INTERNATIONAL MARITIME ORGANIZATION

E

LEGAL COMMITTEE
99th session
Agenda item 14

LEG 99/14
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REPORT OF THE LEGAL COMMITTEE ON THE WORK OF ITS NINETY-NINTH SESSION

1 INTRODUCTION

1.1 The Legal Committee held its ninety-ninth session at IMO Headquarters from 16 to 20 April 2012, under the chairmanship of Mr. Kofi Mbiah (Ghana).

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

ALBANIA
ALGERIA
ANGOLA
ANTIGUA AND BARBUDA
ARGENTINA
AUSTRALIA
AZERBAIJAN
BAHAMAS
BELGIUM
BELIZE
BRAZIL
BULGARIA
CANADA
CHILE
CHINA
COLOMBIA
COOK ISLANDS
CÔTE D'IVOIRE
CROATIA
CUBA
CYPRUS
DENMARK
DOMINICAN REPUBLIC
ECUADOR
EGYPT
EL SALVADOR
ESTONIA
FINLAND
FRANCE
GEORGIA
GERMANY
GHANA
GREECE
RUSSIAN FEDERATION
SAINT VINCENT AND THE GRENADINES
SAUDI ARABIA
SINGAPORE
SOUTH AFRICA
SPAIN
SWEDEN
SWITZERLAND
SYRIAN ARAB REPUBLIC
THAILAND
ICELAND
INDIA
INDONESIA
IRAN (ISLAMIC REPUBLIC OF)
IRELAND
ITALY
JAMAICA
JAPAN
KENYA
KIRIBATI
KUWAIT
LATVIA
LIBERIA
LIBYA
LITHUANIA
LUXEMBOURG
MALAYSIA
MALTA
MARSHALL ISLANDS
MEXICO
MOROCCO
NAMIBIA
NETHERLANDS
NEW ZEALAND
NIGERIA
NORWAY
OMAN
PANAMA
PERU
PHILIPPINES
POLAND
PORTUGAL
REPUBLIC OF KOREA
TRINIDAD AND TOBAGO
TURKEY
TUVALU
UKRAINE
UNITED KINGDOM
UNITED STATES
URUGUAY
VANUATU
VENEZUELA (BOLIVARIAN REPUBLIC OF)

and from the following Associate Members of IMO:

FAROES (the) HONG KONG, CHINA

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

INTERNATIONAL LABOUR ORGANIZATION (ILO)

by observers from the following intergovernmental organizations:

EUROPEAN COMMISSION (EC)
MARITIME ORGANIZATION FOR WEST AND CENTRAL AFRICA (MOWCA)

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

INTERNATIONAL CHAMBER OF SHIPPING (ICS)
INTERNATIONAL UNION OF MARINE INSURANCE (IUMI)
COMITÉ MARITIME INTERNATIONAL (CMI)
INTERNATIONAL ASSOCIATION OF PORTS AND HARBORS (IAPH)
BIMCO
INTERNATIONAL ASSOCIATION OF CLASSIFICATION SOCIETIES (IACS)
OIL COMPANIES INTERNATIONAL MARINE FORUM (OCIMF)
INTERNATIONAL ASSOCIATION OF DRILLING CONTRACTORS (IADC)
INTERNATIONAL FEDERATION OF SHIPMASTERS' ASSOCIATIONS (IFSMA)
INTERNATIONAL ASSOCIATION OF INDEPENDENT TANKER OWNERS (INTERTANKO)
THE INTERNATIONAL GROUP OF P & I ASSOCIATIONS (P&I Clubs)
CRUISE LINES INTERNATIONAL ASSOCIATION (CLIA)
INTERNATIONAL MANAGERS' ASSOCIATION (InterManager)
THE INTERNATIONAL MARINE CONTRACTORS ASSOCIATION (IMCA)
WORLD NUCLEAR TRANSPORT INSTITUTE (WNTI)
INTERNATIONAL TRANSPORT WORKERS' FEDERATION (ITF)
THE NAUTICAL INSTITUTE (NI)
CLEAN SHIPPING COALITION (CSC)

The Secretary-General's opening address

1.4 The Secretary-General welcomed participants and delivered his opening address, the full text of which can be downloaded from the IMO website at the following link: http://www.imo.org/MediaCentre/SecretaryGeneral/Secretary-GeneralsSpeechesToMeetings/Pages/LEG-99-opening.aspx.

The Chairman's remarks

1.5 The Chairman thanked the Secretary-General for his opening address and stated that his comments would be given every consideration in the deliberations of the Committee.

Statement by the Cruise Lines International Association (CLIA)

1.6 Following a one-minute silence in honour of the victims of the **Titanic** and other maritime casualties, the representative of the observer delegation of CLIA expressed appreciation to the Committee for its solemn recognition of the centenary of the sinking of the **Titanic** and emphasized the cruise industry's ongoing commitment to the improvement of

passenger ship safety. He further expressed heartfelt condolences to all affected by the **Costa Concordia** accident and gratitude to all responders, many of whom had put their own lives at risk through their heroic efforts, and continue to do so. Stating that the safety of passengers and crew members is the cruise industry's main priority, he also expressed full support and gratitude for the initiatives instigated by the Secretary-General and the Organization following the **Costa Concordia** accident.

Adoption of the agenda

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

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

2 REPORT OF THE SECRETARY-GENERAL ON CREDENTIALS

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

3 MONITORING THE IMPLEMENTATION OF THE HNS PROTOCOL, 2010

3.1 The Committee noted the Secretariat's report on the status of the 2010 HNS Protocol, as well as document LEG 99/WP.2, containing the key conclusions of the Special Consultative Meeting (Ottawa, June 2003) on implementation of the HNS Convention (document LEG 87/11).

3.2 In particular, the Committee noted that:

- in order to avoid confusion, Governments should ratify the 2010 HNS Protocol rather than the 1996 HNS Convention, without reference to the Convention, since the Protocol superseded the Convention; and

- a number of documents had been made available on the IMO website, namely:

  - the consolidated text of the 1996 Convention and the 2010 Protocol;

  - the overview of the Convention, as amended by the Protocol;

  - a model reporting form on receipts of contributing cargo;

  - the IMDG Code in effect in 1996 (searchable); and

  - Circular letter No.3144, containing the list of solid bulk materials possessing chemical hazards which are mentioned by name in the IMSBC Code and also in the IMDG Code in effect in 1996; and the list of solid bulk materials possessing chemical hazards which are mentioned by name in the IMSBC Code but not in the IMDG Code in effect in 1996.

3.3 The delegation of the Netherlands introduced document LEG 99/3, reporting on the outcome of the Special Consultative Meeting (Rotterdam, June 2011) to discuss implementation and ratification strategies regarding the 2010 Protocol. The meeting had been attended by delegations from nine Member States and the observer delegation of the IOPC Funds' Secretariat and had reconfirmed the conclusions on the definition of receiver,

on transhipment and on reporting requirements prior to ratification. The participants had agreed to finalize implementing legislation by 2013.

3.4 The Legal Committee was requested to take a decision on the location of the 2010 HNS Fund and on whether there should be a joint Secretariat of the HNS Fund and the IOPC Funds. This would remove an element of uncertainty with regard to the future of the HNS Fund and would assist the 1992 Fund Secretariat in its work, particularly with regard to discussions with the Host Government on the question of the privileges, immunities and facilities to be accorded to the future HNS Fund. The Committee was invited to endorse the findings of the Rotterdam meeting, in particular the conclusion that the outcome of the 2003 Ottawa meeting, reported in documents LEG 87/11 and LEG 99/WP.2, was the best approach towards the implementation of the 2010 HNS Protocol.

3.5 The observer delegation of the IOPC Funds introduced document LEG 99/3/1, providing an update on the work carried out by the 1992 Fund Secretariat regarding the administrative preparations required for setting up the HNS Fund, as well as practical measures to assist States in the implementation of the 2010 HNS Convention, such as the development of a searchable list of hazardous and noxious substances covered by the 2010 HNS Convention and a revised Contributing Cargo Calculator, which was in preparation. The Committee noted that this had been requested in resolution 1 of the International Conference on the Revision of the HNS Convention.

3.6 With regard to the status of the 2010 HNS Protocol, some concerns were expressed that, although it had been adopted for the purpose of removing the obstacles to ratification of the 1996 HNS Convention and in order to address practical problems pertaining to its implementation, IMO Member States had yet to report to the Committee on their intention to become Parties to the Protocol, and to provide a timeline in that respect.

3.7 The Committee thanked the delegation of the Netherlands for organizing the Rotterdam Special Consultative Meeting, the IOPC Funds and IMO Secretariats for their preparations for the setting up of the HNS Fund, in particular the development of a searchable list of hazardous and noxious substances (the "HNS Finder") and the information contained in the web pages of the respective organizations on the HNS Convention.

3.8 In respect of the location of the HNS Secretariat, the following views were expressed:

- a joint secretariat of both the HNS Fund and the IOPC Funds, located in London, would be practical, sensible and cost efficient, given the expertise of the IOPC Funds Secretariat in managing claims, the presence in London of most maritime institutions and the similarities between the HNS and the Fund Conventions. However, a final decision on the location of the HNS Fund had to be taken by the first HNS Assembly, rather than the Legal Committee; and

- should the decision be taken to locate the HNS Fund in London, a headquarters agreement between it and the United Kingdom Government would be necessary; in this connection, the delegation of the United Kingdom noted that formulation of the Headquarters agreement could be a lengthy process and therefore suggested that the IOPC Funds' Director contact the United Kingdom authorities as soon as possible, in line with resolution 1 of the 2010 Conference on the Revision of the HNS Convention.

