

THIS CIRCULAR LETTER REQUIRES YOU TO VOTE

IHB File S3/8151/CHRIS

**CIRCULAR LETTER 54/2002
18 November 2002**

**14th CHRIS MEETING
Shanghai, China, 15-17 August 2002**

- Ref: 1) IHB Circular Letter 49/2001, dated 18 October 2001
 2) IHB Circular Letter 19/2002, dated 31 May 2002
 3) IHB Circular Letter 51/2002, dated 31 October 2002

Dear Hydrographer,

The final minutes of the 14th CHRIS Meeting held in Shanghai, China on 15-17 August 2002, as well as all documents referred to at this meeting, are available on the CHRIS page of the IHO website¹ (www.iho.shom.fr/general/ecdis/ecdisnew1.html). A list of actions arising from this meeting is at **Annex A**. Circular Letter 51/2002 already reported on the action related to the newly formed Chart Standardization and Paper Chart Working Group (CSPCWG). Member States' attention is drawn to the following remaining actions:

Vice Chair of CHRIS (see Section 2 of the minutes)

The Directing Committee, after consultation with the Chair of CHRIS, has decided not to propose an IHB Director as Vice Chair of CHRIS. As a result, nominations for this position have been requested from CHRIS Members (CHRIS 9/2002 refers²).

Changes to IHO Standards (see Section 3 of the minutes)

At its 13th Meeting (Athens, Greece, September 2001), CHRIS adopted "Principles and a Set of Procedures for making Changes to IHO Standards", to be adhered to by all Chairmen of CHRIS WGs when updating IHO Standards. They are reproduced at **Annex B**. CHRIS, and this is supported by the IHB, is of the opinion that these principles and procedures should be extended to all IHO committees and working groups tasked to develop and maintain standards, in order for the updating of IHO standards to be uniform. It is therefore proposed that these principles and procedures be made a new IHO Technical Resolution (TR A1.20). Member States are requested to provide their views on this

¹ However, digital and/or paper copies of the final minutes will be available on request to the IHB (info@ihb.mc).

² Available from the CHRIS page of the IHO website (www.iho.shom.fr/general/ecdis/ecdisnew1.html).

proposal by completing the **voting paper at Annex C, to be returned to the IHB by 15 January 2003.**

IHO Website (see Section 5 of the Minutes)

In order to improve the availability of information within the IHO, within its Regional Commissions, its subsidiary Committees and Working Groups, and other interested parties, CHRIS considered that the IHO website requires substantive improvements and should be redesigned. A CHRIS Task Group has been formed to provide concrete recommendations for the improvement of the IHO Website. The group is led by New Zealand (Mr. Michael Farrell), with participation by Canada, USA, Estonia, South Africa, New Zealand, China (Hong Kong), Singapore, the Open ECDIS Forum, and the IHB. A preliminary report has already been produced and is available from the CHRIS page of the IHO website (see above). Member States who wish to contribute to this effort are invited to review this document and provide their comments to the Chair (mfarrell@linz.govt.nz), with copy to the IHB (Mr Anthony Pharaoh, pad@ihb.mc), **no later than 15 December 2002.**

CHRIS ad hoc Working Group Results to SPWG (see Section 5 of the minutes)

The CHRIS Meeting discussed the future work program of CHRIS from the perspective of the work of the SPWG and the results of the XVIth IHC. Discussions were focused through the use of three *ad hoc* working groups. The results of these discussions were summarized and communicated to the Chair of the SPWG (CHRIS Letter 8/2002 refers³). A copy of this letter, without its annexes, is provided in **Annex D** for your information.

Status of implementation of ECDIS Regulations (see Section 6 of the minutes)

The Implementation of ECDIS carriage requirements for navigation information is the responsibility of the Flag State; however, Port States may also enforce ECDIS carriage requirements. It is therefore important to collect and maintain a database reflecting the status of the implementation of ECDIS carriage requirements by both Flag and Port States. Member States are requested to provide this information **by 15 February 2003** using the form provided at **Annex E**.

Liability for IHO Standards (see Section 7.2 of the minutes)

Australia provided a thought-provoking paper dealing with the liability of Hydrographic Offices due to adherence to IHO standards. This paper is provided for all concerned as **Annex F**. The IHO Legal Advisory Committee has also been consulted on the matter and any consolidated LAC position on this issue, received at the IHB, will be forwarded to Member States.

