5

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 some of the main maritime conventions. Important matters include the entry into force, in 2015, of the Nairobi International Convention on the Removal of Wrecks, 2007, as well as a range of regulatory developments relating to environmental and related issues and to maritime and supply-chain security.

Thus, to further support the implementation of a set of technical and operational measures to increase energy efficiency and reduce GHG emissions from international shipping, additional guidelines and amendments were adopted by IMO in April 2014. Work also continued on regulations to reduce emissions of other toxic substances from burning fuel oil, particularly SOx and NOx, which significantly contribute to air pollution from ships. Progress has also been made in respect of the environmental and other provisions of the draft Polar Code.

Continued progress has been made regarding the implementation of the existing framework and programmes in the field of maritime and supply-chain security. As concerns maritime piracy, it is worth noting that the downward trend in incidents continued off the Coast of Somalia, the Gulf of Aden and the Western Indian Ocean. However, the situation in the West African Gulf of Guinea remained serious. A two-part substantive analytical report published by UNCTAD highlights some of the trends, costs and trade-related implications of maritime piracy and takes stock of regulatory and other initiatives that have been pursued by the international community in an effort to combat the problem.

As regards international agreements on trade facilitation, the WTO Trade Facilitation Agreement includes the obligation for WTO members to have a national trade-facilitation committee. This is considered necessary for the implementation of many trade-facilitation measures, especially if they involve several public institutions and private-sector stakeholders. This chapter presents findings of a recent UNCTAD study on lessons learned and best practices for effective and sustainable national trade-facilitation bodies.

A. IMPORTANT DEVELOPMENTS IN TRANSPORT LAW

Entry into force of the Nairobi International Convention on the Removal of Wrecks, 2007

The International Convention on the Removal of Wrecks, 2007,[17] was adopted on 16 May 2007, at a diplomatic conference held in Nairobi under the auspices of IMO.[18] It was set to enter into force twelve months after ratification by at least 10 States. This condition was fulfilled with the deposit, on 14 April 2014, of an instrument of ratification by Denmark, triggering the entry into force of the Convention on 14 April 2015.

Key features of the Convention

According to IMO, although the incidence of marine casualties has decreased dramatically in recent years, the number of abandoned wrecks, estimated at almost 1,300 worldwide in 2007, has reportedly increased and the problems associated with them continue to be serious. Shipwrecks can be a hazard to the navigation of other vessels and their crews. Depending, among other aspects, on the nature of the cargo, wrecks may also potentially cause damage to the marine and coastal environments and costs are involved in their marking and removal. The Convention aims to provide a uniform set of rules for States to remove, or have removed, promptly and effectively, shipwrecks located beyond the territorial sea.[19] The Convention also provides for compulsory insurance and a right of direct action against the insurer (see section Compulsory insurance, below).

Although the Convention normally applies only to wrecks located beyond the territorial sea, in the "exclusive economic zone" of a State Party, it also includes an optional clause enabling States Parties to make certain provisions applicable to their territory, including their territorial sea. This is important, given that most of the dangerous wrecks lie within the territorial sea, in shallow coastal waters under the jurisdiction of coastal States.

Scope and definitions

The first four articles cover the scope, definitions, objectives and general principles of the Convention. A State Party may take measures in accordance with the Convention to remove a wreck that poses a hazard to navigation or the marine environment. A "hazard" is defined as any condition or threat that "(a) poses a danger or impediment to navigation; or (b) may reasonably be expected to result in major harmful consequences to the marine environment, or damage to the coastline or related interests of one or more States".[20] Measures taken by the affected coastal State shall be proportionate to the hazard and "shall not go beyond what is reasonably necessary to remove a wreck which poses hazard and shall cease as soon as the wreck has been removed".[21]

The "Convention area", or the area where the Convention applies, is defined as the exclusive economic zone of a State Party. The territorial sea, where national law applies, is excluded. However article 3(2) provides that a State Party may "extend the application of this Convention to wrecks located within its territory, including the territorial sea", if they so wish.

The definition of "wreck", following a maritime casualty, includes a ship, or any part of a ship, or object that has been on board a ship but has become detached, such as for instance cargo, that as a consequence of a maritime casualty may be sunken or stranded or adrift.[22] In addition, a ship "that is about or may reasonably be expected, to sink or strand, where effective measures[23] to assist the ship or any property in danger are not already being taken", is also included in the definition. A "maritime casualty" is widely defined as "a collision of ships, stranding or other incident of navigation or other occurrence on board a ship or external to it, resulting in material damage or imminent threat of material damage to a ship or its cargo".[24]

Reporting, locating and marking of wrecks

Articles 5 to 9 set out the requirements under the Convention. A State Party "shall require the master and the operator of a ship flying its flag to report to the Affected State without delay when that ship has been involved in a maritime casualty resulting in a wreck".[25] The report shall provide all the relevant information necessary for the affected State, including: "(a) the precise location of the wreck; (b) the type, size 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".[26]

The affected State, that is the State in whose Convention area the wreck is located,[27] shall in turn determine whether the wreck poses a hazard, taking

into account certain specified criteria listed in article 6 of the Convention. The affected State shall establish the precise location of the wreck, "warn mariners and the States concerned on the nature and location of the wreck as a matter of urgency",[28] as well as mark the position of the wreck conforming to the international system of buoyage.[29]

After having been determined that the wreck poses a hazard, according to article 9 of the Convention, the registered owner has the obligation to remove it. The affected State may lay down conditions for such removal, including setting reasonable deadlines within which the wreck has to be removed.[30] If such deadline is not met, or if immediate action is required before the owner can act, the affected State "may remove the wreck by the most practical and expeditious means available, consistent with considerations of safety and protection of the marine environment".[31] It appears that there may be some scope here for dispute between the owner and the affected State as to what constitutes such considerations.

Liability

The registered owner shall normally be liable for the costs of locating, marking and removing the wreck, without any limitation to these costs other than the general restriction in article 2, that they should be reasonable and proportional to the hazard faced. However, liability is excluded if the registered owner proves that the maritime casualty that caused the wreck "(a) resulted from an act of war, hostilities, civil war, insurrection, or a natural phenomenon of an exceptional, inevitable and irresistible character; (b) was wholly caused by an act or omission done with intent to cause damage by a third party; or (c) was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function".[32]

In order to qualify for the second exclusion – based on the maritime casualty being intentionally caused by a third party – the owner, as the party seeking to benefit from this exclusion, will need to show that any resulting damage was "wholly caused" by such act. Thus it does not provide a complete defence in the event that even a small contributory negligence on the part of the shipowner can be established. This seems to be a heavy burden of proof for the owner. The owner is also allowed "to limit liability under any applicable national or international regime, such as the Convention on Limitation of Liability for Maritime Claims, 1976 (LLMC, 1976), as amended."[33] However, local legislation ratifying LLMC, 1976, as amended, often specifically excludes the right to limit in respect of wrecks.

In addition, the registered owner shall not be liable under this Convention to the extent that such liability would be in conflict with other IMO conventions applicable and in force,[34] or national law governing or prohibiting limitation of liability for nuclear damage, or the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001, as amended.[35]

Finally, article 10 of the Convention provides that nothing in it shall prejudice any right of recourse against third parties. Thus, any party incurring costs under the Convention has the right to pursue a recourse action against a third party, such as another vessel involved in a collision.

Compulsory insurance

Article 12 of the Convention requires the owner of a ship of 300 GT and above, and flying the flag of a State Party, "to maintain insurance or other financial security, such as a guarantee of a bank or similar institution", to cover liability under this Convention. The value is to be determined by the applicable limitation regime but in all cases not exceeding an amount calculated in accordance with the limits determined by LLMC, 1976, as amended. Each ship shall carry a certificate attesting that insurance or another financial security is in force. The certificate shall be in an approved format, a draft of which is included in the annex to the Convention. In addition, claims for costs arising out of the provisions of the Convention can be brought directly against the insurer or guarantor stated in the certificate.[36]

However, it is worth noting that States Parties will have to extend the application of the Convention to their territory, including the territorial sea, in accordance with article 3(2), in order to be able to rely on the insurance certificates for incidents occurring outside the "Convention area",[37] and be able to bring direct action claims against the insurer pursuant to article 12.

Time limits

Article 13 imposes a dual time limit within which a claim may be brought. Claims under the Convention shall be brought within the first three years from the date the affected State determines the wreck constitutes a hazard, and not later than six years from the date of the maritime casualty. Otherwise the rights to recover costs under the Convention shall be extinguished.

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

Issues related to the reduction of GHG emissions from international shipping continued to remain an important area of focus of the work of the IMO Marine Environment Protection Committee (MEPC) at its sixty-sixth session held from 31 March to 4 April 2014. Continuous improvements to ships' design and size, as well as operational measures including better speed management during the course of a ship's voyage are being adopted, particularly with the aim of producing further reductions in consumption and more efficient use of fuel. Reducing the consumption of fuel, and consequently emissions of CO2, the primary GHG emitted through its burning, and the largest contributor of GHG emissions from human activities, remains a strong incentive for shipping.

