WORK OF OTHER BODIES

Outcome of LEG 91

Note by the Secretariat

SUMMARY

Executive summary: This document reports on the outcome of LEG 91 on matters relevant to the Committee’s work

Action to be taken: Paragraph 23

Related document: LEG 91/12

General

1  The ninety-first session of the Legal Committee (LEG 91) was held from 24 to 28 April 2006 and its report has been circulated under the symbol LEG 91/12.

2  The outcome of LEG 91 on the draft convention on wreck removal, fair treatment of seafarers, places of refuge, implementation of the HNS Convention after the entry into force of the Revised MARPOL Annex II and abandonment of ships on land or in ports, is summarized in the following paragraphs.

Draft Convention on Wreck Removal (DCWR)

3  LEG 91, having considered document LEG 91/3 providing the outcome of the work carried out intersessionally under the leadership of the Netherlands, undertook an article-by-article reading of the revised text of the DCWR.

4  LEG 91, in noting that because of the refurbishment work, the IMO headquarters building would be closed for about 12 months from the end of July this year, recalled that it had been working on the understanding that there would be a diplomatic conference from 14 to 18 May 2007, in Nairobi, Kenya, and, in this connection the Government of Kenya was thanked for its generous offer to host the diplomatic conference.

5  LEG 91 agreed that the text of the draft DCWR would be ready to be finalized at LEG 92 (October 2006) and considered for adoption at a diplomatic conference in the spring of 2007. The Chairman appealed to limit discussion at LEG 92 to issues already on the table and to submit written proposals well in time.
6 LEG 91 instructed the Secretariat, in consultation with the lead delegation and interested delegations, to edit and prepare a new version of the draft text of the DCWR for consideration at LEG 92.

**Fair Treatment of Seafarers**

7 LEG 91 considered documents LEG 91/5 and LEG 91/5/1 (Secretariat) containing the draft guidelines and the draft report on the work of the second session of the Joint IMO/ILO Ad Hoc Expert Working Group on Fair Treatment of Seafarers.

8 LEG 91 noted the representative of the International Labour Organization (ILO)’s report that the draft resolution attaching the guidelines, as drafted and approved by the Joint IMO/ILO Ad Hoc Expert Working Group, would be submitted to the ILO Governing body for adoption at its next session in June 2006.

9 Following an in-depth debate in which several delegations expressed concerns over certain aspects of the draft Guidelines, LEG 91, noting the overriding need to adopt the Guidelines and the convenience to postpone a review of same to a later stage, adopted, by resolution LEG.3(91), the Guidelines on fair treatment of seafarers in the event of a maritime accident (LEG 91/12, annex 2).

10 In addition, LEG 91:

   .1 decided to establish an *ad hoc* working group of the Legal Committee which would meet during LEG 92 and which would be tasked with reviewing the Guidelines, taking into account the comments made by the delegations which had expressed concerns;

   .2 agreed that any decisions to amend the Guidelines LEG 92 might be able to make on the recommendations of the proposed working group would be transmitted to the ILO Governing Body for its consideration and approval in November of this year; and

   .3 instructed the Secretariat to bring the adopted Guidelines to the attention of the bodies undertaking a review of the Code for the investigation of marine casualties and incidents, in line with the decision of the Council taken at its eighty-ninth session.

11 LEG 91 decided to postpone to its next session the consideration of the draft revised terms of reference for the continuation of the Joint Working Group.

**Places of Refuge**

12 LEG 91 considered document LEG 91/6 (CMI) reporting on work underway by the International Group of the CMI on the preparation of a draft instrument on Places of Refuge.
A debate followed in the course of which the view was expressed that there was no need at present to draft a convention dedicated to places of refuge and that existing liability and compensation regimes already adequately covered places of refuge and that the subject should be removed from the Committee’s agenda. Some delegations, however, expressed the view that the subject should be retained on the Committee’s agenda, in view of the importance of the subject matter.

LEG 91 agreed to revisit this issue at its ninety-second session in October when it would be considering its planned outputs for the next biennium.

**Implementation of the HNS Convention**

LEG 91, in considering document LEG 91/7 (Secretariat), noted that the expected entry into force of the revised Annex II to MARPOL 73/78, on 1 January 2007, would render meaningless the reference in article 1.5(a)(ii) of the HNS Convention to “noxious liquid substances carried in bulk” to Appendix II of Annex II to MARPOL 73/78, as amended, since as from that date, Appendix II, as such, would cease to exist.

