



Development of common security management, maritime safety
and ship pollution prevention for the Black Sea and Caspian Sea
(SASEPOL)

National Transposition Plan for MARPOL, SOLAS/ISPS, and PSC MoU's - Kazakhstan

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MoU's - Kazakhstan

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1. Terms of Reference

The following text has been reproduced from the project TORs for Activity 1.2.

Activity 1.2 *"If needed, prepare and implement a plan for transposition of above-mentioned international conventions and regulations into national legislation. ["above mentioned" is the result/outcome of activity 1.1]*

The above review shall be the basis for drafting a plan for those countries which still need transposition of international conventions into national legislation and port regulations. The plan should also address whether real compliance takes place in ports and to which extent guidelines have been prepared for staff in maritime- and ports administrations. The plan shall be drafted in close cooperation with the respective Maritime Administrations. The level of assistance with the implementation of the prepared plans will vary from country to country."

Accordingly, the Consultant thought necessary to identify the deliverables and the methodology for the implementation of these tasks and to define the interface of this activity to other activities and tasks implemented under this project.

2. Methodology

The terms of reference require the following for activity 1.2:

1. Review of the outcome of activity 1.1;
2. Identification of international conventions which need transposition into national legislation;
3. If needed, drafting of a Transposition Plan.

The overall methodology for activity 1.2 has therefore been structured along the TORs and has been split into two main sections:

1. **Section 1 - Assessment:** It consists in the review and analysis of the report delivered under activity 1.1, with special emphasis on any latest developments that might have taken place since report 1.1 was delivered. It is then followed by an analysis of the number, if any, of international conventions that still require transposition into national legislation. The assessment is to be made against the IMO Code for the Implementation of Mandatory IMO Instruments, 2007. The table below summarizes the requirements and recommendations given in IMO resolution A.996(25) - Code for the Implementation of Mandatory IMO Instruments.

Table 2.1: Overview IMO Resolution 996(25)

		Description
Common areas		
Objective	Here each administration should view the Code for the implementation of mandatory IMO instruments and implement these instruments according to paragraph 6 to which they are Contracting Government and Parties, and also have a role in accordance with it's own circumstances and geographical position.	
Strategy	Here are issues to be covered to get the objective of the Code. According to them each member state should implement and enforce mandatory instruments in accordance to international recommendations; review and verify the effectiveness of the State's international obligations; achieve, maintain and improve organizational performance and capability.	
General	Here Administrations are responsible for promulgating laws and regulations and for taking all necessary steps to provide the whole range of effect of these instruments to ensure that a ship is fit for the service from the points of view of safety of life at the sea and protection of the marine environment by providing experienced staff and refusing to transfer damage and hazard from one area to another or transform one pollution to another.	
Scope		
Initial actions	Here the member state should incorporate new mandatory IMO instruments into national legislation and also ensure effective enforcement.	
Communication of information	Here the State should communicate its strategy including information on its national legislation to all concerned.	
Records	Here records should be established and maintained in order to provide evidence of conformity to requirements.	
Improvement	Here States should improve the adequacy of the measures which are taken to give effect to those conventions they have accepted, and enforce national legislation. The State should determine acts to eliminate the causes of potential non-conformities in order to prevent their occurrence.	
Flag States		
Implementation	Here flag States should make every effort to effectively discharge their responsibilities and obligations, establish resources and processes capable of administering a safety and environmental protection programme and ensure that ships entitled to fly their flag are sufficiently and efficiently manned.	
Delegation of authority	Here flag states authorising recognized organizations to act on their behalf in conducting the surveys inspections, the issue of certificates and documents, the marking of ships and	

