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96th session
Agenda item 13

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REPORT OF THE LEGAL COMMITTEE ON THE WORK OF ITS NINETY-SIXTH SESSION

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1 INTRODUCTION

1.1 The Legal Committee held its ninety-sixth session at IMO Headquarters from 5 to 9 October 2009, under the chairmanship of Professor Lee-Sik Chai (Republic of Korea).

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

ALGERIA	KENYA
ANGOLA	KUWAIT
ANTIGUA AND BARBUDA	LATVIA
ARGENTINA	LIBERIA
AUSTRALIA	LIBYAN ARAB JAMAHIRIYA
AZERBAIJAN	LITHUANIA
BAHAMAS	LUXEMBOURG
BANGLADESH	MALAYSIA
BELGIUM	MALTA
BELIZE	MARSHALL ISLANDS
BOLIVIA (PLURINATIONAL STATE OF)	MEXICO
BRAZIL	NETHERLANDS
BULGARIA	NIGERIA
CANADA	NORWAY
CHILE	PANAMA
CHINA	PAPUA NEW GUINEA
COLOMBIA	PHILIPPINES
COOK ISLANDS	POLAND
CUBA	PORTUGAL
CYPRUS	REPUBLIC OF KOREA
DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA	ROMANIA
DENMARK	RUSSIAN FEDERATION
DOMINICAN REPUBLIC	SAUDI ARABIA
ECUADOR	SINGAPORE
EGYPT	SOUTH AFRICA
FINLAND	SPAIN
FRANCE	SWEDEN
GEORGIA	SWITZERLAND
GERMANY	THAILAND
GHANA	TURKEY
GREECE	TUVALU
INDIA	UKRAINE
INDONESIA	UNITED KINGDOM
IRAN (ISLAMIC REPUBLIC OF)	UNITED REPUBLIC OF TANZANIA
IRAQ	UNITED STATES
ITALY	URUGUAY
JAMAICA	VANUATU
JAPAN	VENEZUELA (BOLIVARIAN REPUBLIC OF)

and the following Associate Member of IMO:

HONG KONG, CHINA

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

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

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

INTERNATIONAL CHAMBER OF SHIPPING (ICS)
INTERNATIONAL SHIPPING FEDERATION (ISF)
INTERNATIONAL UNION OF MARINE INSURANCE (IUMI)
COMITÉ MARITIME INTERNATIONAL (CMI)
INTERNATIONAL ASSOCIATION OF PORTS AND HARBORS (IAPH)
BIMCO
INTERNATIONAL ASSOCIATION OF CLASSIFICATION SOCIETIES (IACS)
OIL COMPANIES INTERNATIONAL MARINE FORUM (OCIMF)
INTERNATIONAL ASSOCIATION OF PRODUCERS OF INSURANCE AND
REINSURANCE (BIPAR)
INTERNATIONAL FEDERATION OF SHIPMASTERS' ASSOCIATIONS (IFSMA)
THE INTERNATIONAL GROUP OF P & I ASSOCIATIONS (P & I Clubs)
INTERNATIONAL ASSOCIATION OF MARITIME UNIVERSITIES (IAMU)
INTERNATIONAL TRANSPORT WORKERS' FEDERATION (ITF)
THE NAUTICAL INSTITUTE

The Secretary-General's opening address

1.4 In the absence of the Secretary-General, his opening address was given by Dr. Rosalie Balkin, Director, Legal Affairs and External Relations Division (LED). The full text of the opening address is reproduced in document LEG 96/INF.2.

Chairman's remarks

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

Adoption of the agenda

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

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

2 REPORT OF THE SECRETARY-GENERAL ON CREDENTIALS

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

3 ELECTION OF OFFICERS

3.1 The Committee re-elected, by acclamation, Professor Lee-Sik Chai (Republic of Korea) as Chairman for 2010. The Committee also re-elected, by acclamation, Mr. Kofi Mbiah (Ghana) and Mr. Walter de Sá Leitão (Brazil) as Vice-Chairmen for 2010.

4 PROVISION OF FINANCIAL SECURITY

(i) Progress report on the work of the Joint IMO/ILO *Ad Hoc* Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers

4.1 The Director, LED, introduced document LEG 96/4/1, containing, at annex, the report of the ninth session of the Joint IMO/ILO *Ad Hoc* Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers (the Group). She recalled that, as orally reported at the last session of the Committee, the Group met from 2 to 6 March 2009 at the ILO Headquarters, in Geneva. The session was chaired by Mr. C. Darr of the United States.

4.2 The report, including the Group's proposals for the text of draft amendments to the Maritime Labour Convention, 2006 (MLC 2006), would also be submitted to the 306th Session of the Governing Body of ILO (November 2009), for consideration and action, as appropriate.

4.3 The Committee was now invited to consider the report and, in particular, to note that the Group was of the view that it had satisfied its remit, as provided for in the revised terms of reference approved by both parent bodies (see paragraph 2 of the report).

4.4 The Committee was requested to comment and decide on the Group's recommendations: firstly, that financial security should be made mandatory for both types of claims; and secondly, as contained in paragraphs 157(a) to (c) of the report of that session, as follows:

- the principles embodied in the draft texts, contained in appendices I and II to the Group's report, should be considered as a basis for finalizing a mandatory instrument or instruments;
- an amendment to the MLC 2006 is the best way forward to create such a mandatory instrument or instruments; and that
- the IMO Legal Committee should remain seized of the issue and keep it under consideration in the event that amendment to the MLC 2006 proves not to be feasible or timely.

4.5 The Group further proposed that, in light of the present circumstances, both IMO and ILO should continue to impress on Governments the importance of the voluntary implementation of the existing Guidelines on Provision of Financial Security in Case of Abandonment of Seafarers (as contained in IMO resolution A.930(22)), pending the adoption and entry into force of the appropriate mandatory solutions (paragraph 157(d) of the report).

4.6 In compliance with this latter request, and as instructed by the Legal Committee at its last session, the IMO Secretariat had issued Circular letter No.2976, of 2 July 2009.

4.7 The observer delegation of the International Group of P & I Associations (P & I Clubs), in introducing document LEG 96/4/1, stated that the P & I Clubs were of the view that the draft text in appendix II of the report of the ninth session of the Working Group did not accurately reflect the principle that the financial security envisaged therein is restricted to financial security for contractual compensation, as provided for under the employment contract, collective bargaining agreement or other employment agreement, and may need clarification.

4.8 The delegation of the United States, on behalf of Mr. C. Darr, Chairman of the Group, stated that the successful outcome of its ninth session could not have been possible without the excellent leadership and diligent efforts of Mr. J.-M. Schindler of France, who chaired the preceding sessions.

4.9 The delegation stressed that the strong co-operative spirit between Governments and the Social Partners had led to their agreement on a text that could form the basis for a mandatory instrument to address the issue of financial security in cases of seafarer death, personal injury, and abandonment. It thanked, on behalf of the Chairman, the spokespersons for Governments and the Social Partners, for their hard work.

4.10 The Chairman of the Group was grateful for the opportunity to serve both Organizations in that capacity and to play a role in advancing the efforts to improve the lives and working conditions of seafarers worldwide. The delegation stressed the Group's view that it had satisfied its remit as provided for in the terms of reference approved by both parent bodies and drew attention to the Group's recommendations, as contained in paragraphs 157(a) to (d) of the report of the session.

4.11 The progress made between the eighth and the ninth sessions was due, in no small part, to the excellent intersessional co-operation between the Social Partners. Abandonment and personal injury and death are risks for seafarers which all the tripartite partners wanted to deal with. The conclusions of the Group showed that tripartism does offer opportunities when all its constituent elements worked together. On behalf of the Chairman, the delegation thanked all the participants and stressed that it was now important for everyone to remain committed to the process until the mandatory solutions are fully adopted, implemented and enforced.

4.12 Referring to the P & I Clubs' submission in document LEG 96/4/2, the representative of the observer delegation of the International Chamber of Shipping (ICS), on behalf of the International Shipping Federation (ISF), stated that it was also the understanding of ISF that the application of the draft provisions on financial security for personal injury and death is limited to contractual compensation and does not cover tort.

4.13 The representative of the observer delegation of the International Transport Federation (ITF) paid tribute to Mr. J.-M. Schindler and Mr. C. Darr for their able chairmanship of the Group. ITF supported mandatory instruments, in the hope that these would enter into force as soon as possible. He stated that some 20 cases had been included in the abandonment database since the beginning of the year, but that this did not reflect the true situation, since ITF had noted increasing bankruptcy of shipping companies, which had left crews to fend for themselves and to late payments. ITF had intervened in several such instances to assist crews of bankrupt companies who had been abandoned. He also stressed the importance of applying the "Guidelines on Shipowners' Responsibilities in respect of Contractual Claims for Personal Injury to or Death of Seafarers", adopted by resolution A.931(22).

4.14 The Committee noted the following information on the MLC 2006, which was presented by the Director, LED, on behalf of Ms C. Doumbia-Henry, Director, International Labour Standards Department, ILO:

- the MLC 2006 has a demanding entry-into-force requirement (at least 30 Members representing at least 33% of the world gross tonnage);
- to date, the MLC 2006 has been ratified by five ILO Members representing more than 44% of the world gross tonnage and the related responsibility for nearly 50% of the world's seafarers working on these ships;
- efforts intensified during 2008 and 2009 and will continue throughout 2010 to support ratification and implementation actions by 25 Members drawn from all regions in order to achieve entry into force by the target date of 2011;
- a major capacity-building activity has been supporting the follow-up to two resolutions of the 94th International Labour Conference regarding the development and adoption by a tripartite expert meeting of international guidelines for both flag State and port State inspections under the MLC 2006. These Guidelines were developed throughout 2008 and adopted by two meetings in September of that year. The "Guidelines for flag State inspections under the Maritime Labour Convention, 2006" and the "Guidelines for port State control officers carrying out inspections under the Maritime Labour Convention, 2006" were published in 2009; and
- there had been significant demand in all regions for capacity-building through training for inspectors, seafarers, shipowners and others involved, in putting the MLC 2006 into operation at a national level. ILO was now implementing, in co-operation with its International Training Centre in Turin, a course for "Training of Trainers" of maritime labour inspectors that is aimed at national level capacity-building. Two courses had already taken place, in February 2009 and in September 2009, in Turin and Genoa. Another course would take place in December 2009.

4.15 There would be a document before the Governing Body, at its 306th Session, concerning preparations for the entry into force of the MLC 2006 and the role of the Special Tripartite Committee under Article XIII of that Convention, which would draw attention to the conclusions of the Group's ninth session.

