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92nd session
Agenda item 13

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

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1 INTRODUCTION AND ADOPTION OF THE AGENDA

1.1 The Legal Committee held its ninety-second session at UNESCO Headquarters, Paris, from 16 to 20 October 2006, under the chairmanship of Professor Lee-Sik Chai (Republic of Korea).

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

ALGERIA	KENYA
ANGOLA	LATVIA
ANTIGUA AND BARBUDA	LIBERIA
ARGENTINA	LITHUANIA
AUSTRALIA	MALAYSIA
BAHAMAS	MALTA
BANGLADESH	MARSHALL ISLANDS
BELGIUM	MEXICO
BELIZE	NAMIBIA
BRAZIL	NETHERLANDS
BULGARIA	NEW ZEALAND
CANADA	NIGERIA
CHILE	NORWAY
CHINA	PANAMA
CUBA	PERU
CYPRUS	PHILIPPINES
DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA	POLAND
DEMOCRATIC REPUBLIC OF THE CONGO	PORTUGAL
DENMARK	REPUBLIC OF KOREA
DOMINICA	RUSSIAN FEDERATION
ECUADOR	SAUDI ARABIA
EGYPT	SINGAPORE
ESTONIA	SOUTH AFRICA
FINLAND	SPAIN
FRANCE	SWEDEN
GERMANY	SWITZERLAND
GHANA	THAILAND
GREECE	TURKEY
INDIA	UKRAINE
INDONESIA	UNITED KINGDOM
IRAN (ISLAMIC REPUBLIC OF)	UNITED REPUBLIC OF TANZANIA
IRELAND	UNITED STATES
ITALY	VANUATU
JAPAN	VENEZUELA

and the following Associate Member of IMO:

HONG KONG, CHINA

1.3 A representative from the International Labour Organization participated in the session.

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

EUROPEAN COMMISSION (EC)

MARITIME ORGANISATION FOR WEST AND CENTRAL AFRICA (MOWCA)

INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS (IOPC FUNDS)

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 HARBORS (IAPH)

BIMCO

INTERNATIONAL ASSOCIATION OF CLASSIFICATION SOCIETIES (IACS)

OIL COMPANIES INTERNATIONAL MARINE FORUM (OCIMF)

INTERNATIONAL ASSOCIATION OF PRODUCERS OF INSURANCE AND
REINSURANCE (BIPAR)

INTERNATIONAL FEDERATION OF SHIPMASTERS' ASSOCIATIONS (IFSMA)

INTERNATIONAL ASSOCIATION OF INDEPENDENT TANKER OWNERS
(INTERTANKO)

INTERNATIONAL GROUP OF P AND I ASSOCIATIONS (P & I CLUBS)

INTERNATIONAL ROAD TRANSPORT UNION (IRU)

INTERNATIONAL COUNCIL OF CRUISE LINES (ICCL)

INTERNATIONAL CHRISTIAN MARITIME ASSOCIATION (ICMA)

The Secretary-General's opening address

1.5 In welcoming participants, the Secretary-General extended the Committee's thanks to UNESCO for hosting the meeting and providing such excellent facilities. He assured the Committee of the Secretariat's determination to continue providing the same high quality service to all meetings held during the refurbishment of IMO's Headquarters, whether in London or elsewhere, and emphasized his appreciation for the understanding, co operation and efforts of all IMO staff, which had facilitated the smooth transition from the old to the new regime of both Headquarters and meeting venues. Although the meeting was being held in unfamiliar surroundings, he assured the Committee that everything possible would be done to provide all the services it needed and thanked it for its understanding and co-operation.

The Secretary-General then drew the Committee's attention to the response undertaken by IMO to combat last August's oil pollution incident in the Mediterranean, which affected the shoreline of Lebanon and the coast of southern Syria. Conscious of the need to mitigate the effect the oil spill might have on human health and livelihoods in the region, and in response to requests for assistance, IMO promptly initiated several actions within the framework of UNCLOS and the OPRC and Barcelona Conventions, which were carried out with UNEP, the Regional Marine Pollution Emergency Response Centre for the Mediterranean Sea and others.

An action plan was drafted to address the emergency; technical studies were conducted; missions were fielded to commence response activities; and a high-level co-ordination meeting was convened in Piraeus, on 17 August 2006, which was co-chaired by the Secretary-General and his counterpart in UNEP, Executive Director Achim Steiner, and attended by Ministers and other officials of the affected countries (Lebanon and Syria), the three countries at potential risk (Cyprus, Turkey and Greece), the European Commission, the oil industry and international organizations. The meeting approved the Action Plan and, to support its execution, a US\$50 million oil spill clean-up project had been developed and presented to a donor meeting held in Stockholm, addressing the recovery process and the long-term reconstruction of the affected infrastructures. Current response operations were concentrating on shoreline clean-up and recovery of bulk oil in confined areas, as well as on mobilizing the further financial and in-kind resources needed to implement the agreed Action Plan.

The Secretary-General thanked the countries and institutions which had provided, or were about to provide, assistance and appealed to all others able to do so to contribute generously to the Marine Pollution Response Fund established by IMO for that purpose. He also commended the exercise as an example of the Organization's sensitivity over the marine environment and its eagerness and preparedness to assist in mitigating the damage that may be caused to it even by sources other than shipping operations, as well as an example of the swiftness and effectiveness which UN bodies, working together, are capable of in responding to such unique challenges.

Turning to the Committee's agenda, the Secretary-General stated that the priority item was the completion of the draft convention on the removal of wrecks, which had been on the Committee's agenda intermittently for over 30 years, making it the longest pending issue in the work programme of IMO. However, thanks to the persistence of its advocates and the efforts of a correspondence group led by the delegation of the Netherlands, the draft convention was nearing completion. Accordingly, the Secretary-General called on the Committee to approve the draft convention at this session, as planned, so that it could be considered and adopted by a diplomatic conference scheduled to be held from 14 to 18 May 2007, at the United Nations Office in Nairobi (UNON), Kenya. To achieve that goal, the Committee should focus on resolving all outstanding issues, rather than revisiting others on which consensus had already been achieved, so as not to re-open them during the five-day diplomatic conference.

This would be the first IMO conference to be hosted by a developing country, reaffirming IMO's universal mandate in the field of maritime safety and security, protection of the marine environment and facilitation of maritime traffic, as well as strengthening its efforts to ensure effective implementation of its mandate through co-operation with developing regions. The Secretary-General reiterated his thanks to the Government of Kenya for making the convening of the Conference possible, and to UNON for hosting it in its attractive and well-equipped premises, which, following related discussions with the President and Transport Minister of Kenya, he had visited in May 2006. He was confident that the Conference would be well organized and efficiently run, and encouraged as many delegates as possible to attend.

Another important item on the Committee's agenda, the Secretary-General continued, was the fair treatment of seafarers following a maritime accident. Guidelines on this subject had been adopted by the Committee, approved by the Governing Body of ILO and promulgated thereafter. However, several related submissions were before the Committee at this session and he trusted that their consideration would assist it in optimizing the Guidelines, as required. While acknowledging that certain provisions in the Guidelines might give rise to concern for some delegations, he exhorted the Committee to bear in mind that they are urgently needed recommendations, that seafarers need to be assured of a dependable regime on fair treatment, and

that any changes the Committee might adopt would also need to be approved by the Governing Body of ILO.

Regarding the Protocol of 2002 to the Athens Convention, 1974, the Secretary-General acknowledged the Committee's efforts to provide the necessary guidance to States in order to attract sufficient ratifications of the Protocol to enable its entry into force. The Committee had undertaken similar efforts with regard to the HNS Convention, resulting in eight of the requisite 12 ratifications being deposited, although the information as to contributing cargo had been less forthcoming. He noted that the 2002 Athens Protocol had, to date, been ratified by just four States (representing only 0.13 per cent of the world's merchant shipping fleet), against the 10 States required for its entry into force. The main concerns behind the delay in ratification related to the ability of the insurance market to provide compulsory cover up to the general limits established under the Protocol, as well as cover for injury and damage arising from acts of terrorism. Considerable intersessional work had, nevertheless, been done to develop a workable solution addressing these concerns. Therefore, in view of the urgency attached by many States to the prompt implementation of the Protocol, the Secretary-General urged the Committee to finalize the related guidelines expeditiously, as this would avoid any possibility of unilateral or regional measures being taken, which might conflict with the provisions of the Protocol.

In the context of the Organization's Strategic Plan, the Secretary-General recalled that the Committee had been invited to report on its planned outputs for the 2006-2007 biennium and prepare those planned for 2008-2009, all of which would assist the Committee to identify, at this session, its future direction following the adoption of the wreck removal convention. In so doing, the Committee should correlate the High-level Actions and associated priorities set out in Assembly resolution A.971(24) with its planned activities and outputs over the next biennium and seek guidance from the Strategic Directions set out in Assembly resolution A.970(24), applicable to the six-year period 2006-2011. He was confident that, as requested, the Committee would provide the Council and Assembly with sound views and proposals on these matters.

The Secretary-General then emphasized the importance of abiding by the security rules in place for IMO meetings, as set out in Circular letter No.2692 and over which there should be no complacency or compromise, taking into account the various venues where IMO meetings are scheduled to be held during the refurbishment period.

He also highlighted the Voluntary IMO Member State Audit Scheme and the globally-recognized need to ensure its successful introduction in the IMO system. Having informed the Committee of the progress being made in its execution, the Secretary-General sought the support and co-operation of all for its wide and effective implementation and looked forward to receiving many more notifications from Governments of their preparedness to be audited, together with the particulars of many more auditors from whom to choose audit teams.

Before concluding, the Secretary-General paid a special tribute to Mr. Måns Jacobsson, who was attending his last session of the Committee in his capacity as Director of the IOPC Funds Secretariat. Mr. Jacobsson had dedicated a significant proportion of his professional life to the development, management and growth of the Funds – building up a very close working relationship with IMO and the Committee, in particular – and had been a powerful force behind the adoption of the 1992 Fund Protocol and, more recently, that of the 2003 Supplementary Fund Protocol. Through his hard work, skill and devotion to his duties, Mr. Jacobsson had made the Funds the respected institutions they were today. The Secretary-General and the Committee wished Mr. Jacobsson well on his retirement and welcomed his successor, Mr. Willem Oosterveen of the Netherlands, who could count on IMO's assistance, in any way possible.

The Secretary-General closed his opening address by underlining his confidence that, with good will, co-operation and commitment, and under the able direction of its Chairman, the Committee would have another successful and fruitful session.

Adoption of the Agenda

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

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

2 REPORT OF THE SECRETARY-GENERAL ON CREDENTIALS

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

3 ELECTION OF OFFICERS

3.1 The Committee re-elected, by acclamation, Professor Lee-Sik Chai (Republic of Korea) as Chairman for 2007. The Committee also re-elected, by acclamation, Mr. Kofi Mbiah (Ghana) and elected Mr. Walter de Sá Leitão (Brazil) as Vice-Chairmen for 2007.

