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## EXTERNAL RELATIONS

### (a) Relations with the United Nations and the specialized agencies

#### Note by the Secretary-General

##### SUMMARY

<i>Executive summary:</i>	This document reports on the outcome of the <i>Ad Hoc</i> Consultative Meeting of Senior Representatives of International Organizations on the “Genuine Link”, held at IMO from 7 to 8 July 2005
<i>Action to be taken:</i>	Paragraph 5
<i>Related documents:</i>	None

1 The *Ad Hoc* Consultative Meeting of Senior Representatives of International Organizations on the “Genuine Link” met at IMO Headquarters from 7 to 8 July 2005. The Meeting was convened in response to resolutions 58/240 and 58/14 adopted by the General Assembly of the United Nations at its fifty-eighth session, inviting IMO and other relevant agencies to study, examine and clarify the role of the “genuine link” in relation to the duty of flag States to exercise effective control over ships flying their flag, including fishing vessels.

2 Resolutions 59/24 and 59/25, subsequently adopted by the General Assembly at its fifty-ninth session, invited the United Nations Secretary-General to report to the General Assembly at its sixty-first session (scheduled to take place during the second half of this year) on the study undertaken by IMO in co-operation with other competent international organizations on the role of the genuine link and the potential consequences of non-compliance with duties and obligations of flag States described in relevant international instruments.

3 The annex to this document contains the text of the report of the Meeting. The report itself refers to other annexes comprising documents circulated at the Meeting and updated information on relevant activities of each of the organizations participating in the Meeting, which, for reasons of economy, have not been included here.

4 The report, together with any comments on it by the Council, will be forwarded to the Secretary-General of the United Nations for onward submission to the General Assembly at its sixty-first session.

For reasons of economy, this document is printed in a limited number. Delegates are kindly asked to bring their copies to meetings and not to request additional copies.

**Action requested of the Council**

5 The Council is invited to take note of this report and comment, as it may deem appropriate.

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## ANNEX

*AD HOC* CONSULTATIVE MEETING  
OF SENIOR REPRESENTATIVES  
OF INTERNATIONAL ORGANIZATIONS  
ON THE “GENUINE LINK”  
Agenda item 6

GL 1/6

**REPORT OF THE *AD HOC* CONSULTATIVE MEETING OF  
SENIOR REPRESENTATIVES OF INTERNATIONAL ORGANIZATIONS ON THE  
“GENUINE LINK”**

**OPENING OF THE SESSION**

1 The *Ad Hoc* Consultative Meeting of Senior Representatives of International Organizations on the “Genuine Link” (hereinafter “the Meeting”) met from 7 to 8 July 2005 at the Headquarters of the International Maritime Organization (IMO).

2 The Meeting was chaired by Dr. R.P. Balkin, Director, Legal Affairs and External Relations Division (IMO).

3 The session was attended by representatives of the Division for Ocean Affairs and the Law of the Sea, United Nations (DOALOS); the Food and Agriculture Organization (FAO); the International Labour Organization (ILO); the United Nations Conference on Trade and Development (UNCTAD); and the International Maritime Organization (IMO). The Organization for Economic Co-operation and Development (OECD) sent apologies. A list of participants is contained in annex 1 to this document.

4 In welcoming the participants on behalf of the Secretary-General of the International Maritime Organization, Dr. R.P. Balkin briefly recalled the developments which had led up to this *ad hoc* consultative meeting; in particular, the meeting of the interagency Consultative Group on Flag State Implementation that had taken place in Paris in 2003 and the comprehensive document resulting from it, namely the Report of the United Nations Secretary-General issued as document A/59/63, hereinafter “the FSI Inventory Document”. That report, which was submitted to the fifty-ninth session of the General Assembly of the United Nations, set out the duties and obligations of flag States under relevant international law and provided an extensive catalogue of the strategic, regulatory and other initiatives undertaken by the participating organizations with regard to securing the effective exercise of flag State jurisdiction.

