



COUNCIL - 89th session

C 89/SR.1  
25 November 2002  
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**SUMMARY RECORD OF THE FIRST MEETING**

**held at IMO Headquarters, 4 Albert Embankment, London SE1 7SR  
on Monday, 25 November 2002, at 9.30 a.m.**

Chairman: Mr. CHEN TZE PENN (Singapore)

Vice-Chairman: Mr. J. FRANSON (Sweden)

Secretary-General: Mr. W.A. O'NEIL

A list of participants is given in document C 89/INF.1.

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## OPENING OF THE SESSION

The CHAIRMAN declared open the eighty-ninth session of the Council and extended a warm welcome to all Members.

The SECRETARY-GENERAL, welcoming delegates, congratulated the additional Council Members which had taken their seats on 7 November 2002 when the 1993 Amendments to the IMO Convention had come into force. He was confident that the recent enlargement of the Council from 32 to 40 Members would ensure that the Council fully represented the interests of all the 162 Member States of IMO. The new Members would make a valuable contribution to achieving the objectives of the Organization, in particular by participating in important decisions with respect to such issues as the strategic plan and policies of the Organization, the implementation of reforms already decided and the proposed IMO Model Audit Scheme. He noted that rule 39 of the Council's Rules of Procedure would need to be amended to comply with the 1993 Amendments to the IMO Convention to provide for a quorum of 26 Members: that consequential amendment had already been agreed by the Council at its sixty-ninth session in November 1992.

Outlining developments concerning measures to strengthen maritime security, he said that the second session of the Maritime Safety Committee Intersessional Working Group on Maritime Security, held in September, had continued work on the preparation of a set of amendments to the SOLAS Convention and the development of an International Ship and Port Security Code: that Code would be submitted through the MSC to the Conference of SOLAS Contracting Governments scheduled to open in two weeks' time. The Group had achieved its objectives, and he expressed appreciation to the United States Government for covering its costs. The G8 leaders, at their Summit in Kananaskis, Canada, had agreed to an initiative entitled Co-operative Action on Transport Security, which recognized the unambiguous role of IMO in maritime security. The eighty-fifth session of the Legal Committee in October had made progress in its review of the 1988 Rome Suppression of Unlawful Acts Convention and Protocol, as requested by the Assembly in resolution A.924(22). Lastly, in July 2002 a memorandum of understanding had been signed between IMO and the World Customs Organization, mainly aimed at strengthening co-operation in the field of container examination and integrity in multi-modal transport and in matters relating to ship/port interface.

The attacks of 11 September 2001 in the United States, the recent loss of life in the Bali bombings, and the Moscow terrorist incident had underlined the need for concerted action at global level to prevent and suppress such unlawful acts. In the maritime field, the importance of the action IMO had taken and would continue to take had been strongly highlighted by the attack on the French tanker **Limberg** off the coast of Yemen in September.

He was sure that the Council appreciated IMO's expeditious response to the problems brought to the fore by those incidents and the progress made on all fronts, including the review and development of the regulatory framework and the preparation and implementation of the technical co-operation project for awareness and capacity-building.

He was confident that the forthcoming SOLAS Conference would succeed not only in achieving its main objective in the regulatory field, but also, through the interest it had generated worldwide, in highlighting the need for a security ethos, a safety culture and an environmental conscience in all maritime operations.

The CHAIRMAN invited the Council to welcome the additional Members which had taken up their seats on 7 November 2002, the date on which the 1993 Amendments to the IMO Convention had come into force; and to receive, with appreciation, a report by the Secretary-General on activities relating to maritime security, in particular those in preparation of the forthcoming SOLAS Conference.

**It was so decided.**

## **INVITATION TO NON-MEMBERS OF THE COUNCIL TO ATTEND THE SESSION**

The CHAIRMAN said that in accordance with Article 20 of the IMO Convention and rule 4 of the Council's Rules of Procedure, a number of Members of the Organization had expressed a wish to participate in the session, namely Algeria, Belize, Benin, Bolivia, Colombia, Costa Rica, Côte d'Ivoire, Cuba, Ecuador, Gabon, Gambia, Grenada, Guatemala, Iceland, Ireland, Jamaica, Liberia, Marshall Islands, Mauritius, Morocco, New Zealand, Pakistan, Peru, Portugal, Saint Vincent and the Grenadines, Saudi Arabia, Sierra Leone, Slovakia, Slovenia, Trinidad and Tobago, Uruguay, Vanuatu and Yugoslavia and the Associate Member, Hong Kong, China. He suggested that the representatives of those countries be invited to attend the session as observers.

**It was so decided.**

## **THE "PRESTIGE" INCIDENT**

The Marqués de TAMARÓN (Spain), congratulating the new Members of the Council, said the reason for his presence was to provide information on the recent accident to the oil tanker **Prestige**, and to outline the preliminary views of his Government in relation to the work of the Organization and to the Council's responsibility for prioritizing the work programmes of the Maritime Safety Committee and the Marine Environment Protection Committee.

On 13 November 2002, the **Prestige**, a Bahamas-registered ship of 243 metres in length and 42,000 GRT, had been sailing through the Finisterre traffic separation scheme carrying 77,000 tons of heavy fuel oil. According to the master, the ship's destination was Gibraltar, although the shipowner had stated that the destination was Singapore. The weather conditions had been severe and the ship was in serious danger of sinking. A distress call had been received by the Maritime Rescue Co-ordination Centre (MRCC) Finisterre, and immediate measures had been taken to rescue the crew and bring the ship under tow. Two hours later a rescue vessel had approached the **Prestige**, and despite the master's initial resistance a tow-line had finally been attached on 14 November when the ship was some 4½ miles offshore. Fifteen minutes after the incident had been reported, the national emergency services had taken action to avoid massive pollution of the Galician coast by towing away the vessel. There had been a fissure in the hull from which oil was leaking; the walls of three tanks had been damaged and the external skin of the third starboard tank had broken, the latter being the main cause of the accident.