4 DRAFT CONVENTION ON WRECK REMOVAL

4.1 The Committee continued with its consideration of this agenda item and agreed that the text contained in the annex to document LEG 92/4 would be used as the basic text for the final reading of the draft wreck removal convention (DWRC).

4.2 The delegation of the Netherlands, as the lead delegation, noted three minor editorial errors which, it was suggested, should be corrected as follows:

- in article 1.4(d), delete the first square brackets and the text within;
- in article 8.2, replace “reasonable cause” with “reason”; and
- in article 10.8, delete “in accordance with paragraph 6(c).”

4.3 At the proposal of the Chairman, the Committee decided to dispense with general presentations of submissions and start the debate by addressing the following three main issues:

- application in the territorial sea (document LEG 92/4/3);
- new article on settlement of disputes (document LEG 92/4/1); and
- gross tonnage, requirements to maintain compulsory insurance and liability in respect of acts of terrorism.

4.4 The delegation of Indonesia referred to the importance of adopting international rules on the removal of wrecks in the light of the recent incident involving the vessel **Hyundai 105**, a wreck located in a busy shipping lane in Indonesian waters in the Strait of Singapore. The delegation noted that the size of the wreck had resulted in reducing the underwater clearance of ships navigating through the shipping lane, thereby threatening the safety of navigation. Oil spill from the wreckage also caused an adverse environmental impact, leading the Government to

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take several emergency measures including a necessary salvage response and the installation of emergency buoys around the wreck. The delegation also referred to its request to the owner of the vessel to take appropriate action to remove the wreck and to compensate the Government for damage incurred.

4.5 The Secretary-General briefed the Committee on meetings organized in Jakarta in 2005 and Kuala Lumpur in 2006, aimed at enhancing safety of navigation, security and environmental protection in the Straits of Malacca and Singapore. At the Jakarta meeting, six safety issues had been identified, all of them priority issues, which it was agreed would form the basis of projects to be developed, each under the leadership of a different State. At the Kuala Lumpur meeting, five States had communicated their intention to sponsor five of the projects, the wreck removal project being the sole one left without sponsorship. The Secretary-General expressed the hope that this lack of sponsorship would not last long, in the light of the importance of the removal of wrecks in straits used for international navigation.

4.6 The observer delegation of the International Group of P and I Associations (P&I Clubs), in relation to the sinking of the vessel **Hyundai 105**, informed the Committee that the owner of the vessel and his P&I Club, which was a member of the International Group, together with their lawyers and experts, were in discussions with the Indonesian Authorities concerning the removal of the wreck. He understood that the bunkers had been removed from the wreck within six weeks of the sinking. He was not aware of any correspondence from the Government authorities which had gone unanswered.

Application to the territorial sea

4.7 In introducing document LEG 92/4/3 on behalf of the co-sponsoring delegations, the delegation of Denmark pointed out that most wrecks are situated in the territorial sea, and that a selective opting-in solution, as in the present draft, would lead to lack of uniformity and transparency. Therefore, the following two alternative solutions regarding the application of the DWRC in the territorial sea, which had been discussed at the Committee's ninety-first session, were set out in the annex to the document:

- solution 1 – expanding the scope of application to apply to the territory, including the territorial sea, in the definition of “Convention area” in article 1; or
- solution 2 – include an opt-in provision for the same area in a new article 3*bis*.

4.8 The delegation further noted that the application of the convention to the territorial sea would not in any way restrict the jurisdiction of States in the territorial sea with regard to measures not covered by the convention. Such measures would still be possible, but would not be covered by the mandatory insurance and direct action provisions, as provided for in the convention.

4.9 The delegation of Argentina, with reference to paragraph 6 of its submission, in document LEG 92/4/5, stated that it could not accept solution 1, *i.e.* a mandatory application in the territorial sea, because in its view, such an application would be incompatible with the international law of the sea, as codified in UNCLOS, in particular, article 21. While the delegation was prepared to examine solution 2 if a majority of delegations supported it, such a solution had no real purpose, since States, in their territorial seas, already had the right to take those measures. In the light of the above, this delegation supported the present draft.

4.10 The delegation of the Netherlands, as the lead delegation, recalled that the scope of application, as contained in document LEG 92/4, had been approved by the Committee at its ninetieth session, on the basis that nothing prevented a State Party from applying some or all of the provisions of the convention to its territorial seas (document LEG 90/15, paragraphs 273 and 274 refer). In this respect, it referred to article 13(2) of the current text.

4.11 The delegation also recalled that, when the issue was addressed at the ninety-first session of the Legal Committee, the proposal to apply the convention as a whole in the territorial sea had again met with difficulties.

4.12 Against this background, and in the light of the decision of the Council to hold a diplomatic conference in May next year, the delegation considered the proposals in document LEG 92/4/3, at this stage, to be too far reaching with possible unforeseen consequences. It suggested that the application of the convention in the territorial sea might be the subject of a conference resolution, recommending that States apply their national legislation with respect to recovery of costs, compulsory insurance and direct action.

4.13 Several delegations, including industry representatives, were in favour of solution 1 for the following reasons:

- it would add clarity and ensure harmonized and uniform application;
- it would follow precedents in existing IMO treaties;
- it would not restrict the jurisdiction of coastal States in respect of matters not regulated in the convention;
- most wrecks are located in the territorial sea;
- it would encourage shipowners to consider carefully the condition of their ships before sending them out to sea; and
- draft article 13(2) in the current text only applies to insurance provisions which, if adopted, would lead to different regimes applying in the EEZ from that in the territorial sea.

4.14 The observer delegation of the International Group of P&I Associations (P&I Clubs) stated that insurers would not be in a position to issue certificates for different regimes to those contained in the convention and, as a result, States would not then be in a position to issue certificates themselves.

4.15 Several other delegations that intervened were in favour of solution 2, set out in document LEG 92/4/3, for the following reasons:

- most wreck removal activities take place in the territorial sea of States;
- it would promote uniformity and facilitate the implementation of the regime; and
- unlike solution 1, it would not impose a solution on coastal States but allow them the freedom of choice.

4.16 A slight majority of delegations were in favour of maintaining the basic text contained in article 13, paragraph 2 of document LEG 92/4, unchanged, for the following reasons:

- it allows States, but does not force them to apply those provisions relating to compulsory insurance or evidence of financial security in their territorial seas;
- compulsory extension of the scope of the convention to the territorial sea would result in obliging coastal States to consult on removal of wrecks in that zone. Such an obligation would be incompatible with international law of the sea as codified in UNCLOS, which recognizes the sovereignty of coastal States over their territorial seas;
- both solutions would require substantial re-drafting of the draft convention; and
- the text in article 13(2) is wise in its simplicity and strikes the right balance, in spite of the problems it may cause in its day-to day application.

However, some of those delegations could accept solution 2 if a majority of delegations wished to have it.

4.17 One delegation requested a vote on this issue.

4.18 The Committee recognized that the issue of the application of the treaty to the territorial sea had been discussed at length on previous occasions. Each time, it had been a divisive issue, decided by a slim majority. In light of the above, the Committee decided to constitute an informal working group, under the leadership of the delegation of Denmark, to explore further the possibility of incorporating solution 2 into the draft text.

4.19 Following the deliberations of the informal working group, the Committee was presented with two proposals, contained in documents LEG 92/WP.3 and LEG 92/WP.4, with alternative solutions for the scope of the convention.

4.20 At the request of the delegation of Cyprus, information was provided as to which delegations participating in meetings of the informal group had supported the proposal contained in document LEG 92/WP.3, since this Working Paper had been submitted to, and accepted by, the Secretariat without the explicit mention of the names of the co-sponsors or participants. The document was reissued as document LEG 92/WP.3/Rev.1, listing the delegations which had participated in the group but which did not necessarily support the proposals in the paper.

4.21 The delegation of Denmark presented the alternative proposed in document LEG 92/WP.3, as a voluntary, optional solution to allow States to apply the convention in their territory, including the territorial sea. As the delegation explained, a new preambular paragraph would serve to emphasize that States which had opted in, would be allowed to implement national schemes in accordance with international law, but outside the scope of the convention. The proposed text aimed at ensuring that insurance, with direct action, would be applicable in the territory and the territorial sea, in line with precedents established in other international liability schemes, such as the HNS and Bunkers Conventions. In this regard, language similar to that contained in those treaties had been used to ensure harmonization. Transparency would be achieved through the possibility for all States to learn which countries were opting in, through an adequate notification procedure administered by the Depository.

4.22 The delegation provided some explanations on each of the proposed amendments to the basic text and further clarified some issues in response to questions from the Committee, as follows:

- the replacement of the words “operating in the marine environment” by “seagoing” in the definition of “ship” enabled its alignment with definitions in other treaties that provided for a regime of compulsory insurance similar to the one proposed for the DWRC. It would also help to differentiate sea-going vessels from inland waterway transportation;
- the provision in new paragraph 12(i), according to which paragraphs 1 and 10 of article 10 would not apply to States which had made an opt-in declaration, served the purpose of enabling States not to apply, for reasons of sovereign jurisdiction, the procedures prescribed in those paragraphs;
- the proposal contained in new paragraph 12(ii) of article 10, namely, that application of article 10.4 should be subject to national law, addressed the case of States experiencing difficulties in developing a process of consultation in view of their regime of sovereign jurisdiction over their territorial seas. It also provided States with an alternative way of dealing with cases involving cabotage navigation, in accordance with their national law;
- the addition of a reference to UNCLOS and customary international law in the proposed new preambular paragraph should not present major difficulties; and
- neither would the replacement of the word “delivery” (referring to the notification to the Depository of the opt-in extension to the territorial sea) by reference to the date of its receipt by the Depository. As stated in article 21, paragraph 2(a)(iv), the Secretary-General of IMO, acting as Depository, would inform all States of the receipt of any declarations or notifications received pursuant to this convention.

4.23 In introducing document LEG 92/WP.4 the delegation of Argentina reminded the Committee that the preference of the co-sponsors was to maintain the basic text, and to refine article 13.2, as a way of avoiding voting on this issue. Nevertheless, the basic text should be considered for the purpose of any voting. The delegation explained that the proposal reflected the understanding that the prospective convention would essentially be a public law treaty, incorporating elements of private law, namely liability and compensation, and a regime of compulsory insurance. The aim of the proposal was to avoid the fragmentation of such a regime by means of applying the provisions relevant to the implementation of the insurance cover. The proposal represented a simple solution which, while enabling States to apply the treaty to the territorial sea if they so wished, would preserve basic principles of sovereign jurisdiction over this area established by UNCLOS.

