

IMO



INTERNATIONAL MARITIME LAW INSTITUTE

INTERNATIONAL MARITIME SEARCH AND RESCUE

ACT 2007

DRAFT LEGISLATION PROJECT

BY

CAPTAIN MARITIME ZULKIFILI BIN ABU BAKAR

MALAYSIA

(SUPERVISOR - MR NORMAN MARTINEZ)

Submitted in Partial Fulfillment of the Requirements for the Award of the Degree of Masters of Laws in International Maritime Law (LLM) at the IMO, International Maritime Law Institute (MALTA)

CONTENTS

<u>TITLE</u>	<u>PAGE</u>
Contents	i
Acknowledgements	ii
Explanatory Notes	
- Introduction	1
- Aim	1
- Historical Background	2
- The Maritime SAR Organization of MMEA	2
- Malaysian Legal System	3
- Legislation Drafting Process	5
- Brief Explanation of the Provisions of the International Convention on Maritime SAR, 1979	6
- Why This Convention is Important to Malaysia	7
- Incorporation of the Convention into Domestic Legislation	
Primary v Subordinate legislation	8
General Principles	9
Text of the Convention	9
Language	10
Reservation	10
- Consequential Amendments to Other Statutes	10
- Costs to the Government	10
 The Maritime SAR Act 2007	 11 - 30
 <u>Annexes</u>	
1 - The MMMEA Act 2004	
2 - The List of IMO Related International Conventions that Malaysia has Ratified	
3 - The Area of Operations of the Malaysian Maritime SAR Region	

4 - The International Convention on Maritime SAR 1979

ACKNOWLEDGEMENTS

I wish to convey my sincere and grateful thanks to all lecturers, staffs and friends at IMLI for the continuous support and assistance that was given to me in the course of preparing this Draft Legislation Project. My special thanks go to Mr. Norman Martinez for guiding me through the successful completion of this Draft Legislation Project. Finally, my affectionate and particular thanks to my wife for her support and all her sacrifices that have enabled me to undergo this LLM course in Malta away from home and family.

EXPLANATORY NOTES

INTRODUCTION

In Malaysia, the task of performing Maritime Search and Rescue (SAR) function for any incident that happens in the area designated as Maritime SAR Region is entrusted to the Malaysian Maritime Enforcement Agency (MMEA), the equivalent to the nation's Coast Guard. This is statutorily provided in the MMEA Act 2004, where Section 6 (1) (b) states that 'the functions of the Agency shall be to perform Maritime SAR'. A copy of the MMEA Act 2004 is enclosed as Annex 1.

Besides the statutory provision, the maritime responsibility also arises from the Malaysian Government's ratification of the International Convention of Safety of Life at Sea 1974/78 and the Law of the Sea Convention 1982. What is lacking for the nation is the fact that we have not ratified the International Convention on Maritime SAR 1979.

To date, Malaysia has ratified 15 International Maritime Organization related Conventions. They are listed in Annex 2. The ratification of the International Maritime SAR Convention, 1979 would further elevate Malaysia on to the international plane in the area of Maritime SAR.

AIM

The aim of this paper is to :

- (1) propose to the Government of Malaysia to ratify the International Convention on Maritime SAR, 1979.
- (2) Propose a draft Bill incorporating the provisions of the International Maritime SAR Convention, 1979.

HISTORICAL BACKGROUND

The ratification of the International Convention on Maritime SAR, 1979 would augur well for Malaysia and the incorporation of the Maritime SAR Act 2006 would indeed be timely and coincide with the inception of Maritime SAR duties to the MMEA.

It is to be noted, however, that originally, the function of Maritime SAR was undertaken by the Marine Department of Malaysia since MMEA had only been formed as from 1st November 2005. The function was officially handed over to MMEA only on 1st July 2006 and thus, the role undertaken by the Agency is still at an infant stage.

As a new organization, the Agency is aggressively sending its personnel for courses to acquire the required knowledge in Maritime SAR. From time to time, the Agency also conducts training and exercises for its men to meet the challenges in this new function. There is also a need to procure SAR related equipment to ensure the Agency can perform its duties effectively.

THE MARITIME SAR ORGANIZATION OF MMEA

The MMEA Maritime SAR organization is an on-call emergency organization responsible for the initiation and coordination of all civilian maritime SAR within the Malaysian Maritime SAR Region. This includes mobilization, organization and tasking of adequate resources to respond to individuals either in distress at sea, or suffers risk of injury or death at sea. The 17 MMEA bases throughout Malaysia form a network of command and control centres coordinated by the Headquarters in Putrajaya called the Maritime Rescue Coordination Centre (MRCC) for responding to reports of maritime or coastal distress. MRCC watch keeping staff provides a 24/7, round the clock service to mariners in receiving incoming distress calls, alerting the appropriate rescue assets and coordinating the rescue effort.

The Area of Operations of the Malaysian Maritime SAR Region is attached as Annex 3.

As the primary objective of Maritime SAR is to save lives at sea, and therefore time is of utmost importance, MMEA endeavours to make the best use of available assets and resources both within MMEA's control as well as those of other maritime agencies. Some of the facilities that can be called upon to participate include:

- a. Vessels in the vicinity of the casualty;
- b. MMEA vessels;
- c. Such non-declared aircraft and ships as the Ministry of Defense may be able to make available;
- d. Vessels under the control of various port authorities;
- e. Vessels from the Customs Department;
- f. Vessels from the Marine Police;
- g. Vessels from the Fisheries Department;
- h. Vessels from the Navy;
- i. Helicopters and other facilities made available by offshore oil operators;
- j. Foreign SAR units;
- k. Police, Fire and Ambulance services ashore.

MALAYSIAN LEGAL SYSTEM

The supreme law in Malaysia is the Federal Constitution. In the Federal Constitution, it is provided that, with certain exceptions such as to land, the Islamic religion, forestry, local governments, State works and waters, machinery of State governments and State holidays, the Federation has full competence to regulate all maritime matters¹. Essentially, this means that the Federal Government shall have the powers to promulgate law affecting maritime matters including Maritime SAR.

Malaysia has no national maritime policy. There are, however, quite a number of maritime legislations which came about through several Ministries charged with responsibilities to handle maritime affairs. Each of the Ministries concerned has

¹ Article 74 of the Federal Constitution.

promulgated its own individual legislation together with the necessary subsidiary legislation, which include rules and regulations for the successful implementation of that particular Ministry's objectives. Some examples are given below:

- a. The Ministry of Agriculture – The Fisheries Act 1985;
- b. The Ministry of Science, Technology and Environment – The Environmental Quality Act 1974;
- c. The Prime Minister's Department – The Exclusive Economic Zone Act 1984, The Continental shelf Act 1966, The Malaysian Maritime Enforcement Act 2004;
- d. The Transport Ministry – The Merchant Shipping Ordinance 1952;
- e. The Finance Ministry – The Customs Act 1967.

With regard to the status of international conventions, it is not self-executing, that is to say it is not competent on its own to confer rights or duties within the law of any part of Malaysia. This resembles the English Legal System and the application of the principle of dualism. As Lord Oliver of Aylmerton said in *Maclaine Watson & Co Ltd v Department of Trade and Industry, Maclaine Watson & Co Ltd v International Tin Council*² "... As a matter of the constitutional law of the United Kingdom, the royal prerogative, whilst it embraces the making of treaties, does not extend to altering the law or conferring rights on individuals or depriving individuals of rights which they enjoy in domestic law without the intervention of Parliament. Treaties, as it is sometimes expressed, are not self-executing. Quite simply, a treaty is not part of English law unless and until it has been incorporated into the law by legislation. So far as individuals are concerned, it is *res inter alios acta* from which they cannot derive rights and by which they cannot be deprived of rights or subjected to obligations; and it is outside the purview of the court not only because it is made in the conduct of foreign relations, which are a prerogative of the Crown, but also because, as a source of rights and obligations, it is relevant." Upon ratification of a particular international convention, therefore, there is a need for

² (1990) 2 A.C. 418, 500, HL

Parliament to enact a statute incorporating the provisions of the convention before it becomes law and binding on Malaysian citizens.

LEGISLATION DRAFTING PROCESS

Before we examine how a Bill would eventually become an Act, let us begin by looking at the process of concluding a treaty or convention. The duties to conclude and ratify an international convention is under the portfolio of the Minister of Foreign Affairs. The Ministry of Foreign Affairs is thus the Ministry that receives first hand information on any international convention. The Minister, however, before concluding or ratifying a convention, must get the approval of the Cabinet. This is done firstly by circulating copies of the convention together with a paper explaining the background and pertinent information on the convention to the relevant government ministries. After getting feedback and comments from the relevant ministries, a paper will be presented by the Minister of Foreign Affairs to the Cabinet. The Cabinet, which is composed of all government-appointed Ministers and is presided by the Prime Minister, will then endorse or reject the convention.

Once Malaysia has ratified an international convention, the Ministry of Foreign Affairs would call for a meeting and identify the relevant Agency that would be responsible in implementing the provisions of the Convention. In the instant case, since MMEA is the Agency responsible for the performance of Maritime SAR functions in the country, it would be incumbent upon MMEA then to sponsor the Maritime SAR Bill to be tabled for approval by Parliament.