Status of Nautical Publications in Digital Form (NP-2). (see Section 7.4 of the minutes)

Mr. Johannes Melles (Germany) has been appointed Chairman of the Standardization of Nautical Publications Working Group (SNPWG) which, based on new terms of reference (see Annex A of CL 49/2001), will work on standardization of nautical publications of type NP-3⁴. CHRIS-14 agreed that it would also be helpful to determine what has been done by Member States in the way of nautical

³ Available from the CHRIS page of the IHO website (www.iho.shom.fr/general/ecdis/ecdisnew1.html).

⁴ For convenience, nautical publications have been categorized as follows:

- a) NP-1 – Printed paper publications.
- b) NP-2 – Digital publications based upon existing paper publications and issued as stand-alone products.
- c) NP-3 – Digital dataset(s) fully compatible with ECDIS that serve the purpose otherwise provided by NP1 or NP2. NP3 would be issued in the form of a compiled database intended primarily to work within an ECDIS.

publications of type NP-2⁴. Member States are therefore requested to provide a current list of nautical publications that are produced in digital form using the questionnaire provided in **Annex G**, which should be returned to the IHB **before 15 January 2003**.

ENC Production Assistance (see Section 11.2.2 of the minutes)

ENC production has progressed but remains far below that necessary for world-wide safety of navigation despite the improvement in and increased availability of ENC production tools. In order to better understand the reasons for the slow production of ENCs and to provide an efficient method of coordinating technical assistance, Member States are requested to provide information on their need for technical assistance or ability to provide technical assistance in the production of ENCs. The questionnaire at **Annex H** is provided for collecting this information. It should be returned to the IHB **before 15 January 2003**.

ECS Standard Development (see Section 17 of the minutes)

Member States' attention is drawn to the on-going development of standards for ECS databases by ISO, and for ECS equipment by RTCM (USA). The current drafts of both standards are on the IHO website⁵. It is IHB intention to be represented at a meeting of the ISO group developing the ECS database standard, which will take place in Genoa, Italy on 5-6 December 2002. While we see this development as a contribution towards more safety in navigation at sea, since the user will have the option of selecting standard quality data if he uses ECS, we will stress that ECDIS with official ENCs is the only system specified by IMO as compliant with Regulation 19 of SOLAS V, further noting that it is the prerogative of national maritime authorities to allow nationally the use of ECS for certain types of ships as a substitute for paper charts, and they have to notify IMO accordingly. Any comments on the above will be welcome.

The 15th CHRIS Meeting has been planned on 10-13 June 2003 at the IHB, Monaco. It will be followed by the 2003 IHO-Industry Days on 16-17 June.

On behalf of the Directing Committee
Yours sincerely,

Rear Admiral Kenneth BARBOR
Director

- Encls: - Annex A Action List from the 14th CHRIS Meeting
 - Annex B Principles and a Set of Procedures for making Changes to IHO Standards
 - Annex C Voting Paper on the proposed IHO Technical Resolution A1.20
 - Annex D CHRIS Letter 8/2002 (*English only*)
 - Annex E Questionnaire on Status of Implementation of ECDIS Regulations
 - Annex F Australian paper on "Potential Liability for IHO Standards" (*English only*)
 - Annex G Questionnaire on Status of Nautical Publications in Digital Format (NP-2)
 - Annex H Questionnaire on Assistance in ENC Production

⁵ Documents CHRIS-14-17A (ECS database) and CHRIS-14-17B (ECS equipment) refer.

