPS Code would be recognized, but does not appear to have any direct implications for recognition of AEO status conferred by a non-Community Customs administration on the basis of the SAFE Framework, which, as will be recalled, is not an international convention. While recognition of AEO certificates in all EU member States is expressly envisaged by the Regulations, recognition of AEO status conferred by any third country would depend on there being agreements between the Community and the country in question. Regarding mutual recognition of AEO standards with third countries, the European Commission has launched discussions with some of the Community’s major trading partners. An agreement on strengthened cooperation on security has been concluded with the United States of America, and discussions on mutual recognition of standards are ongoing. A Working Group on Mutual Recognition, composed of Customs experts nominated by both sides, was established in January 2007. This Working Group will, inter alia, prior to the formal implementation of the AEO programme on 1 January 2008, “draft a road map towards mutual recognition”, and “shall endeavour to provide recommendations for an U.S.-EU agreement on mutual recognition of their respective trade partnership programmes (EU AEO programme and C-TPAT).”⁴⁸

The Commission has also launched a pilot project on “smart and secure trade lanes” with China, which initially involves the European Commission, the Customs administrations of China, the United Kingdom and the Netherlands, and focuses on three ports, with particular emphasis on sea containers.⁴⁹ Once successful, the cooperation is expected to be expanded step by step to the whole of the European Community. Both sides have agreed in the context of cooperation on security to exchange experiences and to develop best practices in order to better understand and prepare the implementation of the WCO Framework of Standards to Secure and Facilitate Global Trade. They have also agreed to pursue the objectives of reciprocity and mutual recognition of

measures for security and facilitation between their respective Customs authorities.⁵⁰

Recently, the EU Council adopted the Customs 2013 Programme for the period 2008–end 2013. This programme will, among other things, support new security policy initiatives, the implementation of modernization of the Customs code and the further development of simplified procedures for compliant traders (AEOs).⁵¹

(3) *International Maritime Organization*

The IMO has begun to consider proposals to integrate appropriate cargo security procedures based on or compatible with the standards of the WCO SAFE Framework into international legislation such as the 1965 Convention on Facilitation of International Maritime Traffic (FAL), as amended, and the 1974 Safety of Life at Sea Convention (SOLAS), as amended. To that end, a joint Working Group has been established by the Maritime Safety Committee (MSC) and the Facilitation Committee (FAL), (MSC/FAL Working Group). It met during the 82nd session of the MSC (29 November–8 December 2006) to begin work on container and supply chain security, and hold initial discussions on the need to develop any relevant amendments to the SOLAS and/or FAL Conventions. Although no specific decisions were taken on this issue, by MSC at its 82nd session, member Governments and international organizations were urged to consult with their experts on all aspects of the security and facilitation of maritime cargo and to submit their proposals on the security and facilitation of the movement of closed cargo units and of freight containers to the next session of the FAL Committee (FAL 34). A number of proposals were submitted at FAL 34 (26–30 March 2007). After discussion, it was suggested that a joint MSC/FAL circular be issued soon in order to raise awareness in relation to the SAFE Framework of Standards and the AEO Guidelines. A draft joint MSC/FAL circular on securing and facilitating international trade⁵² was approved by the FAL, and the secretariat was instructed to issue it once approved by the MSC 83 (to be held from 3 to 12 October 2007). The draft circular reiterates the need to raise awareness of the SAFE Framework and AEO Guidelines among government agencies, local administrations and the shipping and port industries, and recommends that member States, when developing guidance on the implementation of the FAL Convention, SOLAS chapter XI-2 and the ISPS Code, in the context of the SAFE framework, “should include statements to the effect that:

1. SOLAS chapter XI-2 and the ISPS Code sufficiently set out the requirements on ships and port facilities with respect to the security and facilitation of the movement of closed cargo transport units and of freight containers transported by ships, taking into account the appropriate references in the ISPS Code;
2. the WCO has primacy over supply chain security, with IMO's role being limited to those aspects related to ships and port facilities;
3. port facilities and ships are not responsible for maintaining the physical integrity of closed cargo transport units and of freight containers other than those in their custody;
4. the (SAFE Framework of Standards and the AEO Guidelines), including the risk-based cargo security strategy set out therein, should be taken into account in policies and practices with respect to the FAL Convention, SOLAS chapter XI-2 and the ISPS Code; and
5. communication, co-ordination and co-operation at both national and local levels, between ships, port facilities, Customs and other competent authorities are of utmost importance.”