The process begins by MMEA preparing the draft Maritime SAR Bill and later table it for discussion among the respective maritime agencies. Representatives from the relevant maritime agencies concerned would include not only the operators but also their legal officers. After a few rounds of meeting, the draft would be finalized and submitted to the Drafting Division of the “Attorney General’s chambers. There the legal drafters would ensure that nothing in the proposed Bill will run contrary to any other Act

currently or will come into force in Malaysia. The drafters would also scrutinize the legal wording of the Act so as to be consistent with the wordings of other Malaysian statutes. For example, Section 2 of the Act will contain all the definitions that are required for the proper interpretation of the Act.

As soon as the drafters have finalized their work, the proposed Bill would be ready to be tabled in Parliament.

BRIEF EXPLANATION OF THE PROVISIONS OF THE INTERNATIONAL MARITIME SAR CONVENTION, 1979

The International Convention on Maritime SAR was adopted by an international conference held in Hamburg, Germany, in April 1979. The Convention entered into force in 1985. The aim of the Convention is to develop an international SAR plan, so that if an incident happens at sea that warrants a SAR operation, that SAR will be conducted by a competent SAR organization and when necessary under an international framework involving neighboring countries.

It was observed that until the adoption of the Convention, there was no universal application of an international system covering SAR in a worldwide practice.

Parties to the Convention are required to ensure that arrangements are made for the provision of adequate SAR services in their coastal waters. Parties are also encouraged to enter into SAR agreements with neighboring States involving the establishment of SAR regions, pooling of resources and establishment of common procedures. This is to ensure inter-operability among the SAR units involved in a particular mission.

The Convention also allows parties to take measures to expedite entry into its Territorial Waters of rescue units from other countries. The Convention also sought to establish rescue coordination centres and sub-centres. This includes the designation of an on-scene commander and his duties. Parties to the Convention are to establish ship reporting

system where ships report their position to a coast radio station. This enables the interval between the loss of contact with a vessel and her last known reporting position.

A copy of the International Convention on Maritime SAR is enclosed as Annex 4.

WHY THIS CONVENTION IS IMPORTANT TO MALAYSIA

It is important for Malaysia to have a good and efficient SAR organization in order to carry out SAR functions effectively. The ratification of the Convention and the subsequent incorporation of the Convention into a domestic legislation allows for the unification and standardization of international law in the area of Maritime SAR operations in the region.

As a littoral State to the Straits of Malacca, Malaysia has a role to play to ensure that the Maritime SAR organization is ready to cope with any eventualities that occur in the Straits. The Straits of Malacca is a straits used for international navigation providing a sea route for ships traveling from West to East vice-versa. That makes the Straits of Malacca as one of the busiest Straits in the world with over 63,000 vessels traversing the Straits annually³. Any incident that happens in the Straits would surely attract international attention and concern. Thus the Maritime SAR organization of Malaysia needs to be fully equipped and ready to meet any SAR challenges.

To date, the three littoral States adjacent to the Straits of Malacca (Indonesia, Singapore and Malaysia) already have a mechanism to cooperate for the maintenance of security in the Straits⁴. This is the Tripartite Joint Patrol against threats of piracy. To enhance confidence building measures between the three littoral States, there should be a mechanism for cooperation in Maritime SAR. The provisions of the International Convention on Maritime SAR allows for the furtherance of cooperation among States.

³ Security in the Straits of Malacca by Nazeri Khalid, Japan Focus, June 1,2006. See www.japanfocus.org/products/detail/2042

⁴ Burden Sharing, Security and Equity in the Straits of Malacca (Nazeri Khalid) See www.japanfocus.org/products/detail/2277.

Malaysia aims to be a developed nation and this is expressed in the Government's document entitled Vision 2020. As a developed nation, the Maritime SAR Organization and its legal instruments should be at par with other developed nations in the region. The successful implementation of the International Convention on Maritime SAR can only be realized if there is a beginning. We can only crawl before we could walk.

Malaysia's economy is also dependant on the sea for its resources. The main contribution would come from the offshore oil platform and the fishing industry. Most of the population living along the coastline are traditional fishermen and they depend on the sea as their source of income and livelihood. The tourism industry has also seen a marked increase in the arrival of tourists to the many beautiful islands around the country. Besides ensuring the safety of ferries and other vessels used by tour operators to transport the tourists crossing or island hopping, the Maritime SAR organization should also be equipped to handle any eventualities. As a maritime nation, Malaysia has to ensure that it has an efficient Maritime SAR organization ready to provide assistance at all times.

INCORPORATION OF THE CONVENTION INTO DOMESTIC LEGISLATION

Primary v Subordinate Legislation

All legislation can be classified as either primary or subordinate⁵. Quite simply, legislation is subordinate if it owes its existence and authority to other legislation: if it does not, it is primary. Examples of subordinate legislation include orders, rules, regulations, byelaws and other instruments made under any Act. In the instant case, the Convention shall come in the form of primary legislation for the following reasons:

- a. The significance of the Convention which has international character.
- b. The involvement of other government maritime agencies as Search and Rescue Units. A primary legislation carries more authority than a subordinate legislation.

⁵ Craies on Legislation, 8th Edition, Daniel Greenberg, Sweet & Maxwell, London, 2004. p7.

General Principles

Where possible, the legislation should be drafted to achieve a clear, simple and effective result in each context. This point is expressed by Lord Bridge of Harwich in *Associated Newspapers Ltd v Wilson* as follows⁶ “The courts’ traditional approach to construction, giving primacy to the ordinary, grammatical meaning of statutory language, is reflected in the parliamentary draftsman’s technique of using language with the utmost precision to express the legislative intent of his political masters and it remains the golden rule of construction that a statute means exactly what it says and does not mean what it does not say. “

Text of the Convention

Generally speaking, a Convention is composed of the Title, Preamble, Main Body and the Final Part. In this case the Title will remain, albeit with some modifications. The Title proposed will be The International Maritime SAR Act 2007. The Preamble which normally consists of the background and the conditions for which the Convention was adopted will be omitted. The Main Body which consists of the rights and obligations of the parties will form the substantive portion of the statute. Most of the provisions therefore, will be retained subject to certain modifications. The Final Part⁷, which normally relates to how the Convention will come into force, the date when the Convention was signed, etc, will be omitted. A new date for coming into force of the Act will be appointed by the Minister in charge of the Organization by notification in the gazette. Where necessary, the importation of the text will be done word for word. These will normally include the definitions as given by the Convention. The provisions of the Convention also may be amended accordingly to suit the local content and the existing regulations.

⁶ (1995) 2 W.L.R. 354, 362 HL.

⁷ This is also known as the Final Provisions in the Vienna Convention of the Law of treaties, 1969.

Language

The language used for the statute shall be English. Since the Language Act requires that a statute should be available in the domestic language⁸, the Malay Language version shall be prepared by the National Institute of Translation. Should there be a conflict as between the texts of the two languages, the authenticated and authoritative text, however, shall be English.

Reservations

The Convention does not provide for any reservations and it is expected that Malaysia shall not place any reservation with respect to the Convention.

CONSEQUENTIAL AMENDMENTS TO OTHER STATUTES

It is envisaged that there would only be one consequential amendment to other related statute namely the MMEA Act 2004. Section 6 (1) (b) would be amended by inserting the words “in accordance with the International Maritime Search and Rescue Act 2007” after the word “rescue”. With the amendment, Section 6 (1) (b) will read as follows:

- (b) to perform maritime search and rescue *in accordance with the International Maritime Search and Rescue Act 2007*.

COSTS TO THE GOVERNMENT

In general, since MMEA is the Agency responsible to implement the functions of Maritime SAR, there will be no additional costs to the Government in terms of creating another Agency. Such costs that are to be borne by MMEA in implementing the provisions of the Convention will be incidental to the normal operating costs of the Agency.

⁸ Section 6 of the National Language Act 1963/67 (Revised 1971).

LAWS OF MALAYSIA

Act XXX

INTERNATIONAL MARITIME SEARCH AND RESCUE ACT 2007

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

Section

1. Short title and commencement
2. Interpretation

PART II

ORGANIZATION AND CO-ORDINATION

Section

3. Arrangements for provision and co-ordination of search and rescue services
4. Development of national search and rescue services
5. Establishment of rescue co-ordination centres and rescue sub-centres
6. Co-ordination with aeronautical services
7. Designation of search and rescue facilities
8. Equipment of search and rescue units

PART III

CO-OPERATION BETWEEN STATES

9. Co-operation between States

PART IV

OPERATING PROCEDURES

10. Preparatory measures
11. Information concerning emergencies
12. Initial action
13. Emergency phases
14. Procedures to be followed by rescue co-ordination centres and rescue sub-centres during emergency phases
15. Co-ordination when two or more parties are involved
16. On-scene co-ordination of search and rescue activities
17. Termination and suspension of search and rescue operations

PART V

SHIP REPORTING SYSTEMS

18. General
19. Operational requirements
20. Types of reports
21. Use of systems

PART VI

GENERAL

22. Regulations

INTERNATIONAL MARITIME SEARCH AND RESCUE ACT 2007

An Act to establish an international maritime search and rescue plan for the rescue of persons in distress at sea.

