INTERNATIONAL MARITIME ORGANIZATION

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PRINCIPLES TO BE CONSIDERED IN THE REVIEW OF EXISTING REQUIREMENTS AND THE DEVELOPMENT OF NEW REQUIREMENTS

Further discussion of the principles and the development of a framework

Submitted by Greece, Sweden, the United Kingdom, BIMCO, IACS, INTERCARGO and INTERTANKO

SUMMARY

Executive summary:	This document responds to the invitation of C/ES.28 for interested delegations to submit detailed comments and suggestions under this agenda item to C 116 and the decision of C 116 to postpone consideration of this item until its next session (C 117). In particular, this document further discusses 1) **who** would be responsible for applying these principles outlined in C/ES.28/9/1; 2) **when**, within IMO's deliberations, the principles and steps should be applied; and 3) **how** the principles would be applied in practical terms. With a view to making further progress on taking forward this agenda item, the co-sponsors of this document offer to develop a draft process map for consideration at C 118.
Strategic direction:	4.0 and 14.0
High-level action:	4.0.5 and 14.0.1
Output:	4.0.5.1 and 14.0.1.2
Action to be taken:	Paragraph 27
Related documents:	MSC-MEPC.1/Circ.4/Rev.4; FAL.3/Circ.211; TC.1/Circ.68; LEG.1/Circ.8; MSC.1/Circ.1500; C/ES.27/D (paragraph 3.2(vi)); C/ES.28/9/1; C/ES.28/D (paragraph 9.4); resolutions A.1099(29), A.1097(29) and A.1103(29) and C 116/D (paragraph 14.1)

Introduction

1 This document is submitted in accordance with the provisions of paragraph 3.4 of the *Guidelines on the organization and method of work of the Council* (Circular Letter No.3607).

2 At its twenty-eighth extraordinary session, the Council approved the updated Strategic Plan for the Organization for the period 2016-2021, together with the associated draft resolution and the following amendments to Strategic Direction 14:

> "IMO will seek to ensure better regulation through a systematic approach and that its instruments are free from administrative requirements that are disproportionate, obsolete or unnecessary. The Organization will continue its efforts to reduce administrative burdens in IMO instruments, without compromising safety, security and the protection of the environment"

and forwarded it to the twenty-ninth session of the Assembly for adoption.

3 Also at its twenty-eighth extraordinary session the Council considered the information set out in document C/ES.28/9/1 (Jamaica, Liberia, the Marshall Islands, Panama, the United Kingdom, BIMCO, IACS, ICS, INTERCARGO and INTERTANKO) on the Periodic review of administrative requirements in mandatory IMO instruments.

4 Having considered document C/ES.28/9/1, the Council agreed that the issues in this document deserved further consideration and that a separate agenda item entitled "Principles to be considered in the review of existing requirements and the development of new requirements" would be placed on the agenda of C 116. In this regard, document C/ES.28/9/1 was forwarded to C 116 and interested delegations were invited to submit detailed comments and suggestions on this issue.

Background

5 As previously stated in C/ES.28/9/1, the co-sponsors are fully committed to the successful and timely implementation of new, and amendments to existing, IMO instruments, which enhance the existing regulatory framework and facilitate "safe, secure and efficient shipping on clean oceans".

6 The co-sponsors are also of the opinion that proposals to make changes to the regulatory framework should be taken forward on the basis of substantive evidence that a compelling need exists for such action by IMO, when assessed against the operational, technical and economic impacts and the actual benefits delivered and what action has already been initiated within the industry to address the issue.

7 The co-sponsors believe that IMO should have for its use an enhanced and more robust regulatory assessment process, with the aim of delivering timely and effective implementation of new requirements to the benefit of all stakeholders.

8 In particular, the co-sponsors believe that when changes or additions to the regulatory framework are proposed in the future, in addition to the safety and environmental benefits, emphasis should also be given to full and effective regulatory impact and feasibility assessments, which take appropriate account of the economic and social sustainability of maritime transport.

9 Attention also needs to be given to the practicality and timescale allowed for the implementation of new requirements. This should take place in due time before new rules are adopted, not at some, perhaps significant, time after adoption.

10 Clarification will be required as to how new and pertinent information that becomes available after an output has been referred from a committee to a subsidiary body (sub-committee or group established by the committee), should be taken into account. This is

essential to ensure that future regulatory changes are realistically feasible from a technical perspective, supported by a substantive demonstration of compelling need and a clear understanding of the technological, operational, economic and social impacts relative to the benefits being sought, thus contributing to sustainable development."

11 The co-sponsors welcome the Assembly Resolution on *Principles to be considered when drafting IMO instruments* (resolution A.1103(29)) and the amended Strategic Direction 14 in resolution A.1097(29).

12 In C/ES.28/9/1, the co-sponsors introduced principles that should be taken into account in the review of existing requirements and the development of new requirements. These are:

.1 regulation should be necessary;

.2 regulation should be consistent;

.3 regulation should be proportionate;

.4 regulation should be fit for purpose;

.5 regulation should be resilient; and

.6 regulation should be clear.