		Description
		other statutory work.
Enforcement	Here flag states should take all necessary measures to secure observance of international rules and standards by ships entitled to fly their flag and by entities and persons under their jurisdiction so as to ensure compliance with their international obligations.	
Flag state surveyors	Here flag States should define and document the responsibilities, authority and interrelation of all personnel, also the personnel has to be highly qualified and trained.	
Flag State Investigations	Here the flag States should be prepared to send qualified and experienced investigators competent in matters relating to the casualty. Ship casualties should be investigated and reported in accordance with the relevant IMO conventions and the guidelines developed by IMO.	
Evaluation and Review	Here the flag States should periodically evaluate their performance according to the implementation of administrative processes.	
Coastal States		
Implementation	Here coastal States should perform their obligations and rights under mandatory IMO instruments.	
Enforcement	Here coastal States should take all necessary measures to ensure their observance of international rules while fulfilling their obligations.	
Evaluation and review	Here coastal States should periodically evaluate their performance in respect of exercising their rights and meting their obligations under mandatory IMO instruments.	
Port States		
Implementation	Here port States should fulfil their responsibilities with respect to maritime safety and environmental protection including pollution prevention.	
Enforcement	Here to fulfil the whole range of obligations port State should provide taking all measures of control by authorised and qualified officers in accordance to relevant procedures adopted by the Organization.	
Evaluation and Review	Here port States should on a periodic basis evaluate their performance in respect of exercising their rights and meeting their obligations under mandatory IMO instruments.	

2. **Section 2 - Transposition Plan.** This section will then focus on gaps identified in transposition (if any) and discuss the need for a transposition plan. Should there be a need for a transposition plan, then the cornerstones of such a transposition plan and respective institutional competencies will be proposed together with an indicative timeline.

3. Assessment

3.1 Introduction

A mission to Astana, Kazakhstan was undertaken within the Framework of the SASEPOL Project from the 6th to the 9th of April 2010. The scope of the mission was to review the level of transposition of IMO mandatory instruments into national legislation and assess compliance of Kazakhstan legislation in relation to the said Instruments. The information has been obtained through expert visits to Kazakhstan, meetings and interviews with relevant staff in the Committee on Transport and Ways of Communications and other beneficiary organizations of the project (see Appendix 8.3 for details).

3.2 Common Areas

3.2.1 Objective

It has been established by the experts that a National Maritime Administration is not entirely in place. The primary entity for implementing applicable instruments in meeting the obligations of Kazakhstan vis-à-vis the International Mandatory Instruments is the Committee on Transport and Ways of Communications under the auspices of the Ministry of Transport and Communications as set out in diagrammatic format reproduced in Appendix 8.3.

3.2.2 Strategy

With reference to the scope of the project and in accordance with its Statute, the Committee on Transport and Ways of Communications is responsible for

- The transposition of IMO mandatory instruments into national legislations;
- The implementation and enforcement of relevant international mandatory instruments through laws of the Republic of Kazakhstan.

3.2.3 General

The Committee on Transport and Ways of Communications is the responsible entity for promulgating laws and regulations and for taking all other steps which may be necessary to give these instruments full and complete effect so as to ensure that, from the point of view of safety of life at sea and protection of the marine environment, a ship is fit for the service for which it is intended and is manned with competent maritime personnel.

The Committee on Transport and Ways of Communications is the responsible entity to:

- examine and verify level of compliance of national legislation with Mandatory Instruments;
- draft new or amended legislation in order to transpose new or amended international mandatory instruments into national legislation

Finding No 1: Several IMO mandatory instruments have not yet been transposed into national legislation e.g. SOLAS protocols 74 & 88, STCW (95 amendments), MARPOL Annex VI, etc.

3.2.4 Scope

The mandatory IMO instruments addressed in the Resolution A.996(25) are:

- the International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS 1974);

- the Protocol of 1978 relating to the International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS PROT 1978);
- the Protocol of 1988 relating to the International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS PROT 1988);
- the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, as amended (MARPOL 73/78);
- the Protocol of 1997 to amend the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, as amended (MARPOL PROT 1997);
- the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (STCW 1978);
- the International Convention on Load Lines, 1966 (LL 66);
- the Protocol of 1988 relating to the International Convention on Load Lines, 1966 (LL PROT 1988);
- the International Convention on Tonnage Measurement of Ships, 1969 (TONNAGE 1969); and
- the Convention on the International Regulations for Preventing Collisions at Sea, 1972, as amended (COLREG 1972).

A vast number of other instruments have been made mandatory under the above mentioned conventions (see Appendix 8.3).

3.2.5 Initial Actions

Kazakhstan has acceded number of IMO mandatory instruments in 1994 (appendix 4).

Finding No 2: The legal basis for the enforcement of national laws and regulations including the associated investigative and penal processes in relation to the mandatory instruments is not in place.