3.9 Regarding the question of the Ottawa agreement, the following were among the views expressed:

- as the 1996 HNS Convention had not entered into force and the 2010 HNS Protocol was a different treaty, not all of the conclusions of the Ottawa meeting were relevant;

- attention was drawn to the fact that the Committee, at its eighty-seventh session (October 2003), had approved the conclusions of the Ottawa meeting. Those conclusions were therefore of historical value as they related to the 1996 HNS Convention, which had been superseded by the 2010 Protocol; therefore it was not possible to endorse all the conclusions of that meeting; nonetheless, the 2010 Protocol still retained a number of important elements of the 1996 Convention and, to that extent, the conclusions of the Ottawa meeting were still relevant;

- since not all delegations were present at the Rotterdam meeting, it was not possible to endorse all decisions taken at that meeting; in any event, it was the responsibility of the HNS Assembly and States Parties to the 2010 Protocol to endorse the conclusions of the Rotterdam meeting; and

- the conclusions of the Ottawa meeting were not binding, but were a guide and should be kept in mind while implementing the HNS Convention.

3.10 The Committee noted a clarification by the observer delegation of the International Group of P&I Associations (P&I Clubs) in relation to paragraph 14.5 of document LEG 99/3/1, to the effect that, from the P&I Clubs' perspective, the terrorism issue had not yet been resolved for the purposes of the HNS Convention, and did in fact remain an issue to be addressed. Therefore, this delegation believed that the content of that subparagraph was inaccurate in respect of terrorism and insurance and that it was important to avoid any misunderstanding in that regard.

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

4.1 The delegation of Australia, on behalf of the 20 co-sponsoring delegations, introduced document LEG 99/4, proposing that the limits of liability set by article 6.1(a) and (b) of LLMC 76/96 be increased by an amount permitted by article 8. In so doing, the delegation emphasized that the proposal did not set an amount by which the limits should be increased, as this was a matter for the LLMC 96 Contracting States to determine.

4.2 The delegation of Japan introduced document LEG 99/4/1, providing an inflation rate analysis and a proposal for modest increases in the limits of liability in LLMC 96. The analysis focused on the changes in monetary value during the relevant period as the sole factor that could justify the increase. Pursuant to this analysis it proposed raising the limits by not more than 45 per cent.

4.3 The delegation of Australia introduced document LEG 99/4/3, containing a consideration of the factors in article 8.5; and a proposal to increase the limits in article 6 by the maximum amount permissible under article 8.6; document LEG 99/4/4, containing an independent analysis, by KPMG, of changes in monetary values which had affected the real value of LLMC 96 limits; and document LEG 99/4/5, containing an analysis of changes in monetary value by reference to the increases in commodity prices. Pursuant to this analysis

this delegation proposed increasing the limits by 147 per cent, which was the effect of adopting an increase to the limits of 6 per cent per annum on a compound basis, from 1996 to 2012. This would result in the new limits being approximately 2.5 times the current limits, assuming the date of the adoption was used.

4.4 The observer delegation of the International Group of P&I Associations (P&I Clubs) introduced document LEG 99/4/6, containing additional information and claims data further to the data previously provided to the Committee.

4.5 The observer delegation of the International Chamber of Shipping (ICS) introduced document LEG 99/4/7, commenting on the documents submitted by Japan, Australia and the P&I Clubs; and additional information to facilitate the discussion on any increases to the limits, noting also the principle of "shared responsibility" governing the IMO liability and compensation conventions.

4.6 The Secretariat introduced document LEG 99/4/2, containing, in the annex, a draft resolution on the adoption of the amendments to the limits.

4.7 The Committee recalled that:

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

- at its ninety-seventh session, the delegation of Australia provided papers addressing each of the factors listed in articles 8.5 and 8.6 of LLMC 96 and the P&I Clubs provided claims data on incidents where the limits had been exceeded;

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

- the information provided at the ninety-eighth session of the Legal Committee, by the delegation of Australia in document LEG 98/7, contained a historical comparison of past increases in the limits of liability, by reference to the limits of liability in the 1957 International Convention relating to the Limitation of Liability of Owners of Sea-Going Ships, the 1976 LLMC Convention and the 1996 LLMC Protocol;
- sixteen years had passed since the limits in LLMC 96 were adopted and, in accordance with the tacit acceptance provisions in article 8 of that instrument, if adopted at this session, they would not enter into force for another three years, that is, in 2015; and

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

4.8 The Committee noted the conditions contained in article 8 on the maximum limit of any amendment to the limitation amounts, paragraph 6(b) of which states that: "No limit may be increased so as to exceed an amount which corresponds to the limit laid down in the Convention as amended by this Protocol increased by six per cent per year calculated on a compound basis from the date on which this Protocol was opened for signature"; and

paragraph 6(c) of which states that: "No limit may be increased so as to exceed an amount which corresponds to the limit laid down in the Convention as amended by this Protocol multiplied by three".

4.9 There were three factors set out in article 8.5 of LLMC 96 that the Committee should take into account when calculating the amount of the increase, which were the experience of incidents and, in particular, the amount of damage resulting therefrom; changes in monetary values; and the effect of the proposed amendment on the cost of insurance.

4.10 There was wide support for an increase in limits, as well as agreement that the date that should be taken into account in calculating the limits should be 2012, this being the date of the adoption of new limits.

4.11 Among the views expressed in support of the maximum possible increase were the following:

- with respect to the experience of incidents, the focus should be on the amount of damage rather than the number of incidents, per se, especially because article 8.5 does not indicate that the number of incidents shall be taken into account. Although the number of incidents was low, the number of claims that exceeded the limits was significant;

- regarding changes in monetary value, article 8.5 does not indicate the method of calculation. KPMG calculated the changes in monetary values taking into account the average inflation in Contracting States to LLMC, which was 3.1 per cent and worldwide 4.1 per cent;

- with respect to the effect of the increase of limits on the insurance, according to information provided by the P&I Clubs, this was not predictable;

- although limitation of liability was a long-standing principle in maritime law, it was a privilege, not a right. Governments have an obligation to protect the interests of victims of maritime incidents;

- it is undesirable for LLMC limits not to keep pace with the real costs of compensating victims. This was a particular risk for claims for bunker pollution damage. If the LLMC regime does not provide limits that are adequate, coastal States may be tempted to take unilateral action to increase the limits outside of the international regime;

- the Japanese proposal was based on calculations only until 2010; however, the date of the adoption would be 2012 and the date of entry into force would be 2015. The limits could not be amended again until 2020 and would be applicable until at least 2023. It might therefore be appropriate to include a cushion to protect against future inflation to prevent the new limits from being immediately out of date;

- in the two Norwegian cases: in the **Server** incident, the difference between expected costs and LLMC 96 limits was US$23 million and in the **Full City** incident the difference was US$36 million. While the principle of limitation of liability was not in question, the limits must be sufficient to meet demands; and

- the Polluter Pays Principle is a well-established rule affirming that the costs of the pollution should be covered by those who pollute and that there is no shared liability or risk. Therefore, the limits should be increased to the amount that would adequately compensate victims and coastal States for costs incurred in combating pollution damage from bunker spills.

4.12 Among the views expressed in support of a modest increase in limits of liability were the following:

- on current available information, there appeared to be insufficient justification for the maximum permissible increase;

- based on the information provided by the P&I Clubs, the LLMC 96 limits were exceeded, since 2000, only in 10 reported incidents concerning bunker oil pollution claims, amounting to less than two per cent of all reported claims. From this data, it was clear that existing limits of liability were generally sufficient, and that only a modest increase could be justified;

- the majority of cases where the limits were exceeded were bunker pollution cases; however, the increase of the LLMC 96 limits would not only apply to bunker oil pollution damage but also to other types of damage. According to the information provided by the P&I Clubs, the category of non-bunker oil pollution cases where the limits have been exceeded was very small, only three cases between 1996 and 2004 having being reported. Therefore, claims for bunker oil pollution damage should not be overemphasized;

- taking into account changes in monetary values, the Japanese calculation was reasonable and proved that, from 1996 to 2010, the change amounted to 45 per cent. Therefore, the limits of liability should only be increased to the extent necessary to reflect changes in monetary values that had occurred since the last increase in 1996, namely 45 per cent;

- although the impact on the cost of insurance could not be quantified, affordable insurance would be available only if the increases in limits were reasonable; and

- the limits of liability should be set at such a level so as not to negate the concept of limitation of liability, which is a crucial and fundamental principle of sharing responsibility and risks between all interests. The concept of limitation of liability necessarily involves some claims falling beyond the limits, otherwise liability would be unlimited.

4.13 Among the views that expressed support for an increase between the maximum increase and the modest increase were the following:

- the issue before the Committee was complex and no clear guidance could be drawn from the documentation on the changes in monetary values nor on the impact on the cost of insurance. Support was expressed for the calculations in the documents presented by Australia and the assessment on that basis was that the increase should be in the area of four to six per cent per annum in order to retain the value of the limits of LLMC 96; and

- there was a need to strike a balance between the different interests, on the one hand the concept of limitation of liability and on the other hand the concept of full indemnity and the Polluter Pays Principle. Sufficient and reasonable protection to the claimants should be provided taking also into account that the limits would be applicable for a long time into the future.

4.14 Among the other views expressed were the following:

- LLMC 96 limits were no longer sufficient for the compensation of bunker oil pollution damage and independent limits for the Bunker Convention should be established;

- there was a need for future work in the Legal Committee with the aim of evaluating the correlation between the Bunker Convention and LLMC 96 and exploring appropriate solutions for compensation of bunker oil pollution damage that would not put undue strain on LLMC 96 and its general limits of liability;

- the concern was expressed that the Committee was being asked to consider an alternative figure that had not been substantiated through detailed submission for consideration prior to this session of the Committee. The Committee had before it only three substantiated options for consideration and, thus, agreeing to any other alternative figure would be arbitrary;

- no compelling need to increase the limits had been proved; accordingly, no increase was warranted; and any increase in limits may discourage Governments from acceding to the Convention; and

- the Australian proposal was limited only to the increase of limits of liability in article 3 of LLMC 1996; the Committee should also take into account that the Convention contains other limits, namely in article 4 regarding loss of life or personal injury to passengers of a ship and in article 5 for non-IMF members; however, there was no formal proposal to increase these limits. The Committee may consider, at its next session, discussing the adjustment of these limits to the new limits agreed at this session and what procedure should be applied.