The resources used in the first phase of the emergency had been three tugs from the Spanish Maritime Salvage Company; two private tugs; four helicopters; one frigate and one tug from the Spanish Navy; one aircraft from the Spanish Customs Surveillance Service; 8,000 metres of booms, later extended to 18,000 metres; 14 separator sets, 20 fixed storage tanks and three floating tanks. Specialist pollution prevention vessels from neighbouring countries and a salvage vessel sent by the shipowner had joined the initial contingent. International assistance had been requested; the flag State, the State of the shipowner, the countries of origin and destination and the classification society had been contacted; administrative arrangements had

been undertaken and the ship's insurer asked for a bond to cover expected damage. The European Commission, IMO, and the International Oil Pollution Compensation (IOPC) Fund had been kept informed, as well as other international organizations such as CEDRE, REMPEC and CILPAN. Once the ship's drift had been brought under control, a team of experts had been put on board to assess its condition and the engines had been started on the afternoon of 14 November. With the assistance of tugs, the ship had sailed away from the coast at a speed of 6 knots, but the decision had then been taken to stop the engine and to continue under tow. Finally, on the morning of 19 November, the **Prestige** had broken into two and had sunk 133 miles off the Spanish coast to a depth of 3,500 metres. Spain had taken measures to prevent marine pollution and had started to clean up the coast with the assistance of local, national and international services. On behalf of his Government, he thanked the international community for its rapid response and for the aid offered, notably by Belgium, France, Germany, the Netherlands, Norway, Portugal and the United Kingdom.

In such an attack on the marine environment, all those involved in international maritime transport bore a responsibility, and particularly flag States, which must not only comply strictly with safety requirements under international law but also respond to public expectations. If current market conditions encouraged the survival of maritime administrations which were incapable of fulfilling those responsibilities, Governments and IMO must take the necessary measures. The proposal that the Organization should assume audit functions in respect of flag States should therefore be approved as soon as possible, without any voluntary transition phase. Maritime safety depended on the requirements imposed by Member States on fleets for which they were responsible, and flags which did not comply with those requirements should be permanently excluded from the market.

Nor was it acceptable that certain of the powers and responsibilities of Member States should be delegated to recognized organizations. Once again, an accident caused by loss of design resistance in the hull of a defective ship had occurred, despite the fact that the vessel had valid certificates from a reputable classification society. The situation called for an immediate review of the system, and thought should be given to exercising control over classification societies and defining their responsibilities in such situations. To remedy such deficiencies, a system of port State control had been set up, which had helped to improve maritime safety. However, the **Prestige** had succeeded in evading the control system over the past three years in the various ports it had visited since 1999, when faults had been detected which should have made it a priority case for inspection. Inspections by port States should be strengthened and the various memoranda of understanding standardized with a view to increasing efficiency.

The consequences of predictable accidents to defective ships should not be borne by coastal States, which were expected to provide places of refuge, thus endangering the security of their waters and coastline, so that attempts could be made to salvage the cargo. Priority should be given to the saving of life on board, and after that protection of the coast should take precedence over private interests in the cargo or the ship. Places of refuge should be situated away from populated areas, fishing grounds or tourist centres, and should be selected on the basis of the rescue and pollution prevention facilities available.

In the guidelines being developed by IMO for action both by Governments and by ships' masters in such cases, masters of ships in danger should be under an obligation to co-operate with the authorities of the coastal State. Financial guarantees should also be provided for ships seeking refuge.

Spain had noted that major oil companies had disqualified the **Prestige** from charter by them, which suggested that responsible members of the shipping industry were applying higher standards of safety and quality than those accepted by some IMO Member States. IMO should consider whether it bore some responsibility for protecting low-quality ships. Spain, as a coastal State, had to cope with all kinds of traffic and to provide all kinds of services: each year 65,000 merchant vessels, including 40,000 carrying dangerous goods, passed through the Finisterre zone, which was a rich fishing-ground much used by local shipping. To protect it, a traffic separation scheme had been introduced between 20 and 30 miles off the coast, and a proposal for a new scheme further out to sea for vessels carrying dangerous goods was soon to be submitted to IMO.

A separate issue was the cost of salvage and the cost of preventing or minimizing pollution. The salvage of cargo was covered by the cargo owner and his insurer, while the cost of compensation for damage caused to the environment would be covered by the compensation scheme currently under consideration by the Organization, although the limits set for oil spill compensation under the 1992 Convention were unlikely to be high enough to cover a disaster such as the **Prestige**. The need to provide adequate cover to rapidly compensate all the victims of maritime accidents should be fully taken into account at the Diplomatic Conference planned for early 2003, and long delays such as had occurred in the case of the **Aegean Sea**, which had taken ten years to settle, should be avoided.

The proposals put forward by Spain after the **Erika** accident for the withdrawal of single-hull tankers and their replacement by double-hull tankers had been watered down and a time-limit set for 2015, allowing ships like the **Prestige**, **Kristal**, **Castor** and **Erika** to continue sailing and endangering the seas for another 13 years. He therefore called for strict application of all control systems by flag States, port States, classification societies, insurers, shipowners, cargo owners, and other operators. Not even the least defect should be tolerated, nor should the market accept the risks involved in the use of such ships. The training and on-board living conditions of crews were crucial, since they were the first to respond to an emergency. Identification of ships through automatic systems and the installation of voyage data recorders (black boxes) should be promoted.