LEG 91 was informed that the Secretary-General issued, as an interim measure and pending consideration of this issue by LEG 91 and MEPC 55 in October this year, Circular letter No.2699 expressing the understanding that, if, as expected, the revised Annex II to MARPOL 73/78 enters into force on 1 January 2007, the reference to “noxious liquid substances carried in bulk” in article 1.5(a)(ii) of the HNS Convention will, as from that date, refer to noxious liquid substances as defined in regulation 1.10 of the revised Annex II of MARPOL 73/78. The Legal Committee was invited to consider adopting a resolution addressing this issue.

At the invitation by the Chairman, the Director of the Marine Environment Division confirmed that, should the 2004 amendments to the Annex to the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973 (revised Annex II to MARPOL 73/78), which were adopted at the fifty-second session of the Marine Environment Protection Committee on 15 October 2004, by resolution MEPC.118(52), enter into force, as from 1 January 2007, the revised Annex II to MARPOL 73/78 will no longer contain Appendix II; nonetheless, “noxious liquid substances carried in bulk” will remain covered by regulation 1.10 of the revised Annex II.

All supported the adoption of the resolution. In so doing, they noted their concurrence that, although Appendix II would cease to exist, the “noxious liquid substances carried in bulk” referred to in article 1.5(a)(ii) of the HNS Convention would remain covered by regulation 1.10 of the revised Annex II. The change was merely a technical one and the resolution recognizes this fact.

The Committee unanimously adopted resolution LEG.4(91), set out at annex 1, on Implications for the reference in article 1.5(a)(ii) of the HNS Convention to “noxious liquid substances carried in bulk”.

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Abandonment of ships

20 LEG 91 considered document LEG 91/11 (Secretariat) reporting on a decision adopted by the Basel Convention related to the abandonment of ships on land or in ports. The conference of the Parties to the Basel Convention was concerned about the effects that such abandonment might have on human health and the environment and invited the parties to provide information on the issue to the Secretariat of the Basel Convention. In this respect the IMO Secretariat prepared document ILO/IMO/BC WG 1/2/2, attached at annex to document LEG 91/11, providing information on the provisions of various IMO legal instruments and guidelines related to the abandonment of ships.

21 LEG 91 noted that MEPC 53 had considered the issue of abandonment of ships on land or in ports and had expressed concern that this matter had not been adequately covered by a binding legal instrument. MEPC 53, therefore, had invited the Legal Committee to consider this issue based on the analysis provided in the document attached at annex to document LEG 91/11, with a view to assisting in the development of an effective solution.

22 LEG 91 confirmed the accuracy of the information contained in document ILO/IMO/BC WG 1/2/2 attached at annex to document LEG 91/11, noting, however, that the document should be amended to reflect the fact that the 1996 Protocol to the London Convention, 1972 had now entered into force.

Action requested of the Committee

23 The Committee is invited to note the above information and, in particular, to:

.1 note resolution LEG.4(91) on Implications for the reference in article 1.5(a)(ii) of the HNS Convention to “noxious liquid substances carried in bulk”, adopted by the Legal Committee (annex 1); and

.2 consider and adopt the draft MEPC resolution on Implications for the reference in article 1.5(a)(ii) of the HNS Convention to “noxious liquid substances carried in bulk” (annex 2), as the revised MARPOL Annex II, which had implications for the HNS Convention, was adopted by the Committee at MEPC 52.

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ANNEX I

RESOLUTION LEG.4(91)

Adopted on 27 April 2006

REVISED ANNEX II TO MARPOL 73/78

IMPLICATIONS FOR THE REFERENCE IN ARTICLE 1.5(a)(ii) OF THE HNS CONVENTION TO “NOXIOUS LIQUID SUBSTANCES CARRIED IN BULK”

THE LEGAL COMMITTEE at its ninety-first session,

RECALLING article 33(b) of the Convention on the International Maritime Organization concerning the functions of the Committee,

