

LEGAL COMMITTEE
98th session
Agenda item 14

LEG 98/14
18 April 2011
Original: ENGLISH

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

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1 INTRODUCTION

1.1 The Legal Committee held its ninety-eighth session at IMO Headquarters from 4 to 8 April 2011, under the chairmanship of Mr. Kofi Mbiah (Ghana).

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

ALGERIA	LATVIA
ANGOLA	LIBERIA
ANTIGUA AND BARBUDA	LIBYAN ARAB JAMAHIRIYA
ARGENTINA	LITHUANIA
AUSTRALIA	MALAYSIA
AZERBAIJAN	MALTA
BAHAMAS	MARSHALL ISLANDS
BELGIUM	MEXICO
BELIZE	MOROCCO
BENIN	NAMIBIA
BRAZIL	NETHERLANDS
BULGARIA	NIGERIA
CANADA	NORWAY
CHILE	PANAMA
CHINA	PAPUA NEW GUINEA
COLOMBIA	PERU
CROATIA	PHILIPPINES
CUBA	POLAND
CYPRUS	PORTUGAL
DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA	REPUBLIC OF KOREA
DENMARK	ROMANIA
DOMINICAN REPUBLIC	RUSSIAN FEDERATION
EGYPT	SAINT KITTS AND NEVIS
ESTONIA	SAINT VINCENT AND THE GRENADINES
FINLAND	SAUDI ARABIA
FRANCE	SINGAPORE
GEORGIA	SOUTH AFRICA
GERMANY	SPAIN
GHANA	SWEDEN
GREECE	SWITZERLAND
ICELAND	SYRIAN ARAB REPUBLIC
INDIA	THAILAND
INDONESIA	TURKEY
IRAN (ISLAMIC REPUBLIC OF)	TUVALU
IRAQ	UKRAINE
IRELAND	UNITED KINGDOM
ITALY	UNITED STATES
JAMAICA	URUGUAY
JAPAN	VANUATU
KENYA	VENEZUELA (BOLIVARIAN REPUBLIC OF)
KIRIBATI	

and the following Associate Members of IMO:

FAROES

HONG KONG, CHINA

1.3 The session was also attended by representatives from the following United Nations and specialized agencies:

UNITED NATIONS (UN)
INTERNATIONAL LABOUR ORGANIZATION (ILO)

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

EUROPEAN COMMISSION (EC)
INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS (IOPC FUNDS)
INTERNATIONAL MOBILE SATELLITE ORGANIZATION (IMSO)

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

INTERNATIONAL CHAMBER OF SHIPPING (ICS)
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 DRILLING CONTRACTORS (IADC)
INTERNATIONAL FEDERATION OF SHIPMASTERS' ASSOCIATIONS (IFSMA)
INTERNATIONAL ASSOCIATION OF OIL AND GAS PRODUCERS (OGP)
INTERNATIONAL ASSOCIATION OF INDEPENDENT TANKER OWNERS
(INTERTANKO)
THE INTERNATIONAL GROUP OF P & I ASSOCIATIONS (P&I Clubs)
CRUISE LINES INTERNATIONAL ASSOCIATION (CLIA)
THE INTERNATIONAL MARINE CONTRACTORS ASSOCIATION (IMCA)
WORLD NUCLEAR TRANSPORT INSTITUTE (WNTI)
INTERNATIONAL CHRISTIAN MARITIME ASSOCIATION (ICMA)
INTERNATIONAL BUNKER INDUSTRY ASSOCIATION (IBIA)
INTERNATIONAL TRANSPORT WORKERS' FEDERATION (ITF)
THE NAUTICAL INSTITUTE (NI)

The Secretary-General's opening address

1.5 The full text of the Secretary-General's opening address is reproduced in document LEG 98/INF.2.

The Chairman's remarks

1.6 The Chairman thanked the Secretary-General for his remarks. The full text of his opening address is reproduced in document LEG 98/INF.4.

Adoption of the agenda

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

1.8 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 of the Secretary-General that the credentials of all delegations attending the session were in due and proper form.

3 ELECTION OF OFFICERS

(i) Election of the Chairman

3.1 The Committee re-elected, by acclamation, Mr. Kofi Mbiah (Ghana) as Chairman for 2012.

(ii) Election of the two Vice-Chairmen

3.2 The Committee also re-elected, by acclamation, Mr. Jan de Boer (Netherlands), and Mr. Walter de Sá Leitão (Brazil) as first and second Vice-Chairmen of the Committee, respectively, for 2012.

4 GUIDELINES ON IMPLEMENTATION OF THE HNS PROTOCOL, 2010

(i) Draft consolidated text of the 1996 HNS Convention and the 2010 HNS Protocol

4.1 The Secretariat introduced documents LEG 98/4 and LEG 98/4/Corr.1, containing, at annex, a draft consolidated text of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 and the Protocol of 2010 to the Convention, prepared by the Secretariat, in consultation with the IOPC Funds Secretariat.

4.2 The Committee noted that the consolidated text is not, in itself, a treaty instrument or an authentic text, and that it had been prepared to assist Member States and others in implementing the 2010 HNS Convention. In this regard, article 18.1 of the Protocol provided that, upon entry into force of the Protocol, the Convention and the Protocol shall be read and interpreted as a single instrument.

4.3 The Committee noted that the consolidated text was a useful document which would assist States intending to ratify and implement the Protocol.

4.4 It was noted that, in view of the fact that the consolidated text was not an authentic text, it was a matter for each State intending to ratify the Protocol to decide, in accordance with its constitutional practice, whether the consolidated text should be submitted to its legislature, with an explanation of the status of the document, along with the text of the Protocol.

4.5 The Committee agreed that article 44 of the Protocol, which had originally been adopted as article 44*bis*, had been correctly renumbered, in accordance with article 18.2 of the Protocol, which provided that the articles in the Final Clauses should be renumbered sequentially.

4.6 The Committee approved the consolidated text of the 1996 HNS Convention and the 2010 Protocol relating thereto, as annexed to document LEG 98/4, and requested the IMO Secretariat to post it on the IMO website.

(ii) Revision of the Overview of the 1996 HNS Convention, as amended by the 2010 HNS Protocol

4.7 The Secretariat introduced documents LEG 98/4/1 and LEG 98/4/1/Add.1, containing a revision of the Overview of the 1996 HNS Convention, as amended by the 2010 HNS Protocol, prepared in consultation with the IOPC Funds Secretariat.

4.8 The Committee recalled that it had approved the original Overview at its eighty-fourth session, in April 2002, as posted on the IMO website. The Committee also recalled that the Overview was consistent with IMO Assembly resolution A.932(22), adopted on 29 November 2001 and entitled "Implementation of the HNS Convention", which placed a high priority on implementation of the Convention and, *inter alia*, on resolving any practical difficulties in setting up the new regime. The Committee noted that the revision, which had been called for, in resolution 4 of the 2010 HNS International Conference, offers a practical guide for States in implementing the 2010 HNS Convention by explaining and assisting the compliance with complex provisions, such as reporting of contributing cargoes, liability, insurance, limits of compensation and contributions to the Fund accounts.

4.9 The comment was made that more work needed to be done on the revised Overview, to take account of the results of the Special Consultative Meeting of the Correspondence Group to monitor the implementation of the HNS Convention, held in Ottawa in June 2003. The Ottawa consultations were important as they represented part of the "collective history" of the work on the Convention, and the conclusions arrived at in Ottawa might be incorporated into the Overview as part of the Committee's future work.

4.10 A number of amendments to the revised Overview were agreed, as follows:

- the last sentence in paragraph 4(i) should be amended so as to read: "In order to maintain the two-tier system, in view of the exclusion from contributions to the Fund, the shipowner's limitation amount for carrying packaged goods was also increased";
- at the end of paragraph 12, the following sentence should be added: "In this respect, reference is made to IMO Circular letter No.3144, dated 6 January 2011, listing solid bulk materials possessing chemical hazards mentioned by name in the IMSBC Code and also in the IMDG Code in effect in 1996, and solid bulk materials possessing chemical hazards mentioned by name in the IMSBC Code but *not* in the IMDG Code in effect in 1996";
- in paragraph 13, the last sentence should be amended to read: "Some bulk solids such as coal and iron ore are excluded"; and
- in paragraph 15, second line, the words "is already" should be deleted and replaced by "may be".

4.11 A proposal to include the following sentence as a new second sentence in paragraph 15: "Nevertheless contributors to the 1992 Fund are also liable to contribute to the HNS Fund" was not agreed.

4.12 It was suggested that the Overview document be checked for terminology to ensure clear reference to either the 1996 HNS Convention or the 2010 HNS Convention.

4.13 The observer delegation of the IOPC Funds commented that the future HNS Fund Assembly could deal with problems of interpretation and application, once the Protocol had entered into force. At this point in time, priority should be the ratification of the HNS Protocol, to enable these issues to be resolved.

4.14 The Committee approved the revised Overview, with the above amendments agreed to by the Committee, and requested the Secretariat to post it on the IMO website.

(iii) Proposed reporting form on contributing cargo

4.15 The observer delegation of the IOPC Funds introduced document LEG 98/4/2, containing, at annex, a model form designed to assist States to meet their reporting obligations upon acceding to the 2010 HNS Protocol and annually thereafter, until such time as the Protocol entered into force.

4.16 Once the Protocol entered into force, each State Party was required to communicate information on contributing cargo to the Director of the HNS Fund, in accordance with Internal Regulations, which the future HNS Assembly would develop. When that time comes, a different model form would be designed to take into account those internal regulations and would be made available accordingly.

4.17 The delegation also reported the following developments emanating from the 1992 Fund Assembly, held from 28 March to 1 April 2011:

- following consultations between the IMO Secretariat and the IOPC Funds Secretariat, the text of the International Maritime Dangerous Goods Code (IMDG Code), incorporating amendments 27-94, which was in effect in 1996, as a navigable version, with a searchable facility, would be posted on the IOPC Funds and IMO websites;
- for the lists of substances mentioned in article 1, paragraph 5, of the consolidated text of the Convention, discussion was ongoing with the IMO Secretariat; and
- work had started on the review of the HNS Contributing Cargo Calculator to include the most recent information regarding the list of substances. In time, the Calculator would be entirely re-designed to be set up on a more contemporary IT platform.

4.18 The Legal Committee expressed appreciation to the observer delegation of the IOPC Funds for its co-operation in helping to facilitate the early entry into force of the 2010 HNS Protocol.

4.19 The Committee took note of the fact that the complete text of the IMDG Code, incorporating amendments 27-94, which was in effect in 1996, had been posted on the IMO website in Portable Document Format (PDF).

4.20 As packed goods would not be considered as contributing cargo under the 2010 HNS Protocol, it was suggested that a more appropriate term might be found for the Contributing Cargo Calculator.

4.21 The Committee agreed that the reference to "oil" in box 9 of the model reporting form should be replaced by "cargo". The wording should now read: "TOTAL QUANTITY OF CONTRIBUTING CARGO RECEIVED".

4.22 It was noted that use of the model form should not be considered mandatory but rather as guidance to assist States to meet their reporting obligations, in accordance with the Protocol; States were, however, free to develop their own forms, provided these contained the necessary information required by the Protocol.

4.23 Subject to these understandings, the Committee approved the model form on receipts of contributing cargo pursuant to article 20 of the Protocol, and requested the Secretariat to post it on the IMO website.

5 PROVISION OF FINANCIAL SECURITY IN CASES OF ABANDONMENT, PERSONAL INJURY TO, OR DEATH OF SEAFARERS IN THE LIGHT OF THE PROGRESS TOWARDS THE ENTRY INTO FORCE OF THE ILO MARITIME LABOUR CONVENTION, 2006 AND OF THE AMENDMENTS RELATING THERETO

5.1 The observer delegation of the International Labour Office (ILO), represented by Mrs. Cleopatra Doumbia-Henry, Director, International Labour Standards Department, thanked the Secretary-General of IMO for his support in encouraging Governments to ratify the Maritime Labour Convention, 2006 (MLC 2006); and provided the following information on the progress made towards its entry into force:

- the MLC 2006 had been ratified by 12 States representing approximately 48 per cent of the world fleet based on gross tonnage. Eighteen more ratifications were needed to achieve the required number for entry into force;
- a number of measures had been taken by ILO to encourage further ratifications: writing to Governments, organizing training seminars, regional workshops for port State control officers and flag State inspectors, and legislative drafting courses. Guidance on occupational safety and health and social security was also being developed to encompass the more complex, or newer, provisions of the Convention;
- several States had indicated that they were working to ratify the Convention before the end of 2011, to enable it to enter into force in 2012 (in the same year as the 2010 Manila amendments to the International Convention on the Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW) and the 1995 STCW Code);
- one unusual aspect on progress to implement the MLC 2006 lay in the fact that industry and Government port State control inspection systems had outpaced the slower legal mechanisms relating to ratification; however, once the 2010 STCW amendments enter into force in 2012, several aspects of the MLC 2006 would already have become mandatory for States covered by the STCW Convention; and
- the Tripartite Preparatory MLC 2006 Committee would hold a second meeting from 12 to 14 December 2011, in Geneva, to discuss the operating procedures for the Special Tripartite Committee, to be set up after the entry into force of the MLC 2006, with a view to adopting amendments to the Convention. The meeting would address concerns regarding the role of the Special Tripartite Committee under article VII, whereby the Committee would provide guidance to countries that did not yet have representative organizations of seafarers and shipowners.

