

One Hundredth Session of the IMO Legal Committee.

The Legal Committee held its 100th session at IMO Headquarters from 15th to 19th April 2013 under the chairmanship of Dr. Kofi Mbiah.

Welcoming speeches were given by the IMO Secretary-General and by the chairman of the Committee.

Implementation of the HNS Protocol, 2010.

The Canadian delegation reported (LEG 100/3) on the outcome of the workshop on HNS Reporting which had been attended by 29 states. The Guidelines on the reporting of HNS receipts, finalised at the workshop, were welcomed and endorsed by the Committee. These Guidelines are not binding but are aimed at facilitating the entry into force and implementation of the HNS Convention of 1996 through the 2010 Protocol. All states were encouraged to ratify the Protocol as soon as possible.

Provision of Financial Security in cases of Abandonment, personal injury to, or death of Seafarers.

The Secretariat reported that the ILO Maritime Labour Convention 2006 will enter into force on 20th August 2013. This Convention is designed to establish a level playing field for shipowners and provide decent working and living conditions for seafarers. A Special Tripartite Committee has been set up to keep the Convention under continuous review and at its first meeting in 2014 it will look at amendments to the Code of the Convention dealing with financial security for seafarers and their families in the event of personal injury, death or abandonment.

Fair Treatment of Seafarers in the event of a Maritime Accident.

A report prepared by Seafarers Rights International (SRI) was introduced by The International Transport Workers Federation (ITF) and the International Federation of Shipmasters' Associations (IFSMA). This report, based on 3,480 questionnaires completed by seafarers from 68 different nationalities, strongly suggested that the clear rights of seafarers to fair treatment are often, in practice, violated. The report highlighted the lack of due process for seafarers facing criminal charges, intimidation and lack of legal

representation and a consequent reluctance on the part of seafarers to cooperate with casualty enquiries.

Copies of this excellent report were made available to all delegates and may be found at the following link: www.seafarersrights.org

In light of this report it was agreed that this subject should remain on the agenda of the Legal Committee and delegates were urged to think of ways in which compliance with the existing Guidelines might be improved.

The delegation of the Islamic Republic of Iran (LEG 100/5) drew to the attention of the Committee the continued problems which their nationals experience in getting shore leave and access to shore-side facilities including medical services. The delegation also submitted for consideration a draft Resolution regarding shore leave and access to shore-side facilities. The Committee was reminded that at its 98th session it had decided to refer this problem to the Facilitation Committee (FAL) on the basis that this was within the remit of that committee.

There was wide support for the human rights principles covered by the Resolution and the committee confirmed that seafarers should not be discriminated against on the basis of nationality, race, colour, sex, religion, political opinion or social origin, irrespective of the flag State of the ship on which they worked. However, as the matter was within the sole purview of FAL it was not felt that the Committee could go beyond expressing its concern at the continuing practice of discriminating against seafarers from certain states.

Piracy.

Two documents (LEG 100/6 and LEG 100/WP.6) were submitted to the committee covering the work of Working Group 2 of the Contact Group on Piracy off the Coast of Somalia. It transpired that the Secretariat had approached the European Union Naval Force Somalia (EU NAVFOR) and the North Atlantic Treaty Organisation (NATO) as well as the United Nations Office on Drugs and Crime (UNODOC) for information regarding the number of pirates captured and handed ashore for investigation and about the difficulties in apprehending pirates. The committee noted, with regret, that NATO had no information available and EU NAVFOR had not responded to the request.

There was a feeling in the Committee that states were failing to share their experiences of dealing with the piracy problem and that this made devising strategies to combat piracy much more difficult to achieve.

Concern was expressed about the practice of employing armed guards on ships (the so-called Privately Contracted Armed Security Personnel (PCASP)) and the regulation of their activities. A database has been created by the Secretariat and contains information about national laws on the use of PCASPs.

Some discussion took place regarding the need for lists of approved armed security companies

In an interesting presentation the representative of the United Nations Interregional Crime and Justice Institute (UNICRI) provided the committee with statistics drawn from its Piracy Analysis which dealt with such matters as the average age of pirates, the clans from which they came, at which time of day ships were most likely to be attacked and the average number of pirates involved in each attack. Delegates were encouraged to visit the piracy portal on the UNICRI website which includes scanned copies of court decisions and details of post-trial transfers of offenders.

For those seeking information about national legislation on piracy the Secretariat advised that delegates should consult the database created by the Division for Ocean Affairs and the Law of the Sea (DOALOS) which is available on its website.

Delegates were reminded of the importance of submitting details of court decisions in piracy cases to UNICRI or to IMO.

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

LEG 100/7 was submitted by the UK Government and contained draft Guidelines on the procedures to be followed after the committing of a crime on board a ship. Several issues of principle were discussed in plenary but thereafter Katy Ware, from the UK delegation, chaired a Working Group in

the margins which produced a final version of the Guidelines to be found in LEG 100/WP.8. When the Working Group reported back to the full meeting it was agreed that the text of the Guidelines should be adopted and forwarded to the 28th session of the Assembly in the form of an Assembly resolution.

Whilst the Guidelines are quite lengthy they are well set out and should be useful to a ship master faced with a crime on his ship.