4.16 One delegation reported that it was in the process of ratifying the MLC 2006.

4.17 The view was expressed that, because the MLC 2006 was not yet in force, amendment of the Convention might create uncertainties and delay the implementation process and, accordingly, suggested that the format of the legal instrument should be further considered.

4.18 It was also suggested that the recommendation contained in paragraph 157(c) might need clarification, in particular in relation to the phrase "feasible or timely", and that the Committee might concentrate its attention on pursuing the entry into force of the MLC 2006.

4.19 The Committee noted, with satisfaction, the successful outcome of the ninth session of the Group. It agreed that the Group had satisfied its remit and approved the four recommendations in paragraph 157 of the Group's report. The Committee expressed gratitude to Mr. J.-M. Schindler of France and to Mr. C. Darr of the United States for their leadership in

chairing the Group and congratulated the Social Partners, the Member Governments and the other participants on the successful outcome.

4.20 The Committee acknowledged the Secretary-General's personal interest and commitment in finding suitable solutions. It noted with satisfaction that this work had been concluded in time for the celebration of the Year of the Seafarer, in 2010.

4.21 The Committee concurred with the P & I Clubs that financial security envisaged in the draft text in appendix II to the Group's report is restricted to contractual compensation as provided for under the employment contract, collective bargaining agreement or other employment agreement and suggested that this be clarified in future deliberations. It noted that further work on the draft amendments might be needed after the entry into force of the MLC 2006.

4.22 The Secretariat was requested to transmit the outcome of the Committee's deliberations on this item to the ILO Secretariat, for submission to the ILO Governing Body, at its 306th Session, in November 2009. Developments with regard to abandonment of seafarers may be found on the database on abandonment of seafarers, which contains salient information on instances of abandonment for the purpose of monitoring the problem in a comprehensive and informative manner. The database can be found on the ILO website at: www.ilo.org/dyn/seafarers.

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

4.23 The delegation of the Netherlands, as lead delegation, introduced document LEG 96/4 containing a report of the Correspondence Group (the Group) on its progress in developing a single model compulsory insurance certificate (single model certificate) to cover all IMO liability and compensation regimes. The terms of reference of the Group were agreed by the Committee at its last session (see document LEG 95/10, paragraph 4.26).

4.24 The delegation drew attention to the large number of participants that had taken part in the Group's deliberations and referred in detail to the conclusions of the report with respect to the advantages and disadvantages of the single model certificate. In so doing, it noted the emerging consensus of the Group in favour of a non-mandatory approach, to be achieved by means of an Assembly resolution, a draft version of which was annexed to the report.

4.25 The Committee held an extensive debate on the relative benefits and drawbacks of both the mandatory and the recommendatory options for a single model certificate.

4.26 Some delegations noted that legal certainty could be only achieved by amending all six treaties regulating compulsory insurance, so that all of them would include the single model certificate instead of the original models regulated in each of them. It was suggested that these amendments might be included in a protocol to be adopted in a single-day Diplomatic Conference, convened side by side with another scheduled IMO Diplomatic Conference. In this regard, reference was made to the forthcoming HNS Diplomatic Conference to be convened in April 2010.

4.27 The point was made, however, that it would not be feasible, in the short term, to prepare a suitable amending instrument for consideration at the HNS Diplomatic Conference. Moreover, the subject matter to be dealt with at the Conference, namely the consideration of a Protocol to

facilitate the entry into force of the HNS Convention, would occupy all of the short time available, leaving no opportunity for a parallel conference to consider a single model certificate.

4.28 The view was expressed that, in the long term, the adoption of amendments to each individual convention remained the best solution to achieve legal certainty. It was acknowledged, however, that this course of action was not without its difficulties, as it would require the renegotiation of six convention texts, only three of which were currently in force.

4.29 Bearing in mind these obstacles, the Committee focused its discussions on the short term, interim, alternative of adopting an IMO Assembly resolution, based on the text annexed to the report of the Group.

4.30 The majority of delegations that spoke supported, in principle, the adoption of such a resolution, noting that the aim of the single model certificate, namely, the reduction of the administrative burden involved in issuing and monitoring six different certificates, took priority over the format of the certificate. Accordingly, the basic issue was not amendment of the substance (the financial guarantee) but merely amendment of the format.

4.31 A significant number of delegations, including some of those favouring, in principle, the adoption of a resolution were, however, reluctant to support such a step at this stage. In this regard several obstacles were noted, as follows:

- to proceed in this way would give rise to implementation issues and would raise the question of whether a non-binding resolution can override the requirements of a treaty instrument;
- the purpose of the single model certificate would only be achieved if it was subsequently accepted by all port States in lieu of individual certificates. Consensus was thus needed to ensure that port States did not refuse to accept the single model certificate or request individual convention certificates in addition to the single model certificate. The risk was that ships might have to carry both types of certificate, with the result that the administrative burden would be increased rather than being eased;
- non-acceptance of single model certificates coupled with non-availability of convention certificates might result in the detention of ships in foreign ports;
- there was a risk of confusion, due to the fact that, at present, only three of the six instruments referred to in the single model certificate are in force, and the parties to each are not necessarily the same. A port State might be unfamiliar with instruments not ratified by its Government. In this connection, the first step was to bring into force all the liability conventions prior to introducing a single model certificate; and
- seeking to amend a convention text by means of recommendatory resolutions would send a wrong message.

4.32 The view was expressed that, at this stage, there was neither urgency nor compelling need to adopt a single model certificate and the advantages to be gained from so doing did not outweigh the difficulties. It was also noted that it might be better to consider technological improvements, including availability of certificates issued by electronic means. It was suggested that, before proceeding with the resolution, it should be considered by the Sub-Committee on Flag State Implementation (FSI).

4.33 With regard to the content of the single model certificate, there was support for the inclusion of a reference to the IMO identification number. Some doubt was, however, expressed regarding the need for inclusion of the Company identification number.

4.34 The observer delegation of the International Group of P & I Associations (P & I Clubs) supported the idea, in principle, of adopting a single certificate by non-mandatory means, but noted that a recommendatory option for a single model certificate was only feasible if all States agreed on a non-mandatory approach.

4.35 The observer delegation of the International Chamber of Shipping (ICS) supported the draft resolution in principle, but noted the need to ensure that any non-mandatory option was unanimously agreed, such that the certificate would be acceptable to all States, bearing in mind that, when shipowners enter into charter party contracts, it is generally agreed that chartered ships should have access to all ports and be able to engage in worldwide trade.

4.36 The observer delegation of BIMCO agreed with the above-mentioned observer delegations, stating that a recommendatory solution would only work if all States agreed to abide by it.

4.37 The Committee thanked the Group for its comprehensive work on the subject and commended the leadership of Mr. Jan de Boer (The Netherlands) for his efforts.

4.38 The Committee concluded that the Group had fulfilled its mandate under the terms of reference drawn up by the Committee at its ninety-fifth session; and that there was, consequently, no need for the Group to continue with its deliberations.

4.39 In view of the legal and practical issues referred to above and, in particular, the lack of general consensus required to ensure the effective implementation of the draft resolution, the Committee concluded that, at the moment, it was unable to recommend the adoption of the Assembly resolution proposed by the Group, as a short-term solution. Nor was it able, at this point in time, to recommend amending the liability conventions in order to introduce a single model certificate, as a long-term solution.

4.40 The Committee, therefore, decided to remove this item from its work programme, noting that it could be reintroduced at some future date if the Committee so decided.

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

5.1 The Committee was informed that no additional responses had been received since its last session in response to Circular letter No.2825, which had requested that any information concerning cases of mistreatment of seafarers in the event of a maritime accident should be transmitted to IMO or to ILO. Furthermore, consultations between the Secretariats of IMO and ILO and the social partners had not resulted in an agreement on a schedule for convening another session of the Joint IMO/ILO *Ad Hoc* Expert Working Group on Fair Treatment of Seafarers in the Event of a Maritime Accident.

5.2 The observer delegation of BIMCO referred to the document it had submitted to the ninety-fifth session of the Legal Committee (document LEG 95/5) reporting on its "Study of recent cases involving the International Practice of Using Criminal Sanctions towards Seafarers". The delegation stressed its continuing concern regarding this issue, as well as the criminalization of seafarers in relation to events other than maritime accidents, and underlined that, in its view,

this was becoming an increasing problem, with wide implications for the image of the maritime industry. The delegation recalled that the three conclusions of the study, as updated in 2009, were that the criminalization of seafarers was a worldwide problem; that each one typically had a huge impact, although there were relatively few cases; and that there were distinct problems with the unfair treatment of seafarers. At the same time, the study showed clear signs that the boundaries of negligence and responsibility appeared to be drifting towards a stricter liability regime. The delegation informed the Committee that it expected to finalize an updated version of the study early in 2010 and urged delegations to provide information about cases of unfair treatment, to be taken into account in the study.

5.3 The observer delegation of the Comité Maritime International (CMI) said the issue of unfair treatment of seafarers remained a sensitive subject. Viewed from outside the country involved, detention of seafarers in any particular case might appear unreasonable; but viewed from within that country, it may be appropriate and based on domestic law relating to investigation of maritime incidents. The IMO/ILO guidelines may not help in that context. CMI had joined an informal London-based Round-Table, which was trying to ascertain the facts of each case of detention and to intervene if appropriate. The delegation hoped that, through the CMI network of Maritime Law Associations, CMI would be able to obtain more accurate data about future and ongoing incidents so that a more objective assessment of each incident might be undertaken and action could be taken by Round-Table members.

5.4 The delegation of the Islamic Republic of Iran expressed concern about seafarers being deprived of shore leave and denied access to shoreside welfare facilities on the basis of nationality, religion and name. Such practices, in the view of this delegation, undermined the health and morale of the seafarers concerned and could have an adverse effect on ship safety. The delegation requested that the issue of suitable implementation of rules and recommendations concerning shore leave; supervising actions of Contracting Governments; and providing sufficient guarantee of the seafarers' rights should be considered as an agenda item of the joint IMO/ILO working group on the human element. In response to its question, the delegation was informed by the Secretariat that a copy of the statement would be forwarded to ILO. The text of the statement made by the delegation is provided at annex 2 to this report.

5.5 The Committee requested the IMO Secretariat to continue to consult with the ILO Secretariat and with the social partners, to determine the most convenient meeting dates for reconvening the Joint IMO/ILO *Ad Hoc* Expert Working Group on Fair Treatment of Seafarers.