One proposal⁵³ provided a comparison of the WCO AEO Guidelines with the ISPS Code and the FAL Convention, and suggested some focus on areas where individual elements of the AEO Guidelines, applying to a vessel or port facility, might be taken into account by these IMO instruments. After discussion, the Joint MSC/FAL Working Group agreed that there was no need to amend the FAL Convention, SOLAS chapter XI-2 or part A or part B of the ISPS Code. However, it acknowledged that there is a gap in knowledge and understanding of the relationship between the ISPS Code, the FAL Convention, and the SAFE Framework of Standards and the AEO Guidelines, and recognized that there would be value in addressing this gap. In this context, the Working Group emphasized in particular the importance of communication between ships, port facilities, Customs and other competent authorities.⁵⁴

The FAL Committee also noted that the United States, had catalogued, on the basis of extensive validations and site visits, port security best practices and supply chain best practices, and had made the catalogues available online.⁵⁵

According to a presentation by the observer from WCO at the FAL 34 meeting, the SAFE Framework, the seal integrity programme and the AEO Guidelines would be reviewed by the WCO Council in July 2007, and were expected to be integrated into a single document.⁵⁶

It is also worth noting that several important amendments (July 2005) to the Convention on Facilitation of Maritime Traffic (FAL Convention) entered into force on 1 November 2006. They include new recommended practices to encourage the use of electronic systems for exchanging data and, generally, for simplifying procedures to enhance the facilitation of trade. The new recommended practices include transmission of data, required in connection with the arrival, stay and departure of ships, persons and cargo, to a single point (the “Single Window” concept) and use of pre-arrival data for subsequent release and clearance of passengers and cargo.

Amendments to SOLAS, adopted by the IMO in 2002, including in particular the *International Ship and Port Security (ISPS) Code*, which entered into force on 1 July 2004, continue to represent the most important international set of rules for the security of ships and port facilities.⁵⁷ These new rules imposed wide-ranging obligations on Governments, shipping companies and port facilities. Almost three years since its entry into force, the ISPS Code has proved to be less disruptive in terms of control measures than had been feared.

The IMO's Maritime Safety Committee (MSC) has regularly issued a number of guidance circulars to assist in the implementation of and compliance with the requirements of ISPS Code.⁵⁸ Most recently, at its 82nd session in December 2006, the MSC, among other things:

- Adopted a guidance circular entitled “Interim guidance on voluntary self-assessment by companies and company security officers (CSOs) for ship security” (MSC.1/Circ 1217);
- Began consideration of issues relating to the security aspects of the operation of ships which do not fall within the scope of SOLAS chapter XI-2 and the ISPS Code, including cargo ships of less than 500 grt which travel on international routes. It was agreed, inter alia, that any guidelines developed should be non-mandatory. Furthermore, the MSC agreed to recommend the inclusion, as a high-level action for the 2008–2009 biennium, of the development of model legislation on maritime security;⁵⁹

- Approved the Revised recommendations to the safe transport of dangerous cargoes and related activities in port areas (MSC.1/Circ.1216), which include provisions intended to address the security of the transport of dangerous goods by sea;
- Approved amendments to the IMO/ILO/UNECE Guidelines for packing of cargo transport units (MSC/Circ.787), to address the need for security procedures to be developed and followed by all concerned. These guidelines will be transmitted to the ILO and UNECE for their consideration and acceptance;
- Made progress in the development of the technical specifications of the components of the Long Range Identification and Tracking (LRIT) System, including the technical specifications for the International LRIT Data Exchange and the International LRIT Data Centre, and for communication within the LRIT System network; protocols for the development testing of the LRIT System and for the testing of the integration into the system of new LRIT data centres; and guidance on setting up and maintaining the Data Distribution Plan;⁶⁰
- Continued to make efforts to incorporate security-related provisions into other international legal instruments, such as the 1978 International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW Convention) and the STCW Code.⁶¹

Relevant IMO instruments in the context of the United Nations Global Counter-terrorism Strategy include the amendments to the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Convention) and its 1988 Protocol,⁶² adopted by way of two Protocols in October 2005. Amendments introduced by the 2005 SUA Protocol to the 1988 SUA Convention included the following:

- A broadening of the list of offences, to include the offence of using the ship itself in a manner that causes death or serious injury or damage and the transport of weapons or equipment that could be used for weapons of mass destruction and inclusion of new procedures related to the transportation of WMD (Article 3 *bis*);
- Introduction of provisions for the boarding of ships where there are reasonable grounds to suspect that the ship or a person on board the ship has been or is

about to be involved in the commission of an offence under the 1988 SUA Convention (Article 8 *bis*);

- A new definition for “transport” to the effect that it “means to initiate, arrange or exercise effective control, including decision-making authority, over the movement of a person or item” (Article 1(1)(b)).

Amendments introduced by the 2005 SUA Protocol to the 1988 SUA Protocol extended the scope of provisions on the new offences to fixed platforms in the continental shelf, as appropriate.⁶³

When implementing these amendments, particularly when boarding, States Parties should apply important safeguards, so as to avoid any possible negative effects. These include not endangering the safety of life at sea; ensuring that all persons on board are treated in a manner which preserves human dignity and in keeping with human rights law; taking due account of the safety and security of the ship and its cargo; ensuring that measures taken are environmentally sound; and making reasonable efforts to ensure that a ship is not unduly detained or delayed.⁶⁴

The Protocols were open for signature from 14 February 2006 until 13 February 2007. Thereafter, they will remain open for accession. As at 13 February 2007, 18 States had signed, subject to ratification, approval or acceptance, the 2005 SUA Protocols. As at 23 March 2007, one State had deposited an instrument of accession with the IMO Secretary-General.⁶⁵ As also noted during the FAL 34 meeting in March 2007, the development of national legislation to implement the 2005 SUA Protocols is somewhat complex as it touches on all of the counter-terrorism conventions and needs to be in accordance with national and international law, in particular human rights law, refugee law and humanitarian law; and IMO should continue to assist States in implementing appropriate legislation.⁶⁶

(4) UNCTAD

UNCTAD, as part of its mandate, has been monitoring developments in the field of transport security and has, over recent years, disseminated some information as part of its annual *Review of Maritime Transport*, as well as in the form of reports.⁶⁷

As regards the ISPS Code, which entered into force on 1 July 2004, it should be noted that the UNCTAD secretariat has conducted a global study based on a set of questionnaires designed to obtain first-hand

information from all affected parties. The main objective was to establish the range and order of magnitude of the ISPS Code-related expenditures made from 2003 through 2005 and to gain insight into the financing mechanisms adopted or envisaged. In addition, the study sought to clarify matters relating to the implementation process, level of compliance and other less easily quantifiable impacts. A report detailing the results of the survey has since been published (*Maritime Security: ISPS Code Implementation, Costs and Related Financing*, UNCTAD/SDTE/TLB/2007/1) and is available on the UNCTAD website.⁶⁸

Overall, responses received provide a useful overview of the ISPS Code implementation process as experienced by Governments and ports in both developed and developing regions. An informative pool of data on the ISPS Code compliance costs, indirect effects and financing mechanisms has been generated. These results, it is hoped, will contribute to informing the debate on transport-related security measures and help in better understanding some of their economic implications. However, further research in the field is required.

(5) *International Organization for Standardization*

It should be noted that the International Organization for Standardization (ISO) has been developing procedures to enhance supply chain security, consistent with the ISPS Code and the WCO Framework of Standards. Its technical committee ISO/TC 8 “Ships and marine technology” has developed a number of publicly available specifications (PAS) on supply chain security which, after being tested in the marketplace, are expected to evolve into ISO standards. They include the following:

- ISO/PAS 20858:2004 — Ships and marine technology — Maritime port facility security assessments and security plan development. Published on 1 July 2004, it is designed to assist in the uniform implementation of the ISPS Code.
- ISO/PAS 28000:2005 — Specification for security management systems for the supply chain. Published on 15 November 2005, it outlines the requirements for enabling an organization to establish, implement, maintain and improve a security management system. The aspects of ISO/PAS 28000 include, but are not limited to, financing, manufacturing, information management and the facilities for

packing, storing and transferring goods between modes of transport and locations.