4.15 In light of the above considerations, the Committee supported the modest increase in limits proposed by Japan, adjusted to take into account the year of adoption, namely 2012. This resulted in an increase of 51 per cent.

4.16 The Committee adopted the resolution on Adoption of amendments of limitation amounts in the Protocol of 1996 to the Convention on Limitation of Liability for Maritime Claims, 1976, contained in LEG 99/WP.8, with the new limits in the annex thereto. This resolution is contained in annex 2 to this report.

4.17 Following the adoption of the resolution, the delegation of Australia made a statement, drawing the attention of the Committee to a number of concerns it had regarding the Committee's approach to the adoption of the increased limits, as well as the need for clarification of the role of non-contracting States when amendments of the limits are being considered. With regard to the latter, the delegation strongly recommended that this be clarified in the future. The statement is contained in annex 3 to this report.

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

5.1 The observer delegation of the International Labour Office (ILO), represented by Mr. Brandt Wagner, Senior Maritime Specialist, introduced document LEG 99/5.

5.2 He noted that the ILO Maritime Labour Convention, 2006 (MLC or "the Convention") had been ratified by 25 Member States, representing over 56 per cent of the world's gross tonnage of ships. Only five further ratifications were therefore needed to permit its entry into force, the tonnage requirement having already been met. It was expected that the five additional ratifications would be received in 2012, and the MLC would enter into force in mid-2013.

5.3 He referred to the extensive training programme on the Convention at the ILO's International Training Centre in Italy and the many training courses delivered at national level. ILO had also developed many publications and other tools related to the MLC, including the Handbook on Model National Provisions and the Handbook on Social Security for Seafarers.

5.4 In March 2012, the Governing Body of ILO adopted Standing Orders for the Special Tripartite Committee, as provided for in the MLC. The Committee's mandate is to keep the Convention under continuous review. It will be convened once the Convention has entered into force. It will consist of two representatives nominated by the Government of each country that has ratified the Convention, and the representatives of shipowners and seafarers appointed by the Governing Body after consultation with the ILO's Joint Maritime Commission. The Committee will also play an important consultative role under article VII of the MLC for countries that do not have shipowners' or seafarers' organizations to consult when implementing it. The Committee will have the power to consider amendments to the Convention.

5.5 At its first meeting, the Committee will discuss proposed amendments on the issue of financial security for seafarers and their dependants in cases of personal injury, death or abandonment. The envisaged amendments are based on the recommendations adopted in March 2009 by the Joint IMO/ILO Ad Hoc Expert Working Group.

5.6 Several delegations provided information on the status of ratification of the MLC and the work being carried out towards its implementation.

5.7 The Committee noted the information provided by the observer delegation of ILO on the progress made towards the entry into force and the implementation of the MLC, as well as the information on the amendments relating to abandonment, personal injury to and death of seafarers; and urged those States that had not already done so to consider ratifying the Convention at their earliest convenience.

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

6.1 The Committee recalled that the Assembly, at its twenty-seventh regular session, had adopted resolution A.1056(27) on *Promotion as widely as possible of the application of the 2006 Guidelines on fair treatment of seafarers in the event of a maritime accident*, previously approved by the Committee at its ninety-sixth session. The resolution was subsequently revised to include, in the annex, Assembly resolution A.987(24) on *Guidelines on fair treatment of seafarers in the event of a maritime accident*.

6.2 The representative of the observer delegation of ILO introduced document LEG 99/6. He noted that, in keeping with decisions taken by the Governing Body of ILO at its 313th session in November 2011, the Director-General had communicated IMO Assembly resolution A.1056(27)/Rev.1 to all ILO Member States. Member Governments were requested to arrange for the text of the resolution to be examined by their competent services and to transmit it to relevant employers' and workers' organizations. ILO, in collaboration with IMO, continued to keep the problem of fair treatment of seafarers in the event of a maritime accident under review and, as appropriate, periodically assessed the scale of the problem.

6.3 The Committee noted that, in accordance with the decision taken at its last session, document LEG 98/6 (Islamic Republic of Iran), providing information and observations concerning unfair treatment of seafarers due to nationality or religion and citing a number of cases where shore leave and access to shoreside medical facilities had been denied, had been referred together with a summary of the Committee's discussion, to the FAL Committee, at its thirty-seventh session. The document had been referred to a working group for discussion. The FAL Committee had noted the intention of the Islamic Republic of Iran to provide an amended text on the relevant Standard of the FAL Convention (3.44) to its next session.

6.4 The observer delegation of the International Transport Workers' Federation (ITF), on behalf of Seafarers' Rights International (SRI), informed the Committee about a survey it had conducted concerning the experiences of seafarers facing criminal charges.

6.5 The survey had been carried out over a 12-month period, ending in February 2012, and had been conducted in eight languages. Altogether, 3,480 completed questionnaires were returned from seafarers of 68 different nationalities.

6.6 Two important findings from the survey were as follows:

- 8.27 per cent of seafarers in the survey had faced criminal charges; and
- masters faced criminal charges most frequently and, in fact, almost 24 per cent of masters who answered the survey had faced criminal charges.

6.7 The questionnaire specifically asked about the experiences of seafarers who had faced criminal charges:

- 44 per cent of seafarers reported that they had been bodily searched;
- 87 per cent said that they did not have legal representation;
- 91 per cent of seafarers who needed interpretation services said that they were not provided with them; and
- 89 per cent said that they did not have their legal rights explained to them.

6.8 Seafarers were also specifically asked about their perceptions:

- 80 per cent felt intimidated or threatened;
- 46 per cent said that they would be reluctant to cooperate fully and openly with casualty inquiries and accident investigations; and

- overall 81 per cent did not consider that they had received fair treatment.

6.9 These findings were brought to the attention of the Committee because of their relevance to the *Guidelines on fair treatment of seafarers in the event of a maritime accident*, to the IMO resolution promoting the Guidelines, as well as to the submission of ILO. The full report would shortly be available on the SRI website (www.seafarersrights.org).

6.10 It was noted that the statistics showed that there was a need for a better implementation of the Guidelines.

6.11 One delegation, in expressing the view that fair treatment of seafarers was a critically important issue, noted that, when considering issues related to criminality, and the criminalization of seafarers, there existed a continuing trend of providing false record books and the making of false statements to officials, which undermined port State control efforts. In this context, the Committee needed to be mindful of the hierarchy of responsibility in ensuring safe, secure and environmentally sound ships. That responsibility begins with the owner, shipping company and persons on board, classification societies, and, importantly, effective flag State oversight. Port State control is also part of the hierarchy, but should be the last line of defence – not the first. The issue should, therefore, be considered in light of a more comprehensive analysis.

6.12 The Committee noted the information provided by ILO and the Secretariat and thanked SRI for the statistics provided and encouraged it to submit a full report of its study to the next session of the Committee.

7 PIRACY

7.1 The Committee noted the information provided by the Secretariat in documents LEG 99/7 and LEG 99/WP.5, reporting on the ninth and tenth sessions of Working Group 2 (WG 2) of the Contact Group on Piracy off the Coast of Somalia, held in the Seychelles in October 2011 and in Copenhagen in March 2012, respectively.

7.2 The Committee was informed that a special meeting of WG 2 would take place on 24 April 2012 at IMO Headquarters to discuss legal questions with regard to guidelines to Private Maritime Security Companies (PMSCs) providing armed guards (PCASP).

7.3 In response to a request that IMO circulate the dates of all WG 2 meetings to delegations, which might not be aware of the Group's meetings in advance, it was suggested that, since Denmark facilitated the meetings of WG 2, which took place in several locations, delegates should contact the Danish Government for this information. The relevant e-mail address is jtf@um.dk.

7.4 Some delegations reported on the status of their national legislation regarding the employment of armed security personnel on board and the use of force.

7.5 The Secretariat introduced document LEG 99/7/2, containing information on a possible study by the Secretariat on the preparation of a database of court decisions related to piracy off the coast of Somalia. In so doing, it noted that, since the circulation of this document, it had been advised that the United Nations Interregional Crime and Justice Research Institute (UNICRI) already maintained such a database, which could be accessed at http://www.unicri.it/maritime_piracy. The Secretariat invited Member Governments to submit relevant information either directly to UNICRI or to IMO, for forwarding to UNICRI.

7.6 There was general support for the database regarding which the following views were expressed:

- while States were ready to submit their judgments to IMO for inclusion in the UNICRI database, States' privacy legislation should be respected;
- there was no need to duplicate the work carried out by UNICRI; therefore it was advisable to have a link between the IMO and UNICRI websites;
- the database should include not only judgments regarding piracy off the coast of Somalia, but also those related to piracy attacks in other geographical areas;
- the database should not only include piracy judgments, but should be expanded to include judgments on other piracy-related crimes; and
- the database should also include information on post-trial transfers.

7.7 The Secretariat was requested to contact UNICRI regarding the above suggestions and report to LEG 100.

7.8 The delegation of Ukraine introduced document LEG 99/7/1, seeking information on the apprehension of pirates operating in the Gulf of Aden, the Arabian Sea and in the northern Indian Ocean in order to assess the scale of the problem of prosecuting perpetrators.

7.9 The delegation suggested that the Secretariat approach agencies in the region directly involved in combating piracy and armed robbery, primarily the European Union Naval Force Somalia (EU NAVFOR) and the North Atlantic Treaty Organization (NATO), but also the United Nations Office on Drugs and Crimes (UNODC), requesting information on the number of pirates captured, handed ashore for further investigation and apprehension, or left without charges and released because of difficulties associated with apprehending them, as well as identifying such difficulties.