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ACTION LIST FROM CHRIS-14

ITEM	SUBJECT	ACTION(S)
2.	CHRIS Vice-Chair	<ul style="list-style-type: none"> • IHB Directing Committee to decide its position on Vice-Chair.
3.	CHRIS-13 Action List	<ul style="list-style-type: none"> • IHB to take appropriate measures for completion of all remaining actions from CHRIS-13.
4.	Compilation Scales for Electronic Chart data bases	<ul style="list-style-type: none"> • Canada to submit the proposal to the US-Canada Hydrographic Commission for investigation and provide a recommendation at a future date.
4.	Enhancement of the use of data at small scales	<ul style="list-style-type: none"> • USA (NIMA) to discuss the matter further with those MS expressing concerns and resubmit an amended proposal. It will then be forwarded, either to CHRIS Members to gain CHRIS support before submission to MS, or directly to MS (USA to indicate desired course of action).
5.	Future Work Programme of CHRIS	<ul style="list-style-type: none"> • TAWG Chair to set up a new sub-group on “Opportunities and Requirements”. • IHB/Chair of CHRIS to provide SPWG with the outcomes of the three ad hoc sub-groups set up at CHRIS-14 on ‘review TOR of CHRIS’, ‘Co-operation with Industry’, and ‘Communication Practices’. • IHB to formalize the setting up of a CHRIS advisory group to provide concrete recommendations on improving the IHO website.
6.	Chart Carriage Regulations and ECDIS	<ul style="list-style-type: none"> • IHB to contact MS to gain information on the status of ECDIS regulations and implementation, and post the information on the IHO Website. • IHB to contact the IMO secretariat to investigate if the IMO would consider to post this kind of information on the IMO website.
7.1	TSMAD Work Items	<ul style="list-style-type: none"> • CHRIS Members to send their comments on TSMAD Work Items to the Chair of TSMAD (Chris.Drinkwater@ukho.gov.uk) or Edition 4.0 Sub-WG Chair (VachonD@dfo-mpo.gc.ca).
7.2	Revision of the IMO PS for ECDIS	<ul style="list-style-type: none"> • IHB to finalize the ‘C&SMWG Letter to IMO’ on amending the IMO Performance Standards for ECDIS, as in CHRIS-14-7.2B, and to send it to the IMO/MSC Sub-Committee on Navigation (NAV).
7.2	Funding of C&SMWG Work	<ul style="list-style-type: none"> • C&SMWG Chair to provide the IHB with more specifics to support funding request. • IHB to consider whether the C&SMWG request for funding can be accommodated within the IHB consultancy budget.
7.2	Liability for IHO Standards	<ul style="list-style-type: none"> • IHB to send Australia’s paper (CHRIS-14-7.2E) and position of LAC to MS by CL, for information and consideration.

ITEM	SUBJECT	ACTION(S)
7.3	Print on Demand & E-commerce	<ul style="list-style-type: none"> • TAWG Chair to arrange posting published papers on POD and E-commerce, on the TAWG area of the OEF. • TAWG POD interest group to investigate the possibility of setting IHO Standards on POD printing process and digital formats for exchange of POD files. • TAWG e-com interest group to investigate the possibility of setting IHO Standards on E-Commerce.
7.4	SNPWG	<ul style="list-style-type: none"> • IHB to poll MS on the status on the production of NP-2 digital publications. • IHB to provide Germany (J. Melles) with SNPWG Membership. • New Chair of SNPWG to initiate WG work according to agreed TOR.
7.5	CSPCWG	<ul style="list-style-type: none"> • IHB to conduct by correspondence the election of a CSPCWG Chair and Vice-Chair. • New Chair of CSPCWG to initiate work of WG according to TOR. • IHB to advise MS on the minor change made to CHRIS TOR, as a result of CSC becoming a CHRIS WG.
8.	IHO Security Scheme	<ul style="list-style-type: none"> • IHB to seek MS' endorsement for the adoption of the Primar Security Scheme as Version 1 of the IHO RSS and the transfer of SA role to the IHB. • Primar-Stavanger to prepare and accompany the taking over by IHB as Scheme Administrator for Version 1 of the IHO Security Scheme, including training of IHB staff. • TAWG/DPSAG to monitor the development of Version 2 of the IHO Security Scheme, subject to MS' approval.
9.	Liaison with Industry	<ul style="list-style-type: none"> • IHB to monitor/follow the formation of an 'IHO-Industry Forum' and a 'Shipping Industry Group'.
9.	SENC Delivery	<ul style="list-style-type: none"> • IHB to put information about SENC delivery, and other matters affecting safety of navigation (e.g. SOLAS V), on the IHO website.
11.2.1	WEND Study (ENC Coverage)	<ul style="list-style-type: none"> • UKHO to consider completing the graphical part of the WEND Study carried out by Portugal, by combining information about ENC availability with route graphics from the material available. • If successful, IHB to then put the results on the IHO website. Provision to be made for the graphical presentations of ENC coverage on the IHO website, to be kept up to date from MS' inputs.
11.2.2	Assistance in ENC Production	<ul style="list-style-type: none"> • IHB to gather from MS information regarding those HOs 1) needing assistance in ENC production, and 2) willing to provide assistance. • All CHRIS Members to take note of the Guide on ENC Production which is available from the SHARED website (www.ecdisnow.org). • IHB to put the SHARED ENC Guide on the IHO website. • IHB to notify MS of the availability of the SHARED ENC Guide, and to provide the manual in paper copy on request.