5.2 With regard to the abandonment database, updated in February 2011 and containing cases notified up to November 2010, the ILO representative invited States and organizations to ensure it was kept up to date by entering information on cases of abandonment in a timely manner, as well as acting to resolve these cases.

5.3 The Committee noted, with satisfaction, the information provided by the observer delegation of ILO and:

- urged those States that had not already done so to consider ratifying the MLC 2006 at their earliest convenience; and
- invited Member States and interested organizations to submit information on cases of abandonment for inclusion in the database in a timely manner, to ensure the accuracy of the information contained therein.

5.4 With regard to the Committee's suggestion, at its last session, that the International Maritime Law Institute (IMLI) and the World Maritime University (WMU) should include Seafarers' Rights in their curricula, the Committee noted the following information regarding IMLI:

- the present curriculum of IMLI, as part of the course on International Maritime Labour Law, included the different maritime labour conventions adopted by ILO dealing with, *inter alia*, the status, engagement, discharge, welfare and repatriation of seafarers;
- emphasis was given to the consolidated Convention 147 and the MLC 2006, which primarily deal with the rights of seafarers;
- manning and certification under STCW 1978, as amended, were also included in the curriculum; and
- lectures on the IMO/ILO Guidelines on provision of financial security in cases of abandonment of seafarers, death and personal injury and Guidelines on fair treatment of seafarers in the event of a maritime accident were also delivered.

5.5 The Committee also noted the following information regarding WMU:

- while there was no dedicated course on "Seafarers' Rights", elements of the subject were incorporated into a number of subjects already taught. Any specific course on "Seafarers' Rights" could only be introduced gradually, as and when staffing levels were increased.

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

6.1 The Secretariat, with reference to the opening speech of the Secretary-General, informed the Committee that, in consultation with the ILO Secretariat, it had prepared, for the Committee's consideration, a draft Assembly resolution, contained in document LEG 98/WP.3, to promote compliance with the IMO/ILO Guidelines on fair treatment of seafarers in the event of a maritime accident.

6.2 The Committee agreed to the circulation of working paper LEG 98/WP.3.

6.3 The delegation of the Islamic Republic of Iran introduced document LEG 98/6, providing information and observations concerning unfair treatment of seafarers due to nationality or religion, citing a number of cases where shore leave and access to shore-side medical facilities had been denied, particularly following the entry into force of the ISPS Code. In so doing, he emphasized that:

- this problem was persisting, in spite of the Guidelines relating to shore leave adopted by the FAL Committee (FAL) and the Maritime Safety Committee (MSC) (documents FAL.3/Circ.201 and MSC/Circ.1342);
- it was appropriate that, when shore leave was refused for reasons of public health, public safety or public order, the authorities should be obliged to communicate the reasons, in writing, to the seafarers concerned, to the captain of the ship or to the flag State of the ship;
- the seafarers in question should be permitted to object to any discriminatory treatment; and
- further work on the issue of shore leave should be regarded as a mandate for an *ad hoc* IMO/ILO Joint Working Group on the Human Element.

6.4 The Secretariat informed the Committee that:

- in accordance with the request made at its last session, it had brought to the attention of the MSC the concerns regarding shore leave raised by the Islamic Republic of Iran at that session, and that the MSC had noted the information provided (document MSC 88/26, paragraph 4.14);
- FAL would also be informed when it next meets in September 2011; and
- as requested by the Committee at its last session, internal consultations had been held with the Secretaries of MSC and FAL and there had been agreement that the issues raised by Iran were solely within the purview of FAL, under the relevant provisions of the Convention on Facilitation of International Maritime Traffic, 1965 (FAL Convention).

6.5 Most delegations that spoke noted that the issues raised were very important and deserving of further study.

6.6 In the course of the ensuing discussion, the following were among the comments noted:

- concern was expressed at the unjustified denial of shore leave and the refusal to provide medical facilities;
- if these problems continued to exist, it would be bad for the seafaring profession and discourage up-and-coming young people who might wish to join it;
- the issue of shore leave was not covered by the Guidelines on fair treatment of seafarers in the event of a maritime accident;

- the Legal Committee might not, at the present time, be the appropriate forum in which to study the matter further; however, the possibility that it might do so in the future was not ruled out;
- it would be more appropriate, at this point in time, to refer the matter to FAL as this issue was already on its agenda;
- delegations might consider submitting proposals to FAL for an amendment to the FAL Convention to accommodate this issue;
- as the MSC Working Group was currently working on a manual on the implementation of the ISPS Code, dealing also with shore leave of seafarers, the matter might also be referred to the MSC; and
- it was suggested that an *ad hoc* Joint IMO/ILO Working Group on the Human Element might be established with the mandate to study this issue.

6.7 The Committee requested the Secretariat to refer document LEG 98/6 to FAL, as well as the relevant sections of the report of the Legal Committee's ninety-eighth session, in order that FAL may consider them under the relevant agenda item, and take action as deemed appropriate.

6.8 The observer delegation of the International Chamber of Shipping (ICS) introduced document LEG 98/6/1, which requested the Legal Committee to consider the industry view of fair treatment of seafarers in the event of a maritime accident and in the aftermath of a pollution incident, in particular, as set out in a letter, dated 13 December 2010, from the co-sponsors to the United Nations Secretary-General. The letter was reproduced in the annex to the document. He noted that:

- the industry fully supported rules of international law governing ship-source pollution of the sea which were designed to ensure that acts done with intent or recklessly were met with the full force of the law and were punished adequately according to international standards;
- according to MARPOL and UNCLOS, seafarers involved in accidental pollution should not be subjected to imprisonment, irrespective of whether the pollution took place in the high sea or in the territorial waters;
- the Code of International Standards and Recommended Practice for a Safety investigation into a Maritime Casualty or Marine Incident (Casualty Investigation Code) encouraged a blame-free investigation culture, so that the causes of accidents could be fully investigated and appropriate action could be taken to avoid their recurrence;
- the IMO/ILO Guidelines on fair treatment of seafarers in the event of a maritime accident were developed to uphold internationally-agreed principles on how seafarers should be treated and contained provisions designed to avoid prolonged detention pending investigations; and
- the prolonged detention of seafarers had serious consequences for the maritime industry and, if this trend continues, it would discourage experienced seafarers, who are usually at the sharp end in such cases, from staying in the profession.

6.9 The Committee took note of the following information from the Secretariat:

- consultations with the ILO Secretariat had been held in an attempt to identify what efforts had already been made by the Social Partners to call attention to the Guidelines and whether such efforts had been found to be effective;
- posters had been distributed, advising crews of the existence of the Guidelines, but as yet, there was no information as to whether this campaign had been successful; and
- there had been no written proposal requesting the Committee to consider adding an item on development of promotional materials to its work programme as a new output for the next biennium, as required by the Guidelines on work methods and organization of work.

6.10 The Committee also noted the following comments from the observer delegation of ILO:

- the issue of fair treatment of seafarers in the event of a maritime accident was a serious one;
- according to the Social Partners, there was a need for promotional work on the Guidelines to be undertaken; and
- the ILO Secretariat had worked in conjunction with the IMO Secretariat on the draft resolution, fully supported it and would do the necessary to submit it to the ILO Governing Body, for approval.

6.11 The Committee also noted the following comments from the observer delegation of the United Nations Office of Legal Affairs/Division for Ocean Affairs and the Law of the Sea (UN-DOALOS):

- issues relating to the fair treatment of seafarers were included in the annual reports of the United Nations Secretary-General to the General Assembly;
- the General Assembly had also addressed issues relating to the fair treatment of seafarers in its annual resolution on Oceans and the law of the sea; and
- in resolution 65/37, of 7 December 2010, the General Assembly had emphasized that "safety and security measures should be implemented with minimal negative effects on seafarers and fishers, especially in relation to working conditions" (paragraph 75), and had called upon States to implement the Casualty Investigation Code (paragraph 109).

6.12 The Committee took note of the concerns expressed by industry including the call for Governments to align their laws with the internationally-agreed rules.

6.13 It also noted the content of the letter from the co-sponsors to the Secretary-General of the United Nations, dated 13 December 2010, as reproduced in the annex to document LEG 98/6/1, particularly with regard to the importance of observing the IMO/ILO Guidelines on fair treatment of seafarers in the event of a maritime accident.

6.14 Most delegations that spoke expressed concern for the continued trend to criminalize seafarers, especially if this involved detention over lengthy periods of time, and endorsed the draft resolution in document LEG 98/WP.3.

6.15 With regard to the sixth preambular paragraph of the draft resolution, the Committee agreed to delete the brackets around the word "ENDORSING" and to delete the words "[NOTING FURTHER]" in the first line. The Committee also agree to delete the word "continued" in the second line and to delete the third set of square brackets. As a result, the amended paragraph reads as follows:

"ENDORSING the view expressed by the IMO Legal Committee, at its ninety-eighth session, that unfair treatment of seafarers in the event of a maritime accident should not be condoned under any circumstances,".

6.16 With regard to the ninth preambular paragraph, the Committee agreed to add a reference to the new Casualty Investigation Code, adopted by resolution MSC.257(84), by which parts I and II of the Code had been made mandatory, by way of amendments to SOLAS chapter XI-1. As a consequence, this paragraph reads as follows:

"RECOGNIZING ALSO that the Guidelines should be implemented alongside the IMO Code of the International Standards and Recommended Practices for a Safety Investigation into a Marine Casualty or Marine Accident, adopted by resolution MSC.255(84), parts I and II of which have been made mandatory by way of amendments to SOLAS chapter XI-1, which entered into force on 1 January 2010, pursuant to resolution MSC.257(84)".

6.17 The Committee agreed to delete the square brackets in operative paragraph 7 of the draft resolution, and to reformulate its text, in order to emphasize the fact that the Guidelines should primarily be brought to the attention of Government officials, as follows:

"7. REQUEST FURTHER Member Governments, as a matter of urgency, to bring this resolution to the attention of Government officials, in particular, those involved in the administration of justice, who may be involved in decisions and procedures affecting the treatment of seafarers involved in maritime accidents, as well as shipowners and seafarers and their respective organizations and inform the IMO Legal Committee of the means by which this request has been implemented."

6.18 The Committee approved the draft Assembly resolution, as amended, as set out in annex 2 to this report, and decided to submit it to the 106th regular session of the Council for consideration and, thereafter, for submission to the twenty-seventh regular session of the Assembly, for adoption.

7 CONSIDERATION OF A PROPOSAL TO AMEND THE LIMITS OF LIABILITY OF THE PROTOCOL OF 1996 TO THE CONVENTION ON LIMITATION OF LIABILITY FOR MARITIME CLAIMS, 1976 (LLMC 96), IN ACCORDANCE WITH ARTICLE 8 OF LLMC 96

7.1 The Committee recalled that, at its ninety-seventh session, it had agreed to a proposal from the delegation of Australia to add a new work programme and planned output for the 2010-2011 biennium to consider amending the limits of liability of LLMC 96, under the tacit amendment procedure.

7.2 The Committee further recalled that, by Circular letter No.3136 of 6 December 2010, the Secretary-General, in accordance with article 8.1 of LLMC 96, had circulated a proposal by 20 States Parties to LLMC 96 to increase the limits of liability in article 6.1(a) and (b), to be considered by the Committee at its ninety-ninth session, in April 2012.

7.3 The Committee noted the information provided by the delegation of Australia in introducing document LEG 98/7, providing an historical comparison of past increases in the limits of liability, by reference to the limits of liability in the 1957 International Convention relating to the Limitation of Liability of Owners of Sea-Going Ships, the 1976 LLMC Convention and the 1996 LLMC Protocol.

