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95th session
Agenda item 10

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**REPORT OF THE LEGAL COMMITTEE ON THE WORK
OF ITS NINETY-FIFTH SESSION**

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1 INTRODUCTION

1.1 The Legal Committee held its ninety-fifth session at IMO Headquarters from 30 March to 3 April 2009, under the chairmanship of Professor Lee-Sik Chai (Republic of Korea).

1.2 The session was attended by delegations from the following Member States:

ALGERIA	LUXEMBOURG
ANTIGUA AND BARBUDA	MALAYSIA
ARGENTINA	MALTA
AUSTRALIA	MARSHALL ISLANDS
BAHAMAS	MEXICO
BELGIUM	MOZAMBIQUE
BELIZE	NAMIBIA
BOLIVIA	NETHERLANDS
BRAZIL	NIGERIA
BULGARIA	NORWAY
CANADA	PANAMA
CHILE	PAPUA NEW GUINEA
CHINA	PERU
COLOMBIA	PHILIPPINES
CUBA	POLAND
CYPRUS	PORTUGAL
DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA	REPUBLIC OF KOREA
DENMARK	RUSSIAN FEDERATION
ECUADOR	SAINT KITTS AND NEVIS
EGYPT	SAUDI ARABIA
ESTONIA	SINGAPORE
FINLAND	SOUTH AFRICA
FRANCE	SPAIN
GERMANY	SWEDEN
GHANA	SYRIAN ARAB REPUBLIC
GREECE	THAILAND
HONDURAS	TUNISIA
INDONESIA	TURKEY
IRAN (ISLAMIC REPUBLIC OF)	TUVALU
ITALY	UKRAINE
JAMAICA	UNITED KINGDOM
JAPAN	UNITED REPUBLIC OF TANZANIA
KENYA	UNITED STATES
LATVIA	URUGUAY
LIBERIA	VANUATU
LIBYAN ARAB JAMAHIRIYA	VENEZUELA
LITHUANIA	

and the following Associate Member of IMO:

HONG KONG, CHINA

1.3 The session was also attended by observers from the following intergovernmental organizations:

EUROPEAN COMMISSION (EC)
MARITIME ORGANIZATION FOR WEST AND CENTRAL AFRICA (MOWCA)
INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS (IOPC FUNDS)

and by observers from the following non-governmental organizations in consultative status:

INTERNATIONAL CHAMBER OF SHIPPING (ICS)
INTERNATIONAL SHIPPING FEDERATION (ISF)
INTERNATIONAL UNION OF MARINE INSURANCE (IUMI)
COMITÉ MARITIME INTERNATIONAL (CMI)
INTERNATIONAL ASSOCIATION OF PORTS AND HARBORS (IAPH)
BIMCO
INTERNATIONAL ASSOCIATION OF CLASSIFICATION SOCIETIES (IACS)
OIL COMPANIES INTERNATIONAL MARINE FORUM (OCIMF)
INTERNATIONAL ASSOCIATION OF INDEPENDENT TANKER OWNERS
(INTERTANKO)
THE INTERNATIONAL GROUP OF P & I ASSOCIATIONS (P & I Clubs)
ADVISORY COMMITTEE ON PROTECTION OF THE SEA (ACOPS)
INTERNATIONAL SHIP SUPPLIERS ASSOCIATION (ISSA)
WORLD NUCLEAR TRANSPORT INSTITUTE (WNTI)
INTERNATIONAL TRANSPORT WORKERS' FEDERATION (ITF)

The Secretary-General's opening address

1.4 The Secretary-General welcomed participants and delivered his opening address. The full text of the opening address is reproduced in document LEG 95/INF.2.

Chairman's remarks

1.5 The Chairman thanked the Secretary-General for his remarks and said that the Committee would bear them in mind during the course of its deliberations.

Adoption of the agenda

1.6 The agenda for the session, as adopted by the Committee, is attached at annex 1.

1.7 A summary of deliberations of the Committee with regard to the various agenda items is set out hereunder.

2 REPORT OF THE SECRETARY-GENERAL ON CREDENTIALS

2.1 The Committee noted the report by the Director, LED, on behalf of the Secretary-General, that the credentials of all delegations attending the session were in due and proper form.

3 MONITORING THE IMPLEMENTATION OF THE HNS CONVENTION: DEVELOPMENT OF A POSSIBLE DRAFT PROTOCOL TO THE CONVENTION

3.1 The Committee continued with its consideration of a draft protocol to the HNS Convention (the draft protocol). The Committee decided to use the text of the draft protocol contained in the annex to document LEG 95/3 as its basic text.

Definition of HNS

3.2 The Committee approved the following editorial changes proposed by the Secretariat:

- in the annex to document LEG 95/3, the reference, in article 1.5(a)(iii) of the draft protocol, to paragraph “1.1.3” should be to paragraph “1.1.6”; and
- in line with the decision taken by the Committee at its ninety-fourth session to delete the reference in article 1.5(a)(vii) of the HNS Convention to “Appendix B” of the Code of Safe Practice for Solid Bulk Cargoes, a similar consequential amendment should also be made to article 4.3(b) of the HNS Convention.

3.3 The Committee noted that, at its eighty-fifth session (26 November to 5 December 2008), the Maritime Safety Committee (MSC) had adopted the International Maritime Solid Bulk Cargoes (IMSBC) Code, which supersedes the Code of Safe Practice for Solid Bulk Cargoes (the BC Code). The Contracting Governments to SOLAS may apply the IMSBC Code on a voluntary basis as from 1 January 2009. The Code will become mandatory on 1 January 2011, subject to the tacit amendment procedure being satisfied. The Committee agreed that a reference to the IMSBC Code in article 1.5(a) (vii) and in article 4.3(b) should be inserted to replace the existing reference.

Definition of HNS and its relationship to the IMDG Code

3.4 The Secretariat introduced document LEG 95/3/2 which restricts the application of the International Maritime Dangerous Goods Code (IMDG) to the substances included in the version of that Code in effect in 1996. At the request of the Committee, the document includes, at annexes 1 and 2, respectively, a list of solid bulk materials possessing chemical hazards which are mentioned by name in the BC Code 2004 and the IMDG Code in effect in 1996, and a list of such materials mentioned in the BC Code 2004, but not in the IMDG Code in effect in 1996.

3.5 The delegation of the Bahamas introduced document LEG 95/3/4 which proposes that, rather than restricting the application of the IMDG Code to its 1996 version, the HNS Convention should incorporate subsequent amendments, with specific reference to substances to be excluded, notably coal, fishmeal and woodchips.

3.6 After an extensive debate on this issue, a representative of the Marine Safety Division of the Secretariat emphasized the following points:

- the IMDG Code, as amended, and the IMSBC Code provide a list of substances, materials and articles which are covered by their respective provisions; however, it is likely that certain materials, substances or articles are covered by the provisions of the aforementioned Codes, but are not mentioned by name in these Codes. Therefore, the lists provided in the annexes to document LEG 95/3/2 are highlighted as non-exhaustive;

- for UN numbers 2067, 2071, 2912, 2913 and 3170, the bulk cargo shipping names in the IMSBC Code are in line with the corresponding proper shipping names in the IMDG Code, as amended, but are not the same as the corresponding proper shipping names in the IMDG Code in effect in 1996. This anomaly is likely to cause confusion when identifying substances, material or articles by name, as contributing cargoes under the prospective HNS protocol, if a reference is not made to the IMDG Code, as amended. If a version of the IMDG Code is kept frozen in time, while the associated Code is kept dynamic, these anomalies are likely to increase in the future;
- should the Committee decide to replace the text “IMDG Code in effect in 1996”, with the text “IMDG Code, as amended”, then coal, fishmeal (provided accompanied by an appropriate certificate from the competent authority concerned) and woodchips would continue to be non-HNS cargoes, as these substances would not meet the relevant criteria for classification as HNS cargoes under the IMSBC Code and the IMDG Code, as amended; and
- if it is the wish of the Committee to ensure that coal, fishmeal and woodchips continue to be excluded in future from the application of the provisions of the Protocol, then a possible way forward might be to make reference to the IMDG Code, as amended, and to incorporate a specific provision in the protocol excluding these three substances from the application of the Protocol regardless of any other future amendments to the Codes.

3.7 The proposal by the Bahamas received considerable support, on the following grounds:

- thirteen years had passed since the adoption of the HNS Convention and amendments to the IMDG Code reflected new research and the discovery of new substances, and new HNS risks. Restricting the Code to the 1996 version would mean that such new risks are not compensable under the HNS Convention; accordingly, this was not a sensible option;
- it was important to keep the HNS regime up to date, particularly in view of recent incidents involving solid bulk cargoes;
- bearing in mind that coal, fishmeal and woodchips could be explicitly excluded, the IMDG Code should not be treated differently from the other instruments listed in article 1.5 of the HNS Convention; and
- the application of an outdated version of the IMDG Code could lead to confusion as to which risks are actually covered by the HNS Convention given particularly that, in other circumstances, a different version of the IMDG Code would be applied.

3.8 The majority of delegations that spoke reaffirmed their decision to maintain the reference to the 1996 version of the IMDG Code for the following reasons:

- this issue had been very divisive in 1996 and the wording now in the text reflected a compromise carefully agreed to at that time, after long and exhausting negotiations, which should not now be repeated;

- for the purpose of establishing liability and compensation under the HNS Convention, it would be extremely difficult to have a perfect definition of HNS substances covered by the Convention. In this regard, the compromise achieved in 1996 represented a workable solution, which was still relevant today;
- any change to the agreed definition of HNS might also have implications for the contributions system;
- we should not try to find a perfect solution at the expense of losing the Protocol;
- reopening the debate at this point in time might delay or even derail the adoption of the Protocol, which, in turn, would prevent the HNS Convention from entering into force;
- it was important to maintain the policy position agreed to in 1996;
- any inconvenience resulting from maintaining the current text could be overcome by the development of lists indicating which substances are excluded and any unresolved issues relating to the IMDG Code could be tackled at a later stage;
- the Committee had agreed to limit the revision exercise to three particular issues; and
- widening the revision exercise at this stage would open a Pandora's box which has the potential to create many additional problems.

3.9 The Committee decided to maintain its decision to restrict the reference in the definition of the HNS Convention to IMDG substances, to the substances included in the 1996 version of the Code.

Treaty law issues

3.10 The Secretariat introduced document LEG 95/3/3, providing information on the possible legal implications of a new protocol for States which are Contracting States to the 1996 HNS Convention.

3.11 One delegation, referring to paragraph 9 of the document, noted that it was experiencing constitutional problems which it was finding difficult to overcome. It noted that article 18(a) of the Vienna Convention on the Law of Treaties, 1969, (the Vienna Convention) contained the same obligations for Signatory States as for ratifying States. While agreeing that there was now undue delay in the entry into force of this treaty, the delegation restated its dissatisfaction with regard to the fact that the preparatory work for the draft protocol had taken place in the IOPC Funds, among a group of States, rather than in the Legal Committee. In its view, the preparatory works concerning article 16(8) of the draft protocol had negatively influenced potential Contracting States to the Convention.

3.12 One delegation commented that the precedents mentioned in the document, namely the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL 73/78) and the 1992 Protocol to the 1971 Fund Convention, were different in nature and, accordingly, not relevant to the case under consideration. The delegation also disagreed with article 16(8) of the draft protocol, on the basis that States that have signed or ratified a convention cannot withdraw their consent to be bound, or denounce it before it enters

into force. The delegation also expressed the view that the application of the article would defeat the object and purpose of the HNS Convention, as this would be accompanied by an intention to denounce the Convention.

3.13 A number of delegations expressed their appreciation of, and support for, the Secretariat submission. In so doing, the point was made that the Torremolinos Protocol of 1993 relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977, constituted yet another precedent of a protocol which had substantially changed the provisions contained in a Convention which had not entered into force.

3.14 Article 16(8) was drafted on the understanding that the HNS Convention would not enter into force. Its aim was to facilitate a procedure for States which had expressed their consent to be bound by the HNS Convention to withdraw that consent without having denounced the Convention formally.

3.15 The point was also made that the revision or amendment of the HNS Convention did not constitute “acts which would defeat the object and purpose of a treaty”, as referred to in article 18(a) of the Vienna Convention. Moreover, a signatory State may make its intention clear not to become a party to a Convention, in which event, article 18 would not be applicable. Additionally, pending entry into force of a treaty, a State which had previously expressed its consent to be bound by the treaty could withdraw from it “at any time”, in accordance with article 54(b) of the Vienna Convention. One delegation had a different interpretation of article 54(b) of the Vienna Convention.

3.16 One delegation suggested that the obligations arising from article 18 of the Vienna Convention were equally applicable to those States which had signed the Convention “subject to ratification”.

3.17 The Committee noted the content of document LEG 95/3/3.

Scope of application

3.18 In introducing the amendment to the current text of article 3(d) of the HNS Convention, contained in document LEG 95/3/5, the delegation of Japan explained that it was of a purely technical nature and aimed at avoiding any misunderstanding with regard to the geographic scope of application of the Convention. The delegation recalled that the potential problem had already been recognized by the Legal Committee at its seventy-fourth session, in October 1996, at which time the Committee had agreed that the Convention only applies to preventive measures undertaken to prevent or minimize damage “falling within the geographic scope of application provided in article 3 subparagraphs (a), (b) and (c)”. The same amendment had already been proposed orally at the previous session of the Committee. The delegation noted that the proposed amendment would bring the article into line with article 2 of the International Convention on Civil Liability for Oil Pollution Damage, 1992 and article 3 of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992.

3.19 Those delegations that spoke supported this amendment. The observer delegation of the Comité Maritime International (CMI) noted that, for consistency with the remaining text of the article, the word “damages” should be amended to read “damage”.

3.20 The Committee approved the proposal, subject to the substitution of the word “damages” by “damage”.

Article-by-article reading

3.21 The Committee undertook an article-by-article reading of the draft protocol and decided as follows:

Title: Approved.

Preamble: Approved, including the text in bold type and the text within square brackets.

Article 1: Approved.

Article 2: Approved.

Article 3: Approved, subject to a change to the reference in paragraph 5(a)(iii) from 1.1.3 to 1.1.6; and the insertion, in paragraph 5(a)(vii), of the International Maritime Solid Bulk Cargoes Code to replace the reference to the Code of Safe Practice for Solid Bulk Cargoes.

The Committee did not accept a proposal, in paragraph 5(a)(vii), to retain both the words “as amended” and “in effect in 1996” in square brackets, for consideration by the diplomatic conference. In the view of the proposing delegation, retaining just the words “in effect in 1996” would give the diplomatic conference a wrong impression that unanimity had been achieved, bearing in mind that a decision on a matter of substance would require a two-thirds majority at the diplomatic conference. Those delegations that spoke against this proposal agreed with the view that, as the proposal regarding the words “as amended” had not been supported by the majority of delegations, they should not appear in the draft protocol.

Article 4: Approved.