ITEM	SUBJECT	ACTION(S)
16.1	IHO-ISO Cooperative Agreement	<ul style="list-style-type: none"> • <i>IHB to submit the draft IHO-ISO cooperative agreement, as in CHRIS-14-16.1A, to ISO/TC211 for consideration and comments.</i> • <i>IHB to then circulate the draft CA to IHO MS for comments/approval.</i> • <i>IHB to send the CA to the ISO Secretariat when it has been approved by IHO MS.</i>
17	ECS Standards	<ul style="list-style-type: none"> • <i>IHB to draw MS' attention to the ECS standard developments, in particular the ECS data standard and its possible impact on the status of ENC/ECDIS.</i>

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**PRINCIPLES AND A SET OF PROCEDURES
FOR MAKING CHANGES TO IHO STANDARDS**

(as approved by the 13th CHRIS Meeting, Athens, Greece, September 2001)

Principles

Improvements to standards and systems only come about by change, however, changes can cause incompatibility between systems, high updating costs and dissatisfied users. These principles have been drafted to try and avoid this.

- A. Any proposed changes to existing standards need to be technically and commercially assessed before approval.
- B. Assessment should involve all parties including IHO, manufacturers, distributors and users.
- C. Changes to standards should not affect the existing user base where possible and therefore should be "backwards compatible", or the existing version must be supported for a specified time.
- D. If changes are required on the basis of safety of navigation rather than product enhancement, then the previously approved system must be allowed to continue to be used at sea for a defined period, to allow due time for the changes to be implemented on board.
- E. On a case by case basis the lead in time for the change should be defined, unless already defined by a change at IMO.
- F. In exceptional cases, it may be necessary to apply changes retrospectively to all equipment at sea as soon as possible.
- G. All interested parties should be encouraged to "continuously improve" IHO standards. All rejected proposals should therefore have a proper explanation.

Procedures

These procedures are recommended to ensure that any proposed changes are properly assessed and implemented. The procedures should be simple to encourage their use.

1. All parties may submit a "change proposal" to IHB for logging and processing.
2. The "change proposal" must contain a justification for the change, a recommended action list and a proposed time frame for implementation.
3. The IHB forwards the "change proposal" to the relevant IHO committee for evaluation and decision on the next stage.
4. The relevant committee will then either reject or accept the proposal. If rejected it should be returned to the originator with the reasons.
5. If accepted, the committee will involve all the relevant bodies in assessing the proposal and planning any subsequent work.

6. The bodies should include representation from manufacturers, distributors and users via their relevant points of contact such as CIRM, IALA and ICS.
7. Based on this evaluation it should be decided by the committee if the proposal should be recommended for approval or held until a later date (if the change is minor and could be introduced with other changes) or rejected.
8. If approved and after any subsequent work is complete, a "change note" should be drafted showing a summary of the finally agreed changes, documents affected, a recommended action list and the timetable for implementation.

Note: The recommended action list defines the appropriate action for the change and should be developed as a standard list from which the action is chosen. These could be:

- a) retrospectively to all ECDIS at sea;
- b) to all ECDIS at sea at the next service;
- c) to all ECDIS delivered from this date;
- d) to all ECDIS delivered from a date in the future;
- e) to all ENC/SENC delivered after a date in the future..... and so on.

Further work: This process should be flow-charted and standard forms drafted for the "change proposal" and "change note" showing the decisions at each stage.

VOTING PAPER

*(to be returned to the IHB by 15 January 2003
E-mail: info@ihb.mc - Fax: +377 93 10 81 40)*

**PRINCIPLES AND A SET OF PROCEDURES
FOR MAKING CHANGES TO IHO STANDARDS**

Member State:

Do you agree that the 'Principles and a Set of Procedures for making Changes to IHO Standards', as contained in Annex B to IHB CL 54/2002, be made a new IHO Technical Resolution (TR A1.20)?

YES

NO

Comments :
.....
.....
.....

Name/Signature

Date:

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IHB File No. S3/8151/CHRIS

6 September 2002

CHRIS Letter No. 8/2002

To: Chairman of the IHO Strategic Planning Working Group (SPWG)
(Mr Frode Klepsvik, Norway)

Subject: Input to SPWG from CHRIS

Dear Sir,

I am writing to you in your capacity as Chairman of the IHO Strategic Planning Working Group. CHRIS at its 14th meeting in Shanghai, 15-17 August 2002, had on its agenda a discussion on the future work programme of CHRIS. The discussion took place in the light of the work of the SPWG, based on the discussions at the XVIth IHC.

