

CMI NEWS LETTER

Vigilandum est semper; multae insidiae sunt bonis.

COMITE MARITIME INTERNATIONAL

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This Issue Contains:

News from the CMI

- Future events
- The treatment of volume contracts in the UNCITRAL draft convention on the carriage of goods [wholly or partly] by sea

News from Intergovernmental and International Organizations

News from IMO

Meeting of the Legal Committee 16-20 October 2006, by Richard Shaw

News from IOPC Fund

Meetings 23-27 October 2006, by Richard Shaw

NEWS FROM THE CMI

FUTURE EVENTS

2007 Assembly

The Assembly of the CMI will be held on Friday 11th May 2007 in Dubrovnik. The time and the agenda will be made known subsequently.

Symposium on Maritime Law

The CMI and the Croatian Maritime Law Association are jointly organizing a Symposium on maritime law which will be held in Dubrovnik in the afternoon of Friday 11th May, after the CMI Assembly, and in the morning of Saturday 12th May.

The Symposium program will include distinguished speakers from CMI, Croatian MLA and other national associations who will cover, inter alia, the following topics:

- Carriage of Goods (UNCITRAL Draft Convention on the Carriage of Goods [wholly or partly] [by Sea])
- Carriage of Passengers (PAL Protocol update)
- Places of Refuge
- Marine Insurance
- Marine Pollution from Ships
- Wreck Removal
- Young Members' Issues.

Details of the programme of the Symposium, including previous or subsequent excursions and travelling and hotel information, will be posted on the website in the near future.

THE TREATMENT OF VOLUME CONTRACTS IN THE UNCITRAL DRAFT CONVENTION ON THE CARRIAGE OF GOODS [WHOLLY OR PARTLY] BY SEA*

Working Paper (A/CN.9/WGIII/WP.66) submitted by the CMI to UNCITRAL Working Group III

I. INTRODUCTION

1. At the sixteenth session of the Working Group, wide support was expressed for the preparation of an explanatory document on the treatment of volume contracts in the draft convention to further illustrate their legal and practical implications. It was also suggested that the Comité Maritime International (CMI) should be requested to assist in the preparation of such document (see A/CN.9/591, para. 244). This paper is submitted in response to that request.

2. We base ourselves on the draft convention as contained in A/CN.9/WG.III/WP.56, but have also seen and taken into account a final draft proposal by Finland which is to be published as a working paper for the seventeenth session as A/CN.9/WG.III/WP.61 and which proposes alternative drafts of articles 1(b) and (c), 8, 9, 10, 20, 94, 95 and 96.

Definition of “Volume Contract”

3. A “volume contract” is defined in article 1(b) of the draft convention as contained in A/CN.9/WG.III/WP.56 as meaning:

“a contract that provides for the carriage of a specified quantity of cargo in a series of shipments during an agreed period of time. The specification of the quantity may include a minimum, a maximum or a certain range.”

It is proposed in A/CN.9/WG.III/WP.61 that the beginning of this definition is amended to read:

“a contract of carriage that provides for a specified quantity of goods ...”.

Background and existing international regulation

4. The notion of volume contracts, which provide for the carriage of a specified quantity of cargo in a series of shipments during an agreed period of time, is well established in the dry bulk and oil trades, where they are often described as contracts of affreightment (CoAs) or tonnage contracts. They are commonly used, for example, by FOB buyers under a long term sales contract who wish to secure their tonnage requirements and manage the freight risk. BIMCO issued a standard volume contract of affreightment for the transportation of bulk dry cargoes, code-named VOLCOA, in 1982,¹ which reflects the terms commonly used in the trade. This form provides for an agreed period of the contract, the total quantity to be shipped and

the quantity per shipment. It also provides that each and every voyage thereunder shall be governed by the terms and conditions of a voyage charterparty as per an attached pro forma. INTERTANKO issued a standard form tanker contract of affreightment, INTERCOA 80, in 1980 (which is adopted by BIMCO). This form provides for an agreed contractual period, the quantity to be shipped per year and a quantity per shipment. Each voyage is to be performed subject to the terms of a charterparty on the INTERTANKVOY 76 form. Volume contracts which contain provisions similar to those reflected in the VOLCOA and INTERCOA forms are outside the scope of the Hague Rules, the Hague-Visby Rules and the Hamburg Rules. They are therefore not currently subject to an international mandatory regime. Subject to draft article 9(3), which is considered in paragraph 8 below, the draft convention set out in A/CN.9/WG.III/WP.56 does not alter the current position (see A/CN.9/572, para. 89).

