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Agenda item 8

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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 91

Action to be taken: Paragraph 49

Related document: LEG 91/12

NINETY-FIRST SESSION OF THE LEGAL COMMITTEE

INTRODUCTION

1 The report of the ninety-first session of the Legal Committee (LEG 91/12) is submitted to the ninety-sixth session of the Council in accordance with the provisions of Article 34(b) of the IMO Convention.

2 The ninety-first session of the Committee was held from 24 to 28 April 2006. 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.

DRAFT CONVENTION ON WRECK REMOVAL

4 The Committee continued its consideration of a draft convention on wreck removal (DWRC), using, as a basis for discussion, a revised draft which incorporated amendments agreed by the Committee at its previous session and proposals developed intersessionally following the ninetieth session. The Committee undertook an “article-by-article” reading of the draft convention and confirmed its approval of several provisions. The Committee also introduced several amendments to the text.

5 The Committee considered the definition of “warship” which had been proposed as a result of the intersessional consultations. In this regard, it noted that the proposal reflected the definition contained in article 29 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS). The Committee decided that this definition was not necessary, since it was contained in UNCLOS and was widely accepted as a reference for the purpose of addressing the

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question of exclusion of warships from the scope of other treaties. It was noted that, while several other treaties contained exemptions for warships, none of them provided a definition of the term.

6 The Committee decided to include a new paragraph in article 10 which would clarify that the obligation of the State affected by the wreck (“the affected State”) to provide the registered owner with certain information, was connected to, and consistent with, the obligation of all States parties to require the master and operator of a ship to report the identity and principal place of business of the ship’s registered owner.

7 The Committee agreed that, at its next session in October, it would discuss the possible figures for inclusion in the square brackets in article 13 regarding the length of ships required to maintain compulsory insurance. The Committee requested the Secretariat to provide examples from other IMO conventions to the lead delegation which might assist it in its intersessional consultations.

8 The Committee also considered an oral proposal to include in article 16 a reference to the compulsory procedures for the settlement of disputes contained in Part XV, Section 2, of UNCLOS but decided to maintain the current text. Interested delegations were invited to submit written proposals in this regard for the consideration of the Committee at its next session.

9 The Committee decided to include, as a footnote in the text for further consideration at its next session, a proposal for the inclusion of a new paragraph to article 17 aimed at clarifying that the draft convention does not legally confer any authority upon coastal States with respect to wrecks of States which are not party to the convention, or otherwise interfere with the rights and obligations, (including navigational rights and jurisdiction over flag States) of such States, beyond that provided under customary international law as reflected in UNCLOS.

10 The Committee noted two working papers which had been prepared by the Secretariat, one containing a draft preamble, and the other on entry-into-force requirements in IMO “legal” conventions. It was agreed that the lead delegation would consider the draft preamble and would submit proposals on figures for the entry-into-force requirements, in consultation with interested delegations and the Secretariat.

11 The Committee agreed that the draft convention would be finalized at its next session on the understanding that the diplomatic conference would be held from 14 to 18 May 2007, in Nairobi, Kenya. The Committee thanked the Government of Kenya for its generous offer to host the diplomatic conference.

12 The Committee requested the Secretariat, in consultation with the lead delegation and interested delegations, to edit and prepare a new version of the draft text for its consideration by the Committee at its next session.

PROVISION OF FINANCIAL SECURITY

(i) 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

13 The Committee took note of the report of the sixth 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, which considered a number of issues, including, *inter alia*, whether the guidelines cover fishing vessels, the Joint Database on Abandonment of Seafarers developed by ILO, a suitable definition of “resolved case”, a proposal for insurance coverage for abandonment and the need for a mandatory instrument.

14 The Committee noted that the Database on Abandonment of Seafarers had been open to the public since 29 March 2006 on the ILO website. It contains salient information on instances of abandonment, for the purpose of monitoring the problem in a comprehensive and informative manner. The ILO representative called on Governments and non-governmental organizations to report incidents of abandonment of seafarers.

15 The Committee authorized the Working Group to continue monitoring the problem of abandonment of seafarers, taking into account all relevant information, including technical solutions available for financial security.

16 The Committee further authorized the Working Group to proceed with the development of longer-term sustainable solutions to address the problems of liability and compensation regarding claims for death, personal injury and abandonment of seafarers, bearing in mind the outcome of the 94th (Maritime) Session of the International Labour Conference.

