



COUNCIL
90th session
Agenda item 6

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CONSIDERATION OF THE REPORT OF THE LEGAL COMMITTEE

Note by the Secretary-General

SUMMARY

Executive summary: This document reports on the outcome of the eighty-sixth session of the Legal Committee

Action to be taken: Paragraph 54

Related documents: LEG 86/15

1 The Legal Committee held its eighty-sixth session from 28 April to 2 May 2003. The report of the session is contained in document LEG 86/15. The main conclusions, decisions and recommendations are summarised below.

Draft Convention on wreck removal (agenda item 4)

2 The Committee continued with its consideration of the development of the draft wreck removal convention (WRC). The Committee based its consideration on submissions concerning the results of intersessional consultations which highlighted two major issues which required resolution by the Committee, namely, jurisdiction in respect of the removal of wrecks and compulsory insurance or evidence of financial security. The Committee also took into consideration a submission by the Secretariat which noted that IMO's competence to consider and adopt a treaty regulating coastal State intervention in the EEZ for the purposes of wreck removal coincides with IMO's universal mandate to adopt global regulations for the safety of navigation and the prevention of marine pollution; and the United Nations Convention on the Law of the Sea (UNCLOS) does not inhibit the development of new treaty instruments, which IMO may develop even if the UNCLOS is silent on this matter, provided only that any such instruments are not inconsistent with the provisions of UNCLOS.

3 In the course of its discussion on Jurisdiction, the Committee overwhelmingly endorsed the views stated by the Secretariat on the mandate of IMO to adopt rules concerning coastal State intervention powers to regulate wreck removal in the EEZ, provided that any such rules did not conflict with the principles contained in UNCLOS.

4 Broad support was expressed in general for article 10 of the draft WRC and, in particular, there was general agreement that paragraph 9 of this article, which obliges States parties to ensure that their registered owners comply with obligations to facilitate the removal of wrecks, represented an important improvement to the draft and was a step in the right direction. Some

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delegations expressed their reservations regarding the applicability of the prospective WRC to wrecks of flag States which were not parties to the convention.

5 With regard to financial security, the Committee discussed the proposal submitted by the International Group of P&I Clubs to amend article 13 of the draft WRC to provide for evidence of financial security by way of a ship's certificate of entry issued by the International Group of P&I Clubs, rather than by way of the CLC type of certification currently provided for in article 13 of the draft WRC. The majority of delegations which spoke restated their opposition to this proposal and reiterated their support for the present draft article 13.

6 The Committee deferred consideration of several issues under discussion to a Working Group. The Group met from the afternoon of Monday, 28 April to the evening of Wednesday 30 April 2003 and reported orally to the Committee on 1 May 2003. The report is attached at Annex 2 to LEG 86/15. The Committee agreed to the continuation of the intersessional Correspondence Group with the task of further refining the draft WRC. The Committee also agreed to consider the report of the Working Group at its eighty-seventh session, together with the revised draft WRC articles, and to allocate sufficient time for this discussion.

Review of the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 1988, and its Protocol of 1988 relating to Fixed Platforms Located on the Continental Shelf (SUA Convention and Protocol) (agenda item 5)

7 The Committee continued its consideration of a draft protocol to the SUA Convention and Protocol submitted by the United States as lead country for an intersessional Correspondence Group. There was agreement on the need to amend the SUA treaties in the light of the new situation arising from the increase in international terrorism. It was acknowledged that in this new situation, maritime interests are widely exposed to risks such as the use of ships as weapons and the transportation of material which might lead to the proliferation of weapons of mass destruction. The need to develop new SUA instruments seemed overdue on account of the dramatic change of circumstances since the adoption of the original treaties in 1988. In addressing specific issues in the draft articles it was noted that many delegations did not have a mandate to make conclusive decisions and therefore their comments were strictly of a preliminary nature.