The discussion focused on how the work of CHRIS and CHRIS WGs could be improved. All participants in the 14th CHRIS meeting supported the following conclusions from the discussions:

1. The meeting supports the draft vision/objective from SPWG i.e. "*create the global environment in which all States gather and exchange high quality hydrographic and oceanographic data and information and so ensure the widest possible use particularly for marine navigation and marine environment protection.*"
2. The meeting agreed that:
 - a. In order to support the vision/objective above, *all IHO Technical* issues should come under *a single Committee*;
 - b. In order to increase the efficiency of the decision processes in the IHO, the new Committee should be empowered to make appropriate decisions.
3. The meeting discussed the cooperation with industry and believes that:
 - a. co-operation with industry at the technical level should be better; and
 - b. formal recognition of industry organizations, in some way, would be of assistance.
4. Finally the meeting discussed the current communication practices from CHRIS and its working groups to Member States, other IHO bodies and Industry. The meeting agreed:
 - a. that the communication practices need to be improved, primarily by means of the IHO website;

- b. to establish a small task group to provide assistance to the IHB in improving the IHO website as the primary means of communication from CHRIS and CHRIS WG.

Pleased find enclosed for your information three small reports, which are the basis for the conclusions referred to in 1 to 4 above.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ole Berg', with a long, sweeping tail on the 'g'.

Ole Berg
Chairman of CHRIS

Enclosures: 3 annexes

Copy to CHRIS Members

QUESTIONNAIRE

*(to be returned to the IHB by 15 February 2003
E-mail: info@ihb.mc - Fax: +377 93 10 81 40)*

STATUS OF IMPLEMENTATION OF ECDIS REGULATIONS

Member State:

You are kindly requested to describe the current status of the implementation of ECDIS carriage requirements, as regulated in Chapter V of the SOLAS Convention, in your country:

➤ As Flag State?

.....
.....
.....
.....

➤ As Port State ?

.....
.....
.....
.....

Comments :

.....
.....

Name/Signature

Date:

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POTENTIAL LIABILITY FOR IHO STANDARDS

Comment by Australia
(also Doc. CHRIS-14-7.2E)

Introduction

1. CHRIS paper 14/7/2D alerts Member States to a potential for exposure to legal liability for any shortcomings in the standards and technical regulations published by the IHO. The IHB has subsequently asked the IHO Legal Advisory Committee (LAC) to consider the legal status of the IHO in relation to such exposure.

2. On receipt of CHRIS paper 14/7/2D Australia sought urgent advice from the Australian Government Solicitor (AGS) on the matters raised in the paper. A preliminary Advice has now been received from the AGS and is included as an Appendix to this paper. This AGS Advice will also form Australia's contribution to the LAC. The Advice, which is supported by references and identifies legal precedents clearly provides the opinion that neither the IHO nor its Member States are exposed to any significant risk.

3. As a result of the Advice from AGS, Australia is therefore of the view that unless other members of the LAC advance a contrary opinion, then further consideration or advice by the LAC is unnecessary. Similarly, no particular action seems required of the CHRIS, any Member State, the IHO or the IHB.

Action Required by the Committee:

4. Australia recommends that the CHRIS:
 - a. **take note** of the Advice from the Australian Government Solicitor.

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Appendix to Annex F

Canberra Office Litigation

50 Blackall Street, Barton ACT 2600 • Telephone (02) 6253 7000 • DX5678 • www.ags.gov.au
OFFICES IN CANBERRA, SYDNEY, MELBOURNE, BRISBANE, PERTH, ADELAIDE,
HOBART, DARWIN

Our ref: 02081642

5 August 2002

Commander Robert Ward
The Hydrographer RAN
Australian Hydrographic Office
Locked Bag 8801
South Coast Mail Centre NSW 2521

Dear Commander Ward

IHO Liability-Standards

1. We thank you for your email of 31 July 2002 in which you have requested an overview of the general principles and conclusions contained in a paper prepared by Rear Admiral Guy headed 'The Liability of International Organizations for their Standards'.

2. In essence, Admiral Guy has provided comment upon the liability that might arise to the International Hydrographic Organization (IHO) or its Member States by reason of a third party suffering loss or damage which is in some way attributable to standards established by the IHO.