3.2.6 Communication of Information

Even though that the Committee on Transport and Ways of Communications is the primary entity, it has been established during interviews that other governmental entities are also involved in implementing international instruments. These entities are:

- Ministry of Foreign Affairs – Delegation to IMO;
- Ministry of Emergency Planning - Oil Pollution preparedness and response;
- Ministry of Education – Training and Certification of Seafarers.

Finding 3: Information on national Legislation has not been communicated to all parties concerned. This has been established as the borderline between the Ministry of Transport and the Ministry of Education in relation to the issuance of Certificates of Competency for Kazak seafarers which seems not to be clearly defined.

3.2.7 Records

Verification with the relevant requirements of the Code will be established in the near future during an international expert's mission.

3.2.8 Improvement

There is no information relevant to a procedure within the Committee on Transport and Ways of Communications in order to improve the adequacy of the measures which are taken to give effect to those conventions and protocols which they have accepted.

3.3 Flag States

3.3.1 Implementation

As stated by the officials during interviews, there is no actual Maritime Administration in place. To this end the Committee on Transport and Ways of Communications has been assigned with the responsibility of ensuring compliance of the ships flying the Kazak Flag vis-à-vis the provisions of the IMO mandatory instruments.

Finding No 4: The present legislation does not cover all conventional requirements, thus the observance of international mandatory instruments by the ships flying the Kazak Flag cannot be secured.

The Ministry of Education and Science is responsible for education policy and for running academic, technical, vocational training and education institutions, including those in the maritime field. However, the Ministry of Transport and Communications is responsible for the actual implementation of the STCW Convention

Finding No 5: Latest amendments of STCW Convention (1995) have not been transposed into national legislation.

3.3.2 Delegation of Authority

In accordance with the IMO GISIS only the Russian Maritime Register of Shipping (RS) has been recognized by Kazakhstan and authorized to carry out specific statutory activities on its behalf. However during interviews it has been established that other RO's are also performing the aforesaid tasks.

Finding No 6: No evidence of a regulatory procedure for delegating authority to recognised organisations to act on behalf of Kazakhstan in conducting the surveys, inspections, the issue of certificates and documents, the marking of ships and other statutory work required under the IMO conventions.

3.3.3 Enforcement

Ships flying the Kazak flag are bound to comply with IMO mandatory instruments. However, the fact that not all IMO mandatory instruments have been transposed into the national legislation indicates a degree of non-compliance.

Finding No 7: National legislation does not ensure that ships flying the Kazak Flag can proceed to sea only in full compliance with the requirements of international rules and standards

3.3.4 Flag State Surveyors

Officials of the Committee on Transport and Ways of Communications are entitled to perform Flag State Surveys on board of Kazak ships.

3.3.5 Flag State Investigations

Finding No 8: National Legislation does not ensure that Ship casualties are investigated and reported in accordance with the relevant IMO conventions, and the guidelines developed by IMO

3.3.6 Evaluation and Review

No information related to a procedure within the Committee on Transport and Ways of Communications to evaluate their performance with respect to the implementation of administrative processes, procedures and resources necessary to meet their obligations as required by the conventions to which they are party.

3.4 Coastal State

3.4.1 Implementation

The responsibility for coordinating a response in the event of oil pollution lies with the Ministry of Emergency Planning, which has the task to develop the National Marine Oil Spill Contingency Plan.

Monitoring of safety of navigation within the territorial waters lies with the respective Harbour Masters, which are bound to report to the Committee on Transport and Ways of Communications

3.4.2 Enforcement

Finding No 10: : Taking into account that latest edition of the IMO instruments has not yet been transposed into national legislation the observance of international rules when exercising state's rights and fulfilling its obligations cannot be ensured.

3.4.3 Evaluation and Review

There is no information related to a procedure within the Committee on Transport and Ways of Communications for periodical evaluation of its performance in respect of exercising its rights and meeting its obligations under mandatory IMO instruments.

