

MARITIME SAFETY COMMITTEE
102nd session
Agenda item 22

MSC 102/22/13
9 October 2020
Original: ENGLISH
Pre-session public release:

ANY OTHER BUSINESS

Comments on document MSC 102/22/2

Submitted by Iceland, Indonesia, the Philippines, South Africa, Spain, FAO,
ILO, WMU and Pew

SUMMARY

Executive summary: This document provides comments on document MSC 102/22/2 on the outputs of the 2019 Torremolinos Ministerial Conference and is related to the capacity-building that is considered necessary to facilitate the entry into force of the 2012 Cape Town Agreement (the Agreement). The document provides, in this regard, some ideas concerning the content of guidance to assist competent authorities in the implementation of the Agreement. These ideas were originally submitted by the same co-sponsors to III 7, which was postponed because of the COVID-19 pandemic. Due to the urgency of this matter, these ideas are hereby re-submitted.

Strategic direction, if applicable: 1

Output: 1.7 and OW 23

Action to be taken: Paragraph 14

Related documents: MSC 102/22/2; III 7/14 and A 31/D, paragraph 10.6.

Introduction

1 This document is submitted in accordance with the provisions of paragraph 6.12.5 of MSC-MEPC.1/Circ.5/Rev.1 and the provisions of paragraph 9 of Circular Letter No.4008/Rev.1. It provides comments related to paragraph 10.2 of document MSC 102/22/2 (Secretariat) and operative paragraphs 7 to 10 of the Ministerial Conference Resolution 1, contained in annex 1 to that document. These comments concern the capacity-building that is considered necessary to facilitate the entry into force of the Cape Town Agreement of 2012 on the Implementation of the Provisions of the Torremolinos Protocol of 1993 relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977 (hereinafter referred to as the Agreement).

Background

2 Fishing continues to be recognized as one of the most dangerous occupations in the world and despite efforts to tackle this problem there is currently no international binding instrument in force that addresses the design, construction and equipment of fishing vessels.

3 Under the auspices of IMO, the International Conference on the Safety of Fishing Vessels, held from 9 to 11 October 2012 in South Africa, adopted the Cape Town Agreement which updates and amends a number of provisions of the Torremolinos Protocol, including those on application, exemptions, surveys and certification.

4 The Ministerial Conference on Fishing Vessel Safety and Illegal, Unreported and Unregulated (IUU) Fishing, held in Torremolinos, Spain, from 21 to 23 October 2019, expressed its conviction that "the continuing and alarmingly high number of fishing vessel personnel fatalities and of fishing vessels reported lost every year could be reduced by global, uniform and effective implementation of the Agreement." Therefore, in the Torremolinos Declaration¹ concluding the Ministerial Conference, more than 50 States have communicated their determination to take action in order to achieve the entry-into-force criteria of the Agreement by the target date of 11 October 2022,² the tenth anniversary of its adoption.

5 After having considered documents on the outcome of the above-mentioned Ministerial Conference, the thirty-first regular session of the Assembly decided to request the Secretary-General to monitor the rate of ratification of the 2012 Cape Town Agreement and identify capacity-building needs to facilitate its entry into force, taking into account the offer of Spain to provide technical cooperation assistance for ratification and implementation of the Agreement.

6 The impact of the COVID-19 crisis has been felt in the progress of the deposit of instruments of ratification. It becomes even more necessary to continue working to promote the Agreement and to facilitate its entry into force, on this new world scene.

7 There is currently no purpose-made guidance available for States that are considering implementing the Agreement. The above-mentioned Ministerial Conference requested IMO to consider continuing to provide States, particularly developing States, with the assistance they may need in acceding to and implementing the Agreement and to make adequate provision for that purpose within its Integrated Technical Cooperation Programme as well as developing further related technical assistance tools, as appropriate and in cooperation with relevant international organizations.