By way of background, it should be recalled that a new set of technical and operational measures[38] to increase energy efficiency and reduce emissions of GHGs from international shipping (IMO, 2011, annex 19) had been adopted in 2012. This package of measures, introducing EEDI for new ships and the Ship Energy Efficiency Management Plan for all ships, was added by way of amendments to MARPOL annex VI "Regulations on the prevention of air pollution from ships", through the introduction of a new chapter 4 entitled "Regulations on energy efficiency for ships", and entered into force on 1 January 2013. Guidelines and unified interpretations to assist in the implementation of this set of technical and operational measures were subsequently adopted by IMO in October 2012 and in 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 agreement was reached on the initiation of a new study to carry out an update to the IMO 2009 GHG emissions estimate for international shipping.The issue of possible market-based measures for the reduction of GHG emissions from international shipping continued to remain controversial, and further discussion was postponed to a future session.[39] Information about relevant deliberations and outcomes during the period under review is presented below.

Energy efficiency for ships

During its sixty-sixth session, the MEPC continued its work on further developing guidelines to support the implementation of the mandatory regulations on energy efficiency for ships, set out in chapter 4 of MARPOL annex VI. In particular, the Committee:

- Adopted the "2014 Guidelines on the method of calculation of the attained EEDI for new ships" (IMO, 2014a, annex 5);
- Noted "Draft amendments to the 2012 guidelines on survey and certification of the EEDI, as amended" (IMO, 2014b, annex 7), with a view to finalization and adoption at the sixty-seventh session;
- Endorsed views stating that the "Interim guidelines for determining minimum propulsion power to maintain the manoeuvrability of ships in adverse conditions", are not applicable to ships under 20,000 dwt, and no amendment to the guidelines was required;
- Invited further input on the "Interim guidelines for the calculation of the coefficient 'fw' for decrease in ship speed in a representative sea condition for trial use" (IMO, 2012a);
- Approved "Amendments to the unified interpretation of regulation 2.24 of MARPOL annex VI" (IMO, 2014a, annex 6), and requested the secretariat to issue a consolidated text of the unified interpretations, incorporating all amendments, for dissemination;[40]
- Agreed to establish an EEDI database and the minimum data required to support the reviews required under regulation 21.6 of MARPOL annex VI.

Technical cooperation and transfer of technology

At its sixty-sixth session, the MEPC discussed the importance of the implementation of resolution MEPC.229(65) on "Promotion of Technical Cooperation and Transfer of Technology Relating to the Improvement of Energy Efficiency of Ships" (IMO, 2013a, annex 4),[41] as well as the need for the Ad Hoc

Expert Working Group on Facilitation of Transfer of Technology for Ships to initiate its work at that session, following the entry into force of the amendments to annex VI of MARPOL on 1 January 2013. The Working Group was instructed to:

- Assess the potential implications and impacts of the implementation of the regulations in chapter 4 of MARPOL annex VI, in particular, on developing States, as a means to identify their technology transfer and financial needs, if any;
- Identify and create an inventory of energy efficiency technologies for ships; identify barriers to the transfer of technology, in particular to developing States, including associated costs, and possible sources of funding; and make recommendations, including the development of a model agreement enabling the transfer of financial and technological resources and capacity-building between Parties, for the implementation of the regulations in chapter 4 of MARPOL annex VI.[42]

Appreciation was expressed to the Working Group for the progress made, and the MEPC urged it to finish its work as soon as practicably possible, but no later than the sixty-ninth session of the MEPC in 2015.

Further technical and operational measures for enhancing the energy efficiency of international shipping

The MEPC also discussed various submissions relating to proposals to establish a framework for the collection and reporting of data on the fuel consumption of ships.[43] It agreed to establish a correspondence group to consider the development of a data collection system on fuel consumption of ships, including identification of the core elements of such a system. The group will report to the sixty-seventh session of the Committee in October 2014.

Update of the GHG-emission estimate for international shipping

The MEPC at its sixty-fifth session had approved the terms of reference[44] for an update GHG study, and had agreed that (a) the updated GHG 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.[45]

During the sixty-sixth session of the MEPC, a status report on the update GHG study was considered, and the steering committee informed that the consultants subcontracted to prepare the study had submitted a progress report in February. The steering committee found that the work was on track to meet the set date for the completion of the Third IMO GHG Study 2014, and that the terms of reference of the study were being met (IMO, 2013d).[46]

Matters concerning the United Nations Framework Convention on Climate Change

The MEPC noted a document (IMO, 2013e) on the outcome of the Bonn and Warsaw Climate Change Conferences held in 2013, and that the United Nations Secretary-General would be hosting a parallel initiative, the Climate Summit, in New York on 23 September 2014. The Committee requested the IMO secretariat to continue its cooperation with the United Nations Framework Convention on Climate Change secretariat, and to bring the outcome of IMO work to the appropriate bodies and meetings of the Convention, as necessary.

2. Ship-source pollution and protection of the environment

(a) Air pollution from ships

In addition to striving to reduce the carbon footprint from international shipping, IMO is working on regulations to reduce emissions of other toxic substances from burning fuel oil, particularly SOx and NOx. These significantly contribute to air pollution from ships and are covered by annex VI of MARPOL,[47] which was amended in 2008 to introduce more stringent emission controls.

Emissions of nitrogen oxides

The MEPC continued its consideration of issues related to progressive reductions in NOx emissions from ship engines. During the sixty-sixth session, the MEPC adopted amendments to regulation 13 of MARPOL annex VI[48] on NOx, concerning the date for

the implementation of "tier III" NOx standards within emission control areas (ECAs), namely:

- To retain an effective date of 1 January 2016 for the existing ECAs for NOx as listed in paragraphs 6.1 and 6.2 of regulation 13 of MARPOL annex VI;
- To place an exception of a five-year delay for large yachts (greater than 24 metres in length and of less than 500 GT).

Thus, tier III standards will apply to a marine diesel engine that is installed on a ship constructed on or after 1 January 2016 and which operates in the North American ECA or the United States Caribbean Sea ECA that are designated for the control of NOx emissions. In addition, the tier III standards would apply to installed marine diesel engines when operated in other ECAs which might be designated in the future for tier III NOx control. They would apply to ships constructed on or after the date of adoption by the MEPC of such an emission control area, or a later date as may be specified in the amendment designating the NOx tier III ECA.[49] Furthermore, the tier III requirements do not apply to a marine diesel engine installed on a ship constructed prior to 1 January 2021 of less than 500 GT, of 24 metres or over in length, which has been specifically designed and is used solely for recreational purposes. These amendments are expected to enter into force on 1 September 2015.

Requirements for the control of NOx apply to installed marine diesel engines of over 130 kilowatt output power, and different levels (tiers) of control apply based on the ship construction date. Outside ECAs designated for NOx control, tier II controls,[50] required for marine diesel engines installed on ships constructed on or after 1 January 2011, apply.

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 SOx 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 0.5 per cent (5,000 ppm) from 2020 (subject to a feasibility review in 2018).[51] Annex VI also contains provisions allowing for special SOx ECAs to be established where even more stringent controls on sulphur emissions apply.[52] Since 1 July 2010, these ECAs have SOx 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,[53] or use any other technological method to limit SOx emissions.

The 2010 guidelines for monitoring the worldwide average sulphur content of fuel oils supplied for use on board ships (IMO, 2010, annex I) provide for the calculation of a rolling average of the sulphur content for a three-year period. The rolling average based on the average sulphur contents calculated for 2011, 2012, and 2013 is 2.53 per cent for residual fuel and 0.14 per cent for distillate fuel (IMO 2012b, 2013g, 2014c).

As regards the timing of the review required under MARPOL annex VI, regulation 14.8, on control of emissions of SOx from ships, the Committee agreed to establish a correspondence group to develop the methodology to determine the availability of compliant fuel oil to meet the requirements set out in the regulation. The group will provide a progress report to the sixty-seventh session of the MEPC, so that the terms of reference of the study can be adopted at the sixty-eighth session of the MEPC in 2015.[54]

Other issues

The MEPC also adopted:

- "2014 Standard specification for shipboard incinerators" (IMO, 2014a, annex 3), which covers the design, manufacture, performance, operation and testing of incinerators intended to incinerate garbage and other shipboard wastes generated during the ship's normal service. The specification applies to incinerator plants with capacities up to 4,000 kilowatts per unit.
- "2014 Guidelines in respect of the information to be submitted by an Administration to the Organization covering the certification of an approved method as required under regulation 13.7.1 of MARPOL annex VI" (relating to "Marine Diesel Engines Installed on a Ship Constructed Prior to 1 January 2000"), (IMO, 2014a, annex 1).
- "2014 Guidelines on the approved method process" (IMO, 2014a, annex 2).

