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Achievements in 2001

by Louise de la Fayette*

2001 was a signal year for the International Maritime Organisation (IMO), for it adopted three instruments of major importance to the marine environment: the International Convention on Civil Liability for Bunker Oil Pollution Damage, the International Convention on the Control of Harmful Anti-Fouling Systems on Ships, and an amendment to Annex I of the International Convention for the Prevention of Pollution from Ships (MARPOL), providing for an accelerated phase-out for single-hull oil tankers. Furthermore, IMO made significant progress on other issues, including the draft convention on ballast water management, ship recycling, Particularly Sensitive Sea Areas, and greenhouse gas emissions from ships. Finally, a number of environment-related resolutions were adopted at the biennial IMO Assembly held in November 2001.

A. New Instruments and Measures

1. International Convention on Civil Liability for Bunker Oil Pollution Damage

On 23 March 2001, a diplomatic conference held at IMO headquarters adopted the International Convention on Civil Liability for Bunker Oil Pollution Damage (Bunker Convention), the latest of five IMO conventions on civil liability for marine pollution. The first four were the 1969 International Convention on Civil Liability for Oil Pollution Damage (CLC); the 1971 International Convention for the Establishment of an International Fund for Compensation for Oil Pollution Damage (Fund Convention), both revised in 1992; the 1971 Convention Relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material; and the 1996 International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS Convention).

Although the IMO Legal Committee believes that the Bunkers Convention completes a closed set of liability treaties, one can envisage other possibilities at some point in the future. For example, it is not beyond the realms of possibility that once the convention on the management of ships' ballast water is adopted, someone might propose a convention on liability for damage caused by the transfer of alien organisms or pathogens from one area of the sea to another. Even now, the draft convention on wreck removal currently under consideration by the IMO Legal Committee contains provisions on liability and compensation for the marking and or removal of wrecks posing a hazard in the EEZ (exclusive economic zone). Nevertheless, the Bunker Convention does fill the gap left when

negotiators of the CLC and the HNS Conventions decided not to include in those instruments compensation for oil pollution damage caused by oil used as fuel or to operate the ship. The reason for this omission is that the CLC and HNS Conventions essentially cover pollution caused by ships' cargoes, although the 1992 CLC and Fund Conventions also cover bunker spills from oil tankers, since it seemed to be reasonable to provide compensation for all the oil pollution damage coming from a single incident and single oil tanker.

In contrast to the earlier conventions dealing with damage caused by the cargo of relatively small and well-defined categories of vessels, the Bunker Convention potentially applies to all ships, as all ships use oil for fuel and other functions. To be precise, the convention applies to 'pollution damage caused by any bunker oil on board or originating from the ship', with ship defined as 'any seagoing vessel and seaborne craft whatsoever', and 'bunker oil' as 'any hydrocarbon mineral oil, including lubricating oil, used or intended to be used for the operation or propulsion of the ship, and any residues of such oil'. Like the other liability treaties, the Bunker Convention imposes strict liability on the ship-owner, provides for compulsory insurance and allows the ship-owner to limit its liability. Furthermore, the definition of 'pollution damage' is identical



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to that in the 1992 CLC Convention and is subject to the same limitation in that it does not cover damage to the environment *per se*, but only clean-up costs, referred to as 'preventive measures', and the loss of profit suffered by victims such as fishermen and local industries dependent on ocean resources and the tourist trade.

Also identical to the earlier conventions is the scope of application, which covers pollution damage caused in the territory, the territorial sea, the EEZ or equivalent zone of a State Party, and to preventive measures, wherever taken. Actions for compensation may only be brought in the courts of a State where damage was suffered, and must be brought within six years of the date of the incident causing the pollution. Ships must carry certificates attesting to their financial security, and claims for compensation may be made directly against the insurer or other provider of financial security.