4.24 In response to questions from the Committee, the delegation clarified some aspects of this proposal, as follows:

- the reference (in paragraph 2 of the proposal) to article 17 of the basic text, is aimed at safeguarding rights and obligations under UNCLOS and customary international law in case of a declaration of extension of the application to the territorial sea. The safeguard would apply to all States, whether they are parties to UNCLOS or the DWRC or not;
- unlike the alternative proposal under consideration, the proposal in document LEG 92/WP.4 restricted itself to the territorial sea and did not cover the extension to the territory, including internal waters; otherwise States would, among other things, be obliged to consult with other States to remove wrecks in waterways entirely within their own territory; and
- the reference to articles 11, 12 and 13, is aimed at clarifying the scope of the extension to the territorial sea, for the purpose of the insurance cover. Articles 8, 9, and 10 (as referred to in article 11), would apply as long as they were related to the provision of financial security and the operation of the insurance cover.

4.25 The Committee had an extensive discussion on both clarifications, but was unable to reach a consensus on whether either of them should be incorporated into the text to be considered by the diplomatic conference. The Committee, accordingly, considered voting on whether to maintain the basic text, or to incorporate one of the two options contained in documents LEG 92/WP.3/Rev.1 and LEG 92/WP.4. One delegation reserved its position.

4.26 Some delegations requested that any voting be postponed pending the outcome of some last minute negotiations. As a result of these negotiations, the Committee was requested to consider the following proposals:

- paragraph 2 of article 13 should be put into square brackets;
- the two proposals should be annexed to the report of the session; and
- negotiations would continue between now and the diplomatic conference, under the leadership of Germany, with a view to producing a proposal reflecting the widest possible consensus.

4.27 Procedural objections were raised by some delegations regarding the viability of these proposals as alternatives to voting. The delegation of Cyprus stated that, following the decision of the Committee to vote, and the Chairman's decision to suspend debate on these issues, delegations had been deprived of their right to voice their preference on the different proposals, including the original text contained in document LEG 92/4. The delegation mentioned that the Committee did not decide at any moment to reverse its decision for a vote.

4.28 The Committee agreed to work after hours in English only in order to complete its discussion of the basic text. In this connection, the delegation of France reserved its position.

4.29 After an extensive discussion related to procedural issues, the Committee decided to insert square brackets around paragraph 2 of article 13 in the texts to be considered by the Conference, and to annex the two proposals contained in documents LEG 92/WP.3/Rev.1 and

LEG 92/WP.4 to the report of the Committee. These two documents are attached at annexes 2 and 3 respectively.

4.30 The Committee noted that negotiations among interested delegations would continue via a correspondence group, chaired by Germany*. The Committee also noted that a meeting had been scheduled for March 2007, to be hosted by the delegation of the United Kingdom, with a view to achieving the widest possible consensus on the scope of the convention.

4.31 The delegation of Cyprus reserved its position in connection with the outcome of the deliberations of the Committee on this issue.

Settlement of disputes

4.32 The Committee considered proposals for two alternative provisions on the settlement of disputes contained in document LEG 92/4/1, submitted by Italy and Germany.

4.33 In introducing document LEG 92/4/1 on behalf of the co-sponsors, the delegation of Italy recalled the genesis of the submission and stressed that it offered a range of choices with regard to procedures for settlement of disputes. It also noted that the proposal was based on similar provisions contained in existing treaties, including, *inter alia*, the Protocol of 1996 to amend the International Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972, and the UNESCO Convention on the Protection of the Underwater Cultural Heritage, 2001.

4.34 Although some delegations expressed a preference for the proposal contained in paragraph 14 of the document, whereby disputes not amicably settled in accordance with article 16 should be submitted to the International Tribunal for the Law of the Sea (ITLOS), a majority of delegations that spoke were unable to accept this proposal.

4.35 Those delegations favouring the proposal gave as reasons the recognized expertise of ITLOS in settling disputes expeditiously, as well as the convenience of unifying jurisdiction under the *aegis* of one international Tribunal. Those against the proposal noted that exclusive international jurisdiction of ITLOS would exclude other valid alternatives for the resolution of disputes.

4.36 The Committee extensively discussed the proposal, contained in paragraph 11 of document LEG 92/4/1, to apply *mutatis mutandis* the provisions relating to the settlement of disputes set out in part XV of UNCLOS.

4.37 Several delegations favoured maintaining current article 16 of the basic text. In support of this view, it was noted that the alternative of introducing into the DWRC procedures for the settlement of disputes which had been included in another treaty was a vague and imprecise method, which would create problems of interpretation, on account of the fact that several

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provisions of part XV of UNCLOS were not related to the subject matter of the DWRC. Furthermore, the proposal would imply the need to introduce further amendments to the basic text and would also influence the outcome of the question of territorial scope of application. It was also noted that the procedure for settlement of disputes in a public law convention like UNCLOS was not appropriate for a private law convention such as the DWRC.

4.38 Some of the delegations which expressed preference for the basic text indicated that they would, as a matter of compromise, be ready to consider a re-drafting of the proposal.

4.39 Other delegations, however, supported the proposal contained in paragraph 11 of document LEG 92/4/1, on the grounds that the incorporation *mutatis mutandis* of part XV of UNCLOS, would enable a lasting and rapid settlement of disputes, while upholding the principle of freedom of choice. The view was also expressed that disputes required a resolution in all cases and a voluntary procedure might not always achieve this.

4.40 Some of these delegations suggested that the reference to the part XV provisions could be made more precise with the incorporation of an explicit time-frame, for example, six months. Other delegations opposed a definite time-frame, on account of the particular nature of disputes concerning the removal of wrecks.

4.41 The Committee agreed to establish an informal working group comprised of the delegations of Italy and Germany, in consultation with other interested delegations, which was tasked with drafting a compromise text, bearing in mind the considerations made at the plenary.

4.42 The informal working group presented its proposal for an alternative article on settlement of disputes, contained in document LEG 92/WP.6/Rev.1. The following explanations were provided to address questions raised by delegations:

- the proponents of the proposal did not see any problem with incorporating *verbatim* in paragraph 1 all instances of conciliation referred to in article 16 of the basic text;
- the reference, in paragraph 2, to a period of time not exceeding eighteen months, in square brackets, denoted a maximum period of time. The terminology “not exceeding” was intended to recognize the urgency that might be needed in some cases, and the eighteen month period had been suggested following consultations with the Registrar of ITLOS. This period could certainly be shorter;
- the reference, in paragraph 4, to disputes “not covered” by a declaration should be retained because it is used in other international conventions. Without prejudice to this, it was explained that the words “not covered” generally mean “excluded”; and
- it is important to maintain the language used in paragraphs 3 and 4, which adapt *mutatis mutandis* the texts of other treaties mentioned in the footnote to the proposal and which provide a solution to problems similar to those addressed by the proposal.

4.43 Most delegations that spoke agreed to incorporate the text of the proposal, with the proviso that all avenues for the resolution of disputes mentioned in article 16 of the basic text should be reproduced in paragraph 1, and the period within square brackets in paragraph 2 should be changed to 12 months.

4.44 It was also agreed to include “1982” in paragraphs 3 and 4 when referring to the United Nations Convention on the Law of the Sea.

4.45 Several delegations expressed their opposition to the replacement of the basic text. In their understanding, the task of the informal working group had merely been to explore alternative solutions. These delegations reaffirmed their understanding that the basic text should not be replaced by the proposal contained in document LEG 92/WP.6/Rev.1.

4.46 The delegations of Cyprus, Panama and the United States specifically objected to the replacement of article 16 of the basic text with the text contained in document LEG 92/WP.6/Rev.1, as amended, because no decision had been made by the Committee to alter the basic text.

4.47 The Committee, however, decided to replace article 16 of the basic text with the text contained in document LEG 92/WP.6/Rev.1, as amended.

4.48 The delegation of Cyprus reserved its position in connection with the outcome of the deliberations on this issue.

Compulsory insurance

Units of measurement

4.49 The Committee considered alternatives for the inclusion of units of measurement, on the basis of the information provided by the delegation of the Netherlands and the Secretariat, as reflected in document LEG 92/4/2.

4.50 The Committee decided to incorporate gross tonnage as the unit of measurement of ships required to maintain compulsory insurance.

4.51 The Committee noted that wrecks of small ships could represent a significant security and environmental risk. Accordingly, several delegations suggested a figure of either 300 or 500gt as a threshold for ships to be included under the compulsory insurance provisions. The Committee decided that these figures should be referred to in a footnote in the draft text to be considered by the diplomatic conference.

Limits of liability

4.52 The Committee adopted the proposal for a new text in paragraph 13.1, proposed in document LEG 92/4/2, with the inclusion of a specific reference to “article 6.1(b)” of the Convention on Limitation of Liability for Maritime Claims, 1976, as amended.

Certificate of insurance

4.53 The Committee decided to incorporate the model certificate of insurance contained in annex 2 to document LEG 92/4/2. It further decided to insert in the model certificate a reference to the gross tonnage of the ship.

Liability in respect of acts of terrorism

4.54 In introducing document LEG 92/4/2, the delegation of the Netherlands recalled that article 11, paragraph 1, had been approved by the Committee at its ninetieth session. As regards the issue of liability in respect of acts of terrorism, the Committee had noted that work was underway to address that problem in the context of the Athens Convention.

4.55 The Committee, at its last session, had requested the lead delegation to give this matter further consideration during the intersessional period, with the aim of offering proposals for the Committee's consideration at the current session. Subject to that outstanding issue, the Committee had approved paragraph 2 and confirmed its approval of article 11.

4.56 The delegation noted that the paper "**Frequently Asked Questions**" prepared by the International Group of P&I Clubs (P&I Clubs), attached at annex 1 to document LEG 92/4/2, confirmed that shipowners have cover for terrorism, since they take out separate insurance cover for war risks, which includes terrorist acts. That insurance covers the shipowner for both his property (that is, for the value of the ship) and his liability to third parties (including P&I risks such as passenger liabilities). Supplementary cover was also available by means of a second layer of War Risk cover.

4.57 While there is a standard exclusion related to the use of chemical, biological, bio-chemical or electro-magnetic weapons ("bio-chem exclusion") in reinsurance policies, and war risks policies are subject to that exclusion, in the view of the delegation this seemed of lesser importance for wreck removal operations which are related to material damage only.

4.58 The delegation concluded that current War Insurance covers the costs of wreck removal, in case of acts of terrorism, in amounts that seem sufficient in relation to the potential costs for wreck removal operations. Accordingly, there was no need to change draft article 11, paragraph 1.

4.59 The representative of the P&I Clubs, in introducing document LEG 92/4/4, confirmed that shipowners purchase some war risk cover, which includes cover for acts of terrorism, and the P&I Clubs collectively purchase additional war risk cover on behalf of their shipowner members.