Article 5: Approved. One delegation noted that while the HNS Convention made reference to gross tonnage in article 5.1(a), article 5 of the draft protocol (which amends article 9 of the Convention) simply refers to tonnage. It was explained that while article 5 referred to exceptions to the application of the Convention, article 9 regulated a different subject matter, namely the calculation of liability limits; to this end, article 9.10 provides that, for the purposes of the article, ship’s tonnage shall be the gross tonnage of the ship, calculated in accordance with the tonnage measurement regulations contained in annex 1 of the International Convention on Tonnage Measurement of Ships, 1969. It was agreed that the reference in article 5 should remain unchanged.

Article 5bis: Approved.

Article 6: Approved.

Article 6bis: Approved.

Article 7: Approved.

Article 8: Approved.

Article 9: Approved.

Article 10: Approved.

Article 11: Approved.

Article 12: Approved.

Article 13: Approved.

Article 14: Approved.

Article 15: Approved.

Article 16: Approved. One delegation restated its strong concerns in connection with paragraph 8 and foreshadowed its possible intention to provide new text at the diplomatic conference.

Article 17: Approved.

Article 18: Approved.

Article 19: Approved.

Article 20: Approved.

Article 21: Approved.

Article 22: Approved.

Article 23: Approved.

Article 24: Approved. In response to an enquiry regarding the words “acceded to”, it was explained that this was the terminology generally used and it appears, for example, both in the 1996 HNS Convention, and also in the Bunkers Convention.

Article 25: Approved.

Annex: Approved. In response to a question as to whether the annex remains valid if a single model insurance certificate were to be agreed to, it was decided to leave the annex as it was, as such a certificate was still under consideration and it would, accordingly, be premature to change the model certificate at this point in time. A suggestion that the Secretariat examine the question of including a reference to electronic certificates was rejected, on the basis that this was not a practical option, since many port States would not accept such certificates. Moreover, this was not a Secretariat function, but delegations would be free to make any such proposal at the diplomatic conference.

Recommendation for the convening of a diplomatic conference

3.22 The Committee approved the basic text, as amended by the decisions adopted by the Committee at this session, for the purpose of its submission for consideration by a diplomatic conference, and agreed to advise the Council accordingly.

3.23 The delegation of Cyprus made a statement which is attached at annex 2.

3.24 In line with previous practice, the Committee instructed the Secretariat to prepare and circulate the text of the draft protocol, to be considered by a diplomatic conference. The Committee authorized the Secretariat to edit the text in line with the style and language of other treaties adopted by the Organization.

3.25 For the information of the Committee, a clean text of the draft protocol including the amendments agreed at this session is attached at annex 3.

4 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

4.1 The Director, LED, introduced document LEG 95/4/1, summarizing the outcome of the ninth 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 (the Group), held at the Headquarters of the International Labour Organization (ILO), in Geneva, from 2 to 6 March 2009. The Group was chaired by Mr. Charles Darr (United States).

4.2 She noted that, in view of the shortage of time between that session and the ninety-fifth session of the Legal Committee, it had not been possible to submit a timely report in the three working languages. A full report of the ninth session, including the Group's proposals for the text of draft amendments to the Maritime Labour Convention, 2006 (MLC) will be submitted to ninety-sixth session of the Legal Committee, in October 2009, as well as to the November 2009 session of the Governing Body of ILO, for consideration and action as appropriate.

4.3 At this stage, the Committee should note that the Group considered that it had satisfied its remit, as provided for in the revised terms of reference and its recommendation that the Committee should remain seized of the issue and should keep it under consideration, particularly in the event that amending the MLC proves not to be feasible or timely. The joint Secretariat was requested to remind Governments of resolution A.930(22) concerning Guidelines on provision of financial security in case of abandonment of seafarers and to urge its voluntary implementation particularly in these times of global financial crisis.

4.4 The delegation of the United States, on behalf of the Chairperson of the Group, informed the Committee of the historic progress made at the Group's ninth session. For the first time since humans began going to sea, there was a real opportunity to put in place a comprehensive, mandatory international mechanism to provide for the basic humanitarian needs of the uniquely vulnerable class of seafaring workers abandoned in foreign ports far from their homes due to no fault of their own.

4.5 The delegation paid tribute to Mr. J.-M. Schindler of France, who had ably chaired the first eight sessions of the Group and thanked the new Chairman, Mr. C. Darr of the United States and those Governments which had actively participated in the session. These Governments represented the full spectrum of major flag States, port States, and States that provide significant numbers of seafarers, each bringing its own views, perspectives, and interests to enrich the discussion and to improve the final documents.

4.6 The delegation also commended the superb efforts of the Social Partners (Seafarers and Shipowners) to bridge their few remaining differences, and for their continued co-operation in order to reach agreement on all the essential principles for mandatory provisions on both abandonment and crew claims.

4.7 The Group had developed a mature and comprehensive draft text that would provide a solid foundation for further development. It had agreed that the most expeditious way to bring into force the principles encapsulated in the draft text as part of a binding instrument would be via an amendment to the MLC.

4.8 Although the Group had recommended that the ILO Governing Body take on the work of finalizing the text, it had asked that the IMO Legal Committee remain seized of this issue and keep it under close consideration in the event that the MLC amendment process became unworkable for any reason or encountered undue delay.

4.9 Time was of the essence, especially on the matter of providing a basic humanitarian safety net for abandoned seafarers. In this connection, the delegation noted that there appeared to be an increase in the number of cases of abandonment during the last year – this included two vessels flying the United States flag. In view of the highly volatile nature of the current economy, the United States was gravely concerned that the number of cases would continue to increase in number and severity until market conditions changed. While the United States had hoped to have a solution in place before worsening economic conditions began to cause great personal hardship to abandoned seafarers, this had not been possible. For this reason, he encouraged delegations to join in facilitating this important matter through the ILO process, with a view to approving mandatory texts on both the abandonment and crew claims issues as soon as possible.

4.10 In the interim, until a mandatory solution was in force, the Group had urged Governments to continue implementing the voluntary IMO-ILO Guidelines on both abandonment and crew claims.

4.11 The observer delegation of the International Shipping Federation (ISF) thanked the Secretariat for its report, which provided an accurate reflection of the outcome of the Group's ninth session. ISF was particularly grateful to the United States and the United Kingdom Governments for their intersessional assistance in preparing draft texts and supported the recommendation of the Group that resolution A.930(22) be implemented on a voluntary basis in light of the present economic circumstances.

4.12 The observer delegation of the P & I Clubs stated its understanding that the recommendations of the Group concerning financial security related to financial security for contractual compensation, that is compensation/payments due to seafarers following death, personal injury or illness, as provided for in employment contracts, collective bargaining agreements or other employment agreements. If the P & I Clubs' understanding was correct, then the principles recommended represented a step in the right direction and a sound basis for further consideration by whichever body took the issue forward.

4.13 If, however, the P & I Clubs' understanding was not correct, and the recommended financial security requirements were not restricted to contractual compensation, as referred to above, but were intended to cover all types of claim arising from death, personal injury or illness, for example claims arising in tort, it would have serious concerns and would wish to revert in detail on this point at the next session of the Committee.

4.14 The observer delegation of the International Transport Federation (ITF), in welcoming the outcome of the Group, expressed its gratitude to the United States and the United Kingdom delegations, without whose efforts agreement would not have been reached. ITF was dealing with six cases of abandonment and had recently worked closely with Panama on a solution to one particular case of hardship due to abandonment. It reminded flag States of their responsibility to ships' crews and invited Governments to be actively involved in finding prompt solutions. ITF noted that the agreement included not only repatriation, but also other crew claims associated with abandonment.

4.15 The Committee noted with satisfaction the successful outcome of the ninth session of the Group. Pending consideration of the full report, at the ninety-sixth session of the Legal Committee, the Committee noted that the Group considered that it had satisfied its remit. The Committee further noted its recommendation that an amendment to the MLC, 2006 was the best way to create mandatory provisions on abandonment and personal injury to and death of seafarers.

4.16 The Committee agreed that it should remain seized of the issue and should keep it under consideration, in the event that amendments to the MLC prove not to be feasible or timely. The joint Secretariat was instructed to remind Governments of IMO resolution A.930(22) concerning Guidelines on provision of financial security in case of abandonment of seafarers and to further urge its voluntary implementation, as well as resolution A.931(22) concerning Guidelines on shipowners' responsibilities in respect of contractual claims for personal injury to or death of seafarers. The Committee expressed gratitude to Mr. J.-M. Schindler of France and to Mr. C. Darr of the United States for their leadership in chairing the Group and congratulated the Social Partners, the Member Governments and the other participants on the successful outcome.

(ii) Follow-up on resolutions adopted by the International Conference on the Removal of Wrecks, 2007: development of a single model compulsory insurance certificate

4.17 The delegation of the Netherlands, in introducing document LEG 95/4, recalled that when the Committee, at its ninety-fourth session, considered the follow-up on resolutions adopted by the International Conference on the Removal of Wrecks, 2007, there was general consensus that the development of a model for a single insurance certificate would be desirable with the aim of reducing the administrative burden of States and shipowners/insurers. There were, however, several legal and practical issues to be addressed and resolved, also in view of the fact that not all of the conventions covered by the prospective single model certificate had entered into force.

4.18 It recalled the decision of the ninety-fourth session of the Legal Committee to establish an informal correspondence group in order to progress intersessionally the legal, as well as the technical and practical aspects of the consolidated model certificate, including port State control and inspection. The delegation of the Netherlands had accepted to act as coordinator and to submit the outcome of its consultations with other interested delegations to the ninety-fifth session of the Legal Committee.

4.19 The delegation suggested that the draft single model insurance certificate contained in annex 1 to document LEG 94/5/3 could be used as a basis for a future agreement, which might be adopted by an IMO resolution. Such a resolution was in no way intended to change the existing international conventions. The sole purpose of the single model insurance certificate was to facilitate the issuing of certificates, obviate the need to issue separate certificates in respect of each convention and thereby avoid unnecessary duplication. In particular, the reciprocal recognition of the certificate could be achieved by means of a common understanding, in the same way as

that adopted for the recognition of the 1969 and 1992 CLC insurance certificates. The delegation requested the Committee to consider including the following references in the certificate:

- the 2002 Athens Protocol and the wording to cover the Athens Reservation/guidelines and the performing carrier;
- the IMO registered owner identification number; and
- appropriate boxes to be ticked off for each specific convention for which the single certificate is issued.

4.20 Many delegations that spoke expressed their support in principle for the development of a single model insurance certificate as a way of reducing the administrative burden of States and shipowners. Any final decision on the adoption of such a certificate was, however, premature pending the examination of a number of issues.

4.21 There was some support for the proposal that the basis for a single insurance certificate should be an agreement adopted by an Assembly resolution. However, in the event that not all States which are requested to issue the certificate are Parties to all the conventions, the reciprocal recognition of such a certificate might become an issue which could be only resolved by means of a common understanding.

4.22 The view was expressed that each certificate was an integral part of the treaty in question and, consequently, the single model insurance certificate could only become binding, from a treaty law perspective, if all the treaties referred to in it were formally amended to include the single model insurance certificate instead of the original models regulated in each of them. An IMO resolution was not an appropriate vehicle since it could not achieve the necessary uniformity and was not a mandatory instrument.

4.23 The view was expressed that the ticking off of an appropriate box might not be the best way to proceed since some port State authorities might take advantage of this and penalize vessels if some boxes were not ticked.

4.24 It was also suggested that the feasibility of issuing such certificates electronically be investigated. However, some caution was expressed as this was a new system and not all port authorities might be ready to accept them.

4.25 The observer delegation of the P & I Clubs stated that the inclusion of the IMO-registered owner's identification number was irrelevant and superfluous, and therefore it was not necessary to include it in the single model insurance certificate. It also expressed the view that proceeding via a resolution might generate confusion if the resolution was not passed unanimously and was not accepted by all port States. This view was supported by the observer delegation of the International Chamber of Shipping (ICS).

4.26 The Committee decided that the issue of a single model insurance certificate needed more study and agreed to establish a formal correspondence group with the following terms of reference:

- To ensure the development of a model for a single insurance certificate, as requested by the International Conference on the Removal of Wrecks of IMO and in particular the Legal Committee, the Correspondence Group (lead country the Netherlands) as established by, and taking into account the decisions in, the Legal Committee will, with the aim of reducing the administrative burden:
 - .1 base itself on the draft of the model for a single insurance certificate as currently contained in annex 1 to document LEG 94/5/3 together with the content of document LEG 95/4 as the basic text for its work;
 - .2 make an analysis of the advantages and disadvantages (legal and practical) of a mandatory versus non-mandatory (recommended practices) character of a model for a single insurance certificate;
 - .3 make further recommendations on:
 - the inclusion of the 2002 Athens Protocol and the wording to cover the Athens Reservation/guidelines and the performing carrier;
 - the issue of different dates of expiration of insurance cover;
 - the inclusion of the IMO registered owner identification number; and
 - appropriate boxes to be ticked off for each specific convention for which the single certificate is issued;
 - .4 consider the possible use of electronic databases to maintain records of a single insurance certificate; and
 - .5 report to the ninety-sixth session of the Legal Committee.

4.27 The e-mail address of the Chairperson of the Correspondence Group, Mr. Jan de Boer, the Netherlands, is as follows:

Jan.de.Boer@minvenw.nl

5 FAIR TREATMENT OF SEAFARERS IN THE EVENT OF A MARITIME ACCIDENT

5.1 The observer delegation of BIMCO introduced document LEG 95/5. In its first study, on cases involving the practice of using criminal sanctions against seafarers, published in 2006, BIMCO had been looking into cases where seafarers had been detained, imprisoned or fined, especially before any deliberate act or negligence had been proven in court. These cases revealed not only instances where seafarers had been detained as suspects, but also cases where they were unable to leave the relevant jurisdiction as they were material witnesses in an incident.

5.2 The results of this study showed that the practice of using criminal sanctions against seafarers was a global problem, and not restricted to certain countries or regions. There had been relatively few cases in a ten-year period, but many of them had received a great deal of attention.

5.3 BIMCO had recently updated the study, which basically confirmed the conclusions of the first study, namely, that this was a global problem. The information on these recent cases had been sourced mainly from newspapers and the internet, and it was recognized that information on all cases might not be available. BIMCO welcomed any input on cases of unfair treatment, as the study was intended to be a living document to be updated regularly. The study – not published in hard copy – is available on the BIMCO website.

5.4 BIMCO had also recently conducted a study among its shipowning members on the experience of their seafarers in relation to port State control inspections. Overall, few problems had been reported, but of these, extortion and corruption were the overwhelming ones. Improper port State control inspections were an element of the fair treatment debate, in that extortion and corrupt port State control inspectors might force seafarers into criminal behaviour simply in order to be able to do their job. Unprofessional inspectors might also interfere with rest periods and watchkeeping hours, which could ultimately have safety implications.

5.5 Criminal or negligent behaviour or intentional pollution should be penalized. However, in the case of accidental pollution, or where seafarers were involved in incidents beyond their control, as indicated by the BIMCO study, there was an uncomfortable shift towards stricter liability. There was also an apparent tendency towards judging action taken following maritime accidents with the benefit of hindsight.

5.6 The BIMCO study recognized the difficulty of balancing the fair treatment of seafarers against the risk of interference with States' sovereignty and indeed the IMO/ILO Guidelines on fair treatment of seafarers explicitly recognized that there was no intention to interfere with the domestic, criminal or civil law processes of any State.