8 The Committee agreed to insert a reference to the protection of the rights and freedoms of seafarers in the Preambles to the prospective SUA protocols. The Committee also took note of the decision of the IMO Council at its eighty-ninth session, contained in document C 89/D, paragraph 12.1(v), and acknowledged that full consideration of the matters referred to in document C 89/12/3, paragraph 4.1, should be given to decisions on its work and the work of the Correspondence Group.

9 There was extensive discussion on the implications of how the inclusion of new offences in article 5 of the draft protocol would impact on the original scope of the SUA treaties. There was recognition for the need to include offences against security of navigation alongside with the existing offences against the safety of navigation. Some delegations suggested that the extension of the original scope invited consideration as to whether a new convention, instead of a protocol amending the original one, would not be more desirable. However most delegations favoured the development of a protocol. There was agreement that the new offences against security be included in a separate article.

10 A number of delegations supported in principle an article on boarding of foreign ships. Nevertheless, a number of areas were identified where further work would be needed to clarify the objectives, the procedures and safeguards and to ensure that the boarding provisions were not subject to abuse, and should not discriminate in form or in fact against foreign ships.

11 It was noted that the new provisions on boarding should conform with the principles of the United Nations Convention on the Law of the Sea (UNCLOS) and should take into account existing precedents, for example, such as the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Vienna, 1988 (Vienna Drug Convention) and the Protocol against the Smuggling of Migrants by Land, Air and Sea, supplementing the United Nations Convention against Transnational Organized Crime, 2000 (the Migrant Smuggling Protocol). Account should also be taken of more recent experiences and practices bearing in mind that these Conventions were drafted some time ago.

12 It was also noted that any new provisions on boarding of foreign ships must respect the jurisdiction of the flag State over its ships on the high seas. In this regard, a number of delegations said that boarding should take place only when the flag State had given explicit authorization.

13 The Committee discussed the feasibility of including an amendment procedure for the Annex, when in need of adding reference to new treaties. It was noted that this procedure was in fact a tacit amendment procedure, but unlike the tacit amendment procedures in IMO technical conventions such as SOLAS or MARPOL, as well as in various civil liability Conventions, such as the 1992 CLC and Fund Convention, the 2001 Bunkers Convention, the 1996 HNS Convention and the 2002 Protocol to the Athens Convention, 1974, the proposed procedure did not involve the requirement of formal approval by any Committee of the Organization. Further, there was no proviso to the effect that amendments would not apply to States that had issued a declaration of non-acceptance.

14 Several delegations expressed their reservations about the appropriateness of using a tacit amendment procedure in the context of a criminal law treaty.

15 The Committee decided to revert to this issue at a later stage if necessary, once the offence provisions have been settled.

16 In response to the suggestion to amend the title of the SUA Protocols, the Committee noted that the Organization has consistently avoided changing titles to treaties through Protocols amending them. Accordingly, it decided that this precedent should be followed in connection with the amendments to the SUA treaties.

17 During the session, an informal Working Group met to discuss article 3 on new offences and the outcome of that discussion was attached as Annex 5 to the Committee's report (LEG 86/15).

18 The Committee decided that the work on this agenda item should be continued intersessionally through correspondence and prepared revised terms of reference for the Correspondence Group. The United States will continue to act as co-ordinator of the Correspondence Group.

Provision of financial security (agenda item 6)**(a) Report on the outcome of the International Conference on the Revision of the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974**

19 The Committee noted the report on the outcome of the International Conference on the revision of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 as provided in document LEG 86/6/1 and considered each of the three resolutions which had been adopted by the Conference and referred to the Committee by the Council at its eighty-ninth session for appropriate action, as noted in document LEG 86/12, paragraph 5.

20 The Committee considered the resolution contained in document LEG 86/6/1, Annex 1, which *inter alia* calls for the Organization to carry out a study of regional economic integration organizations becoming parties to treaties and, if found necessary, to develop appropriate provisions which may be considered for inclusion in new treaties. The Committee also considered a submission relating to this resolution. The Committee agreed that a study was needed before any decision could be taken for further action. To this end the Committee requested the Secretariat to consult with the UN and with other agencies to determine what provisions on regional economic integration organizations have been introduced into other conventions.