In addition, a discussion[55] on fuel oil quality in general was held during the sixty-sixth session of the MEPC, and a number of comments were made, including the following:

- Fuel oil quality is having an impact on the safety of shipping and is an important factor for marine protection including control of emissions and energy efficiency;
- Guidance should be prepared for those responsible for controlling and authorizing local fuel oil suppliers;
- There may be a need to consider a review and amendment of International Organization for Standardization (ISO) standard 8217:2010 so that it aligns with the fuel-oil quality requirements of marine diesel engine manufacturers, for example, refinery catalyst fines;
- There is a need to consider the illegal blending of chemical wastes;
- The supply and delivery of fuel oil to a ship and the assurance of fuel oil quality were commercial issues and any dispute between supplier and ship was a contractual matter regulated by domestic legislation.

Following discussion, the Committee agreed to develop guidance on possible quality control measures prior to fuel oil being delivered to a ship, and invited member States and international organizations to submit concrete proposals to the sixty-seventh session of the MEPC.

The Committee also approved, with a view to adoption at its sixty-seventh session:

- "Draft amendments to MARPOL annex VI" regarding engines solely fuelled by gaseous fuels (IMO, 2014a, annex 4);
- Draft amendments to regulation 13.7.3 of MARPOL annex VI and item 2.2.1 of the supplement to the International Air Pollution Prevention (IAPP) Certificate (IMO, 2014a, annex 4). The Committee also agreed, in principle, to a draft guidance on the supplement to the IAPP Certificate (IMO, 2014d).

(b) Ballast water management

After considering the reports of the twenty-sixth and twenty-seventh meetings of the Joint Group of Experts on the Scientific Aspects of Marine Environment Protection Ballast Water Working Group (GESAMP–BWWG), which took place in 2013, the MEPC during its sixty-sixth session granted basic approval to four,[56] and final approval to two ballast water management systems[57] that make use of active substances.

The MEPC also approved:

- Guidance on entry or re-entry of ships into exclusive operation within waters under the jurisdiction of a single Party (IMO, 2014e);
- Revision of the GESAMP–BWWG methodology for information gathering and conduct of work (IMO, 2014f).

Having noted that the total number of type-approved ballast water management systems so far was forty-two, the Committee encouraged all States that have not yet become Parties to the International Convention for the Control and Management of Ships' Ballast Water and Sediments (BWM Convention) to do so at their earliest opportunity.[58]

(c) Ship recycling

The MEPC, at its sixty-sixth session, recalled that, since the adoption of the Hong Kong Convention, all six sets of guidelines required under the terms of the Convention had been finalized and adopted to ensure global, uniform and effective implementation and enforcement of the relevant requirements of the Convention and to assist States in the voluntary implementation of its technical standards in the interim period up to its entry into force. Given that so far only one State[59] has acceded to the Convention, member States were encouraged to become members to it at their earliest convenience.

The Committee considered among others the report (IMO, 2013h) of a correspondence group tasked with developing threshold values and exemptions applicable to the materials to be listed in the Inventory of Hazardous Materials, required under the Convention, and decided to re-establish it in order to prepare relevant amendments to the 2011 Guidelines for the development of the Inventory of Hazardous Materials (IMO, 2011, annex 3). The Committee also noted information provided by the secretariat (IMO, 2013i) on the calculation of recycling capacity for meeting the conditions of the entry into force of the Hong Kong Convention.

(d) Port reception facilities

During its sixty-sixth session, the MEPC considered a consolidated version (IMO, 2013j) of five circulars related to port reception facilities, adopted at the sixty-fifth session, and consequently, approved a "Consolidated guidance for port reception facility providers and users" (IMO, 2014g).

The Committee took note of the outcome of the second of two IMO regional workshops on port reception facilities (IMO, 2014h). It also urged all Parties to MARPOL to fulfil their treaty obligations to provide reception facilities for wastes generated during the operation of ships, and all member States to keep the information in the port reception facility database on the Global Integrated Shipping Information System regarding the availability of reception facilities in their ports and terminals up to date.

(e) International Maritime Organization audit scheme

The MEPC adopted amendments to MARPOL annexes I through to VI (IMO, 2014a, annexes 7 and 8), to make mandatory the use of the IMO Instruments Implementation Code (III Code) (IMO, 2013k). The III Code, adopted by the IMO Assembly on 4 December 2013, provides a global standard to enable States to meet their obligations as flag, port and/or coastal States.[60] The amendments add definitions and regulations relating to "verification of compliance", thereby making the IMO audit scheme mandatory under MARPOL, and are expected to enter into force on 1 January 2016. Similar amendments to other IMO treaties have been or are in the process of being adopted.[61]

(f) Noise from commercial shipping

The MEPC approved "Guidelines for the reduction of underwater noise from commercial shipping to address adverse impacts on marine life" (IMO, 2014k). As regards future work on this important issue, the Committee invited member States to submit proposals and noted in particular that "a large number of gaps in knowledge remained and no comprehensive assessment of this issue was possible at this stage". Noting the complexity of the issue, the MEPC also stated that "setting future targets for underwater sound levels emanating from ships was premature and would be difficult to evaluate at this time". In that respect, "more research was needed, in particular on the measurement and reporting of underwater sound radiating from ships" (IMO, 2014a).

3. Other developments at the International Maritime Organization

Polar Code matters

Ships operating in polar waters are exposed to a number of unique risks, including cold temperatures, poor weather conditions, challenges for ships' systems and navigation, as well as difficult and costly clean-up operations. The issue of navigation in polar waters was first addressed by the "Guidelines for ships operating in Arctic ice-covered waters" (IMO, 2002). These guidelines provide requirements additional to those of the International Convention for the Safety of Life at Sea (SOLAS) and MARPOL Convention for navigation in Arctic waters, taking into account the specific climatic conditions in that area in order to meet appropriate standards of maritime safety and pollution prevention. In December 2009, an IMO Assembly resolution on "Guidelines for ships operating in polar waters" was adopted, which addressed both Arctic and Antarctic areas (IMO, 2009). In February 2010, work commenced at IMO to turn these guidelines into a mandatory code for ships operating in polar waters, and to draft associated SOLAS and MARPOL amendments to make the code mandatory.

The draft mandatory international code for ships operating in polar waters (Polar Code), currently under preparation, which will apply to passenger ships and cargo ships of 500 GT and above, covers the full range of design, construction, equipment, operational, training, search and rescue, and environmental protection matters relevant to ships operating in the inhospitable waters surrounding the two poles. It includes mandatory measures covering safety (part I-A) and pollution prevention (part II-A) and recommendatory provisions for both (parts I-B and II-B).[62] The Code would require ships intending to operate in the waters of the Antarctic and Arctic to apply for a Polar Ship Certificate, which will require an assessment taking into account the anticipated range of operating conditions and hazards the ship may encounter in the polar waters, as well as to carry a Polar Water Operational Manual.[63]

During its sixty-sixth session, the MEPC reviewed the environmental requirements under the proposed draft Polar Code. It also considered the proposed draft amendments to MARPOL to make the Code mandatory. A correspondence group was established to finalize these draft amendments and the environmental requirements, and to report to the sixty-seventh session of the MEPC. Other chapters of the draft Polar Code have been under consideration by other IMO bodies[64] according to their areas of competence, with a view to final adoption by both the MEPC and the Maritime Safety Committee (MSC) in the autumn of 2014.

Key developments in summary

As the above overview of regulatory developments indicates, during the year under review several regulatory measures were adopted under the auspices of IMO to strengthen the legal framework relating to ship-source air pollution and the reduction of GHG emissions from international shipping, as well as to make the IMO member State audit scheme mandatory. Progress has also been made with respect to the environmental and other provisions of the draft Polar Code, as well as on technical matters related to the implementation of the 2004 BWM Convention, and on issues related to the 2009 Ship Recycling Convention.

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 maritime piracy.[65]

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 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 (SAFE),[66] with the objective of developing a global supply-chain framework. The Framework provides a set of standards and principles that must be adopted as a minimum threshold by national customs administrations.[67] The Framework has been updated and has evolved over the years as a dynamic instrument, aiming to balance "facilitation and controls while ensuring the security of the global trade supply chain".[68] It is a widely accepted instrument that serves as an important reference point for customs and for economic operators alike.[69]

As an important feature of SAFE, authorized economic operators (AEOs)[70] are private parties that have been accredited by national customs administrations as compliant with WCO or equivalent supply-chain security standards. Special requirements have to be met by AEOs 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)[71] 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 subregional and regional level.[72] As of March 2014, 26 AEO programmes had been established in 53 countries[73] and 11 more countries planned to establish them in the near future.[74]

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 SAFE in a changing trade environment.