6 INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR BUNKER OIL POLLUTION DAMAGE, 2001: IMPLEMENTATION OF THE CONVENTION

6.1 The Committee decided to consider, under this agenda item, documents LEG 96/6 and LEG 96/6/1, which deal with the issue of Bunkers certificates to bareboat-registered vessels. It would deal with document LEG 96/6/2, which provides data on pollution damage claims arising from a spill, or the threat of a spill, from bunker oils, in conjunction with an Australian proposal, under "Any other business" (item 12), to add a new work programme item and planned output to consider amendments to LLMC 96 to increase limits of liability under the Bunkers Convention (document LEG 96/12/1).

6.2 The delegation of Denmark introduced document LEG 96/6, containing the report of the Correspondence Group established by the Legal Committee at its last session to facilitate further ratifications and to promote harmonized implementation of the Bunkers Convention, as well as the draft Assembly resolution at annex thereto.

6.3 She explained that the text of the draft resolution reflected the majority view of the Correspondence Group and that the Legal Committee needed to take a policy decision, due to the difference of opinion, especially with regard to paragraphs 1 and 2 of the draft resolution.

6.4 In introducing document LEG 96/6/1, the delegation of the Marshall Islands disagreed with parts of the draft resolution, in particular, the contention that the Convention is discretionary on the matter of State certificates to ships registered in a bareboat registry (article 7.2). Moreover, if the Convention had created a discretion, a resolution could not eliminate or limit such discretion. The first operative paragraph of the draft resolution would be administratively burdensome for all concerned parties and may be contrary to international law because it would create a conditional, layered system of competence for the issuance of certificates that the Convention does not contemplate. The second operative paragraph would require an important decision of principle by the Committee. The fifth operative paragraph was unacceptable, because a vessel must be secure in the knowledge that a certificate will be accepted by States Parties and not have to rely on their spirit of co-operation.

6.5 A majority of delegations expressed support, in principle, for the draft resolution, for the following reasons:

- although a resolution cannot change the legal content of a convention, it was a pragmatic way to resolve the question of responsibility for issuing Bunkers certificates to bareboat registered vessels;
- the most important consideration is that the ship is covered by insurance and the resolution allows for flexibility in attaining this objective;
- the flexible approach contained in the resolution was acceptable given the possibility of different interpretations on the question of the entitlement to issue the certificate;
- the resolution provides a balanced approach by acknowledging the rights and responsibilities of flag States and, at the same time, taking account of articles 7.2 and 7.9 of the Bunkers Convention;
- when a ship is bareboat-registered out, the responsibility for issuing the certificate is transferred from the underlying register to the flag State; and
- the resolution accommodates all interested States and could be supported, subject to some refinement.

6.6 A variety of other comments were made in connection with the text of the resolution:

- a resolution was not the most suitable vehicle to resolve the issue;
- preferably the flag State should issue the certificate; however, definitive clarification of this issue would involve an amendment to the Convention;
- other treaties contain a similar issue; it is a reasonable interpretation that the burden should be on the underlying registry, however, when a ship is bareboat-chartered out, the responsibility goes to the flag State;

- the text needs adjustment to reflect a preference for the register of origin (genuine link);
- operative paragraphs 1.1 and 1.5 would be sufficient to cover the issues, and are in conformity with UNCLOS;
- operative paragraph 1.2 was of concern since it does not deal with the issue of the flag State not being a party to the Convention;
- operative paragraph 1.2 should be maintained, otherwise practical problems could arise for the flag State in establishing whether the ship is insured. Other possible problems could arise if the State of the underlying register recognizes an insurance not recognized by the flag State, in which case the ship might be prevented from trading;
- it would be acceptable if the resolution called for the certificate to be issued by either the flag State or the State of origin;
- interpretation of the Convention by each party has to be respected;
- paragraph 3 of the preamble should be deleted or amended as per the original draft, as the word “discretionary” does not reflect a proper legal interpretation of the Bunkers Convention;
- operative paragraph 2 contains an important principle of international law;
- as in the case of the Civil Liability Convention, under the Bunkers Convention, the flag State is competent to issue the certificate, on condition that it is party to the Convention;
- flag State jurisdiction is a recognized principle under international maritime law and should not now be disputed;
- the resolution would be a practical way forward, provided its content is clear and does not create more problems and uncertainties; and
- the resolution could be supported on condition that the certificate will be issued by the flag State.

6.7 The observer delegation of the International Chamber of Shipping (ICS) clarified that, while the Civil Liability Convention applies to about 4,000 tankers and has given rise to no real problems in regard to the issuing of certificates, the Bunkers Convention applies to about 40,000 ships, and accordingly there was a need for clarity as to who is responsible for issuing the Bunkers certificate.

6.8 In this connection, it was noted that some registers that had bareboat chartered-in tankers issued Civil Liability certificates to those tankers.

6.9 One delegation warned against the risk of departing from the well-established practice according to which, in situations of bareboat charter registration, the flag State is responsible for issuing the relevant compulsory insurance certificate. The neutral approach in the draft

resolution would create legal uncertainty about that widely accepted regime and the principle of flag State jurisdiction, in implementation of Articles 91, 92, and 94 of the UNCLOS Convention.

The delegation enumerated a number of advantages and disadvantages of having an underlying registry issue the Bunkers certificate (to the detriment of the flag State), demonstrating that the relevant disadvantages were more obvious.

It concluded that, should the underlying registry be given the discretionary power to issue Bunkers certificates, this would create confusion and legal uncertainty. A pragmatic and legally sound solution was necessary, i.e. that the responsibility for issuing Bunkers certificates lies with the flag State (bareboat register). This argument was supported by the standard set by the industry. In this connection, he referred to the relevant clauses of the BIMCO Standard Bareboat Charter Model BARECON 2001. Under bareboat chartering, the principle set by the industry is that the bareboat charterer has the obligation to take the compulsory insurance, not the owner. Therefore, the bareboat register (flag State) should be responsible for issuing Bunkers certificates.

With regard to which IMO body would be competent to adopt the resolution, this should be a Conference of Parties to the Bunkers Convention, or, preferably, the Committee. It recalled in this connection that when the Legal Committee, at its sixty-sixth session in 1992, had a similar debate about the application of the Civil Liability Convention to the bareboat charter registration, the CMI in its report to the Committee (document LEG 66/6/1) had reached the conclusion that it was a problem of interpretation of the provisions of the Convention and that a resolution of the Legal Committee would suffice.

6.10 The observer delegation of the P & I Clubs stated that the Clubs issued Bunkers Blue Cards in the name of the registered owner only, and that they refused to include the name of the bareboat charterer in that document.

6.11 The Committee expressed its gratitude to Ms Birgit Olsen (Denmark), Chairperson of the Correspondence Group, for the complex work produced in such a short time.

6.12 While several States had a different view, the overwhelming majority of delegations that spoke were of the view that the flag State bore the responsibility for issuing the Bunkers certificate.

6.13 In light of the preceding considerations, the Committee agreed on the need to further refine the draft resolution, including the recommendations contained therein. It noted that a broad agreement would be needed in order to approve the draft resolution for submission to the Council and the Assembly.

6.14 The Committee established an informal drafting group to improve the text of the resolution. The outcome of the group's discussions, which were led by Ms Olsen, was presented in document LEG 96/WP.6.

6.15 The Committee approved the draft resolution, subject to the following modifications:

PREAMBLE

- second paragraph, third line: words “**(Bunkers certificate)**” added, to read:

“RECALLING FURTHER article 7 of the Convention, stipulating that a registered owner of a ship having a gross tonnage greater than 1,000 shall maintain insurance or other forms of financial security and obtain a State certificate (**Bunkers certificate**) issued by a State Party to the Convention attesting that such insurance or financial security is in place,”

- third paragraph replaced with a new paragraph, as follows:

“**ACKNOWLEDGING that there have been differing interpretations on the matter of the issuance of Bunkers certificates by States to ships registered in a bareboat registry,**”

- fourth paragraph: reference to the debate at the ninety-sixth session inserted as follows:

“**ACKNOWLEDGING FURTHER** the outcome of the debate on the above matter that took place during the ninety-fifth **and ninety-sixth** sessions of the IMO Legal Committee as reflected in the reports (documents LEG 95/10 **and LEG 96/13**),”

OPERATIVE PARAGRAPHS

- recommendation .1: deleted with consequential re-numbering of the ensuing recommendations.

- recommendation .2: amended to read:

“all States Parties **should not** request **more than** one Bunkers certificate from any ship, including ships bareboat-registered in a State Party, and **should** accept Bunkers certificates issued by such a State Party in accordance with article 7, paragraph 9, of the Convention;”

- recommendation .3: amended to read:

“States Parties **should avoid burdening shipowners with** unnecessary bureaucracy; and”

- recommendation .4: amended to read:

“States Parties which allow ships to be registered as bareboat chartered **should** co-operate to find viable solutions in a spirit of understanding and co-operation;”

- paragraph 2: amended to read:

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

6.16 The Committee approved the draft resolution in document LEG 96/WP.6 with the modifications contained in paragraph 6.15 and, in light of the advice of the Secretariat to the effect that, although an Assembly resolution and a Legal Committee resolution would have the same legal value, an Assembly resolution would carry more weight and, in view of the opinion of the overwhelming majority of delegations which intervened on this issue, decided to submit the draft resolution, reproduced in annex 4 to this report, to the twenty-fifth extraordinary session of the Council for consideration and, thereafter, for submission to the twenty-sixth regular session of the Assembly for adoption.

6.17 The Committee decided to maintain the Correspondence Group, which would continue its work on the implementation of the Bunkers Convention.

7 PIRACY: REVIEW OF NATIONAL LEGISLATION

7.1 The Secretariat introduced documents LEG 96/7, LEG 96/7/Corr.1 and LEG 96/7/1 containing, respectively, general comments on the national legislation on piracy submitted in response to Circular letter No.2933, and information on developments relating to Working Group 2 (on legal and judicial issues) of the Contact Group on Piracy off the coast of Somalia (CGPCS Working Group 2).