3.5 Port State

3.5.1 Implementation

Kazakhstan is not party to any PSC regional MoU. The responsibility lies with the respective Harbour Masters, which are bound to report to the Committee on Transport and Ways of Communications

Finding No 11: The role and responsibilities of the port State with respect to maritime safety and environmental protection is not clearly defined in the current legislation

3.5.2 Enforcement

Finding No 12 : It has been established that there is lack of the necessary legislation for verifying compliance with all IMO mandatory instruments now in force.

3.5.3 Evaluation and Review

There is no information related to a procedure within the Committee on Transport and Ways of Communications for periodical evaluation of its performance in respect of exercising its rights and meeting its obligations under mandatory IMO instruments.

4. Transposition Plan

Based on the information available it is evidenced that not all IMO mandatory instruments have been ratified by Kazakhstan, nor are considered to be transposed. To this end it could be concluded that appropriate national legislation is not entirely into place and hence the state cannot implement and enforce the provisions of the Mandatory Instruments in an appropriate manner. It is therefore anticipated that a potential audit within the framework of VIMSAS will reveal numerous non-conformities related to implementation and enforcement.

In order for the state to start the preparatory work in respect to VIMSAS, is of utmost urgency to enact the appropriate legislation. It is therefore recommended that all mandatory instruments in their latest consolidated edition to be identified and transposed into national legislation along with various other requirements derived from the code itself (like penal procedures, policies, etc) . In order to timely resolve the problem the following transposition plan is proposed.

4.1 Procedure for Incorporation of Mandatory IMO Instruments into National Legislation

1. Step 1: Assignment of Responsibilities (Immediate Action)

The lack of a Maritime Administration has been identified during the mission, which it could be justified taking into account the small size of the national fleet (5 ships) and the existence of just one port. A considerable expansion of the national fleet as well as navigational traffic to and from Kazakhstan based on the anticipated increase of oil export is however expected. To this end it is therefore highly recommended that a Maritime Administration should be established under the auspices of the Ministry of Transport. The said Administration will bear the responsibility for identifying, transposing, implementing and assessing the level of implementation of the state's rights and obligations as these are derived from the IMO mandatory instruments.

2. Step 2: Human Resources (1 year)

Once the Maritime Administration is in place, an appropriate number of qualified personnel need to be recruited in order to assist on the timely transposition of the IMO mandatory instruments into the national legislation (drafting, translation, continuous monitoring of instruments status)

3. Step 3: Identification of IMO Mandatory Instruments in their latest consolidated edition (3 to 5 weeks).

The Maritime Administration should identify the latest edition for each and every one of the International Mandatory Instruments as these are stipulated in Resolution A. 996(25) - this can be achieved through various instruments i.e. EMSA Rule Check or via the IMO itself- and assess the level of compliance of the national legislation with them.

4. Step 4: Translating the IMO Mandatory Instruments in their latest consolidated edition into the Turkmen Language (6 to 9 months)

It is of utmost importance that an accurate translation should take place before the actual drafting of legislation enacts. If the translation from the English version is problematic, all mandatory instruments are also available in Russian, which is one of the official IMO languages. It is suggested that once the translation is completed, a verification for its accuracy (in relation to maritime terminology) to be performed by technical experts.

It should also be considered having the IMO mandatory instruments as a reference to the legislation used in its original form (i.e. in one of the Official IMO languages). This option obviously will speed up the whole process since no translation will be required.

5. Step 5: Drafting of necessary legislation transposing the mandatory instruments into national law (6 to 9 months).

The drafting should include all IMO mandatory international instruments as these are stipulated in Resolution A. 996(25) translated into the national language (or as a reference document in the original form). Furthermore and in order for Kazakhstan to effectively perform its tasks and to ensure compliance with VIMSAS the following provisions should also be drafted and included into the national legislation:

- investigative and penal processes (for Flag, Port and Coastal obligations);
- policies which will assist in the implementation and enforcement of the requirements of all safety and pollution prevention conventions;
- administrative instructions to implement applicable international rules and regulations as well as develop and disseminate any interpretative national regulations that may be needed;
- appropriate instruments of national law and interpretations thereof giving effect to the provisions of the conventions or specify whether the Administration's standards go beyond convention requirements in any respect.

6. Step 6: Ratification of the necessary legislation (3 to 6 months)

Since the whole procedure is of utmost urgency, it is proposed that the fastest way to enact legislation in accordance with national constitution to be adhered.

