



IMO

E

LEGAL COMMITTEE
88th session
Agenda item 13

LEG 88/13
18 May 2004
Original: ENGLISH

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

Table of Contents

	Paragraph Nos.	Page No.
A INTRODUCTION	1-27	3
B REPORT OF THE SECRETARY-GENERAL ON CREDENTIALS	28	8
C REVIEW OF THE CONVENTION FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF MARITIME NAVIGATION, 1988, AND ITS PROTOCOL OF 1988 RELATING TO FIXED PLATFORMS LOCATED ON THE CONTINENTAL SHELF (SUA CONVENTION AND PROTOCOL)	29-83	8
D DRAFT CONVENTION ON WRECK REMOVAL	84-129	16
E PROVISION OF FINANCIAL SECURITY		
(i) Progress report on the work of the Joint IMO/ILO <i>Ad Hoc</i> Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers	130-139	22
(ii) Follow-up on resolutions adopted by the International Conference on the revision of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974	140-144	23
F PLACES OF REFUGE	145-150	24

For reasons of economy, this document is printed in a limited number. Delegates are kindly asked to bring their copies to meetings and not to request additional copies.

	Paragraph Nos.	Page No.
G MEASURES TO PROTECT CREWS AND PASSENGERS AGAINST CRIMES COMMITTED ON BOARD VESSELS	151-157	24
H MONITORING THE IMPLEMENTATION OF THE HNS CONVENTION	158-166	25
I ACCESS OF NEWS MEDIA TO THE PROCEEDINGS OF INSTITUTIONALIZED COMMITTEES	167-175	27
J MATTERS ARISING FROM THE TWENTY-SECOND EXTRAORDINARY SESSION OF THE COUNCIL, THE TWENTY-THIRD REGULAR SESSION OF THE ASSEMBLY AND THE NINETY-FIRST SESSION OF THE COUNCIL	176	28
K TECHNICAL CO-OPERATION: SUBPROGRAMME FOR MARITIME LEGISLATION	177-178	28
L ANY OTHER BUSINESS		
(a) Fair treatment of seafarers	179-193	28
(b) Severe Marine Pollutants and the 1973 Intervention Protocol	194-197	30
(c) Liability cover under the Protocol of 2002 to the Athens Convention, 1974	198-200	31
ANNEX 1 - AGENDA FOR THE EIGHTY-EIGHTH SESSION		
ANNEX 2 - RESERVATION BY THE DELEGATION OF INDIA ON THE MANDATE ISSUE CONCERNING THE REVISION OF THE SUA CONVENTION AND PROTOCOL		
ANNEX 3 - RESERVATION BY THE DELEGATION OF PAKISTAN ON THE MANDATE ISSUE CONCERNING THE REVISION OF THE SUA CONVENTION AND PROTOCOL		
ANNEX 4 - REPORT OF THE WORKING GROUP ON THE REVISION OF THE SUA CONVENTION AND PROTOCOL		
ANNEX 5 - STATEMENT BY ITALY CONCERNING SEVERE MARINE POLLUTANTS AND THE 1973 INTERVENTION PROTOCOL		

A INTRODUCTION

1 The Legal Committee held its eighty-eighth session at IMO Headquarters from 19 to 23 April 2004, under the chairmanship of Mr. A.H.E. Popp, QC (Canada).

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

ALGERIA	LIBYAN ARAB JAMAHIRIYA
ANTIGUA AND BARBUDA	LITHUANIA
ARGENTINA	MALAYSIA
AUSTRALIA	MALTA
BAHAMAS	MARSHALL ISLANDS
BANGLADESH	MEXICO
BELGIUM	MOROCCO
BRAZIL	MOZAMBIQUE
BULGARIA	NETHERLANDS
CANADA	NIGERIA
CHILE	NORWAY
CHINA	PAKISTAN
COLOMBIA	PANAMA
CUBA	PERU
DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA	PHILIPPINES
DENMARK	POLAND
ECUADOR	PORTUGAL
EGYPT	REPUBLIC OF KOREA
ESTONIA	ROMANIA
FINLAND	RUSSIAN FEDERATION
FRANCE	SAUDI ARABIA
GERMANY	SINGAPORE
GHANA	SLOVENIA
GREECE	SOUTH AFRICA
GUATEMALA	SPAIN
HONDURAS	SWEDEN
ICELAND	SWITZERLAND
INDIA	TRINIDAD AND TOBAGO
INDONESIA	TURKEY
IRAN (ISLAMIC REPUBLIC OF)	UKRAINE
IRELAND	UNITED KINGDOM
ISRAEL	UNITED REPUBLIC OF TANZANIA
ITALY	UNITED STATES
JAPAN	VANUATU
LATVIA	VENEZUELA
LIBERIA	

and the following Associate Member of IMO:

HONG KONG, CHINA

3 A representative from the International Labour Office and a representative from the World Maritime University participated in the session.

4 Observers of the following organizations took part in the session:

EUROPEAN COMMISSION (EC)
INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS (IOPC FUNDS)
INTERNATIONAL MOBILE SATELLITE ORGANIZATION (IMSO)
INTERNATIONAL CHAMBER OF SHIPPING (ICS)
INTERNATIONAL SHIPPING FEDERATION (ISF)
INTERNATIONAL UNION OF MARINE INSURANCE (IUMI)
INTERNATIONAL CONFEDERATION OF FREE TRADE UNIONS (ICFTU)
INTERNATIONAL MARITIME COMMITTEE (CMI)
INTERNATIONAL ASSOCIATION OF PORTS AND HARBOURS (IAPH)
BIMCO
EUROPEAN CHEMICAL INDUSTRY COUNCIL (CEFIC)
OIL COMPANIES INTERNATIONAL MARINE FORUM (OCIMF)
INTERNATIONAL ASSOCIATION OF PRODUCERS OF INSURANCE AND
REINSURANCE (BIPAR)
INTERNATIONAL FEDERATION OF SHIPMASTERS' ASSOCIATIONS (IFSMA)
INTERNATIONAL SALVAGE UNION (ISU)
INTERNATIONAL ASSOCIATION OF INDEPENDENT TANKER OWNERS
(INTERTANKO)
INTERNATIONAL GROUP OF P AND I ASSOCIATIONS (P & I CLUBS)
INTERNATIONAL ROAD TRANSPORT UNION (IRU)
INTERNATIONAL SHIP SUPPLIERS ASSOCIATION (ISSA)
INTERNATIONAL MARINE CONTRACTORS ASSOCIATION (IMCA)
WORLD NUCLEAR TRANSPORT INSTITUTE (WNTI)

5 On behalf of the Secretary-General, who was abroad on mission, Dr. R.P. Balkin, Director, Legal Affairs and External Relations Division welcomed participants, extending a particular welcome to those attending the Legal Committee for the first time. She advised the Committee that the Secretary-General had requested her to read out the statement which is reported below:

6 As this was the first occasion on which he was addressing the Legal Committee as Secretary-General, he took the opportunity to reiterate the plea he had made to the Council and the Assembly in 2003, when he invited everyone with an interest in the affairs of IMO and the shipping industry to join forces to create a safer, more secure and environmentally-friendly maritime world.

7 Although he had not been directly involved with the Committee before, he had followed its work over the years and could therefore bear witness to the diverse and essential contributions it had made to the development of international maritime law. The meticulous preparatory work done in the Committee had provided a sound legal basis, and, on many occasions had paved the way for the successful adoption of several IMO conventions, protocols and other instruments covering the entire field of IMO activities.

8 He considered it auspicious that his first address to the Committee in his new capacity was only three weeks before the entry into force, on 13 May 2004, of the 1996 Protocol to the International Convention on Limitation of Liability for Maritime Claims and welcomed this

development, not only because the Protocol would substantially enhance the compensation available for a wide range of maritime claims and establish a simplified mechanism for updating the limitation amounts in the future, but also because another IMO instrument was due to enter into force, although he could not fail to notice that it had taken eight years for this to happen.

9 Reflecting on this, he drew attention to the fact that each time the lengthy process of convening a diplomatic conference to adopt a new instrument was undertaken, it was with the conviction that there was a need for the Organization to regulate a specific activity identified, or to fill a gap in the existing legislation. It did not make sense, once gaps, shortcomings, weaknesses or omissions in the legislative regime had been identified, and action had been taken to rectify them, not to proceed promptly to ratify the instruments adopted. The imminent entry into force of the 1996 Protocol therefore seemed a good opportunity for him to encourage Member Governments to take the necessary steps to expedite the acceptance and thereafter ensure the effective implementation of other important IMO treaty instruments as well. He had also offered similar encouragement to Member Governments when addressing the MEPC three weeks before, in relation to a number of important instruments aimed at protecting the marine environment prepared by that Committee.

10 Among those IMO conventions still awaiting a sufficient number of ratifications to satisfy their entry into force provisions were several developed by the Legal Committee, for example, the Protocol to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, adopted in 2003 to set up a complimentary fund, currently had only two Contracting States. This Protocol, which would provide States Parties with compensation of up to 750 million SDRs (1 billion US dollars) in the event of an oil spill, was adopted at short notice, in May 2003, following intensive preparatory work on the part of both the IOPC Fund and the Organization and, in response to the demands of the IMO membership, it was opened for signature in record time. Another six ratifications were, however, still outstanding, in addition to the requirement relating to the tonnage of contributing oil, and he earnestly hoped, given the importance of the instrument, that these conditions would be met very soon.

11 Also awaiting ratification were the 2001 International Convention on Civil Liability for Bunker Oil Pollution Damage; the Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea; and the 1996 International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea.

12 The Legal Committee, to its credit, had set an important precedent by including in its agenda an item on the monitoring of the implementation of the HNS Convention. While he appreciated the complexity of this Convention, he was hopeful that the fruits of all these labours would, nonetheless, soon be seen in the concrete form of its entry into force. The Bunkers Convention, adopted three years ago, was no less worthy of implementation and it was disappointing to see that, so far, only three ratifications, out of the 18 required, had been deposited with the Organization. The Athens Protocol too, was a long way off obtaining the requisite number of ratifications and this tardiness left not only IMO but also the international community vulnerable to the criticism that not enough care is expressed about human life.

13 The Legal Committee needed no reminder that maritime transport had already been the victim of acts of terrorism – indeed, the 1988 SUA Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and its Protocol for the Suppression of Unlawful

Acts against the Safety of Fixed Platforms Located on the Continental Shelf (the SUA treaties) were adopted as a direct response to the **Achille Lauro** incident in 1985.