More recently, a topic of increasing concern for customs and trade worldwide has been that of data quality (WCO, 2013). Data is used by customs for various purposes, including security risk analyses, admissibility decisions, trade-facilitation measures, revenue collection, resource allocation, coordinated border management, as well as to compile statistics used by Governments in the context of macroeconomic policy decisions. Thus, in cases of misdeclaration of customs information, be it wilful or accidental, poor quality data could lead to customs taking incorrect decisions and all the parties involved facing negative consequences. In this context, an expert group was established at WCO composed of customs and private sector representatives who will work together to find ways to improve data quality, compile best practices developed by customs, other government agencies and trade actors, as well as analyse instruments that aim to ensure data quality developed by other international organizations.[75]

(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,[76] 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.[77] Part of these changes involved 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 became an obligation for traders.[78]

Part of the changes to the Customs Code was also the introduction of provisions regarding AEOs, a status which, as mentioned above, 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,[79] and the issuance of a revised self-assessment questionnaire[80] 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,[81] it is worth noting that an MRA with China was signed on 19 May 2014. The European Union is the first trading partner to enter into such an agreement with China.[82] Under the agreement, the Parties commit to recognize each other's certified safe traders, thus allowing them to benefit from faster controls and reduced customs clearance time and procedures. Thus, customs can "focus their resources on real risk areas thereby improving supply chain security", allowing the citizens to benefit from greater protection (European Commission, 2014a).[83]

On 6 March 2014, a joint communication[84] "For an open and secure global maritime domain: Elements for a European Union maritime security strategy" (European Commission, 2014b) was published. The main aim of the new strategy is to identify the maritime interests of the European Union such as prevention of conflicts, protection of critical maritime infrastructure including ports and terminals, effective control of external borders, the protection of the global trade support chain and the prevention of illegal, unregulated and unreported fishing. It recognizes a number of potential risks and threats for the European Union and its citizens, including territorial maritime disputes, maritime piracy, terrorism against ships and ports or other critical infrastructure, cross-border and organized crime including seaborne trafficking, potential impacts of marine pollution, and natural disasters or extreme events.

The strategy should be inclusive, comprehensive and build upon existing achievements. Cooperation between all maritime stakeholders should be strengthened to efficiently address potential risks and threats, both internally and beyond the European Union borders where it has strategic maritime interests. According to the communication, the strategy should focus on five specific areas where a coordinated approach in the European Union based on already existing tools would lead to better cooperation:

- External action;
- Maritime awareness, surveillance and information sharing;
- Capability development and capacity-building;
- Risk management, protection of critical maritime infrastructure and crisis response;
- Maritime security research and innovation, education and training.

Based on the elements proposed in the joint communication, a concrete European Union Maritime Security Strategy should now be elaborated within the appropriate European Union Council bodies with a view to its adoption.[85]

Concerning United States developments, as noted in previous editions of the *Review of Maritime Transport,* a legislative requirement had been introduced into United States law in 2007[86] to provide, by July 2012, for 100 per cent scanning of all United States-bound cargo containers before being loaded at a foreign port. However, concerns relating to the feasibility of implementing the legislation remained,[87] as was

illustrated by the conclusions of a United States Government Accountability Office report.[88] On 2 May 2012, an official notification letter was submitted by the Secretary of the Department of Homeland Security to the United States Congress, thus giving effect to the anticipated deferral of the requirement for the 100 per cent scanning of United States-bound maritime containers at foreign ports for two years, until 1 July 2014. The letter states among other elements that 100 per cent scanning of containers is neither the most efficient nor cost-effective way to secure the supply chain against terrorism. In addition, diplomatic, financial and logistical challenges of such a measure would cost an estimated $16 billion.[89]

In 2014, the Department of Homeland Security secretary has again decided on another two-year extension, citing the same reasons that existed two years ago. In a letter to the United States Congress sent in May 2014, he notes that the conditions and supporting evidence cited in the 2012 deadline postponement "continue to prevail and preclude full-scale implementation of the provision at this time". In addition, he notes that the use of systems available to scan containers "would have a negative impact on trade capacity and the flow of cargo", and points out that scanners to monitor the 12 million containers imported in the United States each year "cannot be purchased, deployed or operated at ports overseas because ports do not have the physical characteristics to install such a system". The letter also draws attention to the huge cost of such a scheme.[90]

(c) International Maritime Organization

Measures to enhance maritime security

Certain matters covered as part of the agenda of the latest sessions of the MSC and the Legal Committee of IMO are also worth noting that relate to the effective implementation of SOLAS chapter XI-2 and the International Ship and Port Facilities Security (ISPS) Code[91] (combating piracy and armed robbery, and requirements related to privately contracted armed security personnel on board ships).

Maritime Safety Committee

The MSC at its ninety-third session[92] expressed its concern that some States have incorporated the ISPS Code into their domestic legislation without accommodating many of the enabling provisions to properly provide for adequate implementation and enforcement. Therefore, a correspondence group was established to review and subsequently finalize a draft "Guidance for the development of national maritime security legislation", and report to the next session of the Committee.[93]

The Committee reviewed the latest statistics on piracy and armed robbery against ships (IMO, 2014m), and discussed current initiatives to suppress piracy and armed robbery. The Committee noted that the number of worldwide piracy attacks had decreased and that as a result of the actions taken by the international naval forces in the region, implementation of shipboard measures, as well as the deployment of professional security teams, no SOLAS ship had been hijacked in the western Indian Ocean area since May 2012. However, the situation in the Gulf of Guinea had not improved sufficiently, as nine ships were reported hijacked in 2012 and another nine in 2013.[94]

The Committee was also invited to review draft interim guidelines on measures to support seafarers and their families affected by piracy incidents off the coast of Somalia (IMO, 2014n).[95] However, based on the views of several delegations that the provisions in the document were a matter to be considered by the International Labour Organization (ILO), and in order to avoid any inconsistencies with the latest amendments to the Maritime Labour Convention (MLC, 2006) (see section 2, Other issues, below), the Committee decided to forward the draft guidelines to ILO for its review and further action.

Legal Committee

The Legal Committee at its 101st session[96] noted the outcome of the meeting of Working Group 2 of the Contact Group on Piracy off the Coast of Somalia[97] (IMO, 2014o and 2014p), and recognized that piracy continued to be a significant international problem. It welcomed the development of a draft law (IMO, 2014p, annex), for establishing a coastguard/maritime police by the Somali Contact Group on Counter Piracy.[98]

At the Contact Group on Piracy off the Coast of Somalia strategy meeting held in Paris in January 2014, it was decided that Working Group 2 had successfully achieved all of the aims it had intended and that, as a result, it would convene only on an ad hoc basis. It would be renamed "Legal Forum of the CGPCS" and would be preserved as a virtual forum to provide legal support to other working groups as requested.

The following views were expressed:

- Piracy continued to be an important international problem and there should be general support for IMO action in this regard;
- The International Maritime Organization should be involved in the work carried out within the framework of the Legal Forum;
- In the light of escalating acts of piracy off the coast of West Africa, military presence in the region continues to be justified;
- The International Maritime Organization is the proper forum to address the needs of the shipping industry in respect of guidance and recommendations on the issue of armed guards on board ships.[99]

(d) International Organization for Standardization

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".

Also relevant 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 (box 5.1 details the current status of the ISO 28000 series). The core standard in this 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. The standard also serves as a basis for AEO and Customs–Trade Partnership Against Terrorism (C–TPAT) certifications. Various organizations adopting such standards may tailor an approach compatible with their existing operating systems. The standard ISO 28003:2007, published and in force since 2007, provides requirements for providing audits and certification to ISO 28000:2007.

The standard ISO/PAS 28007:2012[100] 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 privately contracted armed security personnel (PCASP) on board ships. Currently ISO is working on the inclusion of the Rules for the Use of Force ("100 Series Rules") (IMO, 2013m), as part of an amendment to ISO/PAS 28007.

It is worth noting that ISO standards are voluntary and ISO itself does not accredit. As regards the accreditation and certification process, States should contact their national accreditation bodies, listed by the International Accreditation Forum, which has the necessary formal international authority in conformity assessment.[101] Individual States are also entitled to make changes to the standards based on their national requirements.[102]

(e) United Nations Conference on Trade and Development

Maritime piracy is a topic which continues to remain of considerable concern to the maritime industry and to global policymakers alike. By its very nature, shipping is particularly vulnerable to piracy and armed robbery threats. At a basic level, maritime piracy is a maritime transport issue that directly affects ships, ports, terminals, cargo and seafarers. However, as piracy activities evolve and become more sophisticated, the problem becomes a multifaceted and complex transnational security challenge that threatens lives, livelihoods and global welfare. Piracy has broad repercussions, including for humanitarian aid, supply chains, global production processes, trade, energy security, fisheries, marine resources, environment and political stability. The resulting adverse and potentially destabilizing effects entail far reaching implications for all countries, whether they are coastal or landlocked, developed or developing.