17 The Committee approved revised terms of reference for the Working Group.

(ii) Follow-up on resolutions adopted by the International Conference on the Revision of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974

(a) Athens Protocol – development of guidelines to implement resolution A.988(24)

18 The Committee considered three related documents submitted by Norway pursuant to Assembly resolution A.988(24) containing guidelines for the implementation of the resolution and aimed at enabling States to ratify the 2002 Athens Protocol with a reservation concerning compulsory insurance for acts of terrorism.

19 The Committee considered a submission by the P&I Clubs and the International Union of Marine Insurance (IUMI). It noted that, although there appeared to be willingness among the majority of Club boards to provide cover, they were unlikely to do so until the issue of terrorism had been satisfactorily settled. Additionally, even if cover could be provided for existing passenger ships of up to 3,600 passengers, it should not be taken for granted that the industry would be able to provide cover for the larger passenger ships now coming into service.

20 The Committee also considered a submission by the International Chamber of Shipping (ICS) and the International Council of Cruise Lines (ICCL) and noted their concerns regarding difficulties in the current insurance market for terrorism-related incidents.

21 Following the discussions on this subject, the Committee agreed that work on the development of the guidelines should continue intersessionally along the lines suggested in the documents submitted by Norway (including LEG 91/WP.3) and within the framework of resolution A.988(24). The majority of the Committee was not, however, in favour of pursuing an option which would exclude shipowners from liability for acts of terrorism. The Committee agreed further that the solution should be widely acceptable and as simple as possible.

(b) Bareboat chartered vessels

22 The Committee noted a submission by the Comité Maritime International (CMI) advising against amending the definition of “owner” and “registered owner” in the 1992 CLC and FUND Convention, the 1996 HNS Convention and the draft wreck removal convention to include bareboat charterers as this might create unforeseen problems arising out of the channelling of liability.

23 The Committee expressed its appreciation and gratitude to the CMI for studying this issue.

FAIR TREATMENT OF SEAFARERS: PROGRESS REPORT ON THE WORK OF THE JOINT IMO/ILO *Ad Hoc* EXPERT WORKING GROUP ON FAIR TREATMENT OF SEAFARERS

24 The Committee took note of the report of the second session of the Joint IMO/ILO *Ad Hoc* Expert Working Group on Fair Treatment of Seafarers, which includes a draft resolution with guidelines on fair treatment of seafarers.

25 The Committee also noted a submission by the United States’ delegation reflecting concerns on issues which might prevent the United States and possibly other States from adopting the guidelines as presently drafted. The delegation explained that its submission aimed at removing those concerns by addressing the following three main issues. Firstly, there should be a clear statement that the guidelines were not intended to apply following incidents committed with criminal intent, as previously decided by the Committee at its eighty-ninth session. Secondly, the definition of “maritime accident” might be susceptible to misinterpretation and confusion, as it lacked a reference to actual or potential damage or injury. Finally, the guidelines should be interpreted and applied in conformity with a State’s domestic law. Although there was language in the introduction that prevented the guidelines from interfering with domestic law, the text might not be interpreted in conformity with this law. Some other concerns were identified by other delegations.

26 Several delegations noted that, on account of their importance, the guidelines should be scrutinized by a body such as the Legal Committee, so as to ensure that the Governments responsible for their implementation were more widely represented than they had been at the Working Group. However, many delegations, although sharing some or all of those concerns, noted the overriding need to adopt the guidelines at this session and to postpone a review of the guidelines to a later stage.

27 Bearing in mind these considerations, as well as the fact that the ILO Governing Body was expected to consider and adopt the guidelines at its 296th session in June 2006, following which the guidelines would be issued under cover of a joint IMO/ILO resolution with a view to their entry into force on 1 July 2006, the Committee unanimously agreed to adopt, at this session, the draft resolution and guidelines on fair treatment of seafarers in the event of a maritime accident, and decided to establish, at its next session, an *ad hoc* working group to be tasked with reviewing the guidelines taking into account the comments made by those delegations which had expressed concerns and any others that might be submitted intersessionally.

28 The Committee agreed that any decision to amend the guidelines it may make at LEG 92 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.

29 The Committee 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.

30 The Committee 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

31 The Committee noted the information provided by the CMI on work underway by the International Working Group of the CMI on the preparation of a draft instrument which would create a rebuttable presumption, first, that a ship in distress had a right of access to a place of refuge, and secondly, that a coastal State which granted access to a place of refuge should have immunity from suit.

32 Some delegations restated the view that there was no need at present to draft a convention dedicated to places of refuge; and that the more urgent priority would be to implement all the existing IMO liability and compensation conventions. Others expressed the view that existing liability and compensation regimes already adequately covered places of refuge and that the subject should be removed from the Committee's agenda. Other delegations, however, were of the view that, because of the importance of the subject matter, this item should be retained on the Committee's agenda.

