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**REPORT OF THE LEGAL COMMITTEE ON THE WORK
OF ITS NINETIETH SESSION**

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A INTRODUCTION

1 The Legal Committee held its ninetieth session at IMO Headquarters from 18 to 29 April 2005, under the chairmanship of Mr. A.H.E. Popp, QC (Canada).

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

ALBANIA	ISRAEL
ALGERIA	ITALY
ANGOLA	JAMAICA
ANTIGUA AND BARBUDA	JAPAN
ARGENTINA	KENYA
AUSTRALIA	KUWAIT
AUSTRIA	LATVIA
BAHAMAS	LEBANON
BANGLADESH	LIBERIA
BELGIUM	LITHUANIA
BELIZE	MALAYSIA
BOLIVIA	MALTA
BRAZIL	MARSHALL ISLANDS
BULGARIA	MEXICO
CANADA	MOROCCO
CHILE	NETHERLANDS
CHINA	NEW ZEALAND
COLOMBIA	NIGERIA
CÔTE D'IVOIRE	NORWAY
CROATIA	PAKISTAN
CUBA	PANAMA
CYPRUS	PAPUA NEW GUINEA
DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA	PERU
DEMOCRATIC REPUBLIC OF THE CONGO	PHILIPPINES
DENMARK	POLAND
ECUADOR	PORTUGAL
EGYPT	REPUBLIC OF KOREA
ESTONIA	ROMANIA
ETHIOPIA	RUSSIAN FEDERATION
FINLAND	SAUDI ARABIA
FRANCE	SERBIA AND MONTENEGRO
GABON	SINGAPORE
GERMANY	SOUTH AFRICA
GHANA	SPAIN
GREECE	SWEDEN
GUATEMALA	SWITZERLAND
HONDURAS	THAILAND
ICELAND	TRINIDAD AND TOBAGO
INDIA	TURKEY
INDONESIA	TUVALU
IRAN (ISLAMIC REPUBLIC OF)	UKRAINE
IRELAND	UNITED KINGDOM
	UNITED STATES
	URUGUAY

VANUATU
VENEZUELA

YEMEN

and the following Associate Member of IMO:

HONG KONG, CHINA

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

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

EUROPEAN COMMISSION (EC)
INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS (IOPC FUNDS)
INTERNATIONAL CHAMBER OF SHIPPING (ICS)
INTERNATIONAL SHIPPING FEDERATION (ISF)
INTERNATIONAL UNION OF MARINE INSURANCE (IUMI)
INTERNATIONAL CONFEDERATION OF FREE TRADE UNIONS (ICFTU)
COMITÉ MARITIME INTERNATIONAL (CMI)
INTERNATIONAL ASSOCIATION OF PORTS AND HARBORS (IAPH)
INTERNATIONAL ASSOCIATION OF CLASSIFICATION SOCIETIES (IACS)
OIL COMPANIES INTERNATIONAL MARINE FORUM (OCIMF)
INTERNATIONAL ASSOCIATION OF PRODUCERS OF INSURANCE AND
REINSURANCE (BIPAR)
INTERNATIONAL FEDERATION OF SHIPMASTERS' ASSOCIATIONS (IFSMA)
INTERNATIONAL SALVAGE UNION (ISU)
INTERNATIONAL ASSOCIATION OF INDEPENDENT TANKER OWNERS
(INTERTANKO)
INTERNATIONAL GROUP OF P AND I ASSOCIATIONS (P & I CLUBS)
INTERNATIONAL SHIP SUPPLIERS ASSOCIATION (ISSA)
INTERNATIONAL COUNCIL OF CRUISE LINES (ICCL)
INTERNATIONAL ASSOCIATION OF DRY CARGO SHIPOWNERS
(INTERCARGO)
INTERNATIONAL MARINE CONTRACTORS ASSOCIATION (IMCA)
WORLD NUCLEAR TRANSPORT INSTITUTE (WNTI)

5 In his general welcome to participants, the Secretary-General extended a special welcome to those delegates attending the Legal Committee for the first time. He also reminded the Committee that this session would, exceptionally, be for a two-week period, as the Committee had agreed last year, in anticipation of the SUA diplomatic conference due to convene in October 2005.

6 Before turning his attention to the items on the Committee's agenda, the Secretary-General referred to the decision of the Council in November 2004, that the theme for World Maritime Day 2005 would be "**International Shipping – Carrier of World Trade**", a theme which would give us the opportunity to direct our attention to the image of shipping, as it is widely perceived nowadays, and to seek ways and means to improve it.

7 He shared the feeling of many that the contribution made by shipping to the global economy and the community as a whole, by providing the facilitation mechanism for the carriage of more the 90 per cent of world trade, was far too easily overlooked. Shipping could claim to be largely safe, secure, efficient and environmentally friendly; and, based on statistics, it could also claim to be constantly striving to improve its overall performance. Yet, on occasions it tended to

be taken for granted at best, and, at worst, condemned as an uncaring and selfish industry displaying scant concern for the environment. Such a perception, he said, was unfair and he therefore called upon all who care about shipping to work together to put this right by reversing this mistaken perception, principally by trying to prevent accidents happening in the first place, since accidents, however isolated in numbers and severity, taint the image of shipping. He urged all present to work harder than ever before towards making ships safer and the environment cleaner and, to this end, to use every opportunity available, including the occasion of the 2005 World Maritime Day celebrations to highlight the role of shipping and the progress it had made and was constantly making, in terms of safety, security and environmental protection.

8 However, he continued, no matter how hard all those with an interest in shipping try, accidents at sea still occurred from time to time. To ensure that, in such situations, victims are fairly compensated, the Organization had, over the years, and in conjunction with the IOPC Funds, developed a comprehensive liability and compensation regime for oil pollution damage. The initial impetus for this had been the grounding and loss of the oil tanker **Torrey Canyon** in March 1967, which also provided the impetus for the establishment, three months later, of the Legal Committee. The treaty law regime established since then reached yet another milestone, with the entry into force, on 3 March 2005, of the 2003 Protocol to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992, and the convening, by IMO, in March 2005, of the first Assembly of the Supplementary Fund. As a result, and in the event of a major oil tanker spill at sea, the new Fund would provide victims in States Parties with compensation of up to 750 million Special Drawing Rights, corresponding to an amount of approximately £597 million, or in excess of US\$1 billion.

9 The Secretary-General then turned to the items on the Committee's agenda for the next two weeks, beginning with the Committee's work on the SUA treaties. To put this into context, he considered it worth mentioning that the Secretary-General of the United Nations, during his visit to IMO in February 2005, had singled out for praise the work of IMO in reviewing and revising measures and procedures to prevent acts of terrorism which threaten the security of passengers and crews and the safety of ships. Following this, in his well-publicized Madrid speech in March 2005, on the first anniversary of the terrorist bombings of the trains in that city, the UN Secretary-General had referred to the five key elements of the Global Strategy for Fighting Terrorism, the "five Ds", as he called them, namely:

- first, to *dissuade* disaffected groups from choosing terrorism as a tactic to achieve their goals;
- second, to *deny* terrorists the means to carry out their attacks;
- third, to *deter* States from supporting terrorists;
- fourth, to *develop* State capacity to prevent terrorism; and
- fifth, to *defend* human rights.

10 Furthermore, in March 2005, in his report entitled "In larger freedom: towards development, security and human rights for all", to be submitted to the September World Summit, as a follow-up to the outcome of the 2000 Millennium Summit, in a series of brain-storming proposals, the UN Secretary-General, addressing such issues as : freedom from fear; freedom to live in dignity; and strengthening the United Nations, concluded that: "We will not enjoy development without security, we will not enjoy security without development, and we will not enjoy either without respect for human dignity. Unless all these causes are advanced, none will succeed."

11 All these security elements, the Secretary-General continued, were at the core of the Committee's consideration of the draft instruments to the 1988 SUA Convention and Protocol, the priority during this session. He hoped that the Committee would be in a position to give its final approval to the two draft protocols, which would be submitted, for consideration and adoption, to the October diplomatic conference – a conference of States Parties to the 1988 SUA instruments also open to IMO Member States which were not SUA Parties but wished to attend as observers. Being aware of the crucial stage of the Committee's preparations and that important decisions on sensitive issues remained to be taken during the course of that week, he took the opportunity to encourage all delegates to demonstrate the well-known spirit of goodwill that traditionally prevails in IMO, so that the two draft instruments could be forwarded to the conference reflecting the consensus of the Committee, a consensus similar to that which had been displayed by the entire 191 UN membership attending last week's General Assembly, which adopted a resolution calling on all countries to sign and ratify the International Convention on Suppression of Acts of Nuclear Terrorism. IMO's splendid record in successfully completing all the tasks it undertook led him to be confident that history would repeat itself in the case of the SUA revision as well.

12 The other priority item on the Committee's agenda, which it would tackle in the second week, was the completion of the draft wreck removal convention, an issue with which it had been dealing for some considerable time. Once adopted and in force, the new Convention would provide the legal basis for States to remove, or have removed from their EEZs, those wrecks that may pose a hazard, either to safe navigation, or, because of the nature of their cargo, to the security of the marine and coastal environment. It would also safeguard the rights and specify the duties of shipowners to remove ships and wrecks by their own means or with the assistance of any available salvor. While it was understandable, albeit unfortunate, that the development of this convention had taken second place to the revision of the SUA treaties, he trusted that the Committee would soon be in a position to approve the draft, so as to enable its consideration for adoption by a diplomatic conference during the next biennium, which had already been approved, in principle, by the Council.

13 The Secretary-General then turned to the Joint IMO/ILO *Ad Hoc* Expert Working Group on Fair Treatment of Seafarers, which, thanks to the initiative of the Committee and the co-operation between ILO and IMO, had met in IMO in January 2005. The Group had prepared a draft resolution for consideration by the IMO Assembly and the ILO Governing Body later in 2005, inviting Member Governments to agree, as a matter of priority, to the preparation and adoption of recommendatory guidelines aiming at ensuring the fair treatment of seafarers in the event of a maritime accident. The Committee's task at this session was to give its imprimatur to the draft resolution and guidelines prior to their submission to the Assembly and to the ILO Governing body. In so doing, the Legal Committee had been requested to review the Joint Group's terms of reference with a view to clarifying the extent of its mandate and authorizing its continuation and future work. Since the draft resolution required that the Guidelines be promulgated by appropriate means, he urged the Committee to circulate them, should they be finalized at an earlier stage, in advance of their adoption by the Assembly in 2007.

14 Among the other items on the Committee's agenda was one of particular importance to the implementation of the Organization's Strategic Plan (for the six-year period 2004 to 2010). At its ninety-third session, the Council had agreed a draft high-level action plan for the remainder of the Strategic Plan period. This action plan provided the link between the Strategic Plan and the work to be undertaken by the Organization to meet its strategic objectives. The Committee was invited to consider the draft high-level action plan and also to consider the outcome-based work priorities of the Legal Committee for the 2006-2007 biennium. On the basis of the Committee's advice, and the advice of the other Committees, a consolidated high-level action

plan and related priorities would be forwarded to the November 2005 session of the Assembly for adoption, to guide the work of the Organization towards realizing its objectives in the next biennium.

15 The Secretary-General then went on to mention one of the IMO treaties still awaiting a sufficient number of ratifications to satisfy its entry into force requirements, i.e. the 1996 International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea (the HNS Convention), which had been prepared by the Legal Committee. Although he was pleased to report that since the last session of the Committee, one additional State (Cyprus) had become a Contracting Party to this treaty, the requirements for entry into force were still far from being met. In this respect, while the track record of the Organization with respect to the entry into force of treaties adopted under its aegis was relatively good compared to that of other international organizations, nevertheless, several instruments, including some adopted by the Legal Committee, had not yet come into force. Accordingly, he encouraged the Committee to continue with its endeavours and to take appropriate action in all respects.

16 Outside the Committee's agenda, but of paramount human importance, was IMO's decisive, considerable and comprehensive response to the Indian Ocean Tsunami tragedy, expressed on two fronts: the technical and the humanitarian. The latter had consisted of a fund, the **Tsunami Maritime Relief Fund**, established in order to give the Organization, the maritime community and the shipping industry at large an opportunity to support the UN-wide disaster relief efforts. Although the Fund was still open and the boxes in the meeting room and elsewhere throughout the building were still there for any donation delegates may wish to make, he informed the Committee that he had taken the opportunity, while attending the meeting of UN Chief Executives in Geneva ten days previously, to hand over to Secretary-General Kofi Annan, a cheque for approximately £90,000, representing the balance of the Fund at that time, with a request that it be passed on to the office of former President Clinton, the Secretary-General's Special Envoy for Tsunami-affected Countries, who had been appointed to mobilize continued support for the reconstruction phase. In his accompanying letter, the Secretary-General had requested that the IMO Fund money be used specifically for the restoration of the maritime infrastructure in the region affected and also to support the reconstruction of the fishing industry. He was, of course, grateful to all donors, including the IMO staff, interpreters and international organizations, as well as shipowner and seafarer organizations, shipping companies and individuals, for their generosity. He hoped that the Committee would add its own contribution to enable him, by the end of this session, to report on a new high total.

17 Before concluding his address, the Secretary-General informed the Legal Committee of the passing away, in March 2005, of Dr. Joseph Fenech, one of the founding fathers of the International Maritime Law Institute and, until the time of his death, an active member of the IMLI Governing Board. On behalf of the entire membership and staff, he conveyed deep condolences to Dr. Fenech's family and to the Maltese Government.

18 In concluding, the Secretary-General wished delegates every success in their deliberations over the next two weeks. The size of the Committee's agenda and the complexity and sensitivity of some of the items it was invited to deal with would certainly make it a stimulating, intriguing and exciting fortnight. The entire membership and the maritime community at large would be anxiously awaiting the outcome of the Committee's deliberations. He had every confidence that with good will, co-operation and commitment and under the exemplary chairmanship of Mr. Popp, of Canada, the deliberations would be both successful and fruitful. As usual, the

Secretariat would be only too pleased to provide any service that might be required to assist the Committee in all its tasks.

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

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

B REPORT OF THE SECRETARY-GENERAL ON CREDENTIALS

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

C ELECTION OF OFFICERS (agenda item 3)

(a) Election of the Chairman

22 The Committee noted that Mr. A.H.E. Popp, QC (Canada) would not stand as candidate for re-election as Chairman of the Committee in 2006. The Committee also noted communications from the Governments of Denmark and the Republic of Korea indicating that Mrs. Birgit Soelling Olsen and Professor Lee-Sik Chai were, respectively, available for election as Chairman of the Committee.

23 The Committee proceeded to hold a vote in accordance with its Rules of Procedure.

24 As a result of the vote, Professor Lee-Sik Chai was elected as Chairman of the Committee.

25 Professor Chai thanked the Committee for having elected him as Chairman. He praised Mr. Popp for the way he had led the Committee throughout many years. He shared with the Committee his vision of the Legal Committee playing a pivotal role in supervising, formulating and implementing international maritime law. He invited members of the Committee to work together in pursuance of this goal.

(b) Election of the two Vice-chairpersons

26 The Committee re-elected by acclamation Mr. Kofi Mbiah (Ghana) as first Vice-Chairperson. The Committee elected by acclamation Ms. Rebecca Louise Irwin (Australia) as second Vice-Chairperson.

27 The Secretary-General paid tribute to Mr. Popp's unparalleled record of service to the Organization, reflected in active participation at sixty-one sessions of the Legal Committee, twenty-three of them as its Chairman. He also referred to Mr. Popp's outstanding participation at international legal conferences convened by IMO, in particular those where he acted as Chairman of the Committee of the Whole.

28 The Secretary-General also welcomed the new Chairman and the two Vice-Chairpersons appointed for 2006.

D REVIEW OF THE CONVENTION FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF MARITIME NAVIGATION, 1988, AND ITS PROTOCOL OF 1988 RELATING TO FIXED PLATFORMS LOCATED ON THE CONTINENTAL SHELF (SUA CONVENTION AND PROTOCOL) (agenda item 4)

29 The Committee continued with its consideration of this agenda item. It noted that it should conclude its deliberations at this session with as few square brackets as possible, to facilitate consideration of the draft texts by the Diplomatic Conference to be convened in October 2005.

30 The Chairperson of the Legal Committee Working Group on the review of the SUA Convention and Protocol (hereinafter “the Group”) reported on the outcome of the Group’s deliberations at its second intersessional meeting held from 31 January to 4 February 2005 and referred to the report of that session contained in document LEG 90/4. She noted that, at this session, the Committee would have to approve both the decisions adopted by the Group during the session held in parallel with the deliberations of the Committee at its eighty-ninth session as well as those adopted by the Group at its second intersessional meeting.

31 It was noted that delegations were urged not to re-open compromises that were extensively considered and agreed to during earlier sessions of the Committee or during Working Group sessions.

Draft protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (draft protocol to the 1988 SUA Convention)

32 The Committee decided to use as the basic text for its deliberations the draft protocol contained in the Annex to document LEG 90/4/1. It also decided to address, firstly, outstanding issues related to new offences and boarding provisions.

New offences

Dual use (article 4 of the draft protocol/article 3bis, paragraph 1(b)(iv) of the Convention)

33 The Chairperson of the Group informed the Committee that, as a result of a compromise, the Group had been able to agree on the text and remove the square brackets.

34 The delegation of India referred to its submission in document LEG 90/4/5 (paragraph 10), restating its position in favour of including a specific reference to national control lists and a terrorist motive. A full statement of India’s general position is attached at annex 2.

35 The delegation of China referred to its submission in document LEG 90/4/6 (paragraph 2) and restated its position in favour of including in the article a definition of “related materials” as footnoted in UNSCR 1540.

36 The delegation of Brazil referred to its submission in document LEG 90/4/7 in which it suggested that the *chapeau* of paragraph (b) should be reworded to include a terrorist motive, which would result in a consequential modification of paragraph 3.

37 While there was support for these suggestions, the majority of delegations that spoke favoured the text adopted by the Group. In their view this text, even if not entirely satisfactory,

was the result of a compromise reached after extensive deliberations where all alternatives proposed had been considered and rejected. With respect to the inclusion of UNSCR 1540, it was noted that the language of that resolution was imprecise for a Convention creating criminal offences and that, in any event, that text was consistent with the resolution.

38 It was noted further that references to national lists would be particularly difficult to implement in view of the disparities between domestic regimes and the practical impossibility to get all of them acknowledged by all parties to SUA. The view was expressed that national export control lists are relevant for implementation of the protocol at national level.

39 It was also noted that some delegations could not accept the current text on the grounds that it is vague and difficult to implement.

40 The Committee noted the suggestion, based on the proposal contained in paragraph 52 of the report of the Working Group (document LEG/SUA/WG.2/4) that proof of “significantly contributes” might be provided by evidence of the inclusion of such equipment, materials or technology in a national control list or by the requirement of a permit, licence or other authorization for its export or import. The Committee did not agree to include such language in the text.

41 The Committee approved the basic text by majority. In this regard it did not follow the suggestion to put square brackets around this provision. A number of delegations were not satisfied with this decision, noting that there was no consensus and that these issues should be decided by consensus rather than by majority vote. These delegations expressly reserved the right to raise the subject again both in the Committee and at the Diplomatic Conference. In the light of this discussion the Committee noted that efforts should be made to narrow differences before and during the Diplomatic Conference so that the new instrument could be supported by as many delegations as possible.

42 The Committee rejected the proposal to include a terrorist motive in the *chapeau* and noted that this proposal had been extensively discussed in the Working Group and had been rejected. One delegation noted the use of the word “delivery” in this article and various other articles. It expressed concern that a literal interpretation of this article might criminalize the transportation of dual use items used for the delivery of the means of delivery of biological and chemical weapons. It therefore noted its understanding that, as long as biological or chemical weapons are concerned, the article should be read to apply only to dual use items to be used for their design and manufacture.

43 One delegation suggested the following:

“Being aware that these were intended for the design, manufacture or despatch of a prohibited weapon.”

This proposal was not accepted.

Transport of nuclear material (article 4 of the draft protocol; article 3bis, paragraph 1(b)(iii) of the Convention)

44 The Committee noted from the introduction of the Chairperson of the Working Group that the Group had agreed to the inclusion of an offence for the transport of nuclear material with knowledge of its intended use in a nuclear explosive activity. However, there was still some debate on the reference in this provision to comprehensive safeguards provisions. The Group

had not been able to agree on the precise wording for such safeguards. Two options were placed in square brackets for the Committee's consideration.