To sum up, he proposed the fastest possible introduction of an IMO model audit scheme to make audit mandatory for flag States; improvement of port State inspection, including a reduction of intervals between inspections, extended mandatory inspections for ships shown to have defects, strengthening of national maritime control mechanisms, the obligation to notify deficiencies not rectified prior to entering port, standardization of regional agreements, and empowerment of inspectors to check repairs and rectification of serious defects.

Classification societies should comply strictly with the minimum standards laid down in SOLAS and set out in resolutions A.739(18) and A.789(19), and recognized organizations acting on behalf of flag States should be required to take on new responsibilities. Guidelines on places of refuge which did not infringe the sovereign rights of coastal States with respect to the protection of their coasts and related interests should be developed, taking into account the circumstances in each case, the coastal State's emergency response capabilities, and the guarantees provided by the commercial interests in the ship and/or cargo. Ships carrying dangerous goods should be required to sail further away from the Finisterre traffic separation scheme and other sea lanes; the international oil pollution compensation scheme should be updated, developing the principle of the "polluter pays" and speeding up procedures for payment of compensation; transition periods should be eliminated to allow early entry into force of double-hull requirements and restrictions on navigation for pre-MARPOL oil tankers. Lastly,

IMO should continue its efforts to improve training and living conditions on board, and there should be accelerated introduction of safety equipment such as the automatic identification systems and voyage data recorders on all ships.

Spanish Finisterre had become known as the “coast of death” because so many seafarers had been lost there, and Spain had made enormous efforts to install aids to navigation and rescue services to prevent such deaths. However, after successive accidents with serious ecological impact, the coast of Finisterre itself was dying, and could soon be remembered as the “dead coast” unless all involved in international maritime traffic did everything in their power to promote safe and efficient navigation and prevent the survival of substandard ships.

Mr. O'BRIEN (Bahamas) said that the tanker **Prestige**, built in 1976, had sailed from Latvia en route for Singapore on 5 November. On Wednesday 13 November, while sailing south in the traffic lane of the traffic separation scheme off Finisterre in severe weather conditions, the vessel had experienced a sudden vibration and had listed over 25° to starboard. The master had sent out a distress message and the Spanish Maritime Rescue Co-ordination Centre in Madrid had been contacted. Subsequently, he had ordered the ballast tank on the port side to be filled, reducing the list to about 5°. All the crew except the master, chief officer and chief engineer had been taken off the vessel by the Spanish rescue service, and he wished to express his Government's profound gratitude to the Spanish Government for its prompt action, which had ensured that no lives had been lost.

As a result of the initial incident, which had involved a structural failure, a significant amount of the oil cargo had escaped into the sea and some had later washed ashore onto the Spanish coast. His Government deeply sympathized with the Government of Spain and the people of Galicia over the environmental and social damage caused by the incident. He was also acutely aware that there was potential for further damage if more of the cargo came ashore, and acknowledged the efforts being made by all parties involved in the clean-up operation.

There had been considerable criticism in the press and elsewhere of the condition of the ship itself. The Bahamas had delegated its statutory surveys and certification for the **Prestige** to the American Bureau of Shipping, one of only eight authorized recognized organizations. The vessel had been subjected to a special survey in China in May 2001, involving dry docking and the carrying out of steel thickness measurements to ascertain the condition of the hull, bulkheads and tanks. Repairs and renewals of steel work had been effected with a view to allowing the ship to trade safely for a further five years. On completion of the survey, there had been no statutory deficiencies and no outstanding class recommendations. In addition, the vessel had been subjected to an annual survey in May 2002 in Dubai, which had again indicated that it was in sound condition.

Comments had been made regarding the lack of port State control inspections on the **Prestige**, particularly in Europe. He pointed out that while such inspections might have found deficiencies, if they existed, it was unlikely that any defects in the internal structure of the ship would have been found. His delegation was therefore of the view that the incident would not have been prevented by more port State control inspections.

As soon as the casualty had been reported, the Bahamas Maritime Authority had appointed its local marine inspector to commence gathering evidence concerning its causes and the circumstances surrounding it. It had then sent two experienced senior members of staff to

Spain to broaden the scope of the investigation. The investigators had liaised fully with the Spanish authorities, and had agreed to maintain close co-operation with them. They had also been in contact with the European Commission and with IMO. He thanked all those concerned for their co-operation, and looked forward to further productive dialogue as the investigation progressed.

He had one major concern, which was that the master of the **Prestige** had been kept in custody as a consequence of the accident and remained in custody ten days after his traumatic experience. In addition, although requests had been made through diplomatic channels, Bahamas inspectors had been denied access to him. In his view, immediate access to the master while the events were still fresh in his mind would have facilitated the investigation. While he recognized that the Spanish authorities believed that the master might have committed a criminal act and understood the need for him to remain in Spain to assist with enquiries, he had some difficulty in accepting that he should be kept in custody.

The issue of places of refuge for vessels in distress had been discussed within the Organization following the **Castor** incident some two years ago. It could be argued that if the **Prestige** had been provided with a place of refuge shortly after the incident, the salvors could have protected the sea area around it with a boom, and the cargo could have been safely offloaded with a minimum of pollution. The fact that no coastal State was willing to accept the **Prestige** had resulted in the vessel being ordered away from the coast, where it was inevitable that it would encounter more severe weather, and it had eventually broken in two and sunk with a further substantial release of cargo.

As long as global trade dictated that ships should continue to sail the seas with valuable cargoes, similar incidents would recur. He was confident that IMO would keep the critical subject of places of refuge under review, and he urged that that review should address the real issues faced by ships in distress. The Bahamas would carry out its investigation as fully, accurately, professionally and expeditiously as possible and report to the Organization promptly thereafter, and he urged the Spanish authorities to allow immediate access by authorized representatives of his Government to the master, in order to ensure that no evidence was overlooked or lost.