ENACTED by the Parliament of Malaysia as follows:

PART I

PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the International Maritime Search and Rescue Act 2007.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the Gazette, and the Minister may appoint different dates for the coming into operation of different provisions of this Act in different parts of Malaysia.

Interpretation

2. In this Act, unless the context otherwise requires-

“Agency” means the Malaysian Maritime Enforcement Agency established under section 3 of the Malaysian Maritime Enforcement Act 2004;

"alert phase" means a situation wherein apprehension exists as to the safety of a person, a vessel or other craft;

"alerting post" means any facility intended to serve as an intermediary between a person reporting an emergency and a rescue co-ordination centre or rescue sub-centre;

"distress phase" means a situation wherein there is a reasonable certainty that a person, a vessel or other craft is threatened by grave and imminent danger and requires immediate assistance;

"emergency phase" means a generic term meaning, as the case may be, uncertainty phase, alert phase or distress phase;

“Minister” means the Minister charged with the responsibility for Malaysian maritime enforcement;

"on-scene co-ordinator" means a person designated to co-ordinate search and rescue operations within a specified area;

“Organization” means the International Maritime Organization;

"rescue" means an operation to retrieve persons in distress, provide for their initial medical or other needs, and deliver them to a place of safety;

"rescue co-ordination centre" means a unit responsible for promoting efficient organization of search and rescue services and for co-ordinating the conduct of search and rescue operations within a search and rescue region;

"rescue sub-centre" means a unit subordinate to a rescue co-ordination centre established to complement the latter according to particular provisions of the responsible authorities;

“relevant agency of other State” means the relevant agency concerned with the responsibility of maritime search and rescue in another State.

"search" means an operation, normally co-ordinated by a rescue co-ordination centre or rescue sub-centre, using available personnel and facilities to locate persons in distress;

"search and rescue region" means an area of defined dimensions associated with a rescue co-ordination centre within which search and rescue services are provided;

"search and rescue service" means the performance of distress monitoring, communication, co-ordination and search and rescue functions, including provision of medical advice, initial medical assistance, or medical evacuation, through the use of public and private resources including co-operating aircraft, vessels and other craft and installations;

"search and rescue facility" means any mobile resource, including designated search and rescue units, used to conduct search and rescue operations;

"search and rescue unit" means a unit composed of trained personnel and provided with equipment suitable for the expeditious conduct of search and rescue operations;

"Secretary-General" means the Secretary-General of the International Maritime Organization;

“shall” means to indicate a provision, the uniform application of which by the Agency is required in the interest of safety of life at sea;

“should” means to indicate a provision, the uniform application of which by the Agency is recommended in the interest of safety of life at sea;

"uncertainty phase" means a situation wherein uncertainty exists as to the safety of a person, a vessel or other craft.

PART II

ORGANIZATION AND CO-ORDINATION

Arrangements for provision and co-ordination of search and rescue services

3. (1) The Agency shall, as they are able to do so individually or in co-operation with the relevant agencies of other States and, as appropriate, with the Organization, participate in the development of search and rescue services to ensure that assistance is rendered to any person in distress at sea. On receiving

information that any person is, or appears to be, in distress at sea, the responsible authorities of the Agency shall take urgent steps to ensure that the necessary assistance is provided.

(2) The Agency shall, either individually or, if appropriate, in co-operation with other relevant agencies of other States, establish the following basic elements of a search and rescue service:

- (a) legal framework;
- (b) assignment of a responsible authority;
- (c) organization of available resources;
- (d) communication facilities;
- (e) co-ordination and operational functions; and
- (f) processes to improve the service including planning, domestic and international co-operative relationships and training.

(3) The Agency shall, as far as practicable, follow relevant minimum standards and guidelines developed by the Organization.

(4) To help ensure the provision of adequate shore-based communication infrastructure, efficient distress alert routing, and proper operational co-ordination to effectively support search and rescue services, the Agency shall, individually or in co-operation with the relevant agencies of other States, ensure that sufficient search and rescue regions are established within each sea area in accordance with sub-sections (5) and (6). Such regions should be contiguous and, as far as practicable, not overlap.

(5) The Agency shall, by agreement with the relevant agencies of other States, establish each search and rescue region. The Agency shall notify the Secretary-General of such agreements.

(6) In case agreement on the exact dimensions of a search and rescue region is not reached by the Agency with the relevant agencies of other States, the Agency shall use its best endeavor to reach agreement upon appropriate arrangements under which the equivalent overall co-ordination of search and rescue services is provided in the area. The Agency shall notify the Secretary-General of such arrangements.

(7) The Agency shall record or incorporate into written plans the agreement on the regions or arrangements referred to in sub-sections (5) and (6).

(8) The delimitation of search and rescue regions is not related to and shall not prejudice the delimitation of any boundary between States.

(9) The Agency should seek to promote consistency, where applicable, between its maritime and aeronautical search and rescue services while considering the establishment of maritime search and rescue regions which shall be established by agreement in accordance with sub-section (5) or the reaching of agreement upon appropriate arrangements in accordance with sub-section (6).

(10) The Agency having accepted responsibility to provide search and rescue services for a specified area shall use search and rescue units and other available facilities for providing assistance to a person who is, or appears to be, in distress at sea.

(11) The Agency shall ensure that assistance be provided to any person in distress at sea. The Agency shall do so regardless of the nationality or status of such person or the circumstances in which that person is found.

(12) The Agency shall forward to the Secretary-General information on its search and rescue service, including the:

(a) national authority responsible for the maritime search and rescue services;

(b) location of the established rescue co-ordination centres or other centres providing search and rescue co-ordination, for the search and rescue region or regions and communications therein;

(c) limits of its search and rescue region or regions and the coverage provided by their shore based distress and safety communication facilities; and

(d) principal types of available search and rescue units.

(13) The Agency shall with priority, update the information provided with respect to any alterations of importance. The Agency shall record the information received from the Secretary-General on the establishment of the relevant agencies of other States.

(14) The Agency shall compile the agreements or arrangements referred to in sub-sections (5) and (6) received from the Secretary-General.

Development of national search and rescue services

4. (1) The Agency shall establish appropriate national procedures for overall development, co-ordination, and improvement of search and rescue services.

(2) To support efficient search and rescue operations, the Agency shall:

(a) ensure the co-ordinated use of available facilities; and

(b) establish close co-operation between services and organizations which may contribute to improve the search and rescue service in areas such as operations, planning, training, exercises and research and development.

Establishment of rescue co-ordination centres and rescue sub-centres

5. (1) To meet the requirements of Section 4, the Agency shall individually or in co-operation with the relevant agencies of other States establish rescue co-ordination centres for their search and rescue services and such rescue sub-centres as they consider appropriate.

(2) Each rescue co-ordination centre and rescue sub-centre, established in accordance with sub-section (1), shall arrange for the receipt of distress alerts originating from within its search and rescue region. Every such centre shall also arrange for communications with persons in distress, with search and rescue facilities, and with other rescue co-ordination centres or rescue sub-centres.

(3) Each rescue co-ordination centre shall be operational on a 24-hour basis and be constantly staffed by trained personnel having a working knowledge of the English language.

Co-ordination with aeronautical services

6. (1) The Agency shall ensure the closest practicable co-ordination between maritime and aeronautical services so as to provide for the most effective and efficient search and rescue services in and over its search and rescue region.

(2) Whenever practicable, the Agency should establish joint rescue co-ordination centres and rescue sub-centres to serve both maritime and aeronautical purposes.

(3) Whenever separate maritime and aeronautical rescue co-ordination centres or rescue sub-centres are established to serve the same area, the Agency shall ensure the closest practicable co-ordination between the centres or sub-centres.

(4) The Agency shall ensure as far as is possible the use of common procedures by search and rescue units established for maritime purposes and those established for aeronautical purposes.

Designation of search and rescue facilities

7. The Agency shall identify all facilities able to participate in search and rescue operations, and may designate suitable facilities as search and rescue units.

Equipment of search and rescue units

8. (1) The Agency shall ensure that each search and rescue unit shall be provided with equipment appropriate to its task.

(2) The Agency shall ensure that containers and packages containing survival equipment for dropping to survivors should have the general nature of their contents indicated by markings in accordance with standards adopted by the Organization.

PART III

CO-OPERATION BETWEEN STATES

Co-operation between States

9. (1) The Agency shall co-ordinate its search and rescue organizations and should, whenever necessary, co-ordinate search and rescue operations with those of neighboring States.

(2) Unless otherwise agreed between the States concerned, the Agency should authorize, subject to applicable laws, rules and regulations, immediate entry into or over Malaysian territorial sea or territory by the rescue units of the relevant agencies of other States solely for the purpose of searching for the position of maritime casualties and rescuing the survivors of such casualties. In such cases,

search and rescue operations shall, as far as practicable, be co-ordinated by the appropriate rescue co-ordination centre of the Agency which has authorized entry, or such other authority as has been designated by the Agency.

(3) The responsible authorities of the Agency shall:

- (a) immediately acknowledge the receipt of such a request; and
- (b) as soon as possible indicate the conditions, if any, under which the projected mission may be undertaken.

