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86th session
Agenda item 18

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PIRACY AND ARMED ROBBERY AGAINST SHIPS**Report of the Working Group****1 General**

1.1 The Working Group on Piracy and armed robbery against ships (the Group) met from 29 May to 3 June 2009 under the Chairmanship of Ms Birgit Sølling Olsen (Denmark).

1.2 The Group was attended by delegations from the following Member Governments:

ANGOLA	ITALY
ANTIGUA AND BARBUDA	JAPAN
ARGENTINA	KUWAIT
BAHAMAS	LATVIA
BAHRAIN	LIBERIA
BOLIVIA	MALAYSIA
BRAZIL	MALTA
BULGARIA	MARSHALL ISLANDS
CANADA	NETHERLANDS
CHILE	NEW ZEALAND
CHINA	NIGERIA
DENMARK	NORWAY
DOMINICA	PHILIPPINES
EGYPT	PORTUGAL
FINLAND	REPUBLIC OF KOREA
FRANCE	RUSSIAN FEDERATION
GERMANY	SAUDI ARABIA
GREECE	SINGAPORE
INDIA	SPAIN
INDONESIA	SWEDEN
IRAN (ISLAMIC REPUBLIC OF)	THAILAND

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TUNISIA
TURKEY
UKRAINE
UNITED KINGDOM

UNITED REPUBLIC OF
TANZANIA
UNITED STATES

and the following Associate Member:

HONG KONG, CHINA

1.3 The session was also attended by observers from the following intergovernmental organizations:

EUROPEAN COMMISSION (EC)
REGIONAL CO-OPERATION AGREEMENT ON COMBATING PIRACY AND
ARMED ROBBERY AGAINST SHIPS IN ASIA – INFORMATION SHARING
CENTRE (ReCAAP – ISC)

and by observers from the following non-governmental organizations in consultative status:

INTERNATIONAL CHAMBER OF SHIPPING (ICS)
INTERNATIONAL ORGANIZATION FOR STANDARDIZATION (ISO)
INTERNATIONAL SHIPPING FEDERATION (ISF)
INTERNATIONAL UNION OF MARINE INSURANCE (IUMI)
INTERNATIONAL CHAMBER OF COMMERCE (ICC)
INTERNATIONAL TRANSPORT WORKERS' FEDERATION (ITF)
INTERNATIONAL ASSOCIATION OF PORTS AND HARBORS (IAPH)
BIMCO
OIL COMPANIES INTERNATIONAL MARINE FORUM (OCIMF)
INTERNATIONAL FEDERATION OF SHIPMASTERS' ASSOCIATIONS (IFSMA)
INTERNATIONAL ASSOCIATION OF INDEPENDENT TANKER OWNERS
(INTERTANKO)
CRUISE LINES INTERNATIONAL ASSOCIATION (CLIA)
INTERNATIONAL ASSOCIATION OF DRY CARGO SHIPOWNERS
(INTERCARGO)
THE INSTITUTE OF MARINE ENGINEERING, SCIENCE AND TECHNOLOGY
(IMarEST)
INTERNATIONAL SAILING FEDERATION (ISAF)

Terms of reference

2 The Group was instructed, taking into account the relevant policy decisions taken and comments made in plenary, and using the annexes to document MSC 86/18/1 as a basis, to prepare revised drafts of MSC/Circ.622/Rev.1, MSC/Circ.623/Rev.3 and resolution A.922(22), and new stand-alone guidance; and submit them to the Committee for consideration with a view to approval. In doing this work, the Group, as instructed by plenary, was to:

- .1 prepare a stand-alone draft MSC circular on Piracy and armed robbery in waters off the coast of Somalia, attaching as its annex the "Best management practices" contained in the annex to document MSC 86/18/2, ensuring that the existing global and new regional guidance are harmonized with the revised MSC/Circ.623 to avoid any apparent contradictions;