In accordance with its mandate in the field of maritime and supply-chain security, UNCTAD prepared a substantive analytical report focusing on matters related to maritime piracy. The report has been published in two distinct parts, entitled *Maritime Piracy. Part I: An Overview of Trends, Costs and Trade-related Implications; and Maritime Piracy. Part II: An Overview of the International Legal Framework and of Multilateral Cooperation to Combat Piracy.*[103] Part I of the report

sets the scene and provides some figures and statistics describing overall trends in maritime piracy and related crimes. It also highlights some of the key issues at stake by focusing on the potential direct and indirect costs and some of the broader trade-related implications of maritime piracy. Part II provides an overview of the contemporary international legal regime for countering piracy and identifies key examples of international cooperation and multilateral initiatives to combat the problem, in particular following the escalation of piracy off the coast of Somalia, the Gulf of Aden and the Indian Ocean.[104]

2. Other issues

(a) Safety of container ships

Following discussion, the MSC at its ninety-third session approved "Draft amendments to SOLAS regulation VI/2" related to mandatory verification of gross mass of a container (IMO 2014l, annex 19), with a view to their consideration and adoption at the ninety-fourth session. The Committee also approved "Guidelines regarding the verified gross mass of a container carrying cargo" (IMO, 2014r).

Practice has shown that if ships are overloaded with overweight containers, the structural integrity and stability of the ship risk being compromised and accidents may occur. It has been argued that weighing containers may help avoid such accidents and combat possible misdeclaration of exports. However, some shipper groups have resisted mandatory container weighing, arguing that the rule would add extra costs and that the infrastructure to weigh containers, particularly in developing countries, is not in place (*JOC, 2014).*

Under the draft SOLAS amendments, container weights will need to be verified before the containers are loaded onto vessels. Shippers can either weigh the loaded container or weigh all packages and cargo items and then add the weight of the empty box. These draft amendments are expected to be considered during the ninety-fourth session of the MSC in November 2014, and if finally adopted their earliest entry into force would be 1 July 2016.

(b) Amendments to the Maritime Labour Convention 2006

As reported in the 2013 edition of the *Review of Maritime Transport*, the MLC, 2006, which consolidates and updates more than 68 international labour standards relating to seafarers, and sets out their responsibilities and rights with regard to labour and social matters in the maritime sector, entered into force on 20 August 2013. It currently has 57 member States representing over 80 per cent of the world's global shipping tonnage, and is considered as the fourth pillar of the global maritime regulatory regime.[105] Therefore, the review of the implementation of the MLC, 2006, on a regular basis, and consultations regarding any necessary updates are considered very important.

A first meeting of the Special Tripartite Committee under the MLC, 2006, attended by representatives of seafarers, shipowners and Governments, was held at ILO in Geneva in April 2014. The meeting considered and unanimously adopted two sets of proposed amendments to the code of the MLC, 2006 (regulations, standards and guidelines). The first set of amendments related to regulation 2.5 – "Repatriation", and the second one related to regulation 4.2 – "Shipowners' liability". As of March 2014, 159 abandoned merchant ships were listed in the ILO Abandonment of Seafarers Database, some dating back to 2006 and still unresolved. The new amendments aim to ensure that seafarers are not abandoned by distressed owners, sometimes for months, without pay, adequate food and water and away from home. They also aim to make the flag States responsible for ensuring that adequate financial security exists to cover the costs of abandonment as well as claims for death and long-term disability due to occupational injury and hazards, thus providing relief to seafarers and their families and improving the quality of shipping overall.

For the purpose of the amendments, abandonment occurs when the shipowner "(a) fails to cover the cost of the seafarer's repatriation; or (b) has left the seafarer without necessary maintenance and support; or (c) has otherwise unilaterally severed ties with the seafarer including failure to pay contractual wages for at least two months".[106] Regarding the financial security system, the amendments request that it provides "direct access, sufficient coverage and expedited financial assistance".[107] Such assistance "shall be granted promptly upon request made by the seafarer"[108] or a nominated representative. The assistance covers payment of outstanding wages and other entitlements due from the shipowner, repatriation expenses and essential needs such as water, food, clothing, necessary medical care and fuel needed for survival on board the ship.

In addition, under the amended provisions, ships are required to carry certificates or other documents indicating that financial security exists "whether it be in the form of a social-security scheme or insurance or a national fund or other similar arrangement",[109] to protect seafarers working on board. Failure to do that may cause the ship to be detained in a port. The amendments were approved by the International Labour Conference, which was held in June 2014.[110]

Key developments in summary

During the reporting period, continued progress was made regarding the implementation of the existing framework and programmes in the field of maritime and supply-chain security. The main areas of progress include enhancements to regulatory measures on maritime security and safety, primarily under the auspices of IMO, as well as implementation of AEO programmes and an increasing number of bilateral MRAs that will, in due course, form the basis for recognition of AEOs at a multilateral level.

In relation to maritime piracy, as a result of efforts made by the international community, implementation of shipboard measures, and deployment of professional security teams, the downward trend has continued off the Coast of Somalia, the Gulf of Aden and the Western Indian Ocean. The situation in the West African Gulf of Guinea area remains serious, however. A recent two-part substantive analytical report by UNCTAD highlights some of the impacts, costs and trade-related implications of piracy and takes stock of regulatory and other initiatives that have been pursued by the international community in an effort to combat piracy. As regards seafarers rights, it is worth noting that a new set of amendments to the MLC, 2006, were adopted at ILO to ensure that adequate financial security is provided by flag States to cover the costs of abandonment of seafarers as well as claims for death and long-term disability due to occupational injury and hazards, thus providing relief to seafarers and their families and improving the quality of shipping overall.

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 ongoing, 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 28004-2:2014** – "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-sized and small ports that wish to adopt ISO 28000. It identifies supply-chain risk and threat scenarios, procedures for conducting risk/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.

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

- **ISO/PAS 28004-3:2014** – "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-sized and small businesses (other than marine ports) that wish to adopt ISO 28000. The additional guidance in ISO/PAS 28004-3:2014, 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 28004-4:2014** – "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.
- **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, the Facilitation Committee 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, 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 provides information on the status of ratification of each of these conventions as at 30 June 2014.

Table 5. Contracting States Parties to selected international conventions on maritime transport as at 30 June 2014

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, Congo, 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 (18)
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, Congo, Ecuador, Estonia, Latvia, Liberia, Spain, Syrian Arab Republic (11)

Note: For official status information, see http://treaties.un.org (accessed 4 October 2014).

E. INTERNATIONAL AGREEMENTS ON TRADE FACILITATION

1. National trade-facilitation bodies in the world

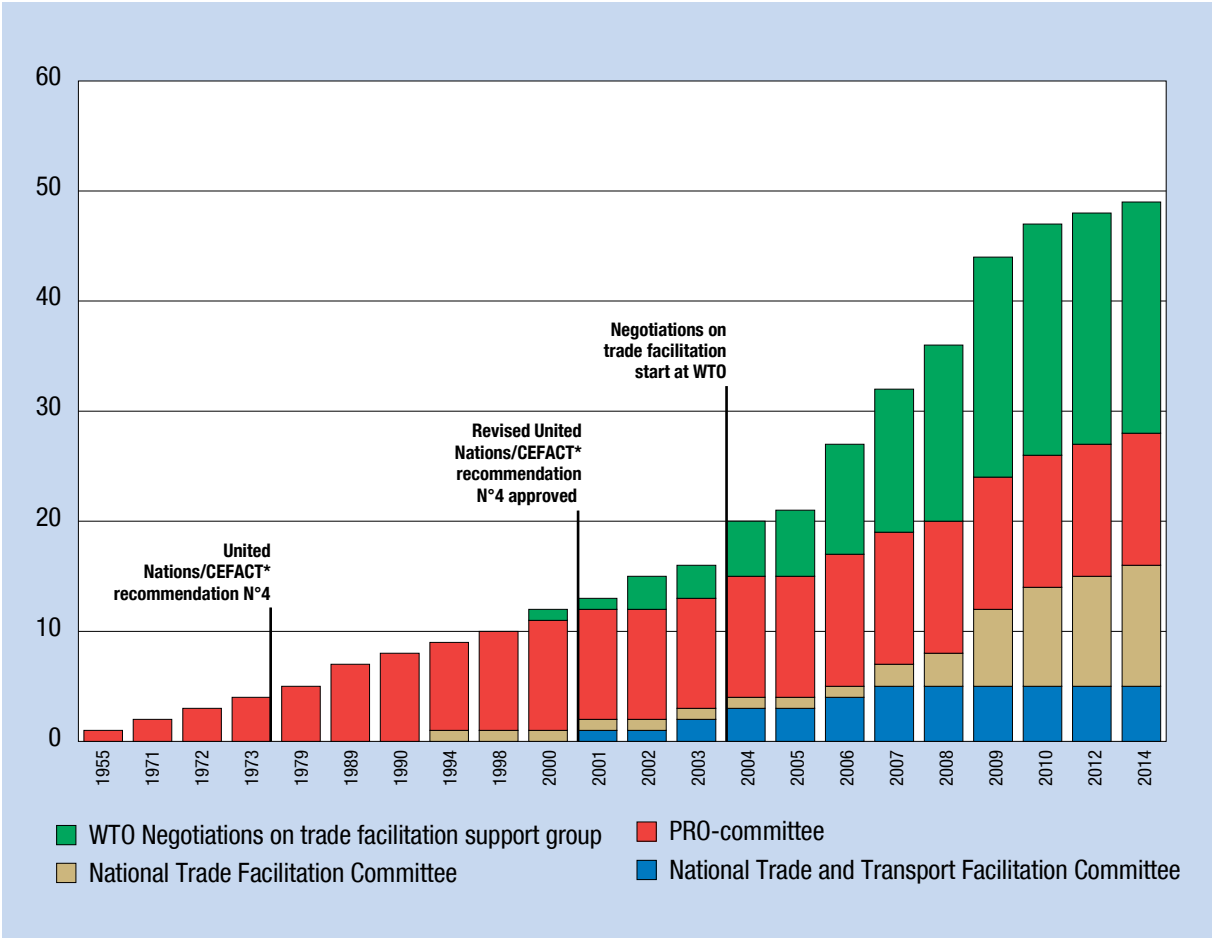
Trade facilitation has become an embedded aspect of the international trade landscape. The number of countries including trade-facilitation reforms in their trade policy agendas has increased over the years and the content of these reforms has evolved over time.