7.10 The Committee was informed that the GISIS database on the IMO website included some of the information requested by Ukraine. This database provided read-only access and was searchable and included information, such as the number of pirates who were captured, dates of release of hijacked ships and brief descriptions of the attacks. In addition to this, the United Nations Secretary-General's report on specialized anti-piracy courts in Somalia and other States in the region, as reproduced in the annex to document LEG 97/7/2, included a table providing a breakdown of global piracy prosecutions.

7.11 In respect to the information requested in document LEG 99/7/1, the following views were expressed:

- information in GISIS and the UNICRI website could be amalgamated;
- the requested information should take into account legislation on protection of personal data;
- a formal agreement might be required between IMO and the European Union on information sharing; and
- there should be no duplication of work by IMO or other agencies.

7.12 There was general support for the action proposed by the delegation of Ukraine. The Secretariat was requested to report back to the Committee at its next session on the results of its enquiries.

8 MATTERS ARISING FROM THE 106TH AND 107TH REGULAR SESSIONS OF THE COUNCIL; THE TWENTY-SIXTH EXTRAORDINARY SESSION OF THE COUNCIL; AND THE TWENTY-SEVENTH REGULAR SESSION OF THE ASSEMBLY

8.1 The Secretariat introduced document LEG 99/8, on decisions and conclusions of the 106th and 107th regular sessions of the Council; the twenty-sixth extraordinary session of the Council; and the twenty-seventh regular session of the Assembly, on matters of relevance to the Legal Committee.

8.2 The Committee took note of the information submitted by the Secretariat and, as requested by the Council, agreed to re-examine the proposed revision of Strategic Direction 7.2 under the "Any other business" item of its agenda, and report to the Council accordingly.

8.3 Additionally, the Committee agreed to consider, under agenda item 11:

- documents (LEG 99/11/1 and LEG 99/INF.2) responding to the call contained within Assembly resolution A.1058(27) for submissions related to guidance following allegations of a crime at sea, including the justification and compelling need for this new unplanned output; and

- document (LEG 99/11/2) proposing amendments to the Guidelines on the organization and method of work of the Legal Committee.

9 TECHNICAL CO-OPERATION ACTIVITIES RELATED TO MARITIME LEGISLATION

9.1 The Senior Deputy Director, Technical Co-operation Division (TCD), introduced document LEG 99/9/1, reviewing technical co-operation activities on maritime legislation from January to December 2011.

9.2 She informed the Committee that:

- TCD was in the process of implementing the ITCP for 2012-2013. More activities had been planned to assist Member States in drafting, updating and bringing into force primary and secondary maritime legislation in matters related to implementation of IMO instruments. Regional and national training courses on drafting of maritime legislation in selected countries, including Least Developed Countries (LDCs) and Small Island Developing States (SIDS), were also planned to be carried out during the 2012-2013 biennium; and

- in accordance with resolution 2 on *Promotion of technical co-operation and assistance*, adopted by the 2010 International Conference on the Revision of the HNS Convention, ITCP for 2012-2013, included, as an immediate objective, support to national authorities in the development of appropriate legislation for the ratification of the 2010 HNS Protocol. The expected output would be the improved implementation of the Protocol at national level. The planned activities within the programme would comprise the development of training materials to promote the ratification of the Protocol which would facilitate the

effective global implementation of the international regime for liability and compensation for vessel-sourced HNS damage.

9.3 The Secretariat introduced document LEG 99/9, reporting on activities of the IMO International Maritime Law Institute (IMLI) for the year 2011. A list of dissertations and drafting projects undertaken by IMLI students in the 2010-2011 academic year and the name of the student awarded a PhD degree in May 2011 were contained in the annex to the document.

9.4 Some delegations expressed their appreciation to IMLI, IMO and the Government of Malta for providing their students with the opportunity to study at IMLI. The Committee was also informed of the award for the best Master thesis on environmental law to a student from the Cook Islands.

9.5 The Committee took note of this information.

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

10.1 The Secretariat introduced documents LEG 99/10 and LEG 99/WP.7, containing information on the status of conventions and other treaty instruments emanating from the Legal Committee.

10.2 The Committee noted that the annex to document LEG 99/10 provided updated status information, to 10 February 2012, on the developments which had occurred since the Committee's last review, in April 2011; and that this information had been further updated to 13 April 2012 in document LEG 99/WP.7.

10.3 The Committee requested delegations to encourage their respective Governments to work towards ratification of all the conventions developed under the aegis of the Legal Committee, and, mindful of the fact that lack of progress regarding the entry into force of the 2002 Athens Protocol, the 2007 Nairobi Wreck Removal Convention and the 2010 HNS Protocol might reflect adversely on the work of the Committee, placed special emphasis in this regard on those treaties.

10.4 The Committee also encouraged States which had not already done so, to ratify the 2005 SUA Protocols, which had already entered into force, in order to ensure the increasing usefulness of these treaties in facilitating the arrest and prosecution of all those involved in criminal acts against the safety of navigation.

10.5 The delegation of Denmark informed the Committee that Denmark would soon be in a position to deposit an instrument of ratification of the 2002 Athens Protocol. The 1996 HNS Convention had been adopted some years ago and work on the implementation of the 2010 HNS Protocol had been initiated. As concerns the 2005 SUA Protocols, the necessary legislation was in place and it was anticipated that the ratification process would follow shortly. The process of drafting implementing legislation with regard to the 2007 Nairobi Wreck Removal Convention was well advanced.

10.6 The delegation of the United Kingdom informed the Committee that domestic legislation with regard to the 2007 Nairobi Wreck Removal Convention had been cleared by Parliament and the United Kingdom's instrument of accession would be deposited imminently.

10.7 The delegation of the Netherlands informed the Committee that enacting legislation regarding the 2002 Athens Protocol had made progress in Parliament and that ratification was expected before the end of 2012. Drafting of implementing legislation for the 2007 Nairobi Wreck Removal Convention was in its final stages.

10.8 The delegation of Canada informed the Committee that legislation to implement the 2010 HNS Protocol was being developed. Policy consultations on the 2007 Nairobi Wreck Removal Convention and the 2005 SUA Protocols were underway.

10.9 The delegation of Kenya informed the Committee that domestic legislation regarding the 2010 HNS Protocol was being developed, and that Kenya was also considering ratification of the 2005 SUA Protocols and the 2007 Nairobi Wreck Removal Convention.

10.10 The delegation of the Netherlands introduced document LEG 99/10/1, on behalf of a number of co-sponsoring delegations, drawing the attention of States, when ratifying the 2002 Athens Protocol, to the need to make a reservation so that the insurance requirements in respect of war risk and terrorism would be determined by the IMO Guidelines developed by the Committee.

10.11 The observer delegation of the P&I Clubs thanked the co-sponsors for their submission and underlined the potential impact on P&I providers of Athens Convention non-war risk blue cards if States have not made the reservation when depositing instruments of ratification or accession to the Protocol. The observer delegation referred States to the potential impact as described in paragraph 7 of the document and this was probably correct from their perspective.

10.12 In order to facilitate the entry into force of the 2002 Athens Protocol, as well as to ensure uniform application of the rules for liabilities and insurance between States Parties, the Committee encouraged administrations, for the reasons explained, to give serious consideration, at the time of ratification, to making a reservation or a declaration concerning limitation of liability for carriers and limitation for compulsory insurance for terrorist risks, taking into account the current state of the insurance market, as recommended in the Guidelines on the implementation of the 2002 Athens Protocol, adopted at the ninety-second session of the Legal Committee and circulated by Circular letter No.2758, dated 20 November 2006.

10.13 The Committee noted a statement by the observer delegation of the P&I Clubs concerning the potential consequences on the Civil Liability and the Fund Conventions of the restrictive measures recently adopted by the European Council against the Islamic Republic of Iran. The Committee also noted that this matter would be discussed at the 1992 Fund Assembly (24 to 27 April 2012).

11 APPLICATION OF THE COMMITTEE'S GUIDELINES

(a) Review of planned outputs for the 2012-2013 biennium

11.1 The Secretariat introduced document LEG 99/11, providing the Committee's Planned Outputs (POs) for the 2012-2013 biennium, to enable the Committee to review them to ensure compliance with the Guidelines on the Application of the Strategic Plan and the High-level Action Plan of the Organization (resolution A.1013(26)) (the GAP).

11.2 The Committee recalled that the Council, at its twenty-sixth extraordinary session had invited the organs of the Organization to review their planned outputs at the first opportunity in the new biennium to ensure compliance with the GAP.

11.3 The Committee considered the issues identified by the Council Ad Hoc Working Group on the Organization's Strategic Plan as summarized in document LEG 99/11 (e.g. outputs not in SMART terms, duplicate outputs, outputs identified as being "continuous", and outputs on which no work has been undertaken for an extended period). With regard to the duplication of outputs, the Committee decided:

- for the outputs related to fair treatment of seafarers, to delete PO 6.3.1.1 and retain PO 1.1.2.6;
- for the outputs related to abandonment, personal injury or death of seafarers and ILO MLC 2006, to delete PO 6.3.1.2 and retain PO 1.1.2.41;
- for the outputs related to SUA, to delete PO 1.1.2.42 and retain PO 6.1.2.1;
- for the outputs related to strategies to facilitate entry into force of certain instruments, to delete PO 1.2.1.5 and retain PO 2.0.1.15; and
- for the outputs on piracy, to delete PO 6.2.1.3 and retain PO 6.2.2.3.

11.4 The Committee took no decision on revision of its planned outputs to ensure they are expressed in SMART terms (i.e. specific, measurable, achievable, realistic and time-bound); however, this matter will be considered further at the next session, particularly with the aim of ensuring that appropriate wording is agreed for submission to the High-level Action Plan for the next biennium (2014-2015).