- .2 avoid making any changes of substance to the text of the “Best management practices” other than to harmonize it with the existing global guidance. Note that the reference to UKMTO Dubai as a single point of contact should be maintained;
- .3 taking into account the proposals of France and Spain (document MSC 86/18/5), advise the Committee on how to progress the development of specific guidance, similar in nature to the “Best management practices”, for use by the fishing industry and/or by other maritime sectors not covered by existing IMO guidelines;
- .4 include in the revised MSC/Circ.623 an annex for the benefit of seafarers, fishermen and other mariners who have been kidnapped or held hostage for ransom, based upon the current United Nations guidance on “surviving as a hostage” contained in the annex to document MSC 86/18/4; and taking into account the proposals contained in documents MSC 86/18/6, MSC 86/18/8 and MSC 86/18/9;
- .5 in considering revisions to MSC/Circ.622/Rev.1 and MSC/Circ.623/Rev.3 with respect to the carriage of firearms or armed personnel on board merchant ships, the working group is to continue to apply the decisions of MSC 85 to continue to strongly discourage the carrying and use of firearms for personal protection or protection of a ship; and that the use of armed professional security teams on board merchant ships was a matter for flag States to determine in consultation with shipowners and companies, not the Organization. The working group is further directed to avoid reopening the discussion during its deliberations;
- .6 in considering the revision of resolution A.922(22), the working group is instructed not to include the ICC text (annex D to document MSC 86/18/1) in the revised text;
- .7 in considering the revision of resolution A.922(22), the working group is instructed not to include any reference to an IMO panel of experts (document MSC 86/18/1, paragraphs 3.2a to 3.2c) at this stage;
- .8 in considering revisions to MSC/Circ.622/Rev.1, the working group is instructed to decide if the full text of the ReCAAP should be included in the revised text or whether it should be referenced with the provision of details of the ReCAAP website; and
- .9 submit a report to plenary by Thursday, 4 June 2009.

Ships’ Automatic Identification Systems (AIS)

3 The Group recalled that, in plenary, concern had been expressed by Saudi Arabia that the lack of controls and safeguards on the retransmission and promulgation of AIS data on the Internet may be assisting pirates in their activities and posing a threat to ships in the waters off the coast of Somalia, and had proposed the establishment of a technical working group to consider the legal aspects of the issue.

4 The Group recalled that this issue had been discussed by the Maritime Security Working Group (MSWG) at MSC 79 (1 to 10 December 2004) in the context of freely available AIS-generated ship data on the worldwide web and the attendant security risks (documents MSC 79/23, paragraph 5.99 and MSC 79/WP.7, paragraphs 40 to 43). The MSWG had concluded

that the publication of such data on the worldwide web undermined the security of ships and port facilities and created unwanted security risks. In addition, those making such data available on the worldwide web undermined and compromised the efforts of the Organization to enhance the safety of navigation and security in the international maritime transport sector and jeopardize the further development of AIS. However, a number of observer delegations had considered that there may be a number of safety benefits in the publication of AIS information on the worldwide web.

5 The Group further recalled that the MSWG had concluded that, in view of the fact that AIS is a public broadcasting system, developed primarily as a collision avoidance aid to navigation, it would be practically impossible for either the Organization or its Member States to regulate or control the activities of those who make AIS information available on the worldwide web.

6 The Group recalled also that at MSC 79 the Committee had:

- .1 agreed that the publication on the worldwide web or elsewhere of AIS data transmitted by ships could be detrimental to the safety and security of ships and port facilities and was undermining the efforts of the Organization and its Member States to enhance the safety of navigation and security in the international maritime transport sector;
- .2 urged masters of ships, notwithstanding the provisions of the Guidelines for the on-board operational use of automatic identification systems (AIS), adopted by the Organization by resolution A.917(22), as amended by resolution A.956(23), not to switch off the ship's AIS on account of the publication on the worldwide web or elsewhere of the AIS data transmitted by their ships;
- .3 urged Member Governments, subject to the provisions of their national laws, to discourage those who make available AIS data to others for publication on the worldwide web, or elsewhere, from doing so;
- .4 condemned the regrettable publication on the worldwide web or elsewhere of AIS data transmitted by ships;
- .5 condemned those who irresponsibly publish AIS data transmitted by ships on the worldwide web or elsewhere, particularly if these offer other services to the shipping and port industries; and
- .6 requested the Secretary-General to bring to the attention of those who publish or who may publish AIS data transmitted by ships on the worldwide web or elsewhere, the conclusions of the Committee.