4.60 However, he pointed out that the delegation of the Netherlands, in reaching its conclusions, had overlooked a number of issues listed in paragraph 5 of document LEG 92/4/4 as follows:

- (i) the level of war risk cover purchased by shipowners and the P&I Clubs could, in some instances, be insufficient to cover wreck removal, since it was designed to meet all liability claims arising out of a terrorism incident, and not exclusively wreck removal;
- (ii) the war risk insurance purchased was subject to a seven day cancellation clause, which was not in line with article 13, paragraph 7, of the DWRC;
- (iii) war risk cover was notoriously volatile and the market could contract or disappear altogether, in the event of a terrorist incident or series of incidents;

- (iv) the structure of war risk cover made it difficult, if not impossible, for one set of underwriters to issue the certificate required under the convention. Moreover, such insurers could not, in any event, certify that the insurance provided met the requirements of the convention since it would not meet the three month termination provision; and
- (v) what is of importance under the DWRC is not the operation of removing the wreck, but the liability that it imposes on the registered owner. Accordingly, the P&I Clubs could not agree to the suggestion that the “bio-chem exclusion”, was not of importance, as wreck removal operations relate to material damage only.

4.61 Accordingly, it seemed to the co-sponsors that it would be necessary for an entity to be found that would be prepared to provide certificates of financial responsibility (“Blue Cards”) for war risks, to permit compliance with the convention, as had been proposed in the context of the Athens Convention, 2002. However, experience has shown that, even if achievable, such an arrangement might prove unwieldy, without achieving major benefits.

4.62 The P&I Clubs and ICS did not, therefore, believe that leaving draft article 11, paragraph 1, unchanged, as proposed by the Netherlands delegation, was a satisfactory solution for resolving the terrorism issue in the context of the DWRC, particularly given the difficulty that this issue has caused in relation to the Athens Convention, 2002, where implementation has been significantly delayed. Any solution for resolving the terrorism issue in the context of the Athens Convention, 2002, would not necessarily be appropriate in the context of wreck removal since the main purpose of providing for certification and conferring a right of direct action against an insurer was to furnish a consumer claimant with additional protection, while in the case of wreck removal the sole claimant would be an individual Member State or neighbouring State and, to that extent, no “consumer interest” would be involved.

4.63 In light of the above, the P&I Clubs and ICS suggested that the simplest and most effective way of resolving the issue would be to include the word “terrorism” in article 11, paragraph 1(a) as a blanket defence.

4.64 The Committee noted that, as there had been no proposal submitted by a State regarding paragraph 1(a) of article 11, there could be no amendment to that paragraph at this session.

4.65 Nevertheless, some delegations expressed support for this proposal. In so doing, the view was expressed that, while terrorism is a serious issue, it is not necessary to deal with it in the same way in every convention. One of the differences between the Athens Convention, 2002 and the DWRC was that, in respect of the latter convention, the claims for compensation would be mainly Government claims, whereas claims under the Athens Convention would be largely claims by individuals. Another difference was that the exposure to risk under the DWRC was not as large as under the Athens Convention.

4.66 Other delegations that spoke, however, saw no reason to change the current text, on the basis that most terrorist risks are, in fact, covered by that text. The delegation of the United Kingdom expressed a willingness to explore potential solutions.

Application to States which are not Parties to the Convention

4.67 In introducing document LEG 92/4/8, the delegation of the United States pointed out that the draft wreck removal convention went beyond customary international law, as codified in UNCLOS. The aim behind its submission was to clarify that the Parties to the DWRC had no

intention of attempting to alter the rights of States non-Parties that exist under customary international law. Accordingly, the delegation proposed to replace the current text of article 17 with the text in paragraph 2 of its submission.

4.68 Some delegations which intervened supported the United States' proposal, agreeing that it would add clarity.

4.69 However, the majority of delegations that spoke were opposed to the proposal. In their view, the rights of States non-Parties were already protected under the current text and the principle was very well-established under customary international law, as codified in article 34 of the Vienna Convention on the Law of Treaties, which provides that a treaty does not create either obligations or rights for a third State, without its consent.

4.70 Several of those delegations also expressed the view that including the text proposed by the United States in the DWRC would be unprecedented, and might well have detrimental effects on customary international law, by calling into question a well-known principle. This could create confusion and send out the wrong signals. The proposal was, accordingly, rejected.

4.71 Nevertheless, recognizing that the intention of the submission was to add clarity, the Legal Committee agreed, at the request of the delegation of the United States, to include in the report its understanding that the wreck removal convention will not bind, and will not be applicable to, non-Parties who have not consented to be bound, in accordance with the Vienna Convention on the Law of Treaties.

Title of the convention

4.72 In introducing document LEG 92/4/6, the delegation of Poland noted that the draft title of the DWRC no longer corresponded appropriately with the objectives of the treaty, as these had evolved considerably over the years. Accordingly, the delegation proposed re-drafting the title, to make it more specific, as suggested in document LEG 92/4/6.

4.73 While one delegation that intervened supported this proposal, the majority of delegations noted that the new title would not encompass the full scope of the draft convention. Accordingly, the Committee decided to maintain the original title.

Article-by-article reading

4.74 The Committee decided to undertake an article-by-article reading of the draft convention, focusing only on the editorial proposals developed intersessionally by the Secretariat in consultation with the lead delegation, printed in bold in the draft articles, and on the editorial proposals by the Secretariat, printed in italics.

Draft article 1 – Definitions

4.75 The Committee considered the definitions contained in draft article 1.

“Wreck” (paragraph 4)

4.76 The Committee considered and approved the editorial proposal in paragraph 4, sub-paragraph (d).

“Related interests” (paragraph 6)

4.77 The Committee considered and approved the deletion of the words “that is” in the chapeau.

“Operator of the ship” (paragraph 9)

4.78 The Committee considered and approved the editorial proposals in paragraph 9.

Draft article 2 – Objective and general principles

Paragraphs 1, 3 and 5

4.79 The Committee considered and approved the editorial proposals in these paragraphs.

Draft articles 3 to 5 – Scope of application

4.80 The Committee confirmed its approval of these articles.

Draft article 6 – General obligations

Reporting wrecks

4.81 The Committee considered and approved the editorial proposals in paragraphs 1 and 2.

Draft article 7 – Determination of hazard

4.82 The Committee considered and approved the editorial proposals in the chapeau and in sub-paragraphs (d) and (o).

Draft article 8 - Locating wrecks

4.83 The Committee considered and approved the editorial proposals in paragraph 1. It also approved the proposal by the delegation of the Netherlands to replace the words “reasonable cause”, by the word “reason”, in paragraph 2.

Draft article 9 - Marking of wrecks

4.84 The Committee confirmed its approval of this article.

Draft article 10 - Measures to facilitate the removal of wrecks

4.85 The Committee considered and approved the editorial proposals in paragraph 1 (chapeau), sub-paragraph 1(a), paragraphs 3 to 9 and paragraph 11. It also approved the proposal by the delegation of the Netherlands to delete, in paragraph 8, the words “in accordance with paragraph 6(c)”. Discussion of this article was then suspended.

4.86 One delegation raised the issue that changes to the harmonized text in article 10, paragraphs 4, 5, 7, and 8, regarding the terms “environmental” and “marine environment” are needed, and may be of a substantive nature. Due to time constraints, it was decided that the matter should be considered during the diplomatic conference.

Draft articles 11 and 12 – Financial liability for locating, marking and removing wrecks

4.87 The Committee requested the Secretariat to check that the titles of the Conventions referred to in these articles were correctly reflected, and confirmed its approval of these articles.

Draft article 13 - Compulsory insurance or evidence of financial security

4.88 The Committee considered and approved the editorial proposals in paragraphs 1, 2, 3, 7, 12 and 13, and asked the Secretariat to check the title of the LLMC Convention referred to in paragraph 1.

4.89 The Committee also recalled its decision, taken the previous day, to insert in a footnote in connection with the square brackets in paragraphs 1, 3 and 13, the figures 300/500. The Committee also recalled its decision to adopt a proposal for a new text to paragraph 13.1.

Draft article 14 – Time bar

4.90 The Committee considered and approved the editorial proposals in this article.

Draft article 15 – Amendment Provisions

4.91 The Committee confirmed its approval of this article.

Final Provisions**Draft article 16 – Settlement of disputes**

4.92 The Committee postponed its consideration of this article, pending the outcome of its discussion on the proposal contained in document LEG 92/4/1. The Committee confirmed the decision referred to in paragraph 4.47.

Draft article 17 – Relationship to other conventions and international agreements

4.93 The Committee confirmed its approval of this article.

Draft article 18 – Signature, ratification, acceptance, approval and accession

4.94 The Committee confirmed its approval of this article.

Draft article 19 – entry into force

4.95 The Committee agreed that the period of time and number of States in connection with the square brackets in paragraph 1 would be decided by the diplomatic conference. It further considered and approved the editorial proposals in paragraph 2.

Draft article 20 - Denunciation

4.96 The Committee considered and approved the editorial proposals in paragraphs 1 and 3.

Draft article 21 – Depositary

4.97 The Committee considered and approved the editorial proposals in paragraphs 2(a)(iv) and 3.

Draft article 22 – Languages

4.98 The Committee agreed to change the reference to “London”, in the second paragraph, with a reference to “Nairobi”.

Final conclusions

4.99 The Committee noted the suggestions of one delegation regarding the need to amend the text of the model certificate and the terminology “recognized organizations” referred to in article 13 and requested the Secretariat to look into these matters.

4.100 The Committee approved the basic text, as amended by the decisions adopted by the Committee at this session, for the purpose of its submission for consideration by the diplomatic conference.

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

4.102 The Committee also expressed its appreciation and thanks to the delegation of the Netherlands for the work it had done on the text of the draft convention over a period of many years.

4.103 The delegation of Cyprus reserved its position with regard to the text of the draft convention on wreck removal adopted by the Committee and requested that its statement in this regard be annexed to the report of the session (see annex 4).

Presentation by the delegation of Kenya

4.104 The delegation of Kenya made a presentation on the arrangements for the diplomatic conference, which encompassed matters such as travel arrangements, accommodation, security, transportation to and from the conference venue and leisure activities. The Committee demonstrated its gratitude by spontaneous applause and expressed its thanks and appreciation to the Government of Kenya.

4.105 The Committee also took note of arrangements regarding the conference venue as presented by the Director, Conference Division.

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

5.1 The IMO Secretariat, in introducing document LEG 92/5/1, recalled that there had been no meeting 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) for the last year. The Legal Committee, at its last session, took note of the outcome of the sixth session of the Joint Working Group, which was held in September 2005, as reported in document LEG 91/4.

5.2 In particular, the Committee had authorized the Working Group to continue monitoring the problem of abandonment of crew members; to proceed with the development of longer-term sustainable solutions to address the problems of liability and compensation regarding claims for death, personal injury and abandonment of seafarers, bearing in mind the outcome of the 94th (Maritime) session of the International Labour Conference. The Committee, at the same session, had approved the revised terms of reference, as amended, as contained in annex 2 to the document under consideration; had noted that the Database on Abandonment of Seafarers (Abandonment Database) had been open to the public on the ILO website; and had noted the adoption of the ILO Maritime Labour Convention, 2006, together with a number of resolutions dealing with issues of common interest to the two Organizations.