- ISO/PAS 28001:2006 — Security management systems for the supply chain — Best practices for implementing supply chain security — Assessments and plans. Published in 2006, it is designed to assist the industry in meeting best practices as outlined in the SAFE Framework. It provides guidance and requirements for establishing and documenting a level of security, and conducting security vulnerability assessments, and assists in meeting the applicable AEO criteria set forth by the SAFE Framework and implementing national supply chain security programmes.
- ISO/PAS 28003:2006 — Security management systems for the supply chain — Requirements for bodies providing audit and certification of supply chain security management systems. Published in 2006, it provides guidance for accreditation of certification bodies as competent to perform certification to ISO/PAS 28000 or similar requirements. It provides customers with the necessary information and confidence about the way in which certification of their suppliers has been granted.
- ISO/PAS 28004:2006 — Security management systems for the supply chain — Guidelines for the implementation of ISO/PAS 28000. Published in 2006, it provides guidelines for the implementation of ISO/PAS 28000.
- ISO 28005 — Electronic port clearance. This is being developed and will provide for computer-to-computer data transmission using XML technology. It is a “one stop shopping” approach for “reporting activities related to ship’s clearance into or out of a port, port state controlled area and related reporting”.⁶⁹

ISO standards are voluntary, but they are developed in response to market demand, and are based on consensus among the interested parties. To ensure that consensus over time, ISO reviews its standards, at least every five years, to decide whether they should be maintained, updated or withdrawn. In the field of supply chain security, the ISO standards may help in attaining some of the goals set in the WCO SAFE Framework, such as the mutual recognition of national-security-related programmes, and the application, by Customs administrations, of similar measures to companies operating throughout the supply chain.

Legal instruments and other developments relating to the environment and climate change

With growing concerns about the effects of global climate change, environmental considerations are emerging as an increasingly important element on the international agenda. Among a broad range of environmental issues in the field of shipping currently dealt with under the auspices of the IMO mention could be made of several in respect of which significant progress has been achieved during the year under review. These include wreck removal and ship recycling, regarding which mandatory instruments were either adopted or are at an advanced stage of preparation. Other IMO important issues worth mentioning are prevention of air pollution from ships and sulphur monitoring, both closely related to the issue of climate change.

The International Convention on the Removal of Wrecks, 2007, was adopted at a diplomatic conference held in Nairobi from 14 to 18 May 2007. The Convention deals with a number of issues relating to the prompt and effective removal of shipwrecks. According to the IMO, the number of abandoned wrecks, estimated at almost 1,300 worldwide, has increased, and so have the problems these wrecks cause to coastal States and shipping in general. Abandoned wrecks may constitute hazards to navigation and, depending on the nature of their cargo and the number of bunkers on board, might cause substantial damage to marine and coastal environments. Also, the marking and removal of hazardous wrecks involves costs. The new Convention:

- Applies to wrecks in the Exclusive Economic Zone (EEZ) of a State Party, or if such a zone has not been established by that State Party, to an area beyond and adjacent to the territorial sea of that State extending not more than 200 nautical miles from the baselines (Article 3(1) and Article 1);
- Includes an optional clause enabling States Parties to apply certain provisions to their territory, including their territorial sea (Article 3(2));
- Shall not apply to measures taken under the International Convention relating to Intervention on High Seas in Cases of Oil Pollution casualties, 1969, as amended, or the Protocol relating to Intervention on the High Seas in Cases of Pollution by Substances other than oil, 1973, as amended (Article 4(1));
- Contains a provision related to reporting obligations for the master or operator of a ship, to the Affected State in the event of a maritime casualty resulting in a wreck. The report shall provide information about the registered owner of the ship, and all the relevant information for the Affected State to determine whether the wreck poses a hazard, including “a) the precise location of the wreck; b) the size, type and construction of the wreck; c) the nature of the damage to, and the condition of, the wreck; d) the nature and quantity of the cargo, in particular any hazardous and noxious substances; and e) the amount and types of oil, including bunker oil and lubricating oil, on board” (Article 5);
- Lists the criteria for determining whether a wreck poses a hazard. These include features and conditions of the wreck and cargo as well as of the sea or port areas where it is located, including environmental criteria such as damage likely to result from the release into the marine environment of cargo or oil (Article 6);
- Contains provisions regarding the warning of mariners and States concerned about the nature and location of the wreck and marking of the wreck (Article 7 and Article 8);
- Covers measures to facilitate the removal of wrecks, including rights and obligations to remove hazardous wrecks. It sets out when the shipowner is responsible for removing the wreck, and when the Affected State may intervene. In all related action taken by the Affected State — that is, for laying down conditions for the removal of the wreck, “considerations of safety and protection of the marine environment” are taken into account (Article 9);
- Contains provisions related to the liability of the owner for the costs of locating, marking and removing the wreck (Article 10);
- Requires the registered owners of ships of 300 grt and above to “maintain compulsory insurance or other financial security, such as a guarantee of a bank or a similar institution, to cover liability under the Convention”. A certificate attesting that such security is in force in accordance with the provisions of the Convention will be issued to each of those ships “by the appropriate authority of the State of the Ship’s registry”. A copy of the certificate will normally be carried on board the ship, and another copy will be deposited with the competent authorities (Article 12);