The implementation of trade-facilitation measures usually implies reforms at multiple stages in the administrative process and involves several public institutions. With a view to securing the most effective progress of the reform, prior consultation and mutual understanding are needed between implementing public agencies and relevant private sector stakeholders. Such a public–private partnership approach is the driving force in the establishment and operation of trade-facilitation coordination bodies.

Initially, the idea of trade-facilitation coordination bodies arose at national level. Later, it migrated to the international arena in the form of recommendations or guidelines.

Inspired by these best practices, the Economic Commission for Europe recommendation No. 4 was adopted in 1974. It advised countries to set up national trade-facilitation organs (so-called "PRO-committees") to contribute to the adoption of international standards relating to simplification of trade procedures and documentation. Recommendation No. 4 was then revised and updated in 2001.

Figure 5. Number of existing national trade-facilitation bodies (Year of creation)



Source: UNCTAD – based on information included in the UNCTAD repository (http://unctad.org/TFC, accessed 5 October 2014).
* CEFACT: Centre for Trade Facilitation and Electronic Business.

Since 2004, the number of trade-facilitation bodies has increased further, triggered by the start of the negotiations on trade facilitation in the context of the Doha Development Agenda of WTO in July that year[111] (see figure 5). The establishment of a national trade-facilitation committee is included in the WTO Trade Facilitation Agreement, adopted at the ninth Ministerial Conference held in Bali in December 2013.[112]

2. UNCTAD study on national trade-facilitation committees

A recent study[113] led by UNCTAD shows that a main challenge for trade-facilitation bodies is their sustainability. There is no one determinant element but many aspects – such as the objectives established for the committee, its institutional capacity, the composition of the group, available financing mechanisms, among others – may have important bearings on the sustainability of the group. The study focuses on bodies gathering stakeholders to address trade-facilitation issues in a coordinated way, regardless of the designation used to describe them (committees, commissions, working groups, and the like). The survey shows that the level of development of a country may be a most influential factor for the effective operation of a trade-facilitation body. The type of body and its geographical region can also be determinant. The research covers trade-facilitation bodies established at national level, excluding regional or international ones, and encompasses 50 country cases based on responses received as of August 2013.

Country cases can be consulted in the UNCTAD online repository "Trade Facilitation Bodies around the World" which is continuously updated and enlarged as new information is collected. [114]

Three main functions may be highlighted for trade-facilitation bodies: negotiate, coordinate and foster trade-facilitation measures. Simplifying, standardizing or harmonizing trade procedures are most quoted regardless of the level of development of a country. The type of trade-facilitation body appears also to have a strong bearing on the functions of the working group.

The institutionalization and legal mandate for a committee can be crucial to ensure political commitment and financial resources, although there seems to be no intrinsic relationship between the level of institutionalization and the effectiveness of a committee. The data collected allowed detection of a relationship between the level of development of a country and the degree of institutionalization of a trade-facilitation body. The less developed a country, the higher the level of the authority institutionalizing the trade-facilitation working group.

In a majority of cases, the Ministry of Trade undertakes the role of coordinating agency. Only in a limited number of cases would other government entities, such as customs, or private sector entities such as chambers of commerce, take over this role. In this case, the less developed a country, the higher the probability that the ministry of trade assumes the role of coordinating agency. Also, while the majority of trade-facilitation bodies have a permanent secretariat, responses received show that its existence increases with the level of development of a country.

Data show a positive correlation between the level of development of a country and the regularity of meetings of the working group. The less developed a country, the less frequent the meetings of the trade-facilitation body are.

The more developed a country is, the more members it includes; and the more it includes members from the private sector. Data show in such a context that the level of development, type of body and even geographic location of national trade-facilitation working groups may influence the ratio between public and private stakeholders.

The information about the activities of the trade-facilitation body disseminated to the public in general, and to particular stakeholders, also depends on the type of trade-facilitation body, the level of development and the geographical region. For instance, the level of development is closely correlated, according to the analysis, with communication strategies. The less developed a country is, the less communications are issued to the general public.

The source of financing will vary depending on the type of body and the level of development of each country. When looking at the source of financing per level of development, it is worth highlighting that the share of trade-facilitation bodies financed solely by the Government is inversely proportional to the level of development of a country. Public–private partnerships financing national trade-facilitation bodies are found only in developed countries.

Box 5.2. Types of national trade-facilitation bodies

Trade-facilitation bodies may be classified into four categories according to different features detailed below: PRO-committees, national trade and transport facilitation committees (NTTFCs), national trade facilitation committees, and WTO negotiations-on-trade-facilitation support groups.

PRO-committees

- The structure and role of the so-called PRO-committees are outlined in the Economic Commission for Europe recommendation No. 4. These organizations, often of a public legal nature, usually receive direct and/or indirect funding from the public sector. These committees were created mainly in Europe, some also in Asia. The "PRO" in their title stands for "procedures" and embodies their objectives (Economic Commission for Europe, 2013).

National trade and transport facilitation committees

- As part of their technical assistance projects, UNCTAD and the World Bank supported the establishment of national transport and trade-facilitation committees in more than 30 countries. While the model was based on the Economic Commission for Europe recommendation No. 4, most NTTFCs have in practice a broader scope of action and include transport facilitation. These committees act as a consultative mechanism to promote facilitation, examine international trade and transport regulations, make policy recommendations, prepare recommendations and regulations, and foster administrative transparency on major trade and transport issues. The goal of NTTFCs is mainly to encourage the modernization of trade and transport practices to support foreign trade (Economic Commission for Europe, 2013).

National trade-facilitation committees

- National trade-facilitation committees, differ from PRO-committees and NTTFCs in that they were created for the purpose of complying with regional or bilateral trade agreements. Governments opted to create national trade-facilitation committees as collaborative platforms to streamline trade procedures and implement trade-facilitation measures at national level as agreed in the referred agreements. From a development level and geographical perspective, the study did not reveal any strong correlation between national trade-facilitation committees and particular regions or levels of development.

WTO negotiations-on-trade-facilitation support groups

- These support groups were created following the launch in July 2004 of the negotiations for a WTO Trade Facilitation Agreement as part of the Doha Development Agenda. Supported in many cases by the WTO trade-facilitation needs-assessment process, "many countries have set up these bodies to provide support to the negotiating teams through the provision of technical expertise and feedback on the tabled proposals. These working groups are organized as a cooperative network, comprising interested parties from the public and private sectors" (Economic Commission for Europe, 2013).

Most of the key success factors indicated are related to the composition of the trade-facilitation body. Contributions by external donors (such as training and capacity-building, appropriate work plans and financial resources) appear to be important, but not as important as the capacity of its members to support the activities and successful achievements of the trade-facilitation body. However, donors' support and technical assistance are determinant for least developed countries.

Interestingly, a majority of obstacles encountered appear also to be related to the role played by the members of the trade-facilitation body. While "financial resources" is considered a crucial success factor by a minority of countries in the sample, the "lack of financial resources" is highlighted as the greatest obstacle for almost a fourth of the countries included in the survey. The "involvement of the private sector" is considered, as well, as the most important success factor.