There are several differences between this new liability convention and the earlier ones. Most importantly, unlike the conventions covering cargo spills, because there are no cargo interests to fund it, there is no second tier providing compensation above that paid by the ship-owner or where the ship-owner is not liable or cannot pay. For this reason, in order to ensure that someone will pay com-

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pensation when the ship-owner cannot be found or cannot pay, the Bunker Convention makes liable not only the registered ship-owner, but also the bareboat charterer, the manager and the operator of the ship, on the basis of joint and several liability. Furthermore, the immunity from liability of a long list of other persons is removed, including that of persons taking preventive measures. The exposure to liability of persons trying to prevent pollution damage seems perverse, to say the least, and was strongly opposed by IUCN (the World Conservation Union), the International Tankers Owners Pollution Federation (ITOPF) and the International Salvage Union (ISU). Although the majority of States maintained their position, a compromise was reached in the adoption by the conference of a resolution calling upon States to provide immunity in domestic legislation from liability for persons taking preventive measures.

Another difference is that the limit on liability is not fixed in the convention, but left uncertain, as it depends upon whatever national or international regime (including a number of limitation conventions) is applicable to the ship, 'such as the Convention on Limitation of Liability for Maritime Claims (LLMC), 1976, as amended'. Since the LLMC imposes a global limit on all claims arising from a single incident, the implication of using the 1976 version could be to maintain the limit at a fairly low level. Earlier limitation conventions establish much lower limits. In order to encourage States to provide for higher levels of compensation, the Conference adopted a resolution calling for the ratification of the 1996 Protocol to the LLMC.

2. International Convention on the Control of Harmful Anti-Fouling Systems on Ships

On 5 October 2001, a diplomatic conference adopted the International Convention on the Control of Harmful Anti-Fouling Systems on Ships. This convention aims to protect the marine environment from toxic paint or other harmful means of preventing marine organisms from attaching to ships' hulls. Preventing the encrustation (fouling) of ships' hulls with marine life, such as barnacles, is necessary to ensure that ships can move smoothly and quickly through the water. Fouling will slow down the ship and cause it to use more fuel, thereby causing both commercial and environmental problems. IMO members were persuaded to adopt the Convention by scientific research showing that paint containing tributyl tin (TBT), an organotin compound, was leaching into the water and causing serious harm to marine life (in particular through endocrine disruption), and possibly even to human beings eating affected seafood.

The primary obligation under this convention is for all States Parties to prohibit or restrict the use of the harmful anti-fouling systems listed in Annex 1, to the extent stated therein and in accordance with the agreed timeframe. To this end, both flag States and port/coastal States have agreed to take measures with respect to ships within their jurisdiction. Flag States are required to prohibit and/or restrict the use of harmful anti-fouling systems on ships flying their flag or operating under their authority, while

port States must prohibit the application or installation of such systems on ships that enter their ports, shipyards or offshore terminals. At present, the only anti-fouling systems listed in Annex 1 are 'organotin compounds which act as biocides in anti-fouling systems' on all ships. Such compounds must not be applied or reapplied after 1 January 2003 and must either be removed or sealed with a coating that prevents leaching by 1 January 2008. Ships of 400 gross tons and over must be surveyed by the flag State in accordance with the regulations in Annex 4 to ensure that they conform to the requirements of the convention, and if they do, must be issued with certificates attesting to that fact. These certificates may be inspected when the ship goes into port and the port State control officers may verify their validity by taking a 'brief sampling' (sic) of the ship's anti-fouling system for analysis. Violations of the convention must be subject to appropriate sanctions by the flag State.

If a Party believes that a new anti-fouling system would cause harmful effects to the environment or to human health, it may propose an amendment to Annex 1 to add that anti-fouling system. The convention provides for examination of such proposals by the Marine Environment Protection Committee (MEPC) and by a 'technical group' composed of representatives of the Parties, members of IMO, representatives of the United Nations (UN) and its specialised agencies and intergovernmental and non-governmental organisations in consultative status. Initial proposals are to be screened by MEPC and must contain the information required in Annex 2. If MEPC decides that further consideration is warranted, the more comprehensive information set out in Annex 3 is to be submitted to a technical group, which will examine it and make recommendations to MEPC. The Parties to the Convention meeting in the Committee will then decide whether to adopt the proposal to amend Annex 1.