7. Step 7: Communication of national legislation (immediately after ratification)

Once the national legislation is in place it should be communicated to all parties concerned, including governmental entities involved in the implementation of IMO mandatory instruments, recognized organizations duly authorized to act on behalf of the republic of Kazakhstan and of course IMO.

8. Step 8: Further Actions

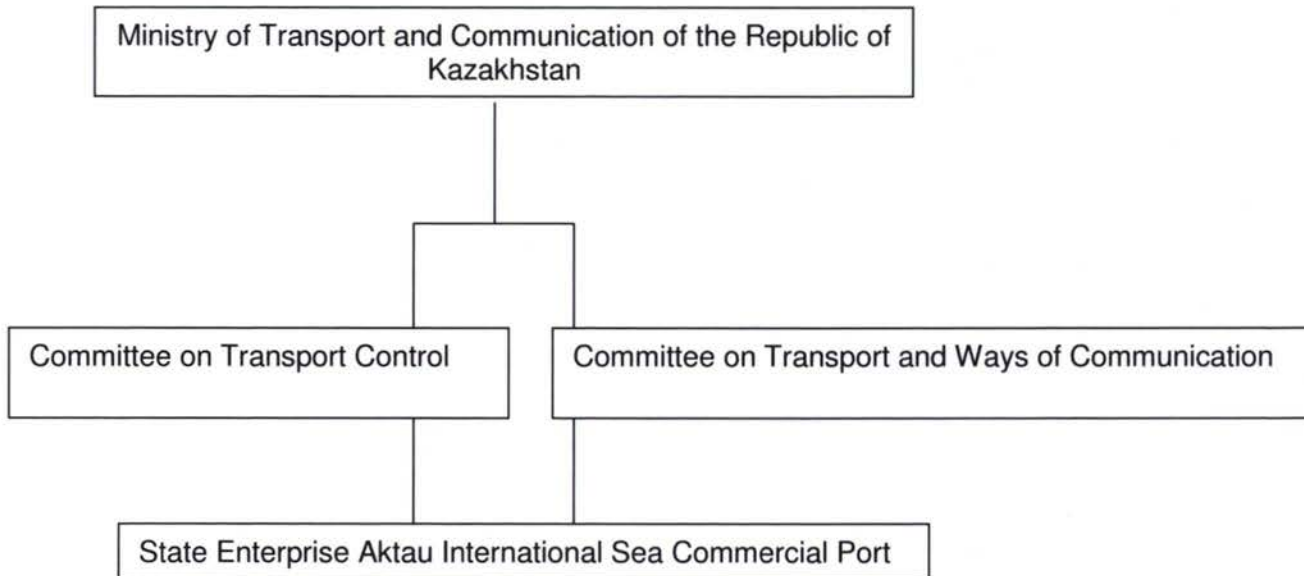
The Maritime Administration should assign responsibility to duly qualified personnel to **continuously** monitor developments within IMO, identify when a new or an amended instrument has been accepted by the Organisation and timely transpose it into national legislation by repeating steps 3 to 7.

5. Appendices

5.1 Representatives from Various Entities Interviewed by the International Expert

- Ms. Gulshot Erkinovna Dueschova, Main Expert of the Committee on Transport and Ways of Communication, Ministry of Transport and Communication
- Ms. Karlygash Kordabayevna Orazbekova, Expert of the Committee on Transport and Ways of Communication, Ministry of Transport and Communication
- Mr. Jandos Almienov, Expert of the Committee on Transport Control, Ministry of Transport and Communication
- Ms. Sholpan Zakiryanovna Yerzhanova, Expert on Administration of the Development of Transport and Communication, Ministry of Transport and Communication
- Ms. Alma Maitunova, Deputy Director of the Department of Technical and Vocational Education, Ministry of Education and Science
- Ms. Raissa Adamova, Adviser, Lloyd's Register Kazakhstan
- Mr. Vasiliyev Adamov, Executive Director, Association of Shipowners and Entrepreneurs in Maritime Industry, Aktau
- Ms. Olga Melnik, Legal Expert on Ecology
- Mr. Sherkhon Sugurbekov, Managing Director, KazMorTransFlot, Astana
- Mr. Alexandr Andryuchshenko, President, Maritime Transport Entrepreneurs' Association, Astana
- Mr. Nikolay Yudin, Deputy Executive Director, Maritime Transport Entrepreneurs' Association, Astana
- Mr. Kjell Landin, Chevron