21 The Committee considered the resolution contained in document LEG 86/6/1, Annex 2, which calls for the Organization to carry out a study of the issuing of certificates attesting that insurance or other financial security is in force with regard to bareboat charter registrations in the context of the Athens Protocol, and, if found necessary, to develop appropriate guidelines. The Committee noted that the resolution called for a study to be carried out in the context of the Athens Convention and Protocol, but agreed that the study should not be limited in this respect and should be extended to other liability conventions where the issue may be relevant. In this connection the Committee noted that the practice of allowing a bareboat charter to be registered in one State while the ship ownership was registered in another State could have implications for any liability convention which imposed certificate-issuing obligations only on the State of the registered owner. The Committee accepted the offer of the CMI to assist the Committee in conducting the study and requested the Secretariat to collaborate with the CMI in undertaking the study.

22 The Committee considered the resolution contained in document LEG 86/6/1, Annex 3, which calls for the Organization to consider the issue of how to ensure that carriers maintain insurance or financial security to meet the full level of their liability provided for in the Athens Protocol, and, if found necessary, to develop appropriate guidelines for the establishment of a framework of good practice in this regard. The Committee noted that this resolution did not call for any specific study to be conducted but would involve a review of Assembly resolution A.898(21) on Guidelines on shipowners' responsibilities in respect of maritime claims. It agreed to include this topic in its work programme. The Committee invited delegations to submit comments and proposals for consideration at its future sessions.

(b) Work of the Joint IMO/ILO *Ad Hoc* Expert Working Group on Liability and Compensation Regarding Claims for Death, Personal Injury and Abandonment of Seafarers

23 The Committee took note of the report of the fourth session of the Joint IMO/ILO *Ad Hoc* Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers (Joint Working Group), which appeared in document IMO/ILO/WGLCCS 4/3, attached to document LEG 86/6.

24 The Committee also noted information provided by the Secretariat that the ILO Governing Body at its 286th session in March 2003 had approved all the points of decision in paragraph 8.1 of the report of the fourth session of the Joint Working Group, including the communication of the circular letter on reporting of incidents of abandonment from 1 January 2003, which appeared in Annex 5 of the report.

25 The Committee was invited to decide on the necessity for the establishment of a database, bearing in mind the financial implications. If such a decision was made, it would then be for the Governing Bodies of the two Organizations to decide on the funding of the database. At present, neither of the two Secretariats had the financial or human resources or the technical skills necessary for the proper management of the database. The establishment of a database was approved in principle, on the understanding that questions relating to the financing of it would be referred to the Council and to the ILO Governing Body. The Committee noted the offer from the International Ship Suppliers Association (ISSA) to assist with the provision of resources needed for the establishment of a database.

26 The Committee was also informed that the fifth session of the Joint Working Group was planned for the beginning of 2004, and approved the revised terms of reference for that Group.

Monitoring the implementation of the HNS Convention (agenda item 7)

27 The Committee was provided with an update on progress made by the Correspondence Group since the last session of the Committee. The Committee was also informed about a meeting of interested States to be hosted by the Canadian delegation from 3 to 5 June 2003 in Ottawa. The purpose of the meeting was to assist the Correspondence Group to finalize its core work in time for consideration at the eighty-seventh session of the Legal Committee in October 2003. All interested delegations, including NGOs and IGOs, were invited to attend this meeting.

28 Delegations attending this session of the Committee were also given an opportunity to view a demonstration of the prototype of a database system which had been developed by the International Oil Pollution Compensation Funds for monitoring, identifying and reporting contributing cargo.

Places of refuge (agenda item 8)

29 At the request of the Maritime Safety Committee, the Committee considered two draft Assembly resolutions prepared by the Sub-Committee on Safety of Navigation as presented in the Annexes to document LEG 86/8. The Committee also considered a number of submissions relating to these resolutions.

