



COUNCIL
24th extraordinary session
Agenda item 10

C/ES.24/10
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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 LEG 93
Action to be taken: Paragraph 47
Related document: LEG 93/13

NINETY-THIRD SESSION OF THE LEGAL COMMITTEE

INTRODUCTION

1 The report of the ninety-third session of the Legal Committee (LEG 93/13) is submitted to the twenty-fourth extraordinary session of the Council in accordance with the provisions of Article 34(b) of the IMO Convention.

2 The ninety-third session of the Committee was held from 22 to 26 October 2007 at the Hotel El Panama, Panama City, Republic of Panama. It was chaired by Professor Lee-Sik Chai (Republic of Korea).

3 The main conclusions, decisions and recommendations of the Committee during the session under review are summarized in the ensuing paragraphs.

PROVISION OF FINANCIAL SECURITY

Progress report on the 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

4 The Committee took note of information submitted by the Secretariat, regarding the progress report on the 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.

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5 The Committee noted that, following its invitation at its ninety-second session to reconvene the Group, the IMO and the ILO Secretariats would arrange for its seventh meeting to be held during the first quarter of 2008. In this regard, the Committee noted, with thanks, the offer made by the representative of ILO to host the meeting at its premises in Geneva, in view of the ongoing refurbishment of the IMO Headquarters.

6 There was consensus that the Group should be reconvened as soon as possible. It was suggested that the Group should focus on practical and long-term sustainable solutions. It was also proposed that the Group should be particularly cautious when considering the adoption of mandatory instruments aimed at proposing long-term solutions. In this regard, it was noted that the Group should first demonstrate the existence of gaps in international law before considering further rules.

7 Some delegations commended the Database on abandonment of seafarers as a useful tool and concern was expressed that there were still unresolved cases of abandonment. Concern was also expressed at the lack of prompt action by some States to deal with reported cases of abandonment involving ships flying their flag, and the consequent burden imposed upon port States to provide humanitarian assistance. In this regard, reference was made to the need for effective legal mechanisms to ensure that shipowners were made liable to pay for the related costs.

8 The Committee agreed to maintain this item on its work programme, bearing in mind the paramount importance to international shipping of promoting the welfare of seafarers.

FAIR TREATMENT OF SEAFARERS IN THE EVENT OF A MARITIME ACCIDENT

9 The Committee continued its consideration of the report of the *Ad Hoc* Working Group on Fair Treatment of Seafarers in the Event of a Maritime Accident, which had met during its ninety-second session with a view to revising the Guidelines on fair treatment of seafarers in the event of a maritime accident. The Committee noted that the Group had not reached a consensus on any proposed changes, with one exception: the revision of paragraph 1(6) in the introduction section, to insert the words “where applicable” after the words “employment agreement”. The Committee agreed that there was no compelling need to revise the Guidelines merely to introduce this modification.

10 The Committee reiterated its concern regarding the fair treatment of seafarers and agreed that it would be appropriate to gain experience with the current Guidelines before considering any revisions. It was suggested that the Guidelines should be widely disseminated and their application encouraged. In this regard, the Committee agreed that the Joint IMO/ILO *Ad Hoc* Expert Working Group on Fair Treatment of Seafarers in the Event of a Maritime Accident should be reconvened to monitor the implementation of the Guidelines on the basis of the terms of reference approved by the ILO Governing Body, including an additional term concerning the collection of information. The Committee requested the IMO and ILO Secretariats to consult with a view to determining an appropriate time and place for its next meeting.

11 The Committee noted that the Maritime Safety Committee (MSC), at its eighty-third session (3-12 October 2007), had agreed to include in the draft Code of the International Standards and Recommended Practices for a Safety Investigation into a Marine Casualty or Marine Incident a provision creating an obligation on Contracting Parties, to ensure that a seafarer from whom evidence is sought in a casualty investigation “be informed, and allowed access to legal advice, regarding” the risk of self-incrimination.

12 The Committee noted the suggestion that there was some confusion between investigations into accidents as a matter of technical information-gathering and administrative process, and investigations that had implications under criminal law. The view was expressed that the work of the MSC, in the context of the aforementioned Code, presumably dealt with the technical and administrative aspects, and, accordingly, the Joint IMO/ILO *Ad Hoc* Expert Working Group should concentrate on legal aspects.