Mr. GASC (France) said that the latest maritime disaster had served to remind the Organization of its responsibilities. The enlargement of the Council should signal a firm commitment not only to meeting new challenges, but also to resolving problems that continued to bedevil the maritime world. The threat of terrorism and the most recent maritime disasters – the sinking, on 26 September, of the ferry **Joola** off the coast of Senegal, resulting in the loss of over 1,000 lives, and the sinking, on 13 November, of the **Prestige** and its appalling consequences – had shocked the maritime community. The Organization played a decisive role in eliminating the risk of terrorism in the maritime sector, and it should beware lest the necessary compromises reached at the forthcoming diplomatic conference on maritime security proved no more than a limp consensus.

Following the tragic events of 11 September, and the subsequent murderous attacks in other parts of the world, the maritime risk has all too soon been demonstrated by the attack on the French tanker **Limberg** off the coast of Yemen on 6 October. That attack would be the subject of a special presentation on the first day of the Conference on 9 December. While the terrorist



menace was a risk of an exceptional kind, calling for exceptional measures to ensure “maritime security”, the guaranteeing of “maritime safety and the protection of the marine environment” was familiar territory for the Organization. The catastrophe of the **Prestige** on 13 November was nothing new.

It was appropriate that France should express its views, not only to show solidarity with its neighbours, and not only because it was too often the direct victim of such disasters, but because it was horrified by the incident and felt compelled to take action at all levels to ensure that decisive and effective measures were put in place.

The time had come for the Organization to define its policy and strategy. Time and again, France had maintained that it was the prime responsibility of the flag State to apply and enforce instruments adopted under IMO’s auspices, and that control by the port State, the coastal State or the State potentially threatened was only a substitute for the failings of the flag State. The transfer of responsibility for such accidents to others had reached unacceptable levels, and intervention by the coastal State or port State was an expression of the notion of legitimate defence. The proper functioning of maritime transport could not be allowed to depend on such an arrangement, and he urged the Council to tackle the root of the evil.

Mr. BAUTISTA (Philippines) said the sinking of the **Prestige** had signalled the need for the Organization to review inspection procedures and other measures for the safe operation of single-hull tankers. His Government thanked the Spanish search and rescue authorities for their efforts in bringing to safety the tanker’s crew, which included 24 Filipino seafarers. The crew had followed the emergency procedures laid down in the Organization’s guidelines, but those guidelines might need to be improved and strengthened to avoid any repetition of such a tragic incident.

Mr. RASMUSSEN (Denmark) thanked Members for admitting his country to membership of the expanded Council.

In the aftermath of the **Prestige** incident, it was essential that the Organization should take steps to ensure effective implementation of its measures relating to maritime safety and marine environment protection, notably measures relating to the responsibility of the flag State, including its relationship with recognized organizations, the proposed Model Audit Scheme, port State control and places of refuge. Within the European Union, a meeting of the Council of Transport Ministers would be held on 6 December to discuss, *inter alia*, the **Prestige** incident and possible initiatives.

Mr. FOKAS (Greece) said it was unfortunate that the first meeting of the expanded Council had to deal with the recent tragic events. He deplored the sinking of the **Prestige**, and sympathized with the Spanish Government in its concern over the environmental and social implications of the incident. It was imperative that existing maritime safety legislation be strictly implemented at world level and that all ships, irrespective of flag, comply with the high standards adopted by IMO relating to safety, quality, training of seafarers and environmental protection. Competitiveness in international shipping should be based on quality, and lack of compliance with international safety standards, combined with insufficient inspections and controls, should be condemned. The world’s ecosystem could not be measured in terms of economic outcomes and its preservation should be of major concern regardless of cost. Greece had always striven to achieve the Organization’s goals of safer and cleaner seas and to promote quality shipping.

Mr. HERNANDEZ ESPINOZA (Honduras) thanked the Organization for enabling his country to become a Member of the Council under category C.

In order to comply with international instruments to ensure safety of life at sea and the prevention of marine pollution, Honduras had excluded many old vessels from its fleet, and its desire to remain on the "White List" provided a constant incentive for it to improve the training of its seafarers. Measures had been taken to prevent the falsification of diplomas, and a new seafarers' training centre, built with the collaboration of Japan, would be inaugurated shortly. In the area of maritime safety, statistics compiled by the Paris Memorandum of Understanding and the United States Coast Guard showed that the detention rates of vessels flying the Honduran flag had decreased. However, much remained to be done, in particular to ensure that recognized organizations complied with existing standards governing their activities.

As a signatory of MARPOL, his country had developed a management plan for the reception of oily wastes. Under the Viña del Mar Agreement, it was carrying out vessel inspections, and had implemented the Quality Management System in collaboration with other Latin American countries. Honduras needed technical assistance from IMO in order to strengthen its maritime administration and to develop its maritime training programmes.

Mr. FARIA (observer, Portugal) expressed his country's solidarity with Spain and its fishing community, which had already suffered considerable damage. Portugal had taken measures at national level to strengthen marine environment protection by intensifying inspections and improving the surveillance of its waters. It also aimed to strengthen co-operation with Spain, and would be submitting to IMO jointly with Spain proposals to enhance the protection of their respective coastlines. The Organization needed to take appropriate action and to include among its objectives implementation of existing regulations, compliance of flag States with international regulations, monitoring of classification societies, improving the efficiency of port State control, ensuring adequate compensation for victims, improving structural and operational requirements for ships and, finally, strengthening technical co-operation.