7.2 In connection with the information received on national legislation the Secretariat noted that:

- only a few countries fully incorporate the definition of piracy, contained in article 101 of the United Nations Convention on the Law of the Sea (UNCLOS), as well as a jurisdictional framework based upon the concept of universal jurisdiction regulated by UNCLOS;
- in most cases, piracy is not addressed as an independent, separate offence with its own jurisdictional framework, but is subsumed within more general categories of crime, such as robbery, kidnapping, abduction, violence against persons, etc. In such cases, prosecution and punishment can only take place in accordance with a jurisdictional scope that is, inevitably, more restricted than the scope of universal jurisdiction regulated in UNCLOS;
- in some cases, domestic legislation, rather than defining all the elements of the offence of piracy as part of its criminal law, simply makes reference to piracy as defined by international law, UNCLOS or otherwise. This generic approach may present obstacles for adequate prosecution and punishment in countries where criminal law requires, as a condition for enforcement, that all elements of any offence are described in detail in the legislation; and
- most States Party to the 1988 SUA Convention have legislation in place implementing the compulsory establishment of jurisdiction regulated in article 6.1 of this Convention. However, the lack of establishment of facultative (or optional) jurisdiction authorized in article 6.2, coupled with the lack of precise rules regulating universal jurisdiction, can inevitably lead to loopholes, as a result of which, some piracy incidents may remain unpunished.

7.3 In connection with the developments in CGPCS Working Group 2, the Secretariat advised that:

- the Working Group's task was to provide specific, practical and legally sound guidance to Contact Group members on legal issues related to the fight against piracy, including the prosecution of suspected pirates. With a view to fulfilling this task, the Working Group agreed that the way forward was to develop a full set of practical tools (checklists, guidelines, templates, compilations) with the aim of providing support to States and organizations participating in the anti-piracy effort;
- material developed by the Working Group included a compilation of the international legal basis for prosecution of suspected pirates, as well as generic templates on evidence collection, ship-rider agreements, obtaining flag State consent in cases where a military vessel protection detachment is to be embarked on merchant ships, and MoU on the conditions of transfer of suspected pirates. These templates, as well as other guidance, will be placed on the Contact Group website when it is established;
- the Working Group agreed terms of reference for an International Trust Fund to help defray the expenses associated with prosecution of suspected pirates;
- the Working Group agreed that the establishment of an international piracy court was premature at this stage; and
- at its last meeting, held in New York on 10 September 2009, the CGPCS had approved these terms of reference and asked Working Group 2 to continue its work, including its discussions on the issue of an international, regional or other mechanism for the prosecution of suspected pirates.

7.4 In response to questions raised by delegations, the Secretariat provided details on the efforts undertaken by IMO and UNODC to ensure that legislative data collected by both organizations was shared and analysed in order to ensure that activities of both organizations did not overlap. The Secretariat also invited countries which needed to do so, to request IMO's advice and assistance in the drafting of legislation within the framework of the Organization's Technical Co-operation Programme.

7.5 The Director of the Maritime Safety Division (MSD) provided information on the activities of the CGPCS since its formation earlier this year and the most recent activities of the MSC and the NAV Sub-Committee regarding the issue of piracy. He also gave an update on the number of piracy incidents in waters off Somalia in 2009, and stated that four ships and 99 seafarers were currently held hostage. He praised the efforts of naval vessels to protect ships navigating in the waters off the Gulf of Aden and the western Indian Ocean. He referred to the adoption by the MSC of updated guidance and recommendations on the suppression of piracy, including specific guidance on piracy and armed robbery against ships in waters off the coast of Somalia, which include the industry-developed Best Management Practices (MSC.1/Circ.1332).

The Director of MSD highlighted the importance of the Djibouti Code of Conduct to repress acts of piracy and armed robbery against ships, which had come into effect on 29 January 2009 and which had so far been signed by 10 countries in the region. He emphasized IMO's determination to implement a programme of capacity-building activities funded through the IMO Djibouti Code Trust Fund, a multi-donor trust fund established through the substantial financial contributions from Japan and Norway, noting also that the Netherlands had indicated a willingness to contribute.

A regional meeting would be held in Seychelles, in October this year, to discuss the general action programme for the implementation of the Djibouti Code over the coming three years and a project team would be established next year. Key issues in the implementation process included:

- establishing information sharing centres;
- developing associated protocols and mechanisms of co-ordination;
- establishing necessary national rules and regulations for anti-piracy activities;
- establishing a regional training centre in Djibouti under Resolution 3 of the Report of the Djibouti Meeting;
- developing practical guidance to implement the ship rider concept; and
- providing a regional system for monitoring the maritime situation using modern technology.

He noted that extra care had been taken to ensure that the activities financed by the IMO Djibouti Code Trust Fund would not overlap with those of the CGPCS International Trust Fund and, in this context, the IMO Secretariat would participate in the implementation Board of the International Trust Fund to ensure co-operation and non-duplication with IMO activities.

7.6 The Committee noted the information provided by the Secretariat, including that provided by the Director, MSD, and commended the work done by IMO, the CGPCS and other organizations, on the prevention and punishment of acts of piracy. It expressed satisfaction at the growing number of participants in the Djibouti Code. Several references were made with respect to the process of elaboration of new anti-piracy legislation, with the object of ensuring an effective application of the principle of extra-territoriality.

7.7 One delegation indicated that, in accordance with the Best Management Practices adopted by IMO, its Government reserves to public authorities the right to use force and firearms for the suppression of piracy.

7.8 The following comments were also made:

- piracy should be considered a high priority issue and the Committee should remain seized of it;
- many issues needed to be further explored, including national and regional prosecution mechanisms, including the establishment of regional courts. The establishment of an international tribunal did not, however, seem to be a viable alternative;
- in the case of piracy in waters off the coast of Somalia, it should not be forgotten that the crisis had been provoked in the first place more by the unstable political situation on land than by the absence of viable legal mechanisms to fight piracy;
- article 105 of UNCLOS provides that any States may seize a pirate ship and decide upon the penalties to be imposed. If the seizing ship decides not to do so, it could waive this right in favour of another State in accordance with the obligation to co-operate imposed by article 100. It would be better to qualify such a jurisdiction as quasi-universal;

- IMO's work should be carefully co-ordinated with that of UNODC in a spirit of mutual co-operation, particularly in connection with the establishment of an appropriate legal framework;
- Working Group 2 was not empowered to compel any particular action, but played an important role in ensuring that all affected States have the necessary tools to bring pirates to justice. The Group was at present addressing many subjects crucial to international co-operation in combating piracy, such as elaboration of national criminal law, establishment of jurisdiction, ship rider agreements and international mechanisms for prosecuting pirates;
- the efforts undertaken by IMO and UNODC with regard to the compilation and analysis of national legislation should provide the basis for the preparation of model law or guidelines; and
- States which have not done so, should ratify, or accede to the SUA Convention in order to strengthen their anti-piracy legislation.

7.9 The observer delegation of the International Transport Workers' Federation (ITF) expressed frustration at the fact that more than 10 years after the initiation of discussions on piracy in the Malacca Strait, on the whole problems still persisted. In relation to crews taken as hostages, support to families of hostages, conditions of release and post-hostage period, the delegation pleaded for a mandatory solution to ensure that seafarers are provided with the support needed in such situations.

7.10 The observer delegation of the Comité Maritime International (CMI) reminded the Committee that the CMI had previously submitted, for its consideration, model law and guidelines based on responses to questionnaires sent by 54 maritime law associations, which were available on the CMI website. This data indicated that few countries have a specific law of piracy, which was sometimes treated as a part of national criminal law without extra-territorial reach. The delegation suggested that model law could be based on the CMI work and indicated the CMI's readiness to co-operate with this exercise.

7.11 The Secretary-General thanked those States providing naval ships to the anti-piracy effort off the coast of Somalia and highlighted the importance of the agreements concluded by the Government of Kenya with the United States, the United Kingdom and the European Union to ensure arrest and prosecution of pirates. He also thanked those States participating in the Djibouti meeting for their work in adopting the Djibouti Code and its subsequent implementation, as well as the donors that had provided significant resources to help capacity-building pursuant to the Code.

He requested delegations of States Members of the UN Security Council to seek support for the extension of the mandate to enter Somali territorial waters in resolution 1851, due to expire in December.

He also looked forward to a high-level participation of Member States at the ceremony due to take place in the margins of the forthcoming session of the Assembly to pay tribute to the naval forces participating in anti-piracy effort off the coast of Somalia. He emphasized the need to address the problems faced by seafarers due to incidents of piracy, as an issue of particular importance, against the background of next year's World Maritime Day theme, namely, "2010: Year of the Seafarer".

8 MATTERS ARISING FROM THE 102nd REGULAR SESSION OF THE COUNCIL

8.1 The Committee took note of the information provided by the Secretariat in document LEG 96/8, on matters arising from the one hundred and second regular session of the Council.

The Secretary-General provided the Committee with background information on the Council's decision to endorse his proposal that the theme for the World Maritime Day 2010 be "2010: Year of the Seafarer". The theme was selected to give IMO and the international maritime community the opportunity to pay tribute to the world's seafarers for their unique contribution to the maritime industry and the smooth flow of seaborne trade. The theme complements IMO's ongoing "Go to Sea!" campaign to attract new entrants to the shipping industry.

Among the measures taken by IMO to advance the welfare of seafarers, the Secretary-General mentioned the establishment of Maritime Rescue Co-ordination Centres in Mombasa, Cape Town, Lagos and Monrovia, with well-advanced plans for the establishment of a fifth Centre in Morocco. As a highlight of the 2010 World Maritime Day theme, the Secretary-General also referred to the Diplomatic Conference to amend the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW) 1978 and its associated Code, to be convened in Manila, Philippines in mid-2010.

9 TECHNICAL CO-OPERATION ACTIVITIES RELATED TO MARITIME LEGISLATION

9.1 In introducing document LEG 96/9, the Secretariat recalled that the Committee, at its ninety-fifth session, had suggested that IMLI should be invited to submit a summary of its research activities to the Committee on a regular basis.

9.2 It informed the Committee that, in response to this suggestion, IMLI had submitted a list of dissertations and drafting projects concluded by its students in the 2008-2009 academic year.

9.3 The Secretariat was requested to ascertain from IMLI whether it would be possible to obtain these dissertations and whether any specific policy was adopted with regard to the choice of dissertation topics, in order to have a balanced selection of topics in the area of private and public maritime law.

9.4 The Committee agreed that IMLI should continue submitting the list of dissertations and drafting projects for the Committee's consideration on a regular basis.

9.5 The Director, Technical Co-operation Division (TCD), introduced document LEG 96/9. She recalled that the Committee, at its ninety-fifth session, was informed that the Djibouti Code of Conduct included two resolutions that were relevant to technical co-operation. In this regard, activities for the review of national legislation to help implement the Code had been included in the proposed Integrated Technical Co-operation Programme (ITCP) for the 2010-2011 biennium. Furthermore, in order to assist Governments to implement the provisions of the Code, IMO and the Government of Seychelles, in co-operation with the United Nations Office on Drugs and Crime, Interpol and other international organizations, would hold a sub-regional meeting in Seychelles during the third week of October 2009. The aim of the meeting was to consider practical and operational aspects of countering piracy and armed robbery against ships and to develop national action plans.

