

14th CHRIS Meeting, Shanghai, China, 15-17 August 2002

**THE LIABILITY OF INTERNATIONAL ORGANIZATIONS
FOR THEIR STANDARDS**

(Neil Guy, IHB <dir1@ihb.mc>)

There are three areas of law to be considered:

1 TYPES of LAW APPLICABLE

National law
International Treaty law
International Customary law.

a National law

This will obviously vary from State to State but unless specific laws are breached within the jurisdiction of a State then it is unlikely that an organization could be held liable for any action or failure to act. There could however be a liability established in 'delict' or 'tort' if five major criteria are met.

b International Treaty law

If a State is party to a treaty then the rights and obligations contained in the treaty apply and actions related to them could be ruled upon by an international tribunal. These requirements could be a consideration by a national court as well.

c International Customary law

This is subjective and is determined by what is international considered and accepted as being the practice of States generally. Customary law could also be a consideration by a national court as well.

2 LIABILITY of MEMBER STATES

If the organization has a 'legal personality' then States Party to the treaty forming such an organization would have immunity from the consequences of the actions of the international organization to which they belong. If the organization does not have a 'legal personality' then the Member States could and probably would have liability for the actions of the organization. The liability would of course be to third States that have suffered loss or damage as a result of the actions or lack of action by an international organization.

3 RESPONSIBILITY for STANDARDS

Where an international organization has published standards it can be generally accepted that these standards are minimum standards and that there is in any event a *duty of care* by a party using a standard to ensure that their product is as safe as possible.

4 IHO, the PRESENTATION LIBRARY and OTHER STANDARDS

- a It must be noted that the IHO is only an advisory inter-governmental organization. It's standards and resolutions can therefore also only be advisory.
- b Standards are also generally accepted as minimum standards and there is always the '*duty of care*' of the user of a standard to be considered.

5. POSSIBLE FURTHER ACTION by the IHO

- a Confirm that the IHO is a 'legal personality' which, in accordance with the Convention, would appear to be so.
 - b Ensure that all written and digital introductions to IHO standards reflect the purpose of the standard and the role of the IHO in such a standard, especially if a regulatory organization, such as the IMO, refers to the standard.
 - c Ensure that changes and updates to standards are undertaken in an internationally and legally acceptable manner and that there is no ambiguity as to the status of previous and new standards and updates.
-