5.7 The Committee was informed by the Secretariat that consultations between the IMO and ILO Secretariats and the Social Partners had not led to agreement on a date for convening the next session of the Joint IMO/ILO *Ad Hoc* Expert Working Group on Fair Treatment of Seafarers in the Event of a Maritime Accident (the Working Group). The Committee was also advised that, since the ninety-fourth session of the Committee, no further responses to Circular letter No.2825, which requested that any information concerning the mistreatment of seafarers in the event of a maritime accident be transmitted to IMO or to ILO, had been received.

5.8 The observer delegation of the International Transport Federation (ITF) expressed disappointment that acts against the fair treatment of seafarers, which continued to occur regularly, were not reported to IMO. This might be due to concerns that such reporting might inflame situations; however, every delegation would be aware of a number of well-publicized incidents.

5.9 Many delegations that spoke commended the BIMCO report. The point was made that the issue of fair treatment of seafarers was the direct responsibility of port, coastal and flag States, the State of the nationality of the seafarers, shipowners, and seafarers. Pursuant to the Universal Declaration of Human Rights and regional human rights instruments, as well as under national law, States were obliged to treat seafarers fairly. The stakeholders involved should co-operate to resolve problems after a maritime accident, rather than detaining the seafarers in the first

instance. There was also a consensus that States should comply with the Guidelines on fair treatment of seafarers adopted by the Legal Committee.

5.10 However, the view was also widely expressed that the analysis provided by BIMCO in its document was only a partial one, and the conclusions arrived at with regard to corruption, for example, were not based on any statistics, investigation or scientific evidence and were, therefore, not done in a holistic manner. The repeated generalizations and lack of rigour in analysis were matters of concern. The point was also made that fair treatment and corruption were completely different issues and, consequently, should be dealt with separately.

5.11 One delegation stated that it could not support the statement in paragraphs 10 and 11 of the document. With regard to paragraph 10, under the constitution of its country, laws were enacted by the legislative branch and then applied by the judiciary in court proceedings. With regard to paragraph 11, it was not appropriate to evaluate the judgement made by the judiciary of a sovereign State in an international forum such as the Legal Committee of IMO. This could be construed as interfering with the legal processes of a sovereign State. Its judiciary was, pursuant to its constitution, independent and should be respected.

5.12 Concern was expressed with regard to numerous illegal detentions and heavy fines imposed by unprofessional and corrupt port State control officers.

5.13 The point was also made that the example of the **Coral Sea**, quoted in the report, was a drug trafficking rather than a pollution-related case, and, as such, was not covered by the IMO Guidelines. It was suggested that the scope of the Guidelines be extended to include such cases.

5.14 In this connection, the observer delegation of ITF agreed that all aspects of the problem of fair treatment and criminalization of seafarers be given full consideration by the Legal Committee, and not only those directly related to maritime accidents. In its view, far too many instances that should be dealt with as a professional error of judgement warranting a professional penalty were defined as criminal acts carrying unrealistic criminal penalties.

5.15 The observer delegation of the Comité Maritime International (CMI) recognized that Governments were reluctant or unable to interfere with the due legal processes in their own countries. However, the law which was applied by the courts of a country following a maritime accident was very much the responsibility of Governments. It was in this area that CMI felt more could, and should, be done.

5.16 CMI was also concerned that in some reported cases too much reliance may be placed on press reports and not enough on an objective analysis of the facts. CMI, through its member National Maritime Law Associations, might be able to obtain, in relation to current and future cases, more objective reports and assessments. In seeking to improve the quality of the evidence to be presented to IMO, CMI was considering whether it might seek to extend the membership of its Working Group to include other NGOs involved in the maritime field.

5.17 The observer delegation of the International Shipping Federation (ISF) stated that the issue of fair treatment of seafarers was an important one, which must be kept high on the agenda. ISF was concerned that appropriate action needed to be taken by all Governments in such circumstances. It also expressed concern that a date had not yet been fixed for the next session of the IMO/ILO *Ad Hoc* Expert Working Group.

5.18 Most delegations were of the view that there was no need to reconvene the Working Group at this point in time.

5.19 The Committee agreed that the Guidelines adopted by the Legal Committee and the Code of International Standards and Recommended Practices for a Safety Investigation into a Marine Casualty or Marine Incident (Casualty Investigation Code) adopted by the Maritime Safety Committee should be strictly applied by States so that a proper balance could be achieved between the need, on the one hand, for a thorough investigation of maritime accidents and, on the other hand, the protection of the rights of seafarers.

6 MATTERS ARISING FROM THE ONE HUNDRED AND FIRST SESSION OF THE COUNCIL

6.1 The Committee took note of the information provided by the Secretariat in document LEG 95/6 on matters arising from the one hundred and first regular session of the Council.

7 TECHNICAL CO-OPERATION ACTIVITIES RELATED TO MARITIME LEGISLATION

7.1 The Director, Technical Co-operation Division (TCD), introduced document LEG 95/7. She informed the Committee that the Code of Conduct concerning the Repression of Piracy and Armed Robbery against Ships in the Western Indian Ocean and the Gulf of Aden, signed in Djibouti, included two resolutions which were relevant to technical co-operation. In this regard, activities for the review of national legislation to help implement the Code of Conduct had been included in the proposed Integrated Technical Co-operation Programme (ITCP) for the biennium 2010-2011. Furthermore, for 2009, two meetings were planned to be held in Kenya and Somalia, respectively, to identify specific areas where assistance was needed. Based on the request from the Kenya Maritime Authority for experts to assist in drafting appropriate legislation to address cases of piracy and armed robbery in the region, arrangements were in hand to field an advisory mission to Kenya in this regard.

7.2 She also informed the Committee that the Secretariat had put in place measures aimed at expanding the pool of experts through enhancement of capacity-building, as follows:

- TCD had established a roster of all IMLI and WMU graduates, in recognition of the fact there were many graduates of IMLI and WMU in the regions of the recipient countries;
- TCD had introduced a system whereby experts selected for missions were accompanied by an IMLI or WMU graduate from the country or region, as an assistant, with the aim of enabling such graduates to gain relevant experience;
- the reports of such assistants were assessed at the end of the missions and, if considered good enough, they were included on the roster of experts; and
- IMO had continued to finance fellowships for IMLI students.

7.3 She added that, in view of IMO's limited resources, assistance to individual States was only possible for a short period of time (7-10 days) which was not sufficient to draft legislation for that State. In this regard, States could help to expand the list of experts by mobilizing national legal resources (e.g., graduates from IMLI) into a national team with whom the consultant could work in the first instance, and thereafter IMO could follow up with further advice and assistance, as required.

7.4 A number of delegations expressed their appreciation for the technical assistance being given to IMO Member States, especially in the field of implementation of marine conventions and the development of maritime legislation. They commended the enhanced capacity-building efforts, in particular those related to IMLI and WMU students.

7.5 The observer delegation of CMI, noting the participation in the Committee of several IMLI graduates, paid special tribute to the achievements of the Institute and its important role in studying, developing and implementing international maritime law.

7.6 This was echoed by the Secretary-General, who announced the holding of a commemorative seminar on the theme of "20 Years in the Service of the Rule of International Maritime Law" to celebrate the 20th anniversary of the Institute. He invited participants to attend the seminar, which would be held at IMO Headquarters, on 5 May 2009, in the presence of Professor D. Attard, Director of IMLI and Mr. Y. Sasakawa, Chairman of the Nippon Foundation.

7.7 The Committee approved the proposal that the Institute be invited, on a regular basis, to submit to the Committee a summary of its research activities.

7.8 The Committee also expressed its appreciation over IMO's involvement in helping to resolve the problem of piracy in the Gulf of Aden. It was suggested that problems in other regions in respect of piracy and armed robbery might benefit by similar initiatives.

7.9 It was further suggested that a common understanding should be developed on the legal aspects of the prosecution of pirates in the Gulf of Aden region and that the Committee could include this in its work programme.

7.10 The point was made that it was important to deal with the legal issues related to piracy in general in order to ensure that pirates and armed robbers were effectively brought to justice and it was suggested that the Legal Committee should be involved in this process.

7.11 The Secretary-General stated that the key to resolving the problem of piracy in Somalia was to provide political stability in the country. The response of the Security Council and other entities concerned, the measures already taken in the area, and those in the process of implementation, would help to move the political process in Somalia forward. This would eventually contribute to the improvement of the situation with regard to piracy off its coast and in the Gulf of Aden. The co-operation of naval forces in the Gulf of Aden was of historical significance since never before had navies from so many different States and regions worked together to fight crimes at sea. This co-operation for the purpose of preventing and counteracting acts of piracy was complemented by IMO's Integrated Technical Co-operation Programme, in particular its activities in the field of development of appropriate legislation to ensure the arrest, prosecution and punishment of pirates. The Djibouti Code of Conduct adopted in January was the best possible tool to achieve this purpose. The Secretary-General urged States which had participated in the Djibouti high-level meeting but which had not yet signed the Code to do so expeditiously, in order to further facilitate its full implementation. He thanked the Government of Kenya, which was the first State to request IMO's assistance with a view to tackling the complex legal issues involved in the fight against piracy.

The Secretary-General also referred to cases of piracy in the Gulf of Guinea and noted the disposition of the Government of Nigeria to actively co-operate with IMO to counteract piracy in that region.

8 WORK PROGRAMME

Guidelines on methods of work

8.1 The Committee recalled that the Council, at its ninety-seventh session, had agreed 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 (MSC) and the Marine Environment Protection Committee (MEPC). The Committee also recalled that, at its ninety-third session, it had requested an informal working group to consider what provisions of the MSC-MEPC guidelines on methods of work might appropriately be incorporated into the Legal Committee's guidelines on methods of work. At its ninety-fourth session, it had considered the group's recommendations and requested the Secretariat to prepare a clean text for this session, at which time it intended to take a final decision. The outcome of the informal working group's efforts was presented to the Committee in the annex to document LEG 95/8.

8.2 The Committee considered the Secretariat's proposal to include a paragraph concerning capacity-building at the end of section 2.5.2 and agreed to the following addition:

“The Committee will consider proposals for the development of new instruments and/or amendment to existing ones taking into account an assessment of implications for capacity-building and technical co-operation.”

8.3 In this regard, the Committee noted that the MSC was in the process of developing a capacity-building mechanism to give effect to resolution A.998(25) and the Legal Committee would have an opportunity to revisit this section of its guidelines when that mechanism was finalized. In the meantime, the Committee agreed that its guidelines should reflect that the assessment of implications for capacity-building and technical co-operation was an ongoing process, and the assessment should not prevent progress on urgent items.

8.4 With regard to paragraph 2.8 of the draft guidelines, the Committee noted that all of the points listed from .1 to .7 should be taken into account as indications of a “higher priority” and the fact that “measures aimed at addressing maritime law issues with a need for urgent resolution” was point 7 did not suggest a lower level of priority. The Committee itself would establish the priority of an item proposed for its work programme.

8.5 The Committee recognized that paragraph 3.20 of the draft guidelines, concerning the need for a correspondence group to be established together with any intersessional working group, was not contained in the MSC-MEPC guidelines; however, this paragraph had been inserted in the existing Legal Committee guidelines to ensure that all delegations could participate in the work of the group even if they were not able to be present at the working group meeting(s). The Committee decided to retain this paragraph in the revised guidelines.

8.6 With regard to section 4.5 of the draft guidelines, the Committee recognized that the deadlines for submission of documents were nearer to the opening of a session than was the case in the MSC-MEPC guidelines; but it was noted that the documents submitted to the Legal Committee were generally less bulky and not as voluminous as the submissions to MEPC and MSC. Nonetheless, the Committee requested the Secretariat to try as far as possible to make all documents available on-line within the deadlines set out for that purpose in the guidelines.

In this regard, the representative of the European Commission (EC) stressed the need for submissions to be available on the IMO documents website to enable participants to Legal Committee meetings to prepare properly for those meetings.

8.7 The Committee recalled that operative paragraph 5 of Assembly resolution A.990(25) on the High-level Action Plan requested the Council and the Committees to review and revise the guidelines for the organization and method of their work in the light of the guidelines developed by the Council on the application of the Strategic Plan and the High-level Action Plan. The Committee noted that it would be necessary to revisit the guidelines in due course to ensure they take into account any new guidelines on application of the Strategic Plan and the High-level Action Plan when they are finalized. However, the Committee decided it was necessary and appropriate to adopt the draft guidelines at this session to align them as closely as possible with those of MSC and MEPC. The Committee would also benefit from the experience gained from the use of the guidelines whenever a future revision was undertaken.

8.8 Subject to the revision described above in paragraph 8.2 on capacity-building, the Committee adopted the text contained in the annex to document LEG 95/8 as the “Guidelines on work methods and organization of work of the Legal Committee” to replace the existing guidelines (LEG.1/Circ.4). The new guidelines are attached to this report at annex 4 and will be issued as a circular (LEG.1/Circ.5).

Planned outputs for the 2010-2011 biennium

8.9 The Committee noted that the Council had requested the Committees, when developing their planned outputs for the 2010-2011 biennium, to be as precise as possible, and, preferably, to do so in SMART terms (document C 101/D, paragraph 3.2(iv)). The Committee established an informal group to examine document LEG 95/8/1 and to suggest draft planned outputs for the Committee’s consideration. The outcome of the group’s discussions, which were led by Mr. Gaute Sivertsen (Norway), was presented in document LEG 95/WP.2.

8.10 The Committee noted that this was the first time an attempt had been made to convert its outputs into SMART terms, and the first time it has made use of an informal group to develop proposals. It was recognized that it may be necessary to examine its planned outputs at every session in the future to ensure they were kept up to date and consistent with Committee priorities. It was also noted that, even if a particular output was not included in the list to be adopted by the Assembly, a Member State would still be entitled to propose a new work item during the biennium, based on compelling need, in accordance with the Committee’s guidelines on work methods.

8.11 The Committee examined the existing strategic directions and high-level actions as set out in Assembly resolutions A.989(25) and A.990(25) and concluded that they remain valid for the anticipated work of the Committee.

8.12 The Committee agreed to the following planned outputs for the 2010-2011 biennium:

- .1 “Permanent analysis, demonstration and promotion of the linkage between a safe, secure, efficient and environmentally friendly maritime transport infrastructure, the development of global trade and the world economy and the achievement of the Millennium Development Goals” (Assembly, Council, all Committees and Secretariat) (High-level actions: 1.1.1 and 11.1.1)
- .2 “Approved recommendations based on the work, if any, of the Joint IMO/ILO *Ad Hoc* Expert Working Group on Fair Treatment of Seafarers in the Event of a Maritime Accident, CMI, and others concerning the application of the joint IMO/ILO Guidelines on the fair treatment of seafarers and consequential further actions as necessary.”
Timeline: 2010 and 2011
High-level actions: 1.1.2 and 6.3.1
- .3 “Keep under consideration the issue of financial security in case of abandonment of seafarers, and shipowners’ responsibilities in respect of contractual claims for personal injury to or death of seafarers pending adoption of an amendment to the ILO MLC 2006 on this matter.”
Timeline: 2010 and 2011
High-level actions: 1.1.2 and 6.3.1

With regard to this planned output, the Committee recognized that this was not strictly in accordance with the SMART principles, but was a specific recommendation of the Joint IMO/ILO *Ad Hoc* Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers and could be reviewed in light of the decisions taken at the ninety-sixth session of the Legal Committee regarding the outcome of the work of that Joint Working Group. In particular, it was noted that the Group had recommended that “the IMO Legal Committee should remain seized of the issue and keep it under consideration, in the event that amendment to the Maritime Labour Convention proves not to be feasible or timely”.