She recalled that the Committee, at its ninety-fifth session, had been informed of the measures put in place by the Secretariat to expand the pool of experts through enhancement of capacity-building, as follows:

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

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

She added that it was not enough to assess expenditure and delivery of TC activities. It was also necessary to assess the impact of the activities. In this connection, the third Impact Assessment Exercise covered an assessment of the impact of IMO's technical co-operation activities delivered during the period 2004-2007, focusing on specific thematic issues. The outcome of the exercise corroborated the fact that IMO used the ITCP as an efficient tool for the strengthening of regional maritime competencies.

In response to previous requests for assistance made by Member States, maritime legislation was included as one of the subject areas covered by the Impact Assessment Exercise. The follow-up to this exercise had been submitted to TC 59 in June this year. The comments of Member States, if any, would be discussed at TC 60 in June next year.

9.6 Appreciation was expressed by the delegation of Chile for the possibility given to States to co-operate in TC activities, through existing Memoranda of Understanding concluded between IMO and various States.

9.7 The Committee commended the enhanced capacity-building efforts, in particular those related to IMLI and WMU students.

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

10.1 The Secretariat introduced documents LEG 96/10 and LEG 96/WP.1, containing information on the status of conventions and other treaty instruments adopted as a result of the work of the Legal Committee.

10.2 The Committee noted that the annex to document LEG 96/10 reported on the developments regarding these instruments as at 31 July 2009 and that this information had been further updated to 2 October 2009 in document LEG 96/WP.1.

10.3 The delegation of the Netherlands informed the Committee of the progress made by its Government regarding the ratification and implementation of the 2005 SUA Protocols, the 2002 Athens Protocol and the 2007 Nairobi Convention on the Removal of Wrecks.

10.4 The delegation of the United States informed the Committee that legislation to implement the 2005 SUA Protocols would be considered by Congress at its current session, which was a significant step forward in the ratification process.

10.5 The delegation of Denmark informed the Committee that its Government is preparing legislation for the 2005 SUA Protocols, which it hoped to ratify in the not-too-distant future.

10.6 The delegation of Cyprus informed the Committee that relevant preparatory work had been done, to some extent, in the Cypriot Maritime Administration, towards becoming party to the 1989 Salvage Convention, the 2002 Athens Protocol and the 1993 Convention on Maritime Liens and Mortgages. The delegation also referred to the preliminary consideration being given by its Government to ratification of the 2005 SUA Protocols and the 2007 Nairobi Convention on the Removal of Wrecks.

10.7 The Secretary-General expressed his appreciation to the delegations providing this information and encouraged other countries to take similar steps to enable the 2005 SUA treaties to enter into force as soon as possible. He noted in this regard that, of the instruments that have been adopted as part of the IMO strategy in response to the incidents of 9/11 (the others being the ISPS Code and LRIT), the SUA treaties were the only ones still not yet in force.

11 WORK PROGRAMME

Guidelines on methods of work

11.1 The Secretariat introduced document LEG 96/11, providing information on the draft guidelines on the application of the Strategic Plan and the High-level Action Plan and on procedures for the assessment of implications of capacity-building requirements when developing new, or amending existing, mandatory instruments. The Secretariat reminded the Committee of the request, in Assembly resolution A.990(25) on the High-level Action Plan, that the Council and the Committees review and revise the guidelines for the organization and method of their work in the light of the guidelines to be developed by the Council on the application of the Strategic Plan and the High-level Action Plan. In this regard, the Committee, at its ninety-fifth session, had noted that it would be necessary to revisit its own guidelines on work methods in due course, to ensure they took into account any new guidelines on application of the Strategic Plan and the High-level Action Plan when they were finalized.

11.2 The Secretariat noted that, at its 102nd session (29 June to 3 July 2009), the Council had approved, in principle, the draft Assembly resolution with draft guidelines on the application of the Strategic Plan and the High-level Action Plan for submission to the twenty-sixth regular session of the Assembly for consideration and adoption. At the Council's request, however, the *Ad Hoc* Council Working Group on the Organization's Strategic Plan (the Working Group) had re-visited the draft texts at its tenth session in September 2009, with a view to accommodating, as appropriate, a number of issues raised by a Meeting of Chairmen held in May 2009, including the unique working methods of the Legal Committee. The Working Group,

however, had decided that with regard to this and the other issues, no amendment to the draft texts was warranted at this stage and, accordingly, the Council, at its twenty-fifth extraordinary session, would be invited to give them final approval and submit them to the twenty-sixth regular session of the Assembly for adoption. In this respect, the Working Group had also concluded that any difficulties and lessons learned by the Committees in the practical application of the Guidelines should be brought to the Council's attention for it to consider if any adjustments might be required.

11.3 Once the draft Assembly resolution and draft guidelines on the application of the Strategic Plan and High-level Action Plan are approved by the twenty-sixth regular session of the Assembly at the end of 2009, it might not be feasible for them to be implemented fully as of 1 January 2010, because the relevant IMO organs would have to adjust their own guidelines to conform to the texts adopted by the Assembly. Accordingly, a migration plan was being developed to facilitate the changeover from current working arrangements to full implementation of the draft guidelines throughout the Organization, following their approval and adoption by the twenty-sixth regular session of the Assembly.

11.4 With reference to paragraph 2.5.2 of its Guidelines relating to capacity-building, the Committee's attention was drawn to the decision of the MSC, at its eighty-sixth session, to approve, subject to the concurrent decision of MEPC 59, procedures for the assessment of implications of capacity-building requirements when developing new or amending existing mandatory instruments. However, MEPC 59 had merely noted the decisions of the MSC without further comment.

11.5 The Committee noted that these procedures were also cross-referenced in the draft guidelines on the application of the Strategic and High-level Action Plans.

Planned outputs for the 2010-2011 biennium

11.6 The Secretariat introduced document LEG 96/11/1, providing information on the Committee's planned outputs for the next biennium, which the Committee had agreed, at its last session, might need re-examination at every future session to ensure they were kept up to date and consistent with Committee priorities. The Secretariat informed the Committee about the conclusion of the Council Working Group to the effect that **not** all of the Organization's planned outputs for the next biennium were phrased in SMART terms (i.e. specific, measurable, achievable, realistic and time-bound), and its recommendation that all IMO organs should, therefore, make every effort to ensure compliance with that request when formulating future outputs. The Working Group also decided to advise the Council that, in the delivery of their planned outputs during the next biennium, all IMO organs should pay special attention to those that were related to the following six areas identified by the Working Group as requiring continued and increased emphasis:

- addressing the prevention and repression of acts of piracy and armed robbery against ships, in particular off the coast of Somalia and in the Gulf of Aden, and promoting capacity-building in the affected countries for that purpose;
- strengthening consideration of the human element in the rule-making process, and making adequate preparations to support the effective implementation of the revised STCW Convention and Code;

- contributing to worldwide efforts to address the phenomena of climate change and global warming through the introduction of all appropriate measures to limit and reduce greenhouse gas emissions from ships;
- promoting and raising the profile, quality and environmental consciousness of shipping and ensuring that these are permanent tasks of all concerned;
- putting in place, internally, the necessary procedure and ICT infrastructure and systems to support results-based management and budgeting and consequential monitoring and analysis of results; and
- analysing the significant increase in the loss of life during 2008 and 2009 to date, and taking action as may be necessary, including on any conclusions from the analysis concerning loss of life resulting from incidents or casualties relating to non-Convention ships.

11.7 The Committee established an informal group, under the chairmanship of Mr. G. Sivertsen (Norway), tasked with ensuring that the outputs were kept up-to-date and consistent with the Committee's priorities and producing a revised list of outputs for the Committee's consideration. The outcome of the group's discussion was presented in document LEG 96/WP.5.

11.8 The Group considered proposals to update the outputs for the 2010-2011 biennium, attached at annex to document LEG 96/11/1, and decided to:

- amend the wording of paragraphs 3 and 11;
- delete paragraph 12; and
- include a new paragraph 13 for the consideration by the Legal Committee of a proposal to amend the limits of liability of article 6.1(b) of LLMC 96.

11.9 With regard to paragraph 3, the view was expressed that IMO was not in a position to assess the International Maritime Labour Convention, 2006, since it was not an IMO Convention.

11.10 With regard to paragraph 11, the Committee agreed with the wording suggested by the informal group.

11.11 With regard to paragraph 12, the Committee agreed to delete the paragraph as a result of its earlier decision not to continue, for the time being, with agenda item 4(ii).

11.12 With respect to the proposal to include a new paragraph 13, on the amendment of the limits of liability of LLMC 96, the view was expressed that this paragraph did not reflect the discussions* that took place in the earlier session of the Committee on this agenda item.

11.13 In this connection, it was suggested that the reference to article 6.1(b) should be deleted, as it was too narrow.

* A decision to add a new work programme item and planned output for the next biennium was made during the discussion under agenda item 12(a) (Any other business: Proposed new work programme item to consider amendments to LLMC 96 to increase limits of liability under the Bunkers Convention) and is reflected in the relevant section of this report.

11.14 It was further suggested that the words “in accordance with amendment procedures set out in article 8 of LLMC 96” should be included; alternatively, that the words “in light of further examination of the criteria of article 8, paragraph 5 of LLMC 96” should be included.

11.15 The view was also expressed that the wording of paragraph 13 should be as broad as possible. In this connection, it was further suggested that the paragraph include a reference to the possibility of introducing into the Bunkers Convention its own limits.