30 The Committee noted that a questionnaire on places of refuge had been circulated in conjunction with a study being conducted by the CMI in co-operation with the Secretariat (Circular letter No. 2449 dated 22 January 2003), but there had not been a sufficient number of replies to allow the CMI to prepare results for submission to the Committee for its consideration. The Committee urged members to reply to the questionnaire as soon as possible to enable the CMI to submit information in time for consideration by the Committee at its eighty-seventh session.

31 The Committee noted that some of the documents, while raising a number of legal issues, predominantly contained comments and proposals on technical matters in the draft resolutions, and that these would have to be addressed by the Maritime Safety Committee and the Sub-Committee on Safety of Navigation as appropriate.

32 It was noted that one of the aims of the draft guidelines on places of refuge for ships in need of assistance should be to enhance accident management systems and provide a common framework for decision-making and co-operation, and to achieve this the guidelines should be kept as simple as possible. In this regard, it was suggested by some delegations that, while liability and compensation were important factors to be considered in the decision-making process, they should not necessarily be decisive in themselves.

33 There was wide agreement in the Committee that ships in distress situations are covered by the current liability and compensation regime, i.e., those conventions which are in force such as the 1992 CLC and the 1992 IOPC Fund Convention, along with those which have been adopted but have not yet entered into force (HNS, Bunkers, and the 1996 LLMC Protocol), as well as those under development such as Wreck Removal and the Supplementary Fund. It was recognized there may be gaps since not all ships were subject to compulsory insurance requirements and not all States were party to the relevant instruments. The Committee agreed that a comprehensive examination of this matter would be conducted once the results of the CMI study were available.

34 The Committee supported the need for urgent guidelines on places of refuge, subject to a number of comments. In this regard, the Committee considered the points raised by the Secretariat in the Annex to document LEG 86/8/1 to be valid and agreed that that Annex should be brought to the attention of the Maritime Safety Committee and the Sub-Committee on Safety of Navigation for consideration during the further development of the guidelines.

35 In light of the fact that the Committee would be undertaking an examination of the issues of liability and compensation as they relate to places of refuge, the Committee agreed with the recommendation that the draft guidelines in document LEG 86/8, Annex 1 should contain the following caveat: "These guidelines do not address the issue of liability and compensation for damage resulting from a decision to grant or deny a ship a place of refuge."

36 The Committee also considered the proposal in document LEG 86/WP.3 prepared by the Secretariat and agreed to recommend to the Maritime Safety Committee and the Sub-Committee on Safety of Navigation that the following words be added as an operative paragraph to the draft Assembly resolution on guidelines on places of refuge for ships in need of assistance:

"REQUESTS the Legal Committee to consider, as a matter of priority, the Guidelines from its own perspective, including the provision of financial security to cover coastal State expenses and/or compensation issues; and to take action as it may deem appropriate".

37 Anticipating that the Maritime Safety Committee and the Sub-Committee on Safety of Navigation would be further developing these guidelines before submission to the twenty-third session of the Assembly, and noting that the eighty-seventh session of the Legal Committee was scheduled to take place prior to that Assembly, the Committee agreed to undertake a review of the guidelines at that session if so requested by the Maritime Safety Committee, and, if necessary, submit its comments and proposals directly to the twenty-third session of the Assembly.

38 The Committee instructed the Secretariat to bring the comments of the Legal Committee regarding the draft resolutions to the attention of the Maritime Safety Committee (MSC) and the Sub-Committee on Safety of Navigation (NAV).

Treatment of persons rescued at sea (agenda item 9)

39 In considering this agenda item, the Committee noted that the Assembly, in resolution A.920(22), had identified the Salvage Convention as one of the instruments that might need to be reviewed and that the Maritime Safety Committee (MSC) and the Sub-Committee on Radiocommunications and Search and Rescue (COMSAR) had already taken note of comments made by the Comité Maritime International (CMI) at the eighty-fifth session of the Legal Committee, contained in document LEG 85/11 (paragraph 169), to the effect that the Salvage Convention may not be the most appropriate instrument to consider in this context.