11.5 In reviewing those planned outputs which contain the word "continuous" in the target completion date, the Committee agreed that the PO concerning input to the ITCP on maritime legislation (PO 3.5.1.4) should remain as a continuous agenda item. The Committee will consider this matter further at its next session.

11.6 The Committee agreed to forward the above decisions to the Council for its endorsement.

(b) Status of planned outputs

11.7 Regarding PO 2.0.1.15 concerning strategies to facilitate entry into force of the 2002 Athens Protocol, the 2005 SUA Protocols, and the 2007 Nairobi Wreck Removal Convention, the Committee recalled that the 2005 SUA Protocols had come into force on 28 July 2010; it had adopted guidance on the Athens Protocol at its ninety-second session which was issued in Circular letter No.2758 and no additional proposals had been put forward; and it had developed guidance on the Nairobi Convention, adopted by the last Assembly as resolution A.1057(27). Consequently, the Committee agreed that the status for this planned output was: "completed".

11.8 The Committee agreed to its report on the status of planned outputs for the current biennium based on the annex to document LEG 99/WP.3, as revised. The report is attached in annex 4 to this report.

(c) Amendments to the Committee's Guidelines: checklist for identifying administrative requirements and burdens

11.9 The Committee recalled that the Council, at its twenty-sixth extraordinary session, had agreed to incorporate within the GAP, and with immediate effect, the checklist for identifying administrative requirements and burdens in the future, and requested the Committees to update the Guidelines on the organization and method of their work accordingly.

11.10 In this regard, the Committee considered the amendments proposed in document LEG 99/11/2 to reflect the decision of the Council, including footnotes to make reference to the checklist for identifying administrative requirements and burdens, and an additional annex with the checklist. It was noted that the same amendments were being or had been considered and agreed by MSC and MEPC.

11.11 The Committee agreed to amend its Guidelines on the organization and method of its work (LEG.1/Circ.6) as proposed in document LEG 99/11/2 and requested the Secretariat to issue a revised circular to reflect the amendments.

(d) Proposed unplanned output

11.12 The Committee considered a proposed unplanned output on collation and preservation of evidence following an allegation of a serious crime having taken place on board a ship or following a report of a missing person from a ship, and pastoral and medical care of victims.

11.13 The Committee:

- recalled that the Assembly, at its twenty-seventh session, had adopted resolution A.1058(27) on *Collation and preservation of evidence following an allegation of a serious crime having taken place on board a ship or following a report of a missing person from a ship, and pastoral and medical care of victims*. The resolution invited Member States and other parties concerned to submit proposals to the Legal Committee to enable consideration of the issues raised in the resolution, bearing in mind that issues of criminal jurisdiction should be consistent with international law;

- noted that document LEG 99/11/1 proposed the development of guidance on this subject as a new unplanned output to be added to the biennial agenda of the Legal Committee; and

- noted that the Guidelines on the organization and method of work of the Committee set out the procedure to be followed when an unplanned output is proposed.

11.14 The delegation of the United Kingdom, on behalf of the co-sponsoring delegations, introduced documents LEG 99/11/1 and LEG 99/INF.2, and invited the Committee to consider adding a new unplanned output to its biennial agenda, on guidance following allegations of a crime at sea, based on document LEG 98/INF.3 and resolution A.1058(27). While recognizing the current strict budget constraints and the burden that additional new unplanned outputs place on the Organization's budget, a compelling need had been demonstrated for developing such guidance.

11.15 With reference to two recent cases involving the disappearance in March 2011 of a passenger from a Bahamian-registered passenger ship and the disappearance in June 2010 of a cadet from a United Kingdom-registered cargo ship, the delegation noted that:

- where a ship is in a more remote location or too far from a port where an investigator from the relevant authority can board in a timely manner, there was a need to enhance the facilitation of future investigations by the relevant authority;

- some ships are, in effect, the equivalent of a large town. This comparison highlights the fact that the ship's crew are isolated in their working environment from the support of professional criminal investigators who would normally collate and preserve evidence when a serious crime is committed ashore or a person goes missing;

- in some circumstances, seafarers are often called upon to collate and preserve evidence following an allegation of a serious crime, without appropriate guidance and support, which further supports the need to provide assistance to the ship's master or crew when collating and preserving evidence that can be passed to the relevant investigating authority;

- with regard to medical and pastoral care, victims of serious crime should receive similar support to that of victims ashore; and

- there was a need to facilitate the effective reporting and timely investigation of crimes by the relevant authority, and cooperation between such authorities.

11.16 The draft guidelines in document LEG 99/INF.2 were based on existing guidelines developed by the MSC to assist in the investigation of the crimes of piracy and armed robbery against ships, adapted to fit the particular issues related to other alleged crimes at sea and contained guidance on actions in the event of a missing person and the pastoral and medical care of victims.

11.17 The Secretariat, on behalf of the Chairman, introduced document LEG 99/WP.4, containing the Chairman's preliminary assessment of the unplanned output proposed in document LEG 99/11/1, according to which the proposal met the criteria set out in the Committee's Guidelines; however, there was an issue regarding the linkage to the Strategic Plan and High-level Action Plan which could be resolved by accepting a broad understanding of the term "safety of persons on board", as used in the Strategic plan. The Chairman believed a decision not to accept the proposed unplanned output for the current biennium could have negative implications for meeting the Organization's objectives, particularly in the area of enhancing the preservation of human life at sea.

11.18 Among the views expressed during the ensuing discussion were the following:

- there was a compelling need to move the guidelines forward and those contained in document LEG 99/INF.2 provided a good basis for this work;

- the guidelines should accommodate different legal systems, be usable, understandable and focus on collation and preservation of the integrity of evidence;

- the development of the proposed guidelines was fully within IMO's mandate;

- with regard to very large passenger ships, a dedicated trained officer might be provided;

- because of possible implications for the STCW Convention including the development of a possible approved model training course, the issue should, at some future time, be brought to the attention of the MSC, which should also consider its practical implications;

- while training might well be needed, there should not be a need for additional certification;

- the guidelines should cover all types of ships, not only passenger ships;

- concern was expressed that the guidelines should not be excessively extensive or detailed, since they would be implemented by persons not used to dealing with such issues, and, if not followed precisely, blame might fall on the master;

- the cost of training needs to be taken into account;

- the guidelines should take into account the fact that more than one State might have jurisdiction; in this connection, the guidelines should ensure cooperation between States with the primary investigative role and other interested States and their investigative agencies, such as specialist police units;

- in developing the guidelines, the rights of suspects should be respected in line with human rights conventions and should take into account issues such as due process;

- possible overlap with the Casualty Investigation Code should be avoided; and

- no liability should be attributed by the guidelines to the master, officers or crew should it be found that any evidence be lacking or contaminated through inexperience in collecting evidence.

11.19 There was overwhelming support to include this item in the Committee's agenda. The Committee expressed appreciation to the co-sponsors for their proposal, as well as to the Chairman and the Secretariat for their preliminary assessment, and agreed to include this item on its agenda, with a target completion date of 2014, noting that work could continue beyond that date, if necessary. Interested delegations were invited to start working intersessionally and to submit proposals to LEG 100. Delegations were invited to ensure that they included persons with pertinent expertise.

(e) Guidance on capacity-building

11.20 The Committee recalled that, at its ninety-eighth session (LEG 98/14, paragraph 12.10), it had requested the Secretariat to consider whether any useful guidance might be provided to aid the Committee in applying Assembly resolution A.998(25) on the need for capacity-building for the development and implementation of new, and amendments to existing, instruments.

11.21 The Committee noted that the most recently agreed Guidelines on the organization and method of work of the Legal Committee (LEG.1/Circ.6), included annex 1, Procedures for the assessment of implications of capacity-building requirements when developing new,

or amending existing, mandatory instruments (together with an appendix with a flow-chart on identification of capacity-building implications) which supported the principles of Assembly resolution A.998(25). This annex is identical to the procedural guidance developed by the Maritime Safety Committee and included in that Committee's (and the MEPC's) guidelines on work methods.

11.22 The Committee agreed that, in the absence at this stage of a clear indication of what additional guidance might be needed, it would return to this matter in the future when a proposal for a new output revealed a clear need for developing more practical or detailed guidance than already existed in the current Guidelines.

(f) Items for inclusion in the agenda for LEG 100

11.23 The Committee approved the list of substantive items for inclusion in the agenda for its one hundredth session, as contained in document LEG 99/WP.6, as amended. The amended list is contained in annex 5 to this report.

11.24 The Committee requested the Secretariat to consider harmonizing its agenda in future with those of other Committees by introducing a heading for "work programme" under which proposed unplanned outputs would be considered.

(g) Evaluation of the Committee's workload

11.25 The Committee noted that, at its last session, it had agreed that two meeting weeks should be adequate for the biennium (2012-2013); however, should there be an unforeseen circumstance, it might need to request the Council to authorize a third meeting week. It also agreed that it would re-assess its workload for the 2014-2015 biennium, in light of any new developments, and advise the Council accordingly. The Committee further agreed that it would be premature to take any decision on the matter at this session but that, at its next session, it would consider the number of meeting weeks it would need for the next biennium (2014-2015), taking into account the Committee's anticipated workload.

12 ELECTION OF OFFICERS

(i) Election of the Chairman

12.1 The Committee re-elected, by acclamation, Dr. Kofi Mbiah (Ghana) as Chairman for 2013.

(ii) Election of the two Vice-Chairmen

12.2 The Committee also re-elected, by acclamation, Mr. Jan de Boer (Netherlands), and Mr. Walter de Sá Leitão (Brazil) as first and second Vice-Chairmen of the Committee, respectively, for 2013.