5. However, individual shipments made under a volume contract may currently be subject to a mandatory regime. Article V of the Hague and Hague-Visby Rules provides that “if bills of lading are issued in the case of a ship under a charter party they shall comply with the terms of this Convention.” Similarly, article 2(3) of the Hamburg Rules provides that “where a bill of lading is issued pursuant to a charter-party, the provisions of the Convention apply to such a bill of lading if it governs the relation between the carrier and the holder of the bill of lading, not being the charterer.” In addition, article 2(4) of the Hamburg Rules provides, “if a contract provides for future carriage of goods in a series of shipments during an agreed period, the provisions of this Convention apply to each shipment”. Consequently the Hague, the Hague-Visby or the Hamburg Rules, as the case may be, might apply to bills of lading issued under the charterparty governing each voyage under a volume contract or directly under the volume contract itself.

II. A/CN.9/WG.III/WP.56 AND A/CN.9/WG.III/WP.61

Exclusions

6. Draft article 9(1)(d) in A/CN.9/WG.III/WP.56 provides that the draft convention does not apply to volume contracts, except as provided in draft article 9(3). A/CN.9/WG.III/WP.61 makes a

1. Revised and reissued in November 2004 as the standard contract of affreightment for dry bulk cargoes code-named GENCOA

distinction between liner and non-liner transportation. Draft article 9(2)(a) as set out in A/CN.9/WG.III/WP.61 provides that, subject to draft article 9(2)(b), the draft convention does not apply to contracts of carriage in non-liner transportation. A volume contract in non-liner transportation thus remains excluded from the scope of application of the draft convention except in situations covered by draft article 9(2)(b). In liner transportation, draft article 9(1) as set out in A/CN.9/WG.III/WP.61 only excludes:

“(a) charterparties, and (b) contracts for the use of a ship or of any space thereon, whether or not they are charterparties.”

Volume contracts in liner transportation are considered to be contracts of carriage which would not fall within this exclusion and which would accordingly remain within the scope of application of the draft convention (see A/CN.9/WG.III/WP.61, para. 31).

7. The intention of draft article 10 of the draft convention in both A/CN.9/WG.III/WP.56 and A/CN.9/WG.III/WP.61 is to maintain the current position, at least under the Hague and Hague-Visby Rules, as regards what may loosely be described as third parties (see A/CN.9/572, para. 96 and A/CN.9/WG.III/WP.61, para. 37). It may however be noted that draft article 10 in A/CN.9/WG.III/WP.56 is a provision similar to article 2(3) of the Hamburg Rules. Draft article 10 preserves the position described in paragraph 5 above as regards bills of lading, but extends the mandatory regime to apply to non-negotiable transport documents and electronic transport records.

8. Draft article 9(3)(a) in A/CN.9/WG.III/WP.56 applies the draft convention to the terms that regulate each shipment under a volume contract (to the extent that draft articles 8, 9 and 10 so specify) and is similar to article 2(4) of the Hamburg Rules. Draft article 9(3)(b) on the face of it goes further and applies the draft convention to the terms of the volume contract itself, but only to the extent that its terms may regulate a shipment under the volume contract. The intention of this provision is explained in paragraph 65 of A/CN.9/576. Paragraph 24 of A/CN.9/WG.III/WP.61 refers to the problems arising from the drafting of draft article 9 in A/CN.9/WG.III/WP.56 and the commentary goes on to say that the proposed text of draft article 9 in A/CN.9/WG.III/WP.61 is intended to provide a clearer understanding of what is excluded from

the scope of application of the draft convention. The intention behind the exception to the exclusion in draft article 9(2)(b) is explained in paragraph 29 of A/CN.9/WG.III/WP.61.

9. The exclusion from the scope of application of the draft convention of volume contracts in non-liner transportation as outlined above applies equally to volume contracts in trades other than the dry bulk and oil trades. It may be, however, that in some trades sea waybills or other non-negotiable transport documents may be used to which the Hague and Hague-Visby Rules might not apply. Currently, subject to article 2(3) and (4) of the Hamburg Rules, both the volume contract itself and shipments thereunder may in some trades fall outside the mandatory regimes. However, as noted in paragraph 7 above, the draft convention brings non-negotiable transport documents and electronic transport records within its scope of application.