7.4 The Committee noted the information provided by the observer delegation of the Comité Maritime International (CMI) in introducing document LEG 98/7/1, reviewing the relationship for loss of life/personal injury and other (property) claims under article 6(1)(a) and (b) of the LLMC 96; and considering the impact of increasing loss of life/personal injury limits, as set out in article 7 of LLMC 96 (passengers) and article 7 of the 2002 Athens Convention on the Carriage of Passengers by Sea.

7.5 There was wide agreement on the need to review the limits of liability in LLMC 96 in order to ensure the availability of adequate compensation to victims, as well as on the applicability of the tacit amendment procedure to bring any revisions of the limits into force.

7.6 It was also agreed that no decisions regarding the amount of any possible increase in limits of liability would be taken by the Committee at this session, since the formal proposal for an amendment under article 8 would only be considered at the Committee's next session, in April 2012.

7.7 Among the observations made and views expressed during the discussion were the following:

- article 8 of LLMC 96 allowed for the tacit acceptance procedure to be followed only up to certain limits and subject to a number of conditions;
- paragraph 5 of article 8 of LLMC 96 required the Committee to take into account three factors when acting on a proposal to amend the limits, namely, the experience of incidents – particularly the amount of damage resulting therefrom; changes in the monetary values (inflation rates); and the effect of the proposed amendment on the cost of insurance;
- it would be important for the Committee to have information, including statistical data where possible, on each of the three above-identified factors in order for it to adopt the proposed amendment using the tacit acceptance procedure;
- information on the world average and LLMC 96 States Parties' average, of the Consumer Price Index for the period 1996-2010, based on the IMF World Economic Outlook Database, indicated that the overall trend in the rate of increase of the Index had been below 6 per cent (the maximum rate of increase permitted under the tacit amendment procedure contained in LLMC 96); accordingly, if the LLMC limitation amounts were to be increased to the maximum permissible under article 8 of the Convention, the increase in aggregation would be substantially larger than the actual inflation rate during the period in question;

- should a decision be taken at the ninety-ninth session of the Legal Committee, in April 2012, to increase the limits, 17 years would have passed since the limits in LLMC 96 were adopted, and, in accordance with the tacit acceptance provisions in article 8 of that instrument, they would not enter into force for another three years, that is, in 2015; in light of this fact, the maximum permitted increase might not be excessive or unrealistic;
- the maximum increase allowable under LLMC 96 compared favourably with previous increases, so the increase proposed in the Australian submission was realistic;
- the requirements built into article 8 of LLMC 96 would ensure that any increase was workable;
- many years have elapsed since LLMC 96 was adopted and the time was now ripe for an increase in limits, however, more statistics and information were needed to assess the precise increase;
- bunker oil victims should be fully protected, as are other oil pollution victims, and this warranted an increase in LLMC 96 limits; if this could not be achieved, the next step might be to amend the Bunkers Convention;
- any increase in limits of liability should be modest and, on current available information, there appeared to be insufficient justification to go for the maximum permissible increase;
- in deciding on any increase in limits, it was important to avoid a negative impact on insurance premium rates, particularly in view of the global financial crisis;
- more information was desirable on insurance implications; however, it was noted by the observer delegation of the International Group of P&I Associations (P&I Clubs) that it would not be possible to quantify the effect on the cost of insurance from an increase in LLMC 96 limits since insurance rates were influenced by a wide variety of variables, e.g., severity and frequency of claims in any one year, types of claims, cost and capacity of market re-insurance, which will often depend on non-marine factors, such as hurricanes, floods and earthquakes. Moreover, the premium paid by a shipowner member of a P&I Club for liability insurance covers a variety of different risks relating to the use and operation of a vessel, and a premium is not specifically allocated to a particular covered risk. However, while it was not possible to quantify any increase in the cost of insurance, it was almost inevitable that there would be an increase if the limits were increased, to reflect the higher cost of claims paid by Clubs. The claims data provided by the P&I Clubs to date seemed to suggest that the current LLMC 96 limits were appropriate;
- in the absence of an increase in limits of liability under LLMC 96, claimants might have to absorb losses that exceeded the current limitations;
- a compelling need for an increase in limits of liability had not yet been established since very few claims had exceeded the current limits;
- implications for other instruments, including the 2001 Bunkers Convention and the 2002 Athens Convention, needed to be considered in adopting increases in limits of liability under LLMC 96;

- it was noted that 13 of the 52 States Parties to LLMC 76 had not become Parties to LLMC 96 and that this might be due to their reluctance to agree to the higher limits of liability in LLMC 96 or to agree to the use of the tacit acceptance procedure for increasing limits under LLMC 96. This might suggest that States would be further discouraged from ratifying LLMC 96 if the limits were again increased;
- a limit which was too high could effectively void the concept of limitation of liability;
- unreasonable increases in the current limits might result in shipowners becoming single-ship companies to avoid high liability limits; and
- the co-sponsors of the proposed amendment, as set out in Circular letter No.3136, should consider whether a clarification may be needed on the scope of the proposal, since the Circular letter only recommended an increase for article 6.1 and a more comprehensive revision might extend to articles 7.1 and 8.2.

7.8 The observer delegation of the International Chamber of Shipping (ICS) noted that the shipping industry was in favour of having limitation figures at a reasonable level, and the current limits appear to be reasonable in the light of data provided by the P&I Clubs, which indicates that 99 per cent of all claims in the 2000-2009 period covered by LLMC 96 were fully compensated.

7.9 The delegation also noted that comparing the existing limits with past increases of the limits in respect of property claims was not relevant to a decision as to whether to increase existing limits under LLMC 96, as that was not one of the considerations listed in article 8.

7.10 Concerning the pre-condition in article 8 regarding changes in the monetary value, the delegation expressed the view that it was only the changes in monetary value in the States which were Parties to LLMC 96 that should be relevant to the decision on whether to amend the limits.

7.11 The observer delegation of the P&I Clubs informed the Committee of its intention to provide to the Committee's next session an update on the claims data submitted previously in documents LEG 96/6/2 (concerning bunker spill claims) and LEG 97/8/5 (with additional information on bunker spill claims, as well as claims not involving bunker oil pollution damage). The current data covered the 2000-2009 period. The Committee welcomed this offer.

7.12 The delegation of Cyprus made a statement concerning the proposed amendments and requested that it be included in the Committee's report. The statement is provided in annex 3 to this report.

7.13 The Committee recognized that it was important to have a broad consensus at its ninety-ninth session, in order to adopt an amendment to the limits of liability under LLMC 96.

7.14 One delegation invited the Committee to consider, in due course, whether it might be appropriate to establish a separate fund for victims of bunker oil pollution damage to prevent property damage claimants from having to compete with other claims, such as collision damages under the general limitation of liability fund under the LLMC regime.

8 PIRACY

8.1 The Committee noted the information provided by the Director, Maritime Safety Division, Mr. K. Sekimizu, on the implementation of the Djibouti Code of Conduct concerning the repression of piracy and armed robbery against ships in the western Indian Ocean and the Gulf of Aden (the Djibouti Code), and on the work of the Maritime Safety Committee (MSC) with regard to piracy. The MSC, at its forthcoming eighty-ninth session (11 to 20 May 2011), was expected to discuss development of guidance on the employment of private, armed security service providers on board ships; measures to improve compliance with Best Management Practices; proposed guidelines to assist investigations in the collection of evidence after a hijack; and a proposal to enhance the role of the Organization to ensure effective implementation of existing guidance by means of certification of compliance and development of a monitoring, management and reporting mechanism.

8.2 The Committee noted the information provided by the Secretariat regarding the seventh session of Working Group 2 of the Contact Group on Piracy off the Coast of Somalia (WG2) (Copenhagen, 3 and 4 March 2011), as follows:

- WG2 had focused on a report prepared by Mr. Jack Lang, special advisor of the United Nations Secretary-General on piracy, which narrowed down the options in the Secretary-General's report regarding the prosecution and imprisonment of persons responsible for acts of piracy and armed robbery at sea off the coast of Somalia. Proposal 25 of the Lang report suggested strengthening the rule of law in Somalia and backed the concept of "Somalization" of prosecution, by establishing a court system comprising specialized courts in Puntland and in Somaliland, as well as an extraterritorial Somali specialized court;
- concerning the proposal regarding an extraterritorial Somali specialized court, WG2 noted that it fell within option 2 (establishment of a Somali court in another country in the region), and option 3 (establishment of a special chamber within the national jurisdiction of a State) of the aforementioned report of the United Nations Secretary-General;
- before taking any final decision, WG2 had recommended, as an initial step, that a feasibility study be conducted of the legal aspects of the models in this proposal. The Group noted that the Lang report was the subject of ongoing consultations at the UN Security Council;
- WG2 had also discussed the legal aspects of post-trial transfer of convicted pirates and noted the post-trial transfer agreement between the Seychelles and the Transitional Federal Government of Somalia (TFG), signed on 8 February 2011, and the two memoranda of intent between Puntland and Somaliland, covering post-trial transfers between Puntland and Somaliland. The next step would be the signing of post-trial transfer agreements between Puntland, Somaliland and the Seychelles;
- WG2 had also noted the presentation made by the European Union Naval Force (EUNAVFOR), demonstrating the need to continue examining the issue of effective and proper collection of evidence, based on the requirements of prosecuting States. A presentation by the United Kingdom on air transfer had also been made to the Group; and
- WG2 had further considered the legal issues in connection with the posting of private armed security on commercial vessels and had highlighted the need for

the Group to look further into a number of legal considerations in this connection, including the law of the sea, rules of engagement and issues of responsibility and liability.

8.3 The Committee took note of information provided by the Secretary-General regarding the efforts underway in connection with the Organization's 2011 World Maritime Day theme, "Piracy: orchestrating the response", to coordinate action among States and intergovernmental and non-governmental organizations to combat piracy.

8.4 The Committee noted information provided by the observer delegation of the International Labour Office (ILO), Mrs. Cleopatra Doumbia-Henry, on the action being taken by ILO to address the root causes of piracy, including the establishment of the Employment for Peace, Stability and Development Programme: a Regional Strategy for the Horn of Africa, 2011-2015. In the framework of this Programme, ILO recognizes the need to tackle, in partnership with Intergovernmental Authority on Development (IGAD), the African Union, the international community and local organizations, the root causes of crises in the region in a holistic manner – focusing on the reasons which create exodus and migration, livelihood vulnerability and fragile governance; paving the way for stability as a main condition for sustainable development.

8.5 The Committee took note of a number of statements by delegations regarding recent successful operational activities to combat piracy off the coast of Somalia and of reports on the status of national legislation and successful prosecutions related to piracy. One delegation, citing the recent sailing vessel **Quest** tragedy, noted the increased use of violence by pirates off the Horn of Africa and the trend of indiscriminate attacks on all those who seek to enjoy the freedom of the seas.

8.6 The observer delegation of the International Transport Workers' Federation (ITF) requested the Legal Committee to provide guidance as to when the "intent" to commit an act of piracy constituted an act of piracy and became actionable as such and therefore warranted immediate naval intervention, capture of suspects, and subsequent prosecution of those suspects.

8.7 The observer delegation of the Division for Ocean Affairs and the Law of the Sea (UN-DOALOS) introduced documents LEG 98/8/1 and LEG 98/8/3 which were intended to assist States in the uniform and consistent application of the provisions of UNCLOS relating to piracy by setting out the elements which could be included in national legislation on piracy developed pursuant to UNCLOS. In this regard, the Committee noted that the two documents should be read together and were focused on the following categories: (i) universal jurisdiction; (ii) the definition of the crime of piracy; (iii) criminalization; (iv) enforcement measures; (v) liability and compensation provisions; (vi) retention or loss of nationality of a pirate ship or aircraft; and (vii) international co-operation.

8.8 The Secretariat introduced document LEG 98/8 which summarized the key elements of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988 (SUA 88), that complement the provisions of UNCLOS regarding piracy. This document focused on: (i) offences; (ii) geographical scope of application; (iii) criminalization; (iv) jurisdiction; (v) custody and related matters; (vi) delivery of alleged offenders; and (vii) the obligation to prosecute or extradite.

8.9 In the absence of the representative of the United Nations Office on Drugs and Crime (UNODC), the Secretariat introduced document LEG 98/8/2 which provided an overview of the conventions which are within UNODC's competence and may contribute to an effective legal framework for conducting piracy prosecutions, namely, the United Nations

Convention on Transnational Organized Crime, 2000 (OCC) and the International Convention against the Taking of Hostages, 1979 (Hostage Convention). The document focused on a number of key elements for an effective legislative regime for the prosecution of piracy, namely: (i) criminalization; (ii) jurisdiction; (iii) participation, conspiracy and attempts; (iv) detention and arrest at sea; (v) trials; (vi) identifying, tracing, freezing, seizing and confiscating criminal assets; and (vii) international co-operation.