5 She recalled resolutions 58/240 (paragraph 28) and 58/14 (paragraph 22) adopted by the General Assembly at its fifty-eighth session, inviting IMO and other relevant agencies to study, examine and clarify the role of the “genuine link” in relation to the duty of flag States to exercise effective control over ships flying their flag, including fishing vessels. She further referred to resolutions 59/24 (paragraph 41) and 59/25 (paragraph 30) requesting the Secretary-General to report to the General Assembly at its sixty-first session on the study undertaken by IMO in co-operation with other competent international organizations on the role of the “genuine link” and the potential consequences of non-compliance with duties and obligations of flag States described in relevant international instruments.

## **ADOPTION OF THE AGENDA**

6 The Meeting adopted the agenda (annex 2).

## **ORGANIZATION OF WORK**

7 The Meeting noted that a final report should be forwarded to the Secretary-General of the United Nations with a request that it be submitted to the General Assembly at its sixty-first session in 2006.

8 The Meeting agreed to consider:

- further development of the conclusions reflected in paragraphs 210 to 221 of the FSI Inventory Document (annex 3);
- the submission of a report by the Secretariat of IMO to the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea at its fifth meeting, in June 2004, entitled “Strengthening of flag State implementation” (document A/AC.259/11) (annex 4);
- a submission by the International Labour Office (ILO) with observations relevant to the role of the flag State in connection with international labour standards for the maritime and fishing sectors and the role of the “genuine link” requirement in connection with flag State duties and comments on consequences and potential responses to failures on the part of a flag State to carry out its responsibilities (annex 5);
- additional information submitted by IMO on some specific outcomes of the work of IMO potentially relevant to the registration of ships (annex 6); and
- information and proposals submitted by the organizations participating at the Meeting.

## **OUTCOME**

### **General considerations**

9 Representatives of the organizations participating at the Meeting exchanged information on their recent activities relevant to the strengthening of flag State jurisdiction and port State control within the purview of their respective mandates. They also addressed the scope of the General Assembly recommendations. In doing so, they noted that the earlier FSI Inventory Document provided an adequate answer to the request contained in paragraph 29 of General Assembly resolution 58/240 to prepare and disseminate to States a comprehensive elaboration of the duties and obligations of flag States, including the potential consequences of non-compliance prescribed in the relevant international instruments.

10 They noted that it was not within their competence to provide a definition of the term “genuine link”. In their view this was a matter to be determined by States and international and domestic courts and tribunals on the basis of provisions contained in the 1982 United Nations

Convention on the Law of the Sea (hereinafter “UNCLOS”) and other applicable international instruments.

11 The organizations considered that the question of the *role* of the “genuine link“ under UNCLOS is a different question and is directly related to the issue of the effective exercise of flag State obligations. The two matters were, in their view, inseparable since the ability of a flag State to effectively exercise its responsibilities appeared to be contingent upon a sufficiently strong link between the flag State and the ships flying its flag. Accordingly, they agreed that their work to study, examine, and clarify the role of the “genuine link” should focus on two main issues, namely:

- the way in which this concept should be applied to strengthen compliance with duties and obligations primarily imposed by UNCLOS and other international instruments upon flag States; and
- the need to update and elaborate the strategic approaches and initiatives initially described in the FSI Inventory Report and to provide a deepening of its conclusions, with the addition of further comments and conclusions directed to the role of the “genuine link”.

12 The Meeting expressed concern about the problems that can arise when the flag State fails to fulfil its obligations. It was noted that the international regulatory system, as developed under the aegis of the different organizations, was dependent upon the effective exercise of flag State responsibilities. In this connection, the organizations participating at the Meeting provided examples of their past and ongoing efforts in the development of international rules and standards aimed at elaborating the duties of flag States and at promoting their implementation.

13 The Meeting emphasized that international regulatory regimes should, where possible, be complemented by a sound economic framework providing incentives to shipowners and ship operators to comply with them. This should be combined with an effective enforcement and compliance strategy which would ensure effective flag State supervision of ships and the imposition of adequate sanctions for cases of non-compliance. In this context, international organizations could continue to seek to further co-ordinate their programmes aimed at identifying any difficulties facing flag States and assisting flag, port and coastal States to effectively implement their responsibilities in connection with these roles.