Finally, on the positive impact of trade-facilitation bodies, they are perceived as an efficient communication channel between Government and the private sector, as well as ensuring better coordination among all public agencies. They are also recognized as knowledge-sharing and learning platforms.

3. Ten key recommendations for trade-facilitation bodies creation and operation

The UNCTAD study on national trade-facilitation committees concludes with a set of recommendations based on the experiences of stakeholders participating in the trade-facilitation bodies involved in the UNCTAD research. These recommendations could be decisive for those countries that are looking to set up or strengthen their national trade-facilitation bodies and for those international agencies and donors that would like to assist them on this task.

Recommendation 1: Adopt a SMART approach when setting up the objectives and scope of the national trade-facilitation body (SMART: sustainable, measurable, attainable, realistic and time bound (Doran, 1981)).

Recommendation 2: Give the national trade-facilitation body a strong legislative mandate. Trade facilitation is part of a national trade policy and as such requires the involvement of many public institutions, its formalization as a governmental structure is instrumental to ensuring and sustaining high level political commitment.

Recommendation 3: Define terms of reference in a comprehensive and inclusive way. Terms of reference should be defined as a tool to support the sustainability and efficient work of the trade-facilitation body. They should be concrete but flexible and agreed by all involved stakeholders.

Recommendation 4: Provide the national trade-facilitation body with a permanent secretariat. Countries should consider setting up a permanent secretariat run either by a government or private sector agency. In practice, this role has in most cases been left to the ministry of trade.

Recommendation 5: Meet regularly. The regularity and frequency of meetings may contribute to the good progress and long term sustainability of the trade-facilitation body. The regularity of meetings is also essential for the monitoring and follow-up of the activities of the trade-facilitation group, which was raised as one important success factor.

Recommendation 6: Ensure trade facilitation is inclusive and involves all concerned sectors including trade and transport communities of the private sector.

Recommendation 7: Take every opportunity to raise awareness about trade facilitation. To strengthen the trade-facilitation body as a platform for dialogue with the private sector, for coordination and for awareness-raising and information-sharing, the establishment of a website could be a useful tool.

Recommendation 8: Provide the national trade-facilitation body with the necessary resources. As the lack of financial resources can strongly influence the sustainability of trade-facilitation bodies, it is specially recommended for developing and least developed countries to systematically include tasks and budget allocations for the trade-facilitation bodies when applying for international funds for concrete projects in trade facilitation. Sharing costs among private and public institutions could also be part of the solution.

Recommendation 9: Establish monitoring and evaluating mechanisms to measure results. For a well-functioning trade-facilitation body, results-based management and continuous monitoring and evaluation of progress is essential. However, only a few existing trade-facilitation bodies use these kinds of tools in a systematic way.

Recommendation 10: Keep the private sector involved. The private sector should be an integral of any trade-facilitation body. This has proved to be a most important success factor for a trade-facilitation body. The private sector should participate from the outset in the design of terms of reference. A shared chairperson or a leadership by rotation between the public and the private sector is also recommended.

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ENDNOTES

17 The text of the Convention is available in document IMO, 2007.

18 The Convention was open for signature from 19 November 2007 until 18 November 2008 and, thereafter, for ratification, accession or acceptance.

19 See IMO press release: Nairobi International Convention on the Removal of Wrecks, 2007. Available at http://www.imo.org/OurWork/Legal/Pages/RemovalOfWrecks.aspx (accessed on 24 June 2014). See also the preamble to the Convention, which states "THE STATES PARTIES TO THE PRESENT CONVENTION, CONSCIOUS of the fact that wrecks, if not removed, may pose a hazard to navigation or the marine environment, CONVINCED of the need to adopt uniform international rules and procedures to ensure the prompt and effective removal of wrecks and payment of compensation for the costs therein involved, NOTING that many wrecks may be located in States' territory, including the territorial sea, RECOGNIZING the benefits to be gained through uniformity in legal regimes governing responsibility and liability for removal of hazardous wrecks, BEARING IN MIND the importance of the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982, and of the customary international law of the sea, and the consequent need to implement the present Convention in accordance with such provisions HAVE AGREED AS FOLLOWS…".

20 These may include ports or fisheries, tourism, health and well-being of the local population, conservation of both marine and non-marine wildlife, as well as offshore and underwater infrastructure. See articles 1(5) and 1(6) of the Convention.

21 Article 2(3).

22 Article 1(4).

23 For example, salvage measures.

24 Article 1(3).

25 Article 5(1).

26 Article 5(2).

27 Article 1(10).

28 Article 7.

29 Article 8.

30 Article 9(6)(a).

31 Articles 9(7) and 9(8).

32 Article 10.

33 Article 10(2). For limits of liability under LLMC, 1976, as amended, see UNCTAD, 2012a, page 96. See also http://www.imo.org/About/Conventions/ListOfConventions/Pages/Convention-on-Limitation-of-Liability-for-Maritime-Claims-%28LLMC%29.aspx (accessed 30 June 2014).

34 Other conventions such as, for example, the International Convention on Civil Liability for Oil Pollution Damage, 1969, as amended; the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996, as amended; the Convention on Third Party Liability in the Field of Nuclear Energy, 1960, as amended; or the Vienna Convention on Civil Liability for Nuclear Damage, 1963, as amended.

35 Article 11. For further information on the 2001 Bunker Oil Pollution Convention, see UNCTAD, 2012b, pages 33–35.

36 Article 12(10).

37 Defined as exclusive economic zone in article 1(1) of the Convention.

38 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, 2010a, pages 118–119 and UNCTAD, 2011, pages 114–116.

39 For further detail, see *Review of Maritime Transport 2013*, UNCTAD, 2013. It should be noted that the issue of possible market-based measures was not discussed at the sixty-sixth session of the MEPC.

40 As document MEPC.1/Circ.795/Rev.1.

41 The resolution requests 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 in particular to developing countries that have requested technology transfer. For discussions by delegates during the sixty-fifth session of the MEPC, see annex 5 of IMO, 2013a. See also UNCTAD, 2013, pages 106–107.

42 See IMO, 2014a, page 27.

43 For further information on the submissions made and the ensuing discussion, see IMO, 2014a, pages 29–30.

44 The terms of reference of the updated GHG study are set out in the annex to the document IMO, 2013b.

45 The steering committee was subsequently established by the IMO Secretary-General on 12 July 2013 by circular letter (IMO, 2013c).

46 The report of the Third IMO GHG Study 2014 is expected to be considered at the sixty-seventh session of the MEPC in October 2014.

47 MARPOL annex VI came into force on 19 May 2005, and as at 30 June 2014 it had been ratified by 75 States, representing approximately 94.77 per cent of world tonnage. Annex VI covers air pollution from ships, including SOx and NOx emissions and particulate matter.

48 As detailed in document IMO, 2013f.

49 For further discussion, see IMO, 2014a, pages 35–39.

50 Limits of tier III are almost 70 per cent lower than those of tier II, thus requiring additional technology.

51 In case of a negative conclusion of the review, the new global cap would be applied from 1 January 2025.

52 The first two SOx ECAs, the Baltic Sea and the North Sea areas, were established in Europe and took effect in 2006 and 2007, respectively. The third to be 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 took effect on 1 January 2014.

53 Also called exhaust gas SOx scrubbers.

54 For more information, see IMO, 2014a, pages 15–16. For discussions on this at the sixty-fifth session of the MEPC, see UNCTAD, 2013, pages 112–113.

55 For more information, see IMO, 2014a, pages 15–17.

56 One of these ballast water systems was proposed by Italy and three by Japan.

57 These systems were proposed by Japan and Germany. 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.

58 The BWM Convention was adopted under the auspices of the IMO in February 2004 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. 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. As of 31 May 2014, 40 States, with an aggregate merchant shipping tonnage of 30.25 per cent of the world total, had ratified it.

59 Norway.

60 The Assembly also adopted resolutions on the framework and procedures for the IMO member State audit scheme (IMO, 2013l), and on transition from the voluntary to the mandatory scheme (IMO, 2014i).

61 For instance, the MSC during its ninety-third session in May 2014 completed the legal framework for the implementation of the mandatory IMO audit scheme, with the adoption of amendments to a number of treaties related to safety at sea, to make mandatory the use of the "III Code" and auditing of Parties to those treaties.

62 The chapters in the Polar Code each set out goals and functional requirements, including those covering ship structure; stability and subdivision; watertight and weathertight integrity; machinery installations; operational safety; fire safety/protection; life-saving appliances and arrangements; safety of navigation; communications; voyage planning; manning and training; prevention of oil pollution; prevention of pollution from noxious liquid substances from ships; prevention of pollution by sewage from ships; and prevention of pollution by discharge of garbage from ships.