8.10 The delegation of Ukraine introduced document LEG 98/8/4 which commented on the analysis by UNODC in document LEG 98/8/2. The delegation noted that uniformity of national legislation had been hard to achieve, in part because the relevant international instruments have different purposes, even if they might all be applicable to the crime of piracy. He suggested that this problem could be rectified by means of either: (i) a multilateral instrument to address piracy in a specific region (such as the Djibouti Code of Conduct), or (ii) development of model legislation on piracy.

8.11 The following were among the points made and views expressed during the discussion of documents LEG 98/8, LEG 98/8/1, LEG 98/8/2, LEG 98/8/3 and LEG 98/8/4:

- States should redouble their efforts to prosecute acts of piracy, on the basis of UNCLOS, customary international law and other relevant conventions;
- it was a priority for States to have suitable legislation in place based on UNCLOS and customary international law;
- the Secretary-General's call for action to respond to acts of piracy was more critical now than ever before; to achieve this, concerted action was required on many fronts, not just on the legal front;
- while the analysis provided in the documentation provided by the three Secretariats was helpful and useful, the Committee should be cautious in agreeing to any particular legal interpretation of UNCLOS or the other referenced legal instruments, since interpretation was a matter for States Parties and their courts;
- the analysis of the term "private ends" in document LEG 98/8 might be too narrow by placing emphasis on financial gains when other motives might still fall within the term;
- although some States could agree that certain elements of SUA 88 complemented the provisions on piracy under UNCLOS under some circumstances, other States expressed doubt that SUA 88 was a proper legal basis for combating piracy;
- the issue of the application of SUA to piracy situations was a matter to be left to national legislation and national courts;
- it was important to take into account the difference between intention and motivation in analysing whether an incident fell within the concept of "private ends" under the definition of piracy contained in UNCLOS or within the acts committed unlawfully and intentionally as defined under SUA; if an offence is considered to be piracy then all States would have jurisdiction to seize the ship and the alleged pirates, while if it is considered to be an unlawful act under the SUA Convention, then States Parties to that Convention would have jurisdiction subject to the limitations set out in SUA;

- the geographic scope of application in document LEG 98/8/1 might be too narrow, taking into account the evolution of international law;
- UNCLOS empowers States to assume jurisdiction and to prosecute acts of piracy under national legislation, but how it chooses to prosecute and what punishment it imposes is a matter for national law;
- it was suggested that the Committee might formally express a position as to whether SUA 88 could be applied to cases of piracy;
- it was important for any work undertaken by the Legal Committee to be closely coordinated with the work of WG2 of the Contact Group on Piracy off the Coast of Somalia – any duplication of work should be avoided;
- a new multilateral instrument had the benefit of being binding; however, it would not satisfy the need for urgent action as it would take some time to develop and would be binding only on States Parties;
- a new international instrument might be developed in the long term, possibly on a regional basis;
- development of a new multilateral instrument might be premature or unnecessary, in light of the existing international legal framework on piracy, which was generally considered to be adequate;
- support was expressed for the development of non-binding measures, including the possibility of guidelines or model legislation, taking into account the analysis provided in the documentation;
- while development of model legislation on piracy might be useful, this would take time and would be unlikely to accommodate the wide diversity of Member States' legal systems;
- the emphasis for the time being, given the urgency of addressing piracy, should be on supporting capacity building to assist States which requested assistance in developing and implementing suitable domestic legislation; and
- while article 105 of UNCLOS, in one view, provided a basis for universal jurisdiction, according to another view it simply reflected a principle of customary international law which denied a pirate ship the protection of a flag State.

8.12 The Committee agreed that documents LEG 98/8, LEG 98/8/1, LEG 98/8/2 and LEG 98/8/3 might be useful to States which were either developing national legislation on piracy or were reviewing existing legislation on piracy.

8.13 The Committee stressed that these documents did not constitute definitive interpretations of the instruments referred to therein. In particular, they should not be considered as limiting, in any way, the possible interpretations by States Parties of the provisions of those instruments.

8.14 The information contained in the documents might also be supplemented by reference to other materials, including relevant commentary by legal experts and judicial opinions which may be available.

8.15 The Committee requested the Secretariat to issue these documents under cover of a Circular letter, taking the above views of the Committee into account.

8.16 The Committee agreed that it was important to coordinate its efforts on piracy with the efforts of WG2 of the Contact Group and, to this end, requested the Secretariat to (a) inform WG2 of the outcome of this session of the Committee, and (b) to keep the Committee informed of developments relating to WG2.

8.17 The observer delegation of ITF noted that there remained a number of outstanding issues to be examined by the Organization including how and where to address shortcomings in current instruments and what is required to ensure clarity and certainty on the part of shipowners, masters and crews when dealing with acts of piracy.

9 MATTERS ARISING FROM THE 105TH REGULAR SESSION OF THE COUNCIL

9.1 The Committee noted the information provided by the Secretariat in document LEG 98/9, on matters arising from the 105th regular session of the Council.

9.2 The Committee's attention was drawn, in particular, to paragraph 2 of the document, regarding the Voluntary IMO Member State Audit Scheme and the decision of the Council to re-establish the Joint Working Group on the Member State Audit Scheme, comprising the members of the Maritime Safety Committee (MSC), the Marine Environment Protection Committee, the Technical Co-operation Committee (TCC), the Facilitation Committee (FAL) and the Legal Committee (LEG). The fourth session of the Group to which all IMO Member States were invited by means of a Circular letter was held from 28 February to 2 March 2011. Information about the next meeting, provisionally scheduled to take place in 2012, would be circulated to all IMO Member States by means of a Circular letter.

9.3 With regard to paragraphs 5 to 7 of the document, reporting on World Maritime Day, the Committee's attention was drawn to the action plan on the theme for the Day, "Piracy: orchestrating the response", for delivery throughout 2011.

10 TECHNICAL CO-OPERATION ACTIVITIES RELATED TO MARITIME LEGISLATION

10.1 The Director, Technical Co-operation Division (TCD), Mr. J. Zhu, introduced document LEG 98/10/1, reviewing technical co-operation activities on maritime legislation from July to December 2010.

10.2 He informed the Committee that:

- the delivery of the Integrated Technical Co-operation Programme (ITCP) activities had revealed that lack of national maritime legislation in many developing countries was an obstacle to their ratification and implementation of IMO instruments. More needed to be done in this area;
- TCD was in the process of developing the ITCP for 2012-2013, which would be submitted for approval to the sixty-first session of the Technical Co-operation Committee (TCC) to be held in June 2011. More activities would be planned to assist Member States in drafting, updating and bringing into force primary and secondary maritime legislation in matters related to implementation of IMO instruments. Regional and national training courses on drafting of maritime legislation in selected countries, including Least Developed Countries (LDCs)

and Small Island Developing States (SIDS), were also planned to be carried out during the 2012-2013 biennium; and

- in response to the item deferred from agenda item 4 (Guidelines on implementation of the HNS Protocol, 2010), dealing with resolution 2 on "Promotion of technical co-operation and assistance" adopted by the 2010 International Conference on the Revision of the HNS Convention, IMO's Global Programme on Capacity Building and Training, 2012-2013, included, as an immediate objective, support to national authorities in the development of appropriate legislation for the ratification of the 2010 HNS Protocol. The expected output would be improved implementation of the Protocol at national level. The activity would comprise the development of training materials to promote the Protocol.

10.3 The Secretariat introduced document LEG 98/10 reporting on activities of the IMO International Maritime Law Institute (IMLI) for the year 2010. A list of dissertations and drafting projects undertaken by IMLI students in the 2009-2010 academic year and the names of students awarded PhD degrees on 1 May 2010, were contained in the annex to the document.

10.4 The Committee took note of this information.

11 REVIEW OF THE STATUS OF CONVENTIONS AND OTHER TREATY INSTRUMENTS EMANATING FROM THE LEGAL COMMITTEE

11.1 The Secretariat introduced document LEG 98/11, containing information on the status of conventions and other treaty instruments emanating from the work of the Legal Committee. It also introduced document LEG 98/11/1, providing information submitted by nine States in response to Circular letter No.3131, on progress being made towards ratification of the 2002 Athens Protocol, the 2005 SUA Protocols and the 2007 Nairobi Wreck Removal Convention.

11.2 The Committee noted that the annex to document LEG 98/11 reported on developments regarding these instruments as at 28 January 2011 and that this information had been further updated to 1 April 2011 in document LEG 98/WP.2.

11.3 With regard to the above, the following points were made:

- document LEG 98/11 provided a guide for the Committee's future work, but also a warning of the dangers to the Committee's reputation occasioned by treaties either not entering into force or attracting few ratifications after entering into force; and
- the Guidelines on the organization and method of work of the Legal Committee stipulated that a "compelling need" should be demonstrated when identifying gaps in the existing treaty regime and deciding whether they should be filled by the adoption of new treaties, or the amendment of existing ones. The fact that some of the conventions for which the Committee was responsible had not entered into force appeared to indicate a lack of "compelling need". The Committee should look, not just at gaps, but also at "compelling need" before making proposals to fill such gaps.

11.4 The delegation of Belgium, referring to article 19 of the 2002 Protocol to the Athens Convention regarding the possibility of regional economic integration organizations acceding to the Protocol, informed the Committee as follows:

- on 31 March 2011, the Council of the European Union had formulated its position with regard to the accession of the European Union to the 2002 Athens Protocol. Ministers had agreed two draft decisions regarding the accession, which would be formally adopted by the Council once the European Parliament had given its consent;
- the draft decisions addressed the accession, by the European Union, to the 2002 Athens Protocol and stipulated that Member States of the European Union should, if possible, accede to the Protocol by 31 December 2011, at the same time as the European Union; and
- the Belgian national administration had reached an advanced stage of preparation of the bill providing parliamentary assent to ratify the Protocol and planned to introduce the bill to its Parliament as soon as the European Union had formally adopted the aforementioned European Union Council decisions.

11.5 The delegation of the Islamic Republic of Iran informed the Committee that it had recently ratified the International Convention on the Control of Harmful Anti-fouling Systems on Ships, 2001 and the International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004 and deposited the instrument of accession with the IMO Secretariat; and that an instrument of accession to the 2007 Nairobi Wreck Removal Convention would be deposited shortly.

11.6 The delegation of the Netherlands informed the Committee that the Netherlands had prepared, for Parliamentary approval, the enacting legislation for accession to the 2002 Athens Protocol, but was awaiting approval from the European Union in order to proceed.

11.7 The delegation of Italy informed the Committee that Italy had reached an advanced stage with regard to accession to the 2002 Athens Protocol, with a reservation concerning the issue and acceptance of insurance certificates with special exceptions and limitations, in accordance with the provisions of Assembly resolution A.988(24) and Circular letter No.2758. It was also in the process of ratifying the 2007 Nairobi Wreck Removal Convention; and expected to ratify the above two treaties, as well as the 2005 SUA Protocols, by the end of next year.

11.8 The delegation of the United Kingdom informed the Committee that a bill had been put before the United Kingdom Parliament regarding ratification of the 2007 Nairobi Wreck Removal Convention.

11.9 The delegation of Denmark informed the Committee that the majority of work had been done to enable Denmark to ratify the 2005 SUA Protocols by the summer of 2011. As regards the 2010 HNS Protocol, the necessary consultative processes had been completed to enable Denmark to sign the Protocol "subject to ratification" during the period it will be open for signature.

11.10 With regard to document LEG 98/11/1, the Committee was informed that, since the issue of Circular letter No.3131, six further States, namely: Denmark, Japan, Peru, Panama, Poland and Uruguay had provided information on this matter.

11.11 The Committee took note of the information provided and urged States to take every possible measure to ratify the 2002 Athens Protocol, the 2005 SUA Protocols and the 2007 Nairobi Wreck Removal Convention at the earliest possible opportunity.

12 APPLICATION OF THE COMMITTEE'S GUIDELINES

Status report of planned outputs for the current biennium (2010-2011)

12.1 The Secretariat introduced document LEG 98/12, recalling that Assembly resolution A.1013(26), entitled "Guidelines on the application of the Strategic Plan and the High-level Action Plan of the Organization" (26 November 2009), provided that reports on the status of planned outputs included in the High-level Action Plan should follow the tabular format set out in annex 3 of that resolution and should be annexed to the report of each session of the Committee. The annex to document LEG 98/12, as updated by document LEG 98/WP.6, contained a draft status report of the Committee's planned outputs for the 2010-2011 biennium for the Committee's consideration.