Mr. PINTO (India) said it was unfortunate that the sense of achievement accompanying the first session of the expanded Council should be marred by an incident that was of grave concern to the maritime industry. He requested that copies of the statements by the representatives of Spain and the Bahamas be made available to the Council.

It was important that the Organization should tackle two issues that had arisen from the incident. First, while there had been much discussion of the role of the flag State and of the classification society, the importance of port State control and the need for more efficient training for seafarers, no reference had been made to the dangerous practices of charterers, who often aimed to reduce costs by chartering the oldest and least reliable ships. Secondly, the immediate imprisonment of the masters of ships in distress was unlikely to attract young people into the maritime industry. While there was a need to place the blame where it belonged and to take remedial action to ensure that such incidents did not recur, there was an even greater need to ensure that those involved were not imprisoned merely to demonstrate that the authorities affected were taking action.

Mr. EL GHERNOUGUI (observer, Morocco) congratulated the Spanish Government on its efforts to rescue the crew and minimize the effects of the disaster. He deplored the damage caused to Spain's coastline and to the environment as a whole.

He urged all Member States to intensify their efforts to ensure maritime safety and the protection of the environment by enhancing port State control and surveillance, regular monitoring of vessels, and improving the quality of ships in order to avoid such incidents or, if they occurred, to minimize their impact on the environment, fisheries and tourism. In that regard, distressed ships carrying dangerous goods should be obliged to sail away from coastlines in order to minimize pollution risks.

Mr. MADUEKWE (Nigeria) said concern should focus on the people involved in the accident, not on the apportionment of blame. His country had a particular interest in the issue of places of refuge for distressed ships, since it was closely affected by the carriage of crude oil from oil terminals situated between the Bight of Benin and the Angolan coast. It was therefore devoting considerable efforts to ensuring the success of the Abidjan Memorandum of Understanding for West and Central African States.

Mr. LEE (Singapore) suggested that, in view of the Council's heavy agenda and the proposals to be submitted by Spain, further discussion of the incident should take place in the appropriate technical committee instead of in the plenary meetings of Council. He suggested that other Member States might wish to submit proposals on the subject of the incident.

Mr. MOUZOROPOULOS (observer, Belize) joined previous speakers in extending sympathies to all those who had been adversely affected by the sinking of the **Prestige**.

The provision of ports of refuge was an important issue and should be reviewed by the Organization. Since both the flag State (the Bahamas) and the classification society (the American Bureau of Shipping) involved in the **Prestige** incident had impeccable safety records, another issue that should be addressed was the fierce competition among shipyards, and the effectiveness of recognized organizations of classification societies in controlling vessel inspections and repairs being carried out by relatively new facilities around the world in countries such as China. He referred to his country's proposal, contained in document C 89/13/1, for the introduction of an IMO Model Audit Scheme, which should focus on the work of recognized organizations in monitoring and controlling ship repairs and authorizing certification.

Mr. ZEBAR (observer, Algeria) agreed that strict implementation of the international maritime standards adopted by IMO and enhancement of coastal State control were the only effective means of avoiding the recurrence of such incidents.

Mr. JÓHANESSON (observer, Iceland) said the occurrence of yet another tanker accident was of great concern to his Government. The incident had highlighted the importance of dealing effectively with a number of challenges facing the Organization: the phasing out of single-hull tankers, the IMO Model Audit Scheme, thorough port State control, the identification of places of refuge and enhanced international co-operation in combating oil spills. It was essential that the incident should be thoroughly investigated so that the findings could be used to guide efforts to reduce the risk of a recurrence. Implementation of regulation 13G of Annex I of MARPOL in response to the **Erika** accident would help to lessen the risk of similar accidents recurring, but flag States should implement the provisions rigorously so that the risk was minimized until single-hull tankers had been phased out completely.

Mr. AGUILAR-SALAZAR (Mexico) said the Organization had a responsibility to give careful consideration to the issues raised by the accident and it was essential that all Member States, particularly those that had been directly affected by the accident, should be at liberty to express their views on them, either orally or in writing, during the current session of the Council.

Mr. PACHA (Spain) thanked previous speakers for their expressions of sympathy for the people of Galicia. Immediate steps should be taken under the auspices of the IOPC Fund to relieve the suffering of the victims of the oil spill. In answer to points raised, he said that the same classification society had been involved in both the **Prestige** and the **Castor** incidents.

As he understood it, the master of the **Prestige** had refused to collaborate with the tug that had come to the vessel's assistance and had failed to restart the engines, which operation had been carried out by an official of the Maritime Prefecture in La Coruña with the assistance of members of the vessel's crew. The port authorities of La Coruña had subsequently made a complaint about the master and the legal authorities had then ordered his arrest, an order which could not be countermanded since the legal authorities in Spain had independent status. His country's position on places of refuge had been reiterated many times since the **Castor** incident. In the case of the **Prestige**, a decision to allow the vessel, whose hull was already partially breached, to come close to the port would have been unjustifiable. According to the representative of Bahamas, no other adjacent coastal State had offered a place of refuge, which lent support to his country's position on the matter.

The SECRETARY-GENERAL said that the Secretariat had been following the incident closely from the outset and had been in constant communication with the authorities of both Spain and the Bahamas. A senior IMO officer had visited the site in order to provide any technical assistance that might be required in the clean-up operations. He joined previous speakers in commending the Spanish authorities on the swift search and rescue operations, which had ensured the crew's safety.

Referring to places of refuge, he recalled that after the **Castor** incident, the issue had been included in the Organization's work programme, as a result of which proposals had been made which were being submitted as resolutions to the Assembly at its forthcoming session. It would be wise for Members to review those resolutions with a view to determining what arrangements could be put in place immediately to deal with similar circumstances to those that had recently arisen. The proposals being submitted to IMO by Spain as a result of the **Prestige** incident would be reviewed as soon as possible.