13 C/ES.28/9/1 also offered a framework for consideration by the Council as a potential tool to assist the Organization in achieving a good balance between safety, security, environmental social and economic factors, with the underlying principle that safety and security remain the priority (see annex).

Discussion

14 During the discussions at C/ES.28 it was recognized that there was an important need to identify, 1) **who** would be responsible for applying these principles outlined in paragraph 12 above, 2) **when,** within IMO's deliberations, the principles and steps should be applied, and 3) **how** the principles would be applied in practical terms.

15 It is the view of the co-sponsors that the principles and framework presented in C/ES.28/9/1 can be incorporated into the IMO regulatory development process with minimal effort by utilizing, as far as practicable, existing procedures such as:

.1 Resolution A.1099(29) – *Application of the Strategic Plan and the High-level Action Plan of the Organization*;

.2 MSC-MEPC.1/Circ.4/Rev.4 – *Guidelines on the organization and method of work of the Maritime Safety Committee and the Marine Environment Committee and their subsidiary bodies* – in particular section 4 and annexes 1, 2, 5, and 6;

.3 FAL.3/Circ.211 – *Organization and method of work of the Facilitation Committee* – in particular section 4 and annexes 1, 2, 5, and 6;

.4 TC.1/Circ.68 – *Guidelines on the organization and method of work of the Technical Cooperation Committee* – in particular section 4; and

.5 LEG.1/Circ.8 – *Organization and method of work of the Legal Committee* – in particular section 4 and annexes 1 and 3.

.6 MSC.1/Circ.1500 – *Guidance on Drafting of amendments to the 1974 SOLAS Convention and related mandatory instruments* – in particular the checklists in annexes 2 and 3.

16 The co-sponsors further consider that the principles and framework need to be addressed in stages, in particular at the beginning of the process when considering a proposal for a new output, and then towards the end of the process prior to the approval/adoption of a new, or amendment to an existing, requirement. An intermediate review stage may be required for new instruments or significant new, or amendments to existing, requirements, for which the associated work takes more than one biennium to complete.

17 The co-sponsors are also of the view that it is necessary to recognize three different types of regulatory development processes within IMO:

.1 the development of a new instrument/code or new chapter to an existing convention – i.e. the Hong Kong Convention on Ship Recycling, the Polar Code and SOLAS chapter XV;

.2 an amendment to an existing requirement; and

.3 an amendment to a requirement that is understood as being a minor correction.

18 In principle, work undertaken in the context of paragraphs 17.1 and 17.2 above would continue to be covered by section 4 of the annex to MSC-MEPC.1/Circ.4/Rev.4, FAL.3/Circ.211, TC.1/Circ.68 or LEG.1/Circ.8, as appropriate; and the three-stage process as outlined in paragraphs 19 to 26 below. However, paragraph 17.3 would continue to be addressed by the Council decision C/ES.27/D(paragraph 3.2(vi)), i.e. the Council:

> *reminded the committees that, before any work is undertaken during a biennium, an appropriate output should be formulated and included in the High-level Action Plan (HLAP) of the Organization, in accordance with the relevant procedures; it being understood that minor corrections/issues could continue to be considered by the committees under the agenda item "Any other business"*

First stage – Assessing proposals for a new output

19 For the first stage, the Committee Guidelines already include the requirements for proposing and considering the compelling need of an output. The co-sponsors are of the view that the responsibility for step 1 – gathering sources of reliable data/collective experience – is the responsibility of those submitting the proposal for an output.

20 It is suggested that during the initial stages of considering a new output, that step 2 as shown in the annex to this document (considering whether IMO action is necessary), step 8 (considering an achievable time frame) and step 9 (evaluating potential conflicts of benefits and detriments); should be incorporated into the Committee's Guidelines for assessing the compelling need of an output.

21 Currently, the committee chair makes a pre-assessment of the proposals for new outputs that are submitted. However, it is considered necessary to make this process more inclusive of the Member States, IGOs and NGOs. The Maritime Safety Committee (MSC) and

Marine Environment Protection Committee (MEPC) both have a standing agenda item on capacity building for implementing new measures (where the capacity-building needs for new measures are assessed and reported to the committees). It is suggested that the committees utilize the existing Capacity-building Needs Analysis Group by expanding its mandate to include the assessment of the compelling need for new outputs. It is suggested that the group is established similar to the Council Working Group that considers new applications from NGO's to be granted observer status. Typically, this group should be established with [X] members (as agreed by the committee at each session when the group is established) it will also be essential to ensure geographical representation in order to facilitate acceptance of the group. The group should meet outside normal working hours and in which it is free to all to attend as observers. It is also the view of the co-sponsors that, whilst it is the responsibility of the Member States to submit proposals for outputs, noting the impact that new and changes to existing regulatory requirements have throughout the industry, in the spirit of collaborative working and to ensure a fair and transparent assessment process this group should not be limited to Member States only. This group would be tasked with completing a new pre-assessment form, which would then be submitted to the plenary for the committee's final deliberation. It should be noted that the co-sponsors anticipate that this group is in addition to the traditional mix of five working or drafting groups.