(4) Unless otherwise agreed between the States concerned, the authorities of the Agency which wishes its rescue units to enter into or over the territorial sea or territory of another State solely for the purpose of searching for the position of maritime casualties and rescuing the survivors of such casualties, shall transmit a request, giving full details of the projected mission and the need for it, to the rescue co-ordination centre of the relevant agency of the other State, or to such other authority as has been designated by the relevant agency of that other State.

(5) The Agency should enter into agreements with the relevant agencies of neighboring States setting forth the conditions for entry of each other's search and rescue units into or over each respective territorial sea or territory. These agreements should also provide for expediting entry of such units with the least possible formalities.

(6) The Agency should authorize its rescue co-ordination centres:

- (a) to request from other rescue co-ordination centres such assistance, including vessels, aircraft, personnel or equipment, as may be needed;
 - (b) to grant any necessary permission for the entry of such vessels, aircraft, personnel or equipment into or over its territorial sea or territory;
- and

(c) to make the necessary arrangements with the appropriate customs, immigration, health or other authorities with a view to expediting such entry.

(7) The Agency shall ensure that its rescue co-ordination centres provide, when requested, assistance to other rescue co-ordination centres, including assistance in the form of vessels, aircraft, personnel or equipment.

(8) The Agency should enter into agreements with other relevant agencies of other States, where appropriate, to strengthen search and rescue co-operation and co-ordination. The Agency shall authorize their responsible authority to make operational plans and arrangements for search and rescue co-operation and co-ordination with the relevant agencies of other States.

PART IV

OPERATING PROCEDURES

Preparatory measures

10. (1) Each rescue co-ordination centre and rescue sub-centre shall have available up-to-date information especially concerning search and rescue facilities and available communications relevant to search and rescue operations in its area.

(2) Each rescue co-ordination centre and rescue sub-centre should have ready access to information regarding the position, course and speed of vessels within its area which may be able to provide assistance to persons, vessels or other craft in distress at sea, and regarding how to contact them. This information should either be kept in the rescue co-ordination centre, or be readily obtainable when necessary.

(3) Each rescue co-ordination centre and rescue sub-centre shall have detailed plans of operation for the conduct of search and rescue operations. Where appropriate, these plans shall be developed jointly with the representatives of

those who may assist in providing, or who may benefit from, the search and rescue services.

(4) Rescue co-ordination centres or sub-centres shall be kept informed of the state of preparedness of search and rescue units.

Information concerning emergencies

11. (1) The Agency, either individually or in co-operation with the relevant agencies of other States shall ensure that they are capable on a 24-hour basis of promptly and reliably receiving distress alerts from equipment used for this purpose within its search and rescue regions. Any alerting post receiving a distress alert shall:

(a) immediately relay the alert to the appropriate rescue co-ordination centre or sub-centre, and then assist with search and rescue communications as appropriate; and

(b) if practicable acknowledge the alert.

(2) The Agency shall, where appropriate, ensure that effective arrangements are in place for the registration of communication equipment and for responding to emergencies, to enable any rescue co-ordination centre or sub-centre to access pertinent registration information quickly.

(3) Any authority or element of the search and rescue service having reason to believe that a person, a vessel or other craft is in a state of emergency shall forward as soon as possible all available information to the rescue co-ordination centre or rescue sub-centre concerned.

(4) Rescue co-ordination centres and rescue sub-centres shall, immediately upon receipt of information concerning a person, a vessel, or other craft in a state of emergency, evaluate such information and determine the phase of emergency in accordance with Section 13, and the extent of operations required.

Initial action

12. Any search and rescue unit receiving information of a distress incident shall initially take immediate action if in the position to assist and shall, in any case without delay, notify the rescue co-ordination centre or rescue sub-centre in whose area the incident has occurred.

Emergency phases

13. To assist in determining the appropriate operating procedures, the following emergency phases shall be distinguished by the rescue co-ordination centre or sub-centre concerned:

- (1) Uncertainty phase:
 - (a) when a person has been reported as missing, or a vessel or other craft is overdue; or
 - (b) when a person, a vessel or other craft has failed to make an expected position or safety report.
- (2) Alert phase:
 - (a) when, following the uncertainty phase, attempts to establish contact with a person, a vessel or other craft have failed and inquiries addressed to other appropriate sources have been unsuccessful; or
 - (b) when information has been received indicating that the operating efficiency of a vessel or other craft is impaired, but not to the extent that a distress situation is likely.
- (3) Distress phase:
 - (a) when positive information is received that a person, a vessel or other craft is in danger and in need of immediate assistance; or

(b) when, following the alert phase, further unsuccessful attempts to establish contact with a person, a vessel or other craft and more widespread unsuccessful inquiries point to the probability that a distress situation exists; or

(c) when information is received which indicates that the operating efficiency of a vessel or other craft has been impaired to the extent that a distress situation is likely.

Procedures to be followed by rescue co-ordination centres and rescue sub-centres during emergency phases

14. (1) Upon the declaration of the uncertainty phase, the rescue co-ordination centre or rescue sub-centre, as appropriate, shall initiate enquiries to determine the safety of a person, a vessel or other craft, or shall declare the alert phase.

(2) Upon the declaration of the alert phase, the rescue co-ordination centre or rescue sub-centre, as appropriate, shall extend enquiries for the missing person, vessel or other craft, alert appropriate search and rescue services and initiate such action, as is necessary in the light of the circumstances of the particular case.

(3) Upon the declaration of the distress phase, the rescue co-ordination centre or rescue sub-centre, as appropriate, shall proceed as prescribed in its plans of operation, as required by Section 10.

Initiation of search and rescue operations when the position of the search objects is unknown

(4) In the event of an emergency phase being declared for a search object whose position is unknown, the following shall apply:

(a) when an emergency phase exists, a rescue co-ordination centre or rescue sub-centre shall, unless it is aware that other centres are taking action, assume responsibility for initiating suitable action and confer with

other centres with the objective of designating one centre to assume responsibility;

(b) unless otherwise decided by agreement between the centres concerned, the centre to be designated shall be the centre responsible for the area in which the search object was according to its last reported position; and

(c) after the declaration of the distress phase, the centre co-ordinating the search and rescue operations shall, as appropriate, inform other centres of all the circumstances of the emergency and of all subsequent developments.

Passing information to persons, vessels, or other craft for which an emergency phase has been declared

(5) Whenever possible, the rescue co-ordination centre or rescue sub-centre responsible for search and rescue operations shall forward to the person, a vessel or other craft for which an emergency phase has been declared, information on the search and rescue operations it has initiated.

Co-ordination when two or more agencies are involved

15. For search and rescue operations involving more than one agency, each agency shall take appropriate action in accordance with the plans of operation referred to in Section 10 when so requested by the rescue coordination centre of the region.

On-scene co-ordination of search and rescue activities

16. (1) The activities of search and rescue units and other facilities engaged in search and rescue operations shall be coordinated on-scene to ensure the most effective results.

(2) When multiple facilities are about to engage in search and rescue operations, and the rescue co-ordination centre or rescue sub-centre considers it necessary, the most capable person should be designated as on-scene co-ordinator as early as practicable and preferably before the facilities arrive within the specified area of operation. Specific responsibilities shall be assigned to the on-scene co-ordinator taking into account the apparent capabilities of the on-scene coordinator and operational requirements.

(3) If there is no responsible rescue co-ordination centre or, for any reason, the responsible rescue co-ordination centre is unable to co-ordinate the search and rescue mission, the facilities involved should designate an on-scene co-ordinator by mutual agreement.

Termination and suspension of search and rescue operations

17. (1) Search and rescue operations shall continue, when practicable, until all reasonable hope of rescuing survivors has passed.

(2) The responsible rescue coordination centre or rescue sub-centre concerned shall normally decide when to discontinue search and rescue operations. If no such centre is involved in co-ordinating the operations, the on-scene co-ordinator may take this decision.

(3) When a rescue co-ordination centre or rescue sub-centre considers, on the basis of reliable information that a search and rescue operation has been successful, or that the emergency no longer exists, it shall terminate the search and rescue operation and promptly so inform any authority, facility or service which has been activated or notified.

(4) If a search and rescue operation on-scene becomes impracticable and the rescue co-ordination centre or rescue sub-centre concludes that survivors might still be alive, the centre may temporarily suspend the on-scene activities pending further developments, and shall promptly so inform any authority, facility or

service which has been activated or notified. Information subsequently received shall be evaluated and search and rescue operations resumed when justified on the basis of such information.

PART V

SHIP REPORTING SYSTEMS

General

18. (1) Ship reporting systems may be established either individually by the Agency or in co-operation with the relevant agencies of other States, where this is considered necessary, to facilitate search and rescue operations.
- (2) The Agency contemplating the institution of a ship reporting system shall take into account of the relevant recommendations of the Organization. The Agency shall also consider whether existing reporting systems or other sources of ship position data can provide adequate information for the region, and seek to minimize unnecessary additional reports by ships, or the need for rescue co-ordination centres to check with multiple reporting systems to determine availability of ships to assist with search and rescue operations.
- (3) The ship reporting system should provide up-to-date information on the movements of vessels in order, in the event of a distress incident, to:
- (a) reduce the interval between the loss of contact with a vessel and the initiation of search and rescue operations in cases where no distress signal has been received;
 - (b) permit rapid identification of vessels which may be called upon to provide assistance;

- (c) permit delineation of a search area of limited size in case the position of a person, a vessel or other craft in distress is unknown or uncertain; and
- (d) facilitate the provision of urgent medical assistance or advice.