5.3 The representative of the ILO Secretariat stated that ILO had begun, with the active co-operation of IMO, to operate the Abandonment Database immediately following the last meeting of the Joint Working Group, when operational details were finalized. He recalled that the setting-up of the database had been made possible thanks to the financial assistance of the International Ship Suppliers' Association (ISSA).

5.4 As of today, and with entries posterior to January 2004, the database contained 40 reported cases, 22 of which had been agreed as resolved, including three fishing vessels, duly identified as such. He noted, in this connection that, unfortunately, during the last months, none of the reported cases appeared to have found a solution.

5.5 In concluding, he mentioned the joint efforts of the Secretary-General of IMO and the Director-General of ILO, who had sent letters requesting assistance to all flag States having one or more ships reported as having been abandoned in the Abandonment Database. Although some of the States had replied promptly, this was not so in all cases.

5.6 Mr. J-M. Schindler (France), Chairman of the Joint Working Group, stressed that the IMO Legal Committee and the ILO Governing Body had authorized the Group to continue monitoring the problem of abandonment of crew members/seafarers, taking into account all relevant information, including technical solutions available for financial security. The Group had also been authorized to proceed with the development of longer-term sustainable solutions to address the problems of liability and compensation regarding claims for death, personal injury and abandonment of seafarers, bearing in mind the outcome of the 94th (Maritime) session of the International Labour Conference, in accordance with its revised terms of reference.

5.7 He recalled that the International Labour Conference, at its 94th (Maritime) session in February 2006, had adopted the Maritime Labour Convention, 2006, together with a number of resolutions. In one of these, entitled: "Resolution concerning the Joint IMO/ILO *Ad Hoc* Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers" (contained in the annex to the document under consideration), the Conference considered that the text in the Convention did not address many of the provisions set out in the Guidelines on Shipowners' Responsibilities in respect of Contractual Claims for Personal Injury to or Death of Seafarers and the Guidelines on Provision of Financial Security in Cases of Abandonment of Seafarers, which have been adopted by both the IMO Assembly and the ILO Governing Body.

5.8 For that reason, the resolution recommended to both Organizations that the way forward would be for the Working Group to develop a standard accompanied by guidelines, which could be included in the Maritime Labour Convention or another existing instrument, at a later date.

5.9 It was therefore important to start working to find possible longer-term sustainable solutions to address the problem of financial security with regard to compensation in cases of abandonment, death or personal injury of seafarers, and he suggested that the time had come to fix the date for the seventh session of the Joint Working Group.

5.10 Mr. Schindler noted that the Abandonment Database revealed that there were a number of unresolved cases of abandonment, in spite of the resolutions and related Guidelines and the personal commitment by the Secretary-General of IMO and the Director-General of ILO in trying to bring them to a positive conclusion.

5.11 In this connection, he urged the maritime administrations of the vessels listed in the Abandonment Database to do their utmost, as a matter of urgency, to facilitate the resolution of those cases.

5.12 In concluding, he invited all national maritime administrations and the industry to take appropriate action for better implementation and wider acceptance of the resolutions and related Guidelines.

5.13 The Legal Committee encouraged the Joint Working Group to continue its work. The Joint Secretariat was invited to fix a date for the seventh session of the Joint Working Group, in consultation with the Chairman.

(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

5.14 The delegation of the United Kingdom introduced document LEG 92/5/3 by noting that in the Correspondence Group, under the leadership of Professor E. Rosaeg (Norway), Governments and the industry had sought to develop practical and workable solutions to what, until recently, had seemed impenetrable problems.

5.15 In preparing the document under consideration, due note had been taken of the outcome of the ninety-first session of the Committee, and the proposal outlined therein was consistent with decisions taken at that session.

5.16 The delegation explained that since the submission by the delegation of Norway of document LEG 92/5, the United Kingdom had continued to improve proposals that seek to meet the needs of Governments and industry. The two documents, LEG 92/5 and LEG 92/5/3, were broadly similar in content, policy and ambition. The key difference in document LEG 92/5/3 was the introduction of an alignment between liability and insurance in respect of terrorism related claims.

5.17 In the opinion of the delegation, the document offered a workable and pragmatic solution, ensuring that certain liabilities under article 3, and the insurance provisions under article 4*bis* of the 2002 Athens Convention were met. The obvious benefits should encourage the P&I Clubs to meet their non-war liabilities and allay some of the concerns of Club boards about the potential effects of entry into force of the 2002 Athens Convention on market capacity.

5.18 The delegation concluded by thanking Professor Rosaeg, the representatives of the International Chamber of Shipping (ICS), the International Council of Cruise Lines (ICCL) and others who had invested their time and expertise on the issue.

5.19 Professor Rosaeg, in introducing document LEG 92/WP.5, stated that 10 years had elapsed since the beginning of the discussions that had led to the development of the 2002 Protocol to the Athens Convention, and now a workable solution had been achieved for its implementation. He thanked the co-sponsors of document LEG 92/5/3 and those who had contributed to the revised version in document LEG 92/WP.5, which contained the text of the proposed reservation, and the guidelines for the implementation of the 2002 Athens Protocol. He noted that the structure of the reservation and of the guidelines contained therein was similar to that in the annex to document LEG 92/5/3, and that there were few amendments to the original document. He recommended their adoption by the Legal Committee.

5.20 The representative of the International Council of Cruise Lines (ICCL) expressed appreciation for the hard work done by the delegation of Norway, and, in particular, Professor Rosaeg, and the delegation of the United Kingdom in trying to combine liability with insurability.

5.21 The representative of ICS, as co-sponsor of document LEG 92/5/3, expressed support for the content of document LEG 92/WP.5 and stated that it was essential, in the interests of both passengers and the industry, to limit the carrier's liability to insurable limits. He noted that insurance cover can only be made available within the clear limits of the reservation.

5.22 The representative of the International Group of P&I Associations (P&I Clubs), in relation to insurance cover, stated that it was currently envisaged that the structure of the cover provided by the P&I Clubs would permit Clubs to offer cover in respect of the liabilities arising under the 2002 Athens Protocol for ships carrying fewer than 3,600 passengers. However, it was anticipated that not all Clubs would be prepared to offer such cover. The position taken by the Clubs was based on current pooling and reinsurance arrangements. The position may alter in the future to reflect changes in the insurance market.

5.23 In relation to Certificates, he stated that it was likely that those Clubs which provide cover would also be able to certify that cover has been given in respect of liabilities arising under the Athens Protocol for vessels carrying fewer than 3,600 passengers.

5.24 The willingness to provide cover and certification would turn, in part, on whether a satisfactory solution could be found to the issue of terrorism. The proposal put forward in document LEG 92/5/3 was favoured in principle, as it provided a fairer solution in relation to shipowners' liability. However, without further detail, it was not possible to judge the impact of the proposal on the War Risk market.

5.25 The representative of the International Association of Producers of Insurance and Reinsurance (BIPAR), with reference to document LEG 92/5/2, stated that the document did try to clarify the situation of the insurance market *vis-à-vis* war and terrorism risks. The document showed that there was an interested market, and he hoped that it would be sustainable at the level of 340 million units of account.

5.26 One delegation stated that it could not support a solution that would exempt carriers, irrespective of fault, from liability to passengers with respect to terrorism claims. Carriers had a duty to provide adequate screening and take reasonable steps to protect passengers from attack.

5.27 It was noted by another delegation that the reservation does not exempt carriers from all liability for terrorism-related incidents; it just caps that liability.

5.28 Other delegations noted that they had voted against exempting carriers from terrorism risks at the Diplomatic Conference which adopted the Athens Protocol, but it was now necessary to find a solution which would enable the Protocol to enter into force, as it provided passengers with much better cover than that existing previously.

5.29 Although this was not a perfect solution, the proposed reservation and Guidelines would put States in a position to ratify the 2002 Protocol and would afford passengers a better cover. It was also noted that the Guidelines were well drafted, objective and viable and would be easy to amend in future, as and when necessary, and that similar solutions might be applied to other liability regimes.

5.30 The Legal Committee adopted the text of the proposed reservation and the Guidelines for the implementation of the Athens Convention contained in document LEG 92/WP.5 which were developed pursuant to resolution A.988(24). The text of the reservation and Guidelines are attached at annex [5]. The Committee praised the outstanding work done by Professor Rosaeg in finding a consensus position between Governments and industry.

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

6.1 The Committee considered several submissions on the revision of the Guidelines on fair treatment of seafarers in the event of a maritime accident, adopted by the Committee by resolution LEG.3(91).

6.2 In introducing documents LEG 92/6 and LEG 92/6/1, the Secretariat reminded the Committee of its decision, at its ninety-first session, to establish an *ad hoc* working group to review the Guidelines at this session and to consider concerns expressed by some delegations about their interpretation and application. The Secretariat invited the Committee to consider terms of reference for the establishment of an *ad hoc* working group to examine the Guidelines, as well as the revised terms of reference for the Joint IMO/ILO *Ad Hoc* Expert Working Group on Fair Treatment of Seafarers in the Event of a Maritime Accident.

6.3 The delegation of China suggested adding another item to the terms of reference of the Joint Working Group, namely, that it collect information on cases of mistreatment of seafarers.

6.4 The Secretariat also invited the Committee to take note of the action taken by the FSI Sub-Committee and MSC 81, regarding the relationship between the Guidelines and the review of the Code for the Investigation of Marine Casualties and Incidents. The Secretariat noted that, following the adoption of the Guidelines, an amendment to chapter 12 of this Code was being considered to provide that the obtaining of evidence should occur as soon as possible, seafarers should be allowed to return to their ships and their human rights should be upheld at all times. The Secretariat noted that further issues relating to the Guidelines and the Code were being considered by the FSI Sub-Committee.

6.5 The delegation of the United States introduced document LEG 92/6/2, containing proposals for amendments aimed at ensuring the effectiveness of casualty investigations, and the protection of seafarers' rights as well as their understanding of these rights. In so doing, it noted the importance for the United States, in conducting thousands of investigations each year, that the

Guidelines keep casualty investigations effective in the pursuit of maritime safety. It also noted the importance of the Guidelines being implemented by as many Governments as possible.

6.6 The observer delegation of the International Federation of Shipmasters' Associations (IFSMA) introduced document LEG 92/6/3 which proposed dividing the fair treatment issue so that one part be accommodated in chapter 12 of the Code for the Investigation of Marine Casualties and Incidents and the remaining part in a separate, mandatory instrument covering breaches, or alleged breaches, of a State's domestic law.

6.7 The observer delegation of the International Chamber of Shipping (ICS) introduced document LEG 92/6/4, which suggested it was premature to improve the Guidelines on issues such as the definition of maritime accident, presumption of innocence and the right to remain silent. The delegation expressed regret that a Legal Committee working group on a tripartite basis had not been established at this session, but noted the willingness of the International Shipping Federation (ISF) as well as ICS and the International Confederation of Free Trade Unions (ICFTU) to participate in the discussions.