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

MONITORING THE IMPLEMENTATION OF THE HNS CONVENTION

34 The Committee took note of the information provided by the Secretariat that there had been no change in the status of the Convention since the last session and that no responses had yet been sent to it on contributing cargo received by the eight contracting States to the HNS Convention.

35 The Committee addressed the interpretation of article 1.5(a)(ii) of the HNS Convention. In so doing, it noted that the Director of the 1992 IOPC Fund had brought to the attention of the Secretary-General the IOPC Fund Assembly's concern that the 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" referred to in Appendix II of Annex II to MARPOL 73/78, as amended, since, as from that date, Appendix II, as such, would cease to exist.

36 In this connection the Committee noted a Circular letter issued by the Secretary-General expressing the understanding that, if, as expected, 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, which are carried in bulk. The Circular letter also invited the Committee to consider adoption of a resolution on this issue.

37 The Committee unanimously adopted the proposed resolution, worded in similar terms, noting that the change was merely a technical one and the resolution recognizes this fact.

MATTERS ARISING FROM THE NINETY-FOURTH SESSION OF THE COUNCIL, THE TWENTY-THIRD EXTRAORDINARY SESSION OF THE COUNCIL AND THE TWENTY-FOURTH REGULAR SESSION OF THE ASSEMBLY

38 The Committee noted the information on matters relevant to the Committee arising from the ninety-fourth regular and the twenty-third extraordinary session of the Council, as well as the twenty-fourth regular session of the Assembly.

39 The Committee agreed that the diplomatic conference to consider the draft wreck removal convention would be held in Kenya from 14 to 18 May 2007. In view of this decision, and also bearing in mind the constraints to holding meetings during the period of refurbishment of the IMO Headquarters building, the Committee agreed, for the 2006-2007 biennium, to have three, rather than four, sessions i.e., two in 2006, and one in October 2007.

TECHNICAL CO-OPERATION: ACTIVITIES RELATED TO MARITIME LEGISLATION

40 The Committee noted a progress report by the Director of the Technical Co-operation Division on technical co-operation activities in the field of maritime legislation, which had taken place from January to December 2005. The Committee also noted that there were no activities on maritime legislation delivered in the Asia-Pacific region during 2005. However, activities were planned for Papua New Guinea, the Philippines, Bangladesh, Cambodia and Pakistan in 2006-2007. In particular, a workshop would take place in the Philippines in September 2006 on the topic of the implementation of the SUA Protocols. The Committee noted the possibility of replicating this workshop in other countries. It also noted the Director's suggestion that the Committee may wish to consider that, in future, instead of reporting on a semi-annual basis on the TC programme related to the maritime legislation, the Technical Co-operation Division may report to the Legal Committee on the biennium programme.

BIENNIUM ACTIVITIES WITHIN THE CONTEXT OF THE ORGANIZATION'S STRATEGIC PLAN

41 The Committee considered a Secretariat document on this subject. As requested by the Council at its ninety-fourth session, the Committee agreed:

- .1 to use the following five factors in prioritizing their work during the current biennium:
 - (i) more effort needs to be put into both implementation and maintenance of standards by all stakeholders in the chain of responsibility;
 - (ii) even more weight should be given by the Organization to the strategic objective of increasing emphasis on the human element across the chain of responsibility;
 - (iii) the Organization's efforts to reduce piracy and armed robbery need to be further enhanced;
 - (iv) more should be done by the Organization with other stakeholders to enhance the image of shipping and, at the same time, more needs to be done to reduce those factors which negatively impact the record of shipping in the eyes of civil society; and