The Convention will enter into force upon ratification by 25 States, the combined merchant fleets of which constitute not less than 25 per cent of the world's gross tonnage. Although at least 25 States strongly supported the convention, it may take some time before they can complete ratification procedures. Since the adoption of the Convention, both the EU and the USA have indicated that they will implement it with respect to their own vessels, as well as foreign vessels entering their ports, even before it enters into force.

3. Accelerated Phase-out for Single-Hull Tankers under MARPOL Annex I

One of the most important achievements of IMO in 2001 was the adoption in record speed of amendments to Annex I of MARPOL providing for an accelerated phase-out plan for single-hull oil tankers in a revised regulation 13G. This measure was one of several proposed after the *Erika* disaster of December 1999 to eliminate standard oil tankers and to improve protection against environmental damage. Although the *Erika* oil spill was not caused by the lack of a double hull, double hulls do provide increased protection against oil spills for certain types of accidents. Furthermore, the accelerated phase-out for sin-

gle hulls will remove from service large numbers of older vessels that are generally in poor condition and that statistically have more accidents and cause more environmental damage. In accordance with a schedule too lengthy for reproduction here, single-hull tankers will be withdrawn for service in sequence according to their year of delivery, with a final end-date of 2015, subject to compliance with a Condition Assessment Scheme (CAS).

For the purposes of the regulation, ships are divided into three categories: (1) 'pre-MARPOL' oil tankers, i.e. oil tankers that do not comply with MARPOL requirements for segregated ballast tanks, that are 20,000 deadweight tons and above carrying crude oil, fuel oil, diesel oil or lubricating oil as cargo, and oil tankers 30,000 deadweight tons and above, carrying other oils; (2) 'MARPOL' oil tankers that do comply with the requirements for segregated ballast tanks, 20,000 deadweight tons and above carrying crude oil, fuel oil, diesel oil or lubricating oil as cargo, and oil tankers 30,000 deadweight tons and above, carrying other oils; and (3) oil tankers above 5,000 deadweight tons, but below the weights indicated in categories (1) and (2). Category (1) vessels wishing to trade after 2004 and category (2) vessels wishing to trade after 2009 must comply with the requirements of the CAS.

The CAS does not impose higher structural standards, but requires more stringent and transparent verification of the reported structural condition of the ship, as well as confirmation that the documentary and survey procedures have been properly carried out and completed. The CAS was adopted by a resolution in conjunction with the amendment to regulation 13G, which will come into force in September 2002, the earliest possible legal date. An exception to the timetable allows flag States to extend the lifetime of some newer vessels that conform to certain technical requirements. However, port States may refuse entry to such vessels. The 15 member States of the European Union, as well as Cyprus and Malta, have announced that they will exercise their right to exclude such vessels.

B. The Marine Environment Protection Committee (MEPC)

The 46th session of MEPC was held from 23–27 April 2001. Although the most notable development was the adoption of the accelerated phase-out for single-hull tankers, MEPC also finalised the Anti-Fouling Convention noted above; finalised the new guidelines on Special Areas under MARPOL, and Particularly Sensitive Sea Areas (PSSAs); continued work on the draft convention on harmful organisms in ships' ballast water and on greenhouse gas emissions from ships; and agreed to continue work on ship recycling in the correspondence group, with a view to the submission of a substantive report to MEPC 47.

1. Draft International Convention for the Control and Management of Ships' Ballast Water and Sediments

At MEPC 46, the Ballast Water Working Group met again to continue the arduous task of preparing a draft convention on the control of harmful organisms in ships'