14 The Meeting suggested that interagency co-operation aiming at ensuring the effective exercise of flag State jurisdiction might be strengthened through a comprehensive approach according to which issues such as safety, prevention of marine pollution, decent working and living conditions for seafarers and fishers and suppression of illegal fishing might be co-ordinated to ensure compliance with the purpose and aims of UNCLOS and related international regulatory agreements. The Meeting noted, however, that the success of such interagency co-operation would remain dependent, to a large extent, upon action taken by States to ensure that the policies of their different government departments and agencies are co-ordinated in such a way that initiatives put forward for consideration in different international *fora* complement, rather than contradict, or unnecessarily overlap with, each other.

15 After a full discussion of agenda items 3 and 4, the Meeting agreed that the information provided at the Meeting and the observations reflected in the following paragraphs, read together with the information contained in the FSI Inventory Document and its conclusions should be

considered as fulfilling the request by the General Assembly to study, examine and clarify the role of the “genuine link”.

16 The following paragraphs reflect the Meeting’s considerations and observations regarding the role of the “genuine link” and the potential consequences of non-compliance with duties and obligations of flag States described in the relevant international instruments. The observations are made in light of the respective mandates and the activities of the participating organizations aimed at helping to ensure the effective exercise of flag State jurisdiction and control.

### **Legal framework for the concept of “genuine link”**

#### **(a) UNCLOS**

17 The role of the “genuine link”, as referred to in article 91 of UNCLOS, should be examined in light of its purpose and operational context. Its meaning should be understood primarily in relation to the duties of flag States under international law as reflected in UNCLOS as well as the other relevant international instruments.

18 The requirement under article 91, paragraph 1, that there be a “genuine link” between a ship and a State that has granted its nationality to that ship is related to the right of a State, acknowledged in the same paragraph, to fix the conditions for the grant of its nationality to ships, the registration of ships in its territory, and the right of ships to fly its flag.

19 The primary obligations concerning ship safety and labour conditions assumed by the flag State as a consequence of granting its nationality and the correlative right to fly its flag to a ship in accordance with articles 91 and 92 are enshrined in article 94 of UNCLOS. However, as indicated in the FSI Inventory Document, the range of flag State duties under UNCLOS is more extensive than the matters listed in article 94, which, clearly, is not intended as an exhaustive list. In particular, the duties of flag States in relation to protection of the marine environment and conservation of marine living resources are set out in a number of articles throughout the Convention.

20 In accordance with article 94, paragraph 1 of UNCLOS, a State is obliged to “effectively exercise its jurisdiction and control in administrative, technical, and social matters over ships flying its flag”. Paragraphs 2, 3 and 4 of the same article enumerate the main obligations in this regard and refer to the fact that they should be complied with in accordance with generally accepted international regulations, procedures and practices and applicable international instruments.

21 Paragraph 5 prescribes that, in taking the measures called for in paragraphs 3 and 4, States conform to generally accepted international regulations, procedures and practices and take any steps which may be necessary to secure their observance. Information regarding such rules, regulations and procedures adopted in the context of participating organizations are contained in the FSI Inventory Document and the updates in the annexes to this report.

22 Apart from these basic obligations, article 94, paragraph 6 provides one possible avenue of importance for responding to a failure by a flag State to implement its responsibilities. Where a State has clear grounds to believe that proper jurisdiction and control with respect to a ship have not been exercised, then it may report the fact to the flag State. In such a case, the flag State is obliged to respond by investigating the matter and, if appropriate, take any action necessary to

remedy the situation. There are, of course, alternative responses available by coastal and port States, including detaining a ship, to deal with ships that are not operated in accordance with applicable international standards (whether because of a failure by a flag State to implement its responsibilities or for other reasons). However, alternatives for other States or for international organizations to respond to a failure by a flag State to fulfil its obligations are limited under current international law.

23 A further obligation imposed upon flag States by article 94, paragraph 7, is to hold enquiries into every marine casualty or incident of navigation on the high seas involving a ship flying its flag and causing loss of life or serious injury to nationals of another State or serious damage to ships or installations of another State or to the marine environment.