Service contracts

10. As regards liner transportation, much of the discussion in the Working Group has been focused on the treatment of service contracts and similar arrangements. This expression is neither used nor defined in the draft convention in A/CN.9/WG.III/WP.56 or in A/CN.9/WG.III/WP.61. “Service contract” is however defined in section 3(19) of the United States Shipping Act of 1984 as amended by the Ocean Shipping Reform Act of 1998 (together, the U.S. Shipping Acts) as meaning:

“a written contract, other than a bill of lading or a receipt, between one or more shippers and an individual ocean common carrier or an agreement between or among ocean common carriers in which the shipper or shippers makes a commitment to provide a certain volume or portion of cargo over a fixed time period, and the ocean common carrier or the agreement commits to a certain rate or rate schedule and a defined service level, such as assured space, transit time, port rotation, or similar service features. The contract may also specify provisions in the event of non-performance on the part of any party.”

The expressions “common carrier” and “ocean common carrier” are also defined in the U.S. Shipping Acts.² A service contract as so defined is considered to be within the definition of a volume contract in draft article 1(b) of the draft convention on the basis that “over a fixed time period” implies a series of shipments.

11. An explanation of the regulatory regime for carriage to and from the United States established

2. At common law, a common, or public, carrier by sea holds itself out as willing to carry for reward for anyone that wants to use its services. A common carrier is subject to a stringent legal regime, which is normally mitigated by the common carrier, which is free to limit its liability by contract, subject to the constraints imposed by the current mandatory regimes.

by the U.S. Shipping Acts is outside the scope of this paper. It is briefly referred to in paragraphs 19 and 20 of the proposal by the United States of America set out in A/CN.9/WG.III/WP.34. In practice, we understand that in the liner trade to and from the United States, volume contracts almost always fall within the definition of service contracts. Outside the United States, we understand that volume contracts are normally entered into in the liner trade only when a shipper wishes to safeguard security of space or regularity of service. In the liner trade to and from the United States, it is possible in service contracts which fall within the definition in the U.S. Shipping Acts to stipulate rates of freight which fall outside the carrier's rates as set out in its published tariffs. It is therefore necessary to enter into a service contract to obtain this commercial benefit. Outside the United States, this can be achieved by a straightforward rate agreement.

Derogation

12. Draft article 95 of the draft convention sets out special rules for volume contracts which are subject to the draft convention under article 9(3)(b), in A/CN.9/WG.III/WP.56 or, as provided in A/CN.9/WG.III/WP.61, to which the draft convention applies because volume contracts in liner transportation do not fall within the contracts excluded by article 9(1). But for draft article 95, the mandatory provisions of the draft convention would apply to shipments thereunder, or under A/CN.9/WG.III/WP.61 to the volume contract itself, from which, under article 94, neither the carrier nor a maritime performing party may derogate. The freedom of the shipper under draft article 94(2) remains open for further consideration.

13. Draft article 95 sets out the conditions under which, and the extent to which, a volume contract which is subject to the draft convention may by its terms derogate from the draft convention's mandatory provisions. Support for this principle and the general structure of draft article 95 has been expressed by the Working Group (see A/CN.9/576, para. 82). However, neither the definition of a volume contract in draft article 1(b) nor of a service contract under the U.S. Shipping Acts refers to a minimum quantity of cargo or containers to be shipped thereunder. The concern has therefore been expressed that service contracts covering a small number of shipments of relatively small quantities of goods, which derogate from the mandatory regime, could disadvantage small or

unsophisticated shippers with unequal bargaining power to that of the carrier, possibly by sub-service contracts made under an overarching framework contract.³ It should, however, be noted that no shipper can be forced to accept a volume contract. A shipper is always entitled to obtain from the carrier an appropriate negotiable transport document or electronic transport record under draft article 37 (except as provided in draft article 37(b)).⁴ Moreover, the freedom to derogate under draft article 95 applies to volume contracts to which the draft convention applies which fall within the definition in draft article 1(b) and not only to volume contracts which are service contracts within the definition in the U.S. Shipping Acts. Draft article 95 could apply to volume contracts used, or which may in future be used, in trades other than to and from the United States. The current practice in trades outside the United States has been referred to in paragraph 11. The conditions under which a volume contract may derogate from the mandatory terms of the draft convention are to be further considered by the Working Group (see A/CN.9/576, paras. 85, 89 and 99).