13 ANY OTHER BUSINESS

(i) Analysis of liability and compensation issues connected with transboundary pollution damage from offshore exploration and exploitation activities, including a re-examination of the proposed revision of Strategic Direction 7.2

13.1 The Committee noted the information provided by the Secretariat in document LEG 99/13 and was reminded by the Chairman that, at its ninety-seventh session, it had considered a proposal for a new work item, as suggested by Indonesia in document

LEG 97/14/1. A wide range of views had been expressed with regard to this proposal but "most delegations that spoke expressed support, in principle, for the inclusion of an item in the Committee's work programme to consider liability and compensation issues for transboundary pollution damage resulting from offshore oil exploration and exploitation activities". At that time, the Committee had agreed to recommend a revision of Strategic Direction (SD) 7.2 to accommodate this output. However, at its 106th session, the Council considered the proposal for revising SD 7.2 and "requested the Legal Committee to re-examine, at its next session, the proposed revision of Strategic Direction 7.2, concerning liability and compensation issues connected with transboundary pollution damage resulting from offshore oil exploration and exploitation activities, under the "Any other business" item of its agenda; and to report to the Council accordingly".

13.2 The Committee also noted the views expressed by the delegation of Brazil in document LEG 99/13/1, to the effect that the proposed revision of SD 7.2 would be outside the competence of the Organization and should remain unchanged. Among the arguments put forward by Brazil were:

- according to UNCLOS, IMO's competence relating to offshore platforms is limited to their impacts on maritime navigation;

- Article 1 of the IMO Convention confines the Organization's pollution prevention activities to vessel-source pollution;

- the proposal to amend SD 7.2 does not clarify which authority would regulate and control the offshore oil exploration activities in order to ensure the necessary effectiveness to a system based on the liability of operators; moreover, the amendment might restrict the ability of States to exert jurisdiction over such activities;

- IMO cannot duplicate, for the offshore oil sector, the liability rules applicable to oil leaks caused by ships. Offshore oil exploration activities only exceptionally have an international impact while shipping normally involves many jurisdictions and may potentially affect any country; and

- the issue of transboundary pollution damage arising from offshore oil activities would be better addressed through bilateral or regional agreements.

13.3 The Committee further noted the information provided by the delegation of Indonesia in document LEG 99/13/2, concerning the International Conference on Liability and Compensation Regime for Transboundary Oil Damage Resulting from Offshore Exploration and Exploitation Activities, held in Bali in 2011, with the participation of seven Member States, observer States and industry participants and other experts, as well as UNEP. Among the views expressed at the Conference were:

- all States have an obligation and commitment to protect the marine environment;

- there is a compelling need to take measures to address the issue;

- some existing rules applicable to regulate liability and compensation for oil pollution damage from ships can be utilized as a model to address the issue;

- the best practices of national and regional instruments can be used as a reference to develop a workable and achievable international instrument to address the specific issue of transboundary damage caused by oil pollution from offshore activities;

- IMO is the only reliable and appropriate forum to address the issue due to its characteristics, experience and expertise as a specialized agency of the United Nations system;

- relevant stakeholders from the industry, associations and oil producers, as well as other international organizations such as the G20 and UNEP, should be included in the discussion; and

- an international regime on liability and compensation for transboundary damage caused by pollution from offshore activities should be established.

13.4 The Committee also noted the views expressed by the delegation of Indonesia in document LEG 99/13/3 concerning the content of document LEG 99/13/1, including the following:

- UNCLOS imposes obligations on States to prevent, reduce and control pollution of the marine environment from seabed activities and installations under their jurisdiction (articles 192 and 208);

- UNCLOS also requires States to ensure that recourse for prompt and adequate compensation for damage caused by pollution of the marine environment is available, in accordance with their legal systems, where this damage is caused by persons under their jurisdiction (article 235);

- accidents, such as those at the Montara wellhead oil platform and the Deepwater Horizon oil rig, demonstrate that there is a compelling need to establish an international regime for liability and compensation for oil pollution damage from offshore drilling activities in connection with exploration and exploitation of oil;

- international law in this field is relatively underdeveloped – consequently the need for an international regime was becoming more apparent;

- licensing agreements between operators and licensing States leave open the question of liability for damage in neighbouring States; and

- IMO would be the appropriate international organization to discuss the issue.

13.5 The Committee gave consideration as to whether the Organization had competence to address the issue of liability and compensation connected with transboundary pollution damage from offshore oil exploration and exploitation activities (hereinafter "offshore activities") and on whether SD 7.2 should be revised.

13.6 Among the views expressed supporting the issue of IMO competency were the following:

- UNCLOS did not preclude any IMO action;

- in the absence of any other competent organization, IMO should take up the issue;

- while the Committee should not necessarily commit itself to a particular way forward, it was nonetheless advisable for the Committee to further explore this new and potentially important area;

- IMO had in the past taken on issues which were not explicitly mentioned in the IMO Convention (such as piracy and maritime security, including the SUA Protocol regarding fixed platforms) and the lack of a reference was not in itself a barrier which prohibited the Organization from evolving to address new problems. In supporting this latter view, the delegation of Cyprus made a statement which is contained in annex 6 to this report;

- the development of the proposal should not be compromised by procedural issues; and

- there was no need for an argument regarding competency – the Committee could exchange views on experiences and national laws.

13.7 Among the views expressed opposing the issue of IMO competency were the following:

- according to UNCLOS, IMO's competence relating to offshore platforms is limited to their impacts on maritime navigation;

- Article 1 of the IMO Convention confines the Organization's pollution prevention activities to vessel-source pollution; and

- it was doubtful whether IMO was the competent agency.

13.8 Among the arguments in favour of amending SD 7.2 were the following:

- this was the right time for a new IMO instrument given the fact that the same damage resulted whether the oil pollution came from ships or oil rigs and the accident may not be confined to internal waters;

- international arrangements might address issues which are not addressed in bilateral or regional arrangements;

- a revision of SD 7.2 would add clarity by establishing a clear basis for the Committee to continue analysing issues connected with transboundary pollution damage from offshore activities; and

- SD 7.2 could be revised without predetermining the specific outcome of the Committee's analysis of the issues.

13.9 Among the views expressing caution regarding the amendment of SD 7.2 were the following:

- there was no compelling need to develop an international liability and compensation regime in the absence of an internationally regulated safety regime;

- it was premature to revise SD 7.2 and, given the complexity and strategic nature of the subject, as well as the sensitive issue of transboundary liability, a more cautious approach should be adopted to enable the Committee to undertake further analysis of the problem;

- in order to revise SD 7.2, it was necessary to have a full understanding of the impact of any possible international instrument; and

- rather than revise SD 7.2, it might be more appropriate at this stage to develop a draft Assembly resolution acknowledging the importance of the transboundary pollution issue, recognizing the contribution IMO might provide to relevant organizations and stakeholders in addressing the issue through international cooperation, and recommending that IMO should cooperate with other international organizations and institutions in the exchange of information on bilateral and regional arrangements and the dissemination of best practices for preventing and mitigating transboundary pollution from offshore activities.

13.10 The observer delegation of the International Association of Drilling Contractors (IADC), supported by the International Maritime Contractors Association (IMCA), expressed the view that the first part of the proposal to revise SD 7.2 ("IMO will focus on reducing and eliminating any adverse impact … by offshore oil exploration and exploitation activities …") could take the Organization into areas of design, construction and operation of offshore drilling units and support services which would be well outside the scope of liability and compensation for transboundary pollution damage. If this was intended, then it should be made clear. In any case, these observers opposed a revision of SD 7.2 and took the view that bilateral and regional arrangements were the preferable way forward.

13.11 Other points raised during the discussion included the following:

- in view of the complexity of the liability and compensation issues connected with transboundary pollution damage resulting from offshore activities, the Committee should be cautious in rushing to any conclusions;

- the development of an international treaty might interfere with the sovereign right of States to regulate oil exploration and exploitation in the EEZ;

- the development of international treaty liability in this regard would produce a further burdensome layer of regulation;

- in the absence of any deadline to report back to the Council, there was a need to proceed carefully and cautiously and further analysis was needed to assess gaps in local or regional situations;

- there was no need for an international regime since bilateral or regional agreements were sufficient;

- views were divided as to whether there was a compelling need for a new binding international instrument;

- given the ever deeper and dangerous oil exploration activities, there was a need for further analysis of the issues although any final conclusion as to the way forward was, as yet, unclear; and

- the Committee could take a "soft law approach" and develop guidelines on bilateral and regional arrangements to assist States interested in exploring such arrangements.

13.12 In response to a question on whether it was necessary for SD 7.2 to be revised in order to allow the Committee to continue its analysis, the Secretary-General suggested that, strictly speaking, it was necessary for a modification to be made to allow the Committee to work on a Planned Output on transboundary pollution damage from offshore activities; but the Committee might also inform the Council that it wished to maintain a degree of flexibility and further analyse the issues with the aim of developing guidance to assist States in pursuing bilateral or regional arrangements, without revising SD 7.2 at this stage.

13.13 In response to a suggestion that the views on the Organization's competence over transboundary pollution damage from offshore activities might be invited from the Division for Ocean Affairs and the Law of the Sea at the United Nations (DOALOS), the Assistant Secretary-General/Director, Legal Affairs and External Relations Division, expressed the view that DOALOS did not have a role in determining the competence of the Organization under its own Convention. That role belonged to Member States under the IMO Convention.

13.14 The Committee agreed that, in order to have a proper basis to organize discussion of the issues relating to transboundary damage from offshore activities, it was necessary to follow applicable procedures. In this regard, a delegation making a proposal which falls outside the scope of the current Strategic Plan should be invited to submit it to the Council in accordance with paragraph 8.7.3 of the Guidelines on the application of the Strategic Plan and the High-level Action Plan (resolution A.1013(26)), and in accordance with paragraph 4.12.3 of the Committee's Guidelines on the organization and method of work (document LEG.1/Circ.6).