12.2 The Committee agreed to the contents of the revised annex set out in document LEG 98/WP.6, as the report of the status of its planned outputs for the 2010-2011 biennium. The Secretariat was requested to update the table to reflect developments during the current session. The report of the status of planned outputs for the current biennium is set out in annex 4 to this report.

Planned outputs for the next biennium (2012-2013)

12.3 In introducing document LEG 98/12/1, the Secretariat recalled that, pursuant to the aforementioned Assembly resolution A.1013(26), it was necessary for the Committee to agree to its planned outputs for the 2012-2013 biennium. The annex to document LEG 98/12/1 provided a draft table of outputs, based on the assumption that the Committee's outputs for the next biennium would follow on directly from the planned outputs for the current biennium, with any adjustments that might be necessary to account for new planned outputs.

12.4 The Committee was invited to consider this annex and agree, as appropriate, for submission of its planned outputs through the Council to the Assembly, for inclusion in the next High-level Action Plan. The Committee was invited to recall that, at its ninety-seventh session, it had recommended a revision of Strategic Direction 7.2, to accommodate future work on liability and compensation issues connected with transboundary pollution damage from offshore oil exploration and exploitation activities. This output was placed in square brackets as the last item on the draft table.

12.5 The Committee agreed to the contents contained in the annex to document LEG 98/12/1 as the Committee's Planned Outputs for the 2012-2013 biennium, subject to the insertion of an output for consideration of the proposed amendments to LLMC 96 (output number 2.0.1.23), and the deletion of all square brackets, except those surrounding the proposed new output on the analysis of liability and compensation issues connected with transboundary pollution damage from offshore oil exploration and exploitation activities. The table of planned outputs for the 2012-2013 biennium is set out in annex 5 to this report.

Number of meeting weeks for the 2012-2013 biennium

12.6 The Committee noted that, in paragraph 3 of document LEG 98/12/1, it was invited to indicate its views on the number of meeting weeks that it considered would be necessary in order to complete its planned outputs during the 2012-2013 biennium. Among the points made during the discussion on this issue were the following:

- the Committee's anticipated workload as reflected in the proposed outputs for the next biennium did not justify more than two meeting weeks;

- the Committee's ongoing work to support ratification and implementation of the 2010 HNS Protocol as well as its work on piracy suggested that three meeting weeks might be needed during the biennium to fulfil the demands of the international maritime community;
- three meeting weeks did not appear to be needed at present; however, this should not be assumed to be a permanent situation and the Committee may need to request an additional meeting week if development of a new instrument or other urgent work was placed on its agenda; and
- two meeting weeks would be adequate for the next biennium; however, the Committee was not in a position at this stage to judge whether this would be the case in a future biennium.

12.7 The Committee agreed that two meeting weeks should be adequate for the next biennium (2012-2013); however, should there be an unforeseen circumstance, the Committee might need to request the Council to authorize a third meeting week. The Committee also agreed that it would re-assess its workload for the 2014-2015 biennium, in light of any new developments, and advise Council accordingly.

Items to be included in the provisional agenda for the Committee's ninety-ninth session

12.8 The Committee considered its provisional agenda for its ninety-ninth session on the basis of document LEG 98/WP.4 prepared by the Secretariat. Although a suggestion was made to delete the item on the 2010 HNS Protocol to allow the Committee to focus on such subjects as fair treatment of seafarers and piracy, the majority of the Committee took the view that it was important to retain this item on the agenda to allow any necessary policy issues to be addressed particularly if they were seen to be impeding ratifications. The Committee therefore decided to retain HNS on the agenda for its ninety-ninth session.

12.9 The Secretariat was requested to consider the agendas of other IMO committees in determining where the item on Election of officers should be positioned.

12.10 The Secretariat was invited to consider whether any useful guidance might be provided to aid the Committee in applying Assembly resolution A.998(25) on the Need for capacity-building for the development and implementation of new, and amendments to existing, instruments.

12.11 The Committee approved the items to be included in the agenda for its ninety-ninth session based on document LEG 98/WP.4 subject to the following modifications:

- deletion of the parentheses around the words "Monitoring the" in the item on HNS;
- deletion of the square brackets around the words "in the light of ... the amendments relating thereto" in the item on abandonment of seafarers;
- deletion of the item on the Bunkers Convention; and
- revision of the item on transboundary damage from offshore activities to read as follows: "Analysis of liability and compensation issues connected with transboundary pollution damage from offshore oil exploration and exploitation activities", but retaining the square brackets around this item because it is subject

to approval by Council and Assembly of the Committee's recommendation for a revision of Strategic Direction 7.2.

12.12 The substantive items for inclusion in the agenda for the Committee's ninety-ninth session are set out in annex 6 to this report.

13 ANY OTHER BUSINESS

(i) Report on informal consultations concerning liability and compensation for oil pollution damage resulting from offshore oil exploration and exploitation

13.1 The delegation of Indonesia, as coordinator of the informal intersessional consultative group on consultations concerning liability and compensation for oil pollution damage resulting from offshore oil exploration and exploitation, introduced the report of the group (document LEG 98/13/1). In so doing, the delegation stressed the following points:

- dedicated instruments, in particular, the mechanism for compensating victims of transboundary oil pollution damage were not, to date, in force;
- sharing information on States' regulatory regimes or bilateral or regional arrangements may be a good starting point for study; document LEG 98/13 was helpful in this regard;
- the issue could move forward, in conjunction with the global initiative to protect the marine environment, proposed by the Russian Federation to the G20 Summit in Toronto in 2010;
- there was a need to develop effective measures for mitigating and responding to the impact on the environment caused by incidents of pollution, as well as liability and compensation issues connected with transboundary oil pollution damage;
- it was important to keep the discussion open, in order to lead to a more comprehensive understanding and common perception of the issues;
- consideration of the proposal to develop a liability and compensation regime for transboundary damage emanating from offshore platforms by the Legal Committee, would assist efforts;
- approval, by the Council and the Assembly, of the proposal to revise Strategic Direction 7.2 would help the common interest of working for clean oceans; and
- Indonesia was planning to hold an international workshop on the issue, in Bali, or elsewhere in Indonesia, in 2011, to pursue the objectives, and was open for further suggestions and ideas to prevent transboundary harm or minimize its risk.

13.2 The Secretariat introduced document LEG 98/13, responding to a view expressed at the ninety-seventh session of the Legal Committee on the need for the Committee to consider international and regional instruments already in existence, and drawing attention, in particular, to:

- the provisions of the United Nations Convention on the Law of the Sea, 1982 (UNCLOS) which *inter alia* require States to control pollution of the marine environment from sea-bed activities and to provide recourse for compensation for damage caused by such pollution. However, the Convention fell short of imposing a liability and compensation regime itself;
- a 1977 Convention on Civil Liability for Oil Pollution Damage from Offshore Activities (CLEE), which contains the text for such a regime, but had not entered into force;
- a 1974 regional Convention between Denmark, Finland, Norway and Sweden on protection of the environment, which provided for compensation for oil spills from offshore platforms and which could serve as a precedent for regional action;
- customary international law, which provided for State responsibility for acts infringing the rights of neighbouring States, and international legal decisions which indicated that this could extend to transboundary oil pollution damage caused by offshore oil operations;
- other international and regional conventions and IMO instruments and codes, which dealt with combating pollution from offshore activities, but did not establish liability and compensation regimes;
- the 2010 United Nations Environment Programme Guidelines, which provided for the development of domestic legislation on liability and compensation for damage from activities dangerous to the environment, but did not extend to offshore platforms;
- a 2004 European Union Environmental Liability Directive, which made operators carrying out dangerous activities responsible for damage, regardless of fault, but which applied only in a limited degree to oil rig accidents;
- the 1974 voluntary Offshore Pollution Liability Agreement (OPOL), which made major oil companies operating in and around the North Sea liable for compensation from damage caused by oil spills from offshore facilities; and
- the United Nations 1992 Environment Conference, and General Assembly resolutions, which dealt with the development of national and international law on liability and compensation for transboundary harm arising from hazardous activities, taking into account principles and articles drafted by the International Law Commission.

13.3 The delegation of the Russian Federation thanked Indonesia for document LEG 98/13/1 and the Secretariat for document LEG 98/13, and expressed support for the proposals and conclusions of Indonesia, in particular those relating to the continuation of work by IMO to address liability and compensation issues arising from transboundary oil spills. The delegation informed the Committee about the work on this topic, which had been carried out in the framework of the G20, as follows:

- at the G20 Summit, in July 2010, and in the aftermath of the tragedy in the Gulf of Mexico, the President of the Russian Federation proposed a global initiative to protect the marine environment from oil spills, the aim of which was to promote co-operation between the G20 nations in the exchange of best

practices for preventing and minimizing the consequences of oil spills from offshore exploitation and marine transportation (document LEG 97/15, paragraph 14.8, eighth bullet point);

- the G20 had formed a working group, chaired by the Russian Federation, with Brazil and Turkey as co-chairs. For the G20 Summit in Seoul in November 2010, the group had prepared a "Review of international regulation of oil and gas exploitation and exploration and marine transportation from the perspective of marine environmental protection". The review provided sound organizational guidance for the exchange of best practices in this field;
- at the Seoul Summit the mandate of the working group was endorsed and strengthened. The Seoul Summit declaration included a paragraph advocating the continuation of this work with the involvement of organizations including OECD, IMO, the International Association of Drilling Contractors, the International Energy Agency and OPEC and that a report be submitted to the G20 Summit in France in 2011; and
- the first meeting of the working group was held in February 2011 in Moscow. The parameters for its future work were outlined and would take into account the outcome of the reports on recent oil spills by the United States Presidential Commission and the Australian Commission.

13.4 Among the views expressed in favour of continuing consultations regarding liability and compensation issues in respect of damage caused by transboundary pollution damage resulting from offshore oil exploration activities, were the following:

- the Indonesian proposal reflects norms in UNCLOS, customary international law, and regional conventions on control of offshore pollution;
- efforts must continue, and would be helped by ascertaining why the 1977 CLEE Convention had not entered into force;
- before discussing whether to develop an international, global instrument, it would be desirable to obtain the views of industry;
- while there was a need for more work to be done, including an alignment of proposals with existing IMO procedures and related conventions, the distinction between fixed and mobile offshore installations could probably be accommodated;
- the reason why the 1977 CLEE Convention had not entered into force could partly be explained by the conditions at the time, which had changed substantially since then; it would be beneficial to study the work carried out in the context of existing regional conventions, especially the Convention for the Protection of the Mediterranean Sea against Pollution, 1976 and, more particularly, its Protocol of 1995 pertaining to offshore oil exploration and exploitation activities (the Barcelona Convention);
- while acknowledging the over-arching UNCLOS provisions, regional instruments may offer the best solutions in the future, both for fixed and mobile rigs;

- the Committee should not wait for another serious incident to occur before acting, and if IMO did not take the initiative, it was doubtful whether any other body was competent to do so. The subject should be pursued by the Committee through a formal Correspondence or Working Group, with clear terms of reference on matters such as coverage of fixed and mobile structures, and relationship with other instruments, including the Barcelona Convention;
- caution should be exercised in considering the subject, and an analytical approach, including the demonstration of compelling need, should be taken in pursuing it, including identifying gaps that exist in the relevant instruments, whether or not offshore facilities are subject to national jurisdiction, and identifying reasons why existing instruments have not entered into force;
- there was a need for a global instrument which could cover all damages, not only transboundary pollution damages;
- the subject was important and the fact that the questions in the report had not yet been answered, indicated a need for further work;
- the group should focus on collecting and analysing national legislation on the topic; and
- IMO should be proactive in developing minimum standards on this subject.

13.5 Other comments made in connection with the subject were:

- a distinction should be drawn between fixed and floating mobile platforms; fixed platforms were subject to national jurisdiction, and compensation was regulated by law; liability for an oil spill which crossed national boundaries, from a land-based rig, even if actually pumped from under the seabed, was subject to law;
- given the different geographic nature of the coast lines, transboundary pollution should be regulated with bilateral or regional agreements. A statement in this regard by the delegation of Brazil is attached at annex 7 to this report;
- IMO's mandate to deal with such issues was questioned;
- the need to develop liability and compensation provisions had not yet been established; and
- it was advisable to include in the consultations other international bodies, which might have a role to play: UN-DOALOS and the International Law Commission.