45 Some delegations objected to any reference to safeguards agreements. In this regard one delegation (India), referred to its submission in document LEG 90/4/5 (paragraph 9), which called for the deletion of the text in both sets of square brackets.

46 This position was supported by several other delegations. Views were expressed that including the safeguard requirement would have the effect of imposing the NPT regime on non NPT States, or would go beyond the NPT regime. It was also noted that it would criminalize the legitimate transport of nuclear material for peaceful purposes.

47 The delegation of Brazil referred to its submission in document LEG 90/4/7 (paragraph 5) which called for the deletion of the text in both sets of square brackets along with expansion of the *chapeau* in paragraph 1(b) to include a terrorist motive requirement for all transport offences.

48 A majority of the Committee agreed to remove the square brackets and include the text in the second set of square brackets, and to delete the first set of square brackets as its sponsor withdrew it. Some delegations, however, were not satisfied with this decision, noting that there was no consensus and that these issues should be decided by consensus rather than by majority vote and expressed a strong preference for retaining the square brackets pending further consideration of this issue with a view to finding a solution.

49 Some delegations noted the close link between this provision and the savings provisions in article *2bis*, paragraphs 4 and 5, and article *3bis*, paragraph 2, which remained to be decided and indicated that they could not give final concurrence to the safeguards issue until the savings provisions had been resolved.

Article 3bis2

50 The Chairman introduced his proposal for article *3bis*, paragraph 2, contained in document LEG 90/WP.4, attached as annex 3 to this report.

51 Several delegations expressed their support for this proposal as a balanced compromise between different views, on the following grounds:

- The "savings clause" is essential to set out clearly the exceptions to the offences in article *3bis*1(b)(iii) and (iv). The clause is needed to make it clear that the SUA exempts legitimate trade activities that NPT Parties are permitted to undertake. The text of the proposal by the Chairman fulfils these expectations. For example, it makes clear that there would not be a SUA offence where an NPT Party transports nuclear materials to a non-NPT Party without a comprehensive safeguards agreement, if the supply does not violate the NPT, that is, so long as safeguards are applied to the nuclear materials in the recipient State. Likewise it will not be a SUA offence to transport such materials regardless of where the transport takes place, if the transport is under the control of an NPT Party, provided that the transport is not contrary to that NPT Party's obligations. Where safeguards are not required by the NPT, it would not be a SUA offence to transport nuclear material for unguarded nuclear activities.

- The proposal also conforms with the view that the NPT neither creates nor recognizes a general right for any State to hold nuclear weapons. In this regard, it was important to stress that the language in the proposal does not create a new interpretation of any State's NPT obligations, nor does it undermine the treaty in any way.
- A key point of the proposal is that it ensures that transports which are not contrary to the obligations of an NPT State Party are not made an offence. The proposal does not, in any way, add to the existing legal position of a nuclear weapon State party to the NPT concerning possession or transfer of nuclear weapons, their components or means of delivery.

52 Some delegations supported the proposal as a compromise, but noted that the balance of NPT obligations was better reflected in article *2bis*, paragraphs 4 and 5, in document LEG 90/4/1. One of these delegations noted its preference that paragraphs (a) and (b) of the Chairman's proposal be re-cast to focus on consistency with NPT obligations.

53 The delegation of India referred to paragraph 8 of its submission in document LEG 90/4/5. In this respect, it noted that article *3bis*, paragraph 2 deals with the rights and obligations of the States parties to the NPT and is, accordingly, not needed within the SUA context in view of the provision in article *2bis*, paragraph 3, which provides that nothing in the Convention shall affect the rights, obligations and responsibilities of States Parties to the BWC, CWC and NPT. The implications of including proposed paragraph 2 would be that the transport offences would only apply to States that are not party to the NPT. The proposed savings clause is discriminatory, since the rights of those States to peaceful application of nuclear technology would not be protected.

54 The delegation of India noted further that there is an intrinsic link between these provisions and the proliferation offences under article *3bis*, particularly subparagraph (iii), related to the transport of nuclear materials. This paragraph, by implying that transport of nuclear materials, equipment and technology for nuclear activities not under comprehensive safeguards would be an offence, violates the IAEA Constitution which allows States not parties to the NPT to enter into safeguards agreements for selected facilities. The combination of the Chairman's proposal and paragraph 1(b)(iii) amounts to a simple rejection of countries not parties to the NPT.

55 Other delegations noted that article *3bis* paragraph 1(b)(iii) and paragraph 2 entrench the unequal legal regime for nuclear weapons States contrary to their obligations under the NPT to fulfil the goals of full implementation of non-proliferation and nuclear disarmament obligations under the NPT. In view of its implications in the field of nuclear activities, this matter should be discussed at the IAEA.

56 One delegation stated that the proposal would conflict with its current legislation which, in pursuance of its commitment to the full implementation of all its NPT non-proliferation and disarmament obligations, prohibits the transfer of material, equipment and technology for use in any nuclear weapons programme, even to a State Party under the NPT. In the view of this delegation, if a savings clause was considered indispensable, the text should explicitly provide for the transport of material, equipment and technology intended for a peaceful nuclear programme. Furthermore, any savings clause should be consistent with the recently agreed International Treaty for the Suppression of Acts of Nuclear Terrorism, 2005, making it clear that the SUA Convention does not address nor should be interpreted to address the issue of the legality of the use or threat of use of nuclear weapons by States.

57 The majority of delegations that spoke supported the compromise proposed by the Chairman. Several delegations, however, stated their formal opposition to the inclusion of this clause and their right to revert to this matter at a later stage, including at the Diplomatic Conference. Other delegations reserved their position on the grounds that they were unable to get instructions from their capitals.

58 One delegation noted that subparagraph (b) of article 3*bis*, paragraph 2, only had to be fulfilled if the transporting items or materials were intended for a delivery system of a nuclear weapon or a nuclear explosive device.

59 The Committee decided to include the text of the proposal as paragraph 2 of article 3*bis*. The Committee also took up the suggestion that those delegations which had reserved their position on the basis of no instructions, should communicate their position as soon as possible before the Diplomatic Conference, with a view to arriving at an acceptable resolution.

Definition of “transport” (article 2 of the draft protocol; article 1, paragraph 1(f) of the Convention)

60 With regard to the definition of the term “transport”, the Committee noted that the Group had combined a number of proposals into a single text but had not been able to agree on whether to include the term “arrange” in the definition.

61 The delegation of Brazil referred to its submission in document LEG 90/4/7 (paragraph 4) which favoured the deletion of the term “arrange” and noted that the definition was linked, in its view, with its proposal to expand the *chapeau* in paragraph 1(b) to include the terrorist motive requirement, which would then apply to all transport offences.

62 The delegation of India referred to its submission in document LEG 90/4/5 (paragraph 7) which also favoured the deletion of the term “arrange” and proposed replacement of this term by the words “knowingly facilitate”.

63 Although it was noted that the term “arrange” could be interpreted very broadly and therefore might include innocent persons with minor or indirect responsibilities in the transport chain, it was also noted that actions would not be considered criminal unless there was proof of a subjective element (e.g., intent or knowledge) as required by article 3*bis*, paragraph 1(b).

64 A variety of views were expressed about the term “arrange” but ultimately the Committee decided to retain it without square brackets.

65 The Committee also exchanged views on the term “decision-making authority” and agreed to re-arrange the definition of “transport” to read as follows:

““transport” means to initiate, arrange or exercise effective control, including decision-making authority over, the movement of a person or item.”

Boarding provisions (Article 8/article 8*bis*)

Paragraph 1

66 The delegation of India referred to its submission in document LEG 90/4/5 (paragraph 12) and stated that it was important for a request for boarding to be based on persuasive information and that, while considering the request, the flag State may also seek

further information if this was deemed necessary. The delegation suggested that this consideration should be reflected in paragraph 1(a).

67 The Committee did not agree with this proposal. Several delegations stated that India's concern was already covered in article 8*bis*, paragraph 5.

68 The Committee approved the text of paragraph 1(a), unchanged.

69 As a general comment, one delegation suggested that the boarding provision was deficient because it did not allow third parties to be involved in the decision-making process. Several delegations opposed the inclusion of text in this regard. They noted that this matter had already been extensively discussed and restated their view that the flag State alone had jurisdiction to decide whether the requesting State could board the ship. One delegation also noted that article 8*bis*, paragraph 1 already encompasses consulting in general.

70 The Committee approved the text of paragraph 1(b). One delegation suggested that there was a need to define conditions when a ship was entering a port. The Committee did not support this proposal.

71 The Committee agreed with the suggestion that the *chapeau* and subparagraphs (a) and (b) should be redrafted as three separate paragraphs, namely, paragraphs 1, 2 and 3.

Paragraph 2

72 The Committee approved the text of paragraph 2, unchanged.

Paragraph 3

73 One delegation noted its concern about possible ambiguity in this provision regarding the rights of the requesting State in cases where the ship was navigating in territorial waters and the requesting State was different from the flag and the coastal State. It was explained that this ambiguity did not exist, bearing in mind the existing application of the SUA Convention pursuant to article 4, and the *chapeau* of paragraph 3, which noted that the boarding provisions only applied to ships located "seaward of any State's territorial sea".

74 One delegation proposed to replace the expression "is about to" be committed with the expression "is attempted to" be committed at the end of subparagraph (b), on the grounds that its domestic law does not sanction the mere probability that an action might take place. While this proposal received some support, the Committee noted that the expression "is about to" be committed implied an attempt and decided to retain the provision as drafted. The Committee noted that this was a drafting issue and agreed that the provision should remain as drafted.

75 One delegation suggested the insertion in subparagraphs (a) and at the end of (e) of a reference to the flag State. It was explained that, until the nationality of the ship was confirmed, it was not possible to speak of the "flag State".

76 Accordingly, the Committee approved the text of paragraph 3 subparagraphs (a), (b) and (c), unchanged.

77 The Committee extensively discussed retention of subparagraph (d) which requires a requesting State to consider warning other Parties if a requested State does not comply with its obligation to respond to any of the requests referred to in article 8*bis*.

78 The delegation of China introduced its submission in document LEG 90/4/6, paragraph 3 requesting the deletion of subparagraph (d).

79 Those delegations in favour of retaining the text reaffirmed the need for it on grounds that it would serve an important purpose, namely, to clarify the consequences of not responding to a requesting State in a high risk situation where the requesting State had reasonable grounds to suspect that the ship or a person on board were involved in the commission of a terrorist offence. They expressed the view that this provision would fill an existing gap without interfering with the rights of the flag State.

80 Other delegations opposed the incorporation of this provision, on the grounds that there was no need to explicitly refer to an existing right held by all States. It was underscored that this provision adds no value to the rights of a requesting State and only gives rise to the danger of arbitrary judgement by such State. Furthermore, the inclusion of this provision might be considered to be intimidating and counter-productive to the aims of the Protocol.

81 An indicative vote showed that the Committee was evenly divided (25 for deletion, 25 against deletion with 12 abstentions) on whether to include the provision.

82 The Committee decided to retain the text in square brackets. It was suggested that interested delegations might explore improvements to the text in preparation for the Diplomatic Conference.

83 The Committee approved the inclusion of subparagraphs (e) and (f), unchanged.

Paragraph 4

84 The Committee approved the text of paragraph 4, unchanged.

Paragraph 5

85 The Committee did not adopt a proposal to include text referring to cases where additional measures had been expressly authorized by a relevant bilateral or multilateral agreement to which both the flag State and the requesting State are Parties. It was explained that this rewording provided details which were already implicit in the original text.

86 The Committee approved the text of paragraph 5, unchanged.

Paragraph 6

87 One delegation proposed the inclusion of the term “expressly” where a flag State may consent to the exercise of jurisdiction by another State. Several delegations opposed this inclusion. They noted that the addition was unnecessary and such consent was subject to the constitution and laws of the flag State. The view was also expressed that paragraph 5 of article 8*bis* allowed a flag State to place any conditions it wished, including express consent, on a boarding State.

88 The Committee approved the text of paragraph 6, unchanged.

Paragraph 7

89 The Committee did not accept a proposal to include in this paragraph explicit references to the right of self-defence, the principle of proportionality and prior authorization of the flag State as features of the use of force, and approved the text of paragraph 7, unchanged.

Paragraph 8 – Safeguards**8(a), subparagraphs (i) to (ix)**

90 A proposal to delete the words “under the circumstances” at the end of subparagraph (a)(vi) in order to strengthen the requirement that the measures taken must be environmental sound was not accepted. It was noted that the current wording was the result of a compromise, which allowed for exigent circumstances and took into account the unpredictability of environmental conditions such as the weather.

91 One delegation sought and received from the Committee clarification that the words at the end of subparagraph (a)(viii) “at the earliest opportunity” would not unduly limit the right of the master to contact the ship owner and the flag State at all times. The Committee was assured that the master has every right to contact the flag State at all times. Accordingly, the Committee approved paragraph 8(a)(viii), unchanged, and also approved the whole of paragraph 8(a).

8(b)

92 A proposal was made to revise the words of subparagraph (b)(i) to read as follows: “... provided that the ship has not committed an act reasonably justifying the measures taken;”. The purpose was to emphasize that measures must be reasonable or would be subject to compensation. Some delegations expressed the view that, in their understanding, vessels, as a means of transport, cannot be accused of having committed an offence.

93 The Committee did not accept this proposal. It was noted that the current wording was based on UNCLOS article 110 and was the result of a compromise after full debate and represented a delicate balance of interests. The view was also expressed that a reasonableness test was incorporated in subparagraph (b)(ii). Without being opposed to the consensus, one delegation expressed the view that article 110 of UNCLOS could not apply to this provision.

94 The delegation of China referred to its submission in document LEG 90/4/6 (paragraph 5) which proposed adding the word “delay” after the words “damage, harm or loss” in the *chapeau*. Several delegations noted that delay was encompassed by the term “loss”. Another delegation, however, noted that, under its law, economic loss was included. In this context, one delegation indicated that, for its domestic purposes, it would interpret the term “harm” as being limited to physical harm. An observer delegation expressed the view that the term “harm” should be understood more broadly to include harm to seafarers who may be affected by an illegal or unfounded boarding or subsequent detention.

95 The Committee decided not to include the word “delay”, as the delay would be interpreted to be covered by “loss” or “damage”.

96 A proposal to add the words “harm or loss” at the end of the second sentence was agreed to as a technical correction in order to achieve consistency with the use of that expression at the beginning of this provision.

97 The delegation of India referred to its submission in document LEG 90/4/5 (paragraph 4) which proposed replacement of the term “States-Parties” with the phrase “Requesting or Boarding States”. The delegation of China referred to its submission in document LEG 90/4/6 (paragraph 4) which also proposed this change. Although this proposal received some support, the Committee did not accept it.

98 The delegation of Greece reminded the Committee of its proposal contained in document LEG/SUA/WG.2/WP.5, submitted during the February 2005 intersessional meeting of the Working Group (paragraph 67 and annex 10 of document LEG/SUA/WG.2/4 refer), to restructure paragraph 8(b). This proposal had not been retained by the Working Group.

99 The Committee adopted paragraph 8(b), with the addition of the words “harm or loss” at the end of the second sentence.

Paragraphs 9 to 12

100 The Committee approved these paragraphs, unchanged.

Article 2/article 1

Paragraph 1

101 **1.1(a)** The Committee agreed to delete the word “death” from the definition as it added nothing to the meaning of the term as it appeared in the text. One delegation stated that the word “damage” in this definition is different from paragraph 8(b) of article 8*bis*.

102 One delegation expressed concern about the definition of environmental damage. According to its interpretation, actions causing “substantial damage to the environment, including air, soil, water, fauna, or flora” could only be made an offence if they endangered the safety and security of international navigation and involved serious injury or damage to property.

103 The Committee approved the text of subparagraph 1.1(a), as amended.

104 **1.1(b)** The Committee adopted the definition of “precursor”, unchanged. The Secretariat was requested to look at the possibility of relocating this definition, under the definition of “chemical weapons”.

105 **1.1(c)** The delegation of India, referring to document LEG 90/4/5, recalled its position that defining a ‘prohibited weapon’ in a convention on the safety of maritime navigation was beyond the mandate of IMO and that the use of the term might have consequences beyond the SUA treaties, reiterated its earlier proposal that the word ‘prohibited’ be deleted from article 1(1)(c).

106 One delegation noted that previous attempts to find a more neutral term had not received support. That delegation suggested now that the term “prohibited weapon” be replaced with “BCN weapon”, which was a short-hand way of referring to biological, chemical and nuclear weapons.

107 One delegation stated that it could agree to this proposal on condition that the new definition would not have consequences in other treaties to which it was a party.

108 Another delegation noted that removing the term “prohibited” from the draft convention should not affect the advisory opinion of the International Court of Justice in the Unlawful Use or Threat of Nuclear Weapons case. It also noted that the term “prohibited weapon” carried an important message for the effectiveness of the protocol.

109 The Committee approved the substitution of “BCN weapon” for “prohibited weapon” and instructed the Secretariat to make all consequential amendments to the text, as appropriate.

110 **1.1(d) to (h)** The Committee approved the texts of paragraphs 1.1(d), (e), (g) and (h), unchanged. The suggestion was made that the definition in subparagraph (e) might be repositioned.

111 The issue of paragraph 1.1(f) is dealt with at paragraphs 32 to 37 of the report.

Paragraph 2

112 The Committee approved the text of definitions contained in subparagraphs (a) and (b), unchanged.

Article 3/article 2bis

Paragraph 1

113 The Committee approved the text of paragraph 1, unchanged.

Paragraph 2

114 In connection with a request for clarification made by one delegation, it was noted that the precedent for this provision was the International Convention for the Suppression of Terrorist Bombings (i.e., the Terrorist Bombing Convention). The provision had been incorporated in the draft SUA protocol in order to clarify that rights and obligations of States Parties to other international instruments, specifically on international humanitarian law, would not be affected.

115 Another delegation noted that if this provision was kept, there might be a need for a definition of military forces, since this definition was included in the Terrorist Bombing Convention. In response another delegation stated that there was no need for such a definition on account of the reference contained in article 8bis 8(e) which referred to “law enforcement or other authorized officials”.

116 One delegation asked whether this paragraph applied to warships. It was explained that this issue was governed by article 2 of the 1988 SUA Convention, in which warships are excluded from the ambit of the treaty and that this position was not being changed by this draft protocol.

117 The Committee approved the text of paragraph 2, unchanged.

Paragraph 3

118 One delegation noted that it could accept this paragraph on the understanding that it would not affect the rights, obligations and responsibilities of States under other treaties.

119 The Committee approved the text of paragraph 3, unchanged.

Article 4/article 3

Paragraph 1

120 The Committee approved the text of the new *chapeau* for article 3, paragraph 1, unchanged.

Paragraph 2

121 The Committee approved the deletion of paragraph 1(g).

Paragraph 3

122 The Committee approved the new text of paragraph 2, unchanged.

Article 4/article 3bis

Paragraph 1

123 One delegation noted that the term “other hazardous and noxious substances” in paragraph 1(a)(ii) was not clear but its understanding was that MARPOL 73/78 appendices to annex II might be used to clarify the term.

124 The Committee approved the text of paragraph 1(a), and 1(b)(i) and (ii), unchanged.

Article 4/article 3ter

125 The Committee approved the text of article 3ter, unchanged.

Article 4/article 3quater

126 The Committee approved the text of article 3quater, unchanged.

Article 5

Paragraph 1

127 The Committee approved the text of paragraph 1, unchanged.

Article 5bis

128 The Committee approved the text of article 5bis, unchanged.

Article 6

129 The Committee approved the text in article 6, unchanged.

Article 7/Annex

130 One delegation suggested that the Diplomatic Conference consider the possible inclusion of the newly adopted International Treaty for the Suppression of Acts of Nuclear Terrorism, 2005. Another delegation suggested the possible inclusion of the 1963 Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft and the 1991 Montreal Convention on the making of Plastic Explosives for the Purpose of Detection.