3. In essence, we consider it unlikely that the IHO could be sued as a result of an error in a standard as:

- (a) although the IHO has a separate legal identity within the jurisdiction of Member States, the IHO will likely be immune from such a claim as a result of Article XIII of the Convention;
- (b) the IHO may not be considered a separate legal entity able to be sued in Non-member States;
- (c) even if the IHO could be sued under national law on the basis of negligence, it is unlikely such a claim would be successful;
- (d) the IHO may not be considered an "international organization" subject to a claim at international law outside Member States;
- (e) if the IHO were considered to be an "international organization", it is likely that:
 - (i) no international tribunal would have jurisdiction to decide upon such a claim against the IHO;
 - (ii) the party which suffered a loss would not have standing in an international tribunal;

- (iii) the IHO would not be considered to have breached its international responsibility; and
- (f) Member States will not be liable for the activities of the IHO.

CAN IHO BE SUED?

4. Whether an action for damages arises from a party's reliance upon a standard published by the IHO requires the consideration of three issues, namely, whether the IHO has a legal personality and is capable of being sued, whether the IHO is immune from such a claim and thirdly, whether a cause of action could arise from the publication of a standard. We consider each of those questions below.

Legal personality

5. The IHO is established by the Convention on the International Hydrographic Organization (the Convention). Article XIII of the Convention provides that:

The organization shall have a juridical personality. In the territory of each of its Members it shall enjoy, subject to agreement with the Member Government concerned, such privileges and immunities as may be necessary for the exercise of its functions and the fulfilment of its object.

6. That object is set in very broad terms in Article II. Accordingly each Member State is obliged to ensure that, in its jurisdiction, the IHO is provided with a 'legal' personality and provided with immunities. Therefore, subject to the immunities provided, the IHO will generally be entitled to sue and be sued in the jurisdiction of a Member State.

7. In Non-member States, as the question of legal personality will be determined by national law, it is perhaps doubtful that the IHO will be recognised as having such an identity. That is because it is unlikely that the domestic law of such States would have addressed the legal status of organizations with which they have no connection.

8. At international law it is likely that the IHO would be regarded as an 'international organization' and so endowed with legal rights and obligations at international law. That is, it is generally agreed that for an entity to qualify as an 'international organization' it must have the following characteristics:

- (a) its membership must be composed of States and/or other international organizations;
- (b) it must be established by a treaty;
- (c) it must have an autonomous will distinct from that of its members and be vested with legal personality; and
- (d) it must be capable of adopting norms addressed to its members.¹

9. The IHO is established by a treaty, has a membership composed of States and is vested with legal personality pursuant to Article XIII. It is comprised of the Conference of Members and the Bureau, appears to have an autonomous will, and is capable of adopting norms addressed to its members.

10. Accordingly, it may be that the IHO would be considered to be:

- (a) a separate legal entity capable of being sued in a Non-member State; and

¹ Philippe Sands and Pierre Kleins, *Bowett's Law of International Institutions* (2001), p. 16

(b) an international organization ‘subject to international law rights and obligations’.

National law

11. In States with a dualist system such as Australia, privileges and immunities in relation to the national law will not necessarily be granted to the IHO unless a specific law is enacted by the Member State to that effect.

12. In Australia, the IHO’s privileges and immunities are set out in the *International Hydrographic Organization (Privileges and Immunities) Regulations 1997* (the Regulations), enacted in accordance with the *International Organizations (Privileges and Immunities) Act 1963* (the Act). The consequence of those legislative instruments is that the IHO is declared to be body corporate with perpetual succession capable of suing and being sued (Regulation 4) and is immune ‘from suit and other legal process’ (Section 6 and the First Schedule of the Act). That immunity is subject to various exemptions and may be waived by the IHO but, subject to any waiver, would provide the IHO with an immunity from a suit commenced to recover damages in the scenario outlined above.

13. Immunity from suit extends to members of the Directing Committee as is accorded to diplomatic agents (Regulation 7 and the Second Schedule of the Act) and officials of the IHO in respect of any act or thing done in the course of their duties (Regulation 8 and Schedule Four of the Act).

14. We expect that such legislation has been adopted in most, if not all, Member States. In any event, in States in which international obligations are immediately incorporated into the national law of that State (monist states), upon the State ratifying the Convention, the IHO will have accordingly been provided with “such privileges and immunities as may be necessary for the exercise of its functions and the fulfilment of its object have immunities”. That is, it is arguable that, in order for the IHO to exercise its objects and functions which include the creation of international standards based upon the practice of national hydrographic organizations and international practice, it should be granted immunity from any suit arising from the creation and publication of those standards. Therefore, even without the introduction of a specific law in the Member State, the IHO may have an immunity of suit in relation to the scenario being considered.

