



COUNCIL
89th session
Agenda item 5

C 89/5/Add.1
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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-fifth session of the Legal Committee
- Action to be taken:* Paragraph 38
- Related documents:* C 89/5, LEG 85/11

1 As envisaged in document C 89/5, the Legal Committee held its eighty-fifth session from 22 to 24 October 2002. The report of the session is contained in document LEG 85/11. The main conclusions, decisions and recommendations are summarised below.

Draft Convention on wreck removal (agenda item 3)

2 The Committee considered submissions on the result of intersessional consultations regarding the development of the draft wreck removal convention (DWRC), the relationship between the draft convention and the Intervention Convention and a proposal to reinstate the definition of “flag State” throughout the draft. It also considered other pending issues in the draft convention including financial liability for locating, marking and removing wrecks, evidence of financial security, measures to facilitate the removal of wrecks, and the question of whether a State would be deemed to give advance consent to the exercise by a coastal State of authority to remove wrecks, where this was not otherwise permitted under international law.

3 In the course of its discussion on financial security, the Committee considered whether the term “act of terrorism” should be expressly included in the draft. The matter was referred back to the Working Group with the instruction that account was to be taken of the insurance implications and to investigate whether the solution might lie in excluding the word “wholly” from draft article 11(1)(b).

4 The Committee approved in principle the contents of article 12, which aimed at ensuring that the DWRC did not overlap and conflict with other liability regimes. The Committee also broadly supported the inclusion of article 10 on measures to facilitate the removal of wrecks but noted the diverging views on whether to replace the expression “State of the ship’s registry” with “flag State” as well as with regard to the power of the Coastal State to remove wrecks.

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5 A debate was held on the contents of Article 13 regulating financial security. The Committee invited the representative of the International Group of P&I Clubs to submit a written proposal on the features and extent of the evidence of financial security, covering in particular, the effect of a valid Certificate of Entry in a Club Member.

6 The Committee decided to delete Article 2(4), in terms of which a State would be deemed to give advance consent to coastal States to rescue wrecks where this was not otherwise permitted under international law.

7 The Committee deferred consideration of several issues under discussion to a Working Group. The Group met on Wednesday, 23 October and reported orally to the Committee on 24 October. The report is attached at Annex 2 to LEG 85/11. In connection with measures to facilitate the removal of wrecks, the Working Group requested the Secretariat to prepare a document on the mandate of the IMO to regulate the coastal State's intervention powers in the EEZ, within the framework of international law, including UNCLOS.

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 4)

8 The Committee considered a draft protocol to the SUA Convention and Protocol submitted by the United States as lead country for an intersessional Correspondence Group, as well as another submission on the need to avoid overlap and duplication with other treaties.

9 The Committee held a preliminary discussion on the main features in the draft protocol, covering proposed new offences, attempts, accomplice liability, duress or threats, the elimination of the political offence exception, the transfer of persons to assist in investigations and prosecutions, new boarding provisions, the exclusion of armed forces, replacement of the concept of flag State by that of nationality of the ship and exemption of naval auxiliaries.

10 While some concern was expressed on the possibility of overlapping and duplication with other treaties, it was also noted that some overlap might be unavoidable in order to close the gaps that would arise if some States did not become party to other conventions on terrorism and if some States did not become party to the new protocol. It was suggested that the Correspondence Group look into the issue.

11 Concern was also expressed about the drafting of the articles on attempts. The Correspondence Group was requested to examine each proposed offence individually to determine whether it was appropriate to add an attempt of that offence as a separate offence. The view was also put, in relation to draft article 5(3) on accomplice liability, that abetting an offence was already covered in the Convention.

12 There was some in principle support for the removal of the political offence exception. However, some delegations cautioned against its removal bearing in mind the expansion of offences and the widening of the scope of other provisions of the treaty. In order to meet concerns about human rights safeguards, the suggestion was made to include a provision similar to that contained in Article 15 of the International Convention for the Suppression of the Financing of Terrorism. That article enables a State to refuse a request for extradition or mutual assistance if there are grounds for believing it was made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion.