13.6 The observer delegation of the Comité Maritime International (CMI) noted that, for 30 years, CMI had been working on a draft convention on Offshore Mobile Craft. In 1998, it had submitted a comprehensive report to the Legal Committee (document LEG 78/10) on craft which do not easily fall within the generally accepted definition of a ship, and the application of certain existing maritime law conventions to such craft had proved difficult. The document reported on the need and prospects for a new international convention to address these problems, and the possibility of enlarging the scope of such a convention to apply, in appropriate cases, not only to mobile offshore units but also to fixed structures. The document also contained what could be the framework for a possible treaty instrument.

13.7 With regard to CLEE, 1977, the observer delegation informed the Committee that the said treaty did not enter into force because it contained higher limits than the 1976 LLMC Convention. In addition, the voluntary OPOL Agreement had been concluded and was working well.

13.8 The observer delegation further commented that there was now a need for international uniformity and the fact that, in the past, IMO had developed treaties and regulations relating to fixed platforms, including the 1988 and 2005 SUA Fixed Platforms Protocols, OPRC, MARPOL and the MODU Code, demonstrated that the subject was within the scope of IMO's mandate.

13.9 The Committee recommended that, pending approval by the Council and the Assembly of the amendment to Strategic Direction 7.2, the informal consultative group of interested States and organizations should continue to work together intersessionally, coordinated by Indonesia, to analyse the issue further, also in light of the comments during the session. The group communicates by electronic correspondence through mailing groups under ind_offshorediscussion_imoleg@yahoo.com.

Contact persons for consultation are:

Mr. Rayyanul Sanqadji: rayyanul@yahoo.com
Captain Hadi Supriyono: hadispri06@gmail.com
Ms. Ira Mamesah: ira.mamesah@indonesianembassy.org.uk.

(ii) Implementation of the Nairobi Wreck Removal Convention, 2007 in cases of bareboat charter registration – issuing of certificates

13.10 The delegation of Germany introduced document LEG 98/13/2, proposing a draft Assembly resolution on the issue of which authority is responsible for issuing certificates of insurance for bareboat registered vessels under the Nairobi International Convention on the Removal of Wrecks, 2007 (Nairobi Wreck Removal Convention). The resolution interprets the term "State of the ship's registry" in article 12, paragraph 2 of the Convention as "flag State", that is to say the State responsible for issuing wreck removal certificates for bareboat registered vessels.

13.11 The draft Assembly resolution aims to:

- provide certainty in the future application of the Nairobi Wreck Removal Convention;
- remove ambiguity regarding the issuing of wreck removal certificates to bareboat registered vessels and avoid the co-existence of certificates;
- assist in applying the Convention in a uniform manner and provide certainty; and
- be consistent with Assembly resolution A.1028(26) on the issue of bunkers certificates under the Bunkers Convention.

13.12 The delegation of Germany also suggested amending the proposed resolution, in order to bring the wording in line with that of Assembly resolution A.1028(26), as follows:

- preambular paragraph 4 of the proposed resolution should read:
"ACKNOWLEDGING that differing interpretations on the matter of the issue of wreck removal certificates by States to ships registered in a bareboat registry should be avoided,"; and
- operative paragraph 1.1, should read:
"All States Parties to the Convention should recognize that wreck removal certificates should be issued by the flag State if the flag State is party thereto;".

13.13 Among the views expressed by the Committee in respect of the proposed Assembly resolution were the following:

- a resolution cannot change the legal content of a convention; however, it was a pragmatic way to resolve the question of responsibility for issuing certificates to bareboat registered vessels;
- article 1, paragraph 11 of the Nairobi Wreck Removal Convention containing the definition of "State of the ship's registry" was not a stand alone provision, but has a direct bearing on other provisions of the Nairobi Wreck Removal Convention. Similar definitions are contained in other liability conventions, such as the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances, 1996 (HNS) and the Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969 (1992 CLC PROT). However, this resolution is only intended to have an effect on the certification provision;
- before adopting the proposed resolution, it might be appropriate to have information regarding the implementation of resolution A.1028(26), so that lessons could be learned for the adoption of future resolutions;
- based on the precedent provided in resolution A.1028(26) relating to the issuing of bunkers certificates under the 2001 Bunkers Convention, wreck removal certificates for bareboat charter-registered vessels should be issued by the flag State, if it was a party to the Convention; and
- the same approach should be followed for the other liability conventions developed by IMO, such as the HNS Convention and the 1992 CLC Protocol, where the same ambiguity arises.

13.14 The Committee noted that the development of strategies to facilitate entry into force of the Nairobi Wreck Removal Convention was one of the Committee's planned outputs for the current biennium.

13.15 The Committee approved the draft resolution on the issuing of wreck removal certificates to bareboat-registered vessels, set out in the annex to document LEG 98/13/2, with the amendments proposed by the delegation of Germany, and contained in annex 8 to this report, and decided to submit it to the 106th regular session of the Council for consideration and, thereafter, for submission to the twenty-seventh regular session of the Assembly, for adoption.

13.16 As a separate matter, the delegation of Germany raised an issue regarding the obligation of ships under article 5 of the Nairobi Wreck Removal Convention to report to the

affected State any maritime casualty resulting in a wreck in the Convention area. The Convention did not, however, identify to which authority the report should be addressed. Nor did the Convention oblige States Parties to designate a Focal Point for that purpose.

13.17 To address this situation, the Committee agreed that States Parties should communicate to the Secretariat the names and addresses of Focal Points in their respective administrations.

13.18 The Secretariat informed the Committee that it would take appropriate action to create a suitable database in GISIS. In this connection, it would issue a Circular letter to all Members, requesting them to enter the information regarding their national Focal Points for the Nairobi Wreck Removal Convention into the GISIS database.

(iii) Crime reporting on passenger ships

13.19 The Committee agreed to the request from the observer delegation of the Cruise Lines International Association (CLIA) to introduce document LEG 98/INF.3, which invited the Committee to note certain information concerning the matter of crime reporting on passenger ships in international commerce, taking into account the legislative framework that had been developed in the United States.

13.20 In introducing the document, the observer delegation of CLIA stressed that it was not requesting the Committee to add a new work programme item or to take any particular action at this point in time. Rather, it was asking for advice and comments on a range of issues that it might take into account, as it consulted with Governments on whether to introduce such a proposal to a future session as a new work programme item.

13.21 The view was expressed that this was a matter for each State to deal with under its national law; it was not an international issue and, therefore, adoption of the reporting requirements contained in the annex to document LEG 98/INF.3 was not an appropriate course of action.

13.22 The Committee was informed that a document had been submitted to the eighty-ninth session of the Maritime Safety Committee, proposing the establishment of a new output for the Sub-Committee on Ship Design and Equipment and the Sub-Committee on Standards of Training and Watchkeeping, to develop non-mandatory guidelines to further enhance the safety and welfare of passengers and crew members on board passenger ships.

13.23 As some interest was shown by Member States in taking this issue forward, the Chairman invited interested delegations to submit a proposal to a future session for a new output, in keeping with the Guidelines on the organization and method of work of the Committee.

13.24 The Committee noted the information provided by CLIA.

Loss of over 250 people in the Mediterranean on 6 April 2011

13.25 The Secretary-General shared with the Committee his profound sadness at the loss, on 6 April 2011, of over two hundred and fifty migrants from a capsized vessel in the central Mediterranean Sea area, who had been fleeing the north coast of Africa in search of a better life. Fifty-three persons were rescued, thanks to the Italian Coast Guard's prompt response to the distress call, but the overwhelming majority were lost. The fact that the tragic loss was at sea should strengthen IMO's determination to prevent such incidents from recurring.

IMO is investigating the circumstances of the sinking, intent on learning possible lessons. Indeed, the news reached IMO during consultations with Italy and Spain on how to improve the system of rescuing migrants in the Mediterranean Basin, and disembarking them at a place of safety in accordance with the SAR and SOLAS Conventions.

A three-stage system is being put in place at the request of the COMSAR Sub-Committee, as follows:

Firstly, a meeting with Italy, Malta and Spain, with the aim of strengthening the SAR system and, in coordination with the UN High Commissioner for Refugees (UNHCR), ensuring that rescued persons are disembarked at a place of safety and forwarded to an appropriate destination. Many people are fleeing their homes as a result of the social and political unrest in the north of Africa and the Middle East, and other countries are also recipients of these immigrants or are affected one way or another;

Secondly, the system will eventually be widened to include participation by other Mediterranean States;

Thirdly, States outside of the Mediterranean region will also be invited to participate, and a meeting with UNHCR, the International Organization for Migration (IOM) and other UN agencies and international organizations to strengthen the system is also being contemplated.

The problem is not entirely in IMO's hands, as political developments have exacerbated the situation beyond its competence. As in the case of the piracy situation off the coast of Somalia, the situation of migrants seeking refuge in the Mediterranean Basin cannot improve substantially unless the political scene in the countries from which migrants depart improves.

The Committee joined the Secretary-General in expressing its profound sorrow at the loss of so many innocent lives.

13.26 A statement made by the delegation of Italy with regard to the above-mentioned tragedy is attached at annex 9 to this report.

13.27 The delegations of Malta and Spain also made statements expressing sincere condolences to the Governments and families of those who had lost their lives. These were supported by many other delegations.

ANNEX 1

AGENDA FOR THE NINETY-EIGHTH SESSION

Opening of the session

- 1 Adoption of the agenda
- 2 Report of the Secretary-General on credentials
- 3 Election of officers
- 4 Guidelines on implementation of the HNS Protocol, 2010
- 5 Provision of financial security in cases of abandonment, personal injury to, or death of seafarers in the light of the progress towards the entry into force of the ILO Maritime Labour Convention, 2006 and of the amendments relating thereto
- 6 Fair treatment of seafarers in the event of a maritime accident
- 7 Consideration of a proposal to amend the limits of liability of the Protocol of 1996 to the Convention on Limitation of Liability for Maritime Claims, 1976 (LLMC 96), in accordance with article 8 of LLMC 96
- 8 Piracy
- 9 Matters arising from the 105th regular session of the Council
- 10 Technical co-operation activities related to maritime legislation
- 11 Review of the status of conventions and other treaty instruments emanating from the Legal Committee
- 12 Application of the Committee's Guidelines
- 13 Any other business
 - (i) Report on informal consultations concerning liability and compensation for oil pollution damage resulting from offshore oil exploration and exploitation
 - (ii) Implementation of the Nairobi Wreck Removal Convention, 2007 in cases of bareboat charter registration – issuing of certificates
 - (iii) Crime reporting on passenger ships
- 14 Report of the Committee

ANNEX 2

DRAFT RESOLUTION ON GUIDELINES ON FAIR TREATMENT OF SEAFARERS IN THE EVENT OF A MARITIME ACCIDENT

THE ASSEMBLY OF THE INTERNATIONAL MARITIME ORGANIZATION AND THE GOVERNING BODY OF THE INTERNATIONAL LABOUR OFFICE,

RECALLING resolution A.987(24) approved by the Assembly of IMO at its twenty-fourth regular session and the ILO Governing Body at its 292nd session, whereby the IMO Assembly and the ILO Governing Body, *inter alia*, agreed to the adoption of Guidelines on fair treatment of seafarers in the event of a maritime accident as a matter of priority; authorized the IMO Legal Committee and the ILO Governing Body to promulgate, once finalized, the said Guidelines by appropriate means; and requested the IMO Legal Committee and the ILO Governing Body to keep the problem of unfair treatment of seafarers in the event of a maritime accident under review and to assess periodically the scale of the problem,

RECALLING FURTHER resolution LEG.3(91) by which the IMO Legal Committee subsequently adopted, on 27 April 2006, Guidelines on fair treatment of seafarers in the event of a maritime accident and called on Member Governments to implement those Guidelines as from 1 July 2006,

RECALLING ALSO the adoption of the said Guidelines by the ILO Governing Body at its 296th session on 12 June 2006,

NOTING that, in compliance with the request in operative paragraph 6 of resolution A.987(24), the IMO Legal Committee and the ILO Governing Body have, since the adoption of the Guidelines, maintained the subject of fair treatment of seafarers in the event of a maritime accident on their respective agendas to enable the Committee and the ILO Governing Body to monitor developments, and to convene, when necessary, the Joint IMO/ILO *Ad Hoc* Expert Working Group on Fair Treatment of Seafarers in the Event of a Maritime Accident,

BEING AWARE of a number of incidents, which have taken place since the adoption of the Guidelines, in which seafarers on ships that have been involved in maritime accidents have been detained for prolonged periods, raising questions about whether they have been treated fairly in full accordance with the principles set out in the Guidelines,

ENDORSING the view expressed by the IMO Legal Committee, at its ninety-eighth session, that unfair treatment of seafarers in the event of a maritime accident should not be condoned under any circumstances,

RECOGNIZING that the issue of fair treatment of seafarers is the direct responsibility of port or coastal States, flag States, the State of the nationality of the seafarer, shipowners and seafarers,