131 In response, the Chairperson of the Working Group noted that the list contained in the annex reflects the list in the International Convention for the Suppression of the Financing of Terrorism (i.e., the Terrorist Financing Convention). That list referred to treaties which, unlike the 1963 Tokyo and 1991 Montreal Conventions, contained criminal offences and provisions on matters of extradition.

132 Another delegation expressed the view that it would not be helpful to add new conventions to the list as this would unnecessarily encumber those States wishing to accede to the Protocol. The view was also expressed that the present list had been subjected to exhaustive scrutiny and should not be altered. Moreover, to be listed in the annex, a convention had to first enter into force.

Article 8

Paragraph 1

133 The Committee approved the text in paragraph 1, unchanged.

(Note: Article *8bis* has been dealt with in paragraphs 38 to 72 above).

Article 9

134 The Committee approved the text in article 9, unchanged.

Article 10

Paragraph 1

135 One delegation suggested that text be included as a new paragraph 2 indicating that measures adopted by States Parties to implement the Convention should conform fully with international law, including legislation on human rights and fundamental freedoms.

136 The Committee noted that it did not support this proposal, which had not been submitted in writing.

137 The Committee adopted the text of paragraph 1, unchanged.

Paragraph 2 (article 11*bis*)

138 One delegation proposed that this provision should be limited to terrorist offences, so as not to create problems under its domestic law. Accordingly, it suggested the deletion of the offences regulated in article *3bis* 1b(ii), (iii), (iv), *3ter*, and *3quater*. This proposal was supported by several delegations.

139 A substantial majority of delegations, however, favoured retaining the present text, which conformed to precedents contained in the Terrorist Financing Convention and the Terrorist Bombing Convention. All the offences created by the draft protocol were very serious and should not be defended on political grounds. Non proliferation offences should not be viewed differently from terrorist offences.

140 It was suggested that the constitutional and internal legal problems encountered by some delegations might be dealt with by way of a suitable reservation or declaration. It was also noted

that, alternatively, States unable to extradite might resolve the problem by initiating prosecution proceedings pursuant to article 6 of the 1988 SUA Convention.

141 The Committee approved paragraph 2, unchanged.

Paragraph 3 (article 11*ter*)

142 The Committee discussed the proposal contained in footnote 22 that the phrase “gender or sexual orientation” be added to article 11*ter*. Some delegations noted that this terminology was not included in other extradition treaties, but favoured the addition as being progressive. Other delegations accepted the addition of the term “gender” but noted that “sexual orientation” was not currently a generally recognized term under international human rights instruments, and that this protocol was not the appropriate place to break new ground. Concern was also expressed that the addition of the term “sexual orientation” might impede some States from becoming Party to the Protocol.

143 It was suggested that the term “or other status”, as used in the UN Model Terrorism Convention and the International Covenant on Civil and Political Rights, might be used instead of the term “sexual orientation”. However, this term was also considered by some delegations to be too vague or indefinite.

144 The suggestion was also made to use the term “or other similar nature” as in article 6 of the Terrorism Financing Convention. However, there was no support for this alternative.

145 The Committee approved this article with the addition of the term “gender”.

Article 11

Paragraph 1 (article 12.1)

146 The Committee approved the text of this paragraph, unchanged.

Paragraph 2 (article 12*bis*)

147 One delegation expressed concern that this draft article did not distinguish clearly between persons in custody who were being detained and persons in custody who had been sentenced for a crime. Since paragraph 2(a) allowed for custody to continue “as long as necessary”, the right of a detained person to a speedy trial might not be respected. It was explained that, since paragraph 1(a) did not permit transfer except in the case where the person concerned “freely gives his informed consent”, such persons were adequately protected. This explanation was not satisfactory to this delegation, which reserved its position on this matter.

148 The Committee approved the text of this paragraph, unchanged.

Article 12/article 13

149 The Committee approved the text of this article, unchanged.

Article 13/article 14

150 The Committee approved the text of this article, unchanged.

Article 14 (Interpretation and application)

151 The Committee considered a proposal to insert the words “including the Annex” after the opening words “The Convention and this Protocol”. It was suggested that this might be done more appropriately in article 7 which adds the Annex to the 1988 SUA Convention.

152 After some discussion, the Committee approved the text of this article, unchanged. In so doing it noted that this was a drafting issue which might be taken up by the Drafting Committee at the Diplomatic Conference.

153 The Committee also considered the suggestion to give the Convention as amended by the protocol a new name. It agreed that this matter might also be considered by the Drafting Committee.

FINAL CLAUSES**Article 15 (Signature, ratification, acceptance, approval and accession)**

154 The Committee, noting that the dates to be inserted in the first paragraph would be decided at the Diplomatic Conference, approved the text of the draft article, unchanged.

Article 16 (Entry into force)

155 The delegation of China introduced its proposal in document LEG 90/4/6, paragraph 6 to the effect that, bearing in mind the universal character of the SUA Convention and its potential impact on international shipping, entry into force conditions should include both number of States plus tonnage.

156 Similarly, the delegation of Brazil introduced its proposal in document LEG 90/4/7, paragraph 6, to the effect that the minimum number of States Parties required for entry into force should be proportional to the current number of IMO Members and that, in line with the IMO technical treaties, a tonnage requirement should be included.

157 These proposals received some support. However the majority of delegations that spoke could not support a tonnage requirement for the following reasons:

- the inclusion of a tonnage requirement in a treaty of this nature was both inappropriate and unprecedented;
- the original treaty did not impose a tonnage requirement and it would be counterproductive to do so in the protocol, given the rise of terrorism in today’s world;
- other counter-terrorism conventions do not include a tonnage factor;
- the inclusion of a tonnage requirement would needlessly delay the entry into force of the protocol, thus benefiting only terrorists and hindering legitimate shipping interests; and
- the tonnage requirement is appropriate for IMO technical conventions because it gives States and the shipping industry sufficient time to implement any required

regulatory change. The same considerations were not applicable to the 2005 SUA Protocol.

158 There was some debate as to the number of States required for the entry into force. In this respect, some delegations expressed a preference for no more than 15 States, since that was the number required to bring the original SUA Convention into force.

159 The Committee, noting that the number of States necessary for the entry into force would be decided at the Diplomatic Conference, approved the draft article, unchanged.

Article 17 (Denunciation)

160 The Committee approved the draft article, unchanged.

Article 18 (Amendments to the protocol)

161 The Committee agreed that the two figures in paragraph 2 should be deleted and replaced by blank spaces within square brackets, since these figures would be decided at the Diplomatic Conference.

162 Subject to this correction, the Committee approved the draft article, unchanged.

Article 19/article 20bis (Amendment of the Annex)

163 The Committee noted that the amendment procedure contained in this article was unique. How it would work in practice had been discussed in the Working Group.

164 One delegation suggested to the Secretariat that references to “this Protocol” contained in article 20bis of the Convention should read instead “the Protocol of 2005” to this Convention.

Paragraph 1

165 The Committee approved the text in paragraph 1, unchanged.

Paragraph 2

166 The Committee approved the text in paragraph 2, unchanged.

Paragraph 3

167 The Committee agreed to the Secretariat's suggestion that the words “to the Secretary-General” be added at the end of paragraph 3.

168 The Committee approved the text in paragraph 3, as amended.

Paragraph 4

169 The Committee approved the text in paragraph 4, unchanged.

Article 20 (Depositary)

170 The Committee noted that the reference to “article 19” appeared to be references to “article 20*bis*” and requested the Secretariat to review this matter.

Subparagraph 2(a)(vi)

171 The Committee agreed to delete the words “which has” and to insert the words “deemed to have”, to read as follows:

“(vi) any amendment deemed to have been adopted in accordance with article [19] [20*bis*], paragraph 3; and”

Subparagraph 2(a)(vii)

172 The Committee agreed to delete the words “deemed to have been” and “in accordance with paragraphs ... and ... of that article”, to read as follows:

“(vii) any amendment accepted under article [19][20*bis*], paragraph 4, together with the date on which that amendment shall enter into force.”

Subparagraph 2(c)

173 The Committee agreed to delete the requirement that the Secretary-General prepare a consolidated text and, instead, to insert a corresponding request in the Final Act of the Diplomatic Conference.

174 Subject to these amendments, the Committee approved the draft article, unchanged. The Secretariat was requested to verify the correct references to be inserted in the draft for submission to the Conference.

Article 21 (Languages)

175 The Committee approved the draft article, unchanged.

Possible new provision: Reservations clause

176 The delegation of India referred to its submission in document LEG 90/4/5, paragraph 15, which proposed the addition of a provision to permit reservations. This proposal was supported by some delegations on the grounds that it would enable each State to safeguard its interests when becoming a Party to the Protocol.

177 It was noted that paragraph 2 of article 16 of the 1988 SUA Convention allowed for reservations in relation to the dispute settlement provisions of that article. It was further noted that article 19 of the Vienna Convention on the Law of Treaties provides that “a State may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation unless (a) the reservation is prohibited by the treaty; (b) the treaty provides that only specified reservations, which do not include the reservation in question, may be made; or (c) in cases not falling under subparagraphs (a) or (b), the reservation is incompatible with the object and purpose of the treaty.”

178 A number of delegations expressed the view that article 19(b) of the Vienna Convention was not entirely clear, and a reservation provision would therefore be helpful in the new protocol. Other delegations were opposed to the introduction of a reservation provision as a matter of principle, since its use could undermine the functioning of the amended Convention. They were also of the view that such a provision would not be consistent with other international conventions on terrorism.

179 In response to a question regarding the use of reservations by States Parties to the 1988 SUA Convention, the Secretariat informed the Committee that several States had made reservations concerning provisions other than article 16 of the Convention, including reservations pertaining to such matters as geographical scope of application, establishment of jurisdiction, and extradition. The Secretariat noted that all reservations received by the Organization, as depositary of the Convention, were circulated to all States Parties, and that the texts of the reservations were also available on the Organization's website. The Secretariat also noted that it had not received any objections to the reservations lodged by States.

180 One delegation, supported by several other delegations, expressed the view that the specific reservation in article 16 of the SUA Convention was commonly employed in dispute resolution provisions, and this would not limit the use of a reservation in regard to other provisions, provided the reservation was not incompatible with the object and purpose of the treaty. There was no disagreement with this interpretation.

181 The Committee therefore agreed that there was no need to develop a specific reservation provision for inclusion in the new protocol.

Draft protocol to the 1988 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf

182 The Committee considered the proposal in document LEG 90/4/7 (paragraph 7) submitted by Brazil, regarding the number of States necessary for the entry into force of the Protocol, but decided that this was a matter to be left for consideration at the Diplomatic Conference.

183 The Committee requested the Secretariat to explore the possibility of inserting the full name of the Convention in the third line of article 2.

184 The Secretariat also undertook to make all changes in the protocol consequent upon the agreed changes to the protocol to the main Convention.

185 The Committee agreed to delete the requirement in article 11(2)(c) that the Secretary-General prepare a consolidated text and, instead, to insert a corresponding request in the Final Act of the Diplomatic Conference.

186 Subject to these amendments, the Committee approved the draft protocol, unchanged.

PREAMBLE (to the Convention)

Paragraph beginning with "THE STATES PARTIES"

187 The Committee approved the text, unchanged.

Paragraph beginning with “BEING”

188 The Committee approved the text, unchanged.

Paragraph beginning with “ACKNOWLEDGING”

189 The Committee approved the text, unchanged.

Paragraph beginning with “RECALLING”

190 The delegation of Brazil referred to its submission in document LEG 90/4/7 (paragraph 3), which proposed to delete descriptive language or selective quotations and to refer only to the numbers of the United National Security Council Resolutions 1368, 1373 and 1540.

191 Some delegations supported this proposal. They noted that terrorist attacks occurred not only in the United States but also in some other countries. One delegation suggested the deletion of the reference to “the 11 September terrorist attacks in the United States”. The Committee noted that this suggestion could be the basis of a compromise. The Committee also went along with the suggestion that the words “emanating from terrorist attacks that have occurred since then” be replaced by the words “of terrorist attacks”.

192 Another delegation suggested replacing the wording in this paragraph with the following:

“RECALLING all UN resolutions on terrorism, including the declaration on Measures to Eliminate International Terrorism, contained in the annex to resolution 49/60 of the United Nations General Assembly and resolutions 1368 (2001) and 1373 (2001) of the United Nations Security Council and deeply concerned by the persistence of terrorist attacks worldwide.”

193 The Committee did not support this proposal.

194 Following further discussion, the Committee accepted the following text:

“RECALLING resolutions 1368 (2001) and 1373 (2001) of the United Nations Security Council, which reflect international will to combat terrorism in all its forms and manifestations and which assigned tasks and responsibilities to States, and taking into account the continued threat from terrorist attacks.”

A proposal to vary this text by including the words “wherever and by whom they were committed” after the word “manifestations” was not accepted.

Paragraph beginning with “RECALLING ALSO”

195 The Committee agreed to make reference to United Nations Security Council 1540 in a separate preambular paragraph, since this resolution dealt with proliferation issues which had a specific impact on the dual use provision. The Committee did not agree with the text suggested in footnote 4 of document LEG 90/4/1, since this selectively quoted from paragraph 4 of that resolution.

196 Following further discussion, the following text was suggested:

“RECALLING ALSO resolution 1540 (2004) of the United Nations Security Council, which recognized the urgent need for all States to take additional effective measures to prevent the proliferation of nuclear, chemical or biological weapons and their means of delivery.”

197 Some delegations opposed this text for the same reason, namely, that this was also a quotation from resolution 1540 (paragraph 12). However, the Committee decided to insert this text in the preambular paragraph. One delegation suggested a quotation from preambular paragraph 7 of resolution 1540.

Paragraph beginning with “RECALLING FURTHER”

198 The Committee approved the paragraph with the addition of the following two instruments, namely, the Convention on Offences and Certain Other Acts Committed on Board Aircraft (Tokyo Convention 1963) and the Convention on the Marking of Plastic Explosives for the Purpose of Detection (Montreal Convention 1991).

199 In response to the suggestion that a reference should also be made to the recently adopted International Convention for the Suppression of Acts of Nuclear Terrorism, it was noted that this instrument was scheduled to be open for signature on 14 September 2005, and delegates could consider its possible addition during the Diplomatic Conference.

Paragraph beginning with “REAFFIRMING”

200 The delegation of India referred to its submission in document LEG 90/4/5 (paragraph 4) concerning the desirability of referring both to the UNCLOS and to customary international law of the sea in this paragraph.

201 There was general agreement on the need to make such a reference in the preamble. Some delegations supported the text in square brackets as providing a good balance. Other delegations proposed a variety of alternative texts to reverse the order by referring to UNCLOS first, thus emphasizing the relative importance of that convention, along the following lines:

- “BEARING IN MIND [or REAFFIRMING] the importance of the United Nations Convention on the Law of the Sea adopted at Montego Bay, on 10 December 1982, and [mindful] of the customary international law of the sea,”
- “ACKNOWLEDGING the importance and relevance of the United Nations Convention on the Law of the Sea adopted at Montego Bay, on 10 December 1982, which codified customary international law of the sea,”.

202 While some delegations were of the view that UNCLOS fully reflected customary international law of the sea, others were of the opinion that UNCLOS did not completely do so. The view was also expressed that IMO was not the appropriate forum for a debate on the primacy of customary international law of the sea over UNCLOS, or *vice versa*.

203 One delegation, on behalf of a group of interested delegations, submitted the following compromise new text:

“BEARING IN MIND the importance of the United Nations Convention on the Law of the Sea adopted at Montego Bay, on 10 December 1982, and of the customary international law of the sea,”.

204 After debate, the Committee unanimously approved this text.

205 One delegation observed that, although it could accept the approved text, nonetheless, it was concerned that it had not been given the opportunity of expressing its position before the compromise was reached and had therefore been unable to influence the compromise.

206 One delegation pointed out that the adoption of this paragraph does not pre-judge the application of the criteria of legislative priority established in international law.

Paragraph beginning with “RECALLING ALSO”

207 It was noted that the reference to United Nations General Assembly resolution 58/87 should be corrected to read 58/187.

208 The Secretariat introduced a proposal to split the paragraph into two paragraphs and to insert at the end of the first of the two paragraphs the text of paragraph 50 of General Assembly resolution 59/24, by which the General Assembly *inter alia* urges States to become parties to the SUA Treaties and to participate in the review of those instruments by the IMO Legal Committee. The redrafted paragraphs would read as follows:

“RECALLING ALSO resolution 59/46 of the United Nations General Assembly, which reaffirmed that international co-operation as well as actions by States to combat terrorism should be conducted in conformity with the principles of the Charter of the United Nations, international law and relevant international conventions, and resolution 59/24 of the United Nations General Assembly, which urged States to become parties to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and its Protocol, invited States to participate in the review of those instruments by the Legal Committee of the International Maritime Organization to strengthen the means of combating such unlawful acts, including terrorist acts, and also urged States to take appropriate measures to ensure the effective implementation of those instruments, in particular through the adoption of legislation, where appropriate, aimed at ensuring that there is a proper framework for responses to incidents of armed robbery and terrorist acts at sea,

RECALLING FURTHER resolution 58/187 of the United Nations General Assembly, which reaffirmed that States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular international human rights, refugee and humanitarian law,”.

209 The Committee unanimously approved the Secretariat’s proposal.

210 One delegation proposed the insertion of the following new paragraph recalling United Nations General Assembly resolution 49/60, since it referred to the measures to eliminate and combat international terrorism:

“FURTHER RECALLING resolution 49/60 of the United Nations General Assembly, which annexes the statement from the United Nations General Assembly on measures to eliminate international terrorism,”.

211 Although this proposal received some support, the majority of delegations that spoke were not in favour of it for a number of reasons, including that, in the absence of a written text of

the resolution, it was not possible to judge the relevance of the citation *vis-à-vis* the scope of the Protocol.

Paragraph beginning with “CONSIDERING”

212 The Committee approved this paragraph, unchanged.

213 One delegation, noting that the draft protocol contained a reference to nuclear, biological and chemical weapons and other explosive devices of mass destruction, the transport of which under certain conditions might constitute a criminal offence, proposed that the preamble should contain a reference to the will of the international community to eliminate those weapons. In this connection, reference was made to the “millennium declaration”. The proposed paragraph could be inserted as the penultimate paragraph and would read as follows:

“REAFFIRMING our resolve to do our utmost to eliminate weapons of mass destruction and in particular nuclear weapons, and to maintain open all options to achieving this aim,”.

214 This proposal received no support. It was noted that the scope of the Protocol to the SUA Convention did not extend to the elimination of weapons of mass destruction. Accordingly, the proposed language, although agreed internationally, had no place in this preamble. The view was also expressed that the proposed wording would upset the balance of the preamble and would be unacceptable to many States.

For the information and assistance of delegations, the revised draft protocols, as agreed by the Committee at this session and as edited by the Secretariat following the meeting, are attached as annexes 4 and 5 to this report.

E DRAFT CONVENTION ON WRECK REMOVAL (agenda item 5)

215 The Committee continued with its consideration of this agenda item. The delegation of the Netherlands, as lead country for the intersessional consultations, introduced document LEG 90/5. In so doing, it summarized the work done between the two sessions and the results of the consultations, and explained the content of the annexes to the document. It noted that the revised text of the draft convention on wreck removal (DWRC) in annex 1 included amendments agreed by the Committee at its eighty-ninth session, appearing in italics, amendments discussed and agreed by the Working Group at the eighty-seventh session, or at the eighty-sixth session, but not discussed by the Committee, which were underlined, drafting proposals suggested by the Secretariat in document LEG 89/5/1.Rev.1, which were in bold and underlined and proposals developed intersessionally following the eighty-ninth session, which appeared in bold type. Both the underlined and the text printed in bold needed approval by the Committee. It noted further that annex 2 contained explanatory notes on the amendments in annex 1, and annex 3 contained the proposals that were not incorporated into the revised DWRC, together with comments regarding the reasons for not including those proposals.

216 The delegation thanked those delegations that had participated in the intersessional work and expressed the hope that, also at this session, negotiations would continue to be fruitful, taking the DWRC a step closer to a diplomatic conference.

217 In introducing documents LEG 89/5/4 and LEG 89/5/5 the delegation of Canada recalled that, at the last session, the Legal Committee had decided to postpone the consideration of these documents to the present session.