13 The Committee decided to retain this agenda item on its work programme.

MONITORING THE IMPLEMENTATION OF THE HNS CONVENTION

14 The Committee noted the decision of the 1992 Assembly of the IOPC Funds to establish an HNS Focus Group to develop a draft protocol to the HNS Convention, with a view to providing legally binding solutions to three issues which had been identified as inhibiting the entry into force of the HNS Convention, namely, contributions to the LNG account; the concept of receiver; and the non-submission of reports on contributing cargo. The draft protocol would be submitted for the consideration and approval by the Legal Committee at its ninety-fourth session, with a view to holding, as soon as possible thereafter, a diplomatic conference to consider and adopt it.

15 Differing views were expressed regarding the mandate of the IOPC Funds Assembly to develop a protocol, instead of implementing the present text of the Convention. Most delegations that spoke commended the initiative taken by the IOPC Funds Assembly as the way forward, which would speed up the entry into force of the HNS Convention, since the issues that had been identified could not be resolved within the framework of the existing HNS Convention. Other delegations considered that, in dispensing with the present text of the HNS Convention, and pursuing a protocol, the IOPC Funds Assembly was exceeding the mandate bestowed upon it by the Diplomatic Conference which adopted the HNS Convention, which was restricted to administrative and organizational activities; they also noted that the decision taken by the IOPC Funds Assembly to propose the development of an amending protocol compromised the position of existing Contracting States, as well as that of future EU Contracting States. It also impeded the progress towards ratification of the Convention by several States with large volumes of contributing cargo, whose preparations to implement the treaty in its present form were in an advanced stage.

16 The Committee expressed its readiness to consider any proposals that might be put forward by the Focus Group. In so doing, it noted the commitment of the Focus Group to maintain the principle of shared responsibility of shipping and cargo interests and to restrict the scope of the draft protocol to provisions aimed at resolving the three key issues.

REPORT ON THE INTERNATIONAL CONFERENCE ON THE REMOVAL OF WRECKS, 2007

17 The Committee noted the report on the successful outcome of the International Conference on the Removal of Wrecks and the action resulting from the adoption of the Nairobi International Convention on the Removal of Wrecks, 2007.

18 The Committee expressed, once again, its appreciation to the Government of Kenya for hosting the Conference and also extended its thanks to the Chairman of the Committee of the Whole, Mr. Jan de Boer of the Netherlands, for the excellent work he had accomplished.

19 The Committee considered, in particular, a resolution of the Conference inviting it to develop a model for a single insurance certificate, which might be issued by States Parties in respect of each and every ship under the relevant IMO liability and compensation conventions. In this regard, the Committee noted that both the International Chamber of Shipping (ICS) and the International Group of P&I Associations (P&I Clubs) supported the development of such a certificate.

20 The Committee agreed to develop a single model insurance certificate and requested the Secretariat to prepare a draft instrument for consideration at its ninety-fourth session.

21 The Committee noted the concern expressed by the ICS and the P&I Clubs with respect to the ongoing problem of liability for acts of terrorism and the proposal that this issue be referred to a correspondence group. However, the Committee was of the view that, since the insurance market had found a solution in this regard for the Civil Liability Convention, the solution for the other liability Conventions should, therefore, also be sought in the insurance market.

MATTERS ARISING FROM THE NINETY-SEVENTH AND NINETY-EIGHTH SESSIONS OF THE COUNCIL

22 The Committee took note of the information provided by the Secretariat on matters arising from the ninety-seventh and ninety-eighth sessions of the Council.

23 In particular, the Committee noted the information provided by the Secretariat on the request made by the Council, at its ninety-seventh session, that the Committee submits specific proposals on how IMO might contribute to the United Nations Counter-Terrorist Strategy, as formulated in resolution 60/288, adopted by the United Nations General Assembly on 8 September 2006. In this regard, the Committee proposed that Member States consider, as a priority, the promotion of the prompt ratification and entry into force of the 2005 Protocols to the 1988 SUA treaties, adopted as a consequence of the work of the Committee. The Committee also encouraged the continuation of technical co-operation activities, to ensure the availability of adequate capacity-building in developing countries, to enable the SUA treaties to be effectively implemented, once they had entered into force.