11.16 In light of the above comments, the Committee agreed to the following planned outputs for the 2010-2011 biennium:

- .1 “Permanent analysis, demonstration and promotion of the linkage between a safe, secure, efficient and environmentally friendly maritime transport infrastructure, the development of global trade and the world economy and the achievement of the Millennium Development Goals” (Assembly, Council, all Committees and Secretariat) (High-level actions: 1.1.1 and 11.1.1)
- .2 “Approved recommendations based on the work, if any, of the Joint IMO/ILO *Ad Hoc* Expert Working Group on Fair Treatment of Seafarers in the Event of a Maritime Accident, CMI, and others concerning the application of the joint IMO/ILO Guidelines on the fair treatment of seafarers and consequential further actions as necessary”
Timeline: 2010 and 2011
High-level actions: 1.1.2 and 6.3.1
- .3 “Monitor the progress of the amendments to ILO MLC 2006 and address the issue of financial security in case of abandonment of seafarers, and shipowners’ responsibilities in respect of contractual claims for personal injury to or death of seafarers, should it be necessary”
Timeline: 2010 and 2011
High-level actions: 1.1.2 and 6.3.1
- .4 “Advice and guidance on issues as may be requested in connection with implementation of SUA 1988/2005 in the context of international efforts to combat terrorism and proliferation of Weapons of Mass Destruction and related materials”
Timeline: 2010 and 2011
High-level actions: 1.1.2 and 6.1.2
- .5 “Protocol to the HNS Convention adopted as soon as possible”
Timeline: Diplomatic Conference in 2010
High-level actions: 1.2.1 and 2.1.1
- .6 “Revised guidelines on implementation of the HNS Protocol to facilitate ratifications and harmonized interpretation”
Timeline: 2011
High-level actions: 1.2.1 and 2.1.1
- .7 “Developed strategies to facilitate entry into force of 2002 Athens Protocol, the 2005 SUA Protocols, and the 2007 Nairobi Wreck Removal Convention”
Timeline: 2011
High-level actions: 1.2.1 and 2.1.1

- .8 “Advice and guidance provided following referrals from other IMO bodies and Member States”
Timeline: 2010 and 2011
High-level action: 1.3.1
- .9 “Input to the ITCP on maritime legislation”
Timeline: 2010 and 2011
High-level action: 3.5.1
- .10 “Revised guidelines on organization and method of work, as appropriate (Council and all Committees)”
Timeline: 2010 and 2011
High-level action: 4.5.1
- .11 “Advice and guidance on issues brought to the Committee in connection with implementation of IMO instruments”
Timeline: 2010 and 2011
High-level action: 2.1.1
- .12 “Advice and guidance to support:
- (a) the review of IMO instruments on combating piracy and armed robbery;
 - (b) international efforts to ensure effective prosecution of perpetrators; and
 - (c) availability of information on comprehensive national legislation and judicial capacity building”
- Timeline: 2010 and 2011
High-level actions: 6.2.1 and 6.2.2
- .13 “Consideration of proposal to amend the limits of liability of the Protocol of 1996 to the Convention on Limitation of Liability for Maritime Claims, 1976 (LLMC 96), in accordance with article 8 of LLMC 96”
Timeline: 2010 and 2011
High-level action: 2.1.1

Items to be included on the draft provisional agenda for the ninety-seventh session of the Legal Committee

11.17 The Secretariat informed the Committee that, in order to bring the practice of the Legal Committee in line with that of the MSC and the MEPC, the Secretariat had prepared document LEG 96/WP.2/Rev.1, listing items for inclusion in the draft agenda of the ninety-seventh session of the Legal Committee.

11.18 The view was expressed that the new guidelines on implementing the strategic plan, which will be adopted by the twenty-sixth regular session of the Assembly, would be in place in 2010. Therefore, the Legal Committee would have to adjust the Guidelines on the organization and method of its own work, to conform with the new guidelines adopted by the Assembly, in particular, to express all the planned outputs in SMART terms. In that regard, this was an important issue and should be included on the agenda.

11.19 The Secretariat reminded the Committee that it had decided, at its last session, to examine its outputs at every future session, to ensure that they were kept up-to-date and consistent with the Committee's priorities. This issue, as well as any revision to the Guidelines on the organization and method of work, would be dealt with under the agenda item on the work programme of the Committee at its future sessions.

11.20 The view was also expressed that all proposals for new work items or for new planned and unplanned outputs should be submitted under the agenda item on the work programme. The Secretariat observed that, once it was decided by the Committee to include a proposal for a new work programme item, it would, thereafter, be a self-standing item and would not appear again in the item relating to the work programme.

11.21 It was suggested that, since the Diplomatic Conference for the adoption of the HNS Protocol would take place in 2010, it may be appropriate to include an item on the agenda in respect of the implementation of the HNS Protocol. The Secretariat stated that the HNS Protocol was, in fact, included in the Committee's outputs for the 2010-2011 biennium. However, the time line for this item was 2011, due to the fact that the HNS Protocol would only be considered for adoption in 2010 and it had been regarded as premature, at this juncture, to include that item in the agenda of LEG 97.

11.22 The view was expressed, in respect of the agenda item on the review of the status of conventions, that the Committee should consider why some conventions had not yet entered into force and make a realistic assessment as to whether they were likely to enter into force. The point was also made that there was a need to reinvigorate the Legal Committee. In that regard, it was suggested that the Committee had to consider which areas of maritime law could possibly benefit by the development of other legal instruments.

11.23 In this connection, the Chairman notified the Committee of his intention to present a written proposal at the Committee's next session to establish a target date for ratification and implementation of those treaties adopted under the purview of the Committee that had not yet entered into force.

11.24 The view was expressed that the items on the agenda should be prioritized and more time should be spent on those items. It was further suggested that the items could be numbered according to their importance and, in respect of the agenda item on the Bunkers Convention, that the Committee, at its next session, might concentrate on two issues, namely, the issuance of the Bunkers certificates to newly-built ships; and the procedure for accepting P & I Clubs and insurance companies outside the International Group of P & I Clubs.

11.25 The Committee was informed that the provisional agenda included only the titles and not the content of the items and the numbering did not reflect the order of the priorities to be discussed.

11.26 Following these comments, the Committee adopted items to be included on the agenda for its ninety-seventh session, attached at annex 3 to this report.

Date of the next session

11.27 The Committee noted that its ninety-seventh session had been scheduled to take place from 15 to 19 November 2010.

12 ANY OTHER BUSINESS

(a) Proposed new work programme item to consider amendments to LLMC 1996 to increase limits of liability under the Bunkers Convention

12(a).1 The delegation of Australia introduced document LEG 96/12/1, which proposed a new work programme item and planned output for the next biennium, to consider amending the limits of liability set out in article 6.1(b) of the Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976 (LLMC 96), in accordance with the tacit amendment procedures set out in article 8 of LLMC 96. The document also proposed that the new work programme item and planned output should include an assessment of whether the current provisions under the LLMC remain relevant and, if considered advisable, that possible amendments be recommended.

The delegation drew particular attention to the recent case of the **Pacific Adventurer**, in which the limits of liability, as calculated under LLMC 96, fell significantly short of the cost of responding to the incident. It noted that the tacit amendment procedures in articles 8(1) and 8(2) would need to be complied with and that support would be sought from States Parties to propose that the amendment be circulated by the Secretary-General, as required, six months before the relevant session of the Legal Committee.

The delegation also noted that the tacit amendment procedure might be used to bring the matter to the Committee without requiring the Committee's agreement under the recently revised Guidelines on work methods and organization of work of the Legal Committee (the Guidelines) (LEG.1/Circ.5), but the delegation was pleased to submit the proposal as a work programme item under the revised Committee guidelines.

With regard to the assessment of the adequacy of the current provisions, the delegation suggested that one issue that might be discussed was the possibility of a separate fund to cover bunker oil damage. However, it stressed that the increase of limits of liability was its primary concern at this time.

12(a).2 The observer delegation of the International Group of P & I Associations (P & I Clubs) introduced document LEG 96/6/2, which provided the claims data, as requested by the Committee, on pollution damage claims arising from a spill, or the threat of a spill, of a ship's bunker oil. It provided information on 595 incidents during the period 2000 to the present, where the relevant vessel was entered with a Club member and where costs had been incurred for pollution damage from such a spill, although it noted that this was probably an underestimate of the total number of such incidents occurring in this period. Of the 595 incidents, eight incidents had been reported where the total cost of such claims exceeded the LLMC 96 limits, whether or not the Protocol was in force in the State in whose waters the incident occurred.

The representative of the P & I Clubs explained that the information provided in document LEG 96/6/2 did not include the total cost of all claims from incidents involving bunker oil pollution damage as one of several claims, but only claims paid for pollution damage arising from a spill, or the threat of a spill, from a ship's bunker oil alone. The eight incidents had all occurred after 2004. He assumed that there were other cases where the costs exceeded the limits under LLMC 96. With regard to the potential effect on premiums of an increase in the limits of liability, he could not be specific since premiums were not broken down by risk and were influenced by a wide range of factors, including historical claims record and market capacity.

12(a).3 In accordance with paragraph 2.13 of the Guidelines, the Committee's attention was drawn to document LEG 96/WP.3, which provided the Chairman's preliminary assessment, undertaken in consultation with the Secretariat, of whether the proposed new work programme item complied with the criteria for general acceptance provided in paragraph 2.4.

12(a).4 The Committee noted that article 7 of the Bunkers Convention provided that: "The registered owner of a ship having a gross tonnage greater than 1,000 registered in a State Party shall be required to maintain insurance or other financial security, such as the guarantee of a bank or similar financial institution, to cover the liability of the registered owner for pollution damage in an amount equal to the limits of liability under the applicable national or international limitation regime but, in all cases, not exceeding an amount calculated in accordance with the Convention on Limitation of Liability for Maritime Claims (LLMC), 1976, as amended."

12(a).5 The Committee noted further that LLMC 96 provided that an amendment to the limits of liability under article 6 could be considered and adopted by the Legal Committee, providing that the procedures stipulated in article 8 were followed, including the cap on the increase in the limit of liability as set out in article 8(6). A request for the Committee to consider a proposed amendment to the limits of liability would need to be supported by at least one half, but not less than six, of the States Parties to LLMC 96.

12(a).6 The majority of delegations that spoke supported the proposal for a new work programme item to consider amending the limits of liability of article 6.1(b) of LLMC 96, in accordance with the tacit amendment procedures set out in article 8. However, several delegations, while supporting the proposal, expressed the view that more information would be needed on such matters as the type and number of claims not involving bunker oil pollution damage which had exceeded the limits under LLMC 96; and on incidents where other claims covered by LLMC 96 (e.g., cargo, collision and personal injury) may have exceeded the limits under that Protocol. The following concerns were also mentioned:

- the potential impact on the world's bunker market must be taken into account; and
- information was required on the factors identified in article 8, which the Committee would need to take into account when acting on a proposal to amend the limits under article 6.1, including changes in monetary values (i.e. currency fluctuations), and the increase of the cost of insurance of the proposed amendment.

12(a).7 In supporting the proposal for a new work programme item, one delegation called the Committee's attention to an incident where three ships collided in the Akashi Strait on 5 March 2008, resulting in one ship sinking and significant pollution damage being caused and the necessity of considering measures from wide and various viewpoints, other than raising the amount of liability. The Committee had been informed of this incident at its ninety-fourth session (document LEG 94/11/1).