ballast water. Alien invasive species carried in ships' ballast water are one of the most serious threats to biodiversity today. Such alien invaders have already caused havoc worldwide by devastating native species and drastically altering marine ecosystems. Although all delegations agree that alien species and water-borne pathogens must be controlled, and ship-owners are calling for global rules to counter the proliferation of differing national laws, progress has been hindered by the fact that no one has yet devised a 'magic bullet' – a piece of equipment or a process that can kill or render harmless all the organisms carried in ships' ballast water. Furthermore, there is increasing scientific evidence that the only technique used thus far – mid-ocean ballast water exchange – is not very effective, in addition to not being always feasible or safe. At MEPC 46, the Group reviewed the draft text prepared by the USA, accepted with minor changes the general principles contained therein, and agreed that the text should be used as the basis for further development. The Group also discussed the development of Ballast Water Exchange Standards and Ballast Water Treatment Standards, with the discussion continuing intersessionally in the Ballast Water Standards Correspondence Group. Finally, the Group finalised a draft MEPC/MSC circular to consider design suggestions for ballast water and sediment options. After reviewing the circular in a working group, MSC approved an amended version and sent it back to MEPC for final approval in March 2002.

2. Air Pollution and Greenhouse Gases

In September 1997, a diplomatic conference adopted a Protocol to MARPOL containing Annex VI on Air Pollution from Ships. Ever since, MEPC has been preparing for its entry into force. In addition, although the Annex itself does not address the problem of greenhouse gases emitted by ships, Conference Resolution 8 called upon the MEPC to consider which carbon dioxide reduction strategies might be feasible in light of the United Nations Framework Convention on Climate Change (UNFCCC). Furthermore, under Article 2(2) of the Kyoto Protocol, Parties are required to pursue the reduction of greenhouse gases from ships' bunker oil through IMO. In response, IMO commissioned a consultants' study on greenhouse gases from ships and instructed the Secretariat to co-operate with the Secretariat of the UNFCCC.

At MEPC 46, the Secretariat introduced a progress report outlining co-operation with the secretariat of the UNFCCC. After reviewing the report, the Committee considered information provided orally by a representative of the UNFCCC. Finally, the Committee considered proposals from Norway and the UK regarding how to deal with greenhouse gas emissions from ships. MEPC decided to establish a working group at MEPC 47 to collate and assess information submitted by States and to further examine the conclusions of the IMO Study on Greenhouse Gas Emissions from Ships, with a view to preparing a work plan for the development of a strategy for the reduction of greenhouse gas emissions from ships. In addition, the working group would identify the sub-committees, which could contribute to the project and prepare the necessary documentation.

3. Oil Pollution Preparation, Response and Co-operation (OPRC)

The OPRC Working Group discussed the issues concerning spills of high-density fuel oil arising from a detailed report from France on the clean-up operations after the *Erika* disaster. In addition, it prepared an initial programme of topics related to those issues to be considered at the Third International R&D Forum, held in Brest, France in March 2002. Finally, the Group finalised joint IMO/FAO Guidance on Managing Seafood Safety during and after Oil Spills, which was later approved by MEPC.

4. Ship Recycling

After considering the report of the Correspondence Group on Ship Recycling, MEPC noted that the report contained information gathered from documents submitted to the Committee, with six annexes concerning: (1) current practices in ship recycling; (2) identification of relevant information from documents submitted to MEPC; (3) safety and environmental risks associated with current practices; (4) procedures introduced by industry and governments to reduce those risks; (5) information from the secretariats of the Basel Convention, the ILO, the London Convention and industry on their activities and perceived responsibilities; and (6) opinions of members on areas where IMO could usefully contribute to the reduction of environmental and safety risks. Several delegations supported the view of India that IMO should confine its role to providing guidelines for preparing vessels before they enter the breakers' yard. MEPC also noted information from Greenpeace on analyses of environmental samples from the Alang-Sosiya Shipbreaking Yard in India. Furthermore, representatives of the Basel Convention Secretariat and the ILO provided information on their activities relating to ship recycling.

Delegations who spoke considered that IMO's main role should be to deal with ships before the recycling process; that internationally binding guidelines should be developed on preparing ships for the recycling process; that there should be further discussion on whether IMO should take the lead co-ordinating role; and that changes in future ship design and equipment should be considered in order to reduce environment and safety problems in the recycling process. The Committee decided to re-establish the Correspondence Group under the leadership of Bangladesh to prepare a comprehensive report for thorough discussion at MEPC 47.