8 The fourth session of the Joint FAO/ILO/IMO Ad Hoc Working Group on Illegal, Unreported and Unregulated (IUU) Fishing and Related Matters (JWG 4), which was held immediately after the above-mentioned Ministerial Conference, recommended that IMO consider developing guidance to assist competent authorities in the implementation of the Agreement, through the most appropriate process. The process of developing guidance should allow for further discussion on its content and scope and be informed by FAO, ILO, and other relevant organizations and stakeholders.

¹ Torremolinos Declaration on the Cape Town Agreement of 2012 on the Implementation of the provisions of the Torremolinos Protocol of 1993 relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977.

² Upon completion of relevant review at national level.

Establishment of an informal group to develop draft guidance

9 The co-sponsors of this document believe that States that are planning to deposit an instrument of ratification, acceptance, approval or accession by the above-mentioned target date would benefit from a set of guidance, as recommended by JWG 4, that addresses the issues related to the implementation of the Agreement.

10 In addition to assisting competent authorities in putting in place, or refining, a regime that will give effect to the provisions of the Agreement, it is also expected that the guidance will be of benefit to the fisheries sector in dealing with other related matters. As stressed by FAO, safety at sea, forced labour and IUU fishing are linked. Therefore, any instrument enhancing safety and decent working conditions such as the Agreement and the ILO Work in Fishing Convention, 2007 (No. 188) contributes to the fight against IUU fishing.

11 Considering that the Agreement offers a wide range of flexibility to facilitate its implementation and application, the guidance would focus on providing information on flexible options, in particular those that relate to the application, exemptions, surveys and certification.

12 The annex to this document provides some ideas concerning the content of this guidance.

13 It is likely that the timing of meetings of IMO bodies, which would normally play a role in the development of the guidance, will be severely impacted by the COVID-19 pandemic with the consequence that the entry-into-force criteria of the Agreement may not be met by the target date of 11 October 2022. The co-sponsors to this document have, therefore, decided to establish an informal group, in which other interested delegations are encouraged to participate, to develop the draft guidance with the following terms of reference:

The group, under the coordination of Spain,³ should:

- .1 develop draft guidance to assist competent authorities in the implementation of the 2012 Cape Town Agreement, taking into account the provisional structure and content provided by the annex to document MSC 102/22/13; and
- .2 submit a report annexing the draft guidance to MSC 103.

Action requested of the Committee

14 The Committee is invited to consider the information provided and take action as appropriate.

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ANNEX

SOME IDEAS ON THE CONTENT OF GUIDANCE TO ASSIST COMPETENT AUTHORITIES IN THE IMPLEMENTATION OF THE CAPE TOWN AGREEMENT OF 2012 (THE AGREEMENT)

Preface

The guidance intends to assist Governments in developing and enacting domestic laws to implement the Agreement. The guidance also provides useful information to stakeholders such as fishing vessels owners, fishing vessel personnel, shipyards, and equipment manufacturers on how to comply with the requirements set forth in the Agreement. The human element would be addressed and the guiding principles of the III Code would be applied, as appropriate.

Introduction to the guidance

The aim and scope of the Agreement, as well as the strategy and goal of the guide, would be described here.

This section would provide an overview on safety in the fishing sector and on international efforts by IMO, ILO and FAO to improve the situation.

The diversity in the design, construction, equipment and operation of industrial fishing vessels would be recalled. The main challenges and solutions related to the implementation of the provisions of the 1977 Torremolinos Convention and the 1993 Torremolinos Protocol would be addressed.

The section would provide an overview of the contents of the 2018 Consolidated edition of the Agreement and how this guidance document would be divided into sections.

Definitions

Necessary definitions would be provided here.

Interpretation and application of the 1993 Torremolinos Protocol

This section would present the articles of the Agreement and the Torremolinos Protocol and highlight the importance to associate them.