63 For further information, see IMO, 2014j.

64 Including the MSC and the Subcommittee on Ship Design and Construction.

65 Matters related to piracy will, for reasons of space, not be covered extensively here, but are the subject of a separate two-part publication by the UNCTAD secretariat, entitled *Maritime Piracy. Part I: An Overview of Trends, Costs and Trade-related Implications* and *Maritime Piracy. Part II: An Overview of the International Legal Framework and of Multilateral Cooperation to Combat Piracy* – documents UNCTAD/DTL/TLB/2013/1 and UNCTAD/DTL/TLB/2013/3, respectively.

66 A June 2012 updated version of SAFE can be found in document WCO, 2012. Also a SAFE Package, bringing together all WCO instruments and guidelines that support its implementation is available at http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/safe_package.aspx (accessed 24 June 2014).

67 These standards are contained within two pillars – pillar 1, customs-to-customs network arrangements, is based on the model of the Container Security Initiative introduced in the United States in 2002. Pillar 2, customs–business partnerships, is based on the model of the 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.

68 See WCO, 2012, preamble by the WCO Secretary-General.

69 As of March 2014, 168 out of 179 WCO members had expressed their intention to implement SAFE.

70 The SAFE AEO concept has its origins in the revised Kyoto Convention, which contains standards on "authorized persons", and national programmes.

71 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.

72 The first MRA was concluded between the United States and New Zealand in June 2007. As of March 2014, 23 bilateral MRAs had been concluded and a further 12 were being negotiated between, respectively, China and the European Union, China and Japan, Japan and Malaysia, China and the Republic of Korea, Hong Kong (China) and Singapore, India and the Republic of Korea, Israel and Republic of Korea, New Zealand and Singapore, Norway and Switzerland, Singapore and the United States, the United States and Israel and the United States and Mexico.

73 Due to the fact that 28 European Union countries have one common uniform AEO programme.

74 This is according to information provided by the WCO secretariat. For more information see the WCO, 2014.

75 This expert group was set up by the SAFE Working Group, responsible for the management of SAFE, and advising WCO bodies, as appropriate, on the full range of issues concerning the Framework, including on matters relating to amendments, monitoring pilot projects in relation to mutual recognition, further developing and monitoring implementation of integrated border management (single window) and related customs matters, and implementation of the Columbus Programme. For more information, see WCO, 2013.

76 Regulation (EC) No. 648/2005, and its implementing provisions.

77 See, in particular, UNCTAD, 2011, which provides an overview of the major changes this amendment introduced to the Customs Code, at pages 122–123.

78 For more information see http://ec.europa.eu/ecip/security_amendment/index_en.htm (accessed 24 June 2014).

79 According to information provided by the European Commission's Taxation and Customs Union Directorate General, as of 19 May 2014, a total of 16,537 applications for AEO certificates had been submitted, and a total of 14,287 certificates had been issued**.** The total number of applications rejected up to 19 May 2014 was 1,689 (10 per cent of the applications received) and the total number of certificates revoked was 1,025 (7 per cent of certificates issued). The breakdown reported per certificate type issued was: AEO-F 7,094 (50 per cent); AEO-C 6,700 (47 per cent); and AEO-S 493 (3 per cent).

80 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 24 June 2014). 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 24 June 2014).

81 The European Union has already concluded MRAs with China, Japan, Norway, Switzerland and the United States. Negotiations are ongoing with Canada.

82 According to the European Union, China is the biggest source of imports and has also become one of the European Union's fastest growing export markets. China and the European Union now trade well over €1 billion a day. In 2013, European Union exports to China increased by 2.9 per cent to €148.1 billion, while the European Union imported €279.9 billion worth of goods in 2013. Customs plays an important role in this trade relationship, ensuring the smooth flow of goods while also protecting the customers against security threats and unsafe or illegal goods. See European Commission, 2014a.

83 Two other important initiatives were also signed on the same date. The first is a new Strategic Framework for Customs Cooperation between the European Union and China, with key areas of focus for the coming years, including trade facilitation, supply-chain security and fighting counterfeit and illicit trade. An important new priority is a joint approach to tackling illegal waste shipments, an area of high concern for both parties, and supporting important environmental objectives. The second initiative signed is a new European Union–China Action Plan on Intellectual Property Rights, which aims to improve the cooperation, communication and coordination in the fight against trade of counterfeit goods.

84 Joint communication of the European Commission and the European Union High Representative for Foreign Affairs and Security Policy to the European Parliament and the Council.

85 For further information see European Commission, 2014b and 2014c.

86 Implementing recommendations of the 9/11 Commission Act of 2007. Public Law 110-53, 3 August 2007. For an analysis of the respective provisions, see UNCTAD, 2010b.

87 See the joint statement by the Department of Homeland Security before the House Committee on Homeland Security Subcommittee on Border and Maritime Security, 7 February 2012, available at http://homeland.house.gov/sites/homeland.house.gov/files/Testimony%20Heyman%2C%20Zunkunft%2C%20McAleenan.pdf (accessed 2 October 2014).

88 Container security programmes have matured, but uncertainty persists over the future of 100 per cent scanning. Statement of Stephen L. Caldwell, Director, Homeland Security and Justice, 7 February 2012, GAO-12-422T, available at www.gao.gov/products/GAO-12-422T (accessed 2 October 2014). The report states that: Uncertainty persists over how the Department of Homeland Security and the United States Customs and Border Protection (CBP) will fulfil the mandate for 100 per cent scanning given that the feasibility remains unproven in light of the challenges the CBP has faced implementing a pilot program for 100 per cent scanning. In response to the SAFE Port Act requirement to implement a pilot program to determine the feasibility of 100 per cent scanning, CBP, the Department of State, and the Department of Energy announced the formation of the Secure Freight Initiative (SFI) pilot program in December 2006. However, logistical, technological, and other challenges prevented the participating ports from achieving 100 per cent scanning and CBP has since reduced the scope of the SFI program from six ports to one. In October 2009, GAO recommended that CBP perform an assessment to determine if 100 per cent scanning is feasible, and if it is, the best way to achieve it, or if it is not feasible, present acceptable alternatives.

89 For the full text of the letter, see www.brymar-consulting.com/wp-content/uploads/security/Scanning_deferral_120502.pdf (accessed 2 October 2014).

90 See *Lloyd's List*, 2014.

91 For a detailed discussion on the ISPS Code, see UNCTAD, 2004. See also UNCTAD, 2005, pages 84–88.

92 Held from 18 to 23 May 2014.

93 See IMO, 2014l, pages 21–22.

94 Ibid., page 56.

95 Developed by Working Group 3 of the Contact Group on Piracy off the Coast of Somalia.

96 Held from 28 April to 2 May 2014.

97 Held in November 2013.

98 To include delegates from the Government of Somalia, Puntland, Galmudug and Somaliland. This is part of the Kampala Process.

99 See IMO, 2014q, page 8.

100 Published in November 2012.

101 The list of recognized International Accreditation Forum member bodies can be found on the Forum's website, http://www.iaf.nu (accessed 3 October 2014).

102 For further information see IMO, 2014l, page 59. See also the full statement by ISO (IMO, 2014l, annex 32).

103 Documents UNCTAD/DTL/TLB/2013/1 and UNCTAD/DTL/TLB/2013/3.

104 For further information and for the text of the report, see http://unctad.org/ttl/legal (accessed 3 October 2014). In addition, for a global assessment and geospatial analysis on piracy activities, see United Nations Institute for Training and Research *UNOSAT Global Report on Maritime Piracy – A Geospatial Analysis 1995–2013*, available at https://unosat.web.cern.ch/unosat/unitar/publications/UNITAR_UNOSAT_Piracy_1995-2013.pdf (accessed 4 October 2014). The report has identified several important trends related to maritime security, taking into account studies from different sources such as United Nations sister agencies, academia, insurance industry, shipping companies, the European Commission and the World Bank.

105 According to the IMO conventions SOLAS, MARPOL and the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers.

106 Standard A2.5.2 – Financial security, paragraph 2.

107 Ibid., paragraph 4.

108 Ibid., paragraph 8.

109 Ibid., paragraph 3.

110 After approval, the amendments are sent to States that have ratified the MLC, 2006, with a two-year period for expressing their disagreement. After that, the amendments will be deemed agreed upon unless dissented by 40 per cent or more of the States that represent no less than 40 per cent of the gross tonnage of the ships from nations that have ratified MLC, 2006. For further information, and the text of MLC, 2006, see the ILO website, www.ilo.org.

111 The negotiations aimed at clarifying and improving relevant aspects of the General Agreement on Tariffs and Trade 1994 articles V, VIII and X with a view to further expediting the movement, release and clearance of goods, including in transit (UNCTAD, 2006, page 18).

112 The Agreement has still to be ratified in each WTO member country and will not enter into force before two thirds of the WTO members have accepted it.

113 The UNCTAD study, National Trade Facilitation Bodies in the World (report to be published).

114 Available at http://unctad.org/TFCommittees (accessed 5 October 2014).