Operational requirements

- 19.** (1) Ship reporting systems should satisfy the following requirements:
- (a) provision of information, including sailing plans and position reports, which would make it possible to determine the current and future positions of participating vessels;
 - (b) maintenance of a shipping plot;
 - (c) receipt of reports at appropriate intervals from participating vessels;
 - (d) simplicity in system design and operation; and
 - (e) use of internationally agreed standard ship reporting format and procedures.

Types of reports

- 20.** (1) A ship reporting system should incorporate the following types of ship reports in accordance with the recommendations of the Organization:
- (a) Sailing plan;
 - (b) Position report; and
 - (c) Final report.

Use of systems

- 21.** (1) The Agency shall encourage all vessels to report their position when traveling in areas where arrangements have been made to collect information on positions for search and rescue purposes.
- (2) The Agency recording information on the position of vessels shall disseminate, so far as practicable, such information to other States when so requested for search and rescue purposes.

PART VI

GENERAL

Regulations

- 22.** The Minister may make such regulations as are necessary or expedient to give full effect to or for carrying out the provisions of this Act.

LAWS OF MALAYSIA

Act 633

MALAYSIAN MARITIME ENFORCEMENT

AGENCY ACT 2004

ACT 633

Date of Royal Assent ... 25 June 2004

Date of publication in the *Gazette* 1 July 2004

Publisher's Copyright C

PERCETAKAN NASIONAL MALAYSIA BERHAD

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means electronic, mechanical, photocopying, recording and/or otherwise without the prior permission of **Percetakan Nasional Malaysia Berhad (Appointed Printer to the Government of Malaysia)**.

LAWS OF MALAYSIA
Act 633
MALAYSIAN MARITIME ENFORCEMENT
AGENCY ACT 2004

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

Section

1. Short title and commencement
2. Interpretation

PART II

ESTABLISHMENT OF AGENCY AND APPOINTMENTS

3. Establishment of the Malaysian Maritime Enforcement Agency
4. Appointment of the Director General of the Agency
5. Appointment of other officers of the Agency

PART III

FUNCTIONS AND POWERS OF THE AGENCY

6. Functions of the Agency
7. Powers of the Agency

PART IV

GENERAL

8. Prosecution
9. Report on status of investigation
10. Protection of officers of the Agency
11. Identification
12. Carrying of arms
13. Desertion
14. Mutiny
15. Penalty for causing disaffection

16. Co-ordination
17. Power during emergency, special crisis or war
18. Standing orders
19. Regulations

An Act to establish the Malaysian Maritime Enforcement Agency to perform enforcement functions for ensuring the safety and security of the Malaysian Maritime Zone with a view to the protection of maritime and other national interests in such zone and for matters necessary thereto or connected therewith.

ENACTED by the Parliament of Malaysia as follows:

PART I

PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Malaysian Maritime Enforcement Agency Act 2004.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*, and the Minister may appoint different dates for the coming into operation of different provisions of this Act in different parts of Malaysia.

Interpretation

2. In this Act, unless the context otherwise requires—

“Agency” means the Malaysian Maritime Enforcement Agency established under section 3;

“relevant agency” means a body or agency that is for the time being responsible in Malaysia for the enforcement of any federal law which is applicable in the Malaysian Maritime Zone;

“offence” means any offence under any federal law which is applicable in the Malaysian Maritime Zone;

“Director General” means the Director General of Malaysian Maritime Enforcement appointed under subsection 4(1);

“territorial sea” means the territorial waters of Malaysia as determined in accordance with the Emergency (Essential Powers) Ordinance, No. 7 1969 [*P.U. (A) 307A/1969*];

“Minister” means the Minister charged with the responsibility for Malaysian maritime enforcement;

“officer of the Agency” includes the Director General and any officer appointed under subsection 5(1);

“continental shelf” means the continental shelf of Malaysia as defined under section 2 of the Continental Shelf Act 1966 [*Act 83*];

“internal waters” means any areas of the sea that are on the landward side of the baselines from which the breadth of the territorial sea of Malaysia is measured;

“Malaysian fisheries waters” means the Malaysian fisheries waters as defined under section 2 of the Fisheries Act 1985 [*Act 317*];

“exclusive economic zone” means the exclusive economic zone of Malaysia as determined in accordance with the Exclusive Economic Zone Act 1984 [*Act 311*];

“Malaysian Maritime Zone” means the internal waters, territorial sea, continental shelf, exclusive economic zone and the Malaysian fisheries waters and includes the air space over the Zone.

PART II

ESTABLISHMENT OF AGENCY AND APPOINTMENTS

Establishment of the Malaysian Maritime Enforcement Agency

3. (1) For the purpose of this Act, the Malaysian Maritime Enforcement Agency is established.

(2) The Agency shall, subject to this Act, be employed in the Malaysian Maritime Zone for the maintenance of law and order, the preservation of the peace, safety and security, the prevention and detection of crime, the apprehension and prosecution of offenders and the collection of security intelligence.

Appointment of the Director General of the Agency

4. (1) The Yang di-Pertuan Agong shall, on the advice of the Prime Minister, appoint a Director General of Malaysian Maritime Enforcement, who shall head the Agency, from among members of the public services for such period and on such terms and conditions as may be specified in the instrument of appointment.

(2) The period of appointment of the Director General shall not extend beyond the date of his compulsory retirement from the public service, but where he attains the age of such compulsory retirement he may be re-appointed as Director General by the Yang di-Pertuan Agong, on the advice of the Prime Minister, on contract for such period and on such terms and conditions as may be specified in the instrument of appointment.

(3) The Director General shall, during the period of his appointment as set out in the instrument of appointment, hold office at the pleasure of the Yang di-Pertuan Agong, subject to the advice of the Prime Minister.

(4) The Director General shall, during his term of office as such, be deemed to be a member of the general public service of the Federation for purposes of discipline.

(5) The Director General shall be responsible for the direction, command, control and supervision of all matters relating to the Agency.

(6) The Director General shall, before assuming the duties and responsibilities of his office, make, in such manner as he may declare to be most binding on his conscience before the Yang di-Pertuan Agong, such declaration as may be prescribed by the Minister by regulations made under section 19.

(7) There shall be issued to the Director General a certificate of appointment in the form of an authority card as evidence of his appointment.

Appointment of other officers of the Agency

5. (1) There shall be appointed such number of officers of the Agency as may be necessary, whose ranks shall be determined by the Yang di-Pertuan Agong by order, for the purpose of carrying into effect the provisions of this Act.

(2) The Yang di-Pertuan Agong may, in the order made under subsection (1), determine that the ranks of such appointed officers shall be regarded as equivalent to the ranks of—
(a) police officers as specified in or under the Police Act 1967 [*Act 344*];
(b) officers of customs as specified in or under the Customs Act 1967 [*Act 235*]; and
(c) any other officers whose ranks are specified in or under any other written law, and the Criminal Procedure Code [*Act 593*] and laws specified in subsection 7(3) shall be construed accordingly.

(3) An officer appointed under subsection (1) shall have such powers as may be provided for him under this Act and shall be subject to the direction, command, control and supervision of the Director General or any other officer of the Agency superior to him in rank, and shall exercise his powers, perform his functions, and discharge his duties in

compliance with such directions or instructions as may be specified orally or in writing by the Director General or any other officer of the Agency superior to him in rank.

(4) A certificate of appointment in the form of an authority card shall be issued to every officer of the Agency appointed under subsection (1), and such card shall be signed by the Director General and shall be *prima facie* evidence of the appointment under this Act.

PART III

FUNCTIONS AND POWERS OF THE AGENCY

Functions of the Agency

6. (1) The functions of the Agency shall be—

- (a) to enforce law and order under any federal law;
- (b) to perform maritime search and rescue;
- (c) to prevent and suppress the commission of an offence;
- (d) to lend assistance in any criminal matters on a request by a foreign State as provided under the Mutual Assistance in Criminal Matters Act 2002 [*Act 621*];
- (e) to carry out air and coastal surveillance;
- (f) to provide platform and support services to any relevant agency;
- (g) to establish and manage maritime institutions for the training of officers of the Agency; and
- (h) generally to perform any other duty for ensuring maritime safety and security or do all matters incidental thereto.

(2) Subject to the provisions of this Act, the functions of the Agency shall be performed within the Malaysian Maritime Zone.

(3) Notwithstanding subsection (2), the Agency shall be responsible—

- (a) for the performance of maritime search and rescue;
- (b) for controlling and preventing maritime pollution;

- (c)* for preventing and suppressing piracy; and
- (d)* for preventing and suppressing illicit traffic in narcotic drugs, on the high seas.

Powers of the Agency

7. (1) The Agency shall have powers to carry out the purposes mentioned in subsection 3(2) and to do all things reasonably necessary for or incidental to the performance of its functions under section 6.