TECHNICAL CO-OPERATION ACTIVITIES RELATED TO MARITIME LEGISLATION

24 The Committee took note of the information provided concerning the overall technical co-operation activities related to maritime legislation, over the 12-month period, from July 2006 to June 2007.

25 In particular, it noted information on the outcome of the national seminars on maritime legislation dealing with implementation of the SUA treaties, held in Bangkok, Thailand and Colombo, Sri Lanka in April 2007.

26 In this connection, it noted that legal assistance may be needed not only to support the implementation of the SUA treaties but also to develop legislation to allow for prosecution or extradition in cases of piracy and armed robbery. Additionally, it was noted that the SUA treaties did not only address terrorism but also offences involving proliferation, which should also be reflected in implementing legislation.

27 The Committee noted the information provided by the representative of the Intergovernmental Oceanographic Commission (IOC) of UNESCO concerning the guidelines IOC was developing, together with IMO, on how IMO Member States might address the effects of *tsunamis* on coastal and harbour operations. It also noted that new legal instruments may be required since Member States need to develop their own strategy for addressing *tsunami*-related evacuation measures for harbours.

REVIEW OF THE STATUS OF CONVENTIONS AND OTHER TREATY INSTRUMENTS ADOPTED AS A RESULT OF THE WORK OF THE LEGAL COMMITTEE

28 The Committee undertook its annual review of the developments regarding the conventions and other treaty instruments adopted as a result of its work, since the Committee's last review in October 2006 and up to 17 October 2007.

WORK PROGRAMME

Planned outputs for the 2008-2009 biennium

29 The Committee noted that its current Guidelines on work methods and organization of work call on the Committee, at each session, to examine its work programme and review the allocation of meeting weeks and its future work programme to ensure all items to be addressed fall within the Organization's Strategic Plan. The Committee introduced several amendments to its work programme.

Review of guidelines on methods of work

30 The Committee took note of the decision of the Council, at its ninety-seventh session, that it would be appropriate and beneficial that the Legal Committee, taking into consideration its differing needs, should harmonize its work methods with those of the Maritime Safety Committee and the Marine Environment Protection Committee.

31 The Committee also took note of the outcome of a subsequent meeting of the Chairmen and Secretaries of the five IMO Committees, held in June 2007, which considered how best this harmonization might be achieved.

32 The Committee established a working group to look into the question of harmonizing its work methods with those of other Committees, using as its terms of reference the four principles contained in paragraph 15 of the report of the Chairmen's meeting, namely that:

- guidelines on submission, processing and distribution should be harmonized, as far as possible, to assist the Secretariat in fulfilling its responsibilities, bearing in mind that deadlines for submission of documents may not be the same for all Committees, and considering that the Conference Division would need more time to process and translate the documents submitted to those Committees that usually handle a very large volume of documentation;
- subsidiary bodies such as working groups, sub-committees and correspondence groups should function in a similar manner;
- the same process should be followed in all Committees when assessing proposals for new items in the context of the Organization's Strategic Plan; and

- the best practices of any single Committee should be considered by the other Committees for possible implementation, adapted as may be appropriate.

33 The Committee endorsed the working group's recommendation that the Legal Committee guidelines should be amended so as to harmonize its methods of work with those of the MSC and the MEPC, as far as possible, taking into consideration its special needs.

34 The Committee agreed that the amendments recommended by the working group should be reflected in a document to be prepared by the Secretariat, in consultation with the Chairperson, to be presented to LEG 94 for its consideration and approval.

Proposal to reduce the number of sessions of the Committee from four to three in the 2008-2009 biennium

35 The Committee agreed to reduce the number of its sessions in the 2008-2009 biennium from four to three, so that only one session would be held, in the autumn of 2008. In doing so, the Committee noted that this agreement should not detract from the importance of the work of the Legal Committee, particularly its ongoing work in relation to the protection of seafarers.