12(a).8 Another delegation advised the Committee that the grounding of a bulk carrier in the summer of 2009 had resulted in costs exceeding the LLMC 96 limits, but these costs were within the limits under national law.

12(a).9 The Committee was also advised that a recent review of incidents over a five-year period had identified two incidents where the limits had been exceeded.

12(a).10 Another delegation referred to a report, which could be made available to the Committee, indicating that over the last 19 years, 51 incidents had exceeded national limits of liability (less than 1% of the total for the reporting period), but 37 of those incidents had involved bunker oil pollution damage, of which 17 involved fishing vessels.

12(a).11 The view was expressed that the percentage of cases in which the limits had been exceeded (1.34% according to the P & I Clubs document) was too low to provide a compelling need to raise the limits. It was noted that the P & I statistics were limited and did not provide a complete picture and a single catastrophic incident outside the LLMC 96 limits was one too many, and that even one incident involving significant pollution damage from bunker oil would attract public outrage, particularly if the shipowner was unable to pay costs due to inadequate insurance cover based on the LLMC 96 limit of liability.

12(a).12 The question was asked as to whether the formalities of the new Guidelines on work methods were necessary in light of the procedures set out in article 8 of LLMC 96.

12(a).13 The view was also expressed that the provisions of article 8 explicitly set out the procedure to be followed and the conditions to be met for amending the limits and, in this case, those procedures had not been followed and the conditions had not been met. Therefore, it was inappropriate for the issue to be brought, at this stage, for discussion before the Committee.

12(a).14 The point was also made that the decision by the Committee was not on the merits or demerits of an increase, and that the agreement that the criteria for a new work programme item had been fulfilled was without prejudice to a future position that might be taken regarding the merits of any proposed amendment.

12(a).15 The view was expressed that it was premature to include this item in the work programme in the absence of additional information and a demonstrated compelling need, and in light of the limited number of Parties to the Bunkers Convention and LLMC 96.

12(a).16 The majority of delegations which spoke expressed their opposition to the proposal that the new work programme item and planned output should include an assessment of whether the current provisions under the LLMC remain relevant. Among the concerns expressed about such a proposal were the following:

- a compelling need for a general assessment had not been established; and
- a broad assessment might lead to unforeseen consequences for the Nairobi Wreck Removal Convention, because the LLMC 96 allows States Parties to reserve the right to exclude the application of certain claims including those relating to wreck removal.

12(a).17 The observer delegation of the European Commission (EC) noted that the few incidents in which the limits were exceeded were likely to be those which attracted the most public attention and shipowners would be under enormous pressure to pay these costs. Otherwise, the public would have the impression that the shipowner was walking away from the damage; accordingly, it was in the interests of shipowners too, to have this discussion.

12(a).18 The observer delegation of the P & I Clubs stated that the Clubs' claims data provided little justification for a wider assessment of the LLMC, but if the Committee decided to include consideration of amending the LLMC 96 limits in the work programme, then the P & I Clubs would wish to be actively involved in any such future debate.

12(a).19 The observer delegation of the Comité Maritime International (CMI) noted that the limits in respect of claims for loss of life or personal injury were twice the limit which applied to claims for property damage, and a change to one without the other would introduce an imbalance. Any reassessment of the limits should, therefore, take this factor into account.

12(a).20 The observer delegation of the International Chamber of Shipping (ICS) drew the Committee's attention to a recent case where the shipowner had been placed under enormous pressure to pay the costs that exceeded the applicable limits and the insurance cover. It queried whether those Governments, which did not believe that a small number of significant incidents established a compelling need for a review, would be satisfied to accept the current limits if one of those significant incidents occurred in their waters. The proposal to increase the limits was based on article 8 of LLMC 96, which contained clear-cut principles that needed to be fulfilled. The available data shows that only about 1.3% of claims have exceeded the limits and this needed to be discussed. The concept of limitation of liability necessarily implied that some claims would exceed the limits. ICS conveyed the industry's concern regarding the experience of the **Pacific Adventurer** and noted that, in a given political climate, it could be very difficult for a State Party to comply with the terms of the Protocol. If that approach spread to other cases, it would bring uncertainty not only to the insurance market and ship operators, but also with regard to insurance premiums. The industry wished to avoid this result. Therefore, whatever the outcome of the discussion, it must be one which was politically acceptable and ICS was open to discussion to assist in achieving this.

12(a).21 The observer delegation of BIMCO stressed the need to have an internationally applicable system of limitation of liability, which was reliable, predictable and realistic, and to avoid imposing responsibility in addition to what was legally established, taking into account the development towards the "polluter pays" principle. At the same time, it noted the political sensitivities and acknowledged the wish expressed by a large number of delegations to consider the issue and stated its willingness to participate in any discussions the Committee might enter into concerning the limits of liability of LLMC 96. It requested further information on the possible repercussions on insurance premiums and on other types of damage than bunker oil pollution, as an increase in LLMC 96 limits would have wider implications than the Bunkers Convention.

12(a).22 The Committee agreed to the inclusion of a new work programme item and planned output for the next biennium (2010-2011) on a consideration of amendment of the limits of liability of LLMC 96, in accordance with the tacit amendment procedures set out in article 8 and to place this item on its agenda for its ninety-seventh session.

12(a).23 The Committee did not agree to include a new work programme item on an assessment of whether the current provisions under the LLMC remain relevant.

12(a).24 The delegation of Australia informed the Committee that it intended to provide a detailed proposal to the Committee's ninety-seventh session.

(b) Joint IMO/ILO Working Group on areas of common interest

12(b).1 In introducing document LEG 96/12, the Secretariat informed the Committee that the idea of establishing a joint IMO/ILO working group on the human element was put forward in resolution X of the 94th (Maritime) session of the International Labour Conference (which had adopted the ILO Maritime Labour Convention, 2006). Subsequently, the Maritime Safety Committee (MSC) (at its eighty-fifth and eighty-sixth sessions) and the Marine Environment Protection Committee (MEPC) (at its fifty-ninth session) considered the proposal and agreed that the joint IMO/ILO working group should not be a standing group, but should be established on an *ad hoc* basis with specific terms of reference. The MSC had noted that matters concerning the follow-up action relating to abandonment of, injury to, and death of, seafarers and the implementation of the Guidelines on fair treatment of seafarers, were within the purview of the Legal Committee and, consequently, referred them to this session for further consideration.

12(b).2 General satisfaction was expressed with the Committee's current procedures regarding the convening of joint IMO/ILO working groups.

12(b).3 Most delegations that spoke agreed with the conclusion reached in the other Committees to the effect that there should not be a standing joint group and that such a group should be established on an *ad hoc* basis only as and when an issue for consideration and advice to the respective parent bodies of the two Organizations arose, with terms of reference being prepared by the Legal Committee and forwarded for joint approval by the Governing Body of ILO, and with selection of membership being based on the subject matter at issue.

12(b).4 One delegation, supported by the observer delegation of the International Transport Workers' Federation (ITF), suggested that a joint IMO/ILO group might be established to find solutions to the problems of the seafarers who became victims of piracy, including post-incident rehabilitation, support for families, fair compensation for seafarers, and the possible underlying reasons for protracted release of crews and vessels.

12(b).5 ITF expressed concern about the difficulties in establishing a joint IMO/ILO working group to consider issues such as those which had been raised and over the fact that IMO could effectively veto proposals put forward by ILO.

12(b).6 The Committee agreed to maintain the *status quo* and that there was no reason to alter past practice, i.e. the establishment of *ad hoc* joint IMO/ILO working groups as and when they were determined to be necessary and with terms of reference agreed by the Legal Committee and the Governing Body of ILO.

(c) Statement by the Russian Federation concerning the vessel Arctic Sea

12(c).1 The delegation of the Russian Federation made a statement concerning the vessel **Arctic Sea**, which is attached at annex 5. The delegation said it had acted on the basis of UNCLOS, 1982, and the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988, to suppress acts of piracy by persons who illegally seized the vessel **Arctic Sea** in the Baltic in July this year. Although since that time, following an investigation, the ship had been authorized by the Russian Federation to resume its voyage, difficulties had been raised by other countries without justification. In the view of the Russian Federation, the necessary degree of co-operation and co-ordination had not been demonstrated in this case.

12(c).2 Reservations regarding the description of events in the statement were made by three of the countries mentioned therein.

12(c).3 The delegation of Spain advised the Committee that information had been requested but had not been provided, and the ship was therefore denied port entry.

12(c).4 The delegation of Algeria informed the Committee that the Algerian authorities had continually provided assistance to the parties concerned through all the various issues pertaining to this vessel and the absence of authorization to enter the port of Bejaia was due to the absence of means of verifying whether the ship complied with IMO standards and also the absence of the technical facilities required to repair the ship.

12(c).5 The delegation of Malta made a statement concerning the incident which is attached at annex 6.

EXPRESSION OF CONDOLENCES

The Committee expressed its deepest condolences to the delegation of Indonesia for the earthquake that struck West Sumatra, Indonesia on 30 September 2009, and also to the Governments of Samoa and the United States for the Tsunami disaster that hit the coast of the Samoa Islands on 29 September 2009, and to all those who lost their lives or were injured in these disasters and to their relatives and friends.

The Indonesian delegation informed the Committee that almost 600 people died and more than 2,000 people were injured in this earthquake and it was feared that these numbers might increase. The Indonesian Search and Rescue (SAR) team together with the foreign SAR teams had been working 24 hours a day to help the victims.

The delegations of the United States and Indonesia expressed their deep appreciation to the Committee for its words of sympathy and the condolences extended.

ANNEX 1

AGENDA FOR THE NINETY-SIXTH SESSION

- Opening of the session
- 1 Adoption of the agenda
 - 2 Report of the Secretary-General on credentials
 - 3 Election of officers
 - 4 Provision of financial security:
 - (i) progress report on the work of the Joint IMO/ILO *Ad Hoc* Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers; and
 - (ii) follow-up on resolutions adopted by the International Conference on the Removal of Wrecks, 2007: development of a single model compulsory insurance certificate
 - 5 Fair treatment of seafarers in the event of a maritime accident
 - 6 International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001: implementation of the Convention
 - 7 Piracy: review of national legislation
 - 8 Matters arising from the 102nd regular session of the Council
 - 9 Technical co-operation activities related to maritime legislation
 - 10 Review of the status of conventions and other treaty instruments adopted as a result of the work of the Legal Committee
 - 11 Work programme
 - 12 Any other business
 - (a) Proposed new work programme item to consider amendments to LLMC 1996 to increase limits of liability under the Bunkers Convention
 - (b) Joint IMO/ILO Working Group on areas of common interest
 - (c) Statement by the Russian Federation concerning the vessel **Arctic Sea**
 - 13 Report of the Committee

ANNEX 2**FAIR TREATMENT OF SEAFARERS IN THE EVENT OF A MARITIME ACCIDENT****Statement by the Islamic Republic of Iran**

First of all, the Islamic Republic of Iran would like to draw the attention of distinguished delegates to the statement delivered to this Committee at its 94th session held last year, expressing great concern regarding unfair treatment of seafarers in some parts of the world. Since then, we hoped, that by considering this and other statements delivered by some Member States and international organizations and, taking into due attention all relevant well-known international regulations, the problems associated with fair treatment of seafarers would be solved. According to our records, it is very unfortunate and regrettable to declare that it was not and still is not the case and the problems remained unsolved.