- (v) more effort needs to be directed by the Committees towards identifying high-level actions and related outputs in order to address the strategic directions on enhancing the quality of shipping and environmental consciousness;
- .2 to set aside sufficient time at its future sessions for consideration of the high-level actions and their associated priorities, in order to ensure that they both accurately and concisely describe its planned activities;
- .3 to ensure that its high-level action plan and related outputs, especially those involving amendments to existing conventions, particularly those which have been in force for a short period, would take fully into account the directives in resolution A.500(XII), and that due attention would be given to the requirement that a well-documented compelling need must be demonstrated for the development and adoption of new or revised standards;
- .4 when reporting on its work to the Assembly at its twenty-fifth regular session, to report progress toward fulfilling the Organization's aims and objectives using the framework of the high-level actions and planned biennial outputs (document LEG 91/10, paragraph 7(i)). In this regard, the Committee noted that the planned outputs described in Part 2 of the annex to this document did not necessarily involve outputs attributable exclusively to the Legal Committee. The Secretariat was, accordingly, asked to identify or highlight those which were relevant to the work of the Committee so that the Committee could review them at its next session in light of its priorities for the 2006-2007 biennium;
- .5 when considering proposals for new work programme items, to ensure that the issues to be addressed are those which fall within the scope of the Strategic Plan;
- .6 to review its guidelines for the organization and method of its work and, as appropriate, that of its subsidiary bodies, in order to require that submissions for new work programme items include an indication of how they relate to the scope of the Strategic Plan. In this regard, the Committee requested the Secretariat to produce amended Guidelines on Work Methods and Organization of Work, taking into account resolutions A.970(24) and A.971(24) for consideration by the Committee at its next session; and
- .7 when making recommendations for its work programme during the Strategic Plan period, to bear in mind the desirability of not scheduling more than one diplomatic conference in each year, save in exceptional circumstances.

42 The Committee noted that the Council was scheduled to receive plans for the 2008-2009 biennium from all the Committees at its ninety-eighth session in June 2007. To facilitate this, the Committee accordingly decided to consider its planned outputs for the 2008-2009 biennium at its ninety-second session in October 2006.

ANY OTHER BUSINESS**(a) Abandonment of ships**

43 The Committee noted the information submitted by the Secretariat informing it about a decision adopted by the Basel Convention related to the abandonment of ships on land and in ports and the concerns expressed by the Conference of the Parties to the Basel Convention about the effects that such abandonment might have on human health and environment.

44 The Committee noted further that the MEPC had considered the issue of abandonment of ships on land and in ports, at its fifty-third session, and had expressed concern that this matter had not been adequately covered by a binding legal instrument. The MEPC, therefore, had invited the Legal Committee to consider this issue with a view to assisting in the development of an effective solution.

45 The Committee confirmed the accuracy of the information contained in the document prepared by the Secretariat 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.

(b) Outcome of the 94th (Maritime) Session of the International Labour Conference (Geneva, 7 to 23 February 2006). Adoption of the Maritime Labour Convention, 2006

46 The Committee took note of document LEG 91/11/1 (ILO) and congratulated ILO on the successful adoption of the Maritime Labour Convention, 2006.

(c) Criminal offences committed on foreign-flagged ships

47 The Committee noted a submission by the CMI reporting on its work on drafting a Model National Law on Maritime Criminal Acts, taking into account not only the problem of criminal offences committed on board foreign-flagged vessels, but also the ISPS Code, the 2005 Protocols to the SUA Convention and updated guidelines developed by the Maritime Safety Committee relating to piracy and other criminal acts.

48 The Committee encouraged the CMI to continue its work on this subject matter and to report to the Committee at its next session.

ACTION REQUESTED OF THE COUNCIL

49 The Council is invited to:

- .1 take note of the work accomplished or envisaged by the Legal Committee at its ninety-first session and to comment or decide, as appropriate; and, in particular:
- .2 take note of the Committee's intention to finalize the text of the draft convention on the removal of wrecks at its ninety-second session to have it ready for consideration with a view to adoption next year (paragraph 11);
- .3 agree to the holding of a diplomatic conference in Nairobi, Kenya, from 14 to 18 May 2007, to consider the adoption of the aforementioned convention (paragraphs 11 and 39);

- .4 take note of the unanimous adoption by the Committee of a resolution containing guidelines on fair treatment of seafarers in the event of a maritime accident (paragraph 27);
- .5 take note of the Committee's decision to establish, at its next session, an *ad hoc* working group on fair treatment of seafarers to undertake a review of the aforementioned guidelines, taking into account concerns expressed by delegations and any comments that may be submitted intersessionally (paragraph 27);
- .6 take note of the unanimous adoption by the Committee of a resolution on "Implications for the reference in article 1.5(a)(ii) of the HNS Convention to 'noxious liquid substances carried in bulk'", which addresses the interpretation of this article following the revision of Annex II to MARPOL 73/78 (paragraphs 36 and 37);
- .7 approve the Committee's decision to hold three, rather than four, sessions in the current 2006-2007 biennium, i.e., two in 2006 and one in October 2007 (paragraph 39);
- .8 take note of the Committee's decision to consider its planned outputs for the 2008-2009 biennium at its ninety-second session in accordance with the criteria set by the Council (paragraphs 41 and 42); and
- .9 in accordance with Article 21(b) of the IMO Convention, transmit the Committee's report, with the Council's comments and recommendations, to the Assembly.