ANY OTHER BUSINESS

(a) Capacity building when developing new instruments or amending existing ones

36 The Committee noted the invitation of MSC 82 to other Committees of the Organization to consider ensuring the provision of guidance for implementation, where necessary, when developing new treaty instruments or amending existing ones. The Committee noted that the International Conference on the Removal of Wrecks, 2007 (14 to 18 May 2007), when adopting the Nairobi International Convention on the Removal of Wrecks, 2007, had adopted a resolution on promotion of technical co-operation and assistance and had also invited the Committee to develop guidelines on the implementation of the Convention.

37 The Committee decided that there was no need, at this stage, to consider the development of such guidelines, but that it might revisit the issue at a future session.

38 The Committee noted that a draft resolution on "Capacity-building when developing new instruments", approved by MSC 83 to be submitted to the Assembly, at its twenty-fifth regular session, if adopted, would apply to the work of all Committees, including the Legal Committee.

39 The Committee, in principle, approved the draft Assembly resolution, but noted that the word "after" in the second operative paragraph, if maintained, might have the unfortunate effect of slowing down the process of the adoption of legal instruments, since it required the assessment of implications for capacity building to be made before embarking on the development of new instruments or the amendment of existing ones. Accordingly, the Committee agreed to suggest to the Assembly that the word "after" be replaced by the words "during or in parallel with".

(b) Measures to protect crews and passengers from crimes committed on vessels

40 The Committee considered proposals for an international instrument to facilitate expeditious investigation of shipboard offences with possible involvement of the substantially interested State on its request. It also considered proposals for guidelines for national legislation on maritime criminal acts, in the light of the expanding problem of serious maritime criminal acts, including piracy.

41 The Committee held an extensive discussion, with a view to deciding, in the first instance, whether the subject of crimes at sea should be reinstated as a separate item in the work programme of the Committee, and, if so, whether the Committee should pursue the format of a draft convention or guidelines for model legislation.

42 The Committee was divided on these issues. Several delegations suggested that either a convention or guidelines, or both, could be further developed by the Committee, in view of the increasing dangers posed by criminal activities at sea and the failure of existing international treaties to comprehensively address the effective prosecution and punishment of criminals. However, the majority of delegations that spoke opposed the reinstatement of the issues under consideration as a separate item on the work programme of the Committee. In their view, the compelling need justifying such reinstatement had not been demonstrated and should be addressed in the light of comprehensive statistics. Only upon availability of this data could the need for the elaboration of new international rules be considered. In their absence, States should concentrate on the effective implementation of existing treaty law regimes.

43 The Committee, accordingly, decided not to reinstate this item on its work programme but encouraged delegations and the Comité Maritime International (CMI) to continue with the consideration of this subject with a view to harmonizing legislation and strengthening the implementation of existing international law.

(c) Report on the IMO/MOWCA forum on the establishment of an integrated coastguard function network for West and Central African Countries, Dakar, Senegal, 23 to 25 October 2006

44 The Committee welcomed a resolution adopted by the IMO/MOWCA forum (held in Dakar, Senegal) and approved by the MOWCA General Assembly of Ministers on the establishment of an integrated coastguard function network for West and Central African Countries. The Committee noted that the operative paragraphs of the resolution would form the basis of action plans to be developed for the implementation of the integrated coastguard function network, which would facilitate the coordination of specialized agencies' and other donors' capacity and capacity-building programmes in their own areas of expertise.

45 The Committee also noted that the establishment of the integrated coastguard function network would also assist in combating piracy, armed robbery, unlawful acts and transnational organized crime at sea.

ELECTION OF OFFICERS

46 The Committee re-elected Professor Lee-Sik Chai (Republic of Korea), as Chairman; and Mr. Kofi Mbiah (Ghana) and Mr. Walter de Sá Leitão (Brazil) as Vice-Chairmen, all three for 2008.

ACTION REQUESTED OF THE COUNCIL

47 The Council is invited to:

- .1 consider the report of the ninety-third session of the Legal Committee and, in accordance with Article 21(b) of the IMO Convention, transmit it, with its comments and recommendations, to the Assembly (paragraph 1);

- .2 take note of the Committee's decision to update its work programme with the introduction of several amendments (paragraph 29);
 - .3 take note of the Committee's action with respect to amendment to its guidelines on methods of work (paragraphs 30 to 34); and
 - .4 take note of the Committee's decision to reduce the number of its sessions in the 2008-2009 biennium from four to three (paragraph 35).
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