24 The Meeting noted that the purpose of the “genuine link” requirement in article 91 was the subject of authoritative interpretation by the International Tribunal on the Law of the Sea (ITLOS) in the 1999 case, *M/V Saiga* (No.2). The Tribunal stated that “the purpose of the provision of the Convention on the need for a genuine link between a ship and its flag State is to secure more effective implementation of the duties of the flag State, and not to establish criteria by reference to which the validity of the registration of ships in the flag State may be challenged by other States” (paragraph 83). This interpretation necessarily derives from the right acknowledged by UNCLOS, article 91, paragraph 1, of every State to fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Hence the conclusion arrived at by the Tribunal in the same case, to the effect that “determination of the criteria and establishment of procedures for granting and withdrawing nationality to ships are matters within the exclusive jurisdiction of the flag State” (paragraph 65). At the same time, it should be noted that the Tribunal distinguished between this question and the question of whether a genuine link, in fact, exists in a particular case (paragraph 79), the latter being a question that was open to review by the Tribunal, on the basis of evidence adduced by the parties. In the *M/V Saiga* (No.2) case, the Tribunal concluded that “... the evidence adduced by Guinea is not sufficient to justify its contention that there was no genuine link between the ship and Saint Vincent and the Grenadines at the material time.” (paragraph 87).

**(b) Other international instruments addressing the question of the “genuine link” and registration of ships**

25 The Meeting noted that the concept of the “genuine link” and its role with respect to flag State jurisdiction and control over ships is also found in other international agreements. For example, article 3, paragraph 3, of the 1993 Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (“the Compliance Agreement”) provides that no Party to the Agreement “shall authorize any fishing vessel entitled to fly its flag to be used for fishing on the high seas unless the Party is satisfied that it is able, taking into account the links that exist between it and the fishing vessel concerned, to exercise effectively its responsibilities under this Agreement in respect of that fishing vessel”. The primary focus of the Compliance Agreement is on the question of the implementation of the duties of flag States with respect to fishing vessels. Nevertheless, it does address the question of the links between these vessels and the respective States enabling the fulfilment of the objectives of the Agreement.

26 The 1995 United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks

(UN Fish Stocks Agreement), follows a similar approach in emphasising flag State duties (article 18).

27 The Meeting noted that the United Nations Convention on Conditions for Registration of Ships, 1986, which had attempted to address in a comprehensive manner the question of uniform criteria for the registration of ships, particularly in connection with the “genuine link” requirement, has not yet entered into force. The representative of UNCTAD informed the Meeting that UNCTAD continues to provide information on the quantitative and qualitative development of tonnage under major open registries and second registries as well as beneficial ownership. This information is generally made available in the annual publication, Review of Maritime Transport, for the benefit of policy makers, shipowners, shippers and other industry players. Most recent data available for 2005 indicate that 45 per cent of world merchant tonnage is registered under open-registry countries. This share is particularly high for dry bulk carriers where 53 per cent are operated under these flags. Beneficial ownership is concentrated in 10 major shipowning countries which account for approximately 70 per cent of tonnage under open registries.

**(c) Conclusion**

28 The Meeting took the view that the exclusivity attached by UNCLOS to the right of States to fix conditions for the grant of nationality, as reaffirmed by the authoritative interpretations of ITLOS in the *M/V Saiga* (No.2) and subsequent cases, as well the other agreements referred to in (b) above, indicated that the questions relating to the precise criteria or conditions adopted by a State with respect to the grant of its nationality to a ship was a matter beyond the purview of the organizations participating at the Meeting. However, the Meeting also considered that issues relating to securing the objective and purpose of the “genuine link” requirement, that is, assuring the ability of the flag State to effectively exercise its jurisdiction over ships flying its flag, were matters of central concern to all of the organizations and formed a substantial part of their programmes of regulatory initiatives and technical co-operation activities in the shipping and fishing sectors.

**Recent initiatives of the participating organizations with respect to strengthening of flag State jurisdiction and control**

29 The Meeting discussed a number of recent initiatives with respect to ships and fishing vessels that appeared particularly relevant to progress on the issues under consideration. To this end, the information contained in the FSI Inventory Document regarding the activities relevant to the strengthening of flag State jurisdiction undertaken by the organizations participating at the Meeting has been updated and issued as annex 7 to this report.