14 The Committee had responded promptly to the renewed threat of international terrorism by making the review of the SUA treaties a high priority item on its agenda. Together with the International Ship and Port Facility Security Code (ISPS Code), the amended SUA treaties would provide the backbone of IMO's response to the scourge of terrorism by helping to apprehend the perpetrators of these terrible acts and also to ensure that they would find no refuge from the law in any civilized country.

15 The importance assigned in the international community to the SUA treaties was clearly demonstrated by the fact that the number of Parties to the 1988 SUA Convention had significantly increased since the last meeting of the Committee, from 95 to 104 Parties. This meant that 46 States had become Parties since 11 September 2001.

16 More recently, the assault on the tanker **Limburg** off the coast of Yemen two years ago, had come as a grim reminder of the potential for loss of life and damage to the marine environment, if steps were not taken to implement effectively the measures adopted by the Organization to protect shipping against terrorism. He urged all parties concerned, be they Administrations, designated authorities, port authorities, companies, recognized security organizations, training institutions or others, to intensify their efforts to meet the entry-into-force deadline for the new security regime specified in SOLAS chapter XI-2 and the ISPS Code, which the Secretary-General saw as going hand-in-hand with the SUA treaties. If implemented rigorously, they should help to prevent acts of terrorism at source and make shipping safer for all. The risks were too high to allow for complacency, since terrorism was not a matter of concern to one country or a group of countries, but was a global issue and should be addressed as such. The comforting yet complacent argument that many would hope never to become the target of a terrorist attack had no value here, since, with the interdependence of the world's economies today, the chain reaction that such an act might trigger would have a major negative impact on trade and the global economy, and hence, all would be victims.

17 The Secretary-General reminded the Legal Committee that the Council and the Assembly had already approved, at the Committee's request, the convening of a diplomatic conference in 2005 to adopt the protocols to the SUA treaties which the Committee was preparing. That would only be possible if substantial progress were made on the drafts during this session and it was heartening that so many delegations had brought with them experts on criminal law to assist in the process. At the end of the session, he hoped that a clearer picture would emerge as to the prospects of a successful conference being convened in 2005.

18 In the meantime it was important that States determinedly engage in the effective application of the SUA instruments in force, which, even in their present form provided a good means of countering terrorism through the operation of their prosecution and extradition provisions. States could not afford to wait until the prospective protocols entered into force to sharpen their defences against dangers that were only too real.

19 The other priority item on the Committee's agenda was the wreck removal convention. Here too, the Council and the Assembly had approved, in principle, the convening of another diplomatic conference. The problems posed by wrecks for many coastal States were well known to the Secretary-General, both from the perspective of safety of navigation in the EEZ and that of potential pollution hazards. He understood that the Committee had made substantial progress in the development of the draft convention which would address these problems, but taking into

consideration the previously-stated emphasis he had placed on implementing new IMO instruments, before the draft convention could be submitted to a diplomatic conference for adoption, the Organization must feel comfortable that all underlying issues had been dealt with in order to ensure that the text was formally adopted by the conference, and, even more importantly, that it should be in a form to satisfy the expectations of the international community such that it would be ratified and implemented as soon as possible and as widely and effectively as possible thereafter.

20 The Secretary-General noted that, when he had opened the recent session of the IMO/ILO Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers, he had expressed concern, as he had also done on subsequent occasions, about seafarers detained ashore following pollution accidents involving ships on which they were serving. He wished to reiterate, as he had done on those occasions, that while fully sympathizing with the communities and industries that had paid a high toll in the aftermath of a serious casualty, at the same time he recognized the complexity of the issue and respected fully the independence of the judiciary in countries which, having suffered in many ways as a result of accidents, were determined to discourage violations of safety and anti-pollution rules through an effective system of sanctions.

21 Nonetheless, he was concerned at the repercussions of recent cases in respect of which there seemed to be a wide degree of legal uncertainty regarding the status of the detainees and the preservation of basic rights involving their welfare. His concern was three-fold: first, it related to the impact that the prolonged detention might have on the morale of seafarers under detention, especially when such detentions do not always seem to be related to any wilful misconduct on their side; secondly, it related to the seafarers of the world as a whole, who might justifiably fear for their livelihoods following an accident involving ships on which they serve; and thirdly, it related to the impact an act of detention may have on the global campaign to attract young people to the maritime profession, particularly at a time when there was a shortage of quality officers as well as a strong possibility of a shortage of ratings in the not too-distant future.

22 He hoped that the two submissions on related issues before the Committee would provide a good opportunity for a meaningful discussion on such a sensitive issue and he was confident that the Committee would successfully strike the right balance between the basic rights of seafarers involved in safety or pollution incidents and the legitimate needs of States to protect their marine environments. He looked forward to following the Committee's deliberations on this subject.

23 In the meantime, he welcomed the news of the positive action taken by the Government of Pakistan to set the process in motion for the repatriation of the seafarers and the salvage master involved in the **Tasman Spirit** casualty off the port of Karachi in July 2003. He was very pleased to learn that the Pakistani court which handled the issue, only last Saturday allowed them all, including the master, to return home.

24 The Committee would also be dealing with other aspects concerning the welfare of seafarers including, under the agenda item 'Provision of financial security', a progress report of the Joint IMO/ILO Working Group he had just mentioned. The Committee had done very good work in developing the Guidelines on shipowners' responsibilities in respect of contractual claims for personal injury to or death of seafarers, but as with other treaty instruments adopted by the Organization, this constituted only the first step forward. To date, very few Member States had responded to the IMO/ILO questionnaire as to how the Guidelines had been used in practice. In the meantime, cases of abandonment of seafarers continued to occur, resulting in much

distress to the individuals concerned and to their families, not to mention the harm such cases caused to the reputation of the maritime industry as a whole. He therefore encouraged Administrations to co-operate fully with both IMO and ILO in helping to find a meaningful solution to this unacceptable state of affairs.

25 Quite apart from the two priority items and the others he had mentioned, the Secretary-General noted that the Committee had a full agenda and the number of submissions and the complexity of their contents indicated the heavy workload it was facing. He did not wish to distract any more of the Committee's attention from its task by listing each of these agenda items individually, important though they were. It therefore only remained for him to re-state that, as usual, the resources of the Secretariat would be at the Committee's disposal throughout the meeting. In wishing the Committee every success in its deliberations, he felt confident that, under the enlightened leadership of its Chairman, Mr. Popp of Canada, and with the usual spirit of co-operation, the Committee would serve well its own interests, as well as those of IMO as a whole.

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

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

B REPORT OF THE SECRETARY-GENERAL ON CREDENTIALS (agenda item 2)

28 The Committee noted the report by the Secretary-General that credentials of the delegations attending the session were in due and proper form.

C REVIEW OF THE CONVENTION FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF MARITIME NAVIGATION, 1988, AND ITS PROTOCOL OF 1988 RELATING TO FIXED PLATFORMS LOCATED ON THE CONTINENTAL SHELF (agenda item 3)

29 The Committee continued with its consideration of this agenda item. It agreed that the basic text to be used in its deliberations would be the draft protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation contained in annex 1 of document LEG 88/3.

30 The delegation of the United States, as lead country of the intersessional Correspondence Group, introduced documents LEG 88/3 and LEG 88/3/5. In so doing it explained the changes and improvements made to the draft protocol based on the Committee's deliberations and subsequent contributions received from members of the Group, with particular reference to the new definitions in article 1, the two new paragraphs of article 2, the revised structure of article 3 *bis* and the revised safeguards in article 8 *bis*.

31 The delegation of Mexico introduced document LEG 88/3/1 containing a proposal relating to the safeguards clause in article 8 *bis* and, stressing the need for clear and appropriate definitions in article 3 *bis*, considering that it deals with the notion of weapons of mass destruction (WMD) dealt with in article 3 *bis*.

32 The observer delegation of the International Chamber of Shipping (ICS), on behalf of all the sponsoring delegations, introduced documents LEG 88/3/2, 3 and 4 which contained comments and suggestions on the proposed new offence provisions and the boarding provisions.

General comments

33 The Committee expressed its appreciation to the delegation of the United States as lead delegation and to members of the intersessional Correspondence Group for the considerable work undertaken in the elaboration of the draft protocol. A majority of delegations expressed the view that the revised text was an improvement, both in structure and in substance, although there were still aspects that required further discussion and development.

34 Most delegations that spoke expressed their support in broad terms for the strengthening of the SUA Convention because of the threat posed by international terrorism. In this regard it was recalled that, as envisaged by the Committee, the whole purpose of the revision of the SUA treaties was to provide an answer to the increasing risks posed by terrorism to maritime navigation. This, of necessity, involved expanding the scope of the SUA treaties.

35 Nevertheless, several delegations referred to the need to ensure that the expanded SUA protocol would not jeopardize the principle of freedom of navigation and the right of innocent passage which are guaranteed by the 1982 United Nations Convention on the Law of the Sea (UNCLOS) as well as by basic principles of international maritime law. The need to avoid unnecessary disturbance of international commercial navigation was also mentioned. The protocol should be consistent with IMO functions and purposes, which are mainly to facilitate and promote international commercial shipping.

36 In the opinion of some delegations there was a need to carefully consider the linkage between the proposed new offences and the boarding provisions. Not all offences should necessarily trigger a request for boarding a foreign ship. The view was also expressed that boarding should proceed only with the express consent of the flag State and that the rights of the seafarers should be preserved. The point was also made that compensation should be clearly provided for any damage or injury caused by unjustified boarding.

37 Some delegations expressed concerns about including other treaties by way of an annex while others suggested that further clarification was needed in respect of such issues as the criminal motive and who was to be made responsible - the carrier or the master. Concerns were also expressed about the inclusion in the draft of provisions criminalizing the transportation of WMD as well as the criminalization of activities which were subject to other treaties such as the Biological Weapons Convention (BWC), the Chemical Weapons Convention (CWC) and the Nuclear Non-Proliferation Treaty (NPT).

38 Reference was also made to the need to ensure that all provisions in the amended SUA treaties applied in an identical way to all States so as to avoid discriminatory treatment among Parties. In the opinion of some delegations, the proposed amendments discriminated between States with regard to rights and obligations. In their view, the protocol as currently worded was discriminatory in that it allowed some States but not others to engage in nuclear trade. Some delegations expressed the view that the Committee should ensure that in the proposed amendments the rights and obligations are applied on a universal and non-discriminatory basis with identical rights and obligations for all States. Only this approach could ensure universal acceptance of the amendments.

