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**Adopted on 29 November 2001
(Agenda item 9)**

UNIFORM WORDING FOR REFERENCING IMO INSTRUMENTS

THE ASSEMBLY,

NOTING the practice whereby, in order to give full effect to the provisions of certain instruments developed by the Organization under specific IMO conventions in the same manner as the regulations of the conventions themselves, such instruments have been treated as mandatory and have the same legal status as the parent convention, in which case appropriate references have been made in the conventions to this effect,

NOTING ALSO the practice concerning performance standards and technical specifications developed by the Organization, which are not regarded as mandatory instruments for treaty purposes but in respect of which Parties to the conventions concerned are obliged to establish national standards at least equivalent and, in any case, not inferior to those developed by the Organization,

NOTING FURTHER that other recommendations and guidelines, including industry standards, have been developed by the Organization to assist Administrations in the implementation of the relevant standards and are treated as recommendations for implementation by Member Governments with a certain flexibility and at their discretion,

RECOGNIZING the need to ensure that, where reference is made to IMO and other instruments, a uniform wording is used in order to indicate clearly the legal status of the instrument concerned and to set the procedures for amendments thereto as appropriate, after the IMO body concerned has decided on such a status,

RECALLING that the Maritime Safety Committee and Marine Environment Protection Committee approved MSC/Circ.930-MEPC/Circ.364 on Guidelines on methods for making reference to IMO and other instruments in IMO conventions and other mandatory instruments, the usefulness of which was subsequently endorsed by the Legal Committee and the Facilitation Committee,

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HAVING CONSIDERED the recommendations of the Maritime Safety Committee at its seventy-third session, the Legal Committee at its eighty-third session, the Marine Environment Protection Committee at its forty-sixth session and the Facilitation Committee at its twenty-eighth session,

1. ADOPTS the Guidelines on methods for making reference to IMO and other instruments in IMO conventions and other mandatory instruments set out in the Annex to the present resolution;
2. DIRECTS the above Committees to make use of the aforementioned Guidelines when making reference to IMO and other instruments in IMO conventions and other mandatory instruments which are within their area of responsibility;
3. REVOKES circular MSC/Circ.930 – MEPC/Circ.364.

ANNEX

**GUIDELINES ON METHODS FOR MAKING REFERENCE TO IMO
AND OTHER INSTRUMENTS IN IMO CONVENTIONS AND
OTHER MANDATORY INSTRUMENTS**

General

1 The purpose of these Guidelines is to provide a standard text for inclusion in new IMO conventions and other mandatory instruments relating to maritime safety and pollution prevention and in future amendments to existing conventions and other instruments, in order to ensure that, where reference is made to IMO and other instruments, a uniform wording is used in order to indicate clearly the legal status of the instrument in question after the IMO body concerned has decided on such a status.

IMO instruments to be treated as mandatory

2 When Contracting Governments or Parties to an IMO convention have decided that full effect should be given to the provisions of certain codes or requirements under that convention in the same manner as the regulations of the convention themselves, such instruments should be treated as mandatory and have the same legal status as the parent convention.

3 The most appropriate method for referencing, in an IMO convention, instruments determined to become mandatory under the parent convention is to follow the SOLAS provisions used for making the IBC and IGC Codes (under chapter VII) and HSC Code (under chapter X) mandatory, i.e.:

- .1 to refer expressly to such instruments in the text of the relevant convention regulations;
- .2 to provide expressly that future amendments to such instruments should follow the amendment procedures laid down in the relevant article of the parent convention; and
- .3 to prescribe expressly in the text of the relevant convention regulations that "such requirements shall be treated as mandatory" in case the word "should" has been used in such instruments instead of "shall".

4 For such instruments, the use of terms such as "guidelines" or "guidance", which might be misunderstood as implying recommendations, should be avoided as far as possible.

5 It would be preferable to adopt the text of the instrument being referenced at the time of adoption of the relevant amendments to the convention concerned and to prepare an authentic text of the instrument, which will be used as the basis for the preparation of any certified copies of future amendments to such an instrument.