**(a) International Maritime Organization**

**(i) The Voluntary IMO Member State Audit Scheme**

30 The Meeting noted the introduction by IMO of the Voluntary IMO Member State Audit Scheme, which involves independent audits to be performed on States. Although the Scheme has been developed as voluntary, it could become compulsory in the future should the IMO Membership so decide. The objective of the Scheme is to provide an audited Member State with a comprehensive and objective assessment of how effectively it administers and implements the key IMO technical treaties and technical assistance can be provided, following an audit, to help



with the introduction of any improvements that may be found necessary. Hand-in-hand with the development of the Audit Scheme has been the preparation of a Code for the implementation of mandatory IMO instruments, which is intended to serve as the audit standard for the Scheme. States might consider the creation of similar schemes for matters strictly within the purview of FAO and ILO.

**(ii) Identification schemes for ships, companies, and registered owners**

31 Reference was also made to the development in IMO of two ship and company (shipowner/operator) identification numbering schemes, i.e., the IMO Ship Identification Number Scheme (resolution A.600(15) and Circular letter No.1886/Rev.2) and the IMO Unique Company and Registered Owner Identification Number Scheme (resolution MSC.160(78) and Circular letter No.2554) which have been made mandatory under SOLAS regulations XI-1/3 and 3-1, respectively. These Schemes, in combination with new security-related requirements, such as the Continuous Synopsis Record to be carried on board ships, could serve to improve transparency with respect to parties responsible for the operation of the ship, irrespective of registration.

**(iii) Fishing vessels**

32 The Meeting noted that several legal instruments, including the Torremolinos Protocol and the STCW-F Convention, which articulate flag State responsibilities in relation to fishing vessels and fishers, have yet to enter into force. The Meeting noted the various ongoing initiatives of IMO making the entry into force of these instruments a priority for the Organization and, in particular, the convening of a second Joint IMO/FAO Working Group on IUU Fishing and Related Matters in 2006. The Meeting supported the need to explore the strengthening of a co-ordinated role of the agencies in the process of assisting each other in the entering into force of instruments.

**(b) The International Labour Organization**

**(i) The proposed ILO Maritime Labour Convention, 2006**

33 The Meeting noted that the proposed Maritime Labour Convention, 2006 to be considered for adoption by a Maritime Session of the International Labour Conference in February 2006<sup>1</sup>, builds upon the earlier maritime labour conventions but more clearly assigns responsibility to the flag State for all labour and social matters on board its ships. The proposed Convention expressly provides for an effective compliance and enforcement system for labour and social conditions on board ships and is intended to secure a level playing field with respect to the conditions of work in this sector. The proposed Convention moves beyond the previous ILO maritime labour conventions to establish a system for flag State certification of specified minimum conditions on board ships.

34 The certificate system is expressly designed to work within the system for port State control, developed under the various MoUs, that is well-established in connection with ship safety, marine pollution and, more recently, in connection with ship security measures. However, the maritime labour documentation system has additional elements which may better

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<sup>1</sup> The Convention was eventually adopted on 23 February 2006 by the 94<sup>th</sup> (Maritime) Session of the International Labour Conference.

ensure both flag State implementation and enforcement and ongoing shipowner compliance with the Convention standards. First, it contains a “no more favourable treatment” clause for control activities in the ports of ratifying countries. Secondly, it requires shipowners, broadly defined, to refer to any entity that exercises the responsibilities of shipowners, to elaborate their approach to ensuring ongoing compliance with national law implementing the Convention standards on a ship-specific basis. This is set out in a document, the Declaration of Maritime Labour Compliance, which each ship will carry. Importantly, the flag State is also required to indicate, in the Declaration, the national legal requirements which it has adopted to implement the Convention standards. The Declaration will be attached to a Certificate and will be available for inspection in foreign ports.

35 The maritime labour documentation system is supported by complaint mechanism procedures under which seafarers or other interested entities can bring a complaint in a port regarding a breach of the requirements of the Convention. The system is linked to the existing ILO supervisory mechanism through Member reporting requirements regarding national implementation activities. The proposed Convention also provides for the filing of port State control reports on complaints and ship detentions with the Director-General of ILO. It is envisaged that a database will be set up, once the Convention is adopted, to monitor the reports.

36 The Convention also puts in place mandatory standards related to the use of Recognized Organizations and includes standards related to the provision of financial security by shipowners for repatriation and to assure compensation in the event of the death or long-term disability of seafarers due to an occupational injury, illness or hazard.