- .4 “Advice and guidance on issues as may be requested in connection with implementation of SUA 1988/2005 in the context of international efforts to combat terrorism and proliferation of Weapons of Mass Destruction and related materials.”
Timeline: 2010 and 2011
High-level actions: 1.1.2 and 6.1.2

With regard to this planned output, the Committee agreed that, although the 2005 SUA Protocols were not yet in force, the Committee was able to anticipate issues of implementation to assist States which were considering ratification. It was also noted that SUA was referenced in more than one planned output because it was related to more than one High-level action. Accordingly, the wording of each planned output differed.

- .5 “Protocol to the HNS Convention adopted as soon as possible”
Timeline: Diplomatic Conference in 2010
High-level actions: 1.2.1 and 2.1.1

- .6 “Revised guidelines on implementation of the HNS Protocol to facilitate ratifications and harmonized interpretation”
Timeline: 2011
High-level actions: 1.2.1 and 2.1.1
- .7 “Developed strategies to facilitate entry into force of 2002 Athens Protocol, the 2005 SUA Protocols, and the 2007 Nairobi Wreck Removal Convention”
Timeline: 2011
High-level actions: 1.2.1 and 2.1.1
- .8 “Advice and guidance provided following referrals from other IMO bodies and Member States”
Timeline: 2010 and 2011
High-level action: 1.3.1
- .9 “Input to the ITCP on maritime legislation”
Timeline: 2010 and 2011
High-level action: 3.5.1
- .10 “Revised guidelines on organization and method of work, as appropriate (Council and all Committees)”
Timeline: 2010 and 2011
High-level action: 4.5.1
- .11 “Keep under review and provide advice and guidance on issues brought to the Committee in connection with implementation of IMO instruments.”
Timeline: 2010 and 2011
High-level action: 2.1.1

With regard to this planned output, the Committee recognized that it may be appropriate to make revisions at the ninety-sixth session of the Legal Committee depending on the progress made by the correspondence group on the Bunkers Convention.

- .12 “Approved recommendations based on the work of the correspondence group on the development of a single model certificate for use in connection with liability and compensation conventions.”
Timeline: 2010 and 2011
High-level action: 2.1.1
- .13 “Advice and guidance to support:
 - (a) the review of IMO instruments on combating piracy and armed robbery;
 - (b) international efforts to ensure effective prosecution of perpetrators; and
 - (c) availability of information on comprehensive national legislation and judicial capacity-building”
Timeline: 2010 and 2011
High-level actions: 6.2.1 and 6.2.2

With regard to this planned output, the Committee noted that it may be necessary to make revisions depending on the outcome of the MSC's work on revision of the Code of investigation of crimes of piracy and armed robbery (resolution A.922(22)), and on the information to be provided to the Committee by the Secretariat based on responses to Circular letter No.2933, which requested samples of national legislation to prevent and punish these crimes.

Diplomatic conference

8.13 The Committee noted that the diplomatic conference to consider the draft protocol on the HNS Convention was tentatively scheduled for April 2010, which would be in lieu of its Spring session for 2010. The Committee expressed its appreciation to the Secretariat for its efforts in making this possible.

Meeting weeks in the next biennium

8.14 The Committee recommended to the Council that it should hold one session in the latter half of 2010 (LEG 97) and one session in 2011 (LEG 98).

9 ANY OTHER BUSINESS

(a) Places of refuge

9(a).1 The observer delegation of CMI introduced document LEG 95/9, setting out the principal policy issues addressed by the draft text of an instrument on Places of Refuge developed by its International Working Group. The draft had been approved at the plenary session of the CMI Conference in Athens, in October 2008, and had been commended to the Committee. Annex 2 to the document contained a report on a survey conducted by the CMI's member National Maritime Law Associations concerning the status of conventions containing liability and compensation regimes for pollution damage and the attitudes, so far as they could be ascertained, of their Governments in relation to their likely ratification. Fearing a repeat of the incidents which had taken place in 2001 and 2002, in relation to the vessels **Castor** and **Prestige**, CMI recommended that the Committee give consideration to the draft instrument before such an incident reoccurred.

9(a).2 The Committee was reminded that, in anticipation of its decisions under agenda item 8 (Work programme), the CMI document could, at this stage, be considered as informational only and that any proposal for a new work item would need to comply with the newly adopted Guidelines on work methods and organization of work of the Legal Committee.

9(a).3 The observer delegation of the International Association of Ports and Harbors (IAPH) stressed that the subject of places of refuge was of great importance and that it was the duty of the Committee to address the issue as a matter of urgency, before another incident occurred.

9(a).4 However, all the delegations that spoke, although expressing their appreciation to CMI for the high quality of the draft treaty and its contribution in general to the Committee's work, restated the view that there was no need for a new convention at this point in time. In the view of these delegations, the international regime comprising the existing liability and compensation conventions for pollution damage at sea provided a comprehensive legal framework, especially

when coupled with the Guidelines on places of refuge adopted pursuant to resolution A.949(23) and other regional agreements.

9(a).5 While the subject of places of refuge was undoubtedly an important one, which needed to be kept under review, instead of embarking on the preparation of a new treaty instrument, priority should be given by the Committee to enhancing the implementation of existing conventions. Once all of these conventions, including the Nairobi Convention on the Removal of Wrecks, 2007, had entered into force and their effectiveness had been assessed, the Committee would be in a better position to ascertain the existence of possible gaps. It was pointed out that it should be noted that the IMO liability Conventions, such as the Bunkers, CLC, HNS and Wreck Removal Conventions, do apply in these situations.

9(a).6 Several delegations expressed their reluctance to develop specific and detailed rules relating to places of refuge, especially in the form of a mandatory instrument. Not only might such an instrument interfere with States' sovereignty, and not accord with UNCLOS, but it might unduly interfere with the right of coastal States to deal with incidents on a case-by-case basis.

9(a).7 The Committee decided not to develop a binding instrument on places of refuge at this stage and renewed its appreciation to CMI for its efforts in preparing the draft instrument.

(b) International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001: bunker oil pollution incidents

9(b).1 The Committee decided to divide the consideration of this item in two parts, namely bareboat-registered vessels and other issues related to the implementation of the Bunkers Convention.

Bareboat charters

9(b).2 The delegation of the Marshall Islands introduced document LEG 95/9/1 expressing the position that the flag State, in which bareboat-registered vessels are registered, should issue the certificate of insurance or other financial security in respect of civil liability for bunker oil pollution damage regulated in the Bunkers Convention.

9(b).3 The delegation of Liberia introduced document LEG 95/9/6 expressing the same position.

9(b).4 The delegation of Germany introduced document LEG 95/9/4 providing a legal analysis as to why the State of the ship's underlying registry, namely the State where the owner of the ship, not the bareboat-registered vessel, is registered, is responsible for issuing insurance certificates under the Bunkers Convention.

9(b).5 The delegation of Denmark introduced document LEG 95/9/2 reporting on the inconclusive outcome of a discussion on the bareboat charter issue arrived at during an informal meeting in London on questions related to the implementation of the Bunkers Convention.

9(b).6 The Committee held an extensive debate on the differing positions which had been expressed, as to whether the flag State, the State of the underlying ship's registry, or both, were entitled to issue certificates.

9(b).7 A large majority of delegations that spoke supported the view that the responsibility for the issuance of the certificate should lie with the flag State of the bareboat-registered vessel. The following reasons were provided in support of this position:

- while the obligation to take out insurance lies with the registered owner of the vessel, the key as to which State should issue the corresponding certificate depends on the interpretation of the definition of “State of the ship’s registry”, as the State of registration of the ship rather than the State of registration of/or domicile of the registered owner;
- article 7.11 of the Bunkers Convention, according to which a State Party shall not permit a ship under its flag to operate at any time unless a certificate has been issued, should be interpreted in the light of article 94.1 of the United Nations Convention on the Law of the Sea (UNCLOS), according to which every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying their flags;
- in accordance with article 1.10 of the Bunkers Convention, “the State of the ship’s registry” means, in relation to a registered ship, the State of registration of the ship and, in relation to an unregistered ship, the State whose flag the ship is entitled to fly. A vessel should be considered an “unregistered ship” when in the process of being registered as bareboat-chartered vessel by a flag State;
- the definition of the “State of the ship’s registry” contained in the Bunkers Convention is identical to that contained in the 1992 Civil Liability Convention, which has been consistently interpreted on the basis that certificates should be issued by the flag State, rather than by the State of the underlying register;
- the alternative of double certification, namely certification by both the State of the underlying registry and the flag State, could lead to confusion regarding the extent of the flag State’s responsibility for the fulfilment of its obligations under the Bunkers Convention. In this regard, reference was made to cases where, after issuing certificates, the flag State had been informed by the shipowner of the existence of similar certificates issued by the State of the ship’s underlying registry. In such cases, the coexistence of certificates issued by two States Parties to the Convention could lead to a potential conflict of public law;
- actual cases have shown that even if the State of the underlying registry informs the flag State of the existence of insurance cover, it does not always inform the flag State of the termination of that cover. In such cases, the flag State, and not the State of the underlying registry, will be exposed by the media and the international community for failure to perform its convention obligations and for failure to exercise control over its ships;
- the flag State would be exposed to a similar situation in cases where port States, insisting on having certificates issued by flag States, do not allow the entry into port of ships with certificates issued by the State of the underlying registry; and

- this issue raised legal and policy implications not confined to the Bunkers Convention. In this regard, reference was made to the use by drug traffickers of multiple registrations and documents apparently valid on their face, conflicting flags and homeports, and other deceptive devices in order to intentionally create legal doubt concerning the actual flag State of the vessel.

9(b).8 The point was made that some port States would not accept certificates not issued by the flag State.

9(b).9 Those delegations favouring the issue of certificates by the State of the underlying registry gave the following reasons in support of their position:

- article 7.2 of the Bunkers Convention explicitly refers to “the appropriate authority of the ship’s registry” and thus regulates a clear right for the State of the underlying ship’s registry to issue a valid certificate;
- this right is further confirmed by the differentiation established by the Convention between “shipowner” and “registered owner”. In accordance with the definition of both these terms contained in articles 1.3 and 1.4 respectively, the meaning of shipowner is wider than that of “registered owner” and only the registered owner is obliged to maintain insurance in accordance with article 7.1. Accordingly, the ship’s registry referred to in article 7.2 must be the registry in which the registered owner (not the bareboat charters) had been registered;
- the expression “unregistered ship” aimed at covering ships which might not be registered, for example due to their small tonnage, but were still entitled to fly a flag;
- the responsibility of the State of the ship’s registry to determine the conditions of issue and validity of certificates is clearly established by article 7.7;
- the definition of the “State of the ship’s registry” contained in article 1.10 clearly indicates that the State of the ship’s registry and the flag State are not necessarily identical;
- port States may accept certificates issued either by the flag State or by the State of the ship’s underlying registry;
- the right of States Parties to the Bunkers Convention to issue certificates and the obligation of all Parties to accept these is clearly regulated in article 7.9 of the Convention. This obligation is also binding on States that allow bareboat charter registration; and
- in accordance with article 94.1 of UNCLOS, the effective exercise of jurisdiction by flag States refers to the need to ensure that a certificate exists, but does not necessarily mean that the flag State has to issue the certificate itself.

9(b).10 The representative of the International Chamber of Shipping (ICS) noted that the bareboat in and out registration is part of the global shipping industry. The main purpose of insurance certification is simply to attest that there is an insurance cover in place. The shipowner must be clear as to the identity of the State to which information on the insurance cover should be provided. Flexibility is needed to ensure the validity of certificates issued by States Parties, while this matter is under discussion by the Legal Committee.

9(b).11 The representative of CMI recalled that CMI had undertaken an inquiry at the request of the Committee, in connection with a similar issue related to the implementation of the Athens Convention, bearing in mind the obligation imposed by this convention on the actual carrier to take insurance. As a result of the inquiry, and taking into account differing national legislation, the conclusion was reached that different legal regimes could co-exist as long as the passenger was protected. CMI stated that, in view of the wide variety of legislation, port States should instruct inspectors to focus on the existence of insurance cover irrespective of which authority issued the certificate. CMI restated its availability to assist the Committee and the Secretariat in any further consideration of this issue.

9(b).12 It was noted that the divergence of opinions was in part due to the fact that the text of the Bunkers Convention was not clear. Accordingly, practical and flexible solutions were needed, in particular bearing in mind the need to avoid confusion over the acceptance of certificates providing insurance cover until February 2010.

9(b).13 The view was also expressed that the alternative dual certification by both the flag State and the State of the underlying register, or the reciprocal endorsement of certificates issued by one of them, was not viable and impractical on account of the additional burden it would imply for shipowners and port States.

9(b).14 Following the debate, the Committee noted that, while it was moving towards a consensus, consensus had not yet been reached. Moreover, as neither the Legal Division of IMO nor the Legal Committee was a judicial body, they could only provide an opinion which was not binding on States and, accordingly, if a State decided not to accept that opinion, that was its sovereign right.

9(b).15 The Committee noted the readiness of those States, which were in the minority, which favoured the issuance of certificates by the State of the underlying registry, to reconsider their positions, bearing in mind that the large majority of delegations that spoke were of the view that the flag State should issue such certificates. Those States, however, would welcome further deliberation on this issue.

9(b).16 It was noted that, at this point in time, all certificates issued by States Parties had been recognized. It was accordingly suggested, and supported by many delegations, that, on an interim basis, all certificates issued by States Parties to the Bunkers Convention, including both flag States and States of the underlying registry, should be accepted as valid evidence of compulsory insurance.

9(b).17 The Committee agreed to include the question of the issuance of certificates to ships registered on a bareboat charter basis as a matter of priority among the terms of reference of the correspondence group on the implementation of the Bunkers Convention.

Other issues

9(b).18 The delegation of Denmark introduced document LEG 95/9/2, informing the Committee of the meeting which had taken place in London on 8 January 2009, with the aim of discussing the various issues where further clarification was needed in connection with the implementation of the Bunkers Convention. The purpose of the meeting was to share information and to discuss questions that had arisen in national implementation processes. During that meeting consensus was achieved on some of the issues, whereas other issues showed that there may be different views on the interpretation of the Convention text. Issues discussed at the meeting were as follows:

(i) issues of consensus:

- certificates should be issued by flag States, though the case of bareboat chartered ships might be the exception;
- Blue Cards should only be accepted if:
 - the Blue Card is properly addressed to the issuing flag State in question; and
 - the Blue Card clearly mentions the name and address of the insurer;
- barges, pontoons and other vessels without engines are required to hold Bunkers Certificates, since they are covered by the definition of “ship” stipulated in the Bunkers Convention and might carry oil for kinds of operation other than propulsion; and
- in the case of co-ownership of a vessel, whether all co-owners were listed on the Blue Card, or only one of the co-owners, was found irrelevant and considered a matter of choice for the co-owners themselves.