Mandate

39 During the course of the general comments the view was expressed that the scope of the proposed new provisions exceeded the mandate given to the Committee in resolution A.924(22), particularly in regard to the provisions in draft article 1(1)(a) relating to the definition of prohibited weapons, and article 2 *bis*, paragraphs 3 and 4 (article 3 of the draft protocol) and article 3 *bis*, paragraph 1(b) (article 4 of the draft protocol) relating to transport of prohibited weapons. The Committee's attention was drawn to the last preambular paragraph of the resolution which calls for a review of existing measures "to prevent and suppress terrorism against ships and to improve security aboard and ashore, in order to reduce the risk to passengers, crews and port personnel on board ships and in port areas and to the vessels and their cargoes". It was observed by one delegation that this language did not authorize bringing non-proliferation issues within the scope of the mandate.

40 The view was expressed that the Committee was confusing two very different issues by attempting to include non-proliferation provisions in an anti-terrorism instrument. Non-proliferation issues were complex, sensitive and political and were being addressed in other fora.

41 Some support was given to this view, and it was suggested that consideration of anti-proliferation issues was beyond the competence and technical expertise of the Legal Committee and should not be considered as part of the revision of the SUA treaties, which were not anti-proliferation instruments. It was further suggested that work on the development of the SUA treaties be suspended pending clarification of the Committee's mandate by the Assembly. A number of observations were offered in support of this view, including the following:

- The objectives of the IMO related to maritime navigation. Any proposed amendments, therefore, should be discussed in this context only. The objective of the IMO is not to classify or define a weapon or substance as a prohibited weapon or substance. That aspect is governed by the relevant regime governing that weapon or substance. Further, as the title of the Convention indicates, its objective is to suppress unlawful acts against the safety of maritime navigation. Therefore, all activities that do not directly affect the safe navigation of ships are clearly outside the scope of the proposed revision. Non-proliferation should be governed by the existing relevant non-proliferation and disarmament regimes.
- Assembly resolution A.924(22), does not give a mandate to the Legal Committee to deal with issues related to non-proliferation or WMD. The resolution very clearly and unambiguously mandates this Committee to review measures and procedures to prevent acts of terrorism, which threaten the security of passengers and crews and the safety of ships. Thus, this Committee cannot and should not go beyond the mandate of the resolution so clearly given by the Assembly. In the past, efforts have been made by certain States in certain other committees to force decisions by a brute majority leading to acrimonious debate and divisions. The Committee was urged to avoid such situations and proceed with its work in the IMO's customary spirit of consensus.

42 While sharing the concerns expressed above regarding the scope of the proposed amendments, one delegation, which had been victimized by terrorism, supported amendments to the SUA Convention to prevent terrorist acts which threaten the safety of maritime navigation. This delegation noted that Assembly resolution A.924(22) referred to UN Security Council

resolutions 1368 and 1373, and UN General Assembly resolution 56/1 and said it could completely agree that further work by the Committee should be within the framework of these resolutions.

43 A substantial majority of delegations disagreed with taking a restricted view of the mandate given to the Committee in resolution A.924(22). They considered that the Committee's work on this item was fully within the mandate, and they offered a number of observations in support of this view, including the following:

- Nothing in resolution A.924(22) prevented the Committee from considering amendments along the lines of those proposed in document LEG 88/3, annex 1. In fact, the resolution indicated that the consideration of "appropriate new measures" and the adoption of "other security measures" should be within the scope of the review and revision of existing instruments called for in the resolution. Rather than limiting the Committee's work, the resolution pointed toward the direction of a wide mandate.
- Proposals along the lines of those contained in draft article 3 *bis* had been before the Committee for some time and delegations had had ample opportunity during the Committee's previous three sessions to raise any doubts concerning their scope in relation to the mandate given in the resolution. It was noted that the terms of reference for the Correspondence Group on SUA (LEG 86/15, annex 4) had called on the Group to continue the exploration of the expansion, as necessary, of the offences in article 3 of the SUA Convention to ensure that "a wide range of unlawful acts" are sufficiently covered.
- The ongoing work of the Committee on this item had been fully reported to the Council and the Assembly and no question had been raised at either of the Organization's governing bodies regarding the scope of the mandate. In fact, the Committee's work had been endorsed and given high priority as part of the Organization's efforts in the field of maritime security. It would not be feasible to interrupt the Committee's work on this item now to seek further clarification of the mandate from the next Assembly which was not scheduled to meet until November 2005, particularly since the Assembly was anticipating that a diplomatic conference would be considering a draft instrument on this item during the present biennium.
- The Committee's work on this item needed to be considered within the broader context of the international response to terrorism and proliferation, including the mandates in relevant UN Security Council resolutions 1368, 1373 and 1456 expressing concerns regarding the illegal movement of deadly materials, and calling for, *inter alia*, international organizations to evaluate ways to enhance the effectiveness of their actions against terrorism.
- It was recalled that, when the original SUA Convention was first proposed, there had been some differences of opinion over whether it fell within the Organization's technical competence, and this difference had been resolved in favour of developing the instrument which was now being updated.

- Excluding provisions on anti-proliferation from the draft protocol would be a major political decision which would deny the diplomatic conference the opportunity to consider such provisions, which have been developed by a broad representation of the Committee.

44 Four delegations stated that they could not accept the outcome of this discussion and remained of the view that the Committee was acting outside the scope of the mandate given in resolution A.924(22). The delegations of India and Pakistan registered formal reservations in this regard, the texts of which are annexed to this report.

New offences (draft article 3 *bis*)

45 The Committee agreed to take up the draft articles in document LEG 88/3 in the following order:

- new offences (article 3 *bis* and 3 *ter*);
- new definitions (article 1);
- annex (article 5) and article 14;
- article 2 *bis*;
- boarding provisions (article 8 *bis*);
- political offence exception (article 11 *bis*);
- final clauses; and
- preamble.

46 It was noted that some of these provisions were interrelated with the offence provisions.

47 The Committee then took up detailed consideration of draft article 3 *bis* (draft protocol, article 4(3)). It decided to address matters of policy and principle, leaving drafting matters to the consideration of a Working Group to be convened in parallel to the plenary.

- **Chapeau for paragraph 1**

48 In response to a proposal to replace the expression “*unlawfully*” with “*knowingly*” it was noted that the unlawful element should be included since it reflected the essence of the terrorist act to be criminalized. It was also noted that while the expression “*unlawfully*” may be needed, the word “*intentionally*” did not seem to fit properly with the transport offences regulated in paragraph 1(b). It was further suggested that the *chapeau* should be revisited with a view to ensuring that it was consistent with all the offences included in paragraph 1.

- **Paragraph 1(a)**

49 With respect to subparagraph (i), it was suggested that the reference to *prohibited weapons* was unclear and required further discussion.

50 Two delegations opposed any formulation that suggested that nuclear weapons in the possession of nuclear weapons States parties to the NPT were not prohibited, while all other nuclear weapons were.

51 Some delegations suggested that subparagraph (ii), currently in square brackets, be deleted, since they considered that the offences therein described were very unlikely to conform with a real-life scenario or were already covered by subparagraphs (i) and (iii).

52 Two delegations, however, favoured the retention of the text within square brackets. In support of this view reference was made to the importance of the subparagraph for the effective suppression of ecological terrorism and the protection of the environment. A terrorist attack involving a major oil spill was, in the view of these delegations, a real risk. It was suggested, however, that the text might be refined to eliminate ambiguities. For instance, the term *other like substances* was too broad and might be replaced by a reference to *other hazardous and noxious substances* or by reference to *substances listed in the IMDG Code*.

53 One delegation suggested that the reference to *national legislation* contained in subparagraph (iv) be deleted, since enforcement capacity varied significantly from one State to another. In the view of this delegation the convention was intended to apply to a maritime area beyond the territorial sea and should remain under the umbrella of international law. On the same grounds, other references to national law should also be deleted.

54 In response to this proposal, the Committee was reminded that references to national law had been included in the original Convention in order to achieve consensus regarding a controversial issue, namely, the different treatment given by countries to unlawful actions consisting merely of threats to cause damage or injury.

55 In response to the suggestion that reference to human fatality, physical destruction or damage be specifically included as consequences of terrorists acts referred to in this article, it was noted that the new definition of "*serious injury or damage*" in article 1 was aimed at achieving this objective. It was agreed that further work needed to be done on this definition.

- **Paragraph 1(b)**

56 Some delegations proposed the removal of this paragraph on the basis that the SUA protocol should not treat the transport of materials as acts of terrorism. If intentionally connected to acts of terrorism, transport should be regarded as ancillary to the commission of a crime and, as such, should be considered under the accomplice provisions in article 3 *ter*. The criminalization of transport operations would become a source of legal uncertainty that would negatively affect the shipping industry; seafarers, owners, charterers, and operators might all be considered potentially liable for actions in respect of which they had no knowledge or control.

57 Some delegations opposing the introduction of this paragraph objected to the inclusion of offences connected with subject matters regulated by other treaties. In particular, they expressed their strong opposition to what they considered an attempt to introduce in the SUA protocol aspects of the legal regime applicable to parties to the NPT. In their view, such an attempt, if successful, would lead to an unacceptable discriminatory situation, namely, the transport of certain materials would be criminalized when carried by ships flying the flag of some countries but not by others under the provisions of the NPT. Such discrimination would not be related to preventing terrorism in the context of safety of navigation. Paragraph 1(b) violated article 1 of the IMO Convention and, as such, its inclusion was not justified.

58 Some delegations favoured requiring a terrorist motive in respect of certain or all subparagraphs of paragraph 1(b). Particular concern was expressed in connection with the lack of a terrorist motive in respect of subparagraph (b)(iv).

59 The majority of delegations which spoke favoured the inclusion of this subparagraph subject to substantive improvements, in particular, to preserve the rights of *bona fide* seafarers and other innocent participants in commercial maritime transport. In this regard, reference was made to the importance of properly defining exactly who would be liable for the transport operations to be criminalized. Furthermore, clear distinctions should be established between this subparagraph and the accomplice offences dealt with in article 3 *ter* in order to avoid inconsistencies and overlappings.

60 With respect to subparagraph (b)(ii), some delegations criticized the lack of a requirement of knowledge. In response, reference was made to the chapeau to article 3 *bis* which covers all the offences in the article in terms of which a person only commits an offence if that person acts unlawfully and intentionally.

61 Reservations were expressed in connection with the dual use provision in subparagraph (iv) as well as the criminalization of mere transportation of WMD in subparagraph (i). In this regard, one delegation noted that article 23 of UNCLOS allows for the innocent passage through the territorial sea of ships carrying nuclear or other inherently dangerous or noxious substances. One delegation emphasized the need of reformulating subparagraphs (iii) and (iv) of this provision so that they do not impinge or effect scientific co-operation for peaceful purposes which is under way, or which is to come in the future between States members of the international community.