(2) In particular, but without prejudice to the generality of subsection (1), the Agency shall have power—

- (a)* to receive and consider any report of the commission of an offence;
- (b)* to stop, enter, board, inspect and search any place, structure, vessel or aircraft and to detain any vessel or aircraft;
- (c)* to demand the production of any licence, permit, record, certificate or any other document and to inspect such licence, permit, record, certificate or other document or make copies of or take extracts from such licence, permit, record, certificate or other document;
- (d)* to investigate any offence which it has reason to believe is being committed, or is about to be committed or has been committed;
- (e)* to exercise the right of hot pursuit;
- (f)* to examine and seize any fish, article, device, goods, vessel, aircraft or any other item relating to any offence which has been committed or it has reason to believe has been committed;
- (g)* to dispose of any fish, article, device, goods, vessel, aircraft or any other item relating to any offence which has been committed or it has reason to believe has been committed;
- (h)* to arrest any person whom it has reason to believe has committed an offence; and
- (i)* to expel any vessel which it has reason to believe to be detrimental to the interest of or to endanger the order and safety in the Malaysian Maritime Zone.

3) Without prejudice to the generality of subsection (1), an officer of the Agency shall have, for the purpose of this Act, all the powers which any relevant agency may exercise under any federal law which is applicable in the Malaysian Maritime Zone.

(4) Notwithstanding subsection (2), no vessel shall be stopped, entered, boarded, searched, inspected or detained within the area of territorial sea if the passage of the vessel within the territorial sea is an innocent passage.

(5) For the purpose of subsection (4) the passage of a vessel is an innocent passage if and so long as the passage of the vessel is not prejudicial to the peace, good order or security of Malaysia.

(6) Notwithstanding any written law, for the purposes of subsection (5), the following activities shall be considered to be prejudicial to the peace, good order and security of Malaysia:

(a) any threat or use of force against the sovereignty, territorial integrity or political independence of Malaysia or any act which in any manner is a violation of the principles of international law;

(b) any exercise or practice with weapons of any kind;

(c) any act aimed at collecting information to the prejudice of the defence or security of Malaysia;

(d) any act of propaganda aimed at affecting the peace, defence or security of Malaysia;

(e) the launching, landing or taking on board of any aircraft;

(f) the launching, landing or taking on board of any military device;

(g) the loading or unloading of any commodity, currency or person contrary to the customs, fiscal, immigration or health laws of Malaysia;

(h) any act of pollution;

(i) any fishing activities;

(j) the carrying out of unauthorised research or survey activities;

(k) any act aimed at interfering with any systems of communication or any other facilities or installations of Malaysia; and

(l) any other activity not having a direct bearing on passage.

PART IV

GENERAL

Prosecution

8. Notwithstanding any other written law, where a person is arrested under this Act, no prosecution shall be instituted against that person except by or with the written consent of the Public Prosecutor.

Report on status of investigation

9. (1) Any person who has given information to the Agency under any federal law may request for a report on the status of the investigation of the offence complained of in his information from the Agency.

(2) The Agency shall give a status report on the investigation of such offence to the informant not later than two weeks from the receipt of the request made under subsection (1).

(3) Notwithstanding subsection (2), the Agency shall not be required to provide a status report on an investigation of an offence—

(a) unless the offence complained of is a seizable offence;

(b) unless a period of four weeks has lapsed from the date of the giving of the information; and

(c) which contains any matter that is likely to adversely affect the investigation into the offence or the prosecution of the offence.

(4) Where a request has been made under subsection (1) and the Agency has failed to furnish the informant with a status report within the period specified in subsection (2), but subject to subsection (3), the informant may make a report to the Public Prosecutor of the failure.

(5) Upon receipt of the report under subsection (4), the Public Prosecutor shall direct the Agency to furnish him with a detailed status report on the investigation that has been conducted by the Agency in relation to the offence in the information given by the informant.

(6) The Public Prosecutor shall cause to be furnished to the informant, or direct the Agency to furnish to the informant, a status report containing such information as may be directed by the Public Prosecutor.

(7) Any officer of the Agency who fails to comply with a directive of the Public Prosecutor under this section commits an offence and shall on conviction be liable to imprisonment for a term not exceeding one month or to a fine not exceeding one thousand ringgit or to both.

Protection of officers of the Agency

10. No action shall be brought against any officer of the Agency in respect of anything done or omitted to be done by him in good faith in the execution or purported execution of his functions, powers and duties under this Act.

Identification

11. Every officer of the Agency when acting under this Act shall, on demand, declare his office and produce to the person against whom he is acting or from whom he seeks any information the authority card issued to him under this Act.

Carrying of arms

12. An officer of the Agency may in the performance of his duties carry arms.

Desertion

13. (1) Any officer of the Agency who, without reasonable cause, the burden of proof of which lies on him, absents himself from duty for a continuous period of twenty-one days or in circumstances which show that he has the intention of not returning to his duty shall be deemed to have deserted, and commits an offence and shall be liable on conviction to imprisonment for a term not exceeding twelve months.

(2) Where a person has been convicted under this section, his Disciplinary Authority may direct that all arrears of pay due to such person be forfeited.

Mutiny

14. Any officer of the Agency who causes, incites, or joins in any mutiny or disaffection against the Agency or conspires with any other person to cause such mutiny or disaffection, or does not use his utmost endeavour to suppress any such mutiny or disaffection or, having knowledge of any mutiny or disaffection or intended mutiny or disaffection, does not, without delay, give information of such mutiny or disaffection to the officer of the Agency to whom he is subordinate, commits an offence and shall be liable on conviction to imprisonment for a term not exceeding five years.

Penalty for causing disaffection

15. (1) Any person who causes or attempts to cause or does any act calculated to cause disaffection amongst the officers of the Agency, or induces or attempts to induce any such officer to withhold his services or to commit a breach of discipline, commits an offence and shall be liable on conviction to imprisonment for a term not exceeding five years or to a fine not exceeding ten thousand ringgit or to both.

(2) Any officer of the Agency may, without warrant, arrest any person who is reasonably suspected of having committed an offence under this section.

Co-ordination

16. The Agency and the relevant agencies shall closely co-ordinate, consult and liaise with each other and render to each other assistance for carrying out the provisions of this Act.

Power during emergency, special crisis or war

17. (1) Notwithstanding any provisions of this Act or any other federal law, the Agency, or any part of the Agency as may be determined by the Minister, shall be under the general command and control of the Armed Forces of Malaysia during any period of emergency, special crisis or war.

(2) If any doubt arises as to whether an emergency, special crisis or war has occurred, a proclamation signed by the Yang di-Pertuan Agong and exhibited at such places as the Minister deems fit shall be conclusive proof of that fact.

Standing orders

18. The Director General may issue administrative orders to be called “Standing Orders”, not inconsistent with the provisions of this Act, on the general control, training, duties and responsibilities of officers of the Agency, and for such other matters as may be necessary or expedient for the good administration of the Agency or for the prevention of the abuse of power or neglect of duty, and generally for ensuring the efficient and effective functioning of the Agency.

Regulations

19. The Minister may make such regulations as are necessary or expedient to give full effect to or for carrying out the provisions of this Act.

ANNEX 2

LIST OF IMO INTERNATIONAL CONVENTIONS THAT MALAYSIA HAS RATIFIED

- a. IMO Convention 48.
- b. IMO Amendments 91.
- c. SOLAS Convention 74.
- d. SOLAS PROTOCOL 78.
- e. Load Lines Convention 66.
- f. Tonnage Convention 69.
- g. COLREG Convention 72.
- h. STCW Convention 78.
- i. INMARSAT Convention 76.
- j. INMARSAT OA 76.
- k. MARPOL 73/78 (Annex I/II).
- l. MARPOL 73/78 (Annex V).
- m. CLC Protocol 92.
- n. FUND Convention 71.
- o. OPRC Convention 90.

Amendments to the International Convention on Maritime Search and Rescue of 27 April 1979

(London, 18 May 1998)

THE MARITIME SAFETY COMMITTEE,

RECALLING Article 28(b) of the Convention on the International Maritime Organization concerning the functions of the Committee,

RECALLING FURTHER Article III(2)(f) of the International Convention on Maritime Search and Rescue, 1979, hereinafter referred to as "the Convention", concerning the procedures for amending the Annex to the Convention, other than the provisions of paragraphs 2.1.4, 2.1.5, 2.1.7, 2.1.10, 3.1.2 or 3.1.3 thereof,

HAVING CONSIDERED, at its sixty-ninth session, amendments to the Convention proposed and circulated in accordance with Article III(2)(a) thereof,

1. **ADOPTS**, in accordance with Article III(2)(c) of the Convention, amendments to the Convention, the text of which is set out in the Annex to the present Resolution;
2. **DETERMINES**, in accordance with Article III(2)(f) of the Convention, that the amendments shall be deemed to have been accepted on 1 July 1999, unless, prior to that date, more than one third of the Parties, have notified their objections to the amendments;
3. **INVITES** Parties to the Convention to note that, in accordance with Article III(2)(h) of the Convention, the amendments shall enter into force on 1 January 2000 upon their acceptance in accordance with paragraph 2 above;
4. **REQUESTS** the Secretary-General, in conformity with Article III(2)(d) of the Convention, to transmit certified copies of the present Resolution and the text of the amendments contained in the Annex to all Parties to the Convention;
5. **FURTHER REQUESTS** the Secretary-General to transmit copies of this Resolution and its Annex to Members of the Organization, which are not Parties to the Convention.