(ii) issues for information:

- issuing certificates to ships from non-party States regardless of whether the ships call at a port in the State Party;
- informing flag States when a State Party issues a certificate to ships from a non-State Party;
- the period/time covered by the Blue Cards;
- the acceptance of electronic Blue Cards;
- validity of the Blue Cards and the problems which may arise when all certificates have to be renewed up to the same date, i.e. 20 February;
- renewal of certificates for ships flying the flag of States which are new Parties to the Bunkers Convention; and
- implementation of the resolution on responder immunity.

(iii) issues for further discussion:

- the interface between the International Convention on Civil Liability for Oil Pollution Damage, 1992 (CLC) and the Bunkers Convention;
- the issuance of Bunkers certificates to ships registered on a bareboat charter basis;
- insurance and liability for claims where the LLMC does not apply (claims concerning MODUs or claims covered by a reservation under article 18, paragraph 1 of the LLMC);
- the issuance of Bunkers Certificates to new buildings; and
- the procedure for accepting P & I Clubs and insurance companies outside the International Group of P & I Associations.

9(b).19 The delegation suggested that the work could be taken forward by a correspondence group tasked by the Legal Committee to work towards establishing common guidelines for the implementation of the Convention. This would be helpful not only for States that were already Parties to the Bunkers Convention, but also for States that might become Parties to it in the future.

9(b).20 The Committee expressed its appreciation for the work carried out by the delegation of Denmark.

9(b).21 Some delegations suggested that the aforementioned discussions on bareboat charter registration should be accurately reflected in the first bullet point in paragraph (i) above, so that the correspondence group could take that as the basis for discussion in the Group.

9(b).22 Differing views were expressed on the first bullet point in paragraph (iii) above as to whether oil tankers holding a CLC certificate were required to obtain, in addition, a Bunkers certificate. In this regard, the point was made that requiring two certificates would impose an unnecessary administrative burden on the industry and States. Other delegations noted that the Bunkers Convention, in their view, does not provide an exemption for ships covered by the CLC.

9(b).23 With regard to the third bullet point of paragraph (iii) above, one delegation was of the opinion that the provisions of the LLMC determined the liability limits under the Bunkers Convention. That delegation considered that the phrase “in accordance with” in article 7(1) of the Bunkers Convention referred to the LLMC as a whole. In this regard, if the LLMC did not give a right to limit liability, (i.e. in case of offshore floating platforms), the obligation to have insurance cover for pollution damage caused by bunker oil was also not limited to a certain amount either.

9(b).24 Other delegations, however, were of the view that, even though the limits imposed by the LLMC could be exceeded by means of the reservation allowed by article 18(1) of the LLMC, and even though the LLMC may not apply at all, it is clearly stated in article 7(1) of the Bunkers Convention that, in all cases, shall the compulsory insurance only be required to cover an amount equal to the limitation amount that would have applied under the LLMC.

9(b).25 With regard to the fifth bullet point in paragraph (iii), the view was expressed that certificates issued by insurance companies outside the P & I Clubs were acceptable by States.

9(b).26 One delegation advised that, having recently deposited in IMO its instrument of ratification to the Bunkers Convention, it noted that the limits in that Convention are tied to the limits imposed by the LLMC Convention and that it is considering seeking the views of other States Parties to the LLMC Convention on a possible increase to those limits.

9(b).27 It was pointed out that it was important, not only for developing States but also for developed States, to receive some guidance on the implementation of the Bunkers Convention through the Integrated Technical Co-operation Programme.

9(b).28 Following this discussion, the Committee decided to establish a formal Correspondence Group with the following terms of reference:

To facilitate further ratifications and to promote harmonized implementation of the Bunkers Convention, the Correspondence Group is instructed to:

- consider as a matter of priority the issuance of certificates to bareboat-registered vessels based on the outcome of the debate in the Legal Committee at LEG 95, on documents LEG 95/9/1, LEG 95/9/4 and LEG 95/9/6, as reflected in the LEG 95 report, paragraphs 9(b).1 to 9(b).17;
- consider the issues regarding the implementation of the Bunkers Convention as contained in document LEG 95/9/2, paragraph 14;
- consider any additional issues in relation to the above that might provide clarity to promote wider acceptance and harmonized implementation of the Bunkers Convention;
- provide a progress report to LEG 96 and make necessary recommendations if possible on the priority issue regarding certificates to bareboat-registered vessels; and
- provide a final report to LEG 97 with appropriate guidance as to how the Committee will disseminate the outcome of the Group's conclusions.

9(b).29 The e-mail address of the Chairperson of the Correspondence Group, Ms. Birgit Olsen (Denmark), is as follows:

BSO@dma.dk

9(b).30 The observer delegation of the International Group of P & I Associations introduced document LEG 95/9/5, stating that the task of collecting and analyzing information on bunker oil pollution incidents was very important but also a very difficult one. The delegation noted its intention to revert to the Committee on this matter at its ninety-sixth session, with a formal position.

(c) Review of national legislation on piracy

9(c).1 The Secretariat introduced document LEG 95/9/3. In this regard, it was noted that the Secretariat intends to review existing national legislation to prevent and punish the crimes of piracy and armed robbery at sea as part of IMO's anti-piracy strategy, in response

to UN Security Council resolution 1851 (2008), which notes with concern the lack of capacity, domestic legislation, and clarity about how to deal with pirates following their capture. This problem has hindered more robust international action being taken against pirates off the coast of Somalia and in some cases has led to pirates being released without facing justice.

9(c).2 The Committee was informed that, since the issue of the document, the Secretariat had received information on legislation on piracy from the following additional countries: Australia, Brazil, Chile, Estonia, Italy, Japan (draft legislation), Peru, Sri Lanka and the United States and encouraged IMO Members that have not yet done so to submit similar information.

9(c).3 One aim of this exercise was to assist IMO to advise countries on the development of anti-piracy legislation within the framework of IMO's Integrated Technical Co-operation Programme – Sub-programme for Maritime Legislation. CMI had offered to assist the Secretariat in this regard and the Committee was reminded of the draft guidelines for legislation on maritime criminal acts submitted by CMI to its ninety-third session in October 2007.

9(c).4 The Director, MSD, informed the Committee about the work of the MSC on piracy and armed robbery against ships as follows.

Revision of the piracy and armed robbery guidance and recommendations

9(c).5 Pursuant to the decisions of the Assembly at its twenty-fifth session (operative paragraph 10 of Assembly resolution A.1002(25)), the Maritime Safety Committee (MSC) was undertaking a comprehensive revision of the existing guidance provided by the Organization for preventing and suppressing piracy and armed robbery against ships with a view, *inter alia*:

- .1 to take into account the current trends and practices of the perpetrators;
- .2 to provide advice in cases where seafarers, fishermen and other mariners are kidnapped or held hostage for ransom; and
- .3 to provide advice in cases where naval vessels and military aircraft seek to provide assistance or protection.

9(c).6 In particular, the Committee was advised that the MSC, at its eighty-sixth session, was to consider the report of the Correspondence Group (contained in document MSC 86/18/1) which it had established, with a view to revising and updating:

- .1 resolution A.922(22) on Code of practice for the investigation of the crimes of piracy and armed robbery against ships;
- .2 MSC/Circ.622/Rev.1 on Recommendations to Governments for preventing and suppressing piracy and armed robbery against ships; and
- .3 MSC/Circ.623/Rev.3 on Guidance to shipowners and ship operators, shipmasters and crews on preventing and suppressing acts of piracy and armed robbery against ships.

9(c).7 Any legal issue which may arise, which cannot be resolved at MSC 86, could be referred for consideration to the Legal Committee at its next session, as the related work had to be completed by the twenty-seventh session of the Assembly, at the latest.

Contact Group on Piracy off the coast of Somalia

9(c).8 The Director, MSD, also informed the Committee that, pursuant to United Nations Security Council resolution 1851(2008), the Contact Group on Piracy off the coast of Somalia (CGPCS) was established and held its inaugural meeting on 14 January 2009 to facilitate discussion and coordination of actions among States and organizations to suppress piracy off the coast of Somalia. The Security Council was informed about the establishment of the Group and the progress thereof (United Nations document S/2009/80).

9(c).9 The Committee was advised that the participants in the inaugural meeting of the CGPCS had agreed to establish four working groups in which the members of the CGPCS may participate, to address the following focus areas:

- Working Group 1 will address activities related to military and operational coordination and information-sharing and the establishment of the regional coordination centre; it was convened by the United Kingdom with the support of IMO and had its first meeting at IMO Headquarters on 24 and 25 February 2009;
- Working Group 2 will address judicial aspects of piracy; it was convened by Denmark with the support of UNODC and had its first meeting in Vienna on 5 March 2009;
- Working Group 3 will address the strengthening of shipping self-awareness and other capabilities; it was convened by the United States with the support of IMO and had its first meeting at IMO Headquarters on 26 and 27 February 2009. The report of the outcome of this Group, in relation to Best Management Practices to Deter Piracy in the Gulf of Aden and off the Coast of Somalia, has also been submitted, on the basis of the decisions of the Group, for consideration by MSC 86 (document MSC 86/18/2); and
- Working Group 4 will address the issue of improving diplomatic and public information on all aspects of piracy; it was convened by Egypt and met in Cairo on 16 March 2009.

9(c).10 The Committee was further informed that the second meeting of the CGPCS took place in Cairo, Egypt, on 17 March 2009 and further meetings of the CGPCS and of some of the Working Groups are contemplated around the middle of this year.

9(c).11 The observer delegation of CMI informed the Committee that the Joint International Working Group of International Organizations, which had produced a Model National Law on Acts of Piracy and Maritime Violence, had continued working on the harmonization of national legislation on maritime criminal acts in the light of the expanding problem of serious maritime criminal acts, including piracy, and on strengthening the implementation of existing international law.

9(c).12 The Secretariat informed the Committee of its intention to review the national legislation on piracy received and to submit a synopsis of the replies to the Committee at its next session, in order to facilitate an assessment of the legal situation, in particular regarding the capture, prosecution and extradition of alleged offenders.

9(c).13 One delegation noted that, while its country did not have legislation that specifically addresses piracy, it had passed a law in July 2008, relating to armed robbery, terrorism and hijacking. The delegation requested that this legislation be reviewed to determine whether it suffices and if it did not, to notify it so that a request could be made for technical assistance in drafting appropriate legislation.

9(c).14 The Committee took note of the content of document LEG 95/9/3. The Committee also noted, with thanks, the information provided by the Director, MSD. Members were urged to submit information and the texts of their national legislation on piracy, in reply to IMO Circular letter No.2933, dated 23 December 2008*.

(d) Amendments to the Rules of Procedure of the Legal Committee

9(d).1 The Director, LED, introduced document LEG 95/9/7, submitted by the Secretariat.

9(d).2 The Committee agreed that, as a consequence of the entry into force, on 7 December 2008, of the amendments to the Convention on the International Maritime Organization regarding the institutionalization of the Facilitation Committee, adopted on 7 November 1991 by resolution A.724(17), it was necessary to amend the reference to Article 62 in Rule 4, paragraph (c) of the Rules of Procedure of the Committee to read “Article 67”.

9(d).3 The Committee also agreed that, due to the fact that the African Union (AU) is the successor organization to the Organization of African Unity (OAU) and that the Assembly, at its twenty-fifth regular session, had approved a new Agreement of Co-operation between the AU and the Organization, it was necessary to replace the reference to “Organization of African Unity” with a reference to the “African Union” in Rule 4, paragraph (d).

9(d).4 The Committee noted that these amendments, together with the amendments contained in paragraph 3 of the document, which had already been approved by the Committee, at its seventy-ninth and eightieth sessions, will be inserted in the new publication of Basic Documents, Volume One.

(e) Rotterdam Rules

9(e).1 The Committee noted the following information provided by the Netherlands concerning the “Rotterdam Rules”:

- on 11 December 2008 the UN General Assembly adopted the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea, and authorized a signing ceremony for the Convention, to be held in Rotterdam, recommending the new Convention to be known as the “Rotterdam Rules”. The signature event will take place from 20 to 23 September 2009 in Rotterdam;
- this new Convention extends and modernizes the existing international rules relating to the contract of maritime carriage of goods. The aim is that the Convention will replace the Hague Rules, the Hague-Visby Rules and the Hamburg Rules and that it will achieve uniformity of law in the field of maritime carriage, as well as provide for modern industry needs in terms of door-to-door carriage;

* If possible, in one of the Organization’s working languages (English, French and Spanish), preferably by e-mail to: info@imo.org.

- the Rotterdam Rules were prepared in intergovernmental negotiations from 2002 to 2009 by the United Nations Commission for International Trade Law (UNCITRAL), while the Comité Maritime International (CMI), had completed preparatory work on the Convention at the request of UNCITRAL, including the creation of a preliminary draft of the text; and
- additional information can be found on line at www.rotterdamrules2009.com.

ANNEX 1

AGENDA FOR THE NINETY-FIFTH SESSION

- Opening of the session
- 1 Adoption of the agenda
 - 2 Report of the Secretary-General on credentials
 - 3 Monitoring the implementation of the HNS Convention: development of a possible draft protocol to the Convention
 - 4 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; and
 - (ii) follow-up on resolutions adopted by the International Conference on the Removal of Wrecks, 2007: development of a single model compulsory insurance certificate
 - 5 Fair treatment of seafarers in the event of a maritime accident
 - 6 Matters arising from the one hundred and first regular session of the Council
 - 7 Technical co-operation activities related to maritime legislation
 - 8 Work programme
 - 9 Any other business
 - (a) Places of refuge
 - (b) International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001: bunker oil pollution incidents
 - (c) Review of national legislation on piracy
 - (d) Amendments to the Rules of Procedure of the Legal Committee
 - (e) Rotterdam Rules
 - 10 Report of the Committee

ANNEX 2

**MONITORING THE IMPLEMENTATION OF THE HNS CONVENTION:
DEVELOPMENT OF A POSSIBLE DRAFT PROTOCOL
TO THE CONVENTION****Statement by Cyprus**

The Republic of Cyprus, as a Contracting Government to the HNS Convention, remains reluctant to accept that the proposed Protocol would “solve” the “ratification problems” “identified”.

In the opinion of this delegation, the proposed Protocol contains provisions that might be considered to be contrary to the underlying aim of the HNS Convention: that is, the compensation of victims and hence, Cyprus, on the basis of article 18 of the Vienna Convention, cannot support such provisions.

It is regrettable to note that the intervention Cyprus made during the ninety-fourth session of the Legal Committee, which is included in the final report of that session of the Committee, remains valid.