#### **(ii) Standards for Decent Work in Fishing**

37 A draft Work in Fishing Convention is currently under development. It will be considered for adoption by the International Labour Conference at its meeting in 2007. The draft as developed to date is similar in its approach and concerns to the proposed Maritime Labour Convention, 2006. However, it is tailored to address the particularities of the fishing sector. It also includes a Part specifically devoted to securing compliance and enforcement of conditions for work on fishing vessels. For example, it currently requires (article 38) that a ratifying State “shall exercise effective jurisdiction and control over vessels flying its flag by establishing a system for ensuring compliance with the standards in the Convention including, as appropriate, inspections, reporting, monitoring, complaints procedures, appropriate penalties and corrective measures...”. It provides for a document evidencing compliance with the national laws implementing the Convention and a complaint system and also includes a no more favourable treatment clause.

#### **Other issues of relevance for the strengthening of flag State jurisdiction and control**

##### **(a) Port State control**

38 The Meeting recalled that port State control activities were complementary to, but do not replace, flag State control and noted the expansion of port State measures in various *fora*. In particular, the group noted the activities of FAO and ILO. The FAO Model Scheme on Port State Measures to combat Illegal, Unreported and Unregulated (IUU) Fishing was developed with the support and participation of IMO and ILO. The inclusion of certification and port State control under the proposed Maritime Labour Convention 2006 extends the enforcement mechanisms already existent in IMO safety and anti-pollution conventions to international

regulations on conditions of labour on board. This innovative measure should be highlighted as a necessary complement to direct flag State control, to ensure that flag States comply with their duties as regulated in article 94 of UNCLOS.

39 The Meeting considered developments in regional port State control regimes, in particular the Second Joint Ministerial Conference of the Paris and Tokyo MoUs on Port State Control, 2004. In this context, the ongoing work of the IMO Sub-Committee on Flag State Implementation (FSI) was especially noted.

**(b) Collection of data**

40 The Meeting highlighted various initiatives that were underway or proposed by the organizations relating to the collection of data aimed at improving transparency and accountability with respect to standards on ships and fishing vessels. It was suggested that these might form the basis for enhanced co-operation among agencies. In this context, the Meeting acknowledged the already agreed provision of information to ILO by IMO concerning PSC-related data and that this issue was currently being addressed through the development of the PSC module of the IMO Global Integrated Shipping Information System (GISIS). Furthermore, the Meeting identified potential developments, in relation to the ILO supervisory system, of a possible database for reports related to the complaint mechanism under the proposed Maritime Labour Convention, 2006 and the FAO project on the identification of fishing vessels, as potential avenues for further co-ordination. The Meeting stressed that such initiatives should be addressed in a pragmatic way so that Member States could benefit from the avoidance of duplication, in particular, concerning the reporting requirements.

**(c) The need for an efficient national administration**

41 The Meeting agreed on the importance of structured and efficient national administrations, to enable flag States to effectively exercise their jurisdiction and control of vessels under their flag. In this regard, the group emphasized the need for effective supervision of recognized organizations by national administrations whenever they delegate to these entities responsibility for carrying out aspects of their respective flag State duties under international law. In this context, the Meeting acknowledged the development by IMO of the Voluntary IMO Member State Audit Scheme, as well as of Goal-Based Standards.

**(d) Consequences of non-compliance by a flag State with its duties and obligations**

42 The Meeting noted that the question of action to be taken to deter non-compliance by the flag State with obligations prescribed in international rules raises two inter-related main issues. The first concerns measures available to counteract non-compliance by means of disincentives aimed at ensuring that shipowners do not profit from violations of international rules and, in parallel, of incentives to those who comply with them. The second, more difficult issue, concerns the consequences for a flag State which does not implement its responsibilities with respect to ships that fly its flag.

43 The two questions and responses are interrelated, particularly from an economic or commercial perspective, since in many cases ships that are not in compliance may be indicative of systemic non-compliance or failures at the flag State level. Evidence of ongoing failure to implement its responsibilities by a flag State may eventually lead to a situation where a particular flag can be seen as less attractive to shipowners/operators as result of increased scrutiny of ships

that fly that particular flag. Nevertheless, from a legal and remedial perspective, the two issues raise different considerations.