Application

This section explains the application of the Agreement. The respective provisions are contained in article 3 of the 1993 Torremolinos Protocol and regulation I/1 of the annex to the Agreement. The section would highlight certain issues, such as:

- the definition of a fishing vessel (which may be different in other fisheries-related instruments);
- application to new and existing vessels;
- use of gross tonnage in place of length (L) as the basis for measurement for all chapters;
- regional standards;

- progressive implementation; and
- the related flexibility options offered by the Agreement.

Exemptions and equivalents

The main purpose of this section is to explain the exemptions options contained in regulation I/3, in particular those in paragraph (3).

Special attention would be paid to vessel operating area, such as "a common fishing zone", "the exclusive economic zone of the flag State", "the exclusive economic zone or marine area under the jurisdiction of another State" and "the high seas".

The section would also highlight exemptions options provided in chapters II – X, provisions on equivalents in regulation I/4 and examples of vague expressions in the text of the annex to the Agreement, all of which provide a wide range of flexibility options in implementing the Agreement.

Surveys and certificates

This section intends to provide some guidance on the application of regulations I/6 to I/17. The conceptual framework of surveys and certification following the Harmonized System of Survey and Certification (HSSC) combined with flexibility options would be discussed. Guidance on inspections of fishing vessels would be provided. The qualifications of inspectors including their training and experience would be addressed. Guidance on the role of recognized organizations would also be provided in the context of the Code for Recognized Organizations (RO Code).

Port State control

The purpose of this section is to provide guidance on the application of article 4 of the 1993 Torremolinos Protocol. While making a reference to the IMO Procedures for port State control, the section would inform on additional safety aspects, which are either specific to fishing vessels (for example "clear grounds") or where the flag State is applying some of the flexibility options (for example "progressive implementation"). The section would also refer to other relevant instruments, such as the FAO Agreement on Port State Measures and the ILO Work in Fishing Convention.

Casualties to fishing vessels

This section would highlight the importance of casualty investigation and analysis and the communication of such investigations to IMO. Reference would also be made to the IMO Casualty Investigation Code and the efforts of FAO, IMO and ILO towards addressing accident and fatality reporting in the fisheries sector.

Promotion of technical cooperation and provision of technical assistance

In support to Conference Resolution 3 from the 2012 Cape Town Conference, the section would promote technical cooperation, particularly for developing countries. The Integrated Technical Cooperation Programme and other assistance possibilities would be presented as well as how to require support regarding the implementation of the Agreement. This section would also highlight the collaborative efforts of IMO, FAO and ILO to build capacity on vessel safety and fishers' safety in their Member States in support of implementation of the Agreement and other relevant international fisheries instruments.

Supplemental reference and source material

This section would link the Agreement with other relevant international instruments. The section could include, but not be limited to, the following:

- FAO/ILO/IMO Implementation Guidelines on part B of the Code, the Voluntary Guidelines and the Safety Recommendations;
- part B of the FAO/ILO/IMO Code of Safety for Fishermen and Fishing Vessels;
- International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel;
- FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing; or the Port State Measures Agreement (PSMA);
- FAO Voluntary Guidelines for Flag State Performance;
- ILO Work in Fishing Convention, 2007 (No.188);
- ILO Guidelines on flag State inspection of working and living conditions on board fishing vessels;
- FAO Technical Guidelines for Responsible Fisheries. No. 1, Suppl. 3 – Fisheries operations. Best practices to improve safety at sea in the fisheries sector;
- IMO Instruments Implementation Code (III Code) – resolution A.1070(28);
- International Convention for the Prevention of Pollution from Ships (MARPOL);
- recommendations of the International Conference on Safety of Fishing Vessels, 1993; and
- resolution MSC.364(92) – Procedure for calculating the number of fishing vessels of each Contracting State to the Cape Town Agreement of 2012.

Appendixes and annexes

Selected articles, regulations, recommendations and resolutions would be presented as well as examples of International Fishing Vessel Safety Certificates.