- Rights to recover costs under the Convention shall be extinguished unless an action is brought “within three years from the date when the hazard has been determined in accordance with the Convention. However in no case shall an action be brought after six years from the date of the maritime casualty that resulted in the wreck” (Article 13);
- The Convention shall be open for signature from 19 November 2007 until 18 November 2008 and, thereafter, will be open for ratification, accession or acceptance. It will enter into force 12 months following the date on which 10 States have either signed it without reservation as to ratification, acceptance or approval or have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General of IMO (Article 17 and Article 18).⁷⁰

Evidence of continued IMO focus on the environment was the approval by its Council, at its last session in November 2006, of the request by the Marine Environmental Protection Committee (MEPC) that provision be made for a five-day diplomatic conference on ship recycling in the 2008–2009 biennium, with a view to the adoption of the draft International Convention for the Safe and Environmentally Sound Recycling of Ships, work on which is already at an advanced stage.

Ships that reach the end of their operating lives are regularly sold for scrap and demolished. Recycling is the most environmentally friendly way to dispose of such ships, making it possible to reuse many of their parts. However, environmental standards and working practices in recycling facilities in certain parts of the world often leave much to be desired. An additional reason that increases the need for regulation of ship recycling is the phasing out of single-hull tankers, in accordance with MARPOL regulations, already underway. Some of these ships will be converted to double-hull, to conform to the new rules. Many others will inevitably be phased out and dismantled. The first category of single-hull tankers were phased out by 5 April 2005 and the process is ongoing.⁷¹

The drafting of the Convention on ship recycling is still in progress; however, it is useful to note how some of the main issues have been approached. The draft Convention aims to provide legally binding and globally acceptable regulations for international shipping and for recycling facilities. It includes a number of articles and

an annex containing the draft regulations, divided into four sections (A to D) and covering respectively general provisions, requirements for ships, requirements for ship recycling facilities and reporting requirements. Under the draft Convention:⁷²

- *Ships* will be required to have an Inventory of Hazardous Materials, which will have to be approved by the Flag State administration, taking into account guidelines that will be developed by the IMO. This inventory will consist of three parts, dealing respectively with (1) materials contained in the ship’s structure and equipment, (2) operationally generated wastes, and (3) stores. Annexed to the Convention will be a list of hazardous materials, the use of which is prohibited or restricted. (Draft Regulation B-I-4)
- In a final *survey*, both the vessel inventory and the recycling plan to be prepared by the recycling facility must be verified by a surveyor working on behalf of the Flag State (Draft Regulation B-III-1). If such a survey is successful, the ship will be issued with a “Ready for Recycling” certificate. (Draft Regulation B-III-2)
- *Ship recycling facilities* will also have to be authorized by national authorities, in accordance with the regulations set out in the annex to the draft Convention. (Article 6)
- *Requirements for ship recycling facilities* and working conditions within these facilities are addressed through nine specific regulations (C-1 to C-9) contained in the annex to the draft Convention. These relate to issues such as controls and authorization of ship-recycling facilities, and various requirements in relation to recycling facility-management plan, as well as to accidents prevention, safe and environmentally sound removal and management of hazardous materials. The regulations also cover issues like emergency preparedness and response, worker safety and training, reporting on incidents and chronic effects. They create specific obligations on Parties to the Convention, enabling the appropriate mechanisms and infrastructures in all the relevant areas.
- Additionally, a series of *guidelines* are being developed; they will specify in great detail the ways in which the obligations set under the regulations can be met.⁷³