5. MARPOL Special Areas and Particularly Sensitive Sea Areas

After several years' work, MEPC 46 finalised new draft Guidelines on the Designation of Special Areas under MARPOL 73/78 and new draft Guidelines for the Identification and Designation of Particularly Sensitive Sea Areas (PSSAs). The old 1991 Guidelines were divided in two, updated, drastically shortened and simplified. Unlike the old Guidelines, which included a wealth of material on marine protected areas, on the dangers to the environment from international shipping, and on measures taken in various IMO instruments to protect the marine

environment, the new Guidelines merely explain in two separate documents the criteria for and the information required in applications by coastal States for the designation of vulnerable sea areas as Special Areas under MARPOL or PSSAs created under the Guidelines. While Special Areas are designated by means of a legally binding amendment to MARPOL, PSSAs are designated in a resolution of MEPC. The protective measures adopted may be legally binding under IMO instruments providing for them.

MARPOL aims to protect the sea generally by strictly controlling deliberate discharges of harmful substances from ships as well as by requirements designed to reduce pollution from accidents. While the provisions of the several annexes apply uniformly on a global basis, under Annexes I, II and V, MEPC may agree to designate certain vulnerable sea areas as 'Special Areas', which are provided with higher levels of protection from pollution because of their oceanographic and ecological conditions and the dangers posed by international shipping activities. Most Special Areas are fairly large enclosed or semi-enclosed seas.

PSSAs are sea areas beyond the territorial sea vulnerable to damage by maritime traffic that require a broader range of protective measures for at least one of a more diverse number of listed ecological, socio-economic or scientific reasons. The Guidelines provide a list of criteria for the designation of PSSAs, at least one of which must be fulfilled by the sea area proposed for designation. In its application, the coastal State must indicate: (1) the criteria which apply; (2) the reasons why the area is vulnerable to international shipping activities; and (3) the measures within the competence of IMO proposed for its protection. Unfortunately, the UK and the USA steadfastly refused to include in the Guidelines an indicative list of possible protective measures, which would have facilitated the work of developing countries wishing to apply for a designation. In addition, they insisted on deleting the criterion of areas important for underwater cultural heritage on the grounds that the subject was being addressed in a draft UNESCO (United Nations Educational, Scientific and Cultural Organisation) Convention, which they later rejected. In consequence, while the new Guidelines are much more user-friendly than their predecessors, they are regrettably somewhat less protective (see page 152).

In response to applications by Colombia and the USA, the Committee agreed in principle to the designation as PSSAs of the sea area around Colombia's Malpeno Island and that around the USA Florida Keys. The applications were forwarded to the Sub-Committee on Navigation for examination of any navigational issues before final approval at MEPC 47.

6. Preparation for Rio+10

MEPC discussed preparations for the World Summit on Sustainable Development (WSSD) to be held in Johannesburg, South Africa in August–September 2002 and approved a draft IMO report to the meeting, with the proviso that the sections on safety, navigation and techni-

cal assistance be approved by MSC and the TCC (Technical Cooperation Committee). The report details the achievements of IMO in implementing the provisions of several chapters of Agenda 21, the programme of action adopted at the 1992 United Nations Conference on Environment and Development (UNCED).

C. MARPOL: Amendments and Implementation

The amendment to Regulation 13G of Annex I of MARPOL has been noted above. Noted below is the persistent failure of Parties to MARPOL to report violations to IMO. As reported in previous years, MARPOL Annexes I and II are undergoing a thorough revision. A new version of Annex I is being prepared to replace the existing one, which has been partially amended so often that it is now difficult to comprehend. The new version will incorporate all existing amendments and be written and organised in a more user-friendly manner. Completion is expected in 2003. As to Annex II, the revision depends upon a product evaluation being carried out by GESAMP (Joint Group of Experts on the Scientific Aspects of Marine Pollution) to take into account the development of hazard evaluation systems covering the physical and biological properties of hazardous substances affecting safety and environmental protection, under the aegis of the OECD and the United Nations Committee of Experts on the Transport of Dangerous Goods. This evaluation will then be used to place each product into the appropriate Pollution Category and Ship Type by the BLG (Bulk Liquids and Gases) Sub-Committee's Working Group on the Evaluation of Safety and Pollution Hazards (ESPH). If work proceeds on schedule, the revision of Annex II should also be completed in 2003.

