INTERNATIONAL MARITIME ORGANIZATION

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SUB-COMMITTEE ON STANDARDS OF TRAINING AND WATCHKEEPING
34th session
Agenda item 5

STW 34/5
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UNLAWFUL PRACTICES ASSOCIATED WITH CERTIFICATES OF COMPETENCY

Progress report on the list of actions

Note by the Secretariat

SUMMARY

Executive summary:	This document contains information on progress with those actions to be undertaken by the Secretariat identified in the list of actions developed by STW 33
Action to be taken:	Paragraph 9
Related documents:	STW 33/17, annex 4

1 The Sub-Committee, at its thirty-third session (21 to 25 January 2002), developed a list of high priority and long-term actions to be undertaken by the Secretariat and the Sub-Committee relating to unlawful practices associated with certificates of competency (STW 33/17, annex 4).

High priority actions

2 Those high priority actions identified for action by the Secretariat include to:

.1 develop its website to include secure, direct links with focal points of administrations and provide ready access to administrations that require verification of certificates;

.2 monitor the effectiveness of the operation of the focal points in administrations for verification of certificates and report the findings to the Sub-Committee; and

.3 seek guidance in relation to the legal implications of liability for mistakes in verification of certificates by using modern technology.

Action taken

2 The Secretariat has developed its website certificate verification facility based on information provided initially by Administrations when communicating information to the Secretary-General as required by regulation I/7. This contact information is maintained up-to-date on the IMO website and published as an STCW circular approximately once per year.

3 The use of the certificate verification facility has been monitored by the Secretariat and it has been widely used as evidenced by the statistics for the 12-month period November 2001 to October 2002 (see annex 1). A small number of questions have arisen, chiefly due to incorrect or out-of-date contact information, but these have been addressed by the Secretariat in conjunction with the Parties concerned.

4 As requested by the Sub-Committee, the Secretariat has obtained legal guidance in relation to legal implications of liabilities in verification of certificates by using modern technology. The advice is given at annex 2.

Long-term actions

5 Those long-term actions identified for action by the Secretariat include to:

.1 establish a focal point at IMO to monitor progress with exchange of information on fraudulent practices;

.2 include direct links on the IMO website to the websites or focal points in certificate issuing administrations that maintain details of fraudulent certificates, to facilitate rapid responses to requests for verification of certificates; and

.3 develop guidance and material to conduct a series of regional seminars and workshops to create a greater awareness of the problem and anti-fraud methods.

Action taken

6 The Head of the STCW and Human Element Section has been nominated to act as the focal point to monitor the progress of exchange of information on fraudulent practices. In this regard, the Secretariat has received information from a number of flag and port States, shipping companies and seafarers detailing examples of fraudulent certificates found on board ships during inspections or reportedly being used. A summary of those reports is at annex 3. The Sub-Committee may wish to consider the role of the focal point and how the exchange of information on fraudulent practices might best be undertaken in the future.

7 To date, the IMO website has not been further developed to provide direct links to the websites or focal points in certificate issuing administrations. In order to make progress on this action point, Member Governments are requested to give to the Secretariat details of their website addresses where direct on-line certificate verification can be made in order that the links can be established as soon as practicable.

8 The development of guidance and material to conduct a series of regional seminars and workshops to create a greater awareness of the problem and of anti-fraud methods will require the identification and allocation of funding. No such allocation has yet been made. The Sub-Committee may wish to consider whether the IMO ITCP should include provision for this task.