In the context of action against global warming and the adverse effects of climate change, one of the areas of

IMO's focus is the *prevention of air pollution from ships*. According to a report by the IMO Council,⁷⁴ the Protocol of 1997 of MARPOL 73/78, which contains MARPOL Annex VI "Regulations for the Prevention of Air Pollution from Ships", as at 26 June 2006 had 36 Parties, representing approximately 70 per cent of the gross tonnage of the world's merchant shipping, a significant increase in the number of States and of tonnage since MEPC 54 (March 2006).⁷⁵ The MEPC noted that climate change caused by greenhouse gas emissions from burning fossil fuels was a steadily growing concern for most countries, and that scientists had found more and more proof of linkages. It also noted that although shipping is a relatively environmentally-friendly and fuel-efficient mode of transport, the industry needs to take action on greenhouse gases (GHG). It approved a work plan⁷⁶ to identify and develop mechanisms needed to achieve the reduction of GHG, mainly carbon dioxide emissions from ships, accompanied by a timetable. It also agreed that an update of the IMO study on greenhouse gas emissions from ships, published in 2000 (MEPC 45/8), was necessary in order to provide a better foundation for future decisions. The study estimated that ships contributed about 1.8 per cent of the world's total emissions and concluded that, at that time, there was no other mode of transport with a better record in respect of CO₂ emission in terms of ton-kilometres performed.⁷⁷

As regards other issues relating to air pollution, MEPC 55:

- Agreed on several unified interpretations of Marpol Annex VI and the NO_x Technical Code and related implementation issues;⁷⁸
- Approved the standard form of the Sulphur Emissions Control Area (SECA) Compliance Certificate;⁷⁹
- Agreed that there was a need to cooperate with other relevant UN bodies in considering GHG emission issues from international shipping;⁸⁰
- On the issue of sulphur monitoring, agreed to allocate the necessary funding for the IMO secretariat to take over and carry out from 2006 onwards, the project on monitoring the worldwide average of sulphur content of residual fuel oils, which had been implemented on a trial basis over a number of years under the leadership of the Netherlands;⁸¹
- Recalled that the Guidelines for Exhaust Gas Cleaning Systems (EGCS), adopted by MEPC 53,

state that waste streams from such equipment shall not be discharged into enclosed ports unless it can be documented that there is no adverse impact on the ecosystems in such waters. It also called for the drafting of new guidelines setting more specific relevant criteria and recommendations.⁸²

Seafarers

As reported in UNCTAD's *Review of Maritime Transport, 2006*, a new consolidated Maritime Labour Convention was adopted at the ILO in February 2006. It constitutes a major legal instrument consolidating more than 65 international labour standards related to seafarers adopted over the last 80 years, setting out their responsibilities and rights with regard to labour and social matters in the maritime sector. It was designed to be an important contribution to the shipping industry, representing the "fourth pillar" of the international maritime regulatory regime, next to the three key IMO Conventions, namely the International Convention for the Safety of Life at Sea (SOLAS), the Standards of Training, Certification and Watchkeeping Convention (STCW) and the International Convention for the Prevention of Pollution from Ships (MARPOL). The Convention will enter into force after it has been ratified by 30 ILO member States with a total share of at least 33 per cent of world tonnage.⁸³ According to information from the ILO, as of July 2007, only one State, Liberia, had deposited its instrument of ratification.

C. STATUS OF CONVENTIONS

There are a number of international conventions affecting the commercial and technical activities of maritime transport. Box 1 gives the status of international maritime conventions adopted under the auspices of UNCTAD as of 30 September 2007. Comprehensive and updated information about these and other relevant conventions is available on the United Nations website at www.un.org/law. This site also provides links to, inter alia, a number of organizations' sites, which contain information on the conventions adopted under the auspices of each organization. Those organizations are the following: the International Maritime Organization (www.imo.org/home.html), the International Labour Organization (www.ilo.org) and the United Nations Commission on International Trade Law (www.uncitral.org).