14. Draft article 95(6)(b) in A/CN.9/WG.III/WP.56 (draft art. 95(5)(b) in A/CN.9/WG.III/WP.61) provides for a derogation which complies with the conditions in draft article 95(2) and (5) (draft arts. 5(1), (2) and (4) in A/CN.9/WG.III/WP.61) to be binding on a third party that has expressly consented to be bound by the terms of the volume contract. Thus the protection of such third party lies in the terms on which such consent must be demonstrated. This provision is also to be considered further by the Working Group (see A/CN.9/576, para. 104).

Exclusive choice of court agreements

15. Specific provisions relating to an exclusive choice of court agreement contained in a volume contract which is subject to the draft convention, and whether such an agreement is to be binding on a third party, are contained in draft article 76(2) and (3) as set out in paragraph 73 of A/CN.9/591 and were accepted by the Working Group at the sixteenth session, although with some reservations regarding the notice to third parties under draft article 76(3) (see A/CN.9/591, para. 84).

Summary

16. It would appear that the draft convention attempts to strike a balance as regards volume contracts. On the one hand, it extends the scope of the mandatory regime to cover volume contracts in

3. See generally the comments from UNCTAD set out in A/CN.9/WG.III/WP.46 and the concerns referred to in paragraph 100 of A/CN.9/572, and the comments thereon, and in paragraph 244 of A/CN.9/591.

4. This article will be considered further by the Working Group at the seventeenth session.

liner transportation, whilst broadly retaining the present position in non-liner transportation. On the other hand, it allows the parties to a volume contract in liner transportation, subject to certain safeguards, freedom to derogate to a defined extent from its mandatory provisions in order to

accommodate current commercial practice in certain trades and the possible development of commercial practice in the future, and, subject to further safeguards, to bind third parties to such derogation. The Working Group is to give further consideration to these safeguards.

NEWS FROM INTERGOVERNMENTAL AND INTERNATIONAL ORGANIZATIONS

NEWS FROM IMO

MEETING OF THE LEGAL COMMITTEE 16-20 OCTOBER 2006

The IMO Legal Committee is an exceptionally effective international body, but the meeting which took place in Paris between 16th and 20th October (while the IMO Building in London is being refurbished) demonstrated both its strengths and weaknesses. The CMI was represented as usual by Patrick Griggs (Immediate Past President) and Richard Shaw. Me Jean-Serge Rohart, our President, was also present for part of the meetings, and the assembled delegates were entertained at a reception on 17th October given by the Association Francaise du Droit Maritime, at which their President Professor Antoine Vialard welcomed the guests.

The three principal items on the agenda were the draft Wreck Removal Convention, the ratification of the 2002 Protocol to the Athens Convention on the Carriage of Passengers, and the Fair Treatment of Seafarers in the event of a Maritime Accident.

Draft Convention on Wreck Removal

This project has been a very long time in development, particularly since it has been subordinated to the politically more pressing demands of the revision of the Athens Convention and the SUA Protocols. The lead delegation, that of the Netherlands, has patiently worked on the draft text in the meantime, and the target is now to submit this to a Diplomatic Conference in Nairobi in May 2007. However it was apparent at the meeting in Paris that there is still a divergence of views as to the scope of application of the proposed convention, and this led to some heated exchanges, which are rare in the Legal Committee. The scope of application of the Wreck Removal Convention as originally conceived was to enable states to take measures to remove wrecks which are located in their Exclusive Economic Zone (EEZ) as defined by the UN Convention on the Law of the Sea (UNCLOS) if those wrecks constitute a danger to navigation or to the marine environment.

Coastal State jurisdiction in the EEZ is limited to the exploitation of natural resources on and above the sea bed, the establishment of artificial islands, marine scientific research, and the protection and preservation of the marine environment. While therefore limited rights are granted to the coastal state to take action on environmental grounds, the right (and obligation) if any, to remove a wreck in the EEZ lies principally with the ship owner of the vessel concerned.

A notable example of such a problem was the vessel "Mont Louis" which sank off the Belgian coast following a collision with the passenger ferry "Olau Britannia" in August 1984. The wreck was located just outside Belgian territorial waters but close enough to the Wandelaar Pilot Station off the port of Zeebrugge to present a serious danger to navigation. It was subsequently removed and broken up, but not before serious questions as to the jurisdiction of the Belgian authorities to make a wreck removal order had arisen.