Referring to the reference made by the representative of France to the sinking of the ferry **Joola** off the coast of Senegal, which had resulted in the loss of over 1,100 lives, he said that IMO, in consultation with the Government of Senegal, had sent two experts to assist in the accident investigation and had offered to provide any necessary follow-up action.

Mr. O'BRIEN (Bahamas) said he had taken note of the concerns expressed by Spain, and that a considered response would be submitted to an appropriate technical committee in the near future. His Government's evidence concerning the master's conduct contradicted the account given by Spain, and his authorities would therefore need to speak to the master as soon as possible.

The CHAIRMAN invited the Council to note the statements made by several delegations regarding the **Prestige** incident, which would be reflected in the summary records of the session.

**It was so decided.**

### **AGENDA ITEM 1 – ADOPTION OF THE AGENDA (C 89/1/Rev.1)**

The CHAIRMAN invited the Council to approve that the first sentence of rule 39 of the Rules of Procedure should be amended to read: “Twenty-six Members of the Council shall constitute a quorum”.

He further invited the Council to decide to take up the items for consideration in the order in which they were listed on the agenda, except for agenda item 24, “Joint Inspection Unit”, which would be dealt with at 2.30 p.m. on Tuesday 26 November 2002, when the Chairman of the JIU was expected to be present; agenda item 13, “Proposed Model Audit Scheme”, which would be dealt with during the afternoon of Monday 25 November 2002; and agenda item 11, “Organizational Review”, which would be dealt with as soon as possible; to decide that any urgent matters arising from the fifty-second session of the Technical Co-operation Committee which that Committee might wish to bring to the Council’s urgent attention would be considered on Friday 29 November 2002; and to adopt the agenda contained in document C 89/1/Rev.1.

**It was so decided.**

### **AGENDA ITEM 2 – REPORT OF THE SECRETARY-GENERAL ON CREDENTIALS (C 89/2)**

The SECRETARY-GENERAL reported that credentials had not yet been received from all delegations and invited representatives who had not yet submitted their credentials to do so as soon as possible.

### **AGENDA ITEM 3 – REPORT ON THE STATUS OF THE CONVENTION AND MEMBERSHIP OF THE ORGANIZATION (C 89/3)**

The SECRETARY-GENERAL said that the position regarding the membership of the Organization was given in document C 89/3. There had been no change since the matter was last reported to the Council at its eighty-eighth session: the membership therefore currently stood at 162 Member States, plus two Associate Members. Regarding the application for membership of the Organization by the Government of the Cook Islands, one further reply had been received since the issue of document C 89/3. The total number of replies received to date was therefore 32.

Annex 3 to document C 89/3 gave the list of Members which, as at 1 September 2002, had accepted the amendments to the IMO Convention relating to the institutionalization of the Facilitation Committee adopted by the seventeenth regular session of the Assembly in 1991. Since the issue of that document, a further three acceptances of the amendments had been deposited with the United Nations: Romania and Tanzania on 6 September 2002, and Monaco on 13 September 2002. As at 25 November 2002, therefore, 73 Members had accepted the 1991 amendments. In accordance with the provisions of Article 66 of the IMO Convention, the amendments would enter into force 12 months after the requisite instruments of acceptance from two thirds of the Members of the Organization, namely 108 Member Governments out of the present total membership of 162, had been deposited with the Secretary-General of the United Nations. Thirty-five acceptances were therefore still required for the 1991 amendments to enter into force.

The Council would recall that he had repeatedly emphasized the importance of the early entry into force of those amendments, given the importance of the Facilitation Committee's contribution to the facilitation of international maritime traffic. To that end, and as requested by the Council, he had sent a Note Verbale in February 1995 urging Member Governments which had not accepted the amendments to give the highest priority to their consideration and acceptance. Additionally, on the occasion of meetings of the Committees, the Secretariat had followed that initiative by writing to each individual delegation which had yet to accept the amendments, urging them to take the matter up with their Governments. Regional co-ordinators had undertaken further initiatives to encourage Member States to adopt the amendments, including direct approaches to participants at regional seminars.

The Council would recall the resolution adopted at its eighty-eighth session, which had been transmitted to all Member States on 17 June 2002. The operative paragraphs of that resolution welcomed the action taken so far by Member States which had already accepted the amendments and urged those that had not yet done so to accept them as soon as possible.

He reiterated that the Secretariat was ready at all times to provide additional information and assistance to any Government which may require it in the consideration of those items.

The CHAIRMAN invited the Council to note the information provided by the Secretary-General in document C 89/3 and in his introduction; to note the status of replies received with regard to the application of the Cook Islands for membership of the Organization; to note the information provided by the Secretary-General concerning the number of Member States which had accepted the 1991 amendments to the IMO Convention and the steps taken to encourage further acceptances in that regard; to commend the Secretary-General on the initiatives he had taken, and to urge Member States which had not already done so to consider accepting the 1991 amendments at the earliest possible opportunity.

**It was so decided.**

**AGENDA ITEM 4 – REPORT ON THE STATUS OF CONVENTIONS AND OTHER MULTILATERAL INSTRUMENTS IN RESPECT OF WHICH THE ORGANIZATION PERFORMS FUNCTIONS (C 89/4 and Add.1)**

The Secretary-General said that document C 89/4 reported on the status of the various conventions and other instruments in respect of which IMO performed depositary or other functions as at 1 September 2002, and document C 89/4/Add.1 updated the information to 15 November 2002. Since the issue of addendum 1, further instruments had been received from the United Republic of Tanzania, namely accession to the Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage, and accession to the Protocol of 1992 to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971.