ANNEX

AMENDMENTS TO THE INTERNATIONAL CONVENTION ON MARITIME SEARCH AND RESCUE, 1979

The existing text of the Annex to the Convention, except paragraphs 2.1.4, 2.1.5, 2.1.7, 2.1.10, 3.1.2 and 3.1.3 is replaced by the following:

"CHAPTER 1

TERMS AND DEFINITIONS

1.1 "Shall" is used in the Annex to indicate a provision, the uniform application of which by all Parties is required in the interest of safety of life at sea.

1.2 "Should" is used in the Annex to indicate a provision, the uniform application of which by all Parties is recommended in the interest of safety of life at sea.

1.3 The terms listed below are used in the Annex with the following meanings:

.1 "Search". An operation, normally coordinated by a rescue coordination centre or rescue sub-centre, using available personnel and facilities to locate persons in distress;

.2 "Rescue". An operation to retrieve persons in distress, provide for their initial medical or other needs, and deliver them to a place of safety;

.3 "Search and rescue service". The performance of distress monitoring, communication, coordination and search and rescue functions, including provision of medical advice, initial medical assistance, or medical evacuation, through the use of public and private resources including cooperating aircraft, vessels and other craft and installations;

.4 "Search and rescue region". An area of defined dimensions associated with a rescue coordination centre within which search and rescue services are provided;

.5 "Rescue coordination centre". A unit responsible for promoting efficient organization of search and rescue services and for coordinating the conduct of search and rescue operations within a search and rescue region;

.6 "Rescue sub-centre". A unit subordinate to a rescue coordination centre established to complement the latter according to particular provisions of the responsible authorities;

- .7 "Search and rescue facility". Any mobile resource, including designated search and rescue units, used to conduct search and rescue operations;
- .8 "Search and rescue unit". A unit composed of trained personnel and provided with equipment suitable for the expeditious conduct of search and rescue operations;
- .9 "Alerting post". Any facility intended to serve as an intermediary between a person reporting an emergency and a rescue coordination centre or rescue sub-centre;
- .10 "Emergency phase". A generic term meaning, as the case may be, uncertainty phase, alert phase or distress phase;
- .11 "Uncertainty phase". A situation wherein uncertainty exists as to the safety of a person, a vessel or other craft;
- .12 "Alert phase". A situation wherein apprehension exists as to the safety of a person, a vessel or other craft;
- .13 "Distress phase". A situation wherein there is a reasonable certainty that a person, a vessel or other craft is threatened by grave and imminent danger and requires immediate assistance;
- .14 "On-scene coordinator". A person designated to coordinate search and rescue operations within a specified area;
- .15 "Secretary-General". The Secretary-General of the International Maritime Organization.

CHAPTER 2

ORGANIZATION AND COORDINATION

2.1 Arrangements for provision and coordination of search and rescue services

2.1.1 Parties shall, as they are able to do so individually or in cooperation with other States and, as appropriate, with the Organization, participate in the development of search and rescue services to ensure that assistance is rendered to any person in distress at sea. On receiving information that any person is, or appears to be, in distress at sea, the responsible authorities of a Party shall take urgent steps to ensure that the necessary assistance is provided.

2.1.2 Parties shall, either individually or, if appropriate, in cooperation with other

States, establish the following basic elements of a search and rescue service:

- .1 legal framework;
- .2 assignment of a responsible authority;
- .3 organisation of available resources;
- .4 communication facilities;
- .5 coordination and operational functions; and
- .6 processes to improve the service including planning, domestic and international cooperative relationships and training.

Parties shall, as far as practicable, follow relevant minimum standards and guidelines developed by the Organization.

2.1.3 To help ensure the provision of adequate shore-based communication infrastructure, efficient distress alert routeing, and proper operational coordination to effectively support search and rescue services, Parties shall, individually or in cooperation with other States, ensure that sufficient search and rescue regions are established within each sea area in accordance with paragraphs 2.1.4 and 2.1.5. Such regions should be contiguous and, as far as practicable, not overlap.

2.1.6 Agreement on the regions or arrangements referred to in paragraphs 2.1.4 and 2.1.5 shall be recorded by the Parties concerned, or in written plans accepted by the Parties.

2.1.8 Parties should seek to promote consistency, where applicable, between their maritime and aeronautical search and rescue services while considering the establishment of maritime search and rescue regions which shall be established by agreement in accordance with paragraph 2.1.4 or the reaching of agreement upon appropriate arrangements in accordance with paragraph 2.1.5.

2.1.9 Parties having accepted responsibility to provide search and rescue services for a specified area shall use search and rescue units and other available facilities for providing assistance to a person who is, or appears to be, in distress at sea.

2.1.11 Parties shall forward to the Secretary-General information on their search and rescue service, including the:

- .1 nationality authority responsible for the maritime search and rescue services;

.2 location of the established rescue coordination centres or other centres providing search and rescue coordination, for the search and rescue region or regions and communications therein;

.3 limits of their search and rescue region or regions and the coverage provided by their shore based distress and safety communication facilities; and

.4 principal types of available search and rescue units.

Parties shall with priority, update the information provided with respect to any alterations of importance. The Secretary-General shall transmit to all Parties the information received.

2.1.12 The Secretary-General shall notify all Parties of the agreements or arrangements referred to in paragraphs 2.1.4 and 2.1.5.

2.2 Development of national search and rescue services

2.2.1 Parties shall establish appropriate national procedures for overall development, coordination, and improvement of search and rescue services.

2.2.2 To support efficient search and rescue operations, Parties shall:

.1 ensure the coordinated use of available facilities; and

.2 establish close cooperation between services and organizations which may contribute to improve the search and rescue service in areas such as operations, planning, training, exercises and research and development.

2.3 Establishment of rescue coordination centres and rescue sub-centres

2.3.1 To meet the requirements of paragraph 2.2, Parties shall individually or in cooperation with other States establish rescue coordination centres for their search and rescue services and such rescue sub-centres as they consider appropriate.

2.3.2 Each rescue coordination centre and rescue sub-centre, established in accordance with paragraph 2.3.1, shall arrange for the receipt of distress alerts originating from within its search and rescue region. Every such centre shall also arrange for communications with persons in distress, with search and rescue facilities, and with other rescue coordination centres or rescue sub-centres.

2.3.3 Each rescue coordination centre shall be operational on a 24-hour basis and be constantly staffed by trained personnel having a working knowledge of the

English language.

2.4 Coordination with aeronautical services

2.4.1 Parties shall ensure the closest practicable coordination between maritime and aeronautical services so as to provide for the most effective and efficient search and rescue services in and over their search and rescue regions.

2.4.2 Whenever practicable, each Party should establish joint rescue coordination centres and rescue sub-centres to serve both maritime and aeronautical purposes.

2.4.3 Whenever separate maritime and aeronautical rescue coordination centres or rescue sub-centres are established to serve the same area, the Party concerned shall ensure the closest practicable coordination between the centres or sub-centres.

2.4.4 Parties shall ensure as far as is possible the use of common procedures by search and rescue units established for maritime purposes and those established for aeronautical purposes.

2.5 Designation of search and rescue facilities

Parties shall identify all facilities able to participate in search and rescue operations, and may designate suitable facilities as search and rescue units.

2.6 Equipment of search and rescue units

2.6.1 Each search and rescue unit shall be provided with equipment appropriate to its task.

2.6.2 Containers and packages containing survival equipment for dropping to survivors should have the general nature of their contents indicated by markings in accordance with standards adopted by the Organization.

CHAPTER 3

COOPERATION BETWEEN STATES

3.1 Cooperation between States

3.1.1 Parties shall coordinate their search and rescue organizations and should, whenever necessary, coordinate search and rescue operations with those of neighbouring States.

3.1.4 The responsible authorities of Parties shall:

- .1 immediately acknowledge the receipt of such a request; and
- .2 as soon as possible indicate the conditions, if any, under which the projected mission may be undertaken.

3.1.5 Parties should enter into agreements with neighbouring States setting forth the conditions for entry of each other's search and rescue units into or over their respective territorial sea or territory. These agreements should also provide for expediting entry of such units with the least possible formalities.

3.1.6 Each Party should authorize its rescue coordination centres:

- .1 to request from other rescue coordination centres such assistance, including vessels, aircraft, personnel or equipment, as may be needed;
- .2 to grant any necessary permission for the entry of such vessels, aircraft, personnel or equipment into or over its territorial sea or territory; and
- .3 to make the necessary arrangements with the appropriate customs, immigration, health or other authorities with a view to expediting such entry.

3.1.7 Each Party shall ensure that its rescue coordination centres provide, when requested, assistance to other rescue coordination centres, including assistance in the form of vessels, aircraft, personnel or equipment.