Performance standards and technical specifications in IMO instruments

6 The SOLAS, MARPOL and other IMO conventions contain provisions referring to performance standards and technical specifications, such as performance standards for GMDSS equipment, shipboard navigational equipment, oil discharge and monitoring systems, etc. which are accompanied by footnotes identifying such performance standards or technical specifications as adopted by the Organization, i.e. by means of Assembly resolutions, MSC or MEPC resolutions, etc. Such standards and specifications referred to in the footnotes are not regarded as mandatory instruments for treaty purposes, since they do not appear in the authentic text of the parent convention and can be updated by the Secretariat as necessary; hence, they do not constitute an integral part of the parent convention. Nevertheless, Contracting Governments or Parties to the parent conventions are obliged to establish national standards not inferior, or at least equivalent, to those developed by the Organization.

7 In referencing such standards and specifications, the expressions shown in the following examples should be used:

- "equipment shall conform to performance standards not inferior to those adopted by the Organization";
- "equipment shall be tested in accordance with specifications at least equivalent to those developed by the Organization"; or
- "the manual shall be drawn up to a standard at least equivalent to that developed by the Organization."

8 Expressions such as "the equipment shall comply with the standards adopted by the Organization" or "... in accordance with the standards adopted by the Organization", should not be used in order to avoid any misunderstanding that the standards not identified in the regulation are mandatory.

9 Standards and specifications referred to in footnotes should not appear in the authentic text of the convention and may be updated by the Secretariat as necessary when a new edition of the relevant publication is prepared.

10 For such standards and specifications, the use of terms such as "guidelines" or "guidance" should be avoided as far as possible.

11 The standards and specifications referred to above should clearly indicate their effective date and application to new and existing ships, or both, and to new and existing installations of equipment, or both, unless this is already specified in the relevant regulations of the parent convention.

12 Future amendments to performance standards and technical specifications should be processed and adopted in accordance with the Committees' Rules of Procedure and the Guidelines on the organization and method of work of the Committees and their subsidiary bodies. When such amendments are adopted as new standards superseding existing ones (with new resolution numbers), the revised standard(s) should normally take effect not earlier than six months after adoption unless expressly decided otherwise by the relevant Committee at the time of adoption.

IMO instruments to be treated as recommendations

13 When Contracting Governments or Parties to an IMO convention have decided that they should implement certain instruments, such as guidelines, manuals or guidance, with a certain discretion and flexibility, such instruments should be treated as recommendatory instruments.

14 Instruments of recommendatory status should be referred to in the footnote accompanying the relevant regulations of the parent convention. In such cases:

- .1 clear expressions should be used in the regulation indicating the recommendatory status of the instrument, e.g. "... shall be approved by the Administration, taking into account the recommendations developed by the Organization" or "...., based on the guidelines developed by the Organization"; and
- .2 self-contradictory expressions, such as "shall comply with the recommendations", should be avoided.

15 Guidelines or recommendations referred to in the footnotes should not appear in the authentic text of the convention and may be updated by the Secretariat as necessary when a new edition of the relevant publication is prepared.

Method for referencing instruments in mandatory IMO instruments

16 The above procedures should also apply for the purpose of referencing IMO instruments in mandatory instruments, such as the IBC, IGC, HSC Codes, etc.

17 If the Committee concerned decides that an instrument referred to in the mandatory instrument should be treated as mandatory, the text making reference to such an instrument in accordance with paragraph 3 above should be included in the relevant regulation of the parent convention rather than in the mandatory instrument itself.

Method for referencing industry standards in mandatory IMO instruments

18 If industry standards, such as ISO or IEC standards, or IACS unified requirements, are to be referred to in IMO conventions or other mandatory instruments, the following method should be used:

- .1.1 industry standards to be treated as mandatory should be adopted by the relevant Committee in the form of an appropriate resolution, and should be referenced as described in paragraphs 2 to 5 above;
- .1.2 industry standards containing performance standards or technical specifications should be referred to as "standards acceptable to the Organization" with an appropriate footnote to identify such standards, e.g. "equipment shall conform to performance standards not inferior to those acceptable to the Organization" or "equipment shall be tested in accordance with specifications at least equivalent to those acceptable to the Organization"; and

- .2 in the case of industry standards which should be treated as recommendations and referred to in footnotes, expressions similar to those mentioned in paragraph 14 above should be used, e.g. "... should be tested in accordance with specifications at least equivalent to those acceptable to the Organization".

19 The standards referred to in footnotes should clearly indicate their edition, such as the number or the effective date. When amended by the relevant industry organization, the revised edition of the standards should be approved by the relevant Committee and the footnote amended accordingly.

20 The provisions of paragraph 11 should apply, *mutatis mutandis*, to the standards referred to in paragraph 18.1.2.