6.8 Some delegations commended the advantages of the present Guidelines and, while agreeing that the review should go ahead in the Working Group, nevertheless expressed their preference that the Guidelines should first be implemented and amendments be considered at a later stage, with the benefit of experience.

6.9 The majority of delegations favoured the establishment of a Legal Committee working group to consider amendments to the Guidelines. The Committee, therefore, decided to establish an *Ad Hoc* Working Group and approved its terms of reference, as set out in paragraph 4 of document LEG 92/6.

6.10 Introducing the report of the *Ad Hoc* Working Group in document (LEG 92/WP.2), the Chairman referred to paragraph 12 of the report, which indicated there had been 'no objection' to one proposal and explained that there had in fact been agreement in the group on the proposal. He informed the Committee that the discussion had been robust, positive and productive and that there was room for future debate about possible changes to the Guidelines.

6.11 The Committee noted that the *Ad Hoc* Working Group had generally been divided in its conclusions.

6.12 One delegation recalled that, at the Committee's ninety-first session, it had agreed to the adoption of the Guidelines with the understanding that, because of concerns with regard to the payment of wages, it would interpret them in a way that was acceptable under its domestic legislation, until a solution was found. Inasmuch the *Ad Hoc* Working Group had not succeeded in finding a solution, this understanding remained in place.

6.13 Several delegations expressed the view that, while improvements could be made to the Guidelines, it was premature at this time to introduce amendments, and circulation of amendments might send a confusing signal to the maritime industry. Experience with the existing Guidelines was needed before a full review and revision was undertaken.

6.14 Some delegations said that the Joint IMO/ILO *Ad Hoc* Expert Working Group was the body which should monitor implementation of the Guidelines and address concerns by identifying where there may be a compelling need to make an amendment. The proposals of that Group could be reported back to both the IMO Legal Committee and the ILO Governing Body, which could then review the proposals in light of their unique expertise.

6.15 The delegation of the United States expressed disappointment that the *Ad Hoc* Working Group and the Committee had not agreed to proposals contained in document LEG 92/6/2, since the Guidelines contained critical impediments in the form of legal errors and ambiguities, which meant that its country would be unable to implement them in full, and seafarers might be misled about their rights. This delegation said it was the responsibility of the Legal Committee to ensure such impediments were removed. With this aim, the delegation proposed that review and monitoring of the Guidelines should be kept on the agenda of the Legal Committee. At the same time, the delegation recognized that the Joint IMO/ILO *Ad Hoc* Expert Working Group could also contribute to effective implementation of the Guidelines, and it could support the proposed terms of reference as set forth in the annex to document LEG 92/6.

6.16 Taking into account the lack of consensus in the *Ad Hoc* Working Group, and in the absence of sufficient time to examine the issues and the terms of reference for the Joint IMO/ILO *Ad Hoc* Expert Working Group in more detail, and the apparent lack of urgency to reconvene that Joint Group, the Committee decided to retain this matter on its agenda for its next session.

7 MONITORING THE IMPLEMENTATION OF THE HNS CONVENTION

7.1 In introducing document LEG 92/7, the representative of the Secretariat mentioned that there had been no change in the status of the Convention since the matter was last reported to the Committee. Only one of the eight Contracting States had submitted information on contributing cargo received. Given the relevance of this information to the entry into force of the Convention, the Secretariat, once again, drew the attention of all States to the obligation, pursuant to article 43 of the Convention, to submit information on contributing cargo received or, in the case of LNG, discharged in that State, when depositing their instruments of ratification or acceptance with the Secretary-General and annually thereafter, until the HNS Convention enters into force.

7.2 She also recalled that, at its last session, the Committee had adopted resolution LEG.4(91), entitled “Implications for the reference in article 1.5(a)(ii) of the HNS Convention to “noxious liquid substances carried in bulk””, which states that, as of 1 January 2007, substances referred to in Appendix II of Annex II of MARPOL 73/78 would remain covered by regulation 1.10 of the revised Annex II of MARPOL.

7.3 She informed the Committee that the Marine Environment Protection Committee, at its fifty-fifth session, held from 9 to 13 October 2006, adopted resolution MEPC.160(55), which mirrors the resolution adopted by the Legal Committee.

7.4 The delegation of Cyprus reported that the list of all HNS contributors had been completed, and hence the total contributing cargo would shortly be submitted to the Secretary-General of IMO.

7.5 The delegation of Denmark reported that primary legislation was ready and secondary legislation was under preparation. The country would, hopefully, be ready to ratify the HNS Convention in 2007.

7.6 The delegation of the United Kingdom stressed that it was vital for all signatories and contracting States to submit information on contributing cargoes. It hoped that the United Kingdom would have the necessary information to enable ratification of the Convention in 2007.

7.7 The Legal Committee took note of this information and agreed to dedicate, in future, more time to the implementation of treaties.

8 MATTERS ARISING FROM THE NINETY-SIXTH REGULAR SESSION OF THE COUNCIL

8.1 The Committee noted that:

- document LEG 92/8 reported on the decisions and conclusions of relevance for the Legal Committee, issued by the Council at its ninety-sixth session;
- most of the items mentioned were merely for noting by the Committee;
- other matters had been, or were being, dealt with by the Committee under other specific agenda items; and
- these other matters were wreck removal; legal issues arising out of the 2002 Athens Protocol; Guidelines on fair treatment of seafarers and consideration of the Committee's planned outputs for the 2008-2009 biennium.

9 TECHNICAL CO-OPERATION ACTIVITIES RELATED TO MARITIME LEGISLATION

Seminars on maritime legislation organized by IMO

9.1 The Secretariat introduced documents LEG 92/9, on the outcome of a regional seminar on maritime legislation held in Bogota, Colombia, and LEG 92/9/2 on the outcome of a national seminar held in Manila, the Philippines, on the adoption and implementation of the SUA treaties.

9.2 The delegation of the Philippines expressed its thanks to the United States Coast Guard and Department of Justice, the United Nations Office on Drugs and Crime (UNODC) and the IMO Secretariat for their contribution to the success of the seminar held in Manila. The delegation highlighted the importance of the seminar and expressed the view that it should provide a useful precedent, which might be repeated in other countries, in order to ensure the effective implementation of the 1988 and 2005 SUA treaties.

9.3 In commending the outcome of the regional seminar held in Bogota, one delegation highlighted the importance of the conclusions reached and recommendations made by participants at the seminar, particularly those regarding the relationship between UNCLOS and IMO instruments, an issue which he described as one of growing concern.

Reporting of technical co-operation activities to the Committee

9.4 The Committee noted the outcome of technical co-operation activities related to maritime legislation for the period January to July 2006, and noted the suggestion, made in document LEG 92/9/1 and in a written statement by IMO's Director, Technical Co-operation Division, which was read to the Committee, to report on a biennial, instead of a semi-annual basis on the TC sub-programme related to maritime legislation.

9.5 One delegation noted that the importance of maintaining this item on the agenda was related to the periodic report made to the Committee at each session. In this regard, the

delegation urged that capacity-building and training be a standard item on the Committee's agenda.

9.6 The Committee accordingly decided that it preferred, for the time being, to continue receiving reports on the TC sub-programme related to maritime legislation on a semi-annual, rather than biennial basis.

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

10.1 The Committee recalled that the Assembly, at its twenty-fourth regular session, adopted resolution A.970(24) on the Strategic Plan for the Organization (for the six-year period 2006 to 2011) and resolution A.971(24) on the High-Level Action Plan of the Organization and Priorities for the 2006-2007 Biennium, which was developed with input from all the IMO Committees. The Committee also recalled that, at its last session, it noted that the Council was scheduled to receive plans for the 2008-2009 biennium from all Committees at its ninety-eighth session in June 2007 and, in view of the fact that the Committee will not be meeting in April 2007, agreed to consider its planned outputs for the 2008-2009 biennium at the present session. In this connection, the Committee agreed to set aside sufficient time at its sessions for consideration of the high-level actions and their associated priorities, and, as instructed by the Council, to use the factors listed in paragraph 1 of document LEG 92/10, in prioritizing its work during the current biennium.

10.2 As requested by the Committee, the Secretariat had identified the high-level actions which are relevant to the work of the Legal Committee, and prepared amendments to the Legal Committee's Guidelines on Work Methods and Organization of Work, to take into account resolutions A.970(24) and A.971(24). The identified actions and associated Committee outputs were presented in annex 1 to document LEG 92/10. Part 1 of annex 1 included a status of the Committee's outputs for the 2006-2007 biennium; and part 2 of annex 1 included the Secretariat's suggestions for planned outputs of the Committee for the 2008-2009 biennium. These suggestions were intended only to offer the Committee a few ideas.

10.3 Annex 2 to document LEG 92/10 contained the Secretariat's suggestions, for the Committee's consideration and decision as appropriate, for proposed revisions to the Committee's Guidelines on Work Methods and Organization of Work.

10.4 The Committee approved part 1 of annex 1 to document LEG 92/10, on the progress report on outputs planned for 2006-2007, with removal of the square brackets in the items in the last column (status of output) for submission to the Council.

10.5 With regard to part 2 of annex 1 to document LEG 92/10 and the proposed outputs planned for 2008-2009, the following comments and observations were made by members of the Committee:

- the Strategic plan envisaged by the Council required the Committees of the Organization to have a clear programme of work. At this time, the Legal Committee did not have such a programme. The Committee should, therefore, consider restoring the agenda item on the work programme at its future sessions;
- proposals for work programme items, according to rule 11 of the Committee's Rules of Procedure, should originate from members of the Committee, and not

from the Secretariat, and these should be considered by the Committee under an agenda item on the work programme;

- it was important for all Committees of the Organization to follow a uniform approach under the strategic plan; in this regard, it was recommended that the Legal Office of the Secretariat should consult with the Divisions which support other Committees, with the aim of establishing uniformity;
- despite the unequivocal terms of Article 33(a) of the IMO Convention, there appeared to be some resistance in other Committees with regard to referring legal issues to the Legal Committee. In order to overcome this reticence, it is important that the Committee shows its readiness to receive and consider these questions;
- it was important for the Legal Committee to give consideration to how it could contribute to the developments associated with UNCLOS;
- it was important for the Legal Committee to continue to identify the reasons why certain instruments which it developed have not come into force, and to consider strategies to encourage States to become party to them, and to develop means for addressing identified concerns;
- since the Committee was expected to keep its work programme under continuous review in the context of the Organization's Strategic Plan, the planned output for the 2007-2008 biennium could be submitted to the Council based on part 2 of annex 1 to document LEG 92/10, and then reviewed at the Committee's next session, which was still scheduled to take place prior to the beginning of the next biennium;
- the outputs proposed in part 2 of annex 1 to document LEG 92/10 were not in the nature of new work programme items, but rather follow-up guidance on implementation on instruments which the Committee had developed;
- one item among the outputs proposed in part 2 of annex 1 to document LEG 92/10 (i.e., 7.2.1 – consideration of guidelines on places of refuge in light of CMI's examination of the subject) did not seem to be consistent with the Committee's decisions on this matter; and
- it was essential for the Committee to be able to assess the results of its work by means of benchmarks, such as the number of conventions developed, as compared to the number adopted and the number which have come into force.