Action requested of the Sub-Committee

9 The Sub-Committee is invited to note the above information as decide as appropriate.

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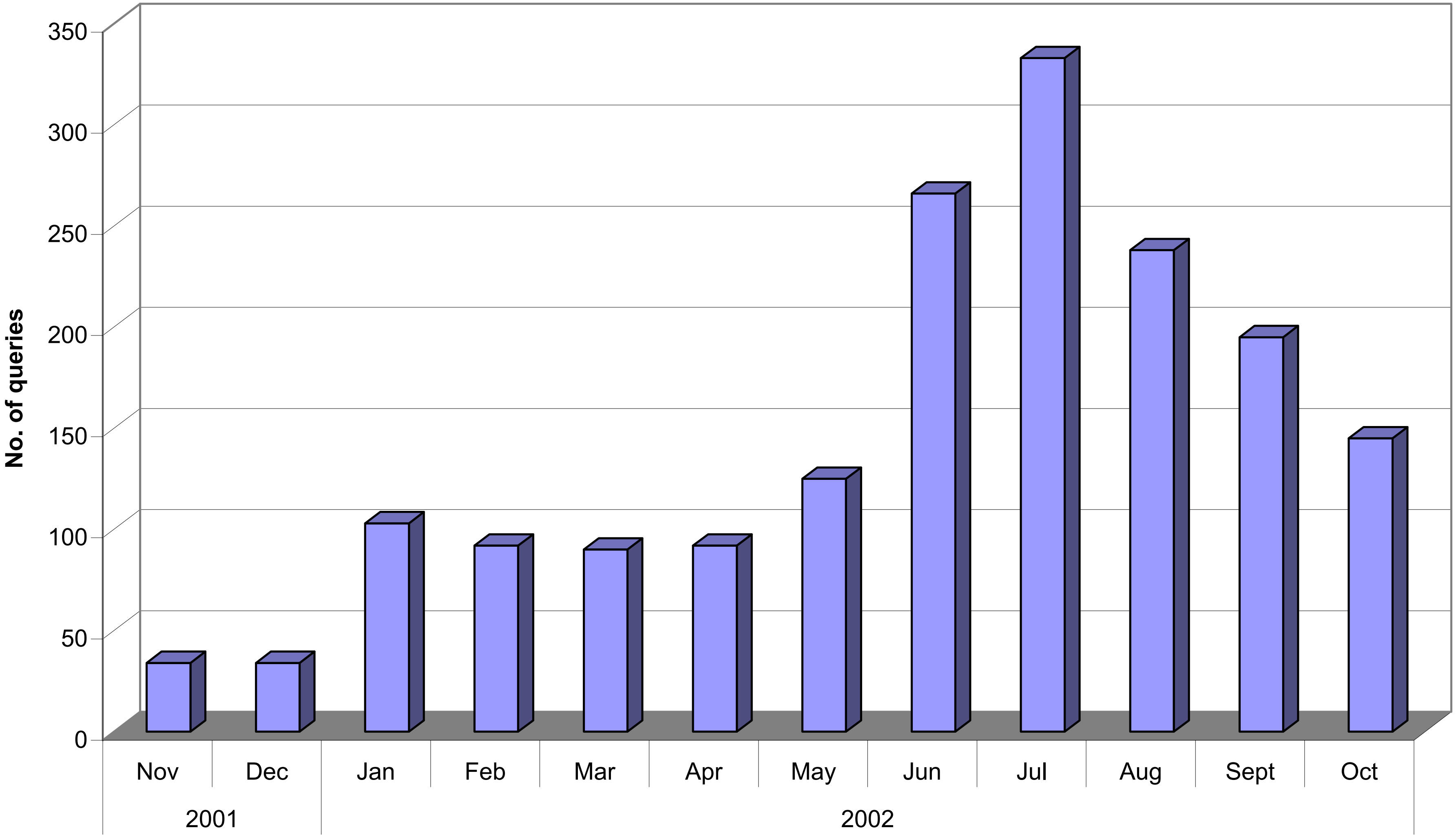
ANNEX 1

Use of IMO website certificate verification facility



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ANNEX 2

LEGAL LIABILITY FOR MISTAKES IN THE VERIFICATION OF CERTIFICATES USING MODERN TECHNOLOGY

1 At its last session, the STW Sub-Committee requested "guidance in relation to the legal implications of liability for mistakes in the verification of certificates using modern technology" (Annex 4, paragraph 2.3 of STW 33/17). This issue was raised in the context of a discussion on the development of an IMO website for verification of certificates via e-mail.