ANNEX 3

**DRAFT PROTOCOL OF [20..] TO AMEND THE INTERNATIONAL CONVENTION
ON LIABILITY AND COMPENSATION FOR DAMAGE IN CONNECTION
WITH THE CARRIAGE OF HAZARDOUS AND NOXIOUS
SUBSTANCES BY SEA, 1996**

The Parties to this Protocol,

RECOGNIZING the significant contribution which can be made by the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (hereinafter referred to as the “Convention”) to the preservation of the environment and the adequate, prompt and effective compensation of persons who suffer damage caused by incidents in connection with the carriage of hazardous and noxious substances by sea,

RECOGNIZING ALSO that, over many years, a large number of States have consistently expressed their determination to establish a robust and effective compensation regime for the maritime carriage of hazardous and noxious substances based on a system of shared liability and have worked towards a uniform implementation of the Convention,

ACKNOWLEDGING, HOWEVER, that certain issues have been identified as inhibiting the entry into force of the Convention and, consequently, the implementation of the international regime contained therein,

DETERMINED to resolve these issues without embarking on a wholesale revision of the Convention,

AWARE OF the need to take into account the possible impact on developing countries, as well as the interests of those States which have already ratified the Convention or are at an advanced stage in so doing,

AWARE ALSO OF the principles enshrined in IMO Assembly resolution A.998(25) “Need for capacity-building for the development and implementation of new, and amendments to existing, instruments”, adopted on 29 November 2007,

CONSIDERING that this objective may best be achieved by the conclusion of a Protocol relating to the Convention,

HAVE AGREED as follows:

Definitions

Article 1

For the purposes of this Protocol:

- 1 “Convention” means the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996.
- 2 “Organization” means the International Maritime Organization.
- 3 “Secretary-General” means the Secretary-General of the Organization.

General obligations

Article 2

The Parties to this Protocol shall give effect to the provisions of this Protocol and the provisions of the Convention, as amended by this Protocol.

Article 3

1 Article 1, paragraph 5, of the Convention is replaced by the following text:

- 5 “Hazardous and noxious substances (HNS)” means:
 - (a) any substances, materials and articles carried on board a ship as cargo, referred to in (i) to (vii) below:
 - (i) oils, carried in bulk, as defined in regulation 1 of Annex I to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, as amended;
 - (ii) noxious liquid substances, carried in bulk, as defined in regulation 1.10 of Annex II to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, as amended, and those substances and mixtures provisionally categorized as falling in pollution category X, Y or Z in accordance with regulation 6.3 of the said Annex II;
 - (iii) dangerous liquid substances carried in bulk listed in chapter 17 of the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk, as amended, and the dangerous products for which the preliminary suitable conditions for the carriage have been prescribed by the Administration and port administrations involved in accordance with paragraph 1.1.6 of the Code;

- (iv) dangerous, hazardous and harmful substances, materials and articles in packaged form covered by the International Maritime Dangerous Goods Code, as amended;
 - (v) liquefied gases as listed in chapter 19 of the International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk, as amended, and the products for which preliminary suitable conditions for the carriage have been prescribed by the Administration and port administrations involved in accordance with paragraph 1.1.6 of the Code;
 - (vi) liquid substances carried in bulk with a flashpoint not exceeding 60°C (measured by a closed-cup test);
 - (vii) solid bulk materials possessing chemical hazards covered by the International Maritime Solid Bulk Cargoes (IMSBC) Code, as amended, to the extent that these substances are also subject to the provisions of the International Maritime Dangerous Goods Code in effect in 1996, when carried in packaged form; and
- (b) residues from the previous carriage in bulk of substances referred to in (a)(i) to (iii) and (v) to (vii) above.

2 The following text is added as article 1, paragraphs *5bis* and *5ter*, of the Convention:

5bis “Bulk HNS” means any hazardous and noxious substances referred to in article 1, paragraph 5(a)(i) to (iii) and (v) to (vii) and paragraph 5(b).

5ter “Packaged HNS” means any hazardous and noxious substances referred to in article 1, paragraph 5(a)(iv).

3 Article 1, paragraph 10, of the Convention is replaced by the following text:

10 “Contributing cargo” means any bulk HNS which are carried by sea as cargo to a port or terminal in the territory of a State Party and discharged in that State. Cargo in transit which is transferred directly, or through a port or terminal, from one ship to another, either wholly or in part, in the course of carriage from the port or terminal of original loading to the port or terminal of final destination shall be considered as contributing cargo only in respect of receipt at the final destination.

Article 4

Article 3(d) is replaced by the following text:

- (d) to preventive measures, wherever taken, to prevent or minimize such damage as referred to in (a), (b) and (c).

Article 5

Article 4, paragraph 3(b), is replaced by the following text:

- 3(b) to damage caused by a radioactive material of class 7 either in the International Maritime Dangerous Goods Code, as amended, or in the International Maritime Solid Bulk Cargoes (IMSBC) Code, as amended.

Article 6

Article 5, paragraph 5, of the Convention is deleted.

Article 7

Article 9, paragraph 1, of the Convention is replaced by the following text:

- 1 The owner of a ship shall be entitled to limit liability under this Convention in respect of any one incident to an aggregate amount calculated as follows:
 - (a) Where the damage has been caused by bulk HNS:
 - (i) 10 million units of account for a ship not exceeding 2,000 units of tonnage; and
 - (ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i):
 - for each unit of tonnage from 2,001 to 50,000 units of tonnage, 1,500 units of account;
 - for each unit of tonnage in excess of 50,000 units of tonnage, 360 units of account;
- provided, however, that this aggregate amount shall not in any event exceed 100 million units of account.
- (b) Where the damage has been caused by packaged HNS, or where the damage has been caused by both bulk HNS and packaged HNS, or where it is not possible to determine whether the damage originating from that ship has been caused by bulk HNS or by packaged HNS:
 - (i) $[10 + W]$ million units of account for a ship not exceeding 2,000 units of tonnage; and

- (ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i):

for each unit of tonnage from 2,001 to 50,000 units of tonnage, [1,500 + X] units of account;

for each unit of tonnage in excess of 50,000 units of tonnage, [360 + Y] units of account;

provided, however, that this aggregate amount shall not in any event exceed [100 + Z] million units of account.

Article 8

In article 16, paragraph 5, of the Convention, the reference to “paragraph 1(c)” is replaced by a reference to “paragraph 1(b)”.

Article 9

1 Article 17, paragraph 2, of the Convention is replaced by the following text:

2 Annual contributions payable pursuant to articles 18, 19 and article 21, paragraph 5, shall be determined by the Assembly and shall be calculated in accordance with those articles on the basis of the units of contributing cargo received during the preceding calendar year or such other year as the Assembly may decide.

2 In article 17, paragraph 3, of the Convention, a reference to “and paragraph 1bis,” is inserted immediately after the words “article 19, paragraph 1”.

Article 10

In article 18, paragraphs 1 and 2, of the Convention a reference to “and paragraph 1bis,” is inserted immediately after the words “article 19, paragraph 1” in both paragraphs.

Article 11

1 In article 19, paragraph 1(b) is deleted and paragraph 1(c) becomes paragraph 1(b).

2 In article 19 of the Convention, after paragraph 1, a new paragraph is inserted as follows:

1bis (a) In the case of the LNG account, subject to article 16, paragraph 5, annual contributions to the LNG account shall be made in respect of each State Party by any person who in the preceding calendar year, or such other year as the Assembly may decide, was the receiver in that State of any quantity of LNG.

- (b) However, any contributions shall be made by the person who, immediately prior to its discharge, held title to an LNG cargo discharged in a port or terminal of that State (the titleholder) where:
 - (i) the titleholder has entered into an agreement with the receiver that the titleholder shall make such contributions; and
 - (ii) the receiver has informed the State Party that such an agreement exists.
- (c) If the titleholder referred to in subparagraph (b) does not make the contributions or any part thereof, the receiver shall make the remaining contributions. The Assembly shall determine in the internal regulations the circumstances under which the titleholder shall be considered as not having made the contributions and the arrangements in accordance with which the receiver shall make any remaining contributions.
- (d) Nothing in this paragraph shall prejudice any rights of recourse or reimbursement of the receiver that may arise between the receiver and the titleholder under the applicable law.

3 In article 19, paragraph 2, of the Convention a reference to “and paragraph 1bis” is inserted immediately after the words “paragraph 1”.

Article 12

Article 20, paragraph 1, of the Convention is replaced by the following text:

- 1 In respect of each State Party, initial contributions shall be made of an amount which shall for each person liable to pay contributions in accordance with article 16, paragraph 5, articles 18, 19 and article 21, paragraph 5, be calculated on the basis of a fixed sum, equal for the general account and each separate account, for each unit of contributing cargo received in that State during the calendar year preceding that in which this Convention enters into force for that State.

Article 13

1 Article 21, paragraph 4, of the Convention is replaced by the following text:

- 4 If in a State Party there is no person liable to pay contributions in accordance with articles 18, 19 or paragraph 5 of this article, that State Party shall for the purposes of this Convention inform the Director of the HNS Fund thereof.

2 Article 21, paragraph 5(b), of the Convention is replaced by the following text:

- 5(b) instruct the HNS Fund to levy the aggregate amount for each account by invoicing individual receivers, or in the case of LNG, the titleholders, if article 19, paragraph 1bis(b), is applicable, for the amount payable by each of them. If the titleholder does not make the contributions or any part thereof, the HNS Fund shall levy the remaining contributions by invoicing the receiver of the LNG cargo. These persons shall be identified in accordance with the national law of the State concerned.

Article 14

The following text is added as article 21bis of the Convention:

Non-reporting

Article 21bis

- 1 Where a State Party does not fulfil its obligations under article 21, paragraph 2, and this results in a financial loss for the HNS Fund, that State Party shall be liable to compensate the HNS Fund for such loss. The Assembly shall, on the recommendations of the Director, decide whether such compensation shall be payable by a State Party.
- 2 No compensation for any incident shall be paid by the HNS Fund for damage in the territory, including the territorial sea in accordance with article 3(a) of this Convention, exclusive economic zone or other area in accordance with article 3(b) of this Convention, or damage in accordance with article 3(c) of this Convention, of a State Party in respect of a given incident or for preventive measures, wherever taken, in accordance with article 3(d) of this Convention, until the obligations under article 21, paragraphs 2 and 4, have been complied with in respect of that State Party for all years prior to the occurrence of an incident for which compensation is sought. The Assembly shall determine in the internal regulations of the HNS Fund the circumstances under which a State Party shall be considered as not having fulfilled these obligations.
- 3 Where compensation has been denied temporarily in accordance with paragraph 2, compensation shall be denied permanently if the obligations under article 21, paragraphs 2 and 4, have not been fulfilled within one year after the Director has notified the State Party of its failure to fulfil these obligations.
- 4 Any payments of contributions due to the HNS Fund shall be set off against compensation due to the debtor, or the debtor's agents.
- 5 Paragraphs 2 to 4 shall not apply to claims in respect of death or personal injury.

Article 15

Article 23, paragraph 1, of the Convention is replaced by the following text:

- 1 Without prejudice to article 21, paragraph 5, a State Party may at the time when it deposits its instrument of ratification, acceptance, approval or accession or at any time thereafter declare that it assumes responsibility for obligations imposed by this Convention on any person liable to pay contributions in accordance with articles 18, 19, 20 or article 21, paragraph 5, in respect of hazardous and noxious substances received in the territory of that State. Such a declaration shall be made in writing and shall specify which obligations are assumed.

Article 16

Article 43 of the Convention is deleted.

Article 17

The model of a certificate annexed to the Convention is replaced by the model annexed to this Protocol.

Interpretation and application

Article 18

The Convention and this Protocol shall, as between the Parties to this Protocol, be read and interpreted together as one single instrument.

Article 19

In chapter VI, the following text is inserted as article 44bis of the Convention:

Article 44bis

Final clauses of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, [20..]

- 1 Articles 1 to 44 and Annexes I and II of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996, as amended by the Protocol of [20..] thereto, together with the final clauses, shall constitute and be called the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, [20..] ([20..] HNS Convention).
- 2 The final clauses of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea [20..] shall be this article and the final clauses of the Protocol of [20..] to amend the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996.
- 3 The articles comprising the final clauses of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996, as amended by the Protocol of [20..] shall be renumbered sequentially with the preceding articles of that Convention. References within the final clauses to other articles of the final clauses shall be renumbered accordingly.

FINAL CLAUSES

Signature, ratification, acceptance, approval and accession

Article 20

- 1 This Protocol shall be open for signature at the Headquarters of the Organization from [.....] to [.....] and shall thereafter remain open for accession.
- 2 Subject to the provisions in paragraphs 4 and 5, States may express their consent to be bound by this Protocol by:
 - (a) signature without reservation as to ratification, acceptance or approval; or
 - (b) signature subject to ratification, acceptance or approval followed by ratification, acceptance or approval; or
 - (c) accession.
- 3 Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.
- 4 An expression of consent to be bound by this Protocol shall be accompanied by the submission to the Secretary-General of data on the total quantities of contributing cargo liable for contributions received in that State during the preceding calendar year in respect of the general account and each separate account.
- 5 An expression of consent which is not accompanied by the data referred to in paragraph 4 shall not be accepted by the Secretary-General.
- 6 Each State which has expressed its consent to be bound by this Protocol shall annually thereafter on or before 31 May until this Protocol enters into force for that State submit to the Secretary-General data on the total quantities of contributing cargo liable for contributions received in that State during the preceding calendar year in respect of the general account and each separate account.
- 7 A State which has expressed its consent to be bound by this Protocol and which has not submitted the data on contributing cargo required under paragraph 6 for any relevant years shall, before the entry into force of the Protocol for that State, be temporarily suspended from being a Contracting State until it has submitted the required data.
- 8 A State which has expressed its consent to be bound by the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 shall be deemed to have withdrawn this consent on the date on which it has signed this Protocol or deposited an instrument of ratification, acceptance, approval of or accession in accordance with paragraph 2.

Entry into force

Article 21

- 1 This Protocol shall enter into force eighteen months after the date on which the following conditions are fulfilled:
 - (a) at least twelve States, including four States each with not less than 2 million units of gross tonnage, have expressed their consent to be bound by it, and
 - (b) the Secretary-General has received information in accordance with article 20, paragraphs 4 and 6, that those persons in such States who would be liable to contribute pursuant to article 18, paragraphs 1(a) and (c), of the Convention, as amended by this Protocol, have received during the preceding calendar year a total quantity of at least 40 million tonnes of cargo contributing to the general account.
- 2 For a State which expresses its consent to be bound by this Protocol after the conditions for entry into force have been met, such consent shall take effect three months after the date of expression of such consent, or on the date on which this Protocol enters into force in accordance with paragraph 1, whichever is the later.

Revision and amendment

Article 22

- 1 A conference for the purpose of revising or amending the Convention, as amended by this Protocol, may be convened by the Organization.
- 2 The Secretary-General shall convene a conference of the States Parties to this Protocol, for revising or amending the Convention, as amended by this Protocol, at the request of six States Parties or one third of the States Parties, whichever is the higher figure.
- 3 Any instrument of ratification, acceptance, approval or accession deposited after the date of entry into force of an amendment to the Convention, as amended by this Protocol, shall be deemed to apply to the Convention as amended.