22 Taking into account paragraphs 19 to 21 above, it is the view of the co-sponsors that it should be recognized that the robust and proper assessment of proposals for new outputs may take more than one session of a committee to conclude.

Second stage – Intermediate review

23 It is envisaged that the second stage – intermediate review – would only be applied when the time frame for completion of the work for a new instrument (as per paragraph 17.1 above) or new/amendments to existing requirements (as per paragraph 17.2 above) extends beyond one biennium.

24 The purpose of this intermediate review would be for the committee to be provided with a report on the progress being made, including any further information e.g. technological developments, industry self-regulatory initiatives; or challenges that have come to light in the work conducted to date. In particular, this review should consider the latest information relevant to steps 3 to 7 as explained in the annex to this document. This intermediate review would be undertaken with a view to the committee confirming or amending the instructions to the subordinate body (sub-committee or group established by the committee) tasked to take forward the output.

Third stage – Assessing the regulatory package

25 If and when a new output is agreed the normal legislative development process of IMO would be followed (subject to the intermediate review process as explained in paragraph 24 above, as necessary). However, upon completion of the work to develop a new, or amendment to an existing, requirement and prior to any agreement to circulate the texts with a view to their subsequent adoption (i.e. before the texts are "approved"), it is proposed that a final assessment is undertaken by the relevant committee[s], using a group similar to the one established at the first stage (paragraph 21 above) of the package that has been developed. This final review should assess the following:

.1 What ships does the requirement apply to? New/existing, etc.

.2 When should the requirement apply from?

.3 Are suitable technologies readily available?

.4 Are the necessary type approval processes, etc. in place?

.5 Are there clear guidelines for enforcement and related survey and inspection?

.6 What is the impact on manufacturers/operators?

.7 What are the capacity-building needs?

26 The aim of the review process would be to assist the committee in making a final decision as to whether or not the regulatory package is "fit for purpose", proportionate and without excessive burden on industry. It is recognized that there may be a need to produce appropriate guidance for the group to follow in order to make this assessment. However, it is suggested that annexes 2 and 3 of MSC.1/Circ.1500 and annex 2 of MSC-MEPC.1/Circ.4/Rev.4 in respect of capacity building could be used as a basis for this assessment.

Action requested of the Council

27 The Council is requested to consider the foregoing and decide as appropriate, especially regarding the proposals in paragraphs 15 to 26 above; and note the offer of the co-sponsors to develop a process map based on these principles for consideration at its next session.

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ANNEX

FACTORS THAT MIGHT BE TAKEN INTO ACCOUNT IN ORDER TO APPROVE THE REGULATORY PROCESS

Step 1 – **gathering sources of reliable data and collective experience** that could be used in the assessment of the compelling need for IMO to address an issue in its regulatory framework, including such aspects as availability, consistency and accessibility of data; and consideration on how other industries address these issues, capture data and apply risk-based methods in developing regulations;

Step 2 – **considering whether IMO action is necessary now**, in particular when issues are uncertain and the impact of a new regulation is difficult to estimate or when it is known that other measures to address the issue have already been agreed or recently implemented in the industry that address the issue (e.g. answering the question whether action by IMO is really needed and identifying the scale of the problem that the new regulation should solve);

Step 3 – **using cost-effectiveness and impact analyses** to estimate short-term and long-term benefits due to the implementation of the new regulation (e.g. in terms of enhancement of safety of life at sea, or protection of the marine environment) and associated costs (including potential negative consequential impacts in other areas, difficulty in practical application, legislative and administrative burdens);

Step 4 – **assessing the availability of suitable technologies** to be installed on new and/or existing ships and estimating a realistic time frame for their implementation to assess whether a system or a technology will be available to meet the objectives of a new regulation, and available from a commercially competitive market;

Step 5 – **evaluating the transparency and robustness of approval procedures for possible new equipment** to ensure compliance with both regulatory and operational requirements;

Step 6 – **considering the impact on manufacturers** to produce and deliver the required systems (e.g. whether suitable facilities are available to install these technologies and a realistic time frame for their implementation, to reach the required production volumes) with possible contributions of individual manufacturers and/or manufacturer associations;

Step 7 – **assessing the availability of clear and unambiguous criteria for surveying, inspecting and testing new technologies on board**. The situation should be avoided when properly used and maintained type approved systems, in accordance with requirement of the new provisions, are found non-compliant when examined against the criteria of other regulatory bodies or authorities, including port State control;

Step 8 – **considering an achievable time frame** to test and consolidate a technology before deciding on the implementation dates; and

Step 9 – **evaluating potential conflicts of benefits and detriments** between environmental, economic and social issues, assuming safety and security as paramount, by applying risk-based approaches (e.g. Formal Safety Assessment, Safety Level Approach), where needed, performance-based methods and/or other qualitative or quantitative considerations.