7 In the context of piracy and armed robbery in waters off the coast of Somalia, the Group noted that there had been no clear evidence of pirates having used AIS to target ships in that no arrested pirate vessels had been found to be equipped with AIS receivers. The Group also noted that the current guidance offered by navies via the Maritime Security Centre – Horn of Africa (MSC-HOA) was that ships operating in the Gulf of Aden should leave AIS switched on, however, as a precautionary measure, ships operating in the Western Indian Ocean should switch AIS off. Further amplifying guidance was given in the “Best management practices”, including the need to confirm the latest naval recommended practices from MSC-HOA.

Best management practices

8 Following discussions on the content of the “Best management practices” (BMP), the Group agreed to leave the text unchanged, however the Group had entered into in-depth discussions on a number of issues as detailed in the ensuing paragraphs.

9 Following proposals that the “Prior to transit – Company planning provisions” (BMP section 2.b.vii) should contain specific recommendations of the carriage of additional crewmembers, the Group concluded that the existing text advocating consideration of “additional resources” was adequate and addressed manning levels.

10 The implication of the use of fire hoses to deter pirates was discussed at length. The Group noted that the guidance on having fire pumps and/or hoses pressurized (BMP section 4.1) may not be applicable to all types of ships, particularly those using an open fire-fighting system. Furthermore, on some ships, using the fire-fighting system against pirates may have safety implications as it may result in its delayed availability to fight fires, for example, if the ship were to be hit by a rocket-propelled grenade. The Group agreed that although the preamble to the BMP made it clear that the BMP was general advice and that detailed procedures were a matter for individual ships to determine, it would be appropriate to clarify the matter in the cover to the MSC circular promulgating the BMP.

11 The Group also discussed the potential risk to seafarers posed by the use of fire hoses against armed pirates. Having noted the caveat in the BMP (BMP section 2.a.v) that the safety of the crew and passengers was paramount, the Group agreed that this should be highlighted (in **bold**) in the BMP with an additional statement to this effect in the MSC circular promulgating the BMP.

12 In discussing the need to advocate the strengthening of ships’ bridges against gunfire, most members of the Group considered that this was already addressed sufficiently in BMP insofar as it recommends securing and controlling access to the bridge (BMP section 4.f) and the citadel concept (BMP section 6.i). The Group also noted that there may be some safety concerns with armouring bridges. Having reiterated that the BMP was generic advice and that to go into detail on protective measures would be to go into technical detail outside the scope of the BMP, the Group did not support amendment at this stage. However, the Group noted that there were concerns with the escalation of violence and recommended that the Committee may wish to consider suggestions on further measures to protect crewmembers during any subsequent revisions to guidance issued by the Organization.

13 The Group considered suggestions to further strengthen the provisions on investigation of offences with a view to intelligence on pirate tactics. Noting that the BMP was primarily aimed at the deterrence and avoidance of attacks, not the response to them, the Group agreed that the investigation of offences was a matter for States and that the existing IMO guidelines, for example, resolution A.922(22) on Code of practice for investigation of crimes of piracy and armed robbery against ships, [as revised,] were sufficient. Furthermore, the Group agreed that the guidance given in the BMP should be read in conjunction with the revised MSC/Circ.622, MSC/Circ.623 and resolution A.922(22).

Piracy and the ISPS and ISM Codes

14 During the discussions on the BMP, the Group considered the initial discussions in plenary which had stressed the importance of full implementation, by shipowners and operators, of IMO and national guidance, and industry best practice on the suppression of piracy. Recalling

that some delegations had stressed the need for anti-piracy measures to be incorporated into ship security plans and/or ship ISM procedures; and noting that in signing the “New York Declaration”, the Bahamas, Liberia, the Marshall Islands and Panama had declared, *inter alia*, that “self protection measures taken by vessels to avoid, deter or delay piracy attacks are an essential part of compliance with the ISPS Code”, the Group had a brief exchange of views including that the ISPS Code had been introduced to counter the threat of terrorism against ships and port facilities and that terrorism and piracy were distinct and different one from another. Although it was noted that discussion of this issue was not within the Group’s terms of reference, it was agreed that the issue warranted further discussion.