Amendment of limits

Article 23

- 1 Without prejudice to the provisions of article 22, the special procedure in this article shall apply solely for the purposes of amending the limits set out in article 9, paragraph 1, and article 14, paragraph 5, of the Convention, as amended by this Protocol.
- 2 Upon the request of at least one half, but in no case less than six, of the States Parties, any proposal to amend the limits specified in article 9, paragraph 1, and article 14, paragraph 5, of the Convention, as amended by this Protocol, shall be circulated by the Secretary-General to all Members of the Organization and to all Contracting States.

- 3 Any amendment proposed and circulated as above shall be submitted to the Legal Committee of the Organization (the Legal Committee) for consideration at a date at least six months after the date of its circulation.
- 4 All Contracting States, whether or not Members of the Organization, shall be entitled to participate in the proceedings of the Legal Committee for the consideration and adoption of amendments.
- 5 Amendments shall be adopted by a two-thirds majority of the Contracting States present and voting in the Legal Committee, expanded as provided in paragraph 4, on condition that at least one half of the Contracting States shall be present at the time of voting.
- 6 When acting on a proposal to amend the limits, the Legal Committee shall take into account the experience of incidents and, in particular, the amount of damage resulting there from, changes in the monetary values and the effect of the proposed amendment on the cost of insurance. It shall also take into account the relationship between the limits established in article 9, paragraph 1, and those in article 14, paragraph 5, of the Convention, as amended by this Protocol.
- 7
 - (a) No amendment of the limits under this article may be considered less than five years from the date this Protocol was opened for signature nor less than five years from the date of entry into force of a previous amendment under this article.
 - (b) No limit may be increased so as to exceed an amount which corresponds to a limit laid down in this Protocol increased by six per cent per year calculated on a compound basis from the date on which this Protocol was opened for signature.
 - (c) No limit may be increased so as to exceed an amount which corresponds to a limit laid down in this Protocol multiplied by three.
- 8 Any amendment adopted in accordance with paragraph 5 shall be notified by the Organization to all Contracting States. The amendment shall be deemed to have been accepted at the end of a period of eighteen months after the date of notification, unless within that period no less than one-fourth of the States which were Contracting States at the time of the adoption of the amendment have communicated to the Secretary-General that they do not accept the amendment, in which case the amendment is rejected and shall have no effect.
- 9 An amendment deemed to have been accepted in accordance with paragraph 8 shall enter into force eighteen months after its acceptance.
- 10 All Contracting States shall be bound by the amendment, unless they denounce this Protocol in accordance with article 24, paragraphs 1 and 2, at least six months before the amendment enters into force. Such denunciation shall take effect when the amendment enters into force.

- 11 When an amendment has been adopted but the eighteen month period for its acceptance has not yet expired, a State which becomes a Contracting State during that period shall be bound by the amendment if it enters into force. A State which becomes a Contracting State after that period shall be bound by an amendment which has been accepted in accordance with paragraph 8. In the cases referred to in this paragraph, a State becomes bound by an amendment when that amendment enters into force, or when this Protocol enters into force for that State, if later.

Denunciation

Article 24

- 1 This Protocol may be denounced by any State Party at any time after the expiry of one year following the date on which this Protocol comes into force for that State.
- 2 Denunciation shall be effected by the deposit of an instrument to that effect with the Secretary-General.
- 3 A denunciation shall take effect twelve months, or such longer period as may be specified in the instrument of denunciation, following its receipt by the Secretary-General.
- 4 Notwithstanding a denunciation by a State Party pursuant to this article, any provisions of this Protocol relating to obligations to make contributions under articles 18, 19 or article 21, paragraph 5, of the Convention, as amended by this Protocol, in respect of such payments of compensation as the Assembly may decide relating to an incident which occurs before the denunciation takes effect shall continue to apply.

Extraordinary sessions of the Assembly

Article 25

- 1 Any State Party may, within ninety days after the deposit of an instrument of denunciation the result of which it considers will significantly increase the level of contributions from the remaining States Parties, request the Director to convene an extraordinary session of the Assembly. The Director shall convene the Assembly to meet not less than sixty days after receipt of the request.
- 2 The Director may take the initiative to convene an extraordinary session of the Assembly to meet within sixty days after the deposit of any instrument of denunciation, if the Director considers that such denunciation will result in a significant increase in the level of contributions from the remaining States Parties.
- 3 If the Assembly, at an extraordinary session convened in accordance with paragraph 1 or 2, decides that the denunciation will result in a significant increase in the level of contributions from the remaining States Parties, any such State may, not later than one hundred and twenty days before the date on which the denunciation takes effect, denounce this Protocol with effect from the same date.

Cessation

Article 26

- 1 This Protocol shall cease to be in force:
 - (a) on the date when the number of States Parties falls below six; or
 - (b) twelve months after the date on which data concerning a previous calendar year were to be communicated to the Director in accordance with article 21, of the Convention, as amended by this Protocol, if the data show that the total quantity of contributing cargo to the general account in accordance with article 18, paragraphs 1(a) and (c), of the Convention, as amended by this Protocol, received in the States Parties in that preceding calendar year was less than 30 million tonnes.

Notwithstanding subparagraph (b), if the total quantity of contributing cargo to the general account in accordance with article 18, paragraphs 1(a) and (c), of the Convention, as amended by this Protocol, received in the States Parties in the preceding calendar year was less than 30 million tonnes but more than 25 million tonnes, the Assembly may, if it considers that this was due to exceptional circumstances and is not likely to be repeated, decide before the expiry of the above-mentioned twelve month period that the Protocol shall continue to be in force. The Assembly may not, however, take such a decision in more than two subsequent years.

- 2 States which are bound by this Protocol on the day before the date it ceases to be in force shall enable the HNS Fund to exercise its functions as described under article 27 and shall, for that purpose only, remain bound by this Protocol.

Winding up of the HNS Fund

Article 27

- 1 If this Protocol ceases to be in force, the HNS Fund shall nevertheless:
 - (a) meet its obligations in respect of any incident occurring before this Protocol ceased to be in force; and
 - (b) be entitled to exercise its rights to contributions to the extent that these contributions are necessary to meet the obligations under (a), including expenses for the administration of the HNS Fund necessary for this purpose.
- 2 The Assembly shall take all appropriate measures to complete the winding up of the HNS Fund including the distribution in an equitable manner of any remaining assets among those persons who have contributed to the HNS Fund.
- 3 For the purposes of this article the HNS Fund shall remain a legal person.

Depositary

Article 28

- 1 This Protocol and any amendment adopted under article 23 shall be deposited with the Secretary-General.
- 2 The Secretary-General shall:
 - (a) inform all States which have signed this Protocol or acceded thereto, and all Members of the Organization, of:
 - (i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession together with the date thereof and data on contributing cargo submitted in accordance with article 20, paragraph 4;
 - (ii) data on contributing cargo submitted annually thereafter, in accordance with article 20, paragraph 6, until the date of entry into force of this Protocol;
 - (iii) the date of entry into force of this Protocol;
 - (iv) any proposal to amend the limits on the amounts of compensation which has been made in accordance with article 23, paragraph 2;
 - (v) any amendment which has been adopted in accordance with article 23, paragraph 5;
 - (vi) any amendment deemed to have been accepted under article 23, paragraph 8, together with the date on which that amendment shall enter into force in accordance with paragraphs 9 and 10 of that article;
 - (vii) the deposit of any instrument of denunciation of this Protocol together with the date on which it is received and the date on which the denunciation takes effect; and
 - (viii) any communication called for by any article in this Protocol; and
 - (b) transmit certified true copies of this Protocol to all States that have signed this Protocol or acceded thereto.
- 3 As soon as this Protocol enters into force, a certified true copy thereof shall be transmitted by the depositary to the Secretary-General of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

Languages

Article 29

This Protocol is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

DONE AT [] this [] day of [] two thousand and [].

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments for that purpose, have signed this Protocol.

ANNEX

CERTIFICATE OF INSURANCE OR OTHER FINANCIAL SECURITY IN RESPECT OF LIABILITY
FOR DAMAGE CAUSED BY HAZARDOUS AND NOXIOUS SUBSTANCES (HNS)

Issued in accordance with the provisions of Article 12 of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, [20..]

Name of ship	Distinctive number or letters	IMO ship identification number	Port of registry	Name and full address of the principal place of business of the owner

This is to certify that there is in force in respect of the above-named ship a policy of insurance or other financial security satisfying the requirements of Article 12 of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, [20..].

Type of security

Duration of security

Name and address of the insurer(s) and/or guarantor(s)

Name

Address

This certificate is valid until

Issued or certified by the Government of
(Full designation of the State)

At (Place) On (Date)

(Signature and Title of issuing or certifying official)

Explanatory Notes:

- 1 If desired, the designation of the State may include a reference to the competent public authority of the country where the certificate is issued.
- 2 If the total amount of security has been furnished by more than one source, the amount of each of them should be indicated.
- 3 If security is furnished in several forms, these should be enumerated.
- 4 The entry "Duration of the Security" must stipulate the date on which such security takes effect.
- 5 The entry "Address" of the insurer(s) and/or guarantor(s) must indicate the principal place of business of the insurer(s) and/or guarantor(s). If appropriate, the place of business where the insurance or other security is established shall be indicated.

ANNEX 4**GUIDELINES ON WORK METHODS AND ORGANIZATION OF WORK
OF THE LEGAL COMMITTEE****1 PURPOSE AND APPLICATION**

1.1 The purpose of these guidelines is to provide a basis for the Legal Committee to conduct its work in an efficient and effective manner having regard to the available resources of the Organization.

1.2 The guidelines are applicable to the work of the Committee as well as to working groups and correspondence groups set up by the Committee. The Chairmen of the Committee and working groups, and correspondence group “leaders” should make all efforts to ensure strict compliance with the guidelines.

1.3 The guidelines shall be kept under review and be updated as necessary in the light of experience gained in their application.

2 COORDINATION OF WORK AND REVIEW OF WORK PROGRAMMES**General**

2.1 The Committee should, at each session, examine its work programme and review the allocation of meeting weeks and future work programme to ensure all items to be addressed fall within the scope of the Organization’s Strategic Plan.

2.2 The Committee should periodically review the status of all conventions, protocols and other major instruments under its purview.

New work programme items

2.3 In compliance with resolutions A.500(XII) and A.777(18), the Committee, in determining inclusion of new work programme items, should be guided by priorities established in accordance with the guidelines set out in paragraphs 2.4 to 2.13.

General acceptance

2.4 Before deciding to include a new item in the work programme of an IMO body, the following considerations should be taken into account:

- .1 has a need for the measure proposed been documented and, in case of proposals calling for new conventions or amendments to existing Conventions, has a compelling need been demonstrated?
- .2 is the subject addressed by the proposal considered to be within the scope of IMO’s objectives and the Strategic Plan for the Organization?

- .3 do adequate industry standards exist or are they being developed, thereby reducing the need for action within IMO?
- .4 do the benefits *vis-à-vis* enhanced maritime safety, maritime security, protection of the marine environment or the enhancement of international maritime law expected to be derived from the inclusion of the new item proposed justify such action?
- .5 has the analysis of the issue sufficiently addressed the cost to the maritime industry as well as the relevant legislative and administrative burdens? and
- .6 the achievability in the number of sessions.

2.5 Notwithstanding the considerations listed above, the following should apply when the Committee is invited to consider proposals for the inclusion of new items in its work programmes:

.1 Proposals for new items (other than proposals for new, or amendments to existing, mandatory instruments)

In such cases, specific indication of the action required should be included in the proposal and the proponent should document the need for the measure proposed and its relation to the objectives of the Organization, determining its scope and analysing the issues involved, having regard to the costs to the maritime industry, the legislative and administrative burden involved and benefits which would accrue therefrom and indicating, where possible, its degree of priority and a target completion date or the number of sessions needed for completion of the item so that the Committee may make an informed decision as to the action to be taken. Decisions on what should be achieved should be made following thorough discussions in plenary; and

.2 Proposals for new, or amendments to existing, mandatory instruments

In such cases, a compelling need for such amendments should be demonstrated by the proponent(s), and an analysis of the implications of such amendments, particularly those with far-reaching implications and consequential proposals for other amendments, having regard to the costs to the maritime industry, the legislative and administrative burden involved and benefits which would accrue therefrom, should be provided so as to give Member Governments a clearer perception of the scope of the proposed new requirements and an improved basis on which to take decisions. A certain degree of flexibility might be allowed in the application of this paragraph in exceptional circumstances, in particular in the case of proposed amendments on operational safety matters.

The Committee will consider proposals for the development of new instruments and/or amendment to existing ones taking into account an assessment of implications for capacity-building and technical co-operation.

2.6 The objective of the Committee when considering proposals for new work programme items is to decide whether the new item should or should not be included in the work programme, based upon justification provided by Member Governments in accordance with these Guidelines. A decision to include a new item in the work programme does not mean that the Committee agreed with the technical aspects of the proposal. If it was decided to include the item in the work programme, detailed consideration of the technical aspects of the proposal and the development of appropriate requirements and recommendations should be left to the Committee.

2.7 Member Governments should refrain from submitting to the Committee proposals for new work programme items under specific agenda items and the Secretariat should not accept such submissions and advise the submitting Administration accordingly.

Establishment of priorities

2.8 In deciding the priority of an item proposed for the work programme of the Committee, a higher priority should be assigned to items that can be shown, or estimated, to have the greatest effect on safety of life, prevention of serious injury, protection of the marine environment, the enhancement of international maritime law and the highest ratio of benefit to be gained from the implementation of the proposal compared with the cost of its implementation. In addition, the following points should also be taken into account, where subparagraphs .1 to .7 below would indicate a higher priority and subparagraphs .8 to .10 would indicate a lower priority:

- .1 measures to promote the widest possible implementation and enforcement of IMO instruments by the shipping community as a whole;
- .2 measures aimed at substantially preventing maritime casualties or marine pollution incidents;
- .3 measures following a major maritime casualty involving substantial loss of life, significant injuries to persons or major marine pollution;
- .4 measures following a series of incidents causing or indicating risk of loss of life, significant injuries to persons or major marine pollution;
- .5 measures aimed at improving the safety and health of ships' crews or personnel;
- .6 measures to correct significant inadequacies identified in existing instruments;
- .7 measures aimed at addressing maritime law issues with a need for urgent resolution;
- .8 measures necessary to align IMO rules and standards with those of other relevant international instruments and organizations;
- .9 measures required to take into account the introduction of new technology and methods in maritime transportation, including the carriage of new hazardous substances; and
- .10 measures other than those referred to above.

2.9 Follow-up action in response to specific requests for action emanating from the Assembly and diplomatic conferences convened by IMO, UN conferences and bodies, regional intergovernmental conferences and other international and intergovernmental organizations, etc., should be evaluated in the light of paragraph 2.8, unless identified as urgent matters.

2.10 When setting the priorities, a certain flexibility should be allowed for initiatives that cannot be foreseen.

2.11 Once a decision has been made on the basis of the above for a new item to be included in the work programme of an IMO body, an appropriate target completion date or the number of sessions needed for completion of the item, as appropriate, taking account of the importance and urgency of the matter concerned, should be established.

