



## IMO Legal Committee, 99th Session

16 - 20 April 2012



The IMO's Legal Committee (LEG) held its 99th session on Monday 16 through Friday 20 April 2012 under the Chairmanship of Mr Kofi Mbiah (Ghana) who was re-elected for a further year as also were his Vice Chairmen Mr Jan de Boer (Netherlands) and Mr Walter de Sa-Leitao (Brazil).

Following is a short summary of salient points on items of greatest interest :

- **CONSIDERATION OF A PROPOSAL TO AMEND THE LIMITS OF LIABILITY OF THE PROTOCOL OF 1996 TO LLMC76.** This item occupied a great deal more time than any other. Basically there were 2 submissions : The first was by 20 States whose major proponent, Australia, cited amongst a few examples, the PACIFIC ADVENTURER in which limits of liability, as calculated under LLMC 76/96 for a bunker fuel oil spill, fell significantly short of the cost of responding to the incident. They thus proposed a maximum increase on the originally-adopted limits by 6% per year, (equating to a total of 147%) calculated on a compound basis, with effect from 1 October 1996 for entry into force in 2015. The other submission, by JAPAN, purported to provide inflation rate analysis based on objective data and to propose 'reasonable' amendments to the limits of liability as set out in Article 8 of LLMC 96. Their paper demonstrated that by far the most significant factor influencing the debate was monetary, and that the changes in monetary value (inflation rates) between 1996 and 2010 were no more than 45% which equates to 2.5% aggregated annually, as opposed to the 'rival' figure of 6%. JAPAN was extremely well supported in the presentation of their submission, first by ICS, then the P&I Clubs. In his summing up of a prolonged debate, the Chairman spoke of the need to strike a balance and for any increase in LLMC limits not to act as a disincentive to would-be signatories. The majority of States, not all of whom are signatories to the Protocol, indicated their preference for the JAPAN approach although it is noteworthy that the Australian proposal too received a similar degree of support from non-signatory States. A Resolution was subsequently adopted to this effect, though expanded to a figure of 51% increase (up by 0.2% on the original Japanese proposal to 2.7% aggregated annually) to take account of the add-on period 2010 - 2012, effective from 2012.

- **MONITORING THE IMPLEMENTATION OF THE HNS PROTOCOL, 2010.** Concerns were expressed that although the 2010 HNS Protocol had been adopted for the purpose of removing obstacles to ratification of the 1996 HNS convention, no IMO Member State had yet reported an intention to become a Party to the Protocol. There was overwhelming agreement that a joint secretariat of both the HNS Fund and the IOPC Funds located together in London would be sensible. However, the final decision on the location of the HNS Fund is the province of the first HNS Assembly and if it comes to the same conclusion, a headquarters agreement between it and the UK Government will then need to be pursued. The P&I Clubs made the point that, contrary to views expressed at the Rotterdam Special Consultative Meeting held in June 2011 to discuss implementation and ratification strategies regarding the 2010 HNS Convention, the terrorism issue with respect to the Convention remains one to be addressed.

- **PROVISION OF FINANCIAL SECURITY IN CASES OF ABANDONMENT, PERSONAL INJURY TO, OR DEATH OF, SEAFARERS.** Mr Brandt Wagner (ILO), affirmed that 25 Member States have ratified MLC 2006 representing 56% of world tonnage thus requiring a further 5 for entry into force, hopefully in mid-2013. This will trigger

the first meeting of a 'Special Tripartite Committee' which will discuss proposed amendments to MLC 2006 on the issue of financial security for seafarers and their dependants in cases of personal injury, death or abandonment. This item was given particularly thin coverage.

- **FAIR TREATMENT OF SEAFARERS IN THE EVENT OF A MARITIME ACCIDENT.** Seafarers' Rights International (SRI) informed the Committee of a survey it had conducted over a 12 month period ending in February 2012 concerning the experiences of seafarers facing criminal charges. It was conducted in eight languages involving seafarers of 68 different nationalities resulting in the completion of 3,480 questionnaires.

Of note:

- (1) 8.27% had faced criminal charges
- (2) Likewise, almost 24% of Masters who answered the survey.

Of those seafarers who had faced charges:

- (3) 44% were bodily searched
- (4) 87% did not have legal representation
- (5) 91% who needed interpretation services were not provided with them, and
- (6) 89% did not have their legal rights explained

As to perceptions:

- (7) 80% felt intimidated or threatened
- (8) 46% said that they would be reluctant to cooperate fully and openly with casualty enquiries and accident investigation, also
- (9) Overall, 81% considered they had not received 'fair' treatment.

The USA reminded the committee that when considering issues related to criminality and the criminalisation 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 their view, the hierarchy of responsibility in ensuring safe, secure and environmentally sound ships begins with the owner, shipping company and persons on board, also the classification societies and effective flag State oversight. Whilst port State control is also part of the hierarchy, it should be the last line of defence, not the first.

- **PIRACY.** A special meeting of WG2 will 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. It was noted that the United Nations Interregional Crime and Justice Research Institute (UNICRI) has a database of court decisions relating to piracy off the coast of Somalia which can be accessed at [http://www.unicri.it/maritime\\_piracy](http://www.unicri.it/maritime_piracy) and member Governments were invited to submit relevant information either directly or via IMO. The GISIS database on the IMO website provides a searchable, read-only access which includes information such as, the number of pirates captured, dates of release of hijacked ships and brief descriptions of the attackers.

- **PROPOSED UNPLANNED OUTPUT.** '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, also pastoral and medical care of victims'. The UK made the point that some ships are, in effect, the equivalent of a large town, highlighting the fact that ships' 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 offshore or a person goes missing. Thus the ship's master and crew require assistance as also do the victims of serious crime by the provision of medical and pastoral care similar to that received by victims ashore. It was agreed that this unplanned output meets the criteria set out in the Committee's Guidelines and is fully within IMO's mandate. The item will be included on the agenda of LEG 100, with a target completion date of 2014. Interested delegations were invited to start working intersessionally and to submit proposals to LEG 100 at which they should also endeavour to include persons in their delegations with pertinent expertise in this subject.

- **ANALYSIS OF LIABILITY AND COMPENSATION ISSUES CONNECTED WITH TRANSBOUNDARY POLLUTION DAMAGE RESULTING FROM OFFSHORE EXPLORATION AND EXPLOITATION ACTIVITIES, INCLUDING A RE-EXAMINATION OF THE PROPOSED REVISION OF STRATEGIC DIRECTION 7.2.** Following long and hotly debated exchanges, the Committee agreed to inform the Council that it wished to further analyse 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 and not to revise Strategic Directive (S.D.) 7.2. Thus the Committee, recognising that bilateral and regional arrangements offer the most appropriate way of addressing this matter also affirmed that it does not require a stand-alone Instrument or international Convention.

Meanwhile the delegation of Indonesia will continue to co-ordinate an informal consultative group to discuss issues connected with transboundary pollution damage from such activities at: [ind\\_offshorediscussion\\_imoledg@yahoo.com](mailto:ind_offshorediscussion_imoledg@yahoo.com).

Source: Intermanager, Captain Paddy McKnight

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