218 With regard to document LEG 89/5/4, the delegation commented that, as currently drafted, paragraph 1 of article 6 did not specifically identify the person or persons with direct operational control of the ship, namely, the master of the ship or another person having charge of the ship at the time of the wreck. A number of major IMO Conventions such as MARPOL 73/78 (Article I, Protocol I), SOLAS 1974 (Regulation 2, chapter V) and OPRC 1990 (Article 4) expressly identified the master as the person primarily responsible for reporting various types of information to relevant authorities. The drafting proposal in the Canadian submission was modeled on article I, Protocol I of MARPOL 73/78 and placed the responsibility for reporting on those on board the ship at the time of an incident and, where such reporting was not possible, the burden of reporting was placed on other parties.

219 However, following intersessional consultations with interested delegations, the Canadian delegation had reached the conclusion that it would be possible to obtain the desired aim, without departing substantially from the present draft. Accordingly, paragraph 1 of article 6 could read as follows:

“States Parties shall require the master or operator of the ship to report without delay a wreck to the Affected State.”

220 Most delegations that spoke expressed their support in principle for the Canadian proposal. It was suggested, however, that the proposal might be improved in the light of the following comments:

- The position of the master and the operator was relative. It would therefore be unfair and impracticable to place the obligation to report primarily on the master, since the master could be in a situation of distress. The obligation should be placed on the master only as appropriate, or where practicable;
- In order to cover all situations, it might be better to place the obligation on the master and/or the operator, whoever has the responsibility under the circumstances;
- The obligation to report should be made to apply only with respect to ships under the jurisdiction of a State Party to the treaty, i.e. flying the flag of a State Party to the draft convention.

221 The Committee agreed to revert to the proposal once delegations had had an opportunity to further consider these proposals.

222 Turning to document LEG 89/5/5, the delegation of Canada noted that the contradiction between the expression “shall be applied” (line 2 in the *chapeau* of article 7) and the expression “as appropriate” (line 1 of the *chapeau* of article 7) may create an unintended ambiguity, in the sense that the word “shall” is typically employed in describing a mandatory requirement, whereas, the expression “as appropriate” implies the conferring of a discretion and would be used to structure a provision that is recommendatory in nature. It had therefore recommended correcting that ambiguity by proposing a new text for the *chapeau* of this article in the document under consideration. In the light of intersessional consultations, however, the delegation proposed the following text for the *chapeau*:

“When determining whether a wreck poses a hazard, the following *factors*, as appropriate, and without regard to the order in which they are presented, *should be taken into account* by the Affected State:”.

223 One delegation noted that the wording in the present draft *chapeau* already gave sufficient flexibility to the Affected State. However, a substantial majority of the delegations that intervened in the debate agreed that the new text was preferable as it removed all ambiguity and ensured flexibility in the application of the criteria. In this connection the Committee noted an intervention by the representative of the Comité Maritime International (CMI), that the word “factor” was to be preferred to the word “criteria”, as used in article 13 of the 1989 salvage Convention as it enabled the Affected State to apply the factors relevant to each particular case.

224 The Committee approved the text for the *chapeau* of article 7 proposed by the delegation of Canada.

Document LEG 90/5/3

225 The Committee noted the information provided by the Secretariat in document LEG 90/5/3 concerning the expression of encouragement by the Contracting Parties to the London Convention, 1972 at their 26th Consultative Meeting (1 to 5 November 2004) to make every effort to conclude the negotiations on the DWRC as soon as possible.

Statement by Japan

226 The delegation of Japan informed the Committee that Japan had amended its national legislation concerning liability for oil pollution damage, in particular, the problems caused by abandoned shipwrecks in Japanese waters. Further information can be found in IMO Circular letter No.2616 dated 28 January 2005.

Draft Article 1 – Definitions

Paragraph 1 – “Convention area”

227 The Committee approved this definition.

Paragraph 2 – “Ship”

228 The Committee was informed by the Secretariat that it had consulted with the Maritime Safety Division, and there was no technical problem identified with this definition.

229 The Committee approved this definition.

Paragraph 3 – “Maritime casualty”

230 The Committee was informed by the Secretariat that it had consulted with the Maritime Safety Division, and there was no technical problem identified with this definition.

231 The Committee approved this definition.

Paragraph 4 – “Wreck”

232 The observer delegation of the CMI referred to its proposal contained in document LEG 90/5/2, paragraph 1(a), concerning the definition of “Wreck” to cover circumstances when the salvors were not taking effective action. The observer suggested a modification of its proposal by proposing that the word “effectively” be inserted before the word “assist” in paragraph 4(d) of draft article 1.

233 While it was noted that a similar proposal had been discussed by the Working Group but not accepted, the Committee reconsidered the matter and agreed to this proposal.

234 The Committee also agreed to the insertion of the words “to” after the words “sink or” and to insert the words “the ship” after the word “assist” as recommended by the Working Group.

235 The Committee approved this definition, as amended.

Paragraph 5 – “Hazard”

236 The Committee approved this definition.

Paragraph 6 – “Related interests”

237 The Committee approved this definition.

Paragraph 7 – “Removal”

238 The Committee agreed to the deletion of the words “proportionate to the hazard” as recommended by the Working Group.

239 Noting that there were variations of the term “removal” used in the draft text of the Convention, the Committee agreed to the addition of the following sentence: ““Remove”, “Removed” and “Removing” shall be construed accordingly.”

240 The Committee approved the definition, as amended.

Paragraph 8 – “Registered owner”

241 The Committee approved this definition.

Paragraph 9 – “Operator of the ship”

242 The Committee approved this definition.

Paragraph 10 – “Territorial Sea” and “The Affected State”

243 The Committee agreed to the deletion of the term “Territorial Sea” and its definition as recommended by the Working Group.

244 The observer delegation of the CMI informed the Committee that it was withdrawing the proposal contained in document LEG 90/5/2, paragraph 1(b) concerning the definition of “Affected State” in draft article 1(10).

245 The concern was expressed that this definition might raise a problem with regard to wrecks located in the Territorial Sea; however, it was also noted that a number of other provisions are in place to address that issue, including the definition in article 1(1) of “Convention area”, article 3, paragraph 2 on a State Party’s ability to make a declaration on application of the Convention to its Territorial Sea; and draft article 17 on the relationship of the Convention to other international agreements including UNCLOS.

246 The Committee approved the definition of the term “The Affected State” and agreed that this expression should be harmonized throughout the draft text.

247 One delegation expressed the view that the term “Affected State” might cause confusion in relation to the other States which are affected by the wreck and in which convention area the wreck is not situated.

Paragraph 11 – “State of the ship’s registry”

248 The Committee approved this definition.

Paragraph 12 – “Warship”

249 The Committee approved this definition.

Paragraph 13 – “Convention”

250 The Committee agreed to delete this term and its definition.

Paragraphs 14 and 15 – “Organization” and “Secretary-General”

251 The Committee approved these definitions.

Draft Article 2

Paragraph 1

252 Reference was made to the proposals contained in document LEG 89/5/3, which were not fully resolved at the eighty-ninth session of the Legal Committee. The request was made that the paper be considered and it was proposed that the words “of States Parties” should be inserted after the word “wrecks” to clarify that the Convention did not affect ships flying the flag of non State Parties.

253 While there was some support for this suggestion, it was noted that the definition of the term “wreck” extended to an object lost from a ship such as a container which would not be considered to have a flag or otherwise be attributable to a State Party. The view was also expressed that such wording might appear to be a restriction on the sovereignty of a coastal State over its territorial waters.

254 It was noted that, as a general principle of international law, a convention only applied to State Parties to it. Some delegations were, accordingly, of the view that a concern over the application of this Convention to wrecks of non State Parties might be better addressed in the preamble. One delegation, however, noting that the concern was over foreign-flagged vessels, expressed the view that inclusion in the preamble was not a solution as preambular clauses did not create legal obligations.

255 In this regard, it was pointed out that draft article 13 on insurance certificates had application to ships of non State Parties which enter the port of a State Party, and this should be kept in mind in drafting any preambular text on this issue.

256 The majority of delegations which spoke were in favour of retaining the text as it is and the Committee approved the text of paragraph 1 unchanged. The Committee agreed, however,

that interested delegations should pursue the discussion further to see if a better solution might be found before the diplomatic conference.

Paragraph 2

257 The Committee approved the text of paragraph 2, as amended.

Paragraph 3

258 The Committee agreed to the revised wording as recommended by the Working Group to avoid use of the term “third States” and approved the paragraph.

Paragraph 4

259 The Committee approved the text of paragraph 4, unchanged.

Paragraph 5

260 The Committee agreed, as a change consequential to the definition of “the Affected State” to insert the word “Affected” before the final use of the word “State” and to delete the words “in whose Convention area the wreck is located”.

261 It was proposed that the word “Parties” should be inserted immediately after the word “States” at the beginning of the paragraph. It was noted, however, that the provision on co-operation was intended to cover among other cases the situation where a wreck might be located in the Convention area of a State Party but was causing a hazard for another State, and the draft was modelled on article 123 of UNCLOS. It was also noted that the additional word was unnecessary since in any case it would not be possible to compel a non State Party to co-operate.

262 One delegation expressed concern was expressed that the application of this paragraph might be unclear in the case of two States which have not established an exclusive economic zone and therefore supported the inclusion of the word “Parties”. It was noted, however, that the definition of “Convention area” accounted for this possibility.

263 The Committee agreed to the new wording contained in document LEG 90/WP.8: “State Parties shall endeavour to co-operate when the effects of a maritime casualty resulting in a wreck affect a State other than the ‘Affected State’.”

264 The observer delegation of the CMI informed the Committee that it was withdrawing the proposal contained in document LEG 90/5/2, paragraph 1(c) concerning a savings provision for the 1969 Intervention Convention in draft article 5.

Proposed article on compensation

265 The observer delegation of the CMI referred to its proposal in document LEG 90/5/1, paragraphs 9 to 11, to include a new article on compensation for damage caused by measures taken by a State Party which exceed those reasonably necessary to remove a wreck posing a hazard or are in contravention to the provisions of the convention. Proposed texts for either a broad provision on compensation for all resulting damage or for a narrow provision focussing only on damage to salvors were offered for the Committee’s consideration.

266 The observer delegations of the ICS, the P & I Clubs and the ISU expressed their support for the proposal.

267 It was noted by a number of delegations that such a provision was contained in the 1969 Intervention Convention, and, with respect to delay of ships, in MARPOL 73/78 and SOLAS 74/78, but it was not included in the other liability and compensation conventions such as CLC, HNS and Bunkers.

268 Although there was some support in principle for the introduction of a broad provision on compensation, most delegations which spoke expressed the view that a provision to give a private right of action against a State Party was not necessary; it would complicate implementation of the convention; and the absence of such a provision would not in any case interfere with existing general law on State liability.

269 The Committee decided not to include an article on compensation.

Proposed article on jurisdiction

270 The observer delegation of the CMI informed the Committee that it was withdrawing the proposal for a new article on jurisdiction as presented in paragraph 12 of document LEG 90/5/1.

Draft Article 3

Paragraphs 2 and 3

271 The Committee discussed the words in square brackets “[articles ... of]” in paragraph 2. Some delegations that spoke favoured retaining an “opting-in” clause that would apply to the whole convention and not just refer to certain articles. In the opinion of those delegations, that option would ensure transparency and uniformity of application. It would also avoid the risk of complicated treaty relationships which might otherwise ensue if selective opting-in were permitted.

272 Other delegations that spoke favoured maintaining a selective opting-in clause, noting that this would be helpful for States in applying their national legislation with respect to the recovery of costs, compulsory insurance and direct action. Maintenance of such a clause might also encourage States to ratify the convention.

273 In the opinion of most delegations, however, these provisions were superfluous as nothing prevented a State Party from applying some or all the provisions in the draft convention to its territorial seas. The two paragraphs added no value to the text, and should therefore be deleted.

274 The Committee decided to delete paragraphs 2 and 3. The Committee noted the intention of one delegation to revert exceptionally to this decision since the possibility to apply the treaty or part of it in the territorial sea would facilitate the effective recovery of the costs of wreck removal, through compulsory insurance and direct action.

Article 4

275 The Committee approved this article, unchanged.

Article 5

276 The representative of the CMI, in order to improve the draft, proposed replacing the words “as described” in the first line of the article with the words “taken under the”.

277 The Committee approved the wording proposed by the CMI.

278 One delegation proposed combining the provisions in articles 5 and 17, since these both dealt with the relationship between treaties. It was noted, however, that the two provisions had a different focus and that article 5 was intended to clarify the scope of the draft convention *vis-à-vis* the Intervention Convention. In the light of this discussion, the Committee decided not to combine the two articles.

Article 6

Paragraph 1

279 The delegation of Canada introduced the following new text for article 6, paragraph 1, which had been agreed at a meeting of a group of delegations:

“A State Party shall require the master and the operator of the ship flying its flag to report to the Affected State without delay, when a maritime casualty involving that ship has resulted in a wreck. To the extent that the reporting obligation under this article has been fulfilled by the master or operator, the other of them shall not be obliged to report accordingly.”

280 The Committee, noting that the proposed wording addressed the concerns which had been expressed with regard to the earlier proposal, approved the new text.

Paragraph 2

281 The Committee then discussed a proposal by one delegation to insert in article 6, paragraph 2 the requirement that information concerning the identity of the registered owner be provided in the report to the Affected State.

282 The Committee was evenly divided on the need for this insertion. Some delegations were of the view that this information should not be included as it was not relevant to the consideration of whether the wreck posed a hazard. Other delegations noted that the identity of the ship owner was not applicable in respect of cargo or containers falling from the ship. The view was also expressed that information concerning the identity of the registered owner was readily available in the public domain and that, by virtue of the inclusion of the term “*inter alia*”, the Affected State could always request such information.

283 Other delegations were of the view that the inclusion of this requirement was desirable in that it would add transparency to the convention. These delegations also noted that the information would facilitate making contact with the registered owner, including, *inter alia*, for the purposes of establishing a time limit in connection with the removal of the wreck. The view was also expressed that, although technically cargoes and containers had no flag State, nevertheless, because they were transported by ship, in practice information regarding the registered owner of the vessel might be useful.

284 Some delegations noted that they were not opposed in principle to the inclusion of this requirement but that it might be better placed elsewhere in the draft text, possibly in article 1(9) or article 10.

285 The Committee approved the wording contained in document LEG 90/WP.8 for paragraph 2 as follows: “Such reports shall include the name and the principal place of business of the registered owner and all the relevant information necessary for the Affected State to determine whether the wreck poses a hazard in accordance with the criteria in article 7, including, *inter alia*:

(a)

(b)

286 One delegation thought that the inclusion of the particulars of the “registered owner” was redundant.

Article 7

287 The Committee recalled that it had already dealt with the *chapeau* of this article and noted information by the delegation of the Netherlands that the wording “in the area” in paragraph (b) had been added for consistency with paragraph (c).

288 The Committee adopted the text of this article, as amended.

Article 8

289 The Committee noted the drafting proposal introduced intersessionally in order to clarify the scope of application of the draft convention, i.e. the Convention area.

290 The Committee adopted the text of this article, as amended.

Article 9

291 The Committee approved the redraft of paragraph 3 as proposed by the Secretariat in document LEG 89/5/1/Rev.1.

292 The Committee adopted the text of this article, as amended.

Article 10

Paragraph 1

293 The observer delegation of the CMI referred to its proposal in document LEG 90/5/1, paragraph 8, to include salvors in the consultation process in paragraph 1 of draft article 10.

294 The observer delegation of the ISU expressed the view that the current wording was acceptable and there was no need to include an explicit reference to the Salvage industry in this article.

295 Although one delegation supported the proposal, it was noted that salvage measures were addressed in the savings provisions in paragraph 2 of draft article 12, and a special duty to

consult with salvors might create confusion. The view was also expressed that affected States are likely to consult with all interested parties, and it was not necessary to make consultation with salvors an explicit obligation.

296 The Committee decided not to include the proposal text in paragraph 1 of draft article 10.

297 The Committee discussed two alternative proposals. One was to add the words “, if known” at the end of paragraph 1(a). The other proposal was to add the following wording at the end of that paragraph “, whose contact details should be provided by the State of the ship’s registry”. Several delegations preferred the provision as drafted. It was further noted that the treaty would only impose the obligation to inform on States Parties.

298 The Committee noted that paragraph 1(b) appeared in bold type in error.

299 The Committee decided to defer the conclusion on this paragraph, pending examination of the proposal for paragraph 2 of article 6.

Paragraphs 2 and 3

300 The Committee approved the texts of these paragraphs, as amended.

Paragraphs 4 and 5

301 One delegation expressed reservations regarding the use of the word “salvor” in paragraph 4, since the Convention might apply when no salvage operation was being carried out. In order to avoid misunderstanding, a proposal was made to replace the word “salvor” with the word “person”. Other delegations suggested, further, that the word “person” could be qualified with adjectives such as “specialized” or “competent”.

302 One delegation proposed the addition of the word “effectively” after the word “proceed” in paragraph 4 in order to give the Affected State sufficient flexibility to intervene if it had concerns about the manner in which the removal operation was being carried out. It was agreed to add the word “effectively”.

303 The delegation of Germany introduced document LEG 90/WP.7. The proposal contained in this document concerned the re-arrangement of the second sentence of paragraph 4 and paragraph 5 of article 10 and included the word “effectively” in paragraph 5. The Committee approved these changes.

Paragraphs 6 and 7

304 The Committee approved the text of these paragraphs, as amended.

Paragraph 8

305 The observer delegation of the CMI referred to its proposal contained in document LEG 90/5/2, paragraph 1(e) concerning the discretion of a State to take action to remove a wreck under urgent and exceptional circumstances. The observer suggested a modification of its proposal by the following wording at the beginning of paragraph 8: “If, however, immediate action is required and the Affected State has informed the State of the ship’s registry ...”. The Committee approved the paragraph with the amendment.

Paragraph 9

306 The Committee approved the text of this paragraph, as amended.

Paragraph 10

307 The Committee noted the comment by one delegation that, from a treaty law perspective, this paragraph was redundant. The Committee, however, decided to retain it.

Article 11

Paragraph 1

308 The Committee approved the Secretariat's drafting proposal in paragraph 1.

309 One delegation, referring to the exemptions from liability in subparagraphs (a), (b) and (c), noted an apparent discrepancy if this was compared with paragraph 2 of article 10, which contained no exemptions.

310 Another delegation noted that the draft convention might be difficult to apply where terrorist acts are concerned. It was noted that work was underway to find an appropriate common solution to address this problem with respect to all liability and compensation regimes.

Paragraph 2

311 The Committee discussed a proposal to redraft paragraph 2 along the lines of article 6 of the Bunkers Convention. Following informal consultations, this proposal was agreed to. It was noted that the new wording would require consequential amendments to paragraph 11 of article 13. Some delegations, while supporting in principle the proposed amendment, reserved their position until they saw the redraft at the next session of the Committee.

Paragraph 3

312 The Committee approved this paragraph, unchanged.

Additional comments

313 One delegation questioned why the draft convention did not contain any provisions on channelling of liability similar to those in other liability and compensation conventions developed by the Committee. In this connection, it was noted that, contrary to those conventions, the draft wreck removal convention did not regulate liability but was concerned only with the expenses connected with the removal of wrecks.

314 The Committee agreed that further work was required on the question of channelling.

Article 12

315 The observer delegation of the CMI informed the Committee that it was withdrawing the proposal contained in document LEG 90/5/2, paragraph 1(f) concerning the use of the term "conflict" in the *chapeau* of draft article 12(1).

316 The delegation of the Netherlands commented that the text in bold characters in the *chapeau* of paragraph 1 had been developed intersessionally, to make sure that there is no possibility of double recovery of the costs.

317 Some delegations stated that they would have preferred the wording proposed by the CMI in paragraph 1(f) of document LEG 90/5/2 “established or explicitly excluded under ...”, which had been withdrawn.

318 Other delegations favoured the provision as drafted in document LEG 90/5, because it made it clear that the draft convention would apply to losses only to the extent that they did not conflict with existing international liability regimes, or equivalent national law.

319 The Committee approved the text of article 12 as contained in document LEG 90/5, subject to reaching agreement on a suitable wording for the *chapeau* of paragraph 1.