15. In Non-member States, it is perhaps unlikely that any such immunity would be provided.

International law

16. As set out above, we consider that the IHO would be regarded as an international organization subject to rights and obligations imposed by international law and subject to the rules of international law, including conventional and customary rules. The International Court of Justice (ICJ) in an advisory opinion stated:

‘international organizations are subjects of international law and, as such, are bound by obligations encumbered upon them under general rules of international law, under their constitutions or other international agreements to which they are parties’²

17. International organizations are therefore subject to rules of customary international law and general principles of law recognised by civilised nations³ which include the principle of international responsibility.

² *Advisory Opinion on the Interpretation of the Agreement of March 25, 1951 between WHO and Egypt*, 1980 ICJ Reps, p.73 at 89-90.

³ Sands and Kleins, *Bowett’s Law of International Institutions* (2001), p.459

18. In Australia, an action could not be commenced which solely relied upon a breach of international law. However, if it was possible to bring a claim in a domestic court that sought to rely solely on a breach of international law as suggested above, no such immunity would appear to be available to Non-member States.

19. The only other apparently available jurisdiction in which a claim could be brought against the IHO is in an international tribunal. However, even if there was an international tribunal in which proceedings could be commenced, it appears unlikely that any party that wished to make a claim against the IHO would have standing in such a tribunal and be able to commence proceedings.

Cause of action

20. Obviously, if the IHO is immune from suit as a result of the matters set out above, the question of whether a cause of action may arise against the IHO is irrelevant. However, if the IHO is able to be sued in a particular jurisdiction, a cause of action may arise in accordance with national or international law. We consider each of these areas below.

National law

21. A claim in accordance with national law would generally arise either under a principle akin to negligence or in accordance with an enactment of the State. The most likely claim would appear to arise on the basis of negligence and a breach by the IHO of a duty of care it owed to the party bringing the claim. Such a claim would generally involve consideration of issues such as:

- (a) the causal link between the alleged breach of duty and the damage suffered;
- (b) the degree to which the IHO consulted and relied upon national hydrographic organizations and international practice in preparing the standards;
- (c) the foreseeability of the damage;
- (d) the extent and reasonableness of the parties reliance on the standard;
- (e) the extent to which the party's own negligence contributed to the loss, etc.

22. However, realistically, in light of the role of the IHO and the manner in which standards are created, we consider the possibility of such a claim being successful to be remote, even if it could be commenced, which itself appears unlikely.

23. That is, in circumstances where the standards are:

- (a) based upon information provided by national hydrographic offices and international practice;
- (b) prepared in consultation with those offices; and
- (c) published and made available to third parties on that basis;

it appears unlikely that negligence could be established against the IHO or that absolute and blind reliance on the standard would be considered to be reasonable.

24. Finally, even if such an action could be brought and was successful, unless the IHO had assets within the jurisdiction of the Non-member State in which the proceeding was commenced, depending upon any reciprocal relationship that State may have with another Non-member State in which the IHO does hold assets, it is unlikely any judgement could be executed.

International law

25. If the IHO was considered to be an international organization subject to international law rights and obligations, and a jurisdiction was available in which it could be sued on that basis, a claim could arguably be commenced on the basis of a breach of international responsibility.

26. That is, a claim which might be regarded as one in negligence is, broadly speaking, available under the general principles of international responsibility, which effectively embodies the principle of State responsibility as it applies to international organizations. Once an international organization subject to international law is found to have breached its international responsibility, reparation must generally be made for the loss caused.

27. The emphasis in international law is upon a wrongful act committed in conflict with international responsibility. In general, issues which will be considered in the assessment of whether a tort has been committed in accordance with Australian law such as causation, negligence, remoteness of damage, etc. are issues which are often considered at international law where international responsibility is at issue.

28. In relation to standards prepared by the IHO, we consider it unlikely that an error in the standard or the process by which the standard was prepared would likely constitute a breach of international responsibility. A breach of international responsibility would normally be confined to the consideration of obligations with an international flavour imposed under a treaty or some other international principle. The potential breach of duty considered in this scenario is more appropriately categorised as one for consideration at a national level.