62 One delegation suggested that the requirement to prove knowledge as a precondition to criminalization of transport should be removed, on account of the potential catastrophic implications of this offence and the difficulty in providing proof of criminal intent. This suggestion was opposed on the grounds that it would impose strict liability in criminal law, which was unacceptable.

63 Some delegations noted the specifications made regarding the meaning of the term *transport* in note 13 of the basic text. In their view, specifications of that kind would have to be incorporated into the text itself in order to resolve the uncertainties and ambiguities of the present draft. It was essential to resolve these shortcomings in order to be able to incorporate the new offences into the national legislation of SUA Parties.

64 Some delegations suggested deletion of article 2 *bis*, paragraph 4, as the NPT does not confer the right upon nuclear weapons States Parties to use nuclear weapons, as stated in this paragraph.

Boarding provisions (article 8 *bis*) (article 6 of the draft protocol)

65 The Committee recognized that while there seemed to be general acceptance of the need to include provisions concerning boarding in the draft protocol, it was clear that the present draft text, although an improvement over the previous text, still required further modification.

66 It was also recognized that inclusion of boarding provisions constituted a significant departure from the fundamental principles of freedom of navigation on the high seas and exclusive jurisdiction of flag States over their vessels. It was accepted that the principle of flag State jurisdiction must be respected to the utmost extent, recognizing that a boarding by another State on the high seas could only take place in exceptional circumstances. Any exception must be precise, unambiguous and internationally accepted.

67 Some delegations were of the view that boarding should not be allowed for all offences in article 3 *bis* but should be limited to the more serious ones. In this respect further work was required to identify precisely which offences under article 3 *bis* should be subject to the boarding provisions.

68 Some delegations emphasized that boarding should take place only with the prior consent of the flag State and that sufficient time should be allowed for the master to verify the legitimacy of the boarding with the flag State and the owner. Moreover there should be clear grounds for boarding and *prima facie* evidence of an offence should be provided by the boarding State to the flag State when permission for boarding is sought.

69 It was suggested that the boarding provisions in article 106 of UNCLOS might provide a model for boarding and assist in preventing errors in implementation. However, one delegation was of the view that this article applied only for crimes such as piracy and slavery and was therefore not an appropriate model. It was further suggested that boarding was a consequence of the right of visit in article 110 of UNCLOS and, as such, required clear and reliable information.

70 One delegation expressed the view that the issue of primary, or preferential, jurisdiction with respect to criminal proceedings needed to be studied further.

71 The Committee then considered some specific points raised by the draft text.

Paragraph 3

72 With reference to the text in square brackets concerning the case where a State is unable to confirm the nationality of a ship, a number of delegations said that such a provision would be legally doubtful and should be deleted.

73 With regard to the text in square brackets concerning a time limit for responding to a request for confirmation of nationality of a ship, the view was expressed that the 4-hour time limit was unacceptable. Some delegations suggested that the problem of time zones and different public holidays made the 4-hour time limit procedure impracticable. The notion of “tacit acceptance” was not acceptable because it was inconsistent with the right of a flag State to exercise jurisdiction. If a State was unable to confirm or refute the nationality of the ship, it was in no position to consent to boarding. Some delegations expressed the view that, if there is to be a provision on tacit acceptance, then they would prefer an “opt-in” clause rather than the “opt-out” clause as currently in paragraph 4.

Paragraph 8(b)

74 Several delegations were of the view that, although the draft articles do address the question of compensation for an unjustified boarding, these provisions needed to be strengthened.

75 Some delegations were also of the view that the current compensation provisions provided little protection for the ship’s operator against delays or damage to the ship or cargo occasioned by the boarding because the terminology used was unclear and capable of differing interpretations.

76 Some delegations were of the view that the reference to national law created uncertainties since national law might not allow compensation for unjustified boardings. Others were of the opinion that it was inappropriate to refer to national law in an international convention.

77 One delegation noted that several international conventions on maritime law included provisions relating to compensation for wrongful detention of a ship by a State Party, but these provisions had not been effective in assuring payment of compensation. Consequently, the onus of proof that the detention was justified should be on the boarding State and this provision should be included in the protocol.

Future work

78 The Committee agreed to send these provisions to a Working Group, which was to meet in parallel with the Plenary, and agreed that the Group should focus primarily on draft articles 3 *bis* and 8 *bis*, and related issues, taking into account the comments made during the deliberations in the Plenary.

79 To the extent that the Committee was not able to deal with the matters mentioned in paragraph 45 above, it was agreed that these matters would be taken up at the next Plenary session of the Committee.

80 The Working Group met in parallel with the Plenary and the Chairman of the Group presented an oral report to the Committee, which is annexed to this report solely for the information of Member States.

81 The Committee agreed that the Working Group should meet intersessionally from 12-16 July 2004 to continue with its deliberations. The Committee endorsed a broad mandate for the Group, consistent with resolution A.924(23), to consider and advance suitable amendments for the consideration of the Committee at its eighty-ninth session.

82 The Committee agreed to extend the deadline for submissions to its eighty-ninth session on this agenda item to 15 September 2004, to take account of the report of the Intersessional Working Group, as well as comments or proposals arising from the work of the Group.

83 The Committee further agreed that the Correspondence Group should also continue with its intersessional work in order to advance further the work of the Intersessional Working Group and that of the Committee at its eighty-ninth session.

D DRAFT CONVENTION ON WRECK REMOVAL (agenda item 4)

84 The Committee continued with its consideration of this agenda item.

85 The delegation of the Netherlands, as lead country for the intersessional consultations, introduced document LEG 88/4. In so doing, it summarized the results of the consultations and explained the content of the annexes to the document. It made the point that the revised text of the draft convention on wreck removal (DWRC) included amendments agreed by the Committee at its eighty-seventh session, appearing in italics, amendments discussed and approved by the Working Group at that session (or as the case may be, at the eighty-sixth session), which were marked in bold and underlined and new proposals based on the outcome of the discussions in the Working Group and on subsequent intersessional work, which appeared in bold. The delegation

expressed the hope that negotiations would be fruitful and that sufficient progress would be made at this session.

86 The Committee then proceeded to discuss the following preliminary issues:

- (i) Application of the DWRC to the territorial sea (article 3(2));
- (ii) Exclusion of liability for acts of terrorism (article 11(1)(c));
- (iii) Identification of the person normally in charge of the day-to-day operation of the ship, who might not necessarily be the registered owner as presently defined in the convention (new proposal developed intersessionally under article 1(9), with consequential amendment to article 6(1)); and
- (iv) Relationship between the DWRC and the existing liability regimes (article 12(1), chapeau).

(i) Application of the DWRC to the territorial sea (article 3(2))

87 With respect to the two alternatives in article 3(2), some delegations favoured the possibility of a selective opting-in clause, with respect to some provisions or parts of the convention not already covered in their national legislation (option 1).

88 However, most delegations that spoke were in favour of an “opting-in” clause with respect to the whole convention (option 2). In the opinion of those delegations, that option would ensure transparency and uniformity of application.

89 Some delegations indicated that the two alternatives could be combined to obtain maximum flexibility.

90 The observation was also made, however, that it was difficult to make a choice between the two options until there was identification of the specific articles contemplated by the first option.

91 The Committee decided to delete the square brackets around the second option. However, it also decided that a final decision should be deferred pending the identification of the particular articles. Accordingly, the Committee also decided to maintain the first option in brackets, on the understanding that interested delegations could revert to this matter by way of proposals.

(ii) Exclusion of liability for acts of terrorism (article 11(1)(c))

92 In introducing the provision, the delegation of the Netherlands pointed out that subparagraph (c) should have appeared in bold and underlined, since at the last session the Working Group had agreed to maintain the text as it was.

93 Some delegations, including the representative of the CMI, commented that the provision as currently drafted was unclear and that the wording should be simplified or deleted.

94 Other delegations noted that the matter was one of principle and the exclusion of terrorist acts was pertinent to all liability conventions. A separate solution should not be sought in the DWRC.

95 The representative of the International Group of P&I Clubs recalled that, in the wake of the terrorist attacks of 9/11, the marine insurance market had introduced an exclusion clause for certain losses that could arise from acts of terrorism. The Group was in favour of including a provision along the lines of the draft provision, and offered to provide a wording if it was decided not to include a blanket exception for terrorist acts by including the words “act of terrorism” in article 11. This position was supported by the representative of the International Chamber of Shipping (ICS), who, noting the similarity between acts of terrorism and acts of war also suggested that the inclusion of acts of terrorism in subparagraph (a) after the expression “act of war” might be the way forward. However, it was noted that there was no internationally agreed definition of act of terrorism.

96 One delegation questioned whether the exclusion of liability under this article should be limited to the registered owner or whether it should extend also to the operator or the bareboat charterer.

97 The representative of the International Union of Marine Insurance (IUMI) supported the exclusion of liability for acts of terrorism. Recognizing that at present there was no definition of terrorism in existing treaties, since these had been adopted prior to 2001, it offered to provide the definition used by IUMI, which had been accepted and used by insurers.

98 The Committee noted the information provided by the insurance industry about the lack of cover for acts of terrorism. It agreed that there was a problem of language in subparagraph (c) and decided to delete the wording, on the understanding that the Committee might revert to it at a later stage after study of the problem in a broader context.

(iii) Identification of the person normally in charge of the day-to-day operation of the ship, who might not necessarily be the registered owner as presently defined in the Convention (new proposal developed intersessionally under article 1(9), with consequential amendment to article 6(1))

99 In introducing the provision, the delegation of the Netherlands recalled that when discussing the definition of “registered owner” at its last session, the Committee had agreed that the definition was suitable for the purpose of channelling liability, but not for the operational, practical requirements, such as reporting the location of a wreck. The new definition was based on the definition of “company” in article 1.1.2 of the International Safety Management Code (ISM Code).

100 One delegation commented that it was necessary to link the new definition with the definition in the ISM Code. To that end it suggested the following wording: “Operator of the ship means company as defined in article 1.1.2 of the ISM Code.” This would take care of any amendments agreed to under the ISM Code.

101 The majority of the delegations that intervened supported the new definition in principle. However some of these delegations noted that to avoid misunderstandings, it would be preferable to use the definition as in the ISM Code i.e. “company” and not “operator of the ship”.