13 Concern was expressed on the introduction of new boarding provisions. Reference was made to the potential lack of compatibility between the proposed boarding procedures and the principles of freedom of navigation and flag State jurisdiction. Doubts were also expressed about the compelling need for such an article and its potential for abuse in its practical application. The Committee also voiced its concern about the safety of crews who might be exposed to hijacking by individuals posing as members of armed forces of a State. It was suggested that additional safeguards might need to be developed to protect seafarers.

14 The Committee did not agree with the proposed new language to describe nationality of the ship and preferred to retain the traditional language of "*flying the flag*" included in other IMO Conventions as well as in UNCLOS.

15 The Committee indicated its strong preference in favour of retaining the traditional language for the exclusion of naval auxiliaries used in other international instruments. Doubts were expressed as to the feasibility of excluding the armed forces of a State from the ambit of the Convention.

16 The Committee noted that the convening of an intersessional group would be premature in view of the preliminary nature of the deliberations at this stage. The Committee accordingly decided to instruct the Correspondence Group to continue its deliberations. In so doing it emphasized the need for transparency and for circulation of all comments submitted to the Group. It was further suggested that the Maritime Safety Committee might consider the safety aspects of the draft proposals.

Monitoring the implementation of the HNS Convention (agenda item 5)

17 The Committee noted the progress made by the Correspondence Group established by the Committee at its eightieth session to assist the Committee in monitoring the implementation of the HNS Convention. In particular, the Committee noted that an IMO HNS Correspondence Group website had been set up and would continue to be updated. This website was linked to the IMO website which also displayed relevant information regarding the HNS Convention.

18 In response to requests made at the eighty-fourth session of the Legal Committee for information on the reasons why Governments should join the HNS regime, the Committee noted the information submitted to it on some 65 incidents involving the international carriage of hazardous and noxious substances since 1995. Member States were encouraged to add any relevant information the list.

19 The Committee noted the work done by the International Oil Pollution Compensation Funds on the development of electronic database to report contributing cargo under the HNS Convention. There was also support for a proposal to request the IMO Secretariat to monitor cargo contributions and report on them to each session of the Legal Committee in order to identify the point of entry into force of the HNS Convention.

20 The Committee noted that the core work of the Correspondence Group would be finalized at the eighty-seventh session of the Legal Committee but that the Group would continue its work thereafter to update the HNS incident list on the website and to respond to any issues raised by Member States. The delegation of Canada confirmed that it would be willing to facilitate an informal meeting of the Group in June 2003 to agree the results of its work.

Provision of financial security: Joint IMO/ILO *ad hoc* Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers (agenda item 6)

21 The Committee took note of an oral report on the fourth session of the Joint Group, as well of as the fact that the Group had entered the second part of its mandate, consisting in monitoring the implementation of the resolutions A.930(22) and A.931(22) and related Guidelines adopted by the IMO Assembly on 29 November 2001.

22 The Committee also noted that, in order to help this monitoring process, the Group had prepared two questionnaires to be sent to competent national Administrations and to relevant organizations. The Committee requested the Secretariat to circulate the two questionnaires and encouraged Governments and the relevant organizations to submit the required information, taking into account the report of the fourth session of the *Ad Hoc* Working Group. The holding of a fifth session of the Group was endorsed by the Committee.

Technical Co-operation - subprogramme for maritime legislation (agenda item 7)

23 The Committee noted the progress report on the implementation of the subprogramme from January to June 2002.

24 The Committee also noted the information provided by the Director of the Technical Co-operation Division on the main features of implementation of the subprogramme in view of the ongoing requests for assistance received from many countries wishing to update their maritime legislation. In this regard the Committee took note of the external constraints on implementation, including the need to identify qualified consultants to provide advice in the field of maritime law.