Fishing vessels

15 In considering whether specific guidance to fishing vessels was warranted and, if so, whether it should be attached to the BMP as an annex, the Group agreed that the development of such guidance was appropriate and took account of the views that:

- .1 the BMP was a stand-alone document, subject to industry review, but that the shipping industry was not competent to amend the fishing guidance, thus combining them would be problematic but separating them would facilitate their amendment;
- .2 that fishing vessels when not engaged in fishing would benefit from the guidance contained in the generic BMP and that the additional guidance for vessels engaged in fishing should be read in conjunction with the BMP; and
- .3 there was a need to promulgate the guidance quickly.

16 Following consultations with MSC-HOA, the Group agreed to include a recommendation in the additional guidance for vessels engaged in fishing, that non-Somali fishing vessels should avoid operating or transiting within 200 nm of the coast of Somalia, irrespective of whether or not they had been issued with licences to do so.

17 The Group agreed that the BMP and the additional guidance for vessels engaged in fishing should be issued as separate annexes to a single MSC circular, with appropriate guidance on their application to be included in the chapeau of the circular.

18 The Group further recommended that Governments should be requested to bring the BMP and the additional guidance for vessels engaged in fishing to the attention of their fishing sectors and that their fishing sectors should be involved in any revisions to the text. The Group further recommended that the Organization should request that the MSC circular be promulgated on the MSC-HOA website.

19 The Group agreed to request the Committee to approve the draft circular on Piracy and armed robbery against ships in waters off the coast of Somalia, attached at annex 1 to this report.

Guidance for Recreational Vessels

20 The Group recalled ISAF had advised the Committee that they had developed Guidance for yachts considering a passage through the Gulf of Aden and waters off the coast of Somalia. (Section 1 of the guidance states that “Yachts are strongly recommended to avoid the area.”) The Group noted that the full document was already available on the ISAF website at: <http://www.sailing.org/28110.php> and was expected to be displayed on the MSC-HOA website in the near future.

UN guidelines on “Surviving as a hostage”

21 The Group supported the inclusion of the United Nations Department of Safety and Security guidelines on “Surviving as a hostage”, suitably modified to be applicable to the maritime context, in the revision of MSC/Circ.623/Rev.3. An edited version is appended as annex 2 to this report.

Reference to the ReCAAP

22 In considering the revision to MSC/Circ.622/Rev.1, the Group decided that, given that the Regional Co-operation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP) was one example of a regional agreement to address piracy, the Djibouti Code of Conduct and the IMO/MOWCA Memorandum of Understanding on the establishment of a Sub regional Coastguard Network for the West and Central African sub-region, being two others, it would be inappropriate for the full text of the ReCAAP to be included in the revised circular. The Group therefore decided that the ReCAAP should be referenced with the provision of details of the relevant website address and that similar arrangements could be made for the other regional agreements.

The carriage and use of firearms and security personnel

23 In considering revisions to MSC/Circ.622/Rev.1 and MSC/Circ.623/Rev.3 with respect to the carriage of firearms or armed personnel on board merchant ships, the Group accepted fully the principle agreed at MSC 85 that the carriage and use of firearms for personal protection or protection of a ship should be strongly discouraged; and that the use of armed professional security teams on board merchant ships was a matter for flag States to determine in consultation with shipowners and companies, not the Organization.

24 Mindful of the Committee’s instruction to avoid reopening the general discussion on firearms during its deliberations, the Group examined the proposals of the Correspondence Group, the results of which have been incorporated as paragraphs 3a to 3f and 45a to 46 of the proposed revisions to MSC/Circ.622/Rev.1 and MSC/Circ.623/Rev.3, respectively (the “revised text”). The ensuing paragraphs are a summary of the salient issues raised.

25 The Group noted that the suppression of piracy was for some a constabulary operation, thus for those States the lead agency was the police rather than the military. It was therefore agreed that reference should be made to “military teams or law enforcement officers duly authorized by Government” rather than the term “military teams on board vessels under the command of naval officers” offered by the Correspondence Group.

26 The terminology used to describe other armed personnel was also discussed. The Group agreed to use the term “privately contracted armed security personnel”. As the meaning of this term is clear in plain language, there was no need to give a definition. While considering the use of the term “professional” in this context, the Group agreed that as there were no recognized standards for such personnel, the use of the term “professional” would not be appropriate.

27 Text was added to reflect that it should also be borne in mind that carrying firearms may pose an even greater danger if the ship is carrying flammable cargo or similar types of dangerous goods.