Box 1

Contracting States parties to selected conventions on maritime transport, as of 30 September 2007

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, Bulgaria, 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, Denmark, Egypt, Ethiopia, Finland, France, Gabon, Gambia, Germany, Ghana, Guatemala, Guinea, Guyana, Honduras, India, Indonesia, Iraq, Italy, Jamaica, Jordan, Kenya, Kuwait, Lebanon, Liberia, Madagascar, Malaysia, Mali, Mauritania, Mauritius, Mexico, Montenegro, Morocco, Mozambique, Netherlands, 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 Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, Uruguay, Venezuela, Zambia (81)
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, 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 (33)
International Convention on Maritime Liens and Mortgages, 1993	Entered into force 5 September 2004	Ecuador, Estonia, Monaco, Nigeria, Peru, Russian Federation, Spain, Saint Vincent and the Grenadines, Syrian Arab Republic, Tunisia, Ukraine, Vanuatu (12)
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, Libyan Arab Jamahiriya, Mexico, Oman, Syrian Arab Republic (14)

Source: For official status information, see www.un.org/law/.

Endnotes

- ³⁵ See www.unctad.org/rmt2006; and for more information and for the text of the SAFE Framework see the WCO website, www.wcoomd.org.
- ³⁶ “The Columbus Capacity Building Programme”, *WCO News*, No. 53, June 2007. It is being reported that as of 1 June 2007, the WCO and its partners had completed diagnostic missions in 60 WCO Member administrations. According to an earlier article entitled “WCO Columbus Programme: One Year On”, *WCO News*, No. 52, February 2007, 100 missions were projected to be completed by July 2007. With regard to Phase 2 of the Columbus Programme, the WCO was working closely with the diagnosed countries, and it estimated that 23 countries had reached the implementation phase. Concerning Phase 3, 98 countries had submitted the SAFE monitoring matrix report.
- ³⁷ The text of the *WCO SAFE Framework of Standards, AEO Guidelines* can be found at the WCO website, www.wcoomd.org.
- ³⁸ *WCO SAFE Framework of Standards, AEO Guidelines*, chapter 1, p. 4.
- ³⁹ Ibid.
- ⁴⁰ The SAFE framework, Pillar 2, Standard 3 (Customs-to-Business Partnerships) provides as follows: “The Customs administration, together with representatives from the trade community, will design validation processes or quality accreditation (authorization) procedures that offer incentives to businesses through their status as Authorized Economic Operators.” For more information on authorization, validation and mutual recognition, see the definitions on page 3 of the *AEO Guidelines* document, as well as other relevant information on pages 18–25.
- ⁴¹ See *WCO SAFE Framework of Standards, AEO Guidelines*, p. 24.
- ⁴² “Let’s talk about the Framework of Standards”, interview with the WCO Director of Compliance and Facilitation, *WCO News*, No. 52, February 2007 (www.wcoomd.org).
- ⁴³ Further information on transport security issues, including a number of documents and reports, is available on the European Commission website at http://ec.europa.eu/dgs/energy_transport/security/index_en.htm.
- ⁴⁴ The Regulation entered into force at the end of December 2006. For its text see the *Official Journal of the European Union*, OJL 360, 19.12.2006, p. 64.
- ⁴⁵ Further requirements are set out in Article 14 k (2), including the need for an internationally recognized security and/or safety certificate issued in accordance with any relevant international convention. This would include an International Ship Security Certificate issued under the ISPS Code.
- ⁴⁶ See Commission Regulation (EC) No. 1875/2006, Section 3.
- ⁴⁷ Ibid., Article 14 k (4).
- ⁴⁸ Terms of Reference, EU-U.S. JCCC Working Group on Mutual Recognition, European Commission’s website, <http://ec.europa.eu>.
- ⁴⁹ See EU Press Release IP/06/1206 of 19 September 2006.
- ⁵⁰ For more information, see the European Commission’s website, <http://ec.europa.eu>.
- ⁵¹ See “Modernising customs procedures: European Commission welcomes adoption of Customs 2013 Programme by Council”, EU Press Release IP/07/531 of 19 April 2007.
- ⁵² For the text of the draft circular see *Report of the Joint MSC/FAL Working group on security and facilitation of the movement of closed cargo transport units and of freight containers transported by ships*, FAL 34/WP.5, Annex.
- ⁵³ FAL 34/10/5.
- ⁵⁴ FAL 34/WP.5, paras. 8–10, and Annex.
- ⁵⁵ See the Report of the FAL on its thirty-fourth session, FAL 34/19, p. 39. The website addresses are as follows: <http://www.uscg.mil/hq/g-m/mp/xfqs.html>; and http://www.cbp.gov/linkhandler/cgov/import/commercial_enforcement/ctpat/ctpat_best_practices.ctt/ctpat_best_practices.pdf.
- ⁵⁶ FAL 34/WP.5, para. 5.
- ⁵⁷ For an overview of the responsibilities of Governments, port facilities and shipowning and ship-operating companies under the ISPS Code, see UNCTAD report *Container Security: Major Initiatives and Related International Developments*, UNCTAD/SDTE/TLB/2004/1, paras. 80–86. See also UNCTAD, *Review of Maritime Transport, 2005*, p. 84.
- ⁵⁸ The MSC circulars are available on the IMO website, www.imo.org. For more information on circulars adopted recently, see UNCTAD, *Review of Maritime Transport, 2006*.
- ⁵⁹ For more information, see the Report of the MSC on its 82nd Session, MSC 82/24, 18 December 2006, p. 43.