5.2 Functional Structure of the State Maritime Administration of the Republic of Kazakhstan



5.3 Instruments Made Mandatory under IMO Conventions

SOLAS 74	<i>Res. MSC.133(76), as amended</i>	<i>reg. II-1/3-6.2.1</i>
	<i>FSS Code</i>	<i>reg. II-2/3.22</i>
	<i>FTP Code</i>	<i>reg. II-2/3.23</i>
	<i>LSA Code</i>	<i>reg. III/3.10</i>
	<i>CSS Code, sub-chapter 1.9</i>	<i>reg. VI/2.1</i>
	<i>Grain Code</i>	<i>reg. VI/8.1</i>
	<i>IMDG Code</i>	<i>reg. VII/1.1</i>
	<i>IBC Code</i>	<i>reg. VII/8.1</i>
	<i>IGC Code</i>	<i>reg. VII/11.1</i>
	<i>INF Code</i>	<i>reg. VII/14.1</i>
	<i>ISM Code</i>	<i>reg. IX/1.1</i>
	<i>1994 HSC Code</i>	<i>reg. X/1.1</i>
	<i>2000 HSC Code</i>	<i>reg. X/1.2</i>
	<i>Res. A.739(18)</i>	<i>reg. XI-1/1</i>
	<i>Res. A.789(19)</i>	<i>reg. XI-1/1</i>
	<i>Res. A.744(18), as amended</i>	<i>reg. XI-1/2</i>
	<i>Res. 4 of the 1997 SOLAS Conf.</i>	<i>reg. XII/1.5 (reg. XII/1.7 as of 1.7.06)</i>
	<i>Res. MSC.169(79)</i>	<i>reg. XII/7.2</i>
	<i>Res. MSC.168(79)</i>	<i>reg. XII/14</i>
MARPOL 73/78	<i>Res. MEPC.94(46), as amended</i>	<i>Annex I, reg. 20.6</i>
	<i>IBC Code</i>	<i>Annex II, reg. 1.4</i>
	<i>BCH Code</i>	<i>Annex II, reg. 1.4</i>
	<i>NOx Technical Code</i>	<i>Annex VI, reg. 2(5)</i>
STCW 78	<i>STCW Code, Part A</i>	<i>reg. I/1.2.3</i>

5.4 IMO Conventions acceded to by Kazakhstan

Name of Instrument (Date of accession) ¹	Transposed into national legislation?
IMO Convention 48	Act of Parliament ²
SOLAS 74 (7 March 1994)	Act of Parliament
SOLAS Protocol 78 (7 March 1994)	Act of Parliament – Has been abrogated by SOLAS PROT 88
SOLAS PROT 88 (17 February 2009)	Law ³

¹ The dates given here are from the IMO publication: STATUS OF MULTILATERAL CONVENTIONS AND INSTRUMENTS IN RESPECT OF WHICH THE INTERNATIONAL MARITIME ORGANIZATION OR ITS SECRETARY-GENERAL PERFORMS DEPOSITARY OR OTHER FUNCTIONS as at 28 February 2010

² Term used before the Constitutional change in 1995

³ Term used after the Constitutional change in 1995 (a Law is adopted by the Parliament)

Name of Instrument (Date of accession) ¹	Transposed into national legislation?
Load Lines (LL) 66 (7 March 1994)	Act of Parliament
Load Lines PROT 1988 (17 February 2009)	Law
Tonnage 69 (7 March 1994)	Act of Parliament
COLREGs 72 (7 March 1994)	Act of Parliament
CSC 72 (7 March 1994)	Act of Parliament
STCW 78 (7 March 1994)	Act of Parliament – Amendments 1995 and later have not yet been fully transposed
MARPOL 73/78 (Incl. Annexed I – V) (7 March 1994)	Act of Parliament
Civil Liability Convention (CLC) 69 (7 March 1994)	Act of Parliament
SUA 88 (24 november 2003)	Law
SUA Protocol 88 (24 November 2003)	Law