28 There were lengthy discussions on the legal responsibilities of flag States and coastal States or port States and, in particular, coastal State and port State jurisdiction with respect to the carriage of weapons on board ships of another State entering their territorial sea and/or ports. In this context, the Group noted that a ship carrying firearms entering the territorial sea of a State could be deemed to have imported them, irrespective of the master's intention to do so. In developing the text in relation to firearms and armed personnel in the context of coastal State and port State jurisdiction, the Group agreed that:

- .1 the carriage of privately contracted armed security personnel as well as the use of military or other law enforcement officers duly authorized by the Government of the flag State to carry firearms for the security of the merchant ship or fishing vessel should be subject to flag State legislation and policies and is a matter for the flag State to authorize in consultation with shipowners, companies and ship operators;
- .2 ships entering the territorial sea and/or ports are subject to the coastal State's or port State's legislation;
- .3 importation of firearms is subject to coastal and/or port State regulation;
- .4 the use of the terms "merchant ship" and "fishing vessel" is to distinguish them from warships and vessels in Government service.

29 In this regard, some delegations proposed that Administrations should advise ships entitled to fly their flag of the national regulations of coastal States and port States. This suggestion was not supported by the majority of States.

30 Representatives of the insurance sector highlighted the importance of consultation between Administrations, companies and insurers on liability and other aspects of the carriage of armed security personnel. It was suggested that ships should ensure that their procedures were insurable and thus take precautions as if they were uninsured or self-insured.

31 In considering the issue of insurance, the Group noted the statement of the observer from IFSMA who stated that "IFSMA is greatly concerned of the effect of the possibility for shipowners to obtain insurance for the ship and cargo in case of hijacking of ships. This will give the owner a security for his ship and cargo but will not in any way make the transit for seafarer safer. On the contrary, we fear that this could encourage certain owners to take the risk of running their ships through piracy areas such as the Gulf of Aden and the Somali coast. IFSMA strongly urge IMO to call upon the shipowners and insurance organizations to abolish such insurance policies, in order to avoid risking the life of seafarers unnecessarily".

32 Seafarer and shipowner organizations supported by some delegations, raised concerns with respect to the carriage of firearms and the use of military teams, some of which were reflected in the revised text. These concerns included:

- .1 the right of the master and seafarers to refuse to serve on a ship where the carriage of armed personnel was required by the company or the flag State;
- .2 the need for delineation of the responsibilities of the master and the leader of any armed personnel and, in particular, a clear statement of who is in overall command for any circumstance;

- .3 that there had been an insufficient consideration of matters of liability, safety, due diligence and legal frameworks;
- .4 given the tendency towards criminalization of seafarers, the risk that masters and seafarers would be subject to criminal charges arising from the actions of armed personnel; and
- .5 the lack of reference to the master in the text under discussion.

The Group concluded that these were matters for the flag State to decide.

33 The observer from ITF stated that “ITF are opposed to the carriage of arms on board ships and that ITF’s participation in the working group should not be interpreted as endorsing the carriage of arms. It was the view of the ITF that if flag States, after proper consultation with shipowners and companies, determined that arms should be carried on board, then there must be the appropriate operational policies and legal frameworks among flag, coastal, and port States to resolve legal and liability issues. Additionally, it was the view of the ITF that the guidance should be clear that armed military or law enforcement teams are acting on behalf of the flag State”.

34 The observer from BIMCO stated that “there are no global standards and to the best of BIMCO’s knowledge no State or flag State has legislation or policies on the employment of privately contracted armed security personnel. The Committee is about to issue guidance in the full knowledge of this. BIMCO would suggest therefore that given the urgency of addressing this issue, if there is to be any IMO guidance at all, then IMO should direct a Correspondence Group immediately to address the subject of due diligence and the *modus operandi* of such guards (including their rules of engagement, taking into account the requirements of SOLAS). This is essential in order that shipowners, companies and operators have guidance when dealing with flag States. The consequence of not addressing the subject under the banner of the IMO would mean numerous flag States developing legislation and policies on the subject which will naturally differ and present owners and companies with a multitude of different approaches to the subject. This is totally contrary to the ethos of IMO and the industry view that maritime legislation and policies should be global and common in nature”.