BEING AWARE that the conditions for the deemed acceptance of the 2004 amendments to the Annex to the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973 (revised Annex II to MARPOL 73/78), which were adopted at the fifty-second session of the Marine Environment Protection Committee on 15 October 2004, by resolution MEPC.118(52), should be met on 1 July 2006, and that, if so, the revised Annex II of MARPOL 73/78 would enter into force on 1 January 2007,

NOTING that the definition of “noxious liquid substances carried in bulk” in article 1.5(a)(ii) of the International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (HNS Convention), refers to Appendix II of Annex II to MARPOL 73/78, as amended,

NOTING FURTHER that, once it enters into force, the revised Annex II to MARPOL 73/78 will no longer contain Appendix II; nonetheless, that “noxious liquid substances carried in bulk” remain covered by regulation 1.10 of revised Annex II,

DESIRING to ensure that all Contracting States and all States wishing to become Parties to the HNS Convention interpret and implement the Convention in a consistent and uniform manner,

1. URGES Governments concerned to note that, should the conditions for the entry into force of the amendments to Annex II to MARPOL 73/78 as described above be met, and consequent upon the said revision, “noxious liquid substances carried in bulk” in article 1.5(a)(ii) of the HNS Convention will, as from 1 January 2007, refer to noxious liquid substances as defined in regulation 1.10 of the revised Annex II of MARPOL 73/78, which are carried in bulk;

2. REQUESTS the Secretary-General, in accordance with article 53(2)(vii) of the HNS Convention, to transmit certified copies of the present resolution to all States which have signed or acceded to the HNS Convention;

3. FURTHER REQUESTS the Secretary-General to transmit copies of the present resolution to the Members of the Organization which have not signed or acceded to the HNS Convention;

4. INVITES Governments to bring this resolution to the attention of all Parties concerned.

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ANNEX 2

DRAFT RESOLUTION MEPC…. (55)

Adopted on … October 2006

REVISED ANNEX II TO MARPOL 73/78

IMPLICATIONS FOR THE REFERENCE IN ARTICLE 1.5(a)(ii) OF THE
HNS CONVENTION TO “NOXIOUS LIQUID SUBSTANCES CARRIED IN BULK”

THE MARINE ENVIRONMENT PROTECTION COMMITTEE,

RECALLING article 38(a) of the Convention on the International Maritime Organization concerning the functions of the Marine Environment Protection Committee (the Committee) conferred upon it by the international conventions for the prevention and control of marine pollution,

BEING AWARE that the conditions for the deemed acceptance of the 2004 amendments to the Annex to the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973 (revised Annex II to MARPOL 73/78), which were adopted at the fifty-second session of the Committee on 15 October 2004, by resolution MEPC.118(52), were met on 1 July 2006, and that the revised Annex II of MARPOL 73/78 will enter into force on 1 January 2007,

NOTING that the definition of “noxious liquid substances carried in bulk” in article 1.5(a)(ii) of the International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (HNS Convention), refers to Appendix II of Annex II to MARPOL 73/78, as amended,

NOTING ALSO that the revised Annex II to MARPOL 73/78 does not contain Appendix II; nonetheless, that “noxious liquid substances carried in bulk” remain covered by regulation 1.10 of revised Annex II,

NOTING FURTHER that the Legal Committee adopted resolution LEG.4(91) on the implications of the revised Annex II to MARPOL 73/78 for the reference in article 1.5(a)(ii) of the HNS Convention to “noxious liquid substances carried in bulk”,

DESIRING to ensure that all Contracting States and all States wishing to become Parties to the HNS Convention interpret and implement the Convention in a consistent and uniform manner,

1. URGES Governments concerned to note that, as the revised Annex II to MARPOL 73/78 will enter into force on 1 January 2007, “noxious liquid substances carried in bulk” in article 1.5(a)(ii) of the HNS Convention will, as from the same date, refer to noxious liquid substances as defined in regulation 1.10 of the revised Annex II of MARPOL 73/78, which are carried in bulk;

2. REQUESTS the Secretary-General, in accordance with article 53(2)(vii) of the HNS Convention, to transmit certified copies of the present resolution to all States which have signed or acceded to the HNS Convention;
3. FURTHER REQUESTS the Secretary-General to transmit copies of the present resolution to the Members of the Organization which have not signed or acceded to the HNS Convention;

4. INVITES Governments to bring this resolution to the attention of all Parties concerned.