In addition, the BLG Sub-Committee agreed in principle a draft regulation for Annex I on accidental oil outflow performance in tankers, providing criteria for levels of protection in the event of grounding or collision. BLG also agreed in principle to draft amendments to the Interim Guidelines for the approval of alternative methods of design and construction of oil tankers under regulation 13F(5) of Annex I of MARPOL in order to harmonise the Guidelines with the proposed new regulation. Finally, in response to difficulties States perceived with the original version of Annex IV, a revised version has been adopted, but since it is formally an amendment to the original version, it cannot enter into force until after the first version has done so. As part of an effort to encourage States to ratify Annex IV, MEPC 46 approved Circular MEPC/Circ. 380 requesting information from contracting States to MARPOL Annex IV on regulations on the discharge of sewage in waters under their jurisdiction and on available reception facilities for sewage in their ports.

D. The Sub-Committee on Flag State Implementation (FSI)

FSI-9 approved draft revised Guidelines on the Implementation of the International Safety Management Code

adopted in resolution A.788(19). The revised Guidelines update provisions regarding certification of vessels under the Code, which provides for effective management systems on ship and shore in order to ensure that ships comply with relevant safety and environmental requirements. The Sub-Committee also discussed measures to encourage port States to notify flag States of the detention of their ships in the most expeditious manner, and approved a draft MSC/MEPC Circular on measures to improve port State control procedures. In the face of the long-standing failure of most States to comply with the requirement to report violations of MARPOL to IMO, FSI urged States Parties to fulfil their legal obligations. From the limited number of reports submitted for 1999, it appeared that many vessels still were not carrying the required documents and record books and still had not fitted mandatory pollution control equipment. In a further effort to assist flag States in improving their performance, FSI agreed upon Revised Guidelines including criteria and performance indicators to assist flag States in the self-assessment of their performance while completing the IMO Flag State Self-Assessment Form.

On the question of illegal, unregulated and unreported (IUU) fishing, FSI reviewed the report of the first meeting of the Joint IMO/FAO Working Group on IUU Fishing held in Rome from 9–11 October 2000. The Sub-Committee considered that the list of measures to deal with illegal fishing proposed in appendices F and G of the report related to fisheries management and were within the competence of FAO alone. Furthermore, there was no legal basis for using the port State control provisions in IMO instruments to deal with illegal fishing. On the other hand, IMO could assist FAO in developing its own port State control system to combat illegal fishing and could deal with safety and environmental issues related to illegal fishing, especially after the IMO conventions regulating fishing vessels had come into force. In that regard, FSI invited IMO members to consider ratifying the 1993 Torremolinos Protocol (on the safety of fishing vessels) and the 1995 STCW-F Convention (on the training of crews of fishing vessels).

Having considered the report of FSI-9, MEPC 46 approved the draft Assembly resolutions on Revised Guidelines for the Implementation of the ISM Code, on measures to further strengthen flag State implementation, and a circular on measures to improve port State control. In addition, it noted the outcome of the discussion on illegal fishing, FSI's opinion on measures to eliminate substandard oil tankers, and the concern of the Sub-Committee that over 75 per cent of Parties to MARPOL had failed to submit their mandatory reports.

The German delegation made a statement recommending that further measures be taken to ensure the effective and consistent global implementation of IMO instruments. In addition, it welcomed the decision of MSC 73 to request FSI to consider further the request of CSD-7 to IMO to develop measures in binding form to ensure that ships of all States meet international standards. Finally, Germany reiterated its earlier proposal that FSI exhaust all legal possibilities provided in UNCLOS Articles 228 and

94 to strengthen flag State responsibility and to enhance self-discipline.