44 The Meeting noted the conclusions expressed in paragraph 214 of the FSI Inventory Document, to the effect that existing incentives for quality shipping, such as reduced inspection frequencies, or existing disincentives, such as potential detentions or increased inspections, may not be sufficient to counteract the profits obtained through substandard shipping. In this regard, the Meeting considered that an expansion of national and regional policies related to incentives and disincentives would be desirable but should be complemented by an effective deterrence system.

45 With respect to the question of deterrence, the Meeting noted that UNCLOS and other relevant international Conventions required that the States Parties establish adequate enforcement mechanisms, including, where appropriate, sanctions adequate in severity to discourage violations, as part of the implementation process (see for instance, UNCLOS article 217). The obligation to establish an effective system of sanctions is primarily a matter for flag States. Aside from penalties of a financial kind, sanctions should include suspension from registration and the use of flag and, in cases of persistent violations, deletion from the flag State's registry.

46 In the case of financial penalties, the Meeting considered that, in order to discourage violations and act as an effective deterrent system, the level of penalties would need to be sufficiently high to ensure that owners and operators could not compensate these amounts with profits obtained from the operation of substandard ships. This kind of approach, which is reflected in the domestic environmental laws of some States, is called "profit stripping". Research by OECD has shown that, frequently, the profits gained by not complying with international regulations are greater than penalties for non-compliance. To be effective, such an approach would also require that third party liability insurers not include the payment of financial penalties within the scope of their insurance cover.

47 With respect to the consequences of non-compliance by flag States, the Meeting noted that there is a limited scope for responses under general international law and even less scope for direct action by international organizations. Ultimately, the responsibility for action against non-compliant States lies with other States. Some conventions, such as UNCLOS (Part XV) and the UN Fish Stocks Agreement (Part VIII), contain a set of provisions for the settlement of disputes. Other types of remedies or responses are also provided in UNCLOS, article 94(6) and Part XII, section 7. Article 94(6) imposes upon the flag State an obligation to investigate reports from other States having clear grounds to believe that proper jurisdiction and control have not been exercised. Part XII, section 7 sets out detailed procedural rules to be followed by flag States and other States to prevent or punish pollution damage. These rules relate, *inter alia*, to investigation of foreign vessels, institution of proceedings, notification of measures to flag States and monetary penalties.

48 It was noted that ILO differs somewhat from most other international organizations in that, under its Constitution, it has a well-developed supervisory system which provides for the monitoring of implementation activities by Member States, though a tripartite process. It also provides for the possibility that representations can be made by an industrial association of employers or workers to ILO with respect to a failure by a Member to observe a Convention to which it is a party. This process can result in an inquiry and, possibly, a decision of the International Court of Justice.

49 The Meeting noted the evolving practice of the adoption of collective measures by States within the framework of regional fishery management organizations (RFMOs) to deal with non-compliant States. In this context, the Meeting welcomed the expected involvement of RFMOs in the forthcoming second joint IMO/FAO Working Group on IUU Fishing and Related matters.

50 Above all, the Meeting noted the restrictions placed by the current mandates of the participating organizations to respond to non-compliance by States. In this respect, the role of the agencies is primarily a regulatory one, in addition to their work in facilitating compliance through technical co-operation and the sharing of information.

### **Promoting compliance**

51 The Meeting noted that the practice of transferring of responsibilities between entities such as classification societies and insurers had the potential to affect the ability of flag States to meet their obligations. The Meeting supported the idea of “compliance in motion”, namely, ensuring ongoing compliance with international regulations wherever a ship is operating irrespective of registry or flag. In this context, the Meeting welcomed the progress made by IMO on the issues of transfer of flags (“flag-hopping”) and transfer of class, while confirming that these issues merited further consideration.

52 The Meeting stressed the importance of developing a “compliance culture”. It was suggested, in this context, that the organizations concerned increase their co-operation in technical co-operation activities designed to enhance flag State implementation. These activities should cover the complete range of responsibilities of flag States, as contained in the mandates of the respective organizations.

53 The Meeting suggested that a joint model course on flag State implementation might be usefully developed, covering all flag State responsibilities falling within the mandates of the various agencies.

### **ANY OTHER BUSINESS**

54 The Meeting considered that there was no necessity at this stage to reconvene unless future developments dictated otherwise.

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