Article 13

320 The delegation of the Netherlands commented that, except for some editorial amendments proposed by the Secretariat and consequential amendments to paragraph 11, the article had been discussed and largely accepted.

321 With reference to paragraph 1, one delegation proposed to replace the words “at least” with the words “that is equal”. However, other delegations favoured retaining the words “at least”. There was no agreement in the Committee in this regard and it was decided that this issue should be studied further intersessionally.

322 One delegation questioned the reason for deleting the reference to the word “certified” in paragraph 3. It noted that paragraphs 6 and 7 contained the same wording and suggested that the word should be retained because issuing and certifying were two different processes. It was agreed that this matter should be looked into further, bearing in mind the Bunkers and HNS Conventions.

323 With reference to paragraph 4(b)(i), one delegation proposed the insertion of the words “or organization”, for consistency with paragraph 4(a).

324 The Committee approved this proposal.

325 The Committee noted a declaration by the representative of the P & I Clubs that the Clubs would cover wreck removal up to the applicable legal limit of liability, regardless of whether or not a State had made reservation under the LLMC.

326 Intervening in this connection, the representative of the CMI reminded delegates that the certificate of insurance issued under the convention will not indicate a specific figure as a limit, either in SDR or in currencies, but will refer to a limit fixed in the 1976 LLMC as amended. He stated that he understood that the limit of liability and of the certificate issued under this convention would be the 1976 LLMC limit of liability of the ship in question, as increased by the Protocol of 1996, even for a wreck in the convention area of a country which has not ratified or acceded to that protocol. He also confirmed his understanding that the cover presently provided by the P & I Clubs extends to the applicable limit of liability in the country in question.

Article 14

327 The Committee approved the text of this article, unchanged.

Article 15

328 In introducing this article, the delegation of the Netherlands noted that the text underlined in bold in the second paragraph had been proposed by the Secretariat.

329 The Committee approved the text of this article, unchanged.

Article 16

330 One delegation reserved its position on the Final Clauses, due to the absence of the experts in its delegation.

331 With reference to the second line, one delegation, noting that the definition of “Convention” had been deleted from the draft, suggested the replacement of the article “the” with “this”, to read “this Convention”.

332 The Committee approved this article, as amended.

Article 17

333 In introducing this article, the delegation of the Netherlands noted that the text was based on the Ballast Water Convention.

334 While supporting the article, one delegation commented that the reference to “customary” law was not necessary. It proposed the following text:

“Nothing in this Convention shall prejudice the rights and obligations of any State under international law, such as the United Nations Convention on the Law of the Sea.”

335 The Committee was divided on this proposal. It was agreed that this article required further intersessional work.

Articles 18 to 22

336 The Committee noted that articles 18 to 22 contained standard final clauses provisions.

337 The representative of the CMI proposed to replace the word “agreement” in the last line of paragraph 2 of article 19 with the word “accordance”.

338 The Committee approved this proposal.

339 One delegation expressed concern about the absence of tonnage requirement in article 19, noting that financial contributions to the IMO budget were based on tonnage.

340 Interested delegations were encouraged to continue working intersessionally under the leadership of the delegation of the Netherlands to further refine the text and to submit documents at the ninety-first session of the Committee.

341 The Committee noted a suggestion that at the next session it would be useful to have the comments received in footnotes to the draft treaty, as was done for the draft SUA protocols.

F PROVISION OF FINANCIAL SECURITY (agenda item 6)

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

342 The representative of the International Labour Organization (ILO) introduced document LEG 89/6/1, containing information on the development by ILO of a joint database on incidents of abandonment of seafarers. This should facilitate monitoring of the problem in a comprehensive and informative manner. At the present testing stage, the database was not open to the public and was password-protected.

343 He then read a letter from the letter dated 18 April 2005, from Mr. J.M. Schindler, Chairman of the Joint IMO/ILO *Ad Hoc* Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers to Mrs. C. Doumbia-Henry, Director, International Labour Standards Department, ILO. In that letter, Mr. Schindler acknowledged that the database appeared to meet the requirements of the Joint Working Group and thanked the International Ship Suppliers' Association for its financial support in the implementation of that project.

344 He also noted that, while checking the accuracy of the information communicated by Governments and other organizations related to the abandonment of ships and seafarers was essential, ILO did not appear to be, for the time being, in a position to do so. Governments and organizations were therefore responsible for ensuring that the information supplied was correct. Once the database was made available to the public, it would be imperative that the information therein contained was not subject to controversy. The Chairman referred to a four points' procedure which could help to resolve the problem.

345 Because of the number and variety of cases, the Chairman was unable to give a definition of "resolved case". A resolved case might be the best possible case, namely, once all the crew members of an abandoned ship have been repatriated and have been paid all their outstanding wages. It is important to be able to distinguish, when first looking in the database, ships which no longer represent a problem from those in respect of which a satisfactory solution has not yet been found. Ships no longer representing a problem should also remain in the database, since its principal aim was to give precise statistics on problems linked to abandonment.

346 The Chairman concluded by indicating his view that it was essential to include the subject in the agenda of the next meeting of the Joint Working Group, to be held in September 2005. The matter would then be submitted for consideration of the IMO Legal Committee and the ILO Governing Body.

347 The representative of the International Shipping Federation (ISF) stated that ISF supported the establishment of a database to monitor cases of abandonment. ISF had participated in the testing phase by investigating as many cases as possible through its member contacts around the world and through the ITF. During the testing phase, a number of issues had arisen which were yet to be settled. A significant proportion of the cases initially cited had been resolved, but their entries remained on the database. ISF believed 10 out of the 22 cases reported had been resolved. Some of these seemed to be related to fishing vessels, which were not within

the remit of the Joint Working Group. There was also no common interpretation of the terms used in the database; most crucially what amounted to a resolution of a case.

348 The representative of ISF stated that it was important to keep the database up-to-date and that no misleading impression was given concerning the real number of active cases at any one time. If a case had been resolved, then it should not remain as an entry or it should at least be clearly indicated that it has been resolved. ISF also questioned the compelling need to convene the Joint Working Group this year.

349 The representative of the ILO stated that, pending agreement by the Social Partners, the database would not be open to the public prior to the Joint Working Group meeting in September 2005.

350 One delegation, while welcoming the demonstration of the database, stated that it was essential to ensure that it contained reliable information. It suggested that the information might be divided between historical and current cases and commercial and fishing vessels. When fully functioning, it expected IMO and ILO Members to be given the password.

351 The representative of the ILO noted that, although ILO was not able to control the accuracy of the information effectively, the provider had no interest in submitting incorrect information, since the data was subject to verification by the Port State, the Flag State, the ITF and the ISF.

352 The Legal Committee noted the information submitted by ILO and the concerns of the ISF. The Committee agreed that the sixth session of the Joint Working Group will be held from 19 to 21 September 2005.

(ii) Follow-up on resolutions adopted by the International Conference on the Revision of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 (agenda item 6)

Bareboat chartered vessels

353 The representative of the observer delegation of the CMI introduced document LEG 90/6 which contains the result of research by the CMI into the effect on the rights of passengers of a ship being bareboat chartered under the 1974 Athens Convention and its 2002 Protocol. On the basis of the findings reflected in this document, he informed the Committee that, in practice, claimants' rights would be protected through checking by flag and port States of the existence for each ship of insurance or other financial security. Assuming that, in all proceedings commenced, the passenger would sue the company which issued the ticket and/or the actual carrier would always join the insurer or provider of financial security as primary or secondary defendant.

354 The Committee took note of the information provided by the CMI. It decided that no further action was needed to comply with the request contained in the resolution adopted at the 2002 Diplomatic Conference. The Committee thanked the CMI for its co-operation in the implementation of this agenda item.

Correspondence Group on the Athens Convention 2002: draft Assembly resolution

355 The Committee noted the information provided in document LEG 90/6/3 that discussions had continued with insurers intersessionally on the issue of insurance cover for acts of terrorism under the 2002 Athens Protocol. The Committee also noted the proposal in document

LEG 90/6/2 that an Assembly resolution should be developed recommending that States Parties agree to interpret an “act of war” in article 3(1)(a) of the Convention as including an “act of terrorism”. This document also suggested that it would also be necessary to take steps regarding the use of the so-called “bio-chem” exclusion in the marine insurance market (e.g., “In no case shall this insurance cover loss, damage, liability or expense directly or indirectly caused by or contributed to, by or arising from any chemical, biological, bio-chemical, or electromagnetic weapons.”).

356 As a result of informal consultations during the session, a draft resolution was prepared for the Committee’s consideration (LEG 90/WP.9, annex, subsequently revised as LEG 90/WP.9/Rev.1, annex).

357 It was explained that one of the main obstacles to ratification of the 2002 Athens Protocol was the concern about acts of terrorism and damage caused by bio-chemical and electromagnetic weapons. The preferred solution was determined to be a process by which a State could use a reservation in its instrument of ratification to enable it to issue insurance certificates and meet its obligations under the Protocol even if the insurance cover allowed for exemptions from these risks. This approach was considered to be in line with article 19 of the 1969 Vienna Convention on the Law of Treaties, particularly since the 2002 Athens Protocol contains no restrictions on the use of reservations.

358 The Committee noted that the draft resolution would recommend that States Parties ratify the Athens Protocol with the reservation that they reserve the right to issue and accept insurance certificates with such special exceptions and limitations as the insurance market conditions at the time of issue of the certificate necessitate, such as the bio-chemical clause and terrorism related clauses. The Committee also noted that the draft resolution would call on the Legal Committee to develop guidance to promote uniformity in any arrangements and that the issue of carrier liability would be dealt with intersessionally in the Correspondence Group.

359 The observer delegation of the P & I Clubs, supported by the delegation of IUMI, expressed its broad support for the approach taken in the draft resolution but noted that it did not address other issues raised in document LEG 90/6/2, including the issue of capacity and carrier liability which would be dealt with separately. The observer delegation of the P & I Clubs also said it needed assurance that the claimant’s right to proceed directly against the insurer under article 4*bis*, paragraph 10 would in all cases be subject to the agreed form of reservation and the qualifications expressed in the certificates. In this regard, the delegation indicated that appropriate assurances would be sought on this important point of principle in the Correspondence Group.

360 The observer delegation of ICS agreed that the draft resolution offered a pragmatic solution to the certification problem but pointed out that the issue of carrier liability was different and required further attention. This delegation expressed the view that the legal structure of the Protocol could lead to a situation where the carrier would be strictly liable without any fault on its part for acts of international terrorism without having the possibility of getting sufficient insurance for such liability. The only way out, according to this delegation, was to interpret the words “war and hostilities” in the Protocol in a way that included those acts of international terrorism which are in nature and extent similar to the excluded hostilities within the exclusion of liability for war and war-like operations. This principle had been adopted by UNCITRAL in its preparation of a convention to replace the Hague-Visby and Hamburg Rules and this approach should be considered by the Correspondence Group.

361 The view was expressed that the approach recommended in the draft resolution should be considered to be an extraordinary measure which was necessitated by the realities of the insurance market, and it should be reconsidered in due course in light of changes in that market.

362 One delegation noted that it could not adopt a final position on the draft resolution and that it would need time to consult with its capital on the application of the Vienna Convention. This delegation also suggested that any efforts to clarify carrier liability for risks associated with terrorism and war would need to be addressed comprehensively in the context of other liability and compensation conventions where similar wording was employed in the provisions on exceptions.

363 The Committee welcomed the approach reflected in the draft resolution and recognized that further work would be needed to develop the guidance called for in the draft resolution as well as to address other outstanding issues relating to the 2002 Athens Protocol, including the liability issues. The text of the draft resolution is attached as annex 6 to this report. The Committee requested the Correspondence Group to develop recommendations on these matters for the Committee's consideration as a matter of priority. The Correspondence Group will be led by Professor Erik Rosaeg (Norway), whose contact details are as follows:

E-mail: erik.rosag@jus.uio.no
Telephone: +47 228 59752.

The Committee also requested the Secretariat to bring the recommendations contained in the draft resolution to the attention of any State which submits an instrument to become a Party to the 2002 Athens Protocol prior to the twenty-fourth session of the Assembly.

364 The Committee approved the draft resolution as at annex 2 for submission to the twenty-fourth session of the Assembly.

365 The Committee agreed that its work on development of guidance on interpretation and implementation of the 2002 Athens Protocol and other liability and compensation conventions should be added as a third item in the column on "Planned Output 2006/2007" in the row parallel to number 2.1 of the "High Level Action" column (in annex 2 to document LEG 90/10).

G FAIR TREATMENT OF SEAFARERS: REPORT ON THE FIRST SESSION OF THE JOINT IMO/ILO *AD HOC* EXPERT WORKING GROUP ON FAIR TREATMENT OF SEAFARERS (agenda item 7)

366 The Committee continued with the consideration of this agenda item.

367 The Chairperson of the IMO/ILO *Ad Hoc* Expert Working Group on Fair Treatment of Seafarers (hereinafter "the Group") referred to the report of the first session of the Group. She noted that the Group had agreed that, although some international agreements highlighted problems related to the question of fair treatment of seafarers, none of them addressed the issue in a comprehensive way. The Group had been able to prepare a draft resolution for approval by the Committee and thereafter formal adoption by the Assembly, but there had been insufficient time to complete the task of developing guidelines. The Chairperson highlighted the Group's debate on whether the terms of reference, which at present refer to the fair treatment of seafarers in the event of a maritime accident, should be expanded to include maritime incidents in general.

368 The representative of the International Labour Organization (ILO) informed the Committee that the Governing Body of the ILO had approved the text of the draft Assembly

resolution and the terms of reference, as approved by the Legal Committee at its eighty-ninth session.

369 The Committee thanked the Chairperson and the Group for their work at the first session of the Group.

370 The representative of the International Federation of Shipmasters Associations (IFSMA) introduced documents LEG 90/7/1, LEG 90/7/2 and LEG 90/7/3 containing, respectively, a proposal to amend the terms of reference, comments on open issues, and information on the outcome of the IFSMA Conference held in February 2005.

371 The Committee considered the draft resolution, the continuation of the activities of the Group and the proposed amendments to the terms of reference.

Draft Assembly resolution on guidelines on fair treatment of seafarers in the event of a maritime accident

372 One delegation emphasized the importance of ensuring that neither the resolution nor the guidelines interfered with the independence of the judiciary. This delegation also noted that neither MARPOL nor the IMO Code for the Investigation of Maritime Casualties and Incidents should be mentioned in the preambular paragraphs, since these instruments were not related to the fair treatment of seafarers. It also expressed its opposition to the inclusion in the resolution of an authorization for the Legal Committee to promulgate the guidelines. In its view, there was no justification for such exceptional procedure, and the guidelines were important enough to merit their formal adoption by the IMO Assembly.

373 This delegation, supported by another delegation, criticized the reference to “hostages” in a preambular paragraph, which projected a negative image of the maritime sector. It was suggested that the expression “detained” could be used instead. It was also suggested that operative paragraph 1 of the resolution be broadened to include a reference to shipowners of operators.

374 The observer delegation of IFSMA proposed the deletion of the word “direct” in the paragraph beginning “recognizing also”, bearing in mind that the main responsibility clearly fell upon port States.

375 Another delegation reminded the Committee of its submission to the Council (document C 92/6/1) in which it reaffirmed its view that, rather than guidelines on maritime accidents, a legally binding instrument should be developed. Alternatively, guidelines could be developed as an interim step towards the adoption of treaty provisions.

376 The overwhelming majority of delegations that spoke approved the present text of the draft resolution. In their view there was an urgent need to prepare guidelines and have them implemented as soon as possible. The adoption of the resolution was only a first step which paved the way for the adoption of guidelines, which all agreed were necessary to ensure the fair treatment of seafarers following maritime accidents.

377 The Committee approved the text of the draft resolution on guidelines on fair treatment of seafarers in the event of a maritime accident contained in annex 5 of document LEG 90/7, unchanged. The text of the draft resolution is attached as annex 7 to this report.

Continuation of the Group

378 The Committee noted that the Group had insufficient time to prepare guidelines. It approved the continuation of its deliberations, as well as the establishment of a correspondence group to assist its progress during its intersessional period, led by the Chairperson, H.E. Ms. Liliana Fernandez. She requested all those who wished to be included in the deliberations of the Correspondence Group to provide their email addressed to her. Ms. Fernandez details are as follows:

E-mail: lfernandez@panamauk.org

Telephone: +44 207 409 2255.

Terms of reference of the Group

379 The Committee discussed whether the terms of reference of the Group were too restrictive and whether they should be expanded to include, *inter alia*, “incidents”.

380 In the view of several delegations this amendment was needed to address situations different from mere accidents, where the fair treatment of seafarers could be compromised. Reference was made to maritime incidents consisting of acts or omissions on board ships which, while not being technically accidents, might result in unfair treatment to seafarers. It was also suggested that commercial disputes relating to the ship or cargo might also be included, to take account of situations where the master or other seafarers have been held vicariously liable when the owner or charterer did not comply with their obligations.

381 Several delegations expressed their support for a definition of maritime accident in order to avoid legal uncertainties which could arise as a result of disparities in interpretation under different domestic legal systems. In this regard the definition proposed by IFSMA in LEG 90/7/1 was seen as a good starting point but needed further analysis. The point was made however that any such definition should be confined to situations governed by public law and should not extend to commercial disputes.

382 Most delegations did not agree to the modification of the terms of reference. They noted that the introduction of amendments would have to be agreed by the Governing Body of ILO, thus delaying the preparation of the urgently needed guidelines. The view was also expressed that the terms of reference should not duplicate the work of other *fora* such as the IMO/ILO Joint Working Group on abandonment and crew claims.

383 The Committee agreed that the terms of reference should remain unchanged.

H PLACES OF REFUGE (agenda item 8)

384 The observer delegation of the CMI introduced document LEG 90/8 providing information about existing IMO conventions containing provisions on intervention, liability and compensation regimes. In so doing it noted that the conventions did not contain clear guidelines identifying the duties and obligations of shipowners, States and others when making a request for a place of refuge or when receiving such a request, and did not sufficiently encourage States to grant places of refuge to distressed vessels. It requested the Legal Committee to consider whether work on a new international instrument should be undertaken.

385 The observer delegation of IAPH introduced document LEG 90/8/1 suggesting that the current treaty regime of liability and compensation was not conclusive and therefore not

satisfactory. Even if all the liability and compensation conventions were to enter into force there would still be gaps regarding places of refuge. In this regard, IAPH urged the Committee to develop a convention solely on places of refuge.

386 The observer delegation of the International Group of P & I Clubs introduced document LEG 90/8/2 containing a revised version of the proposed standard form letter of guarantee submitted to the eighty-ninth session of the Legal Committee in relation to vessels granted places of refuge. It noted that, at that session, some delegations had found the limit of US\$10 million was too low. It explained that this was merely an indicative figure and should be included in square brackets. It also emphasized that the purpose of the letter was not to propose a voluntary scheme, but merely to inform the Committee about existing practice of the P & I Clubs.

387 Some delegations supported the proposals of CMI and IAPH for a new convention. It was noted that the subject of places of refuge was unique and that coastal States were innocent bystanders who should be encouraged to grant permission to enter by being assured of receiving adequate compensation. Existing conventions, although useful, did not address these issues and it was not simply a question of filling the gap by national legislation. It was also noted that existing conventions did not satisfactorily address the problem of limitation of liability.

388 However, most delegations that spoke were of the view that there was no need for a new convention. In their view, the existing regime of liability and compensation for pollution damage worked reasonably well. These delegations noted that not all these conventions were in force, and although, as a result, there were gaps in the regime, the proper way to fill the gaps was not by the creation of a new convention or by amending existing conventions but by ratifying and implementing the existing conventions.

389 The view was expressed that it would be premature and possibly even counterproductive to begin work on a new convention at this point in time and that the Committee would only be in a position to make such a decision once all the existing liability and compensation conventions, including the future wreck removal convention, had entered into force.

390 The view was also expressed that instead of adopting a new convention, the existing guidelines on places of refuge might be revised. It was also suggested that there would not be a need for a convention, if substandard ships were eliminated. In response to this, it was noted that accidents were caused not only by substandard ships, but could also involve ships in good condition.

391 One delegation noted that the gaps in the current liability and compensation regime were not, as such, deficiencies and that the instruments in question had been carefully drafted to fulfil particular needs.