E. Maritime Safety Committee (MSC)

MSC 74 met from 30 May to 8 June 2001. The only issue of environmental significance was that of 'places of refuge', already briefly discussed by MEPC. Originally raised after the *Erika* disaster, the question of places of refuge for ships in distress became urgent during the *Castor* incident in early 2001. After the fully-laden oil tanker *Castor* suffered structural damage in heavy weather off the coast of Spain, it was denied entry to sheltered waters where salvors could offload the cargo to prevent environmental damage. Because the vessel posed a serious risk of explosion, which could result in personal injury as well as environmental damage, first Spain and then several other States refused entry to the *Castor* to their ports or sheltered waters close to the coast. The vessel remained in a dangerous condition in mid-Mediterranean for 35 days before it could take shelter off the coast of Tunisia, where salvors successfully removed the cargo. MSC decided that IMO should develop guidelines to assist masters and States in making decisions about places of refuge for ships in distress. In particular, the guidelines might cover (1) the action expected from States offering places of refuge to ships in distress; (2) the evaluation of risks associated with the provision of places of refuge; and (3) the action ships' masters should take when seeking places of refuge. The Sub-Committee on the Safety of Navigation is taking the lead on this issue and began deliberations at its meeting in July 2001; and the Search and Rescue Sub-Committee, the Sub-Committee on Ship Design and Equipment and the Legal Committee will also be involved in studying various aspects of the problem.

F. Legal Committee (Legal)

IMO Legal Committee met for its 83rd session from 8-12 October 2001. Although the only item on the existing agenda of environmental interest was the draft Wreck Removal Convention (WRC), the Legal Committee was requested to add a new item on 'ports of refuge', as described in the previous section. The Legal Committee requested the Secretariat to prepare a paper on the subject as the basis for consideration at its next session of matters relating to international law, the rights of coastal States, liability, insurance, etc. As for the WRC, a brief discussion resulted only in the agreement of the Netherlands delegation to prepare a new comprehensive draft convention, to be discussed in a correspondence group and to be submitted to the next session in April 2002. Finally, the Committee considered problems relating to the implementation of the HNS Convention. In view of the apparent reluctance of States to ratify the Convention, the Com-

mittee prepared a draft resolution for IMO Assembly urging them to do so.

G. 22nd Session of the IMO Assembly

The 22nd session of IMO Assembly was held from 19-30 November 2001. In addition to approving the programme of work and a budget of zero real growth (up from zero nominal growth, but still grossly inadequate), the Assembly adopted 34 resolutions and approved the holding of four diplomatic conferences, including one on ballast water management, in late 2003. Another conference will be held at the behest of the International Oil Pollution Compensation Fund in order to adopt a new Protocol to the 1992 Fund Convention that will provide a third tier of compensation for oil pollution damage to be funded by oil importers when the cost of the damage is greater than the current limit to the 1992 Fund Convention.

The resolutions with specific environmental implications include the following:

- A.902(22) Relations with Non-Governmental Organisations (confirming organisations in consultative status, including environmental NGOs);
- A.912(22) Self-Assessment of flag State performance (replaces A.881(21));
- A.914(22) Measures to further strengthen flag State implementation;
- A.926(22) Availability and use of low-sulphur bunker fuel oils in SO_x emission control areas designated in accordance with regulation 14(3) of Annex VI of MARPOL 73/78;
- A.927(22) Guidelines for the Designation of Special Areas under MARPOL 73/78 and Guidelines for the Identification and Designation of Particularly Sensitive Sea Areas;
- A.928(22) Early and effective application of the Convention on the Control of Harmful Anti-fouling Systems on Ships;
- A.932(22) Implementation of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances (HNS) by Sea, 1996.

Conclusion

With the adoption of the Bunkers Convention, the Anti-Fouling System Convention and the amendment to Annex I of MARPOL, IMO is gradually coming to the end of a major legislative initiative for the protection of the marine environment. Although the Ballast Water and Wreck Removal Conventions remain to be completed, IMO is ready to move into a period of consolidation and implementation, with perhaps a greater focus in years ahead on the work of the Sub-Committee on Flag State Implementation.



Courtesy: IUCN-SB