10.6 Subject to the above comments and observations, the Committee approved part 2 of annex 1 of document LEG 92/10 with the proposed outputs planned for 2008-2009, with removal of the square brackets in the items in the last column (planned output of the Committee – 2008-2009) for submission to the Council.

10.7 The Committee requested the Secretariat to prepare a document on the status of outputs for the 2006-2007 biennium, and the planned output of the Committee for the 2008-2009 biennium, for submission to the ninety-eighth session of the Council.

10.8 The Committee approved proposed revisions to the Guidelines on Work Methods and Organization of Work of the Legal Committee, as proposed in annex 2 to document LEG 92/10, relating to the Strategic Plan. The Committee also approved proposals contained in paragraph 3 of document LEG 92/10/1, submitted by the delegation of Brazil, relating to the establishment of intersessional groups, in order to allow full participation by delegations wishing to participate in the discussions. The revised text of the Guidelines will be issued by means of a circular letter.

10.9 The Committee invited members to submit any new work programme item, which they believed to be justified, for consideration at its next session, taking into account the Guidelines on Work Methods and Organization of Work of the Legal Committee as revised at the present session.

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

11.1 The Committee noted that:

- document LEG 92/11 reported on the developments regarding these conventions and instruments since the Committee's last review in April 2005 and up to 11 August 2006;
- the Secretariat had updated the information contained in document LEG 92/11 to 13 October 2006; in order that the Committee might see the details in print, this update was contained in document LEG 92/WP.1;
- the annex lists, in three sections, all the conventions and other treaty instruments to be reviewed by the Committee:
- the first section included the instruments which were already in force, or which had met the conditions for entry into force;
- the second section contained information on the instruments for which the entry into force conditions had not yet been met; and
- the third section provided status information on the two UN/IMO treaties in the field of maritime law, namely, the International Convention on Maritime Liens and Mortgages, 1993, and the International Convention on the Arrest of Ships, 1999.

EXPRESSIONS OF APPRECIATION

Mr. Måns Jacobsson

The Committee paid tribute to Mr. Måns Jacobsson, Director of the International Oil Pollution Compensation Funds (IOPC Funds). In so doing, the Committee recognized Mr. Jacobsson's outstanding contribution to the development of international maritime law and, in particular, his important role over many years in the development and adoption of several international conventions prepared by the Committee, in conjunction with IOPC Fund Members, many of which contained provisions of an innovative nature. The Committee also remembered Mr. Jacobsson's excellent contribution to its work in his capacity as the Director of the IOPC Funds for more than 20 years, and wished him all the best in his retirement.

In his final address to the Legal Committee as Director of the IOPC Funds, Mr. Jacobsson mentioned his long-standing association with the Committee and its work, dating back to the preparatory works leading to the adoption of the 1971 Fund Convention. He also provided the Committee with a succinct account of the various conventions adopted by IMO over the years and his role in their development.

Mr. Bob Blumberg

The Committee also expressed its appreciation to Mr. Bob Blumberg, who had been a regular participant in the Legal Committee since 1982, and would be retiring in 2006, after more than 30 years of service with the United States State Department. As this would be his last session, the Legal Committee also wished him all the best in his retirement.

ANNEX 1

AGENDA FOR THE NINETY-SECOND SESSION

- Opening of the session
- 1 Adoption of the agenda
 - 2 Report of the Secretary-General on credentials
 - 3 Election of officers
 - 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 Fair treatment of seafarers in the event of a maritime accident
 - 7 Monitoring the implementation of the HNS Convention
 - 8 Matters arising from the ninety-sixth regular session of the Council
 - 9 Technical co-operation activities related to maritime legislation
 - 10 Biennium activities within the context of the Organization's Strategic Plan
 - 11 Review of the status of Conventions and other treaty instruments adopted as a result of the work of the Legal Committee
 - 12 Any other business
 - 13 Report of the Committee

ANNEX 2

DRAFT CONVENTION ON WRECK REMOVAL

Development of the proposals in document LEG 92/4/3

Option 2

Submitted by the delegations of the Bahamas, Brazil, Canada, Denmark, Finland, France, Italy, Japan, Norway, South Africa, United Kingdom, Comité Maritime International (CMI), International Chamber of Shipping (ICS)

Article 1

New paragraph 2

“When a State Party has made a declaration under Article [17*bis*], “Convention Area” includes its territory and territorial sea”.

Article 1

Paragraph 2 becomes paragraph 3, and shall read:

3. “Ship” means a seagoing vessel of any type whatsoever, and includes

(Insert the word “seagoing” before “vessel”, and delete the words “operating in the marine environment”)

Article 10

New paragraph 12

“When a State Party has made a declaration under Article [17*bis*], the following exceptions apply to the application of the Convention to the territory, including the territorial sea:

- (i) paragraphs 1 and 10 above do not apply;
- (ii) paragraph 4 applies subject to national law; and
- (iii) in circumstances under paragraph 8 where immediate action is required, the affected State may take such action without having to inform the ship’s registry and the registered owner prior to the action, but shall then inform the ship’s registry and the registered owner of the measures taken as soon as is reasonably practicable.

Article 13 paragraph 2 is deleted.

New 17bis

1. Any State Party may apply the Convention to its territory, including its territorial sea, in which event it shall notify the Secretary-General accordingly.
2. Such notification takes effect when the Convention enters into force for the State Party. Notifications made after the ratification, accession, acceptance or approval will, however, take effect [.....] months after its delivery to the Secretary-General.

Preamble text:

The application of this Convention to the territory, including the territorial sea, does not prevent a State Party from taking actions other than those provided for herein, in accordance with international law.

ANNEX 3

DRAFT CONVENTION ON WRECK REMOVAL

New proposal for Article 3

Submitted by Argentina and the Netherlands

Scope of application

ARTICLE 3¹

1 Except as otherwise provided in this Convention, this Convention shall apply to wrecks in the Convention area.

2 **A State Party may at the time of expressing its consent to be bound by this Convention and consistently with Article 17, declare by means of a notification to the Secretary-General, that such State Party shall apply Articles 11, 12 and 13 of this Convention to wrecks located within its territorial sea.**

3 **A State Party that has made a declaration under paragraph 2 may withdraw it at any time by means of a notification to the Secretary-General.**

¹ The Committee reconfirmed its approval of this article. (See LEG 91/12, paragraph 26.)

ANNEX 4**DRAFT WRECK REMOVAL CONVENTION****Statement by the delegation of the Republic of Cyprus**

The delegation of the Republic of Cyprus, in light of the proceedings of the 92nd session of the Legal Committee which prevented a debate in the plenary on written proposals to extend the scope of the application of the draft convention to include the territorial sea and in addition, due to the inability of the committee to either make or execute any decisions that have been made in accordance with the procedures of the committee, which in effect deprived the right of this delegation to express its opinion on the merits of the proposed options, would like to make the following statement.

Cyprus does not read articles of any international convention in isolation and neither does it read international conventions in isolation but in conjunction with each other and in particular with regard to the scope of application of each and the provisions contained therein.

The delegation of the Republic of Cyprus places particular importance to the International Convention of the Law of Sea, UNCLOS done at Montego Bay 1982, which it has ratified since 1988 and strongly believes that provisions of the current text of the Draft Wreck Convention are in direct conflict with the sovereign rights of the Republic of Cyprus.

The current text of the Draft Wreck Convention in conjunction with an extended scope of application to the territorial sea and to the territory of a member state, and in association with a disputed 'decision' of the Committee to amend the text of Article 16 "Settlement of Disputes", presents a major obstacle to this delegation to consider the adoption of the current text at the upcoming Diplomatic Conference which will be held in Nairobi, between 14-18 May 2007.

The delegation of Cyprus therefore, regrettably reserves its position with regard to the current text of the Draft Convention and expresses grave concerns about the outcome to the Diplomatic Conference in Nairobi.

This delegation is grateful to the Government of Kenya and all the individuals who assisted into the preparation of the Diplomatic Conference and would like to express its sincere thanks and appreciation for their efforts. The Government of the Republic of Cyprus will maintain and even strengthen its efforts to achieve a successful Diplomatic Conference and an equally successful and effective International Wreck Removal Convention.

We also request the Secretariat to include our statement to the Final Report of this esteemed Committee.

ANNEX 5

IMO RESERVATION AND GUIDELINES FOR IMPLEMENTATION OF THE
ATHENS CONVENTION**Reservation**

- 1 The Athens Convention should be ratified with the following **reservation or a declaration** to the same effect:

“[1.1] *Reservation in connection with the ratification by the Government of ... of the Athens Convention Relating to the Carriage of Passengers and Their Luggage by Sea, 2002 (“the Convention”)*

Limitation of liability of carriers, etc.

- [1.2] The Government of ... reserves the right to and undertakes to limit liability under paragraph 1 or 2 of Article 3 of the Convention, **if any**, in respect of death of or personal injury to a passenger caused by any of the risks referred to in paragraph 2.2 of the IMO Guidelines for Implementation of the Athens Convention to the lower of the following amounts:

- 250,000 units of account in respect of each passenger on each distinct occasion;
- or
- **340 million units of account** overall per ship on each distinct occasion.

- [1.3] Furthermore, the Government of ... reserves the right to and undertakes to apply the IMO Guidelines for Implementation of the Athens Convention paragraphs 2.1.1 and 2.2.2 *mutatis mutandis*, to such liabilities.

- [1.4] The liability of the performing carrier pursuant to Article 4 of the Convention, the liability of the servants and agents of the carrier or the performing carrier pursuant to Article 11 of the Convention and the limit of the aggregate of the amounts recoverable pursuant to Article 12 of the Convention shall be limited in the same way.

- [1.5] The reservation and undertaking in paragraph 1.2 will apply regardless of the basis of liability under paragraph 1 or 2 of Article 3 and notwithstanding anything to the contrary in Article 4 or 7 of the Convention; but this reservation and undertaking do not affect the operation of Articles 10 and 13.

Compulsory insurance and limitation of liability of insurers

- [1.6] The Government of ... reserves the right to and undertakes to limit the requirement under paragraph 1 of Article 4*bis* to maintain insurance or other financial security for death or personal injury to a passenger caused by any of the risks referred to in paragraph 2.2 of the IMO Guidelines for Implementation of the Athens Convention to the lower of the following amounts:

- 250,000 units of account in respect of each passenger on each distinct occasion;
- or
- **340 million units of account** overall per ship on each distinct occasion.