40 It was noted that no legal issues had yet been referred to the Legal Committee for its consideration.

41 The Committee noted its continued readiness to provide advice on any legal issues that might be brought to its attention by other IMO bodies and decided to keep this matter under review and to report to the Assembly on work undertaken in compliance with resolution A.920(22) on Review of safety measures and procedures for the treatment of persons rescued at sea.

Code of Practice for the investigation of crimes of piracy and armed robbery at sea (agenda item 10)

42 The Committee recalled that, at the last session of the Assembly, the Maritime Safety Committee and the Legal Committee had been requested to keep the Code under review and to take action as they may deem appropriate. It noted that this item was last discussed at its eighty-fourth session, when it was agreed to keep this item on the work programme of the Committee and return to it at this session. However, no documents were submitted. The Committee decided to keep this item on its agenda and in its work programme for the eighty-seventh session of the Committee and, if at that session no submissions were received, it would report to the Assembly that no action has been required of the Committee.

Work programme and long-term work plan (agenda item 11)

43 The Committee reviewed the specific subjects and the general subjects contained in the draft long-term work plan for the period up to 2010.

44 In view of the progress made during this session, the Committee decided to recommend to the Council that, on a planning basis, provision be made for two diplomatic conferences during the biennium 2004-2005 to consider:

- A draft convention on wreck removal; and
- A draft protocol to amend the Convention on the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988, and its Protocol of 1988 relating to Fixed Platforms Located on the Continental Shelf (SUA Convention and Protocol).

45 The Committee approved the long-term work plan including a progress report on the work done in the current biennium. The Committee agreed to review and update this documentation at its forthcoming session in October. The long-term work plan is being submitted to Council under agenda item 21.

Matters arising from the eighty-ninth session of the Council (agenda item 12)

46 The Committee took note of the information on matters relevant to the Committee arising from the eighty-ninth session of the Council.

Technical Co-operation - subprogramme for maritime legislation (agenda item 13)

47 The Committee noted the progress report on the implementation of the subprogramme from July to December 2002.

Any other business (agenda item 14)

(a) Court decision on the meaning of damage in MARPOL 73/78

48 The Committee took note of information concerning a recent decision of the High Court of Australia regarding the meaning of the term 'damageto the ship or its equipment' in MARPOL 73/78. The document did not request any action of the Committee.

(b) Participation of Regional Economic Integration Organizations in IMO Conventions

49 The Committee dealt with this issue under agenda item 6 (as summarized above in paragraph 20).

(c) An offer of co-operation by the Comité Maritime International (CMI)

50 The Committee was informed that the Secretary-General had received an offer from the CMI to co-operate in collecting information from Contracting States on the implementation of the International Convention on Salvage, 1989. The letter stated that, to date, Contracting States to the Salvage Convention had not complied with the request to submit such information contained in the resolution on international co-operation for the implementation of the Salvage Convention as set out in Attachment 3 to the Final Act of the International Conference on Salvage, 1989. The Committee noted this request and the statement of CMI that, once it received this information, it would pass it on to the Committee.

(d) Discussion on the measures to protect crews and passengers against crimes on vessels

51 The Committee continued its consideration of problems arising from the lack of a current maritime regime to deal with offences committed on board a vessel travelling far away from its flag State. One delegation proposed two options to solve the problem. The first of these was the establishment of a legal scheme to enable the captain of the vessel to act at his discretion in the same way as the captain of an aircraft under the Convention on Offences and Certain Other Acts Committed on Board Aircraft, 1963 (Tokyo Convention). This would be a mandatory document. The second was the adoption of a resolution regarding co-operation between relevant States to facilitate a prompt solution.

52 The Committee received an interim report summarizing the responses received by CMI to its questionnaire on criminal offences committed on board foreign flagged vessels.

53 The Committee decided to remove this item from Any other business and to include it at future sessions of the Committee as a separate agenda item.

Action requested of the Council

54 The Council is invited to take note of the work accomplished or envisaged by the Legal Committee at its eighty-sixth session and to comment or decide, as appropriate, and, in accordance with Article 21(b) of the IMO Convention, to transmit the Committee's report, with the Council's comments and recommendations, to the Assembly.