Section I of document C 89/4 provided information on instruments and amendments to instruments for which the entry into force requirements had been met since they had last been reported to the Council. The Council would be particularly pleased to note, as reported in document C 89/4/Add.1, that the entry into force requirements for Annex IV of MARPOL 73/78 had been met on 26 September 2002, following the deposit by the Government of Norway of an instrument of acceptance. Annex IV, dealing with shipboard sewage management, would therefore enter into force 12 months following the deposit by Norway, *i.e.* on

27 September 2003. Section II of the document outlined the current situation regarding instruments and amendments to them, for which entry into force requirements had not yet been fulfilled. There were 11 such instruments. With the adoption of the Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, on 1 November 2002, there were currently 45 viable treaty instruments, 34 of which were in force.

The Secretariat would continue its efforts to encourage and assist all Governments to accept and implement the various conventions and protocols, in accordance with the decisions of the Assembly, the Council and other bodies of IMO.

Mr. ANANE (Ghana) said that his Government had made significant efforts to address issues of interest to IMO. For example, within the past nine months, it had ratified the Convention on the Suppression of Unlawful Acts against the Safety of Maritime Navigation, the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, the 1992 Protocols to the Civil Liability and the Fund Conventions. Furthermore, his Cabinet had approved ratification of the 1991 Amendment to the IMO Convention.

During the same period, two major maritime laws had been enacted, namely the Ghana Maritime Authority Act and the Ghana Shipping Act of 2002. Those laws sought to put in place the requisite maritime administrative machinery and legal framework to implement IMO conventions more effectively. Further assistance from the Secretariat would be appreciated in order to put in place a well-structured organizational and management system for effective performance when the Ghana Maritime Authority began operations the following year.

Mr. KOBASHI (Japan), welcoming the new Members of the Council, expressed approval of an enlarged Council, which would lead to better representation. Regarding the International Convention on the Control of Harmful Anti-Fouling Substances on Ships and bearing in mind the importance of establishing global measures to protect marine ecosystems, his Government was in the preparatory stages of ratifying the Convention.

Mr. EL GHERNOUGUI (observer, Morocco) informed the Council that his Government too had decided to sign the 2001 Convention on the Control of Harmful Anti-Fouling Systems on Ships. To that effect, a letter had been sent to the IMO Secretary-General and the Moroccan Ambassador in London had been authorized to sign the instrument.

Mr. JÓHANNESSON (observer, Iceland), recalled that resolution A.925(22) on entry into force and implementation of the 1993 Torremolinos Protocol and the 1995 STCW-F Convention, adopted the previous year, had urged Governments to consider accepting the Protocol and Convention at the earliest opportunity. It had also requested the Secretary-General to take any additional measures necessary to assist Member Governments in its implementation. His country's maritime administration was finalizing presentation material for a series of five-day IMO seminars on the safety of fishing vessel personnel, closely related to the STCW-F Convention. He hoped that the seminars, planned for a number of locations around the world, would be successful, resulting in more Member States accepting the Convention and thereby contributing to its entry into force.

The CHAIRMAN invited the Council to take note of the developments which had occurred since the eighty-eighth session of the Council in June 2002; to note with satisfaction that the conditions for the entry into force of Annex IV of MARPOL 73/78 had been met, and that Annex IV would consequently enter into force on 27 September 2003; to note the adoption,

on 1 November 2002, of the Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974; to endorse and support the Secretary-General's continuing efforts to encourage Governments to take early action on the consideration and acceptance of the instruments to which they are not yet parties; to extend its appreciation to the Secretary-General for his efforts, which had contributed immensely to those favourable developments, and to urge him to maintain these efforts in the future.

**It was so decided.**

**AGENDA ITEM 5 – CONSIDERATION OF THE REPORT OF THE LEGAL COMMITTEE (C 89/5 and C 89/5/Add.1; LEG 85/11)**

Mr. POPP (Canada), speaking as Chairman of the Legal Committee, said that the Committee had recently held its eighty-fifth session, in conjunction with the diplomatic conference that had adopted the Protocol to the Athens Convention.

Two agenda items had been given priority status, namely the draft convention on wreck removal and a review of the Convention on Acts of Violence against the Safety of Navigation. The former had been on the agenda for some time and he expressed appreciation of the role played by the delegation of the Netherlands in developing and submitting draft articles for the Committee's consideration. A number of important issues were still outstanding and the Committee would continue to focus on them, aiming to complete its work before the diplomatic conference scheduled for the next biennium.

The Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988, and its Protocol relating to Fixed Platforms, which stemmed from resolution A.924(22) adopted at the twenty-second Assembly, and which called for a review of measures and procedures to prevent acts of terrorism threatening the security of passengers and crews and the safety of ships, expressly referred to the SUA Convention and requested the Committee to undertake such a review as a priority, in order to ascertain a need for revision. That work had been commenced at the eighty-fifth session, and he expressed appreciation of the outstanding work of the correspondence group set up by the United States in producing a full set of draft articles. He emphasized, however, that the discussion had been preliminary because most delegations had not had an opportunity to study the drafts in detail, nor to consult with their national legal experts.

Nevertheless, a number of points had emerged. In particular, there had been concern that overlapping and duplication with other treaties might arise, although some overlapping was unavoidable and could have the practical consequence of filling any gaps for States that were not party to all conventions. In addition, there had been approval in principle to the removal of the political offence exception, although it might be necessary to include language that would protect individuals from being punished on account of their race, religion, nationality, ethnic origin or political opinion. The new provisions included in the draft dealing with the boarding of ships at sea had also attracted much discussion: the Committee had considered that their implications needed further study and would be reviewed at its eighty-sixth session. The United States, meanwhile, would continue its work in the correspondence group to try to refine the draft articles submitted so that a more substantive discussion could take place at the next session.