392 The observer delegation of the CMI noted its concern that the deletion of the opt-in provision allowing States to apply the draft wreck removal convention to territorial waters might dissuade States from ratifying the convention and might impact on places of refuge, thereby widening the gap even further. This concern was shared by some other delegations which noted that national legislation would find it difficult to fill the gap, particularly with respect to mandatory insurance.

393 The Committee thanked the observer delegation of the P & I Clubs for producing a model letter of guarantee. Several delegations found this model letter useful and noted that letters of guarantee worked well in some jurisdictions. It was noted however that in other jurisdictions

where national law governed the subject of financial guarantees the model letter might not be accepted.

394 The Committee noted that the subject of places of refuge was a very important one and needed to be kept under review. The Committee agreed that at this point in time, there was no need to draft a convention dedicated to places of refuge. It noted that the more urgent priority would be to implement all the existing liability and compensation conventions. A more informed decision as to whether a convention was necessary might best be taken in the light of the experience acquired through their implementation.

395 The Committee expressed its appreciation to the CMI for its efforts in carrying out this study on the places of refuge.

I MONITORING THE IMPLEMENTATION OF THE HNS CONVENTION (agenda item 9)

396 The Committee noted information on the status of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (HNS Convention) submitted by the Secretariat in document LEG 90/9, including that none of the eight Contracting States had submitted information on contributing cargo received. The Committee recalled that States which ratify the HNS Convention were obliged at the time of ratification, and annually thereafter, to provide information on the volume of contributory cargo received during the previous year. This data was essential for the Organization to determine when the entry into force requirements will be met. The failure to provide such information might delay the entry into force of this Convention.

397 The delegation of Denmark reported that the constitutional procedures for the approval of the Convention would be finalized by the end of May 2005. It noted the importance for reporting procedures on contributing cargo to be in place even before the entry into force of the Convention.

398 The delegation of Spain reported that work towards ratification of the Convention was in progress and procedures for reporting contributing cargoes were also being developed in consultation with the industry.

399 The delegation of Canada reported that the Department of Transport would soon be releasing a discussion paper on maritime law reform which would include the issue of acceptance of the HNS Convention.

400 The delegation of Norway reported that public hearings had been held and the draft legislation would soon be submitted to Parliament.

401 The delegation of the United Kingdom reported that the final document had been issued for public consultation and that it was hoped that the United Kingdom Government would ratify the Convention some time in 2005. In his capacity as leader of the Correspondence Group, he stated that it was time to revisit the issue of whether a comprehensive guide on the implementation of the HNS Convention should be developed. Finally, he informed the Committee that the IOPC Fund had organized a workshop on the implementation of the HNS Convention scheduled to take place on 28 and 29 June 2005, at IMO. He noted that following his retirement it would be necessary for someone to take over the responsibility of co-ordinating the HNS implementation and suggested that the IOPC Fund should assume a more active role and work with the Secretariat in this regard.

402 The delegation of Greece reported on ongoing consultations among competent Ministries on the HNS Convention.

403 The delegation of France reported that the ratification process had begun and that national legislation and reporting procedures were being prepared. It also made an appeal to the industry to co-operate in the implementation process.

404 The delegation of the Netherlands informed the Committee of the ongoing work on the implementation and consultation on the HNS Convention. The delegation referred to its intentions to organize an international workshop on the practicalities encountered in port areas in the near future.

405 The representative of the Oil Companies International Marine Forum (OCIMF) stated OCIMF's concern about the failure of Contracting States to submit estimates of their receipts on ratification and annually thereafter. He noted that, from the oil industry perspective, the success of the International Oil Pollution Compensation Funds was largely due to the confidence of the oil industry that all receivers contribute in proportion to their receipts. If the HNS was to be successful, the industry must have the same confidence that all receivers of HNS would contribute equally according to their receipts. States were urged to make use of the valuable resource on the HNS Correspondence website and within the IOPC Funds and IMO Secretariats, to assist them in fulfilling their treaty obligations.

406 The Committee requested the Secretariat to write to Contracting States to the HNS Convention underlining the importance of their obligation, under article 43 of the Convention, to report on contributing cargoes.

407 Noting that it would be the last session attended by Mr. J. Wren, the Committee unanimously acknowledged with gratitude his important personal contribution to the entry into force of the HNS Convention, as the leader of the HNS Correspondence Group.

J MATTERS ARISING FROM THE NINETY-THIRD SESSION OF THE COUNCIL (agenda item 10)

408 The Committee noted the background information provided in document LEG 90/10 that the Council, at its eighty-eighth session, had established an *ad hoc* Council Working Group to draft a strategic plan for the Organization. The first Strategic Plan, for the period 2004 to 2010, was adopted by the Assembly at its twenty-third session (resolution A.944(23)). Subsequently, the Council instructed its *ad hoc* Working Group to prepare high-level action plans and a prioritization of areas of work. The high-level action plan was intended to provide a link between the Strategic Plan and the detailed, outcome-based work programmes of the Committees, without unduly constraining the Committees' work. The Council adopted the draft high-level action plan for the period 2006 to 2009 at its ninety-third session and instructed the Secretariat to forward it to the Committees for consideration with a view to its adoption at the next Assembly. One consequence of the development of the Strategic Plan and the high-level action plan was that the long-term work plan would be discontinued.

409 The Committee noted the table in annex 1 of document LEG 90/10 which sets out the Strategic Plan 2006 to 2009 and the draft high-level action plan as agreed by the Council at its ninety-third session. The Committee welcomed this new approach as being a transparent and balanced framework but expressed its concern that that plan remained flexible enough to allow for adjustment of priorities when necessary.

410 With regard to annex 2 of document LEG 90/10, the Committee recommended that item 2.1 in the column for the high-level actions should be revised to include a reference to development of conventions and should read along the following lines: “Monitor, improve and develop conventions, etc., and provide interpretation thereof if requested by Member States.”

411 The Committee also agreed that its work on development of guidance on interpretation and implementation of the 2002 Athens Protocol and other liability and compensation conventions should be added as a third item in the column on “Planned Output 2006/2007” in the row parallel to number 2.1 of the “High Level Action” column (in annex 2 to document LEG 90/10).

K TECHNICAL CO-OPERATION ACTIVITIES RELATED TO MARITIME LEGISLATION (agenda item 11)

412 The Committee noted the information contained in document LEG 90/11 submitted by the Secretariat, which reviews technical co-operation activities from July 2004 to December 2004.

413 The Director of the Technical Co-operation Division (TCD) of IMO (Mr. David Edwards) provided the Committee with the following additional information on Technical Co-operation (TC) activities in relation to maritime legislation:

- The Technical Co-operation Committee (TCC) at its fifty-fifth session to be held in June 2005 would consider the final report of the Integrated Technical Co-operation Programme (ITCP) for the 2006-2007 biennium (document TC 55/3/3). This was a regionally based programme and thus did not contain a discrete section on maritime legislation. Nonetheless maritime legislation was an important component of the programme since it was concerned with the adoption and implementation of IMO treaties.
- Many requests for assistance for development of maritime legislation were received, and assistance provided, within the framework of the IMO global programme on advisory assistance.
- IMO through its technical co-operation activities continued financing fellowships for IMLI students.
- As part of its technical co-operation activities, IMO was considering innovative tools to assist with the adoption and implementation of IMO instruments, such as e-learning.
- The Legal Committee should consider the possibility of developing a guidance document for consultants on drafting of maritime legislation. The purpose of such a document would be to help national drafters in developing countries to draft their own legislation in situations where IMO was not in a position to provide technical assistance.
- As a result of increased technical co-operation activities, available funding was being rapidly depleted. Future requests for assistance in the field of maritime

legislation should be thus properly prioritized to enable availability of funding resources.

414 The Committee noted with thanks the information provided by the Director, TCD.

L WORK PROGRAMME AND LONG-TERM WORK PLAN (agenda item 12)

415 The Committee noted the information provided by the Secretariat in document LEG 90/12 on the decision of the Council at its ninety-third session regarding the discontinuation of the long-term work plan. In particular, the Committee noted that the Secretariat would discontinue reporting on the work programme and long-term work plan, and would only report on biennium activities, within the context of the Organization's strategic plan.

M REVIEW OF THE STATUS OF CONVENTIONS AND OTHER TREATY INSTRUMENTS ADOPTED AS A RESULT OF THE WORK OF THE LEGAL COMMITTEE (agenda item 13)

416 The Committee took note of the information provided by the Secretariat in documents LEG 90/13 and its annex and LEG 90/WP.1 on the status of conventions and other treaty instruments adopted as a result of the work of the Legal Committee.

417 The delegation of Netherlands reported that legislation concerning the 2003 Supplementary Fund Protocol was approved by its Parliament and it was hoped that within weeks an instrument of accession would be deposited with the Organization.

418 The delegation of Denmark reported that its Parliament was currently considering legislation to implement the HNS and Bunkers Convention.

419 The delegation of Bulgaria reported on the ratification by its Parliament of the 1992 Protocol to the Fund Convention and announced that the instrument of accession would be deposited with the Organization in the near future.

N ANY OTHER BUSINESS (agenda item 14)

(a) Proposed CMI study on the implementation of procedural rules in limitation conventions

420 The representative of the observer delegation of the CMI introduced document LEG 90/14/1 proposing the study of the implementation of procedural rules in limitation conventions and the possibility of establishing a set of uniform rules of procedure for use by States Parties. He noted that a questionnaire was being prepared and would be sent by the CMI to its members. He suggested that, depending on the results of the study, consideration might be given to the production of guidelines or model legislation by IMO to ensure uniformity in the implementation of IMO liability treaties.

421 The Committee thanked the CMI for this initiative and stated its readiness to examine, in due course, the results of the CMI study and its implications, and would then decide on the need for any further action on the part of the Committee.

(b) Proposal to increase the number of pages of non-bulky documents

422 The Committee considered a proposal by the Secretariat in documents LEG 90/14 and Corr.1 that the number of pages of non-bulky documents could be increased from five to six, in line with the practice of the Maritime Safety Committee (MSC) and the Marine Environment Protection Committee (MEPC).

423 In this connection, the Committee noted that the MSC and MEPC had different deadlines for submission of non-bulky documents – 9 weeks for the MSC and MEPC – while the deadline for the Legal Committee is 4 weeks, and that, unlike the Legal Committee, the MSC and MEPC meet on average three times per biennium, for sessions which continue over 8 days. The Committee also noted that the volume of the documents submitted to the MSC and MEPC was considerably higher than the volume of the documents submitted to it.

424 The Committee decided to increase the length of non-bulky documents from 5 to 6 pages and to retain the current deadlines for their submission.

425 As a consequence, the Committee adopted the following amendment to paragraph 20.1 of the Guidelines on Work Methods and Organization of the Work of the Legal Committee:

“(20).1 basic and bulky documents (over 6 pages of text) should be received by the Secretariat not later than 9 weeks before the opening of any meeting of the Committee;”.

The Committee noted that paragraph (20).2 remained unchanged.

ANNEX 1

AGENDA FOR THE NINETIETH SESSION

- Opening of the session
- 1 Adoption of the agenda
 - 2 Report of the Secretary-General on credentials
 - 3 Election of officers
 - 4 Review of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988, and its Protocol of 1988 relating to Fixed Platforms Located on the Continental Shelf (SUA Convention and Protocol)
 - 5 Draft convention on wreck removal
 - 6 Provision of financial security:
 - (i) progress report on the work of the Joint IMO/ILO *Ad Hoc* Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers; and
 - (ii) follow-up on resolutions adopted by the International Conference on the Revision of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974
 - 7 Fair treatment of seafarers: report on the first session of the Joint IMO/ILO *Ad Hoc* Expert Working Group on Fair Treatment of Seafarers (17 to 19 January 2005)
 - 8 Places of refuge
 - 9 Monitoring the implementation of the HNS Convention
 - 10 Matters arising from the ninety-third session of the Council
 - 11 Technical co-operation activities related to maritime legislation
 - 12 Work programme and long-term work plan
 - 13 Review of the status of Conventions and other treaty instruments adopted as a result of the work of the Legal Committee
 - 14 Any other business
 - 15 Report of the Committee

ANNEX 2

REVIEW OF THE CONVENTION FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF MARITIME NAVIGATION, 1988, AND ITS PROTOCOL OF 1988 RELATING TO FIXED PLATFORMS LOCATED ON THE CONTINENTAL SHELF (SUA CONVENTION AND PROTOCOL)**Statement by India**

India has been participating in the exercise to review and amend the SUA Convention in a constructive manner. India fully shares the objective of ensuring the safety of maritime navigation against the threat of terrorism, in particular its links with weapons of mass destruction. India, in fact, has been in the forefront in highlighting the acute danger posed by the threat of terror and WMD proliferation coming together. Since 2002, India has annually piloted a resolution on “measures to prevent terrorists from acquiring weapons of mass destruction”, adopted by consensus in the UN General Assembly.

2. India has outlined its position on various issues for the consideration of the Legal Committee in its Working Paper (LEG 90/4/5). It is essential that the proposed amendments to the SUA Convention are non-discriminatory with identical rights, obligations and responsibilities. Any treaty regime is applicable to the States Parties concerned and cannot be extended or interpreted to extend to non State Parties. India remains constrained to once again record its reservation regarding the incorporation of principles derived from the NPT, to which it is not a State Party, into a Convention primarily meant to ensure the safety of maritime navigation. We have consistently maintained that this is beyond the mandate of the Legal Committee derived from the IMO Assembly Resolution A.924 (22). IMO is not the appropriate forum to discuss exclusively non-proliferation issues.

3. India has cautioned against the temptation to cast the SUA Convention in the NPT framework by extending its principles to the SUA Convention. Some of the principles, under the consideration of the Legal Committee, intend to impose restrictions on peaceful applications of nuclear energy that go beyond existing non-proliferation frameworks and instruments. Amendments to the SUA Convention suggesting curtailment of only the rights of a non-State Party to the NPT to pursue peaceful uses of nuclear energy are clearly discriminatory and exclusive. India is opposed to any curtailment of its right to transport, including on its own civil/commercial vessels, nuclear or nuclear-related dual-use materials, equipment and technologies for use in its civilian nuclear power programme. Nuclear power, as a safe and secure energy source, is an indispensable component for meeting the development needs of a large and growing economy like India. India is committed to exploring its full potential for peaceful purposes.

4. The current text at paragraph 3 *bis* 1 (b) (iii) seeks to outlaw transfers of nuclear or nuclear-related materials, equipment and technologies that are permissible pursuant to facility-specific IAEA safeguards. Needless to add, it is beyond the mandate of the IMO or its instruments to deal with such issues. We also continue to maintain that formulations suggested at Article 3 *bis* (1) (b) (iv) should establish very precise and clear objective criteria for determining the offence.

5. Proposed paragraph 3 *bis* 2 attempts to enshrine in the SUA Convention the rights and obligations of the States Parties to the NPT and seeks to further extend NPT-derived principles with the exclusive purpose of protecting the interests of a few. Its fundamentally discriminatory nature is completely unacceptable to India.

6. India continues to support the evolution of a Protocol to the SUA Convention that would be inclusive and non-discriminatory. This would facilitate wider acceptability of the proposed amendments by the States Parties to the SUA Convention and contribute to the global efforts to combat the threat of WMD proliferation and its links with terrorism.

ANNEX 3

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

Chairman's Proposal

ARTICLE 3bis2

2. It shall not be an offence within the meaning of this Convention to transport an item or material covered by paragraph 1(b)(iii) or, insofar as it relates to a nuclear weapon or other nuclear explosive device, paragraph 1(b)(iv), if such item or material is transported to or from the territory of, or is otherwise transported under the control of, a State Party to the Treaty on the Non-Proliferation of Nuclear Weapons where:
- (a) the resulting transfer or receipt (including internal to a State) of the item or material is not contrary to such State Party's obligations under the Treaty on the Non-Proliferation of Nuclear Weapons and,
 - (b) if the item or material is intended for the delivery system of a nuclear weapon or other nuclear explosive device of a State Party to the Treaty on the Non-Proliferation of Nuclear Weapons, the holding of such weapon or device is not contrary to that State Party's obligations under that Treaty.

ANNEX 4

**CONSIDERATION OF A DRAFT PROTOCOL OF 2005 TO THE CONVENTION
FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY
OF MARITIME NAVIGATION****Prepared by the Legal Committee of the Organization and edited by the Secretariat**

THE STATES PARTIES to this Protocol,

BEING parties to the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (hereinafter referred to as “the Convention”),

ACKNOWLEDGING that terrorist acts threaten international peace and security,

RECALLING resolutions 1368 (2001) and 1373 (2001) of the United Nations Security Council, which reflect international will to combat terrorism in all its forms and manifestations, and which assigned tasks and responsibilities to States, and taking into account the continued threat from terrorist attacks,

RECALLING ALSO resolution 1540 (2004) of the United Nations Security Council, which recognizes the urgent need for all States to take additional effective measures to prevent the proliferation of nuclear, chemical or biological weapons and their means of delivery,

RECALLING FURTHER the Convention on Offences and Certain Other Acts Committed on Board Aircraft, done at Tokyo on 14 September 1963; the Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970; the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971; the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973; the International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979; the Convention on the Physical Protection of Nuclear Material, done at Vienna on 26 October 1979; the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24 February 1988; the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988; the Convention on the Marking of Plastic Explosives for the Purpose of Detection, done at Montreal on 1 March 1991; the International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997; and the International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9 December 1999,

BEARING IN MIND the importance of the United Nations Convention on the Law of the Sea adopted at Montego Bay, on 10 December 1982, and of the customary international law of the sea,

RECALLING ALSO resolution 59/46 of the United Nations General Assembly, which reaffirmed that international co-operation as well as actions by States to combat terrorism should be conducted in conformity with the principles of the Charter of the United Nations, international law and relevant international conventions, and resolution 59/24 of the United Nations General Assembly, which urged States to become parties to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and its Protocol, invited States to participate in the review of those instruments by the Legal Committee of the International Maritime Organization to strengthen the means of combating such unlawful acts, including terrorist acts, and also urged States to take appropriate measures to ensure the effective implementation of those instruments, in particular through the adoption of legislation, where appropriate, aimed at ensuring that there is a proper framework for responses to incidents of armed robbery and terrorist acts at sea,

RECALLING FURTHER resolution 58/187 of the United Nations General Assembly, which reaffirmed that States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular international human rights, refugee and humanitarian law,

CONSIDERING that it is necessary to adopt provisions supplementary to those of the Convention, to suppress additional terrorist acts of violence against the safety and security of international maritime navigation and to improve its effectiveness,

HAVE AGREED as follows:

ARTICLE 1

For the purposes of this Protocol:

- 1 “Convention” means the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988.
- 2 “Organization” means the International Maritime Organization.
- 3 “Secretary-General” means the Secretary-General of the Organization.

ARTICLE 2

Article 1 of the Convention is amended to read as follows:

Article 1

- 1 For purposes of this Convention,
 - (a) “ship” means a vessel of any type whatsoever not permanently attached to the sea-bed, including dynamically supported craft, submersibles, or any other floating craft.
 - (b) “transport” means to initiate, arrange or exercise effective control, including decision-making authority, over the movement of a person or item.

- (c) “serious injury or damage” means,
 - (A) serious bodily injury,
 - (B) extensive destruction of a place of public use, State or government facility, infrastructure facility, or public transportation system, resulting in major economic loss, or
 - (C) substantial damage to the environment, including air, soil, water, fauna, or flora.
- (d) “BCN weapon” means
 - (i) “biological weapons”, which are:
 - (A) microbial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes; and
 - (B) weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.
 - (ii) “chemical weapons”, which are, together or separately:
 - (A) toxic chemicals and their precursors, except where intended for:
 - (I) industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes;
 - (II) protective purposes, namely those purposes directly related to protection against toxic chemicals and to protection against chemical weapons;
 - (III) military purposes not connected with the use of chemical weapons and not dependent on the use of the toxic properties of chemicals as a method of warfare; or
 - (IV) law enforcement including domestic riot control purposes;as long as the types and quantities are consistent with such purposes; and
 - (B) munitions and devices, specifically designed to cause death or other harm through the toxic properties of those toxic chemicals specified in subclause (A), which would be released as a result of the employment of such munitions and devices; and

- (C) any equipment specifically designed for use directly in connection with the employment of munitions and devices specified in subclause (B).
 - (iii) nuclear weapons and other nuclear explosive devices.
 - (e) “toxic chemical” means any chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans or animals. This includes all such chemicals, regardless of their origin or of their method of production, and regardless of whether they are produced in facilities, in munitions or elsewhere.
 - (f) “precursor” means any chemical reactant which takes part at any stage in the production by whatever method of a toxic chemical. This includes any key component of a binary or multicomponent chemical system.
 - (g) “Organization” means the International Maritime Organization (IMO).
 - (h) “Secretary-General” means the Secretary-General of the Organization.
- 2 For the purposes of this Convention,
- (a) the terms “place of public use”, “State or government facility”, “infrastructure facility”, and “public transportation system” have the meaning given those terms in the International Convention for the Suppression of Terrorist Bombings, done at New York on 15 December 1997, and
 - (b) the terms “source material” and “special fissionable material” have the meaning given those terms in the International Atomic Energy Agency Statute, done at New York on 26 October 1956.