102 One delegation, noting that the reporting provisions contained in Protocol I of MARPOL 73/78 and in the SOLAS Convention place the burden of reporting on the master of the vessel, suggested that this obligation should be placed on the master also in the DWRC. This was supported by other delegations.

103 The Committee agreed in principle that the reporting requirement should be placed on the person who was effectively in charge of the day-to-day operation of the ship and that further intersessional drafting work was necessary on the new definition of operator of the ship, particularly to link it with the definition of “company” contained in the ISM Code. Consideration should also be given to the inclusion of the master of the ship in article 6(1).

104 One delegation, referring to article 6(1), questioned the scope of the draft provision and noted that, if it was not limited to requiring the operator of the ship to report its own vessel if it became wrecked, but also to report any other wreck encountered, both should be specified in the article since they refer to two separate categories of persons.

105 One delegation, with reference to article 10(1)(a), proposed the insertion of the wording “or another interested party”. The Committee agreed that further consideration should be given to this proposal during the intersessional work.

(iv) Relationship between the DWRC and the existing liability regimes (article 12(1), chapeau)

106 In introducing article 12(1), the delegation of the Netherlands explained that the scope of the provision was threefold, to avoid double compensation, to avoid a gap so that claims are being dealt with either in the DWRC or in the other liability regimes mentioned in article 12 and to avoid the establishment of liability for losses that are explicitly excluded from liability under other conventions.

107 The representative of the CMI, noting that the aim of the article was to establish precedence among liability conventions, proposed the following re-drafting of the chapeau:

“The registered owner shall not be liable under the Convention for the costs mentioned in article 11, paragraph 1, if and to the extent that liability for such costs is established under ... :”

108 Several delegations noted that the present wording allowed for the possibility to choose under which convention to claim compensation for the costs mentioned in article 11. To avoid that possibility, they proposed that the model in previous conventions be followed. In this connection, article 4(1) of the Bunkers Convention and article 4(3) of the HNS Convention were mentioned.

109 With reference to the phrase “explicitly excluded” in article 12(1), it was noted that the wording used had no precedent in previous treaties and further, that other conventions do not cover costs for removal of wrecks. Another delegation suggested the insertion in the chapeau of the words “*inter alia*”, to allow for the possibility that other liability instruments could be developed in the future.

110 The Committee expressed appreciation for the work done by the delegation of the Netherlands. It agreed that, intersessionally, alternative wording should be prepared for the article, based on existing precedents, and on the proposals at the session, as reported. It was also

agreed that the next draft should be prepared in close consultation with the Secretariat, in order to achieve uniformity with other conventions. In this regard it was noted that a uniform approach should be adopted in respect of headings for all articles.

111 The Committee then turned its attention to an article by article discussion of the DWRC, starting with article 2, on the understanding that the definitions in article 1 would be taken up in the context of specific provisions where they were used.

Article 2

112 The delegation of the Netherlands recalled that the Committee had discussed the wording in article 2(4) at its last session. The wording had then been referred to the Working Group and agreed by it.

113 The Committee accepted the wording in article 2(4).

114 One delegation, referring to the definition of “Wreck” in article 1(4)(d) expressed concern with regard to the relationship between the DWRC and the Salvage Convention. Reference was also made to the articles of public law nature in the Salvage Convention and the need to ensure consistency between the two instruments. Article 10(4) and (5) of the DWRC were given as examples in this context. The delegation recommended seeking the assistance of the CMI to ensure compatibility between the DWRC and the Salvage Convention. This suggestion was supported by the Committee and the CMI agreed to take on this task. Another delegation also expressed its concern about the present wording and would consult with other delegations and the CMI. This delegation would make a proposal, if necessary.

115 In connection with the relationship between the DWRC and the Salvage Convention, one delegation pointed out that this was dealt with in article 12(2).

116 With reference to article 2(1), one delegation suggested the insertion of the wording “of other State parties” after “wrecks”. This proposal was supported by another delegation, which noted that the wording reflected generally accepted principles of International Law. Other delegations, however, could not support the proposal. In this connection it was noted that the proposed wording would unduly restrict the scope of the DWRC by limiting the coastal State’s right to remove wrecks. One delegation suggested that the matter might be resolved by reference to article 10(10). It was further recalled that the same proposal had been discussed by the Committee at its last session (document LEG 87/17, paragraphs 52 to 55), but the issue remains unresolved.

117 One delegation suggested the insertion of the whole definition of “Removal” in article 2(1) as this expression was confined to that article.

118 It was suggested that there might be further intersessional work on the definition of “wreck.”

Article 3

119 Subject to the previous discussion on the two alternatives in paragraph 2, the Committee approved this article.

Article 4

120 The Committee approved the article.

Article 5

121 The Committee approved the article in principle subject to drafting improvements.

Article 6

122 The Committee noted the explanation by the delegation of the Netherlands that the wording “without delay” in paragraph 1 had been inserted intersessionally based on the comments at the last session that the report should be submitted in a timely manner, and that the wording in bold and underlined in paragraph 2(d) had been agreed by the Working Group at the same session.

123 One delegation suggested that the words “such as” in paragraph 2(e) should be replaced by “including”. The Committee agreed to this proposal and accepted the rest of the article.

Article 7

124 One delegation commented that, since the provision was aimed at providing guidance to the coastal State in the determination of the hazard posed, it recommended that it be redrafted using recommendatory language. It suggested that the criteria might be put into an annex to the treaty. It offered to provide wording intersessionally.

125 The delegation of the Netherlands, warned against the weakening of this provision.

126 One delegation, supported by another delegation, proposed the deletion of the words “identified and, as appropriate,” in article 7(d). Another delegation, noting that the article was excessively oriented towards safety of navigation, indicated that it should also make reference to other sea areas of environmental concern to coastal States. This delegation proposed the following draft text:

“areas of seas and coast lines of major environmental concern for the State whose interests are the most directly threatened by the wreck”.

127 One delegation proposed the deletion of the wording “, as appropriate, and without regard to the order in which they are presented” in the chapeau of the article.

128 The Committee agreed that the text of DWRC required further intersessional drafting in the light of the comments and proposals at this session.

129 Interested delegations were invited to continue working intersessionally under the leadership of the delegation of the Netherlands to further refine the text. This work should be done in co-operation with the Secretariat.

E PROVISION OF FINANCIAL SECURITY (agenda item 5)**(i) Progress report on the work of the Joint IMO/ILO *Ad Hoc* Expert Working Group on Liability and Compensation Regarding Claims for Death, Personal Injury and Abandonment of Seafarers (agenda item 5)**

130 The Committee took note of the report of the fifth session of the Joint IMO/ILO *Ad Hoc* Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers (Joint Working Group), which appeared in document IMO/ILO/WGLCCS 5/3, attached to document LEG 88/5/1.

131 The Committee noted the information provided by the representative of ILO that the ILO Governing Body at its 289th session in March 2004 had approved all the points of decision in the report of the fifth session of the Joint Working Group.

132 The Committee was informed that the sixth session of the Joint Working Group was planned for spring 2005.

133 The representative of the International Shipping Federation (ISF) stated that, from the low rate of response to the questionnaires on the two sets of guidelines and on reported cases of abandonment, it appeared that the guidelines were not sufficiently implemented and that the Group had insufficient data on which to make an informed decision. ISF therefore believed that it was premature, at this stage, to develop a mandatory instrument on either issue. It believed that the current P&I cover was sufficient, and that, for the time being, no additional mandatory solutions were necessary to deal with the crew claim issue. Nevertheless it looked forward to continue working with Governments and Social Partners with a view to achieving a practical and workable solution.

134 The representative of the International Group of P&I Clubs supported these views and reiterated its position, also contained in its submissions to a previous session of the Committee and to the Working Group, that crew claims were in almost all cases handled fairly and expeditiously by the various Clubs. Therefore, it did not believe it was necessary to consider long-term solutions.

135 The representative of the International Confederation of Free Trade Unions (ICFTU) stated that the issues covered by the Guidelines for cases of abandonment and personal injury to and/or death of seafarers were serious and needed a prompt solution. He warned that as long as there were no mandatory solutions, the P&I Clubs and other responsible parties would not meet their obligations. It was therefore necessary to move towards mandatory solutions.

136 Most of the delegations that spoke, including the representatives of some States who already had specific legislation in place covering the subject matter of the Guidelines, supported the continuation of the work of the Group and approved recommendations in the report.

137 The Committee expressed its appreciation for the work done by the Joint Working Group, under the able chairmanship of Mr. Schindler (France). The Committee urged Member States and non-governmental organizations to respond without delay to Circular letters No. 2531 and No. 2532 on monitoring the implementation of the Guidelines.

138 The Committee authorized the Group to proceed with the development of longer-term sustainable solutions to address the problems of financial security with regard to compensation in

case of death and personal injury, leaving aside, for the time being, whether it should mandatory or not. It was understood that the eventual solution should not in any way interfere, affect, erode or in any way whatsoever, diminish any rights or remedies seafarers may enjoy in a particular State under an existing legal framework.

139 The Committee authorized the Joint Secretariat to prepare suggestions of possible sustainable solutions for the consideration of the Group at its next session. It approved the revised terms of reference for the Group as contained in annex 3 of the report and endorsed the Guidelines on method of work, as contained in annex 4 of the report.

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

140 The Committee considered document LEG 88/5 which recalled the Secretariat collaboration with the CMI in undertaking the study called for by the Conference resolution and noted that a questionnaire requesting information on the current practice of bareboat charter registration was distributed by circular letter in July 2003.

141 The representative of the CMI provided information regarding its ongoing examination of the issue of bareboat charterers. Based on 25 responses to their questionnaire, the CMI representative made the following observations:

- Bareboat charterers are recognized in a great number of countries spread evenly between Common law and Civil law jurisdictions.
- There is no common definition of the term “bareboat charterer”, but it is common ground that in such a situation full possession and control of the ship would lie with a person other than the owner. As this person would also employ the master and the crew, the bareboat charterer would also be liable in tort. It should be expected that third party liability arising from the operation of the ship, whether personal or vicarious, would be borne by the charterer.
- Certification of ships bareboat chartered-in does not seem to be addressed expressly in national laws. Responses to the questionnaires suggest that, by implication, these ships are assimilated to vessels registered in the name of their owners.
- No reliance can be placed on the certification requirements of the underlying registry, because a number of national legal systems either require deletion/suspension of the original registration or do not make bareboat charter registration dependant on the consent of the underlying registry.
- The fact that, in certain countries certificates provided for by the CLC are issued to the ship rather than the owner or the bareboat charterer is probably of no significance, because the Convention clearly places the requirement on the owner for the purposes of covering his liability.