RECOGNIZING FURTHER that States should conduct investigations into maritime accidents in accordance with the requirements of the Merchant Shipping (Minimum Standards) Convention 1976 (Convention No. 147) and, when it enters into force, the Maritime Labour Convention, 2006 (MLC 2006),

RECOGNIZING ALSO that the Guidelines should be implemented alongside the IMO Code of the International Standards and Recommended Practices for a Safety Investigation into a Marine Casualty or Marine Accident, adopted by resolution MSC.255(84), parts I and II of which have been made mandatory by way of amendments to SOLAS chapter XI-1, which entered into force on 1 January 2010, pursuant to resolution MSC.257(84);

1. REITERATE THE IMPORTANCE of the Guidelines on fair treatment of seafarers in the event of a maritime accident set out in the annex to the present resolution;
2. URGE Member Governments to implement these Guidelines to the extent possible;
3. INVITE Member Governments and non-governmental organizations in consultative status with IMO and ILO to circulate the Guidelines as widely as possible in order to ensure their widespread promulgation and implementation;
4. INVITE, where appropriate, Member Governments to consider amending their national legislation to give full and complete effect to the Guidelines;
5. INVITE FURTHER Member Governments to take note of the principles contained in these Guidelines when considering fair treatment of seafarers in other circumstances where seafarers might be detained;
6. REQUEST the IMO Legal Committee and the ILO Governing Body to continue to keep the problem of unfair treatment of seafarers in the event of a maritime accident under review and to assess periodically the scale of the problem;
7. REQUEST FURTHER Member Governments, as a matter of urgency, to bring this resolution to the attention of any Government officials, in particular, those involved in the administration of justice, who may be involved in decisions and procedures affecting the treatment of seafarers involved in maritime accidents, as well as shipowners and seafarers and their respective organizations and inform the IMO Legal Committee of the means by which this request has been implemented.

[Attach as the annex:
Guidelines from Circular letter No.2711]

ANNEX 3

STATEMENT BY CYPRUS CONCERNING THE PROPOSAL TO AMEND THE LIMITS OF LIABILITY OF THE PROTOCOL OF 1996 TO THE CONVENTION ON LIMITATION OF LIABILITY FOR MARITIME CLAIMS, 1976 (LLMC 96), IN ACCORDANCE WITH ARTICLE 8 OF LLMC 96

Thank you, Mr. Chairman,

We wish to thank Australia and the CMI for presenting their submissions under this agenda item.

The data provided by Australia in document LEG 98/7 will no doubt be useful in the negotiation of the increases of the limits of liability under the LLMC Convention at the next session of the Committee.

The comprehensive analysis provided by the CMI in document LEG 98/7/1 and its conclusions suggests that there are no real legal obstacles to increase the limits (by confirming the preference to life/personal injury claims in comparison to property claims; and that an increase shall not impact unfairly on the limits for passenger claims).

During the previous discussions of the issue we expressed serious reservations and we indicated that we were not convinced that a compelling need had been established for amending the limits of liability under the 1996 LLMC Protocol, especially as this was proposed in the context of providing adequate funds to cover all foreseeable cases of bunkers pollution damage.

Circular letter No.3136 is not, in the strict sense, before the Committee. However, for the benefit of the States Parties to the 1996 LLMC Protocol, who have now, through their submission, initiated a formal process for the revision of the limits of liability, we feel obliged to point out that although the letter of transmittal, which is attached as annex 1 to the aforementioned circular, is not specific, the submission they have made for consideration at the next session, which is attached as annex 2 to the circular, focuses its attention on article 6(1) of the LLMC Convention as amended by the Protocol and on the need to amend the limits of liability under the Protocol for the purposes of compensation for bunkers pollution damage. As a result, they will need to clarify, as soon as possible, whether they are suggesting a comprehensive revision of all the limits, including the ones under articles 7(1) and 8(2) or only of those under article 6(1). We are not expecting an answer now. However, this has to be clarified before the next session.

There is no doubt that the Organization needs to consider whether it would be wise to amend, in view of the passage of time, the limits of liability under the 1996 LLMC Protocol. We are prepared to engage in constructive discussions, at the next session, for the purpose of establishing whether amendments of the limits of liability are warranted and if so, to what extent.

Article 8(5) of the 1996 LLMC Protocol states that, when acting on a proposal to amend the limits, such as the one which is set out in Circular letter No.3136, the Committee, shall take into account the experience of incidents and, in particular, the amount of damage resulting therefrom, changes in the monetary values and the effect of the proposed amendment on the cost of insurance.

We cannot see how the Committee will be able to make reasoned and justified decisions without having before it, at its next session, what is stipulated in article 8(5) and namely, a complete and comprehensive set of data, going back to the time of the last revision of the limits in 1996. The set of data will need to include, beyond the data relating to all the claims which fall within the scope of the LLMC Convention as amended by the 1996 LLMC Protocol, data in relation to claims in the context of the Bunkers Convention since it entered into force. Although the Nairobi Convention Wreck Removal Convention makes the same links to the 1996 LLMC Protocol as the Bunkers Convention, it is unreasonable to expect any data or discuss the implications in the context of the Nairobi Convention Wreck Removal Convention.

The other key aspect of article 8(5) is the effect of the proposed amendments on the cost of insurance. Thus, consideration will need to be given on how the Committee will be able to have before it such information at the next session.

ANNEX 4

REPORT ON THE STATUS OF PLANNED OUTPUTS FOR THE 2010-2011 BIENNIUM

Planned output number in the HLAP for 2010-2011 (resolution A.1012(26))	Description	Target completion year	Parent organ(s)	Coordinating organ(s)	Associated organ(s)	Status of output for Year 1	Status of output for Year 2	References
1.1.1.1	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 MDGs	Continuous	Assembly Council Committees			Ongoing	Ongoing	No specific output has been proposed for action by the Legal Committee during this biennium
1.1.2.5 6.3.1.1	Cooperation with ILO and others: approved recommendations based on the work, if any, of the Joint IMO/ILO <i>Ad Hoc</i> 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	2011	LEG			In progress	In progress	Draft Assembly resolution approved (document LEG 98/14, annex 2)

Planned output number in the HLAP for 2010-2011 (resolution A.1012(26))	Description	Target completion year	Parent organ(s)	Coordinating organ(s)	Associated organ(s)	Status of output for Year 1	Status of output for Year 2	References
1.1.2.38	Policy and strategy for the implementation of the IMO-related aspects of the UN Global Counter-Terrorism Strategy	Continuous	MSC, LEG, TCC, FAL			Ongoing	Ongoing	UN General Assembly resolution A/RES/60/288; see document LEG 93/13, paragraphs 8.2 to 8.4 (2007). No specific output has been proposed for action by the Legal Committee during this biennium
1.1.2.39 6.3.1.2	Monitor the progress of the amendments to ILO MLC 2006 and address 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, should it be necessary	2011	LEG			In progress	In progress	Resolution A.931(22) Guidelines on shipowners' responsibilities in respect of contractual claims for personal injury to or death of seafarers; see document LEG 96/13, paragraphs 4.1 to 4.22 where the Committee approved the recommendations of the Joint Expert Working Group. The Committee continues to monitor developments relating to the ILO MLC 2006
1.1.2.40 6.1.2.1	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	2011	LEG			Postponed	No action	No specific output has been proposed for action by the Legal Committee during this biennium

Planned output number in the HLAP for 2010-2011 (resolution A.1012(26))	Description	Target completion year	Parent organ(s)	Coordinating organ(s)	Associated organ(s)	Status of output for Year 1	Status of output for Year 2	References
1.2.1.1 2.0.1.19	Protocol to the HNS Convention adopted as soon as possible	2010	LEG			Completed	---	Diplomatic Conference to revise the 1996 HNS Convention; adoption of 2010 HNS Protocol by Conference (April 2010)
1.2.1.5 2.0.1.20	Revised Guidelines on implementation of the HNS Protocol to facilitate ratifications and harmonized interpretation	2011	LEG			In progress	In progress	"An overview of the 1996 HNS Convention" (document LEG 84/9, annex) revised pursuant to 2010 HNS Conference resolution 4 (document LEG 98/14, paragraphs 4.7 to 4.14); a model form on receipts of contributing cargo approved (document LEG 98/14, paragraph 4.23); a consolidated text of the 1996 HNS Convention and the 2010 HNS Protocol approved (document LEG 98/14, paragraph 4.6)
1.2.1.6 2.0.1.21	Strategies developed to facilitate entry into force of the 2002 Athens Protocol, the 2005 SUA Protocols and the 2007 Nairobi Wreck Removal Convention	2011	LEG			In progress	In progress	Circular letter No.3131 – Request for information on progress toward ratification of certain IMO instruments, including Athens 2002, SUA 2005 and NWRC (Dec.. 2010); draft Assembly resolution on NWRC agreed (document LEG 98/14, annex 8)

Planned output number in the HLAP for 2010-2011 (resolution A.1012(26))	Description	Target completion year	Parent organ(s)	Coordinating organ(s)	Associated organ(s)	Status of output for Year 1	Status of output for Year 2	References
1.3.1.1	Advice and guidance provided following referrals from other IMO organs and Member States	Continuous	LEG				Ongoing	
2.0.1.22	Advice and guidance on issues brought to the Committee in connection with implementation of IMO instruments	Continuous	LEG				Ongoing	Draft Assembly resolution on issue of bunkers certificates (document LEG 97/15, annex 2) approved; draft Assembly resolution on issue of NWRC certificates approved (document LEG 98/14, paragraph 13.15); guidance on implementation of the Bunkers Convention (document LEG 97/15, paragraphs 7.1 to 7.21); guidelines on accepting documents from insurance companies, financial security providers and P&I Clubs (document LEG 97/15, annex 3); Circular letter No.3145, 6 Jan. 2011
2.0.1.23	Consideration of proposal to amend the limits of liability of the Protocol of 1996 to the Convention on Limitation of Liability for Maritime Claims, 1976 (LLMC 96), in accordance with article 8 of LLMC 96	2012	LEG			In progress	In progress	Circular letter No.3136 with proposed amendments for consideration at LEG 99 (Dec. 2010)

Planned output number in the HLAP for 2010-2011 (resolution A.1012(26))	Description	Target completion year	Parent organ(s)	Coordinating organ(s)	Associated organ(s)	Status of output for Year 1	Status of output for Year 2	References
3.5.1.4	Input to the ITCP on maritime legislation	Continuous	LEG				Ongoing	Document LEG 97/15, paragraphs 11.1 to 11.11; document LEG 98/14, paragraphs 10.1 to 10.4
3.5.3.2	A capacity-building mechanism for new measures or instruments, as called for under resolution A.998(25)	Continuous	All Committees				Completed	Procedures for the assessment of implications of capacity-building requirements when developing new or amending existing mandatory instruments are incorporated in the revised Committee Guidelines on organization and method of work (LEG.1/Circ.6 (25 November 2010))
4.0.5.1	Revised guidelines on organization and method of work, as appropriate	Continuous	Council and all Committees			Ongoing	Completed, subject to future revisions as appropriate	LEG.1/Circ.6 (November 2010)
6.2.1.2	Revised guidance relating to the prevention of piracy and armed robbery to reflect emerging trends and behaviour patterns	2011	MSC, LEG				No action	No specific output has been proposed for action by the Legal Committee during this biennium
6.2.1.3 6.2.2.3	Advice and guidance to support the review of IMO instruments on combating piracy and armed robbery	[2012]	LEG				In progress	Circular letter No.3154 requesting information on national legislation on piracy (January 2011)

Planned output number in the HLAP for 2010-2011 (resolution A.1012(26))	Description	Target completion year	Parent organ(s)	Coordinating organ(s)	Associated organ(s)	Status of output for Year 1	Status of output for Year 2	References
6.2.1.4 6.2.2.4	Advice and guidance to support international efforts to ensure effective prosecution of perpetrators (piracy)	[2012]	LEG				In progress	Circular letter No.3154 requesting information on national legislation on piracy (January 2011)
6.2.1.5 6.2.2.5	Advice and guidance to support availability of information on comprehensive national legislation and judicial capacity building	2012	LEG				In progress	Circular letter No.3154 requesting information on national legislation on piracy (January 2011); agreement to circulate documents prepared by the Legal Office, DOALOS and UNODC with guidance to assist States developing or reviewing national legislation on piracy (document LEG 98/14, paragraphs 8.12 to 8.15)