Liability and compensation issues connected with transboundary pollution damage from offshore oil exploration and exploitation activities.

This is a topic which was first raised at LEG 99 by the delegation of Indonesia following an incident in August 2009 involving an oil spill from a rig in the Australian Montara field. The spill had caused pollution in Indonesia for which they had been unable to obtain compensation. The Legal Committee has not been persuaded that this is a suitable subject for an international treaty but the Indonesian Government has been encouraged to lead efforts to find alternative solutions. To this end the Indonesian Government has organised two International Conferences the most recent one in November 2012. At this meeting delegates agreed that this remained a very serious and pressing issue which is not adequately covered by existing laws and that a workshop of legal experts should look at the problem. Whilst the Indonesian Government remains of the view that a legally binding international agreement would be the preferred solution it accepts the position taken by the Legal Committee and is prepared to work with the Committee in the development of guidance to assist states to enter into bilateral or regional agreements to cover liability and compensation.

In LEG 100/13/2 the Indonesian Government sets out principles for guidance on model bilateral/regional agreements on liability and compensation for transboundary spills for further consideration. During discussion in the Committee several (sometimes contradictory) points were made:

- there is a need for a fair and effective model framework but not for a binding international treaty;
- the aim should be to assist states in reaching bilateral or regional agreements by creating workshops or consultative groups;

- there is no need for direct IMO involvement which might simply delay the creation of bilateral or regional agreements;
- strict liability should be at the heart of any scheme;
- in drafting any document regard should be had to the terminology used in UNCLOS;
- under international law coastal states have sovereign rights over their outer continental shelves and these rights have to be taken into account when negotiating bilateral or regional agreements;
- those states which have entered into bilateral or regional agreements should offer assistance to those states seeking to enter into such agreements;
- regard should be had to the principles set out in Leg 100/13/2 which reflect the 1992 CLC and Fund Conventions and the 2001 Bunkers Convention;
- on environmental issues regard should be had to Arts. 192, 194 and 197 of UNCLOS.

The Committee suggested that Indonesia should pursue the subject intersessionally and that more states should participate and that a good starting point would be for states which already have bilateral or regional agreements in place to send examples to the IMO Secretariat. The online address for participating in the intersessional group is:

ind_offshorediscussion_imoleg@yahoogroups.com

The CMI delegation informed the Committee that the subject of transboundary oil pollution would be on the agenda at its Dublin Symposium scheduled to take place from 29th September to 1st October 2013. The CMI will share the results of the Symposium with the delegation of Indonesia.

Implementation of the International Convention on Civil Liability for Oil Pollution Damage, 1992.

A request (LEG 100/13/1) was received from the International Oil Pollution Compensation Funds (IOPC Funds) for advice from the Legal Committee in connection with the case of the Alfa I. In that case the liability insurers of the ship (Aigaion) issued a blue card indicating that the vessel had insurance cover at a level to comply with the requirements of CLC 1969/92. On the

strength of that blue card the Central port Authority of Piraeus issued a certificate of insurance in the form of the annex to CLC 92. In the event there were restrictions on the Aigaion cover which limited the amount of compensation to a figure substantially below the limit contained in the CLC 92. The question from IOPC Funds was whether the state issuing the certificate has an obligation to investigate the terms, conditions and cover provided in blue cards presented by an insurer and whether it (the state) would have a potential liability to the IOPC Fund should the Fund suffer a loss as a result of the insurance cover being inadequate.

This is a question which has much wider ramifications in that it could arise in connection with claims under the 2001 Bunkers Convention and under the 2002 Protocol to the Athens Convention.

Delegates expressed the following views:

- The state issuing the certificate has an obligation to investigate the blue card;
- contracting states should normally be able to trust the blue card unless there is some indication that further investigation is needed;
- investigation is easy where the insurer is a member of the International Group of P & I Clubs or major insurer but less easy (but not impossible) where the insurer is foreign;
- if in doubt the state should always examine the underlying insurance policy;
- in the event of a discrepancy between the blue card and the policy it will be a matter for national law to determine the legal consequences;
- CLC 92 does not provide for the liability of the state if it issues a certificate based on insufficient or invalid insurance and therefore there is no automatic liability to pay damages;
- in some jurisdictions there may exist a duty of care which could make the state liable in negligence;
- there is no reason in international law why a state may not be liable if it fails to comply with their convention obligations;
- these liability conventions are intended to place liability on the shipowner or his insurer and not on states so channeling liability to a state is widening the intended scope of the conventions.

One delegation informed the Committee that at LEG 101 it will submit a paper proposing that the guidelines for vetting and accepting documentation

from insurance companies adopted in respect of the Bunkers Convention should be extended to CLC and HNS certificates.

Status of Conventions.

LEG 100/10 and LEG 100/WP.2 contain information on the ratification status of IMO conventions and other treaty instruments.

States were urged to work towards ratification of conventions in general and the 2007 Wreck Removal Convention, the 2002 Athens Protocol, the 2005 SUA Protocol and the 2010 HNS Protocol particular.

Several delegations gave notice of their governments impending ratification of named instruments and of particular significance was the announcement that a bill was placed before the Canadian Parliament in March implementing the 2010 HNS Protocol. Denmark will follow suit later this year and Sweden in 2014.

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