142 The CMI suggested that a possible solution could be a resolution which recorded that the definition of “registered owner,” wherever it appeared in the context of the obligation to obtain a certificate attesting that insurance or other financial security was in force shall be deemed to include a registered bareboat charterer.

143 One delegation said that questionnaires only dealt with “bareboat-in” situations. There is no information on “bareboat-out” situations. CMI replied that when a ship is in a “bareboat-in” situation in one country, it becomes a “bareboat-out” situation in another country.

144 The representative of the CMI also said that they would give the final report at the eighty-ninth session of the Legal Committee.

F PLACES OF REFUGE (agenda item 6)

145 The Committee considered document LEG 88/6 which called the Committee’s attention to the adoption, by the twenty-third regular session of the Assembly, to the resolution on guidelines on places of refuge for ships in need of assistance. This resolution requested the Legal Committee to consider, as a matter of priority, the said guidelines from its own perspective, including the provision of financial security to cover coastal State expenses and compensation issues. Document LEG 88/6 informed the Committee that the Secretariat issued Circular letter No. 2550 on 21 January 2004 as a reminder to Governments to complete and submit the questionnaire, which was originally distributed by means of Circular letter No. 2449, concerning the provisions of existing international instruments and of national law dealing with liability and compensation and their application to places of refuge.

146 The CMI noted that it would consider liability and compensation issues at its Vancouver conference in June 2004 and would report on the outcome of its discussions to the next meeting of the Legal Committee.

147 The CMI noted that the guidelines on places of refuge were very clear but were not easy to access. He suggested that IMO should make them available on the IMO web page.

148 The representative of CMI also emphasized the importance of adopting the wreck removal convention.

149 The International Group of P&I Clubs informed the Committee that it was endeavouring to formulate a standard form letter of undertaking to facilitate access to places of refuge in appropriate cases, which would respond to covered liabilities such as pollution and wreck removal.

150 The Committee took note of the information provided by the CMI and the International Group of P&I Clubs.

G MEASURES TO PROTECT CREWS AND PASSENGERS AGAINST CRIMES COMMITTED ON VESSELS (agenda item 7)

151 The Committee recalled that, at its eighty-seventh session, the CMI had provided an interim report on its ongoing work to examine State practice on how crimes committed on vessels on the high seas were handled in different jurisdictions.

152 The Committee had decided at that session that it would be premature to engage in a substantive discussion on this matter pending receipt of the CMI report and decided to retain this

item on its work programme for the eighty-eighth session when it anticipated having the CMI report for consideration.

153 The Committee was informed that the Secretariat had issued Circular letter No. 2550 on 21 January 2004, as a reminder to Governments to complete and submit the questionnaire.

154 The Committee was provided with an interim analysis by the CMI on State practice. The CMI noted that the responses received from its national Member Associations differed in part with the view of their Governments. For that reason the report was limited to and based upon the responses of the National Member Associations of Maritime Law. In this respect, the CMI suggested that Governments should discuss the questionnaires with their National Member Associations of Maritime Law before sending their responses in order to achieve consistency.

155 Annex 2 of document LEG 88/7/1 also contained a working paper on this subject which would be considered at the CMI Conference in Vancouver in June 2004 following which the CMI would make further submissions to the Legal Committee.

- The delegation of Japan introduced document LEG 88/7/2 and gave the history and the legal aspects of the **Tajima** case.
- The Japanese delegation also suggested measures that might be taken to prevent similar incidents, including:
 - Establishment of a legal scheme
 - Adoption of a resolution or other document
 - Amendment of penal code in order to enable it to be applied to a foreign offender.

156 One delegation suggested that the provisions might be adopted in a convention strengthened by financial arrangements. Two other delegations were of the opinion that due to possible conflict with national penal codes, perhaps the Organization should consider the drafting of guidelines in the first instance.

157 The Committee expressed its appreciation to the CMI for its ongoing work in this area. It also thanked the Japanese delegation for their paper that contained a clear explanation of the problems raised by the **Tajima** case.

H MONITORING THE IMPLEMENTATION OF THE HNS CONVENTION (agenda item 8)

158 The delegation of the United Kingdom introduced document LEG 88/8 as the leader of the HNS Correspondence Group. This document provided a report of the work undertaken so far by the twelve States in the HNS Correspondence Group since the Committee's eighty-sixth session. This delegation also informed the Committee that the IOPC Fund was nearing completion of the development of an HNS Data Base which would include a 'cargo calculator' to facilitate reporting of contributing HNS Cargo.

159 This delegation said the progress being made was positive and encouraging, but also recalled that work to develop the convention had taken nearly 30 years and it had now been eight years since it had been adopted, but only four States had become parties.

160 The Committee recalled that, in his opening remarks, the Secretary-General had drawn the Committee's attention to the fact that each time the lengthy process of convening a diplomatic conference to adopt a new instrument was undertaken, it was with the conviction that there was a need for the Organization to regulate a specific activity identified, or to fill a gap in the existing legislation. It did not make sense, he said, once gaps, shortcomings, weaknesses or omissions in the legislative regime had been identified, and action had been taken to rectify them, not to proceed promptly to ratify the instruments adopted. He had called attention to the HNS Convention as one of those awaiting a sufficient number of ratifications to be brought into force.

161 The delegation of Italy informed the Committee that progress was being made in his country to collect information and comments from the ministries concerned and this would be used to prepare the report to accompany the legislative act to be submitted to Parliament, and this might take place as early as the summer.

162 The delegation of Japan informed the Committee that it will undertake a national survey and will determine how it would proceed in respect of this Convention upon the result of the survey.

163 The delegation of Slovenia informed the Committee that its ratification procedure had entered the parliamentary stage and ratification was expected in the near future.

164 The delegation of the United Kingdom, as leader of the Correspondence Group, recalled that States which ratified the HNS Convention were obligated at the time of ratification, and annually thereafter, to provide information on the volume of contributory cargo which had been received during the previous year, and this data was essential for the Organization to use in determining when the entry into force requirements had been met. Therefore, the failure to provide such information could have the effect of delaying the entry into force of this new convention. He suggested that the Secretariat might monitor the situation and provide progress reports to the Committee.

165 The Committee thanked the United Kingdom for reporting on the work undertaken so far by the States in the HNS Correspondence Group and was gratified to learn of the positive progress being made toward ratification by those States and others which had informed the Committee of developments in their countries. The Committee also endorsed the suggestion that the Secretariat should monitor the reports of contributing cargo being submitted by States at the time of ratification and provide regular progress reports to the Committee.

166 The representative of the Oil Companies International Marine Forum (OCIMF) called attention to the information in document LEG 88/INF.2 regarding a workshop on the HNS Convention to be held in Barcelona on 19 May 2004, and the Committee welcomed this industry initiative. In particular, OCIMF encouraged States to bring this workshop to the attention of their industries.

I ACCESS OF NEWS MEDIA TO THE PROCEEDINGS OF INSTITUTIONALIZED COMMITTEES (agenda item 9)

167 The Committee noted the annex to document LEG 88/9 containing the draft guidelines on the access of news media to the proceedings of various committees of the Organization submitted by Cyprus to the ninetieth session of the Council. At that session the Council had requested the committees to consider the draft guidelines for consideration at its ninety-second session.

168 The Secretary-General advised the Committee that his approach to the issue was rather liberal and derives from his acceptance of the role of the representatives of the specialized maritime press as one of partnership. Once IMO accepted the press as servants of the same industry in a common effort to enhance safety, security and environmental protection, it made sense that IMO treated them as such, i.e. partners. If such an understanding could be reached between IMO and the maritime press representatives, IMO could then work towards building the necessary climate of trust and co-operation which would assist it to move forward in the achievement of its objectives.

169 The Committee endorsed the views of the Secretary-General on trust and co-operation with the press.

170 The Committee also agreed on the need for IMO meetings to be transparent, and agreed that there was no reason to fear the press. It was noted, however, that the press should be accurate in its reporting. Some guidelines might be necessary to maintain the right balance between publicity for the work of the Organization whilst, at the same time, maintaining the efficient and effective conduct of IMO meetings. The aim would be to apply the guidelines to all committees. In this respect, the Committee noted that the rules of procedure of each committee might need to be changed to permit access of the media to the proceedings of the IMO organs.

171 The Committee agreed, in principle, to the establishment of such guidelines but suggested that the present text would require some modifications.

172 Some concern was expressed regarding the enforceability of the guidelines. There was also concern expressed concerning specific provisions such as article 5 on recording which was vague and ambiguous.

173 One delegation said that, if articles 1, 2 and 3 of the guidelines were adopted in their present form, each Committee would still be required to deal with media requests for access to its meetings. This was time-consuming and therefore a general policy regarding media access was needed.

174 Another delegation expressed its concern regarding article 10 which, in its view, was difficult to apply.

175 In this respect the Committee decided not to engage in any further discussion of the guidelines and its comments would be reported to the Council.

J MATTERS ARISING FROM THE TWENTY-SECOND EXTRAORDINARY SESSION OF THE COUNCIL, THE TWENTY-THIRD REGULAR SESSION OF THE ASSEMBLY AND THE NINETY-FIRST SESSION OF THE COUNCIL (agenda item 10)

176 The Committee took note of the information contained in document LEG 88/10 on matters relevant to the Committee arising from the twenty-second extraordinary session of the Council, the twenty-third regular session of the Assembly and the ninety-first session of the Council. With respect to the items on the revision of the SUA treaties, the draft wreck removal convention, monitoring the implementation of the HNS Convention and access of news media to the proceedings of institutionalized committees, it further noted that these had been considered under agenda items 3, 4, 8 and 9 respectively, of its agenda.

K TECHNICAL CO-OPERATION: SUBPROGRAMME FOR MARITIME LEGISLATION (agenda item 11)

177 The Committee noted the progress report provided in document LEG 88/11 and its annex on technical co-operation activities in the field of maritime legislation which had taken place from July to December 2003.

178 The Committee further noted the information provided by the Senior Deputy Director, Technical Co-operation Division, regarding the increasing number of requests from developing countries for assistance in updating their maritime legislation and the special global programme which had been designed to address new and urgent requests in this regard, as well as the information he provided on the Division's recently-completed impact assessment exercise on maritime legislation, the report of which was currently being finalized for presentation to the forthcoming session of the Technical Co-operation Committee in June 2004. The Committee also noted that the outcome of the consideration by the Technical Co-operation Committee of this report would be made available to it for study.