General review of MSC/Circ.622/Rev.1, MSC/Circ.623/Rev.3 and resolution A.922(22)

35 In conducting the general review of the changes to MSC/Circ.622/Rev.1 and MSC/Circ.623/Rev.3 as proposed by the Correspondence Group in document MSC 86/18/1, the Group:

- .1 accepted the revision to the definition of “Armed robbery against ships” developed during the Djibouti Meeting;
- .2 replaced the proposed provisions on firearms (MSC 86/18/1, annex A, paragraph 3) with new text as referred to above;
- .3 in referencing the definition of “company” cited SOLAS regulations IX/I and XI-2/1 *vice* the ISM Code;
- .4 aligned the suggested actions to repress piracy (MSC 86/18/1, annex A, paragraph 5b) with the provisions of United Nations Security Council resolution 1851 (2008);

- .5 included a reference to the welfare of crew being taken into account as a factor in encouraging masters to report incidents of piracy and armed robbery (MSC 86/18/1, annex A, paragraph 13); and
- .6 included a reference in the introduction to the revised MSC/Circ.623 to the effect that planning should give consideration to the crew's welfare during and after a period of captivity by pirates or armed robbers. In this regard the Group also agreed to keep provisions on the delivery of "psychological first aid" to crew members by the master, but added text on the need for further counseling by professionals at the earliest opportunity (MSC 86/18/1, annex B, paragraph 74).

36 In conducting the review of the draft Assembly resolution to replace resolution A.922(22) and the proposed amendments to the Code of practice therein proposed by the Correspondence Group in document MSC 86/18/1, the Group noted the intervention of Denmark with respect to revisiting the issue of forming an IMO panel of experts, and took action as follows:

- .1 noting that the 2005 Protocols to the SUA Treaties were not yet in force, agreed to delete references to them from the draft Assembly resolution and Code of practice (MSC 86/18/1, annex C, preamble);
- .2 raised the profile of UNCLOS within the preamble to the draft Assembly resolution (MSC 86/18/1, annex C, preamble);
- .3 deleted references to the panel of experts as instructed by the Committee; (MSC 86/18/1, annex to annex C, paragraphs 3.2a to 3.2c);
- .4 deleted references to "interventions" from the text of the Code of practice; (MSC 86/18/1, annex to annex C, paragraphs 4.1 and 5.4); and
- .5 deleted the proposal of ICC-IMB for a new part B to the Code of practice (MSC 86/18/1, annex D).

37 The Group recommended that the draft revisions to MSC/Circ.622/Rev.1 and MSC/Circ.623/Rev.3 be forwarded to the Committee for approval.

38 The Group recommended that the draft Assembly resolution to replace resolution A.922(22) and the proposed amendments to the Code of practice be forwarded to the Committee for endorsement and forwarded to the Assembly for approval.

The proposals of ICMA

39 The Group considered the proposals in document MSC 86/18/6 and, in particular, the resolution adopted by ICMA at its meeting in Hong Kong, China on 29 October 2008. The Group was generally supportive of the ICMA proposals, noting that some had already been taken into account in the Group's work. In the absence of the observer from ICMA, the Group took note of the document and agreed to recommend that, with respect to operative paragraph 4 of the resolution, the Committee should seek more detailed proposals from ICMA and consider taking further action as appropriate.

Action requested of the Committee

40 The Committee is invited to:

- .1 decide whether to invite suggestions on further measures to protect crewmembers against attack, for consideration by the Committee in any subsequent revisions to the Organization's guidance on piracy and armed robbery against ships (paragraph 12);
- .2 approve the draft circular on Piracy and armed robbery against ships in waters off the coast of Somalia, (paragraph 18 and annex 1);
- .3 approve the inclusion of the modified guidelines on "Surviving as a hostage" in the revision of MSC/Circ.623/Rev.3 (paragraph 20 and annex 2);
- .4 approve the draft revisions to MSC/Circ.622/Rev.1 and MSC/Circ.623/Rev.3;
- .5 endorse the draft revisions to the draft Assembly resolution which is to replace resolution A.922(22); and the proposed amendments to the Code of practice and forward them to the Assembly for approval;
- .6 seek more detailed proposals from ICMA with respect to operative paragraph 4 of the resolution adopted by the ICMA meeting in Hong Kong, China on 29 October 2008, and to consider taking further action as appropriate; and
- .7 approve this report in general.

(The annexes will be issued as document MSC 86/WP.7/Add.1)