ARTICLE 3

The following text is added as Article *2bis* of the Convention:

Article *2bis*

- 1 Nothing in this Convention shall affect other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes and principles of the Charter of the United Nations and international human rights, refugee and humanitarian law.
- 2 This Convention does not apply to the activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law, and the activities undertaken by military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law.

- 3 Nothing in this Convention shall affect the rights, obligations and responsibilities under the Treaty on the Non-Proliferation of Nuclear Weapons, done at Washington, London and Moscow on 1 July 1968, the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, done at Washington, London and Moscow on 10 April 1972 or the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, done at Paris on 13 January 1993, of States Parties to such treaties.

ARTICLE 4

- 1 The *chapeau* of Article 3, paragraph 1 of the Convention is replaced by the following text:**

Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally:

- 2 Article 3, paragraph 1(f) of the Convention is replaced by the following text:**

(f) communicates information which that person knows to be false, thereby endangering the safe navigation of a ship.

- 3 Article 3, paragraph 1(g) of the Convention is deleted.**

- 4 Article 3, paragraph 2 of the Convention is replaced by the following text:**

Any person also commits an offence if that person threatens, with or without a condition, as provided for under national law, aimed at compelling a physical or juridical person to do or refrain from doing any act, to commit any of the offences set forth in paragraph 1, subparagraphs (b), (c), and (e), if that threat is likely to endanger the safe navigation of the ship in question.

- 5 The following text is added as Article 3bis of the Convention:**

Article 3bis

- 1 Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally:
- (a) when the purpose of the act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act:
 - (i) uses against or on a ship or discharges from a ship any explosive, radioactive material or BCN weapon in a manner that causes or is likely to cause death or serious injury or damage; or
 - (ii) discharges, from a ship, oil, liquefied natural gas, or other hazardous or noxious substance, which is not covered by clause (i), in such quantity or concentration that causes or is likely to cause death or serious injury or damage; or

- (iii) uses a ship in a manner that causes death or serious injury or damage; or
 - (iv) threatens, with or without a condition, as is provided for under national law, to commit an offence set forth in clause (i), (ii) or (iii); or
 - (b) transports on board a ship:
 - (i) any explosive or radioactive material, knowing that it is intended to be used to cause, or in a threat to cause, with or without a condition, as is provided for under national law, death or serious injury or damage for the purpose of intimidating a population, or compelling a Government or an international organization to do or to abstain from doing any act; or
 - (ii) any BCN weapon, knowing it to be a BCN weapon as defined in article 1; or
 - (iii) any source material, special fissionable material, or equipment or material especially designed or prepared for the processing, use or production of special fissionable material, knowing that it is intended to be used in a nuclear explosive activity or in any other nuclear activity not under safeguards pursuant to a comprehensive safeguards agreement; or
 - (iv) any equipment, materials or software or related technology that significantly contributes to the design, manufacture or delivery of a BCN weapon, with the intention that it will be used for such purpose.
- 2 It shall not be an offence within the meaning of this Convention to transport an item or material covered by paragraph 1(b)(iii) or, insofar as it relates to a nuclear weapon or other nuclear explosive device, paragraph 1(b)(iv), if such item or material is transported to or from the territory of, or is otherwise transported under the control of, a State Party to the Treaty on the Non-Proliferation of Nuclear Weapons where:
 - (a) the resulting transfer or receipt (including internal to a State) of the item or material is not contrary to such State Party's obligations under the Treaty on the Non-Proliferation of Nuclear Weapons and,
 - (b) if the item or material is intended for the delivery system of a nuclear weapon or other nuclear explosive device of a State Party to the Treaty on the Non-Proliferation of Nuclear Weapons, the holding of such weapon or device is not contrary to that State Party's obligations under that Treaty.

6 The following text is added as Article 3ter of the Convention:

Article 3ter

- 1 A person commits an offence within the meaning of this Convention if that person unlawfully and intentionally transports another person on board a ship knowing that the person has committed an act that constitutes an offence under articles 3, 3bis, 3quater or an offence set forth in any treaty listed in the Annex, and intending to assist that person to evade criminal prosecution.
- 2 On depositing its instrument of ratification, acceptance, approval or accession, a State Party which is not a party to a treaty listed in the Annex may declare that, in the application of this Protocol to the State Party, the treaty shall be deemed not to be included in paragraph 1. The declaration shall cease to have effect as soon as the treaty enters into force for the State Party, which shall notify the Secretary-General of this fact.
- 3 When a State Party ceases to be a party to a treaty listed in the Annex, it may make a declaration as provided for in this article, with respect to that treaty.
- 4 On depositing its instrument of ratification, acceptance, approval or accession, a State Party may declare that it will apply the provisions of paragraph 1 in accordance with the principles of its criminal law concerning family exemptions of liability.

7 The following text is added as Article 3quater of the Convention:

Article 3quater

Any person also commits an offence within the meaning of this Convention if that person:

- 1 unlawfully and intentionally injures or kills any person in connection with the commission of any of the offences set forth in article 3, paragraph 1, article 3bis, or article 3ter; or
- 2 attempts to commit an offence set forth in article 3, paragraph 1, article 3bis, paragraph 1(a)(i), (ii) or (iii), or paragraph 1 of this article; or
- 3 participates as an accomplice in an offence set forth in article 3, article 3bis, article 3ter or paragraph 1 or 2 of this article; or
- 4 organizes or directs others to commit an offence as set forth in article 3, article 3bis, article 3ter or paragraph 1 or 2 of this article; or
- 5 contributes to the commission of one or more offences as set forth in article 3, article 3bis, article 3ter or paragraph 1 or 2 of this article by a group of persons acting with a common purpose, intentionally and either:
 - (a) with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an offence as set forth in article 3, article 3bis or article 3ter; or

- (b) in the knowledge of the intention of the group to commit an offence as set forth in article 3, article *3bis* or article *3ter*.

ARTICLE 5

1 Article 5 of the Convention is replaced by the following text:

Each State Party shall make the offences set forth in articles 3, *3bis*, *3ter* and *3quater* punishable by appropriate penalties which take into account the grave nature of those offences.

2 The following text is added as Article *5bis* of the Convention:

Article *5bis*

- 1 Each State Party, in accordance with its domestic legal principles, shall take the necessary measures to enable a legal entity located in its territory organized under its laws to be held liable when a person responsible for management or control of that legal entity has, in that capacity, committed an offence set forth in this Convention. Such liability may be criminal, civil or administrative.
- 2 Such liability is incurred without prejudice to the criminal liability of individuals having committed the offences.
- 3 Each State Party shall ensure, in particular, that legal entities liable in accordance with paragraph 1 above are subject to effective, proportionate and dissuasive criminal, civil or administrative sanctions. Such sanctions may include monetary sanctions.

ARTICLE 6

1 The *chapeau* of Article 6, paragraph 1 of the Convention is replaced by the following text:

- 1 Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in articles 3, *3bis*, *3ter* and *3quater* when the offence is committed:

2 Article 6, paragraph 3 of the Convention is replaced by the following text:

- 3 Any State Party which has established jurisdiction mentioned in paragraph 2 shall notify the Secretary-General. If such State Party subsequently rescinds that jurisdiction, it shall notify the Secretary-General.

3 Article 6, paragraph 4 of the Convention is replaced by the following text:

- 4 Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in articles 3, *3bis*, *3ter* and *3quater* in cases where the alleged offender is present in its territory and it does not extradite the alleged offender to any of the States Parties which have established their jurisdiction in accordance with paragraphs 1 and 2 of this article.

ARTICLE 7

The following text is added as an Annex to the Convention:

ANNEX

- 1 Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970.
- 2 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971.
- 3 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973.
- 4 International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979.
- 5 Convention on the Physical Protection of Nuclear Material, done at Vienna on 26 October 1979.
- 6 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24 February 1988.
- 7 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988.
- 8 International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997.
- 9 International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9 December 1999.

ARTICLE 8

1 Article 8, paragraph 1 of the Convention is replaced by the following text:

- 1 The master of a ship of a State Party (the “flag State”) may deliver to the authorities of any other State Party (the “receiving State”) any person who the master has reasonable grounds to believe has committed one of the offences set forth in articles 3, *3bis*, *3ter*, or *3quater*.

2 The following text is added as Article 8bis of the Convention:

Article 8bis

- 1 States Parties shall co-operate to the fullest extent possible to prevent and suppress unlawful acts covered by this Convention, in conformity with international law, and shall respond to requests pursuant to this article as expeditiously as possible.
- 2 Each request pursuant to this article should, if possible, contain the name of the suspect ship, the IMO identification number, the port of registry, the ports of origin and destination, and any other relevant information. If a request is conveyed orally, the requesting Party shall confirm the request in writing as soon as possible. The requested Party shall acknowledge its receipt of any written or oral request immediately.
- 3 States Parties shall take into account the dangers and difficulties involved in boarding a ship at sea and searching its cargo, and give consideration to whether other appropriate measures agreed between the States concerned could be more safely taken in the next port of call or elsewhere.
- 4 A State Party that has reasonable grounds to suspect that an offence under articles 3, *3bis*, *3ter* or *3quater* is, has been or is about to be committed involving a ship flying its flag, may request the assistance of other States Parties in preventing or suppressing that offence. The States Parties so requested shall use their best endeavours to render such assistance within the means available to them.
- 5 Whenever law enforcement or other authorized officials of a State Party (“the requesting Party”) encounter a ship flying the flag or displaying marks of registry of the first Party (“the first Party”), located seaward of any State’s territorial sea, and the requesting Party has reasonable grounds to suspect that the ship or a person on board the ship is, has been or is about to be involved in, the commission of an offence under articles 3, *3bis*, *3ter* or *3quater*, and the requesting Party desires to board,
 - (a) it shall request, in accordance with paragraphs 1 and 2, that the first Party confirm the claim of nationality, and,
 - (b) if nationality is confirmed, the requesting Party shall ask the first Party (hereinafter, “the flag State”) for authorization to board and to take appropriate measures with regard to that ship which may include stopping, boarding and searching the ship, its cargo and persons on board, and questioning the persons on board in order to determine if an offence under articles 3, *3bis*, *3ter* or *3quater* has been, or is about to be, committed; and
 - (c) the flag State shall either:
 - (i) authorize the requesting Party to board and to take appropriate measures set out in subparagraph (b) of this paragraph, subject to any conditions it may impose in accordance with paragraph 7; or

- (ii) conduct the boarding and search with its own law enforcement or other officials; or
- (iii) conduct the boarding and search together with the requesting Party, subject to any conditions it may impose in accordance with paragraph 7; or
- (iv) decline to authorize a boarding and search.

The requesting Party shall not board the ship or take measures set out in subparagraph (b) of this paragraph without the express authorization from the flag State.

- (d) [If a requested State, which has not made a declaration in accordance with the subparagraphs 5(e) or 5(f) of this article, does not comply with its obligation under paragraphs 1 and 2 to this article to respond to either of the requests pursuant to the subparagraphs 5(a) and 5(b) of the present article, the requesting Party shall consider the need to warn other States Parties concerned.]
- (e) On or after it deposits its instrument of ratification, acceptance, approval or accession, a State Party may notify the Secretary-General that, with respect to ships flying its flag or displaying its mark of registry, the requesting Party is granted authorization to board and search the ship, its cargo and persons on board, and to question the persons on board in order to locate and examine documentation of its nationality and determine if an offence under articles 3, *3bis*, *3ter* or *3quater* has been, or is about to be, committed, if there is no response from the first Party within four hours of acknowledgement of receipt of a request to confirm nationality.
- (f) On or after it deposits its instrument of ratification, acceptance, approval or accession, a State Party may notify the Secretary-General that, with respect to ships flying its flag or displaying its mark of registry, the requesting Party is authorized to board and search a ship, its cargo and persons on board, and to question the persons on board in order to determine if an offence under articles 3, *3bis*, *3ter* or *3quater* has been or is about to be, committed.

The notifications made pursuant to this paragraph can be withdrawn at any time.

- 6 When evidence of conduct described in articles 3, *3bis*, *3ter* or *3quater* is found as the result of any boarding conducted pursuant to this article, the flag State may authorize the requesting Party to detain the ship, cargo and persons on board pending receipt of disposition instructions from the flag State. The requesting Party shall inform promptly the flag State of the results of a boarding, search, and detention conducted pursuant to this article. The requesting Party shall also inform promptly the flag State of the discovery of evidence of illegal conduct that is not subject to this Convention.

- 7 A flag State, consistent with the other provisions of this Convention, may subject its authorization under paragraphs 5 or 6 to conditions, including obtaining additional information from the requesting Party, and conditions relating to responsibility for and the extent of measures to be taken. No additional measures may be taken without the express authorization of the flag State, except when necessary to relieve imminent danger to the lives of persons or those that derive from relevant bilateral or multilateral agreements.
- 8 For all boardings pursuant to this article, the flag State has the right to exercise jurisdiction over a detained ship, cargo or other items and persons on board (including seizure, forfeiture, arrest and prosecution); however, the flag State may, subject to its Constitution and laws, consent to the exercise of jurisdiction by another State having jurisdiction under article 6.
- 9 When carrying out the authorized actions under this article, the use of force shall be avoided except when necessary to ensure the safety of its officials and persons on board, or where the officials are obstructed in the execution of the authorized actions. Any use of force pursuant to this article shall not exceed the minimum degree of force which is necessary and reasonable in the circumstances.
- 10 Safeguards:
- (a) Where a State Party takes measures against a ship in accordance with this article, it shall:
 - (i) take due account of the need not to endanger the safety of life at sea;
 - (ii) ensure that all persons on board are treated in a manner which preserves their basic human dignity, and in compliance with the applicable provisions of international law, including international law of human rights;
 - (iii) ensure that a boarding and search pursuant to this article shall be conducted in accordance with applicable international law;
 - (iv) take due account of the safety and security of the ship and its cargo;
 - (v) take due account of the need not to prejudice the commercial or legal interests of the flag State;
 - (vi) ensure, within available means, that any measure taken with regard to the ship or its cargo is environmentally sound under the circumstances;
 - (vii) ensure that persons on board against whom proceedings may be commenced in connection with any of the offences set forth in articles 3, *3bis*, *3ter* or *3quater* are afforded the protections of article 10(2), regardless of location;

- (viii) ensure that the master of a ship is advised of its intention to board, and is, or has been, afforded the opportunity to contact the ship's owner and the flag State at the earliest opportunity; and
 - (ix) take reasonable efforts to avoid a ship being unduly detained or delayed.
- (b) Provided that authorization to board by a flag State shall not *per se* give rise to its liability, States Parties shall be liable for any damage, harm or loss attributable to them arising from measures taken pursuant to this article when:
- (i) the grounds for such measures prove to be unfounded, provided that the ship has not committed any act justifying the measures taken; or
 - (ii) such measures are unlawful or exceed that reasonably required in light of available information to implement the provisions of this article.

States Parties shall provide effective recourse in respect of such damage, harm or loss.

- (c) Where a State Party takes measures against a ship in accordance with this Convention, it shall take due account of the need not to interfere with or to affect:
- (i) the rights and obligations and the exercise of jurisdiction of coastal States in accordance with the international law of the sea; or
 - (ii) the authority of the flag State to exercise jurisdiction and control in administrative, technical and social matters involving the ship.
- (d) Any measure taken pursuant to this article shall be carried out by law enforcement or other authorized officials from warships or military aircraft, or from other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect and, notwithstanding articles 2 and 2*bis*, the provisions of this article shall apply.
- (e) For the purposes of this article "law enforcement or other authorized officials" means uniformed or otherwise clearly identifiable members of law enforcement or other government authorities duly authorized by their government. For the specific purpose of law enforcement under this Convention, law enforcement or other authorized officials shall provide appropriate government-issued identification documents for examination by the master of the ship upon boarding.

- 11 This article does not apply to or limit boarding of ships, conducted by any State Party in accordance with international law, seaward of any State's territorial sea, including boardings based upon the right of visit, the rendering of assistance to persons, ships and property in distress or peril, or an authorization from the flag State to take law enforcement or other action.
- 12 States Parties are encouraged to develop standard operating procedures for joint operations pursuant to this article and consult, as appropriate, with other States Parties with a view to harmonizing such standard operating procedures for the conduct of operations.
- 13 States Parties may conclude agreements or arrangements between them to facilitate law enforcement operations carried out in accordance with this article.
- 14 Each State Party shall take appropriate measures to ensure that its law enforcement or other authorized officials, and law enforcement or other authorized officials of other States Parties acting on its behalf, are empowered to act pursuant to this article.
- 15 On or after it deposits its instrument of ratification, acceptance, approval or accession, each State Party shall designate the authority, or, where necessary, authorities to receive and respond to requests for assistance, for confirmation of nationality, and for authorization to take appropriate measures. Such designation, including contact information, shall be notified to the Secretary-General within one month of becoming a Party, who shall inform all other States Parties within one month of the designation. Each State Party is responsible for providing prompt notice through the Secretary-General of any changes in the designation or contact information.

ARTICLE 9

Article 10, paragraph 2 is replaced by the following text:

- 2 Any person who is taken into custody or regarding whom any other measures are taken or proceedings are being carried out pursuant to this Convention shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international human rights law.

ARTICLE 10

1 Article 11, paragraphs 1, 2, 3 and 4 are replaced by the following text:

- 1 The offences set forth in articles 3, *3bis*, *3ter* and *3quater* shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

- 2 If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State Party may, at its option, consider this Convention as a legal basis for extradition in respect of the offences set forth in articles 3, *3bis*, *3ter* and *3quater*. Extradition shall be subject to the other conditions provided by the law of the requested State Party.
- 3 States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in articles 3, *3bis*, *3ter* and *3quater* as extraditable offences between themselves, subject to the conditions provided by the law of the requested State Party.
- 4 If necessary, the offences set forth in articles 3, *3bis*, *3ter* and *3quater* shall be treated, for the purposes of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in a place within the jurisdiction of the State Party requesting extradition.

2 The following text is added as Article 11bis, of the Convention:

Article 11bis

None of the offences set forth in articles 3, *3bis*, *3ter* or *3quater* shall be regarded for the purposes of extradition or mutual legal assistance as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.

3 The following text is added as Article 11ter of the Convention:

Article 11ter

Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance, if the requested State Party has substantial grounds for believing that the request for extradition for offences set forth in articles 3, *3bis*, *3ter* or *3quater* or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin, political opinion or gender, or that compliance with the request would cause prejudice to that person's position for any of these reasons.

ARTICLE 11

1 Article 12, paragraph 1 of the Convention is replaced by the following text:

- 1 States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offences set forth in articles 3, *3bis*, *3ter* and *3quater*, including assistance in obtaining evidence at their disposal necessary for the proceedings.

2 The following text is added as Article 12bis of the Convention:

Article 12bis

- 1 A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for the investigation or prosecution of offences set forth in articles 3, *3bis*, *3ter* or *3quater* may be transferred if the following conditions are met:
 - (a) The person freely gives informed consent; and
 - (b) The competent authorities of both States agree, subject to such conditions as those States may deem appropriate.
- 2 For the purposes of the present article:
 - (a) The State to which the person is transferred shall have the authority and obligation to keep the person transferred in custody as long as necessary to effectuate the needs of paragraph 1, unless otherwise requested or authorized by the State from which the person was transferred;
 - (b) The State to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States;
 - (c) The State to which the person is transferred shall not require the State from which the person was transferred to initiate extradition proceedings for the return of the person;
 - (d) The person transferred shall receive credit for service of the sentence being served in the State from which the person was transferred for time spent in the custody of the State to which the person was transferred.
- 3 Unless the State Party from which a person is to be transferred in accordance with the present article so agrees, that person, whatever that person's nationality, shall not be prosecuted or detained or subjected to any other restriction of personal liberty in the territory of the State to which that person is transferred in respect of acts or convictions anterior to that person's departure from the territory of the State from which such person was transferred.