L ANY OTHER BUSINESS (agenda item 12)

(a) Fair Treatment of Seafarers

179 The delegation of the Philippines introduced document LEG 88/12 on behalf of the co-sponsors. This document expressed concern about the treatment of seafarers following maritime accidents and proposed that the Organization, perhaps in co-operation with ILO, consider the development of appropriate guidelines or other measures on the fair treatment of seafarers based not only on the principles of UNCLOS but also on the fact that unwarranted detention was a violation of basic human rights. The document set out four basic principles which the co-sponsors believed should be reflected in the proposed guidelines. (LEG 88/12, paragraph 5). The document invited the Committee to approve a new work item on the Committee's agenda to develop the guidelines or other measures.

180 The representative of the International Labour Office (ILO) introduced document LEG 88/12/3 which informed the Committee that the ILO Joint Maritime Commission had adopted a resolution in January 2001 on actions taken against seafarers in the event of maritime accidents, and that, more recently, a declaration on this subject had been adopted by the ILO Tripartite Working Group on Maritime Labour Standards in January 2004. The note also

expressed ILO's view that there was a need to develop, at the international level, an appropriate instrument on this subject, and that a Joint IMO/ILO Working Group should be formed and tasked, as a first step, with the development of guidelines on the issue.

181 The Secretary-General reiterated his concerns regarding the detention of seafarers serving on ships involved in accidents, which have resulted in serious pollution of the marine environment. Against the background of those concerns, he said he had travelled to Pakistan to thank the Government of Pakistan for the positive action it had taken in the previous week to set the process in motion for the repatriation of the seafarers from the tanker **Tasman Spirit** and the salvage master involved in an accident which had serious pollution repercussions following the ship's grounding off the port of Karachi in July last year. Further to thanking the Government of Pakistan, the message he had wanted to convey by travelling there was that, when we say that we care about the seafarers, not only should we mean it but also show that we do and, for the seafarers themselves from all over the world, to know that the maritime community as a whole recognizes and appreciates their contribution, cares about them and is there to look after them should there be such a need. He said he hoped there would be no such need in the future. He also expressed his appreciation to all other Governments and international organizations which had contributed to bringing the **Tasman Spirit** episode to an end.

182 The delegation of Greece made a statement expressing its great satisfaction for the release and repatriation from Pakistan of the four Greek, the three Filipino seafarers, crewmembers of the **Tasman Spirit** and of the Greek salvage master. It stressed that it found warm and active support by the IMO and the ILO, member States of the European Union, many other countries as well as NGOs such as the International Organizations of Shipowners and Seafarers. It also expressed its thanks to all who had contributed to the development of the issue. Finally, it trusted that a similar positive response would materialize in the near future in the case of the **M/V Prestige**.

183 The delegation of Pakistan expressed its appreciation to the Secretary-General for taking a personal interest and for using his good offices in the **Tasman Spirit** case, and said the repatriation of the seafarers involved had been undertaken as a good will gesture.

184 The delegation of the Philippines conveyed the sincerest thanks of the Philippines Government to the Government of Pakistan for releasing the crewmembers of the **Tasman Spirit**, which included three Filipinos, and the salvage master. He also expressed the profound gratitude of the Philippine Government to the Government of Greece, the Secretary-General of IMO, the Director-General of ILO and all others who made this possible.

185 The delegation of Malta expressed its satisfaction following the release of the crew of the **Tasman Spirit** and the salvage master. The Government of Malta, having actively participated, both at the diplomatic level and through the presence of the highest officials of the Maritime Authority in Pakistan, right from the outset of the incident, is pleased to note that ultimately a satisfactory outcome, in the interests of seafarers, was achieved and it therefore expressed its thanks and appreciation to all those who helped to bring this about.

186 The Committee expressed its satisfaction at the repatriation of the crewmembers who had been detained in connection with the **Tasman Spirit** incident. In this regard, the Committee expressed its appreciation to all those who had played a role in bringing about this result.

187 One observer delegation suggested that, in the interests of making rapid progress in the development of the guidelines, consideration should be given to establishing a joint working

group which was somewhat less formal than the Joint IMO/ILO *Ad Hoc* Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers. The Secretariat was requested to consult with the Secretariat of the ILO to determine what procedures should be followed to establish the joint working group.

188 One delegation said that cases of detention were exceptional and questioned what purpose the guidelines would serve since detention situations involved a judicial rather than administrative decision, and courts were unlikely to refer to such guidance in applying national laws and rules of procedure. This delegation also noted that the master of the ship was considered to be the shipowner's on-scene representative following an incident, and this would need to be taken into account in any guidelines.

189 It was suggested by other delegations that the guidelines should establish procedures to be followed for the fair treatment of seafarers following a maritime accident at a stage before the national judicial process commenced. The purpose of the guidelines would be, among other things, to promote harmonization, and to indicate, for example, a reasonable application of any bond that might be required to be posted for release of seafarers. Such guidance would encourage officials who may be faced with political or public pressure to act in accordance with accepted practice and international law. Furthermore, this guidance would also be an encouragement to seafarers who might otherwise feel they were on their own.

190 The Committee noted that the guidelines should not interfere with situations involving a charge of wilful misconduct, criminal negligence, or other criminal activity.

191 One delegation suggested that the guidelines would tend to promote cooperation between States in the aftermath of a maritime incident, since the fear of criminalization of seafarers could hamper investigation of the incident for its causes and for lessons to be learned. This delegation said the emphasis should be on financial compensation for damage, based on the IMO regimes of liability and compensation, rather than on punishment of seafarers. In this regard, the representative of the International Salvage Union (ISU) said that recent incidents of seafarer detention could have an adverse effect on salvage by deterring salvors from getting involved, and guidelines could go some way to addressing their concerns.

192 The Committee welcomed the initiative of the co-sponsors of document LEG 88/12, and of the ILO, in putting forward proposals for the Committee's consideration. The Committee agreed to include as a new, independent item on its work programme the development of guidelines on the fair treatment of seafarers following a maritime accident. The Committee also endorsed the proposal to establish a joint IMO/ILO Working Group on this matter.

193 Delegations were invited to submit proposals to the next session for the Committee's consideration under the new agenda item.

(b) Severe Marine Pollutants and the 1973 Intervention Protocol

194 The Committee noted the information provided in document LEG 88/12/1 concerning developments taking place in the Sub-Committee on Dangerous Goods, Solid Cargoes and Containers (DSC) affecting the list of substances to which the 1973 Intervention Protocol applies.

195 The Committee recalled that the 1973 Protocol refers to a list of substances which is established by the appropriate body of the Organization and that the Assembly had determined that the MEPC would perform that function on behalf of the Organization. In 2002, the MEPC

adopted amendments to the list which made reference to “Severe Marine Pollutants” as one of the categories of substance. However, the Committee was informed that, more recently, the UN body which oversees transport of dangerous goods in all modes had been developing new criteria which could mean that the term “Severe Marine Pollutants” would no longer be used. No final decision had been taken, but it seemed likely that in due course, an amendment will be made to the list of substances associated with the 1973 Intervention Protocol.

196 The Committee also noted in this connection that the HNS Convention defines “Hazardous and Noxious Substances” by making reference to “harmful substances... in packaged form covered by the IMDG Code”. Therefore, there may be potential implications for the HNS Convention in this work on severe marine pollutants which the HNS Correspondence Group might want to consider in due course i.e., when a final decision is taken with regard to the IMDG Code.

197 One delegation, whose statement is attached at annex 5 said it was important, from the point of view of ensuring that substances which are potential marine pollutants were safely transported, for the Committee to be kept informed when new criteria were adopted which might affect the definition of such substances. The representative of the CMI agreed that it was important to have clear criteria given the range of technical names given to hazardous substances.

(c) Liability cover under the Protocol of 2002 to the Athens Convention, 1974

198 The representative of the International Group of P&I Clubs introduced document LEG 88/12/2 in which that Group expressed its concern that sufficient liability cover may not be available to permit certification of the liability exposure under the Athens Protocol, 2002. In this regard it specifically referred to war risks and those arising out of the use of chemical, biological, bio-chemical or electromagnetic weapons. The representative recalled that there were two principle areas of concern. First, the 2002 Athens Protocol required, for a vessel capable of carrying 3000 passengers, certificated cover up to a value of SDR 1.2 billion. However, it could not be assumed that this level of liability cover would automatically be available from the P&I Clubs. Secondly, it pointed out the difficulties relating to cover for terrorism generally and the unavailability of cover for liability for loss caused by chemical or biological weapons. The Group did not have a solution to offer but stood ready to assist in any initiative undertaken by the Committee.

199 The delegation of Norway noted that these were not new issues but they would need to be addressed. This delegation stated that it would be exploring the insurance issue by informally exchanging views and experience with other delegations. The contact for this informal correspondence would be Professor Erik Røsag. All delegations, including observer delegations, were encouraged to contact either the Norwegian delegation or Professor Røsag at erik.rosag@jus.uio.no

200 The Committee welcomed this initiative and hoped the informal consultations would result in ideas for consideration by the Committee.

ANNEX 1

AGENDA FOR THE EIGHTY-EIGHTH SESSION

- Opening of the session
- 1 Adoption of the agenda
 - 2 Report of the Secretary-General on credentials
 - 3 Review of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988, and its Protocol of 1988 relating to Fixed Platforms Located on the Continental Shelf (SUA Convention and Protocol)
 - 4 Draft convention on wreck removal
 - 5 Provision of financial security:
 - (i) progress report on the work of the Joint IMO/ILO *Ad Hoc* Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers; and
 - (ii) follow-up on resolutions adopted by the International Conference on the Revision of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974
 - 6 Places of refuge
 - 7 Measures to protect crews and passengers against crimes committed on vessels
 - 8 Monitoring the implementation of the HNS Convention
 - 9 Access of news media to the proceedings of institutionalized committees
 - 10 Matters arising from the twenty-second extraordinary session of the Council and the twenty-third regular session of the Assembly
 - 11 Technical Co-operation: subprogramme for maritime legislation
 - 12 Any other business
 - 13 Report of the Committee

ANNEX 2**RESERVATION BY THE DELEGATION OF INDIA ON THE MANDATE ISSUE REGARDING THE REVIEW OF THE CONVENTION FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF MARITIME NAVIGATION, 1988, AND ITS PROTOCOL OF 1988 RELATING TO FIXED PLATFORMS LOCATED ON THE CONTINENTAL SHELF (SUA CONVENTION AND PROTOCOL)**

The delegation of India was in agreement with the need to effect amendments to the SUA Convention to ensure the safety of maritime navigation. But it was of the view that discussions on this issue should be within the framework of the principles contained in Assembly resolution A.924(22). Further, it felt that incorporating principles related to the Nuclear Non-Proliferation Treaty (NPT) into the SUA protocol would be going beyond the mandate of the Legal Committee, flowing from resolution A.924(22). To forge consensus on the question of mandate, the delegation of India proposed that document LEG 88/3, containing the draft amendments to the SUA Convention and Protocol proposed by the United States be referred back by the Committee to the IMO Assembly at its next session, with a view to determining whether document LEG 88/3 was in conformity with resolution A.924(22). Since this proposal was not accepted, India was constrained to record its reservations with respect to the discussion of NPT-related principles by the Committee.