Matters arising from the eighty-eighth session of the Council (agenda item 8)

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

Review of status of conventions and other treaty instruments adopted as a result of the work of the Legal Committee (agenda item 9)

26 The Committee took note of the information provided by the Secretariat and by Member States on the status of conventions and other treaty instruments adopted as a result of the work of the Legal Committee.

Any other business (agenda item 10)

(a) Decision on the measures to protect crews and passengers against crimes on vessels

27 The Committee noted information on an incident on the high seas involving the suspicious death of a seafarer. In particular, the Committee considered the difficulties for a flag State geographically far from the place of the incident to take steps to exercise jurisdiction over such an incident. Delegations were divided in their opinions as to whether the SUA treaties would, or would not, apply to the incident. Concern was expressed at the suggestion that a coastal State should be compelled to accept delivery of a foreign suspect in the event of a crime committed on a foreign-flag ship on the high seas.

28 Some delegations expressed the view that although it might not be necessary to develop a new international convention to address this matter, guidelines might be developed for masters and coastal States to provide practical guidance on how to handle such situations and to remind flag States of their responsibilities to enforce criminal law on ships flying their flag.

29 The Committee agreed that it would not be appropriate to include this matter as part of the review of the SUA Convention. It also noted that it would be premature to include this matter on its work programme as a separate item until additional information was available on current State practice and domestic law.

30 The Committee accepted the offer by the CMI to develop a questionnaire, in consultation with the Secretariat of the IMO Legal Office, to be sent by the IMO to Member Governments to solicit information which may be relevant to the Committee's further consideration of this matter.

(b) Places of refuge

31 The Committee noted the information provided by the Secretariat and by the Assistant Secretary-General and Director of the Maritime Safety Division (MSC) on the work of several IMO bodies in this regard. In particular the Committee noted that three draft Assembly resolutions were being considered, and that at the invitation of the MSC at its seventy-sixth session in December 2002, it might be asked to consider work in progress from a legal perspective in matters such as liability and compensation for damage arising from entry of a ship in need of assistance into a place of refuge.

32 The Committee further noted the results of a CMI survey conducted by the CMI at the Committee's request, to ascertain the extent to which domestic law dealt with the problem of vessels in distress seeking refuge. In this regard the Committee noted that the responses of the CMI members did not indicate that States had imposed legal liabilities on the owners of such vessels and that the CMI was in the process of analysing the liability issues.

33 The Committee agreed to examine the legal aspects of the draft Assembly resolutions on the liability aspects of places of refuge should it be asked to do so by the MSC.

The Committee requested the Secretariat to circulate the draft Resolutions well in advance of the Committee's next session. The Secretariat was also requested to review, in co-operation with the CMI, the provisions of existing international instruments and of national law dealing with liability and compensation and their application to places of refuge.

(c) Treatment of persons rescued at sea

34 The Committee took note of the information on the work of other IMO bodies on treatment of persons rescued at sea as well as of the Secretary-General's initiative in promoting inter-agency co-operation in this regard.

35 The Committee decided that there was no specific action to be taken at this session. However, it took notice that it may be requested by other IMO bodies to examine particular issues, and that it would need to decide at its next session what interim report to submit to the Council for transmission to the twenty-third Assembly.

(d) Quality shipping Conference

36 The Committee took note of information concerning a Quality Shipping Conference hosted by Denmark and decided that no further action was requested at this time.

Note of appreciation

37 The Committee paid tribute to three of its long-standing members, Professor Tanikawa (Japan), Mr. Muttillainen (Finland) and Mr. Bozrikov (Russian Federation), who would be retiring after this session of the Committee. The Committee expressed its appreciation for the work they had done for the Committee over the years and their valuable contribution to the development of IMO Conventions.

Action requested of the Council

38 The Council is invited to take note of the work accomplished or envisaged by the Legal Committee at its eighty-fifth 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.