The Committee had set up a correspondence group to monitor the implementation of the very complex HNS Convention, adopted in 1996. Some progress had been made in discussing the problems and issues connected with its implementation. For example, an IMO HNS correspondence group website had been established, through which reports would be made on the various issues raised or on progress made. There had also been close collaboration with the Director of the IOPC Fund in setting up an electronic database to report on contributing cargo, which was a key item for the implementation of that particular Convention. The correspondence group should complete its work at the eighty-seventh session of the Committee but it was hoped to keep the website active as a medium for exchange of views on any problems identified.

The Joint IMO/ILO *Ad Hoc* Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers had held a fourth session, and was a good example of the ongoing co-operation between IMO and other United Nations specialized agencies such as ILO. Such co-operation had helped to ensure that the rights and interests of an important group – seafarers – continued to receive due consideration. The Chairman of the Joint Group, Mr. Schindler (France), had presented an oral report on its fourth session and a written report would follow. The Group had entered the second part of its mandate, which was to monitor the implementation of resolutions A.930(22) and A.931(22), both of which had been adopted at the previous Assembly. In order to help the monitoring process, the Joint Group had prepared two questionnaires to be sent by the Secretariat to the competent national Administrations and to the relevant organizations, and it was hoped that Member States would take careful note of those questionnaires and respond.

The Committee had continued to work closely with the Technical Co-operation Division, and the implementation of the subprogramme for maritime legislation was well in hand.

Two other issues had arisen: the first had been brought to the attention of the Committee by the Japanese delegation and had involved an incident on the high seas in which a seafarer had died in suspicious circumstances. The Committee had considered the jurisdictional aspects of the problem, in particular the difficulties for a flag State geographically far from the place of the incident to take steps to exercise jurisdiction. There had been a suggestion that the issue might be considered under the review of the SUA Conventions but it had been decided that it would not be appropriate to do so. Further discussions on the matter were anticipated. It had been suggested that guidelines on how to handle such situations might be developed for ships' masters and administrations.

The second issue was places of refuge. The Committee had noted the information provided by the Assistant Secretary-General and Director of the Maritime Safety Division on the work of several IMO bodies on the subject. In particular, it had noted two draft Assembly resolutions that were to be considered by the MSC which the Legal Committee might also be invited to consider before the next Assembly. The Committee was collaborating with the CMI in certain investigations aimed at determining to what extent domestic legislation existed for places of refuge.

Lastly, he paid tribute to three of the Committee's long-serving Members, Professor Tanikawa (Japan), Mr. Mutttilainen (Finland) and Mr. Bozrikov (Russian Federation), who had retired after the session.

The SECRETARY-GENERAL stated that, since its inception, the major focus of the Committee's work had been on liability and compensation issues. With the adoption in 2001 of the Bunkers Convention and the recent successful adoption of the Protocol to the 2002 Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, that aspect of the Committee's work was largely complete. Thanks to the ongoing efforts of the Committee, IMO had now succeeded in putting in place a comprehensive international liability and compensation regime covering, on the environmental side, not only damage from tanker spills but also damage from bunker spills, chemicals and other pollutants. Once the 2002 Athens Protocol had entered into force, improved protection would be guaranteed to passengers carried by sea.

As mentioned earlier with respect to the **Prestige**, it was necessary to keep the liability and compensation regimes under constant review by the Committee to ensure that they were in tune with changing circumstances. It was clear that the increasingly diversified work of the Committee over the years had managed to achieve that.

The implementation of the HNS Convention was regarded as an important milestone, given the diversity of dangerous substances carried by sea, and the Committee was considering solutions to the practical difficulties in implementing the regime. An overview of the Convention, containing fundamental information on the key issues that fell within its scope, had been placed on the IMO website, along with IMO HNS correspondence group information, which would assist Member States wishing to ratify that particular Convention.

The welfare of seafarers was a matter of fundamental concern to IMO, and the Legal Committee's ongoing involvement with it was a welcome complement to the actions taken by other IMO Committees aiming to improve the conditions under which seafarers operated.

The work of the Joint IMO/ILO *Ad Hoc* Expert Working Group had resulted in the adoption by the Assembly of certain resolutions. The Joint Working Group had embarked on the process of monitoring their implementation, and two questionnaires had been prepared. He urged Governments to respond positively to them.

The Committee had responded to the Assembly's request to review the SUA Conventions, and he had reminded it of the pressing need for IMO to adopt measures to ensure that the shipping industry did not become a soft target for terrorist activities. While the SUA Conventions could not prevent terrorist attacks, helping to ensure that anyone involved in such acts was prosecuted and brought to trial would be an important adjunct to action by the Committee. Some amendments to the Conventions would be advisable in order to maintain their continuing relevance in the post-11 September world.

He commended the Committee's positive and prompt response to requests for assistance by other IMO bodies. In particular, places of refuge was a very important issue and the Council needed to know, in conjunction with CMI studies, what measures were necessary to review existing international instruments and national legislation dealing with liability and compensation and their application to places of refuge.

In response to a request by the CHAIRMAN, he outlined new security measures taken in response to an increased risk to public buildings in all major capitals. They would include a new barrier system operated by electronic passes, which would be in place by the beginning of the following year, and an opportunity for delegates to register in advance on the Friday or Sunday before conferences, from 2 p.m. onwards. As an interim measure, a system of passes with photographs had been introduced for the eighty-ninth session.

**The meeting rose at 12.35 p.m.**