2 To the extent that the system being envisioned is along the lines set out in document STW 33/6/1 (Unlawful practices associated with certificates of competency – IMO website developments), the legal implications would appear to be rather straight forward. The system described in that note involves a mechanism by which anyone (e.g., ship owner, manning agent, port State control officer, etc.) can submit the details from a certificate for verification by the issuing authority. (It may be noted that the IMO website in this case is simply a means of electronically routing the request. IMO is not itself involved in the verification process.) The options available to the issuing authority are, at an elementary level, to reply by stating that the details are (a) correct or (b) incorrect. There appears to be no obligation to provide a more detailed response (such as 'corrections' to mistakes in the information being presented by the requesting party). In such a case the risk of liability would seem to be limited to cases where either the details requested for confirmation are said to be correct when they are in fact incorrect or invalid, or where such details are said to be incorrect or invalid when in fact they are correct.

3 In principle, a person or organization can be held liable if (a) false or misleading information is negligently made available under circumstances which suggest the user should be able to rely on that information as being accurate; (b) the circumstances are such that the reliance was reasonable (i.e., there was no apparent reason for the user to suspect that there were errors in the system or in the data); and (c) the provider of the information (i.e., the verifying authority) should reasonably be aware of such reliance.

4 Several questions would be relevant in establishing the above, including:

- were the circumstances in which the advice or information provided such as to give the impression that the advice or information was seriously intended?
- does the verifying authority have or profess to have some special skill/knowledge in giving the advice or information?
- is it intended by the verifying authority that any person or limited class of persons might rely on the accuracy of the advice or information?
- was there actual reliance on the advice or information? and
- does the person who relied on the advice or information fall within the limited class of persons who might reasonably be expected to rely on it?

5 To some extent, reliance could presumably be tempered (and exposure to liability could be mitigated) by a suitably-drafted prominent caveat or warning which alerts the user to any limitations in the reliability of the data being accessed.

6 Although IMO will not itself be involved in the verification process, and its role will be confined to making the website available, it would nevertheless be advisable for the website to carry a disclaimer to the effect that IMO has played no role in the verification process and cannot be held responsible for any errors, omissions or the like in the information appearing on the website. This disclaimer would be separate from and in addition to the caveat discussed in paragraph 5 above.

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ANNEX 3

REPORTS RECEIVED SINCE JANUARY 2001

Reported by	Flag of ship	Certificate claimed to be issued by	Comments
Portugal	Lebanon	São Tomé & Principe	Two false certificates
Portugal	Lebanon	Bolivia	Three false certificates (Chief Officer, Chief Engineer and Second Engineer)
Paris MOU	St. Vincent and the Grenadines	Yugoslavia	Confirmed as false by Administration. Prosecution in port State.
Paris MOU	Greece	Romania	Confirmed not issued to holders. Prosecution in port State.
Paris MOU	Cyprus	Romania	Confirmed not issued to holder. Prosecution in Port State.
Seafarer	Panama	Panama	Passed to Panama authorities for action.
Seafarer	India	India	Letter to Indian Administration and copied to IMO
Antigua & Barbuda	Antigua & Barbuda	Liberia	Two false documents (Master, Second Engineer)
Antigua & Barbuda	Antigua & Barbuda	Philippines	Three false documents (Master, 2nd Mate, 3rd Mate)
Antigua & Barbuda	Antigua & Barbuda	Panama	Two false documents (Master)
Antigua & Barbuda	Antigua & Barbuda	Germany	Altered limitations (Master, Chief Engineer)
Antigua & Barbuda	Antigua & Barbuda	Bulgaria	Two false documents (Chief and Second Engineer)
Seafarer	Antigua & Barbuda	Georgia	Alleged bribery and false qualifications
Ukraine	Antigua & Barbuda	Ukraine	Verification checks of 60,057 certificates conducted by Ukraine inspectorate. 1,326 found not to be valid (2.2%)
Honduras	Honduras	Honduras	5 false certificates (Master, Chief Officer, Second Officer, 2 Chief Engineers)
Malta	Malta	Pakistan	3 false certificates (Chief Mate, First Engineer, Second Engineer)
Shipowner	-------	Indonesia	4 false certificates

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