[1.7] The Government of ... reserves the right to and undertakes to limit the liability of the insurer or other person providing financial security under paragraph 10 of Article 4*bis*, for death or personal injury to a passenger caused by any of the risks referred to in paragraph 2.2 of the IMO Guidelines for Implementation of the Athens Convention, to a maximum limit of the amount of insurance or other financial security which the carrier is required to maintain under paragraph 1.6 of this reservation.

[1.8] The Government of ... also reserves the right to and undertakes to apply the IMO Guidelines for Implementation of the Athens Convention including the application of the clauses referred to in paragraphs 2.1 and 2.2 in the Guidelines in all compulsory insurance under the Convention.

[1.9] The Government of ... reserves the right to and undertakes to exempt the provider of insurance or other financial security under paragraph 1 of Article 4*bis* from any liability for which he has not undertaken to be liable.

Certification

[1.10] The Government of ... reserves the right to and undertakes to issue insurance certificates under paragraph 2 of Article 4*bis* of the Convention so as:

- to reflect the limitations of liability and the requirements for insurance cover referred to in paragraphs 1.2, 1.6, 1.7 and 1.9; and
- to include such other limitations, requirements and exemptions as it finds that the insurance market conditions at the time of the issue of the certificate necessitate.

[1.11] The Government of ... reserves the right to and undertakes to accept insurance certificates issued by other States Parties issued pursuant to a similar reservation.

[1.12] All such limitations, requirements and exemptions will be clearly reflected in the Certificate issued or certified under paragraph 2 of Article 4*bis* of the Convention.

Relationship between this Reservation and the IMO Guidelines for Implementation of the Athens Convention

[1.13] The rights retained by this reservation will be exercised with due regard to the IMO Guidelines for Implementation of the Athens Convention, **or to any amendments thereto**, with an aim to ensure uniformity. If a proposal to amend the IMO Guidelines for Implementation of the Athens Convention, **including the limits**, has been approved by the Legal Committee of the International Maritime Organization, those amendments will apply **as from the time determined by the**

Committee. This is without prejudice to the rules of international law regarding the right of a State to withdraw or amend its reservation.”

Guidelines

2 In the current state of the insurance market, States Parties should issue insurance certificates on the basis of one undertaking from an insurer covering war risks, and another insurer covering non-war risks. Each insurer should only be liable for its part. The following rules should apply (the clauses referred to are set out in Appendix A):

2.1 Both war and non-war insurance may be subject to the following clauses:

2.1.1 *Institute Radioactive Contamination, Chemical, Biological, Bio-chemical and Electromagnetic Weapons Exclusion Clause* (Institute clause no. 370);

2.1.2 *Institute Cyber Attack Exclusion Clause* (Institute clause no. 380);

2.1.3 The defences and limitations of a provider of compulsory financial security under the Convention as modified by these guidelines, in particular the limit of 250,000 units of account per passenger on each distinct occasion;

2.1.4 The proviso that the insurance shall only cover liabilities subject to the Convention as modified by these guidelines; and

2.1.5 The proviso that any amounts settled under the Convention shall serve to reduce the outstanding liability of the carrier and/or its insurer under Article 4*bis* of the Convention even if they are not paid by or claimed from the respective war or non-war insurers.

2.2 War insurance shall cover liability, **if any**, for the loss suffered as a result of death or personal injury to a passenger caused by:

- war, civil war, revolution, rebellion, insurrection, or civil strife arising there from, or any hostile act by or against a belligerent power;
- capture, seizure, arrest, restraint or detainment, and the consequences thereof or any attempt thereat;
- derelict mines, torpedoes, bombs or other derelict weapons of war;
- act of any terrorist or any person acting maliciously or from a political motive and any action taken to prevent or counter any such risk;
- confiscation and expropriation;

and may be subject to the following exemptions, limitations and requirements:

2.2.1 *War Automatic Termination and Exclusion Clause*

2.2.2 In the event the claims of individual passengers exceed in the aggregate the sum of **340 million units of account overall** per ship on any distinct occasion,

the carrier shall be entitled to invoke limitation of his liability in the amount of **340 million units of account**, always provided that:

- this amount should be distributed amongst claimants **in proportion to their established claims**;
- the distribution of this amount may be made in one or more portions to claimants known at the time of the distribution; and
- the distribution of this amount may be made by the insurer, or by the Court or other competent authority seized by the insurer in any State Party in which legal proceedings are instituted in respect of claims allegedly covered by the insurance.

2.2.3 30 days notice clause in cases not covered by 2.2.1

- 2.3 Non-war insurance should cover all perils subject to compulsory insurance other than those risks listed in 2.2, whether or not they are subject to exemptions, limitations or requirements in 2.1 and 2.2.
- 3 An example of a set of insurance undertakings (Blue Cards) and an insurance certificate, all reflecting these guidelines, are included in Appendix B.
 - 4 A State Party should not issue certificates on another basis than set out in paragraph 2 unless the matter first has been considered by the Legal Committee of the International Maritime Organization.
 - 5 The Legal Committee encourages the Depositary of the Convention - if necessary - to make these guidelines known to a State that is about to deposit an instrument of signature, ratification, acceptance, approval or accession.

* * *

APPENDIX A

Insurance clauses referred to in guidelines 2.1.1, 2.1.2 and 2.2.1

Institute Radioactive Contamination, Chemical, Biological, Bio-chemical and Electromagnetic Exclusion Clause (Cl. 370, 10/11/2003)

This clause shall be paramount and shall override anything contained in this insurance inconsistent therewith

- 1 In no case shall this insurance cover loss, damage liability, or expense directly or indirectly caused by or contributed to by or arising from:
 - 1.1 ionizing radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel;
 - 1.2 the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof;
 - 1.3 any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter;
 - 1.4 the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter. The exclusion in this sub-clause does not extend to radioactive isotopes, other than nuclear fuel, when such isotopes are being prepared, carried, stored, or used for commercial, agricultural, medical, scientific or other similar peaceful purposes;
 - 1.5 any chemical, biological, bio-chemical, or electromagnetic weapon.

Institute Cyber Attack Exclusion Clause (Cl. 380, 10/11/03)

- 1 Subject only to clause 10.2 below, in no case shall this insurance cover loss damage liability or expense directly or indirectly caused by or contributed to by or arising from the use or operation, as a means for inflicting harm, of any computer, computer system, computer software programme, malicious code, computer virus or process or any other electronic system.
- 2 Where this clause is endorsed on policies covering risks of war, civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power, or terrorism or any person acting from a political motive, Clause 10.1 shall not operate to exclude losses (which would otherwise be covered) arising from the use of any computer, computer system or computer software programme or any other electronic system in the launch and/or guidance system and/or firing mechanism of any weapon or missile.

War Automatic Termination and Exclusion

1.1 Automatic Termination of Cover

Whether or not such notice of cancellation has been given cover hereunder shall TERMINATE AUTOMATICALLY

1.1.1 upon the outbreak of war (whether there be a declaration of war or not) between any of the following:

United Kingdom, United States of America, France, the Russian Federation, the People's Republic of China;

1.1.2 in respect of any vessel, in connection with which cover is granted hereunder, in the event of such vessel being requisitioned either for title or use.

1.2 Five Powers War

This insurance excludes

1.2.1 loss damage liability or expense arising from:

the outbreak of war (whether there be a declaration of war or not) between any of the following:

United Kingdom, United States of America, France, the Russian Federation, the People's Republic of China; and

1.2.2 requisition either for title or use.

* * *

APPENDIX B

I. Examples of insurance undertakings (Blue Cards) referred to in guideline 3

Blue Card issued by War Insurer

Certificate furnished as evidence of insurance pursuant to article 4bis of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002.

Name of Ship:
IMO Ship Identification Number:
Port of registry:
Name and Address of owner:

This is to certify that there is in force in respect of the above named ship while in the above ownership a policy of insurance satisfying the requirements of article 4bis of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002, *subject to all exceptions and limitations allowed for compulsory war insurance under the Convention and the implementation guidelines adopted by the Legal Committee of the International Maritime Organization in October 2006, including in particular the following clauses: [Here the text of the Convention and the guidelines with appendices can be inserted to the extent desirable]*

Period of insurance from: 20 February 2007
to: 20 February 2008

Provided always that the insurer may cancel this certificate by giving ~~three months~~ 30 days written notice to the above Authority whereupon the liability of the insurer hereunder shall cease as from the date of the expiry of the said period of notice but only as regards incidents arising thereafter.

Date:

This certificate has been issued by:

War Risks, Inc.
[Address]

.....
Signature of insurer

As agent only for **War Risks, Inc.**

* * *

Blue Card issued by Non-War Insurer

Certificate furnished as evidence of insurance pursuant to article 4bis of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002

Name of Ship:
IMO Ship Identification Number:
Port of registry:
Name and Address of owner:

This is to certify that there is in force in respect of the above named ship while in the above ownership a policy of insurance satisfying the requirements of article 4bis of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002, *subject to all exceptions and limitations allowed for non-war insurers under the Convention and the implementation guidelines adopted by the Legal Committee of the International Maritime Organization in October 2006, including in particular the following clauses: [Here the text of the Convention and the Guidelines with appendices can be inserted to the extent desirable].*

Period of insurance from: 20 February 2007
to: 20 February 2008

Provided always that the insurer may cancel this certificate by giving three months written notice to the above Authority whereupon the liability of the insurer hereunder shall cease as from the date of the expiry of the said period of notice but only as regards incidents arising thereafter.

Date:

This certificate has been issued by:

PANDI P&I
[Address]

.....
Signature of insurer

As agent only for **PANDI P&I**

* * *

II. Model of certificate of insurance referred to in guideline 3

**CERTIFICATE OF INSURANCE OR OTHER FINANCIAL SECURITY
IN RESPECT OF LIABILITY FOR THE DEATH OF AND PERSONAL INJURY TO
PASSENGERS**

Issued in accordance with the provisions of article 4bis of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002

Name of Ship	Distinctive number or letters	IMO Ship Identification Number	Port of Registry	Name and full address of the principal place of business of the carrier who actually performs the carriage

This is to certify that there is in force in respect of the above-named ship a policy of insurance or other financial security satisfying the requirements of article 4bis of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002.

Type of Security.....

Duration of Security

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

The insurance cover hereby certified is split in one war insurance part and one non-war insurance part, pursuant to the implementation guidelines adopted by the Legal Committee of the International Maritime Organization in October 2006. Each of these parts of the insurance cover is subject to all exceptions and limitations allowed under the Convention and the implementation guidelines. The insurers are not jointly and severally liable. The insurers are:

For war risks: War Risks, Inc., [address]

For non-war risks: Pandi P&I, [address]

This certificate is valid until

Issued or certified by the Government of

(Full designation of the State)

OR

The following text should be used when a State Party avails itself of article 4bis, paragraph 3:

The present certificate is issued under the authority of the Government of
(full designation of the State) by (name of institution or organization)

At On
(Place) (Date)

.....
(Signature and title of issuing or certifying official)

Explanatory Notes:

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