ANNEX 3

RESERVATION BY THE DELEGATION OF PAKISTAN ON THE MANDATE ISSUE REGARDING THE REVIEW OF THE CONVENTION FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF MARITIME NAVIGATION, 1988, AND ITS PROTOCOL OF 1988 RELATING TO FIXED PLATFORMS LOCATED ON THE CONTINENTAL SHELF (SUA CONVENTION AND PROTOCOL)

Pakistan believes that amendments proposed to the SUA Convention are outside the scope of the mandate contained in resolution A.924(22). The proposed amendments violate basic principles of international law by virtue of being discriminatory and based upon rules/criteria of exclusive informal groupings with no international legitimacy.

ANNEX 4

**REPORT OF THE CHAIRMAN (UNITED STATES) OF THE
WORKING GROUP ON REVIEW OF THE CONVENTION FOR THE
SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF
MARITIME NAVIGATION, 1988, AND ITS PROTOCOL OF 1988
RELATING TO FIXED PLATFORMS LOCATED ON THE CONTINENTAL SHELF
(SUA CONVENTION AND PROTOCOL)**

1 As agreed by the Legal Committee when discussing the organization of its work for the session, after some of the policy issues had been considered in plenary, the work on this subject continued in a Working Group that met concurrently with the Committee. The Group met from Tuesday, 20 April to the morning of Friday, 23 April 2004 and was chaired by the United States delegation.

2 The following delegations participated: Antigua and Barbuda, Argentina, Australia, Bahamas, Bangladesh, Belgium, Brazil, Bulgaria, Canada, Chile, China, Denmark, Finland, France, Germany, Ghana, Greece, Hong Kong, India, Indonesia, Iran, Ireland, Israel, Italy, Japan, Liberia, Malaysia, Mexico, the Netherlands, Norway, Pakistan, Panama, Philippines, Poland, Portugal, Republic of Korea, Russia, Singapore, Slovenia, South Africa, Spain, Sweden, Trinidad and Tobago, Turkey, the United Kingdom and the United States. The following observer delegations also participated: International Chamber of Shipping (ICS), International Shipping Federation (ISF), International Confederation of Free Trade Unions (ICFTU), the International Federation of Shipmasters' Associations (IFSMA) and the World Nuclear Transport Institute (WNTI).

3 The Working Group based its work on the text contained in annexes 1 and 2 of document LEG 88/3, which was submitted by the United States delegation as co-ordinator of the intersessional work. A revised draft is being prepared, based on the work of the Working Group at the eighty-eighth session of the Legal Committee and this will be circulated shortly to the Correspondence Group.

4 The Group discussed the following articles:

3 bis(1)

Chapeau

It was suggested to include the phrase “within the meaning of this Convention”. There was little objection to this proposal. It was noted that a similar provision should also be included in Article 3 and Article 3 *ter*.

Subparagraph (a)

A few members asked that certain language used in the European Union Framework Decision on Terrorism be included in the terrorist motive chapeau. It was also suggested that “by its nature or context”, language used in the Terrorist Financing Convention, be deleted from the chapeau. A large majority favoured the existing text.

Subparagraph (a)(i)

It was proposed to replace “explosive, radiological material or prohibited weapon” with “explosive, biological agent or toxin, toxic chemical or radiological material”. This was supported by some members. Most members favoured the existing text. Certain members objected here (and elsewhere where the term is used) to the term “prohibited weapon”. Finally, it was suggested that “radiological” be replaced by “radioactive”. No objection was made to this change and a similar change in subparagraph (b).

Subparagraph (a)(ii)

Although a handful of members expressed concerns about inclusion of an environmental offence, the vast majority favoured inclusion of this provision replacing the phrase “or other like substance” for “or other similar hazardous or noxious substance”. Some members expressed concern about the “or is likely to cause” phrase (and also in (iii)), but the majority were in favour of the current text.

Subparagraph (a)(iii) & (iv) were not yet considered by the group.

Subparagraph (b)

This paragraph was the most contentious. Certain members made a variety of arguments against the inclusion of this provision, including that the provision was not within the scope of the mandate, adversely affected seafarers, was discriminatory and criminalized the activities of states. The Working Group noted that some of these objections were not appropriately before the Working Group. The delegation of Pakistan objected to the report in full on the basis, *inter alia*, that it failed to reflect concerns about the operational aspects of the amendments and their consistency with the IMO convention and international law. In particular, the delegation was concerned that Article 3 *bis* criminalized activities of member states (including trade) that were legitimate under international law.

Many members were concerned that the concept “transports” was too broad and needed clarification. Proposed text on this subject was circulated. Because of time constraints this issue was not fully discussed, it will be considered at the next meeting. Some members also asked for a fuller discussion whether any, or all, of the subparagraphs were preparatory offences, already covered in 3 *ter*. This paragraph requires further discussion.

Subparagraph (b)(i)

It was proposed that the “knowing that it is intended” phrase be replaced by “when he has serious and reliable information which makes it probable” (a change that would also apply to (iii) and (iv)). While a great majority of the members did not support this proposal, there was some sentiment that additional specificity needed to be added to the “knowledge” element.

Subparagraph (b)(ii)

Some members questioned whether the knowledge element for this offence was sufficient. There was no objection to a proposal to add the phrase “knowing it to be a biological weapon, chemical weapon, nuclear weapon or other nuclear explosive device”. This will be

discussed further at the next meeting. Some members wanted the inclusion of a terrorist motive, but most did not. Some members suggested deletion of the subparagraph on the basis that its inclusion was beyond IMO's mandate.

Subparagraph (b)(iii) and (iv)

There was support for the view that further work could be done with respect to the "knowledge and intent" requirements. Several members suggested the inclusion of a terrorist motive. However, more members were hopeful that some form of enhanced intent related to the purpose of the delivery could satisfy this concern. A number of proposed texts were presented for consideration at the next meeting. But nothing was finalized. Some members expressed concern about the lack of internationally agreed definitions of material and equipment and suggested deletion of these subparagraphs.

Subparagraph (1)(c)

This paragraph was not discussed.

Article 1 (definitions)

Environmental Damage. Although a few members did not favour inclusion of this provision in the definition of "serious injury and damage", a substantial majority favoured its inclusion. Compromise language, "substantial damage to the environment, including to the air, water, soil, fauna or flora", was proposed as a bracketed alternative and will be discussed further at the next meeting.

Prohibited Weapon. With the exception of a few delegations who opposed the concept in whole or in part as being beyond the IMO mandate, there was no general objection to the definition, but a suggestion that "any" be inserted before "equipment" in the chemical weapon definition. However, discussion of this definition was limited due to time constraints and will resume at the next meeting.

Person. An initial discussion took place; due to time restraints it will have to be resumed at the next meeting.

Article 8 bis

General

Several members raised the question whether 8 *bis* should apply to all offences covered in 3, 3 *bis* and 3 *ter*, or only to a selection of the offences.

Paragraph 1

A great majority of members preferred the elections of "covered by this Convention" and "international law." A suggestion to include text that considers alternatives other than boarding at sea as a first option for taking appropriate measures was generally supported, but there was no agreement on where this provision might best be located, and there will be further discussion at the next meeting.

Paragraph 2

There was consensus in favour of a revised draft, deleting the reference to a ship's cargo or a person on board the ship, and inclusion of text that a requested party may seek additional information (added also in paragraphs 3 & 4). The consensus preference was "reasonable grounds to suspect" and "flying its flag."

It was suggested that the term "engaged in" be used in place of "involving," but most members did not support this.

Paragraph 3

One delegation proposed a redraft; however, a consensus existed for retaining the existing draft with the understanding that, where possible, concepts from the proposed redraft would be included.

There was majority support for "flying the flag or displaying marks of registry." There was majority support for "reasonable grounds to suspect; however, some delegations preferred "reasonable grounds to believe." One delegation requested additional detail to be included in any request to a flag State. No support existed for this proposal.

After considerable discussion, the general view was to delete the first bracketed paragraph following subparagraph (b) and to modify the second bracketed paragraph as an opt-in provision.

Suggestions were made to delete the time limit, to add a time certain for responses to requests in the last paragraph, and to provide authority to board absent adequate flag State control, but a majority preferred the existing text.

A proposal was made to address the issue of vessels without nationality both here and in paragraph 5. Most members felt such further specification was unnecessary because the paragraph 9 savings clause retains the existing international law regimes.

Paragraph 4

As discussed above, a majority of members favored "flying the flag or displaying marks of registry" and "reasonable grounds to suspect." Some delegations preferred "reasonable grounds to believe."

Paragraph 5

A proposal was made to include text that would provide for primary criminal jurisdiction of the flag State following a boarding. A slim majority of members did not support this proposal. A second proposal to include text on the handling of evidence was offered but not fully discussed due to time constraints. Because discussion of both proposals was not completed, there will be further discussions at the next meeting.

ANNEX 5**STATEMENT BY THE DELEGATION OF ITALY CONCERNING SEVERE MARINE POLLUTANTS AND THE 1973 INTERVENTION PROTOCOL**

The Italian delegation, cannot, at this stage, hide its concern regarding the measures that the Committee is invited to take in document LEG 88/12/1. It is being requested of the Legal Committee that, in an effort to achieve harmonization with the GHS system, the definition of Severe Marine Pollutants (PP) as indicated in the Convention should be abandoned. But it seems to us that it is precisely in the case of the Convention that one cannot speak simply of a question of terminology. On the contrary, in our view, the identification of PP is a way of guaranteeing the highest level of environmental protection that is required by the International Convention relating to Intervention on the High Seas and its Protocol.

Again, the indication of PP for severe marine pollutants allows better stowage on ships and, in the case of incidents, a more specific notification to the coastal authorities of the substances involved.

This is why we request LEG 88 to defer this decision until such time as new criteria for indicating substances harmful to the aquatic environment are adopted in other IMO instruments. In this way it will be possible to have the same marine environment protection guarantees as indicated previously.