13.15 There was support for the Committee to develop guidance or a model agreement to assist States to enter into bilateral or regional agreements. In this regard, it was noted that the Committee had special expertise in the area of liability and compensation issues.

13.16 In view of the above, the Committee agreed to inform the Council that it wished to analyse further the liability and compensation issues connected with transboundary pollution damage resulting from offshore oil exploration and exploitation activities, with the aim of developing guidance to assist States interested in pursuing bilateral or regional arrangements, without revising SD 7.2.

13.17 The Committee recognized that bilateral and regional arrangements were the most appropriate way to address this matter; and that there was no compelling need to develop an international convention on this subject.

13.18 The delegation of Indonesia informed the Committee that it would continue coordinating an informal consultative group to discuss issues connected with transboundary pollution damage from offshore exploration and exploitation activities. The online address for participating in this group is as follows: ind_offshorediscussion_imoleg@yahoogroups.com.

13.19 Delegations were invited to submit documents on this subject to the Committee's next session under the agenda item "Any other business".

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ANNEX 1

AGENDA FOR THE NINETY-NINTH SESSION

Opening of the session

1 Adoption of the agenda

2 Report of the Secretary-General on credentials

3 Monitoring the implementation of the HNS Protocol, 2010

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

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

6 Fair treatment of seafarers in the event of a maritime accident

7 Piracy

8 Matters arising from the 106th and 107th regular sessions of the Council; the twenty-sixth extraordinary session of the Council; and the twenty-seventh regular session of the Assembly

9 Technical co-operation activities related to maritime legislation

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

11 Application of the Committee's Guidelines

12 Election of officers

13 Any other business:

(i) Analysis of liability and compensation issues connected with transboundary pollution damage from offshore exploration and exploitation activities, including a re-examination of the proposed revision of Strategic Direction 7.2

14 Report of the Committee

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ANNEX 2

RESOLUTION LEG.5(99)

(Adopted on 19 April 2012)

ADOPTION OF AMENDMENTS OF THE LIMITATION AMOUNTS IN THE PROTOCOL OF 1996 TO THE CONVENTION ON LIMITATION OF LIABILITY FOR MARITIME CLAIMS, 1976

THE LEGAL COMMITTEE at its ninety-ninth session,

RECALLING Article 33(b) of the Convention on the International Maritime Organization (hereinafter referred to as the "IMO Convention") concerning the functions of the Committee,

MINDFUL of Article 36 of the IMO Convention concerning rules governing the procedures to be followed when exercising the functions conferred on it by or under any international convention or instrument,

TAKING INTO CONSIDERATION article 8 of the Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976 (hereinafter referred to as the "1996 LLMC Protocol") concerning the procedures for amending the limitation amounts set out in article 3 of the 1996 LLMC Protocol,

HAVING CONSIDERED amendments to the limitation amounts proposed and circulated in accordance with the provisions of article 8(1) and (2) of the 1996 LLMC Protocol,

1. ADOPTS, in accordance with article 8(4) of the 1996 LLMC Protocol, amendments to the limitation amounts set out in article 3 of the 1996 LLMC Protocol, as set out in the annex to this resolution;

2. DETERMINES, in accordance with article 8(7) of the 1996 LLMC Protocol, that these amendments shall be deemed to have been accepted at the end of a period of 18 months after the date of notification unless, prior to that date, not less than one-fourth of the States that were Contracting States on the date of the adoption of these amendments have communicated to the Secretary-General that they do not accept these amendments;

3. FURTHER DETERMINES that, in accordance with article 8(8) of the 1996 LLMC Protocol, these amendments deemed to have been accepted in accordance with paragraph 2 above shall enter into force 18 months after their acceptance;

4. REQUESTS the Secretary-General, in accordance with article 14(2)(a)(v) of the 1996 LLMC Protocol, to transmit certified copies of the present resolution and the amendments contained in the annex thereto to all States which have signed or acceded to the 1996 LLMC Protocol;

5. FURTHER REQUESTS the Secretary-General to transmit copies of the present resolution and its annex to the Members of the Organization which have not signed or acceded to the 1996 LLMC Protocol.

ANNEX

AMENDMENTS OF THE LIMITS OF LIABILITY IN THE PROTOCOL OF 1996 TO AMEND THE CONVENTION ON LIMITATION OF LIABILITY FOR MARITIME CLAIMS, 1976

Article 3 of the 1996 LLMC Protocol is amended as follows:

in respect of claims for loss of life or personal injury,

the reference to:

- "2 million Units of Account" shall read "3.02 million Units of Account";
- "800 Units of Account" shall read "1,208 Units of Account";
- "600 Units of Account" shall read "906 Units of Account";
- "400 Units of Account" shall read "604 Units of Account";

in respect of any other claims,

the reference to:

- "1 million Units of Account" shall read "1.51 million Units of Account";
- "400 Units of Account" shall read "604 Units of Account";
- "300 Units of Account" shall read "453 Units of Account";
- "200 Units of Account" shall read "302 Units of Account".

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ANNEX 3

STATEMENT BY AUSTRALIA REGARDING AMENDMENT OF THE LIMITS OF LIABILITY IN THE PROTOCOL OF 1996 TO THE CONVENTION ON LIMITATION OF LIABILITY FOR MARITIME CLAIMS, 1976

In the interests of consensus, Australia accepts the majority view expressed by the members of the Committee under agenda item 4 regarding the increase to the limits of liability under article 6.1(a) and 6.1(b) of LLMC 96.

However, Australia wishes to express a number of concerns regarding the approach of the Committee to that issue.

This is because the approach taken by the Committee at this meeting could set a precedent for future amendment of the limits under LLMC 96, especially as this was the first time that the amendment procedure in article 8 of LLMC 96 has been used. Australia also notes that a number of other Conventions contain amendment provisions which are expressed in the same or similar terms as those in article 8 of LLMC 96, including the Civil Liability Convention 1992, the 1992 Fund Convention, the HNS Convention and the Protocol of 2002 to the Athens Convention.

The focus of much of the Committee's consideration concerned changes in monetary values. As Australia noted, there is no guidance in LLMC 96 on the methodology to be used to measure changes in monetary value. During the consideration of agenda item 4, the majority of delegations that spoke favoured the proposal put forward by Japan. Japan's proposal relied on the use of a "trimmed weighted" measure of CPI to calculate changes in monetary value, yet there was a lack of transparency in the methodology employed by Japan in their calculations. In particular, the way they "trimmed" CPI figures, and the GDP figures they used for "weighting". Consequently, this made independent verification of their calculations problematic. Further, there was little or no consideration by the Committee as to whether the Japanese methodology was the appropriate one to use.

Australia also considers that there should be clarification about the role of non-Contracting States when amendment of the limits is being considered. Article 8.5 of LLMC 96 refers to the Legal Committee acting on a proposal to amend the limits of liability. However, article 8.4 provides that amendments shall be adopted by a two-thirds majority of Contracting States to LLMC 96 present and voting.

During the consideration of the proposal to amend the limits, a number of non-Contracting States made interventions and expressed views as to the amount by which the limits should be increased. While Australia agrees that a clear majority of States present in the Committee supported the level of increase proposed by Japan, there was a significant number of Contracting States to LLMC 96 that supported a higher level of increase. In Australia's view, it was by no means clear that if the issue had gone to a vote, there would have been a two-thirds majority of Contracting States to LLMC 96 voting in favour of the increase proposed by Japan.

Australia considers that the provisions of LLMC 96 regarding the role of non-Contracting States in adoption of increases to the limits are ambiguous and unclear. Australia strongly recommends that this be clarified for the future before further increases to the limits in LLMC 96 are considered, or before increases in the limits under other Conventions which contain the same or similar amendment provisions are considered.

Finally, a number of delegations questioned the continued appropriateness of linking the limits under the Bunkers Convention to those under the LLMC and whether alternatives might be more appropriate. Australia considers that this is a matter that warrants further investigation by the Committee.

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ANNEX 4

DRAFT REPORT ON THE STATUS OF PLANNED OUTPUTS FOR THE CURRENT BIENNIUM (2012-2013)

Legal Committee (LEG)

Planned output number in the High-level Action Plan for 2012-2013	Description	Target completion date (year)	Coordinating organ	Responsible organ(s)	Status of output for Year 1	Status of output for Year 2	References
1.1.2.6	Cooperation with ILO and others: 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	2013 (LEG)		LEG	Ongoing		LEG 99 recommended retaining this PO and deleting PO 6.3.1.1; LEG 99 received a report of ILO's approval of the resolution (A.1058(27))
1.1.2.41	Assessment of the need to address the issue of financial security in case of abandonment of seafarers, and shipowners' responsibilities in respect of contractual claims for personal injury to or death of seafarers, in light of the progress of the amendments to ILO MLC 2006	2013 (LEG)			In progress		LEG 99 recommended retaining this PO and deleting the duplicate PO 6.3.1.2; progress report received from ILO on MLC 2006

Planned output number in the High-level Action Plan for 2012-2013	Description	Target completion date (year)	Coordinating organ	Responsible organ(s)	Status of output for Year 1	Status of output for Year 2	References
1.1.2.42	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				N/A		LEG 99 recommended deletion of this PO as a duplication of PO 6.1.2.1
1.2.1.4	Revised guidelines on implementation of the HNS Protocol to facilitate ratifications and harmonized interpretation	2013 (LEG)			N/A		LEG 99 recommended deletion of this PO as a duplication of PO 2.0.1.14
1.2.1.5	Strategies developed to facilitate entry into force of 2002 Athens Protocol, the 2005 SUA Protocols and the 2007 Nairobi Wreck Removal Convention				N/A		LEG 99 recommended deletion of this PO as a duplication of PO 2.0.1.15
1.3.1.1	Advice and guidance provided following referrals from other IMO organs and Member States				Ongoing		No issues referred to LEG 99 by other IMO organs or Member States
2.0.1.14	Revised guidelines on implementation of the HNS Protocol to facilitate ratifications and harmonized interpretation	2013 (LEG)			In progress		LEG 99 recommended retaining this PO and deleting duplicate PO 1.2.1.4. LEG 99 received progress report from IOPCF on HNS calculator and database