3.1.8 Parties should enter into agreements with other States, where appropriate, to strengthen search and rescue cooperation and coordination. Parties shall authorize their responsible authority to make operational plans and arrangements for search and rescue cooperation and coordination with responsible authorities of other States.

CHAPTER 4

OPERATING PROCEDURES

4.1 Preparatory measures

4.1.1 Each rescue coordination centre and rescue sub-centre shall have available up-to-date information especially concerning search and rescue facilities and available communications relevant to search and rescue operations in its area.

4.1.2 Each rescue coordination centre and rescue sub-centre should have ready

access to information regarding the position, course and speed of vessels within its area which may be able to provide assistance to persons, vessels or other craft in distress at sea, and regarding how to contact them. This information should either be kept in the rescue coordination centre, or be readily obtainable when necessary.

4.1.3 Each rescue coordination centre and rescue sub-centre shall have detailed plans of operation for the conduct of search and rescue operations. Where appropriate, these plans shall be developed jointly with the representatives of those who may assist in providing, or who may benefit from, the search and rescue services.

4.1.4 Rescue coordination centres or sub-centres shall be kept informed of the state of preparedness of search and rescue units.

4.2 Information concerning emergencies

4.2.1 Parties, either individually or in cooperation with other States shall ensure that they are capable on a 24-hour basis of promptly and reliably receiving distress alerts from equipment used for this purpose within their search and rescue regions. Any alerting post receiving a distress alert shall:

.1 immediately relay the alert to the appropriate rescue coordination centre or sub-centre, and then assist with search and rescue communications as appropriate; and

.2 if practicable acknowledge the alert.

4.2.2 Parties shall, where appropriate, ensure that effective arrangements are in place for the registration of communication equipment and for responding to emergencies, to enable any rescue coordination centre or sub-centre to access pertinent registration information quickly.

4.2.3 Any authority or element of the search and rescue service having reason to believe that a person, a vessel or other craft is in a state of emergency shall forward as soon as possible all available information to the rescue coordination centre or rescue sub-centre concerned.

4.2.4 Rescue coordination centres and rescue sub-centres shall, immediately upon receipt of information concerning a person, a vessel, or other craft in a state of emergency, evaluate such information and determine the phase of emergency in accordance with paragraph 4.4, and the extent of operations required.

4.3 Initial action

Any search and rescue unit receiving information of a distress incident shall initially

take immediate action if in the position to assist and shall, in any case without delay, notify the rescue coordination centre or rescue sub-centre in whose area the incident has occurred.

4.4 Emergency phases

To assist in determining the appropriate operating procedures, the following emergency phases shall be distinguished by the rescue coordination centre or sub-centre concerned:

.1 Uncertainty phase:

.1.1 when a person has been reported as missing, or a vessel or other craft is overdue; or

.1.2 when a person, a vessel or other craft has failed to make an expected position or safety report.

.2 Alert phase:

.2.1 when, following the uncertainty phase, attempts to establish contact with a person, a vessel or other craft have failed and inquiries addressed to other appropriate sources have been unsuccessful; or

.2.2 when information has been received indicating that the operating efficiency of a vessel or other craft is impaired, but not to the extent that a distress situation is likely.

.3 Distress phase:

.3.1 when positive information is received that a person, a vessel or other craft is in danger and in need of immediate assistance; or

.3.2 when, following the alert phase, further unsuccessful attempts to establish contact with a person, a vessel or other craft and more widespread unsuccessful inquiries point to the probability that a distress situation exists; or

.3.3 when information is received which indicates that the operating efficiency of a vessel or other craft has been impaired to the extent that a distress situation is likely.

4.5 Procedures to be followed by rescue coordination centres and rescue sub-centres during emergency phases

4.5.1 Upon the declaration of the uncertainty phase, the rescue coordination centre or rescue sub-centre, as appropriate, shall initiate inquiries to determine the safety of a person, a vessel or other craft, or shall declare the alert phase.

4.5.2 Upon the declaration of the alert phase, the rescue coordination centre or rescue sub-centre, as appropriate, shall extend inquiries for the missing person, vessel or other craft, alert appropriate search and rescue services and initiate such action, as is necessary in the light of the circumstances of the particular case.

4.5.3 Upon the declaration of the distress phase, the rescue coordination centre or rescue sub-centre, as appropriate, shall proceed as prescribed in its plans of operation, as required by paragraph 4.1.

4.5.4 Initiation of search and rescue operations when the position of the search object is unknown.

In the event of an emergency phase being declared for a search object whose position is unknown, the following shall apply:

.1 when an emergency phase exists, a rescue coordination centre or rescue sub-centre shall, unless it is aware that other centres are taking action, assume responsibility for initiating suitable action and confer with other centres with the objective of designating one centre to assume responsibility;

.2 unless otherwise decided by agreement between the centres concerned, the centre to be designated shall be the centre responsible for the area in which the search object was according to its last reported position; and

.3 after the declaration of the distress phase, the centre coordinating the search and rescue operations shall, as appropriate, inform other centres of all the circumstances of the emergency and of all subsequent developments.

4.5.5 Passing information to persons, vessels, or other craft for which an emergency phase has been declared.

Whenever possible, the rescue coordination centre or rescue sub-centre responsible for search and rescue operations shall forward to the person, a vessel or other craft for which an emergency phase has been declared, information on the search and rescue operations it has initiated.

4.6 Coordination when two or more Parties are involved

For search and rescue operations involving more than one Party, each Party shall take appropriate action in accordance with the plans of operation referred to in

paragraph 4.1 when so requested by the rescue coordination centre of the region.

4.7 On-scene coordination of search and rescue activities

4.7.1 The activities of search and rescue units and other facilities engaged in search and rescue operations shall be coordinated on-scene to ensure the most effective results.

4.7.2 When multiple facilities are about to engage in search and rescue operations, and the rescue coordination centre or rescue sub-centre considers it necessary, the most capable person should be designated as on-scene coordinator as early as practicable and preferably before the facilities arrive within the specified area of operation. Specific responsibilities shall be assigned to the on-scene coordinator taking into account the apparent capabilities of the on-scene coordinator and operational requirements.

4.7.3 If there is no responsible rescue coordination centre or, by any reason, the responsible rescue coordination centre is unable to coordinate the search and rescue mission, the facilities involved should designate an on-scene coordinator by mutual agreement.

4.8 Termination and suspension of search and rescue operations

4.8.1 Search and rescue operations shall continue, when practicable, until all reasonable hope of rescuing survivors has passed.

4.8.2 The responsible rescue coordination centre or rescue sub-centre concerned shall normally decide when to discontinue search and rescue operations. If no such centre is involved in coordinating the operations, the on-scene coordinator may take this decision.

4.8.3 When a rescue coordination centre or rescue sub-centre considers, on the basis of reliable information that a search and rescue operation has been successful, or that the emergency no longer exists, it shall terminate the search and rescue operation and promptly so inform any authority, facility or service which has been activated or notified.

4.8.4 If a search and rescue operation on-scene becomes impracticable and the rescue coordination centre or rescue sub-centre concludes that survivors might still be alive, the centre may temporarily suspend the on-scene activities pending further developments, and shall promptly so inform any authority, facility or service which has been activated or notified. Information subsequently received shall be evaluated and search and rescue operations resumed when justified on the basis of

such information.

CHAPTER 5

SHIP REPORTING SYSTEMS

5.1 General

5.1.1 Ship reporting systems may be established either individually by Parties or in cooperation with other States, where this is considered necessary, to facilitate search and rescue operations.

5.1.2 Parties contemplating the institution of a ship reporting system should take account of the relevant recommendations of the Organization. Parties should also consider whether existing reporting systems or other sources of ship position data can provide adequate information for the region, and seek to minimize unnecessary additional reports by ships, or the need for rescue coordination centres to check with multiple reporting systems to determine availability of ships to assist with search and rescue operations.

5.1.3 The ship reporting system should provide up-to-date information on the movements of vessels in order, in the event of a distress incident, to:

- .1 reduce the interval between the loss of contact with a vessel and the initiation of search and rescue operations in cases where no distress signal has been received;
- .2 permit rapid identification of vessels which may be called upon to provide assistance;
- .3 permit delineation of a search area of limited size in case the position of a person, a vessel or other craft in distress is unknown or uncertain; and
- .4 facilitate the provision of urgent medical assistance or advice.

5.2 Operational requirements

5.2.1 Ship reporting systems should satisfy the following requirements:

- .1 provision of information, including sailing plans and position reports, which would make it possible to determine the current and future positions of participating vessels;
- .2 maintenance of a shipping plot;

- .3 receipt of reports at appropriate intervals from participating vessels;
- .4 simplicity in system design and operation; and
- .5 use of internationally agreed standard ship reporting format and procedures.

5.3 Types of reports

5.3.1 A ship reporting system should incorporate the following types of ship reports in accordance with the recommendations of the Organization:

- .1 Sailing plan;
- .2 Position report; and
- .3 Final report.

5.4 Use of systems

5.4.1 Parties should encourage all vessels to report their position when travelling in areas where arrangements have been made to collect information on positions for search and rescue purposes.

5.4.2 Parties recording information on the position of vessels should disseminate, so far as practicable, such information to other States when so requested for search and rescue purposes."