During recent years, some seafarers from the Islamic Republic of Iran and some other countries, in particular Muslim countries, have reportedly been deprived of shore leave merely due to their nationality, religion and even name. Regrettably, we have even received a report that an Iranian ship was refused permission to land a sick seafarer in one of the foreign ports. These types of unfair treatment are not only in clear contravention of international treaties, but are also considered as a jeopardizing factor affecting the seafarer's health and moral status, and consequently, shipping safety.

It should also be appreciated that IMO and ILO have placed great importance on the issue of the human element as the life blood of the shipping industry and the naming of year 2010 as "The year of the Seafarer" is another reference to this great concern. We would also like to refer to the ISPS Code, which clearly prevents Member States interpreting the Code in such a way as could be considered contradictory to seafarers' fundamental rights.

Furthermore, according to MSC/Circ.1112, dated 7 July 2004, entitled "Shore Leave and access to ships under the ISPS Code", and MSC/Circ.1194, entitled "Effective implementation of SOLAS chapter XI-2 and ISPS Code", the Contracting States' obligations with regard to human-related aspects and the necessity of special support for seafarers, as well as the importance of paying attention to shore leave and its crucial role, at the time of implementing ISPS Code, have been clearly emphasized.

In accordance with these circulars, Contracting Governments should pay due cognizance to the fact that the ships' personnel live and work on the vessel and need shore leave as well as access to shore-based seafarers' welfare facilities, including medical care and, any failure in granting them such facilities, must be reported to IMO and to the Facilitation Committee and Maritime Safety Committee.

Additionally, under Section 4.4 of the Rules and 4.4 A of the Standards of the latest ILO Labour Convention, all States Parties are asked to provide seafarers with access to welfare facilities established in ports, regardless of the seafarer's nationality, religion, colour and so forth. Also, according to ILO Convention 185, Article 6, the need for shore leave has been emphasized. Moreover, under Convention 108, ratified by many States, which possibly could be considered as an international customary rule in the maritime community, access to shore leave has been stated with special importance.

Nevertheless, many seafarers around the world are still being deprived of this basic human right, due to their nationality and religious beliefs.

This delegation believes that depriving seafarers of shore leave and similar facilities is definitely against the recognized basic rights of seafarers and the right to decent jobs for all seafarers of any nationality, race or belief and is also, more importantly, against the shipping industry safety, thus discouraging prospective recruits from joining this profession.

Under these circumstances, in view of the ILO request to establish a joint working group with a focus on the human element in the shipping industry, and in particular, seafarers' fatigue, pointed out in document LEG 96/12, as well as the health and safety of seafarers, an issue stressed in the annex to the same document, we suggest that suitable implementation of the rules and recommendations in international treaties concerning: a) shore leave; b) the supervision of Governments in this respect; and c) the provision of sufficient security to guarantee the seafarers recognized rights, must be taken into consideration as the first agenda item of the Joint IMO/ILO Working Group.

As maritime humanitarian traditions and human rights principles mentioned in international instruments have always, regrettably, taken second place to maritime safety and technical issues, because of current political pressures, we therefore suggest all these traditions and principles be gathered under new guidelines stipulating all human rights standards to be observed in maritime activities. The Islamic Republic of Iran will work on this subject and submit a document to the next session of the Legal Committee if it deems necessary.

ANNEX 3**ITEMS TO BE INCLUDED IN THE AGENDA FOR LEG 97**

- 1 Provision of financial security:

Monitor the progress of the amendments to ILO MLC 2006 and address the issue of financial security in case of abandonment of seafarers, and shipowners' responsibilities in respect of contractual claims for personal injury to or death of seafarers, should it be necessary
- 2 Fair treatment of seafarers in the event of a maritime accident
- 3 International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001: implementation of the Convention
- 4 Consideration of proposal to amend the limits of liability of the Protocol of 1996 to the Convention on Limitation of Liability for Maritime Claims, 1976 (LLMC 96), in accordance with article 8 of LLMC 96
- 5 Piracy: review of national legislation
- 6 Matters arising from the 25th extraordinary session; the 104th regular session of the Council and the 26th regular session of the Assembly
- 7 Technical co-operation activities related to maritime legislation
- 8 Review of the status of conventions and other treaty instruments emanating from the Legal Committee
- 9 Work programme
- 10 Election of officers
- 11 Any other business
- 12 Consideration of the report of the Committee on its ninety-seventh session

ANNEX 4

**DRAFT ASSEMBLY RESOLUTION ON THE ISSUING OF BUNKERS
CERTIFICATES TO BAREBOAT-REGISTERED VESSELS**

The ASSEMBLY,

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

RECALLING ALSO the adoption by the International Conference on Liability and Compensation for Bunker Oil Pollution Damage, held at the Organization's Headquarters in 2001, of the International Convention on Civil Liability for Bunker Oil Pollution Damage (hereinafter referred to as "the Convention"),

RECALLING FURTHER article 7 of the Convention, stipulating that a registered owner of a ship having a gross tonnage greater than 1,000 shall maintain insurance or other forms of financial security and obtain a State certificate (Bunkers certificate) issued by a State Party to the Convention attesting that such insurance or financial security is in place,

ACKNOWLEDGING that there have been differing interpretations on the matter of the issuance of Bunkers certificates by States to ships registered in a bareboat registry,

ACKNOWLEDGING FURTHER the outcome of the debate on the above matter that took place during the ninety-fifth and ninety-sixth sessions of the IMO Legal Committee as reflected in the documents LEG 95/10 and LEG 96/13,

DESIRING to remove ambiguity and assist present and future States Parties to apply the Convention in a uniform manner,

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

1. RECOMMENDS that:

- .1 all States Parties recognize that Bunkers certificates should be issued by the flag State if the flag State is party to the Convention;
- .2 all States Parties should not request more than one Bunkers certificate from any ship, including ships bareboat-registered in a State Party, and should accept Bunkers certificates issued by such a State Party in accordance with article 7, paragraph 9, of the Convention;
- .3 States Parties should avoid burdening shipowners with unnecessary bureaucracy; and
- .4 States Parties which allow ships to be registered as bareboat chartered should co-operate to find viable solutions in a spirit of understanding and co-operation;

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

ANNEX 5

**STATEMENT BY THE RUSSIAN FEDERATION CONCERNING
THE VESSEL ARCTIC SEA**

Acting on the basis of UNCLOS, 1982, and the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988, the Russian Federation, using Russian naval forces, has suppressed acts of piracy by persons who illegally seized the vessel **Arctic Sea** in the Baltic. The ship was flying the flag of Malta and engaged in a commercial voyage carrying timber from Finland to the port of Bejaia in Algeria.

The vessel and its crew, citizens of the Russian Federation, have been liberated from their captors. Following an investigation into this incident, carried out by the Prosecutors Office of the Russian Federation, with the help of a team of police and the maritime administration of Malta, the vessel was escorted for the purposes of the investigation, to the Canary Islands area and was ready for return to its owner on 17 and 18 September, in the port of Las Palmas. However, all the necessary measures taken by the Russian Federation to ensure the return of the ship to its owner and to help it to possibly complete its commercial voyage, in accordance with its cargo shipping contract, all these efforts and measures have not, unfortunately, as yet been successful. Malta, the flag State of the vessel, in an official note, has notified us that it does not intend to send its representatives to participate in the handover of the vessel in the Spanish port of Las Palmas, before the seaworthiness of the vessel has been established. The Spanish authorities have also refused to issue permission for the vessel to enter its port until it has been clarified who is going to pay for its time at anchor and its repairs. The Algerian authorities have also refused entry for the vessel into the port of Bejaia for technical reasons, referring to the unseaworthiness of the vessel and non-compliance with international shipping standards, as well as the absence in the port of Bejaia of the technical facilities to tow and repair the vessel.

Hence, despite the provisions of IMO resolution A.949(23), of December 2003, entitled "Guidelines on places of refuge for ships in need of assistance" providing for comprehensive assistance on the part of Member States of IMO in order to resolve such situations and to act efficiently and develop a common rational approach to evaluate situations when vessels require assistance, despite this, the authorities of the States I have referred to, without any specific justification emanating from the requirements of international conventions, have taken decisions which do not help in the coordinated efforts of Member States of IMO to suppress acts of piracy or other illicit acts against shipping.

Our aim is to draw the attention of IMO to the problem I have outlined. This situation highlights the fact that there is an urgent need for closer co-operation between Members of IMO in developing an efficient and effective mechanism to coordinate efforts undertaken by the international community, under the aegis of the United Nations, to prevent acts of piracy, and requires, in our view, an immediate reaction on the part of IMO and requires its assistance in settling this particular situation and also in developing a generally binding mechanism to resolve such situations in the future.

ANNEX 6**STATEMENT BY MALTA CONCERNING THE VESSEL ARCTIC SEA**

The delegation of Malta has taken note of the Statement of the Russian Federation concerning the Maltese registered ship Arctic Sea and, the reservations regarding the description of events in the statement by the delegation of Algeria and Spain. The delegation of Malta also has some reservation of its own. Maltese officials were on board the Arctic Sea when this was off the coast of the Canary Islands and had discussions with both the Master of the Arctic Sea and the Head of the Russian Naval Forces in the area.

Malta also shares the views of the delegation of the Russian Federation in the importance of closer cooperation between member states of the International Community and considers that there are a number of crucial issues which have to be addressed at IMO and other international fora.

Malta considers the case of the Arctic Sea as still unfolding and would make a statement at the appropriate time. Meanwhile however Malta would like to thank the authorities of Finland, Sweden and the Russian Federation for their invaluable cooperation already extended and still being given by them in this case. The delegation of Malta wants to express its appreciation for the assistance and advice given by the Secretariat of the International Maritime Organization, the European Commission and the European Maritime Safety Agency.