- 60 MSC.1/Circ.1219, *Interim LRIT Technical Specifications and Other Matters*. A set of new regulations on the Long Range Identification and Tracking Systems (LRIT), to be included in SOLAS chapter V on Safety of Navigation, together with associated performance standards and functional requirements was adopted at the 81st session of the MSC in May 2006; see Resolutions MSC.202(81), MSC.210(81) and MSC.211(81). LRIT was introduced to extend significantly the tracking capabilities of SOLAS Contracting Governments. For background information and description of the LRIT see *Review of Maritime Transport, 2006*.
- 61 For an overview of other amendments to SOLAS and mandatory codes and guidelines adopted by the MSC at its 82nd session in December 2006, see the IMO website, www.imo.org.
- 62 Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, 1988 (SUA Protocol).
- 63 Art. 1(1); Art. 2, 1(d), (2); Art. 2 bis; Art. 2 ter; Art. 3 (1), (3),(4).
- 64 The texts of the 2005 SUA Protocols are contained in IMO documents LEG/CONF.15/21 and LEG/CONF.15/22. For more information, see the IMO website, www.imo.org. See also UNCTAD, *Review of Maritime Transport, 2006*.
- 65 See the *Report of the Facilitation Committee on its 34th Session*, FAL 34/19, para. 7.8 (4), p. 28. The Protocols are not yet in force. The 2005 Protocol amending the SUA Convention requires adoption by 12 States Members to enter into force. The 2005 Protocol to the SUA Protocol requires adoption by only 3 State Members, but its entry into force is contingent on the entry into force of the amendments to the SUA Convention.
- 66 FAL 34/WP.5
- 67 All documents are available at www.unctad.org/ttl.
- 68 www.unctad.org/ttl/legal.
- 69 For more information see document FAL 34/INF.6, submitted by the ISO at the last session of FAL Committee. Also see ISO website, <http://www.iso.org>. For a number of articles on ISO's recent work in the field of supply chain security, see *ISO Focus*, July/August 2006.
- 70 See LEG/CONF.16/3, of 13 November 2006, *Consideration of a Draft Convention on the Removal of Wrecks (WRC)*.
- 71 For more information see "Double or quits", *Lloyd's Shipping Economist*, November 2006.
- 72 For the text of the draft Convention and the regulations see IMO document *Recycling of Ships, Report of the Correspondence Group*, MEPC 55/3/2. For more information see the report of the MEPC on its 55th session, MEPC 55/23, p. 19–28. See also "Draft new ship-recycling convention reaches advanced stages", *IMO News*, No. 4, 2006 (www.imo.org).
- 73 Among them are Guidelines for authorization of ship-recycling yards, Guidelines for safe and environmentally-sound ship recycling, and Guidelines for the development of Ship-Recycling Plan.
- 74 *Report on the status of conventions and other multilateral instruments in respect of which the organization performs functions*, C 97/15/Add.1.
- 75 As at 27 October 2007, the number of Parties reported was 37; see IMO Council report, C 97/15/Add.1.
- 76 See the *Report of the MEPC on its 55th Session*, MEPC 55/23, Annex 9.
- 77 MEPC 45/8.
- 78 *Ibid.*, Annex 8.
- 79 *Ibid.*, Annex 10.
- 80 *Ibid.*, p. 33.
- 81 *Ibid.*, p. 29.
- 82 *Ibid.*
- 83 Article 8(3) of the Convention.