ARTICLE 12

Article 13 of the Convention is replaced by the following text:

- 1 States Parties shall co-operate in the prevention of the offences set forth in articles 3, *3bis*, *3ter* and *3quater*, particularly by:

- (a) taking all practicable measures to prevent preparation in their respective territories for the commission of those offences within or outside their territories;
 - (b) exchanging information in accordance with their national law, and co-ordinating administrative and other measures taken as appropriate to prevent the commission of offences set forth in articles 3, *3bis*, *3ter* and *3quater*.
- 2 When due to the commission of an offence set forth in articles 3, *3bis*, *3ter* or *3quater*, the passage of a ship has been delayed or interrupted, any State Party in whose territory the ship or passengers or crew are present shall be bound to exercise all possible efforts to avoid a ship, its passengers, crew or cargo being unduly detained or delayed.

ARTICLE 13

Article 14 of the Convention is replaced by the following text:

Any State Party having reason to believe that an offence set forth in articles 3, *3bis*, *3ter* or *3quater* will be committed shall, in accordance with its national law, furnish as promptly as possible any relevant information in its possession to those States which it believes would be the States having established jurisdiction in accordance with article 6.

ARTICLE 14

Article 15, paragraph 3 of the Convention is replaced by the following text:

- 3 The information transmitted in accordance with paragraphs 1 and 2 shall be communicated by the Secretary-General to all States Parties, to Members of the Organization, to other States concerned, and to the appropriate international intergovernmental organizations.

ARTICLE 15

Interpretation and application

The Convention and this Protocol, shall, as between the Parties to this Protocol, be read and interpreted together as one single instrument.

FINAL CLAUSES

ARTICLE 16

Signature, ratification, acceptance, approval and accession

- 1 This Protocol shall be open for signature at the Headquarters of the Organization from [] to [] and shall thereafter remain open for accession.

- 2 States may express their consent to be bound by this Protocol by:
 - (a) signature without reservation as to ratification, acceptance or approval;
 - (b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or
 - (c) accession.
- 3 Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.
- 4 Only a State which has signed the Convention without reservation as to ratification, acceptance or approval, or has ratified, accepted, approved or acceded to the Convention may become a Party to this Protocol.

ARTICLE 17

Entry into force

- 1 This Protocol shall enter into force ninety days following the date on which [] States have either signed it without reservation as to ratification, acceptance or approval, or have deposited an instrument of ratification, acceptance, approval or accession with the Secretary-General.
- 2 For a State which deposits an instrument of ratification, acceptance, approval or accession in respect of this Protocol after the conditions in paragraph 1 for entry into force thereof have been met, the ratification, acceptance, approval or accession shall take effect ninety days after the date of such deposit.

ARTICLE 18

Denunciation

- 1 This Protocol may be denounced by any State Party at any time after the date on which this Protocol enters into force for that State.
- 2 Denunciation shall be effected by the deposit of an instrument of denunciation with the Secretary-General.
- 3 A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after the deposit of the instrument with the Secretary-General.

ARTICLE 19

Revision and amendment

- 1 A conference for the purpose of revising or amending this Protocol may be convened by the Organization.

- 2 The Secretary-General shall convene a conference of States Parties to this Protocol for revising or amending the Protocol, at the request of [] of the States Parties, or [] States Parties, whichever is the higher figure.
- 3 Any instrument of ratification, acceptance, approval or accession deposited after the date of entry into force of an amendment to this Protocol shall be deemed to apply to the Protocol as amended.

ARTICLE 20

Amendments to the Annex

- 1 The Annex may be amended by the addition of relevant treaties that:
 - (a) are open to the participation of all States;
 - (b) have entered into force; and
 - (c) have been ratified, accepted, approved or acceded to by at least [] States Parties to this Protocol.
- 2 After the entry into force of this Protocol, any State Party thereto may propose such an amendment to the Annex. Any proposal for an amendment shall be communicated to the Secretary-General in written form. The Secretary-General shall circulate any proposed amendment that meets the requirements of paragraph 1 to all members of the Organization and seek from States Parties to this Protocol their consent to the adoption of the proposed amendment.
- 3 The proposed amendment to the Annex shall be deemed adopted after more than [] of the States Parties to this Protocol consent to it by written notification to the Secretary-General.
- 4 The adopted amendment to the Annex shall enter into force [] days after the deposit with the Secretary-General of the [] instrument of ratification, acceptance or approval of such amendment for those States Parties to this Protocol that have deposited such an instrument. For each State Party to this Protocol ratifying, accepting or approving the amendment after the deposit of the [] instrument with the Secretary-General, the amendment shall enter into force on the [] day after deposit by such State Party of its instrument of ratification, acceptance or approval.

ARTICLE 21

Depositary

- 1 This Protocol and any amendments adopted under articles 19 and 20 shall be deposited with the Secretary-General.
- 2 The Secretary-General shall:
 - (a) inform all States which have signed this Protocol or acceded to this Protocol, of:

- (i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession together with the date thereof;
 - (ii) the date of the entry into force of this Protocol;
 - (iii) the deposit of any instrument of denunciation of this Protocol together with the date on which it is received and the date on which the denunciation takes effect;
 - (iv) any communication called for by any article of this Protocol;
 - (v) any proposal to amend the Annex which has been made in accordance with article 20, paragraph 2;
 - (vi) any amendment deemed to have been adopted in accordance with article 20, paragraph 3;
 - (vii) any amendment ratified, accepted or approved in accordance with article 20, paragraph 4, together with the date on which that amendment shall enter into force; and
- (b) transmit certified true copies of this Protocol to all States which have signed or acceded to this Protocol.
- 3 As soon as this Protocol enters into force, a certified true copy of the text shall be transmitted by the Secretary-General to the Secretary-General of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

ARTICLE 22

Languages

This Protocol is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

IN WITNESS WHEREOF the undersigned being duly authorized by their respective Governments for that purpose have signed this Protocol.

DONE AT LONDON this [] day of [] two thousand [].

ANNEX 5

**CONSIDERATION OF A DRAFT PROTOCOL OF 2005 TO THE PROTOCOL
FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY
OF FIXED PLATFORMS LOCATED ON THE CONTINENTAL SHELF**

Prepared by the Legal Committee of the Organization and edited by the Secretariat

THE STATES PARTIES to this Protocol,

BEING PARTIES to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf adopted in 1988,

RECOGNIZING that the reasons for which the Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation was elaborated also apply to fixed platforms located on the continental shelf,

TAKING account of the provisions of those Protocols,

HAVE AGREED as follows:

ARTICLE 1

For the purposes of this Protocol:

- 1 “1988 Protocol” means the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988.
- 2 “Organization” means the International Maritime Organization.
- 3 “Secretary-General” means the Secretary-General of the Organization.

ARTICLE 2

Article 1, paragraph 1, of the 1988 Protocol is replaced by the following text:

- 1 The provisions of article 1, subparagraphs (1)(c), (d), (e), (f), (g), (h) and 2(a), of articles *2bis*, 5, *5bis* and 7, and of articles 10 to 16 (including articles *11bis*, *11ter* and *12bis*) of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, as amended by the Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, shall also apply *mutatis mutandis* to the offences set forth in articles 2, *2bis* and *2ter* of this Protocol where such offences are committed on board or against fixed platforms located on the continental shelf.

ARTICLE 3

1 Article 2, paragraph 1(d) of the 1988 Protocol is replaced by the following text:

- (d) places or causes to be placed on a fixed platform, by any means whatsoever, a device or substance which is likely to destroy that fixed platform or likely to endanger its safety.

2 Article 2, paragraph 1(e) of the 1988 Protocol is deleted.

3 Article 2, paragraph 2 of the 1988 Protocol is replaced by the following text:

- 2 Any person also commits an offence if that person threatens, with or without a condition, as is provided for under national law, aimed at compelling a physical or juridical person to do or refrain from doing any act, to commit any of the offences set forth in paragraphs 1(b) and (c), if that threat is likely to endanger the safety of the fixed platform.

ARTICLE 4

1 The following text is inserted as article 2bis:

Article 2bis

Any person commits an offence if that person unlawfully and intentionally when the purpose of the act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act:

- 1 uses against or on a fixed platform or discharges from a fixed platform any explosive, radioactive material or BCN weapon in a manner that causes or is likely to cause death or serious injury or damage; or
- 2 discharges from a fixed platform, oil, liquefied natural gas, or other hazardous or noxious substance, which is not covered by subparagraph 1, in such quantity or concentration, that it causes or is likely to cause death or serious injury or damage; or
- 3 threatens, with or without a condition, as is provided for under national law, to commit an offence set forth in subparagraph 1 or 2.

2 The following text is inserted as Article 2ter:

Article 2ter

Any person also commits an offence within the meaning of this Protocol if that person:

- 1 unlawfully and intentionally injures or kills any person in connection with the commission of any of the offences set forth in article 2, paragraph 1 or article 2bis; or
- 2 attempts to commit an offence set forth in article 2, paragraph 1, article 2bis, paragraph 1 or 2, or paragraph 1 of this article; or

- 3 participates as an accomplice in an offence set forth in article 2, article *2bis* or paragraph 1 or 2 of this article; or
- 4 organizes or directs others to commit an offence as set forth in article 2, article *2bis* or paragraph 1 or 2 of this article; or
- 5 contributes to the commission of one or more offences as set forth in article 2, article *2bis* or paragraph 1 or 2 of this article by a group of persons acting with a common purpose, intentionally and either:
 - (a) with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an offence as set forth in article 2 or article *2bis*; or
 - (b) in the knowledge of the intention of the group to commit an offence as set forth in article 2 or article *2bis*.

ARTICLE 5

1 Article 3, paragraph 1 of the 1988 Protocol is replaced by the following text:

- 1 Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in articles 2, *2bis* and *2ter* when the offence is committed:
 - (a) against or on board a fixed platform while it is located on the continental shelf of that State; or
 - (b) by a national of that State.

2 Article 3, paragraph 3 of the 1988 Protocol is replaced by the following text:

- 3 Any State Party which has established jurisdiction mentioned in paragraph 2 shall notify the Secretary-General. If such State Party subsequently rescinds that jurisdiction, it shall notify the Secretary-General.

3 Article 3, paragraph 4 of the 1988 Protocol is replaced by the following text:

- 4 Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in articles 2, *2bis* and *2ter* in cases where the alleged offender is present in its territory and it does not extradite the alleged offender to any of the States Parties which have established their jurisdiction in accordance with paragraphs 1 and 2.

ARTICLE 6

Interpretation and application

The 1988 Protocol and this Protocol shall, as between the Parties to this Protocol, be read and interpreted together as one single instrument.

FINAL CLAUSES

ARTICLE 7

Signature, ratification, acceptance, approval and accession

- 1 This Protocol shall be open for signature at the Headquarters of the Organization from [] to [] and shall thereafter remain open for accession.
- 2 States may express their consent to be bound by this Protocol by:
 - (a) signature without reservation as to ratification, acceptance or approval; or
 - (b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or
 - (c) accession.
- 3 Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.
- 4 Only a State which has signed the 1988 Protocol without reservation as to ratification, acceptance or approval, or has ratified, accepted, approved or acceded to the 1988 Protocol may become a Party to this Protocol.

ARTICLE 8

Entry into force

- 1 This Protocol shall enter into force ninety days following the date on which [] States have either signed it without reservation as to ratification, acceptance or approval, or have deposited an instrument of ratification, acceptance, approval or accession with the Secretary-General.
- 2 For a State which deposits an instrument of ratification, acceptance, approval or accession in respect of this Protocol after the conditions in paragraph 1 for entry into force thereof have been met, the ratification, acceptance, approval or accession shall take effect ninety days after the date of such deposit.

ARTICLE 9

Denunciation

- 1 This Protocol may be denounced by any State Party at any time after the date on which this Protocol enters into force for that State.
- 2 Denunciation shall be effected by the deposit of an instrument of denunciation with the Secretary-General.

- 3 A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after the deposit of the instrument with the Secretary-General.

ARTICLE 10

Revision and amendment

- 1 A conference for the purpose of revising or amending this Protocol may be convened by the Organization.
- 2 The Secretary-General shall convene a conference of States Parties to this Protocol for revising or amending the Protocol, at the request of [] of the States Parties, or [] States Parties, whichever is the higher figure.
- 3 Any instrument of ratification, acceptance, approval or accession deposited after the date of entry into force of an amendment to this Protocol shall be deemed to apply to the Protocol as amended.

ARTICLE 11

Depositary

- 1 This Protocol and any amendments adopted under article 10 shall be deposited with the Secretary-General.
- 2 The Secretary-General shall:
- (a) inform all States which have signed this Protocol or acceded to this Protocol, of:
 - (i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession together with the date thereof;
 - (ii) the date of the entry into force of this Protocol;
 - (iii) the deposit of any instrument of denunciation of this Protocol together with the date on which it is received and the date on which the denunciation takes effect;
 - (iv) any communication called for by any article of this Protocol; and
 - (b) transmit certified true copies of this Protocol to all States which have signed or acceded to this Protocol.
- 3 As soon as this Protocol enters into force, a certified true copy of the text shall be transmitted by the Secretary-General to the Secretary-General of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

ARTICLE 12

Languages

This Protocol is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

IN WITNESS WHEREOF the undersigned being duly authorized by their respective Governments for that purpose have signed this Protocol.

DONE AT LONDON this [] day of [] two thousand and [].

ANNEX 6

PROVISION OF FINANCIAL SECURITY:

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

Resolution A. {...} (24)

**Adopted on {...} 2005
(Agenda item...)**

THE ASSEMBLY,

RECALLING the adoption of the Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 (hereinafter “the Athens Protocol”);

BEING AWARE that the Athens Protocol is intended to provide a viable and effective compensation system;

CONSCIOUS of the need to ensure the early entry into force of the Athens Protocol;

ACKNOWLEDGING that the Athens Protocol contains provisions excluding liability resulting from an act of war and other specified events as well as any incident wholly caused by an intentional act or omission by a third party, but that not all acts of terrorism are excluded by those provisions;

RECOGNIZING that insurance cover for liabilities for death and personal injury arising from terrorism or other special risks is currently either limited or unavailable;

RECOGNIZING FURTHER that the continuing threat of terrorism has had a negative impact on the insurance market;

NOTING that, as a consequence, carriers as defined in the Athens Protocol may be unable to obtain the Certificate of Financial Security currently required by the Athens Protocol:

1. RECOMMENDS that States ratify the Athens Protocol as soon as possible with the reservation that they reserve the right to issue and accept insurance certificates with such special exceptions and limitations as the insurance market conditions at the time of issue of the certificate necessitate, such as the bio-chemical clause and terrorism related clauses;
2. ACCEPTS that these arrangements are applied in a uniform manner in accordance with guidance developed by the Legal Committee of the Organization as a matter of urgency;
3. RECOMMENDS that the Organization keeps the resolution under review at future sessions of the Assembly.

ANNEX 7

**DRAFT GUIDELINES ON FAIR TREATMENT OF SEAFARERS
IN THE EVENT OF A MARITIME ACCIDENT**

Resolution A. {...} (24)

**Adopted on {...} 2005
(Agenda item...)**

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

THE ASSEMBLY OF THE INTERNATIONAL MARITIME ORGANIZATION AND THE GOVERNING BODY OF THE INTERNATIONAL LABOUR ORGANIZATION,

AWARE of a number of recent incidents in which seafarers on ships which have been involved in maritime accidents have been detained for prolonged periods,

SERIOUSLY CONCERNED of the need to ensure the fair treatment of seafarers in view of the growing use of criminal proceedings against seafarers after a maritime accident,

AWARE FURTHER that seafarers may not be familiar with the law and processes of a port or coastal State and the impact those national laws may have on them,

CONVINCED that seafarers should not be held hostage pending the resolution of a financial dispute,

CONCERNED that in some cases the grounds for such detentions have not been clear to the seafarers being detained or to the international maritime community,

ALSO CONCERNED that in some cases the detained seafarers have been subject to conditions in which their basic human rights appear not to have been fully respected,

FURTHER CONCERNED that these cases have an adverse impact on the morale of seafarers, on the attraction and recruitment of young people into the seafaring profession, and on retention of current seafarers in the profession,

RECALLING the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR),

RECALLING ALSO the ILO Declaration on Fundamental Principles and Rights at Work, 1998 and the generally accepted principles of international human rights applicable to all workers,

RECALLING FURTHER the United Nations Convention on the Law of the Sea, 1982, in particular Article 292 concerning the prompt release of vessels and crews, and Article 230 on monetary penalties and the observance of recognized rights of the accused,

NOTING that MARPOL 73/78 provides in Annex I, Regulation 11 and in Annex II, Regulation 6 that certain discharges are not violations of MARPOL, specifically those resulting from damage to a ship or its equipment: provided that all reasonable precautions have been taken after the occurrence of the damage or discovery of the discharge for the purpose of preventing or minimizing the discharge; and except if the owner or the master acted either with intent to cause damage, or recklessly and with knowledge that damage would probably result,

NOTING ALSO the relevant international labour standards applicable to repatriation of seafarers, in particular, the ILO Convention on the Repatriation of Seafarers, Revised 1987 (No.166),

NOTING FURTHER the IMO Code for the Investigation of Maritime Casualties and Incidents (resolution A.849(20) as amended by resolution A.884(21)),

RECOGNIZING the established rights of States to prosecute or extradite in accordance with international law those accused of criminal behaviour,

RECOGNIZING FURTHER that States should conduct investigations into maritime accidents,

RECOGNIZING ALSO that the issue of fair treatment of seafarers is the direct responsibility of the port or coastal States, flag States, the State of the nationality of the seafarer, shipowners and seafarers,

CONVINCED that recommendatory guidelines are an appropriate means of establishing a framework of legal certainty and consistent good practice to ensure that, in connection with maritime accidents, seafarers are fairly treated and their rights are not violated,

CONSIDERING that, given the global nature of the shipping industry, seafarers need special protection,

FURTHER CONVINCED that the protection of the rights of seafarers through the application of the guidelines referred to above is necessary to avoid the financial, physical and emotional burden which prolonged detention inflicts on seafarers and their families,

CONSIDERS that the adoption of guidelines which will facilitate the fair treatment of seafarers in the event of a maritime accident should be finalized as a matter of urgency,

HAVING CONSIDERED the recommendations made by the Legal Committee at its ninetieth session, as endorsed by the ILO Governing Body at its 292nd session,

1. URGE all States to respect the basic human rights of seafarers involved in maritime accidents;
2. URGE all States expeditiously to investigate maritime accidents to avoid any unfair treatment of seafarers;

3. URGE all States to adopt procedures to allow the prompt repatriation or re-embarkation of seafarers following maritime accidents;
 4. INVITE Member Governments and non-governmental organizations with consultative or observer status in IMO or ILO, as appropriate, to record instances of unfair treatment of seafarers in the event of maritime accidents and to provide data to IMO or ILO whenever requested;
 5. AGREE to adopt guidelines as a matter of priority and to this end request the Joint IMO/ILO *Ad Hoc* Expert Working Group on Fair Treatment of Seafarers to finalize its work expeditiously;
 6. AUTHORIZE the IMO Legal Committee and the ILO Governing Body to promulgate, once finalized, the said guidelines by appropriate means and to report to the twenty-fifth regular session of the IMO Assembly and to the 295th session of the ILO Governing Body, accordingly;
 7. REQUEST the IMO Legal Committee and the ILO Governing Body to keep the problem of unfair treatment of seafarers in the event of maritime accidents under review and to assess periodically the scale of the problem; and
 8. REQUEST Member Governments to bring this resolution to the attention of shipowners and seafarers and their respective organizations as well as any Government officials who may be involved in decisions and procedures affecting the treatment of seafarers who are involved in maritime accidents.
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