ANNEX 5

PLANNED OUTPUTS FOR THE 2012-2013 BIENNIUM

LEGAL COMMITTEE (LEG)					
PLANNED OUTPUTS 2012-2013		Parent organ(s)	Coordinating organ(s)	Associated organ(s)	Target completion year
Number (Res. A.1013(26))	Description				
1.1.1.1	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 MDGs	Assembly/ Council Committees			Continuous
1.1.2.5 6.3.1.1	Cooperation with ILO and others: approved recommendations based on the work, if any, of the Joint IMO/ILO <i>Ad Hoc</i> 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	LEG			2013
1.1.2.38	Policy and strategy for the implementation of the IMO-related aspects of the UN Global Counter-Terrorism Strategy	MSC/LEG/TCC/FAL			Continuous
1.1.2.39 6.3.1.2	Assessment of the need to address 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, in light of the progress of the amendments to ILO MLC 2006	LEG			2013

LEGAL COMMITTEE (LEG)					
PLANNED OUTPUTS 2012-2013		Parent organ(s)	Coordinating organ(s)	Associated organ(s)	Target completion year
Number (Res. A.1013(26))	Description				
1.1.2.40 6.1.2.1	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	LEG			2013
1.2.1.5 2.0.1.20	Revised Guidelines on implementation of the HNS Protocol to facilitate ratifications and harmonized interpretation	LEG			2013
1.2.1.6 2.0.1.21	Strategies developed to facilitate entry into force of the 2002 Athens Protocol, the 2005 SUA Protocols and the 2007 Nairobi Wreck Removal Convention	LEG			2013
1.3.1.1	Advice and guidance provided following referrals from other IMO organs and Member States	LEG			Continuous
2.0.1.22	Advice and guidance on issues brought to the Committee in connection with implementation of IMO instruments	LEG			Continuous
2.0.1.23	Consideration of proposal to amend the limits of liability of the Protocol of 1996 to the Convention on Limitation of Liability for Maritime Claims, 1976 (LLMC 96), in accordance with article 8 of LLMC 96	LEG			2012
3.5.1.4	Input to the ITCP on maritime legislation	LEG			Continuous
4.0.5.1	Revised guidelines on organization and method of work, as appropriate	LEG			Continuous

LEGAL COMMITTEE (LEG)					
PLANNED OUTPUTS 2012-2013		Parent organ(s)	Coordinating organ(s)	Associated organ(s)	Target completion year
Number (Res. A.1013(26))	Description				
6.2.1.3 6.2.1.4 6.2.1.5 6.2.2.3 6.2.2.4 6.2.2.5	Advice and guidance to support the review of IMO instruments on combating piracy and armed robbery; to support international efforts to ensure effective prosecution of perpetrators (piracy); and to support availability of information on comprehensive national legislation and judicial capacity building	LEG			2013
[7.2.2.x if SD 7.2 is revised]	[Analysis of Liability and compensation issues connected with transboundary pollution damage from offshore oil exploration and exploitation activities] ¹	[LEG]			2013

¹ This agenda item is subject to approval by Council and Assembly of the Committee's recommendation for a revision of Strategic Direction 7.2. See document LEG 97/15, paragraph 14.12.

ANNEX 6

ITEMS TO BE INCLUDED IN THE AGENDA FOR LEG 99

Monitoring the Implementation of the HNS Protocol, 2010

Provision of financial security in cases of abandonment, personal injury to, or death of seafarers in the light of the progress towards the entry into force of the ILO Maritime Labour Convention, 2006 and of the amendments relating thereto

Fair treatment of seafarers in the event of a maritime accident

Consideration of a proposal to amend the limits of liability of the Protocol of 1996 to the Convention on Limitation of Liability for Maritime Claims, 1976 (LLMC 96), in accordance with article 8 of LLMC 96

Piracy

Matters arising from the 106th and 107th regular sessions of the Council, the 26th extraordinary session of the Council and the 27th session of the Assembly

Technical co-operation activities related to maritime legislation

Review of the status of conventions and other treaty instruments emanating from the Legal Committee

[Analysis of liability and compensation issues connected with transboundary pollution damage from offshore oil exploration and exploitation activities.]¹

Application of the Committee's Guidelines

Election of officers

Any other business

Consideration of the report of the Committee on its ninety-ninth session

¹ This agenda item is subject to approval by Council and Assembly of the Committee's recommendation for a revision of Strategic Direction 7.2. See document LEG 97/15, paragraph 14.12.

ANNEX 7

**STATEMENT BY BRAZIL CONCERNING THE REPORT ON INFORMAL
CONSULTATIONS ON LIABILITY AND COMPENSATION FOR
OIL POLLUTION DAMAGE RESULTING FROM OFFSHORE
OIL EXPLORATION AND EXPLOITATION**

Thank you, Mr. Chairman,

Brazil thanks the Secretariat for the information provided in its document, and the Republic of Indonesia, as coordinator of the informal consultative group, for the report submitted.

Brazil took part in the deliberations of the group, as we consider that transboundary pollution damage from offshore platforms is an important issue, particularly in view of recent events.

However, given that offshore exploration and exploitation activities are, as a rule, carried out on the continental shelf of States, such activities are regulated by national law, as required by the United Nations Convention on the Law of the Sea (UNCLOS). As for oil pollution extending beyond national jurisdiction, Brazil deems that this matter needs to be looked at from a regional point of view, since geographical realities do differ worldwide. In this respect, we consider that agreements, especially at the regional and bilateral levels, are the most appropriate instruments to address the issue. Therefore, the development of an **international regime** seems not to be the appropriate way forward,

Therefore, Mr. Chairman, Brazil firmly believes that regional/bilateral agreements are the instruments that best address the issue of transboundary pollution damage from offshore platforms and thus, this delegation cannot support the development of an international regime to that end.

In this respect, this delegation requests that this intervention be reflected in the final report of the Committee.

Thank you.

ANNEX 8

DRAFT ASSEMBLY RESOLUTION

ISSUE OF WRECK REMOVAL CERTIFICATES TO BAREBOAT-REGISTERED VESSELS

THE ASSEMBLY,

RECALLING Article 15(j) of the Convention on the International Maritime Organization regarding the functions of the Assembly in relation to regulations and guidelines concerning maritime safety and the prevention and control of marine pollution from ships and other matters concerning the effect of shipping on the marine environment,

RECALLING ALSO the adoption, by the 2007 International Conference on the Removal of Wrecks, of the Nairobi International Convention on the Removal of Wrecks (hereinafter referred to as "the Convention"),

RECALLING FURTHER article 12 of the Convention, stipulating that the registered owner of a ship of 300 gross tonnage and above flying the flag of a State Party shall maintain insurance or other forms of financial security and obtain a State certificate (wreck removal certificate) issued by a State Party to the Convention attesting that such insurance or financial security is in place,

ACKNOWLEDGING that differing interpretations on the matter of the issue of wreck removal certificates by States to ships registered in a bareboat registry should be avoided,

DESIRING to remove ambiguity and assist present and future States Parties to the Convention to apply it in a uniform manner, in particular in cases of bareboat charter registrations,

BEING CONSCIOUS of the need to provide certainty in the application of the Convention, thereby assisting shipowners, ship operators, ship managers and ship companies in avoiding unnecessary delays to, or detentions of, ships and the related administrative burdens,

BEING AWARE that resolution A.1028(26) provides an adequate solution with regard to the issue of Bunkers certificates to bareboat-registered vessels, and that legal questions related hereto must be solved in a coherent manner,

HAVING CONSIDERED the recommendations made by the Legal Committee at its ninety-eighth session,

1. RECOMMENDS that:

- .1 All States Parties to the Convention should recognize that wreck removal certificates should be issued by the flag State if the flag State is party thereto;
- .2 States Parties should not request more than one wreck removal certificate from any ship including ships bareboat-registered in a State Party, and should accept Wreck Removal certificates issued by such a State Party in accordance with article 12, paragraph 9, of the Convention;

- .3 States Parties should avoid taking action that could cause unnecessary bureaucracy; and
- .4 States Parties which allow ships to be registered bareboat-chartered should co-operate with each other to find, in a spirit of understanding and co-operation, viable solutions to problems caused by differing interpretations regarding the issue of wreck removal certificates to ships registered in bareboat registries;

2. INVITES Governments to bring this resolution to the attention of the masters of ships entitled to fly the flag of their States, shipowners, ship operators, ship managers, shipping companies and all other parties concerned, for information and action, as appropriate.

ANNEX 9

STATEMENT BY ITALY CONCERNING THE SEARCH AND RESCUE OPERATION IN THE SICILY CHANNEL ON 6 APRIL 2011

On 6 April 2011 at about 1.30 a.m., the Maritime Rescue Coordination Centre, Malta, informed the Italian Maritime Rescue Coordination Centre of the presence, in its waters, 45 miles from the Italian island of Lampedusa and mid-way between Malta and Italy, of a boat in distress due to flooding, with an alleged 200 people on board. The information had been received via a Mayday call originating from people on board the boat, which had departed from Zuara, a Libyan port.

The situation in the area was sea force 6 and wind of 39 knots from the North West.

Due to the temporary unavailability of Maltese patrol boats, naval SAR assets from Lampedusa were shipped to the area in order to rescue and assist the persons, described as being stranded and very panic-stricken as a consequence of many days on board.

At 4 a.m., after the authorization from the NATO base of Naples to infringe the "No fly zone", a SAR aircraft was sent to the area.

Other merchant vessels were despatched to the rescue area; at 4.15 a.m., two SAR units reached the distressed boat, a vessel of 13 meters, capable of holding a maximum of 40 people. It had severely listed. On board were men, women and children of different nationalities (from Somalia, Eritrea, Nigeria, Bangladesh, Cote d'Ivoire, Chad and Sudan) – approximately 300 persons.

Moreover, due to damage to the engine, the boat was prey to high waves and it was impossible to manoeuvre it.

In such a situation, the risk of the boat capsizing was considered to be very great; furthermore it would be difficult to rescue the panic-stricken occupants in order to prevent further listing of the boat while attempting to berth alongside it.

At 5.35 a.m., after various attempts to tranship the occupants, the boat eventually capsized, due to the massive quantity of water on board, and despite the deployment of all possible measures, only 52 survivors were rescued, while over 250 were missing.

Due to their poor health conditions, including advanced hypothermia, the survivors were taken to Lampedusa, and, at 7 a.m., a team of rescuers arrived.

At the same time, a wider search operation was underway and is still ongoing. But, as of today, only 23 bodies have been found.

Mr. Chairman,

To these bare facts, let me add a few personal but sad comments, just to better clarify the situation.

This terrible event in the Sicily Channel is the last episode in a very long string of casualties and serious situations, very likely to be repeated with similar results, in many other parts of the world, as a consequence of massive migration which is inevitable and quite impossible to

stem, because it originates from people's desire to achieve minimal standards of living, often denied in their own countries.

At the same time, this kind of "exodus" is destined to create an abyss between humanity, human sentiments and moral obligations on one side, and concrete possibilities of supplying proper aid on the other.

This gigantic movement of persons and the continuous loss of lives at sea (hypocritically referred to as "missing persons") are sadly familiar sights in the Mediterranean Cemetery, where for every 100 people safely landing, 5 drown without leaving any trace. Additionally, of the 26,000 people who disembarked during the first three months of the current year on the rock of Lampedusa, between 800 to 1000 died.

It makes nearly 15,000, I repeat 15,000, over the last 10 years: just like a war!

But, worse than this, is the consideration that people drowned without their names ever being known. They have been "cancelled" by the sea, buried and marked as "nameless" as if they had never existed.

Most of them are anonymous; nobody, perhaps, will ever know they have died, deprived of the minimal dignity, such as their name and the unique sign of their individuality. This is a supreme outrage!

Yesterday, watching the TV, I saw survivors happy to be rescued and waving a banner saying: "*Thanks for rescuing us, we just want to live and all we need is a bit of warmth and humanity*".

My apologies, Mr. Chairman, for this lengthy digression but it is necessary to depict a situation that cannot be confined within national borders and of which the international community, not just the maritime community, has to take due responsibility.

By ironic coincidence, just two days ago, this delegation met the Spanish delegation and the Secretariat to examine the matter and extremely fruitful results were achieved.

Our hope is now that the "Draft Regional Agreement on the procedures for the disembarkation of persons rescued at sea", as finalized during the meeting here in IMO, with the personal good offices of the Secretary-General, could be a precursor for further debate among all the Mediterranean States and Regional Institutions, so as eventually to give concreteness to agreed operational measures, aimed at stemming the occurrence of tragedies such as the one just described in the Sicily Channel and all the ones likely to occur tomorrow in any area of the planet.

But the key point is that we must act now without further delay, since many people's lives are at stake!