SAFETY OF NAVIGATION

Places of refuge

Note by the Secretariat

SUMMARY

Executive summary: This document reports on the outcome of the consideration the issue of Places of refuge by MEPC 48 and LEG 85

Action to be taken: Paragraph 14

Related documents: MEPC 48/21, LEG 85/11, NAV 48/19 (annexes 12 and 13)

1 The Marine Environment Protection Committee, at its forty-eighth session (MEPC 48) and the Legal Committee, at its eighty-fifth session (LEG 85), considered the issue of Places of refuge and the relevant parts of their reports (MEPC 48/21 and LEG 85/11) are given in the ensuing paragraphs.

MEPC 48

2 MEPC 48 considered the outcome of the discussion at NAV 48 regarding Places of Refuge (MEPC 48/9/5).

3 MEPC 48 noted that the draft Assembly resolution on Guidelines on places of refuge for ships in need of assistance and the draft Assembly resolution on Maritime assistance services (annexes 12 and 13 of NAV 48/19) provided guidance on possible actions to be taken when a ship is in difficulty and there is no threat to the safety of life but there is a potential danger of pollution occurring.

4 Noting that NAV 48 had requested MSC 76 to authorize the submission of these resolutions to the twenty-third session of the Assembly for adoption once finalized by NAV 49, MEPC 48 agreed that the content of these resolutions appeared to be sound. However, as the draft resolution addressed pollution prevention aspects, it agreed that the introductory paragraph should reflect the fact that MEPC had considered them.

5 In addition, it was recalled that MEPC 46 had considered the work carried out by the OPRC Working Group on the issue of sheltered waters/safe havens from the marine environment protection perspective and had agreed to forward it to MSC for consideration. A proposed set of issues, from which criteria would need to be developed as a guidance to Member States when
considering sheltered waters/safe havens from a marine environmental response perspective, was set out in annex 4 to document MEPC 46/23.

6 However, MEPC 48 agreed that it should review the draft resolution to satisfy itself that it reflected those aspects which were considered important from an environmental perspective. As a result, an informal drafting group was instructed to review the draft resolution with the intention of forwarding comments to NAV 49 prior to the text being submitted to the Assembly for approval.

7 Having considered the report of the informal drafting group (MEPC 48/WP.13), MEPC 48 agreed on the following:

1. the sixth introductory paragraph of annex 12 to document NAV 48/19 should be amended to read:

"HAVING CONSIDERED the recommendation made by the Maritime Safety Committee at its [seventy-sixth and seventy-seventh] sessions and the Marine Environment Protection Committee [at its forty-eighth session],"

2. the third recommendation of the preamble of annex 12 of NAV 48/19 should be amended to read:

"REQUESTS the Maritime Safety Committee and the Marine Environment Protection Committee to keep the Guidelines under review and amend them as appropriate;"

3. some other editorial changes to annex 12 of NAV 48/19, shown in MEPC 48/WP.13 should be considered by NAV 49 when preparing the final draft for submission to the Assembly.

8 The MEPC noted also that the informal drafting group had identified some other points that should be considered from an environmental perspective (MEPC 48/WP.13, paragraph 5).

LEG 85

Places of refuge

9 LEG 85 considered document LEG 85/10/1 reporting on the outcome of the forty-eighth session of the Sub-Committee on Safety of Navigation (NAV) on matters pertaining to the issue of places of refuge.

10 The Assistant Secretary-General and Director of the Maritime Safety Division informed the Committee that the Maritime Safety Committee (MSC), the Sub-Committee on Radio-communications (COMSAR) and the NAV Sub-Committee had been considering the operational aspects of the issue and that two draft Assembly resolutions were under preparation in this connection. One of these draft resolutions, prepared by NAV 48, contained Guidelines on places of refuge for ships in need of assistance. The Legal Committee was informed that, at the invitation of the MSC at its seventy-sixth session in December 2002, it might be asked to consider the work in progress from a legal perspective (i.e., liability and compensation for damage arising from entry of a ship in need of assistance into a place of refuge as well as financial security issues).
11 The representative of the Comité Maritime International (CMI) introduced document LEG 85/10/3, containing the results of a survey, conducted by the CMI at the Committee’s request, to ascertain the extent to which domestic law dealt with the problem of vessels in distress seeking refuge. The questionnaire circulated to the CMI members referred in particular to the relevant articles of the OPRC, SALVAGE and UNCLOS Conventions. The responses of the CMI members did not indicate that States had imposed legal liabilities on the owners of such vessels. He noted that the CMI was in the process of analysing the liability issues. In this regard he indicated that there were two possible questions. First, what are the liabilities of a State that allows a ship into a place of refuge under its jurisdiction. Secondly, what are the liabilities of a State that refuses entry.

12 The Legal Committee expressed appreciation to the CMI for the useful submission contained in document LEG 85/10/3, as well as for the fuller version of the study lodged in the IMO Library; and agreed to examine the legal liability aspects of the aforementioned draft Assembly resolutions should it be asked to do so by the Maritime Safety Committee.

13 The Secretariat was requested to circulate these draft resolutions as soon as possible, well in advance of the Committee’s next session. The Secretariat was also requested to review, in co-operation with the CMI, the provisions of existing international instruments and of national law dealing with the liability and compensation and their application to places of refuge. This would assist the Committee in identifying gaps in the existing system. Members should be encouraged to submit information on their national law and practice.

**Action requested of the Committee**

14 The Committee is invited to take the above information into consideration when discussing the outcome of NAV 48 (NAV 48/19) on matters related to Places of refuge.