Planned output number in the High-level Action Plan for 2012-2013	Description	Target completion date (year)	Coordinating organ	Responsible organ(s)	Status of output for Year 1	Status of output for Year 2	References
2.0.1.15	Strategies developed to facilitate entry into force of 2002 Athens Protocol, the 2005 SUA Protocols, and the 2007 Nairobi Wreck Removal Convention				Completed		LEG 99 recommended retaining this PO and deleting the duplicate PO 1.2.1.5; no additional material is required at this time
2.0.1.16	Advice and guidance on issues brought to the Committee in connection with implementation of IMO instruments				Ongoing		No issues referred to LEG 99 by other IMO organs or Member States
2.0.1.17	Consideration of proposal to amend the limits of liability of the Protocol of 1996 to the Convention on Limitations of Liability for Maritime Claims, 1976 (LLMC 96), in accordance with article 8 of LLMC 96	2012			Completed		LEG 99 adopted a resolution to increase the limits in article 3 of the LLMC Protocol 1996
3.5.1.4	Input to the ITCP on maritime legislation				Continuous		LEG 99 received report of recent missions under the ITCP concerning maritime legislation; agreed this should be continuous
5.2.4.5	Non-mandatory instruments: guidance on interpretation of UNCLOS provisions vis-à-vis IMO instruments				Ongoing		No issues referred to LEG 99 by other IMO organs or Member States
6.1.2.1	Advice and guidance on issues, as may be requested, in connection with implementation of SUA 1988/2005 in the context of international efforts to combat terrorism and proliferation of weapons of mass destruction and related materials				Ongoing		LEG 99 recommended retaining this PO and deleting the duplicate PO 1.1.2.42. No issues referred to LEG 99 on SUA

Planned output number in the High-level Action Plan for 2012-2013	Description	Target completion date (year)	Coordinating organ	Responsible organ(s)	Status of output for Year 1	Status of output for Year 2	References
6.2.1.2	Revised guidance relating to the prevention of piracy and armed robbery to reflect emerging trends and behaviour patterns				Ongoing		Discussion of issues relating to prosecution of alleged pirates
6.2.1.3	Advice and guidance to support the review of IMO instruments on combating piracy and armed robbery; to support international efforts to ensure effective prosecution of perpetrators (piracy); and to support availability of information on comprehensive national legislation and judicial capacity-building				N/A		LEG 99 recommended deletion of this PO as a duplication of PO 6.2.2.3
6.2.2.3	Advice and guidance to support the review of IMO instruments on combating piracy and armed robbery; to support international efforts to ensure effective prosecution of perpetrators (piracy); and to support availability of information on comprehensive national legislation and judicial capacity-building	2013 (LEG)			In progress		LEG 99 recommended retaining this PO and deleting the duplicate PO 6.2.1.3; LEG discussed need for information on prosecutions

Planned output number in the High-level Action Plan for 2012-2013	Description	Target completion date (year)	Coordinating organ	Responsible organ(s)	Status of output for Year 1	Status of output for Year 2	References
6.3.1.1	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				N/A		LEG 99 recommended deleting this PO as a duplication of PO 1.1.2.6
6.3.1.2	Monitor the progress of the amendments to ILO MLC 2006 and address the issue of financial security in case of abandonment of seafarers, and shipowners' responsibilities in respect of contractual claims for personal injury to or death of seafarers, should it be necessary				N/A		LEG 99 recommended deletion of this PO as a duplication of PO 1.1.2.41
8.0.3.2	Electronic access to, or electronic versions of, certificates and documents required to be carried on ships		FAL		In progress		No issues referred to LEG 99 by other IMO organs or Member States

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ANNEX 5

ITEMS TO BE INCLUDED IN THE AGENDA FOR LEG 100

Monitoring the implementation of the HNS Protocol, 2010

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

Fair treatment of seafarers in the event of a maritime accident

Piracy

Matters arising from the 108th and 109th regular sessions of the Council

Technical co-operation activities related to maritime legislation

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

Collation and preservation of evidence following an allegation of a serious crime having taken place on board a ship or following a report of a missing person from a ship, and pastoral and medical care of victims

Application of the Committee's Guidelines

Election of officers

Any other business*

Consideration of the report of the Committee on its 100th session

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* Under this item, liability and compensation issues connected with transboundary pollution damage from offshore oil exploration and exploitation activities will be discussed.

ANNEX 6

STATEMENT BY CYPRUS CONCERNING ANALYSIS OF LIABILITY AND COMPENSATION ISSUES CONNECTED WITH TRANSBOUNDARY POLLUTION DAMAGE FROM OFFSHORE EXPLORATION AND EXPLOITATION ACTIVITIES, INCLUDING A RE-EXAMINATION OF THE PROPOSED REVISION OF STRATEGIC DIRECTION 7.2

We wish to thank Brazil, Indonesia and the Secretariat for presenting their submissions under this agenda item.

In our view, the matter before the Committee highlights two issues:

(i) whether IMO is the appropriate forum to discuss the matter; and, if it is agreed that it is so,

(ii) what should be the scope and the objective of work to be undertaken by IMO?

In relation to the first question, the Brazilian and the Indonesian submissions offer a different rationale and justification to support opposing conclusions either in favour of an IMO competence or not.

The Committee may recall that during the ninety-seventh and ninety-eighth sessions of the Legal Committee, most delegations supported in principle (either tacitly or expressly) the inclusion of a related new item in the Committee's Work Programme. As a result, we are surprised and puzzled to see, after two years of discussions, that 18 Member States, which actively participated in the previous debates within this Committee, adopt a different approach at the Council level. This is a very worrying development and without any doubt has serious consequences in relation to the conduct of business by this Committee.

It is unreasonable to expect that those who started drafting the IMO Convention in 1946 could have foreseen the likely scenarios and issues which IMO had to deal with 70 years in the future. For Cyprus, IMO is a living and continuously evolving organism which responds to emerging needs for the purpose it has been set up.

It is not the first time that IMO has been confronted with the question of whether a matter is within its competency. In the 1980's with the re-emergence of piracy, a universal crime for which UNCLOS makes no reference to IMO, the Organization associated the issue with the safety of navigation and started dealing with it.

Following the **Achille Lauro** incident, IMO found a way to deal with unlawful acts at sea in relation to ships and fixed platforms operating on the continental shelf, and the related work was done by this Committee. The word "security" does not appear in the IMO Convention. However, as a technical regulator of ships, a servant of world trade and in the common public interest, IMO adopted chapter XI-2 of the SOLAS Convention and the ISPS Code and, following the ISM Code example, has regulated matters at sea and ashore.

The work on disembarkation of persons rescued at sea, which is a border control matter, is another example of IMO's involvement in matters which may be argued as falling outside the strict wording of the IMO Convention. We are not expanding the involvement of IMO in matters such as the arrest of ships, maritime liens and mortgages or salvage. In addition, the work of this Committee in relation to the 2005 SUA Protocols, and the inclusion therein of

non-proliferation matters, is a further example of IMO doing work in areas which some of its Member States argue as not being IMO matters.

In our view, Indonesia has identified and brought to the attention of this Organization a problem relating to the protection of the marine environment. We hope that no-one disputes the fact that the problem is real and needs to be resolved. There is a legal vacuum at the international level, in terms of soft-law and of binding instruments.

It is for these reasons that Cyprus is of the opinion that under the present structure of the UN system, IMO is the most appropriate "natural forum" to start addressing the matter. As on all other occasions in the past, the other related UN Agencies, bodies, programmes and funds, together with interested international intergovernmental organizations, will eventually respond and engage in the discussions within IMO.

Turning to the second question, the International Conference held in Bali, in September 2011, has identified that the matter has three major aspects:

(i) the duty of States to exercise regulatory control over offshore operators;

(ii) response measures to deal with such spills; and

(iii) fair and prompt compensation which, in the language of this Committee, means liability and compensation.

No one should dispute the fact that this Committee has, globally, the best knowledge and the best expertise on matters relating to liability and compensation in connection with vehicles operating in the marine environment. We think that it is about time that this Committee should put its knowledge and expertise to good use for the public interest and the protection of the environment, which is one of the key missions of IMO.

For us, the preferred way forward is to have a new Legal Committee-related Strategic Direction, which should be written in a way which neither constrains future discussions, nor does it predetermine the outcome of the work to be undertaken.

Although the Bali Conference has identified issues which fall under the purview of MSC and MEPC, the first proposed amendment to Strategic Direction 7.2, namely, the addition after the word "shipping" of the words "or by offshore oil exploration and exploitation activities" is expanding the work of MSC and MEPC. This cannot be done by a simple decision of this Committee without first seeking and having first the concurrence of these two Committees.

Cyprus shares the view of those who believe that the problem is not suited to an international instrument and may be best dealt with through bilateral or regional arrangements.

However, the offshore oil exploration and exploitation industry is a global industry and therefore needs the certainty of internationally-accepted solutions. Hence, the development by this Committee of model bilateral and regional agreements for use by those interested will be a major contribution towards providing certainty and it will be of great assistance to the membership of IMO.

Such work will also demonstrate how seriously IMO takes its mission in connection with the protection of the marine environment and will yield outcomes which are in the interest of the wider public.

Proposed wording of Strategic Direction 7.2

"IMO will focus on reducing and eliminating any adverse impact by shipping **or by offshore oil exploration and exploitation activities** on the environment by ... developing effective measures for mitigating and responding to the impact on the environment caused by shipping incidents and operational pollution from ships **and liability and compensation issues connected with transboundary pollution damage resulting from offshore oil exploration and exploitation activities**."

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