2.12 Based on the above guidelines, the Committee should:

- .1 decide on items to be included in the work programme with clear and detailed instructions for the work to be undertaken; and
- .2 establish priorities and target completion dates or the number of sessions needed for the completion of the consideration of such items.

2.13 In order to facilitate consideration by the Committee, the Chairman should, with the support of the Secretariat, undertake a preliminary assessment of whether each new work programme item complies with the criteria for general acceptance provided in paragraph 2.4 and assign preliminary priorities to new work programme items according to paragraphs 2.8 and 2.9, and submit the outcome of such preliminary assessment and assignment of priorities to each session of the Committee for approval.

Format for submission of proposals for new items

2.14 Submissions by Member Governments, intergovernmental organizations or non-governmental organizations co-sponsored by a Member Government, containing proposals for the inclusion of new work programme items, as referred to in paragraph 2.5, should, taking into account the criteria for general acceptance set out in paragraph 2.4 and priority setting provided in paragraphs 2.8 and 2.9, be prepared in accordance with the format set out in paragraph 2.16. Where the information thus required cannot be provided, the reasons therefore should be clearly indicated.

2.15 Notwithstanding the above provision that proposals for the inclusion of new work programme items, submitted by non-governmental organizations, should be co-sponsored by Governments, such organizations should not be restrained from submitting comments and recommendations on items on the agenda of any IMO body, thus providing expert advice, contributing to the discussion and enabling the bodies concerned to reach optimal decisions.

2.16 Documents containing proposals for the inclusion of new work programme items, should contain the following sections and the information required therein:

- .1 With regard to the information under paragraphs 2.5.1 and 2.5.2 of these Guidelines:

- .1.1 scope of the proposal;
 - .1.2 need or compelling need, as required in paragraphs 2.5.1 and 2.5.2;
 - .1.3 analysis of the issues involved, having regard to both the costs to the maritime industry, as well as the associated legislative and administrative burden, at global level;
 - .1.4 benefits which would accrue from the proposal;
 - .1.5 priority and target completion date; and
 - .1.6 specific indication of the action required including draft texts of the proposed requirements, if possible.
- .2 Remarks on the criteria for general acceptance, as provided in paragraph 2.4:
- .2.1 is the subject of the proposal within the scope of IMO's objectives?
 - .2.2 how is the proposed item related to the scope of the Strategic plan for the Organization and fits into the High-level Action Plan?
 - .2.3 do adequate industry standards exist?
 - .2.4 do the benefits justify the proposed action?
- .3 Estimation of the number of sessions needed to complete the work.

2.17 In respect of subjects requiring research, contributions from other organizations and appropriate entities should be encouraged and taken into account.

3 WORKING ARRANGEMENTS

Working groups

3.1 The Committee should keep the number of working groups formed during their sessions to a minimum; however, a maximum of three working groups could be established, where necessary, bearing in mind the difficulties small delegations experience in being represented in such groups and the fact that such groups work without interpretation. When a working group has completed its task and has been terminated, another working group should not be convened in its place during the same session.

3.2 Where more than three working groups are needed to deal with different subjects in one session, the Committee should establish a priority order for possible subject items and decide accordingly. Where more than three unrelated topics need to be covered by independent working groups over several sessions, arrangements could be made for groups concerned to meet at alternate sessions of the Committee within the maximum of three groups per session.

3.3 Working groups could start work on the morning of the first day of the meeting on the basis of the draft terms of reference presented by the Chairman of the Committee, pending formal discussion of those terms of reference under the relevant agenda item. However, these measures should be an option and be decided at the meeting with caution. It should be encouraged that, whenever possible, terms of reference of working groups should be agreed at the previous sessions of the Committee. Another option would be that the draft terms of reference of working and drafting groups issued at the beginning of the session, in accordance with paragraph 3.18 of these Guidelines, also identify items on which the groups could start, if so decided, working on the morning of the first day of the meeting, without prior consideration of the related agenda items in plenary.

3.4 In principle, there should be no splinter group(s) of a working group. However, where the establishment of a splinter group(s) is necessary for the facilitation and efficiency of the work, the working groups should have a unanimous agreement on its establishment and the outcome should be considered and agreed by members of the working group and incorporated in the report of the working group.

3.5 When appropriate, working groups should make full use of the five working days of a session, submitting their reports to the next session. When working group reports are to be prepared during a session, all efforts should be made to keep such reports as short as possible.

3.6 Permanent working groups should be avoided and, if there ever is a need for such a group, clear justification and appropriate terms of reference should be provided.

Drafting groups

3.7 In addition to working groups, the Committee may form drafting groups. In no case should more than five groups (e.g., three working and two drafting groups) meet simultaneously during a session. If additional drafting groups are needed, they should meet outside normal working hours.

Correspondence groups

3.8 To facilitate the consideration of an issue, correspondence groups may be established by the Committee and instructed to work on the basis of a consolidated draft text prepared by a "lead country" or the Secretariat, thereby, through consultation between interested delegations by correspondence, decreasing the volume of papers submitted and processed, after the Committee has agreed to consider the issue and has endorsed terms of reference for the group (see also paragraph 3.18).

3.9 Correspondence groups should utilize modern communication technology, such as the Internet, as much as possible.

3.10 The work of a correspondence group (e.g., the receipt and processing of comments and suggestions) should not pre-empt formal consideration of the relevant issue by the parent body concerned or the positions taken by Member Governments or international organizations participating in the correspondence group.

3.11 In normal circumstances, the Committee should not establish more than three correspondence groups although this number may be increased where the urgency of the matter under consideration so justifies. These correspondence groups should, as a rule, be established only for high priority agenda items. Sub-groups within a correspondence group should not be established. No official meetings of members of correspondence groups should be held without the prior approval of the Committee.

3.12 Participation in correspondence groups is open to all delegations (Governments and organizations) which can provide the necessary expertise on a timely basis or which have a particular interest in the issue under consideration. Any Member Government or international organization can join in the work of the correspondence group subsequent to the establishment of the group and any contribution should be accepted at any stage of the work of the group.

3.13 When establishing a correspondence group, a “lead country”, “lead organization” or the Secretariat should be designated to coordinate the work of the group. Responsibilities of group coordinators should include:

- .1 preparation, maintenance and circulation of list of participants;
- .2 establishment of deadlines for the preparation of draft texts and receipt of comments and proposals thereon;
- .3 preparation and circulation of draft texts and comments thereon;
- .4 preparation and submission to the Secretariat of the report of the correspondence group including any consolidated draft texts (see paragraph 3.17); and
- .5 introduction of the above-mentioned report and consolidated draft texts to the Committee.

3.14 Responsibilities of participants should include:

- .1 active participation in the work of the group;
- .2 compliance with the deadlines established for the submission of comments on draft texts, proposals, etc.; and
- .3 relaying to other group members copies of comments, proposals, etc., submitted to the group coordinator.

3.15 The responsibilities of the Secretariat, in those cases where the Secretariat acts as a group coordinator, should be the same as those listed under paragraph 3.13 above. The Secretariat may also be requested to circulate consolidated draft texts, etc., on behalf of the group coordinator.

3.16 The results of work carried out by correspondence groups should normally take the form of a consolidated draft text reflecting the information received from members of the group. Such texts should be accompanied by a succinct report summarizing the work and indicating which members have provided input to the process. Where it has not been possible to prepare an agreed consolidated draft document, texts or issues on which there was a disagreement should be clearly indicated in the draft document or the report, as appropriate.

3.17 Correspondence groups' reports should be submitted to the Committee's first session following conclusion of the groups' work in time to meet the deadline established for consideration of substantive documents, in accordance with the provisions of paragraph 4.5. Normally the work of the correspondence groups should not overlap with sessions of the Committee. In case the group has not finalized its work in time to meet such a deadline, a progress report should be made to the Committee.

Terms of reference of working, drafting and correspondence groups

3.18 When working, drafting and correspondence groups are formed, draft terms of reference should be prepared following consultations between the Chairman of the Committee and the Secretariat for approval by plenary. In the case of working and drafting groups, the aforementioned draft terms of reference should be issued by the Secretariat at the beginning of the session for agreement by plenary before the groups in question start their work. Thereafter, the agreed terms of reference should not be modified or extended without the Committee's prior consent.

Intersessional working groups

3.19 Subject to approval by the Council, intersessional meetings of working groups may be convened without interpretation services. Intersessional meetings should only be held if considered to be absolutely essential and after careful consideration of their need by the Committee on a case-by-case basis, taking into account the priority and urgency of the specific matter such meetings will be invited to address. Intersessional meetings of such groups should be held at IMO Headquarters immediately before or after an agreed session of the parent body concerned. Other arrangements may be considered; however, no arrangements should be made with respect to intersessional meetings until such meetings have been approved by the Committee.

3.20 All intersessional meetings of working groups should have an associated correspondence group, so that Member States unable to send a representative to the meeting are also given the opportunity to participate in the debate and contribute to the work of the group. The resulting working documents should be made available on the IMO website (IMODOCS) in advance to allow the meeting preparation by all Member States.

4 PREPARATION AND SUBMISSION OF DOCUMENTS AND REPORTS

4.1 Documents should be prepared in single spacing and be as concise as possible so as to facilitate their timely processing. In order to enhance the clear understanding of documents, the following should be observed:

- .1 all documents should be preceded by a brief summary prepared in the form, and containing the information indicated in the box set out below:

SUMMARY	
<i>Executive summary:</i>	This description should be brief, outlining the proposed objective (an Assembly resolution, a circular, information only, etc.), and include information on whether a proposal will have any financial implications for the shipping industry or for the IMO budget.
<i>Strategic direction:</i>	A reference should be made to one or more relevant strategic directions in the Organization's Strategic Plan (see the Annex to resolution A.989(25) or the Annex to resolution A.990(25)).
<i>High-level action:</i>	A reference should be made to one or more corresponding high-level actions in the Organization's High-level Action Plan (see the Annex to resolution A.990(25)).
<i>Planned output:</i>	A reference should be made to one or more corresponding planned outputs for 2008-2009, in the Organization's High-level Action Plan (see the Annex to resolution A.990(25)). If there is no corresponding planned output, an appropriate descriptive text should be included.
<i>Action to be taken:</i>	A reference should be made to the paragraph of the document which states the action to be taken by the Committee, Sub-Committee, etc.
<i>Related documents:</i>	Other key documents should be listed to the extent they are known to the originator of the document.

- .2 substantive documents should conclude with a summary of the action the relevant body is invited to take; and
- .3 information documents should conclude with a summary of the information contained therein.

4.2 To facilitate their processing, documents should be accompanied by computer diskettes, preferably in Microsoft Word. Documents may also be submitted via e-mail in Microsoft Word to IMO's e-mail address "info@imo.org". In such cases, documents should be confirmed by hard copies to facilitate processing of the document, i.e. attachment of annexes to main texts, and to check that none of the text has been garbled during sending or conversion. Requirements for the submission of documents set out in paragraph 4.5 should also be applicable when such documents are submitted by electronic means.

4.3 Documents made available at IMO, 13 weeks or more before a session, should not be introduced in the plenary unless the Chairman decides that this is essential for the proper consideration of the matter concerned.

4.4 In drafting recommendations, codes or guidelines, cross references may, whenever possible, be made to texts and terminology previously developed by IMO or other organizations. This will avoid unnecessary duplication and will reduce the need for excessively detailed provisions and for subsequent harmonization.

4.5 To ensure that all documents are available at IMO Headquarters in all three working languages well in time before a meeting of the Committee so as to enable the timely study of documents and thus promote the participation of all members in the decision-making process of the Committee, the following provisions should apply:

- .1 as a general rule, documents, other than information documents, should not contain more than 50 pages. In the case of reports from working, drafting or correspondence groups and in other exceptional circumstances, this number of pages may be exceeded, provided that the appropriate deadline for receipt of the document by the Secretariat, as specified in subparagraphs .2 and .3 below, is put back by one week for every 20 pages exceeding 50 pages;
- .2 documents containing proposals for new work programme items should be received by the Secretariat not later than 9 weeks before the opening of any session of the Committee. They should be made available at IMO Headquarters and the IMO documents website, in the Organization's three working languages, not later than 4 weeks before the opening of the session;
- .3 documents (including information documents) containing more than 6 pages of text (bulky documents) should be received by the Secretariat not later than 9 weeks before the opening of any session of the Committee. They should be made available at IMO Headquarters and the IMO documents website, in the Organization's three working languages, except for information documents which should not be translated, not later than 4 weeks before the opening of the session;
- .4 non-bulky documents commenting on those referred to in subparagraphs .2 and .3 above, or on items already on the agenda should be received by the Secretariat not later than 6 weeks before the opening of any session of the Committee. They should be made available at IMO Headquarters and the IMO documents website, in the Organization's three working languages, not later than 4 weeks before the opening of the session;
- .5 notwithstanding the provisions of subparagraph .4 above, documents commenting on those referred to in subparagraphs .2 and .3 above containing 4 pages or less should be processed if received by the Secretariat not later than 5 weeks before the opening of any session of the Committee. These documents should start with a paragraph clearly indicating the document on which comments are made and stating that the document is submitted in accordance with the provisions of paragraph 4.5.5 of the Guidelines. They should be made available at IMO Headquarters and the IMO documents website, in the Organization's three working languages, not later than 3 weeks before the opening of the session; and

- .6 non-bulky information documents should be received by the Secretariat not later than 6 weeks before the opening of any session of the Committee. They should not be translated and should be made available at IMO Headquarters and the IMO documents website not later than 3 weeks before the opening of the session. No action will be taken on the basis of an information paper only, other than to take note of it.

4.6 The Secretariat should make every effort to ensure the timely posting of documents on the IMO document website. Member Governments and international organizations should also endeavour to submit documents as early as possible and not just on the deadlines of the submission of documents.

4.7 The Secretariat should strictly apply the rules concerning the submission of documents and not accept late submissions from Governments or delegations. Any exemption from these provisions should have the prior authorization of the Chairman of the Committee following consultations with the Secretariat. In emergency circumstances requiring immediate action by the Committee, a document to that end consisting of no more than four pages should be received by the Secretariat not later than 5 weeks before the opening of the session of the body concerned and made available at IMO Headquarters, in the Organization's three working languages, not later than 3 weeks before the opening of the session. Such a document will be considered by the Committee only if the Committee decides to do so at the opening of its session.

4.8 Reports of the Committee should, in general, contain under each section only:

- .1 a summary of key documents and listing of other documents submitted by Governments, international organizations and the Secretariat;
- .2 a summary of views expressed during consideration of an item, which may have influenced the decision taken (thus not allowing the reports to turn into summary records). Statements by delegations should be included therein only at their express request; and
- .3 a record of the decisions taken.

5 OBSERVANCE OF THE GUIDELINES

These Guidelines should be observed strictly. This will assist delegations in preparing adequately for each meeting and enhance their participation in the debate and decision-making process during meetings. It will also prevent delegations from experiencing difficulties when developing national positions on subjects on the agenda of the Committee. Committee members should also ensure that their experts attending meetings of working groups, drafting groups or correspondence groups are adequately informed and instructed on any action necessary to give effect to decisions made by the Committee.