29. However, even if the scenario does involve a consideration of the IHO's compliance with its international responsibility, as set out in relation to a claim at a national level, it appears remote that any breach of that responsibility would be established. That is, in circumstances where the standards are:

- (a) based upon information provided by national hydrographic offices and international practice;
- (b) prepared in consultation with those offices; and
- (c) published and made available to third parties on that basis;

it is unlikely that negligence could be established against the IHO or that absolute reliance on the standard was reasonable. Accordingly, a claim for reparation at international law would not be likely to be successful.

CAN MEMBER GOVERNMENTS BE SUED IN RELATION TO THE ACTIVITIES OF THE IHO

30. The final issue to consider is whether, in circumstances where it is alleged that a breach of the IHO of a duty has caused damage to a third party, the third party may commence proceedings against a Member State.

31. The first principle relevant to this question is the principle of customary international law that States are immune from the jurisdiction of other States. In Australia, that principle is embodied in the *Foreign States Immunities Act* 1985 which provides that a State shall be immune from suit, absent a submission to the jurisdiction, for damages arising from personal injury unless the injury arose from an action or omission occurring within Australia.

32. Accordingly, we consider it unlikely that any claim could be commenced at national law against a foreign Member State in relation to an activity of the IHO, regardless of whether the IHO was recognised as a legal entity in that jurisdiction.

33. If an immunity is not available, in national jurisdictions where the IHO is a recognised separate legal identity, the IHO will be the appropriate body to be sued. The same applies in the international arena as the IHO is likely to be categorised as an international organization.

34. The issue was considered in relation to the International Tin Council (ITC) by the English Court of Appeal⁴ which found that:

- (a) the constituent instrument establishing the ITC showed no intention of creating a principal/agent relationship;
- (b) there was no real opportunity of any one State to control the activities of the ITC;
- (c) the absence of a no liability clause in the constituent instrument did not result in direct liability to creditors of the ITC and there was no contrary international principle of that nature; and
- (d) as the Parliament had endowed the ITC with the legal capacities of a body corporate it was the appropriate body to sue.

35. The House of Lords also considered a claim against the Members of the ITC and found that the ITC:

was invested with a legal personality distinct from its members, with the consequence that, when it entered into engagements, it and not the members was the contracting party.⁵

36. These principles equally apply to the IHO and so we consider it unlikely that Member States could be sued for a loss suffered by a party as a result of reliance upon an IHO standard.

37. This advice has been settled by Mr Henry Burmester QC and Mr Ken Pogson. Please contact myself or Mr Pogson if you wish to discuss this matter further.

Yours sincerely

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Australian Government Solicitor

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⁴ *Maclaine Watson & co Ltd v International Tin Council (No2)* 80 ILR 110

⁵ *JH Rayner v Department of Trade* (1989) 81 ILR 704 per Lord Aylmerton

QUESTIONNAIRE

(to be returned to the IHB by 15 January 2003
E-mail: info@ihb.mc - Fax: +377 93 10 81 40)

STATUS OF DIGITAL NAUTICAL PUBLICATIONS (NP-2)

Produced by IHO Member States

Member State:

You are kindly requested to indicate in the table below whether nautical publications of type NP-2, i.e. digital publications based upon existing paper publications and issued as stand-alone products, have been produced/published by your Hydrographic Office:

Publication	Produced as NP-2 (Y/N)	Status:	Date	Code/Number
		<ul style="list-style-type: none"> • Published • Under Preparation • Planned 		
Distance Tables				
List of Buoys and Beacons				
List of Lights				
List of Radio Signals				
List of Symbols, Abbreviations and Terms used on Charts				
Mariners' Handbook				
Notices to Mariners				
Routeing Guide				
Sailing Directions				
Tidal Stream Atlas				
Tide Tables				
Other:				

Comments :

.....

Name/Signature

Date :

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QUESTIONNAIRE

*(to be returned to the IHB by 15 January 2003
E-mail: info@ihb.mc - Fax: +377 93 10 81 40)*

ASSISTANCE IN ENC PRODUCTION

Member State:

1. Do you need technical assistance in the production of ENCs?

YES NO

1.1 If yes, would you be interested in receiving assistance on the matter from other IHO Member State(s)?

YES NO

Comments :
.....
.....

2. Would you be prepared to provide technical assistance to other IHO Member State(s) in the production of ENCs?

YES NO

Comments :
.....
.....

Name/Signature

Date :

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