However, the stark reality is that most troublesome wrecks are located in shallow waters inside the internal waters and territorial sea of coastal states, where they have unquestioned jurisdiction to take appropriate legal measures. Many governments in the early debates therefore supported the proposal to extend the provisions of the draft convention to the internal waters and territorial sea of the affected coastal state. This led to the inclusion of a so-called "opt-in" provision in the draft, which would enable a coastal state to make a declaration that it would apply certain articles of the convention to wrecks in its internal and territorial waters. This was, however, opposed by the delegation of the Netherlands, which argued that the carefully crafted provisions in the draft designed to extend limited rights of the coastal state over the EEZ beyond those specified in UNCLOS were inappropriate to measures in internal and territorial waters over which the jurisdiction of the coastal state is unquestioned

5. A CMI working group has contributed a number of suggestions to the latest draft text, which is annexed to IMO Document LEG 92/4, available at www.imodocs.imo.org.

6. By articles 55 to 75 of UNCLOS.

and virtually unlimited.⁷

A great deal of time and effort was spent in the margins of the Paris meeting in an attempt to draft text which would meet these concerns. This work prolonged the discussions of the Draft Wreck Removal Convention far beyond the two days allocated to it, but by the conclusion of the meeting the resulting text was still unacceptable to the delegations of the Netherlands and of some other states. A key element in this debate was the position of the insurance industry, which has agreed in principle to provide “blue cards” to extend to wreck removal the principles of strict liability and direct action against insurers adopted in the conventions governing oil pollution, HNS and bunker spills. That agreement is however limited to the coastal state action provided in the draft convention, and the P and I Clubs, which are the leading insurers of wreck removal liabilities, made it clear to the Legal Committee that they would not support a convention containing provisions which might expose their members to liabilities imposed by national law which were greater than those set out in the draft.

There appeared to be a misconception in some states that they could avail themselves of the benefits of compulsory insurance, strict liability and direct action against insurers in relation to claims for recovery of the cost of wreck removal operations in their internal and territorial waters without the constraints specified in the draft convention. This is certainly not the case.

The debates ran on well beyond the time allocated, and concluded only when an informal arrangement was agreed by which work would be continued intersessionally to attempt to agree wording which would allow states to “opt-in” to the application of the convention’s principles to their internal and territorial waters.

Such an arrangement, while it has avoided a head-on confrontation between states in favour of the “opt-in” provision and those against it, carries with it grave risks for the Diplomatic Conference in May 2007. The usual IMO practice is that the text of a proposed convention must be fully settled six months before the diplomatic conference is scheduled to take place. That interval is essential for the text to be translated into all the official languages of the UN and for governments to make the necessary policy decisions and to instruct their delegates accordingly.

It would be a great shame if the considerable work already put into the draft Wreck Removal Convention were not to be brought to fruition. The benefits, particularly to developing countries, of a coherent international wreck removal regime with significant financial advantages are considerable. It has perhaps not been realised in some quarters that

a wreck is, by definition, a thing of no commercial value. Were it to have such a value, the salvage industry would no doubt undertake its removal and sale in return for a suitable salvage reward. However a valueless wreck will not yield proceeds of sale equal to the costs involved in its removal, and since most ships these days are owned by a one-ship company, the prospects of a coastal state recovering by legal action expenses which it has incurred in removing a wreck are very poor in the absence of insurance provisions such as those in the draft convention. In almost all cases therefore the coastal state will be better off financially in accepting the convention’s limits on the state’s freedom of action, even in its internal and territorial waters, in return for the guaranteed recovery which the convention confers.

Moreover on a broader front, the existence of a certificate of financial responsibility provided for in the draft convention will serve to allay the concerns of state and harbour authorities when they are requested to allow entry of a ship in distress to a place of refuge in their waters. Such authorities will be justifiably concerned at the risk of such a ship sinking and obstructing navigation in their waterways. The topic of Places of Refuge is still in the work programme of the Legal Committee, and member states would be wise to recognise the linkage with the Wreck Removal Convention.

Ratification of the 2002 Protocol to the Athens Convention

The 2002 Protocol was intended to bring the 1974 Athens Convention up to date. The 1974 limit of liability for passenger claims of 46,666 special drawing rights (US\$68,800 or £36,550 at current values) per passenger does not reflect a fair value of the loss of a human life in any country. The UK, following the Herald of Free Enterprise disaster, felt obliged to increase the figure unilaterally to £80,000, subsequently increased to 300,000 SDR (£234,975), for carriers of passengers whose principal place of business is in the UK.⁸

The Protocol of 2002 was a serious attempt to bring the figures up to date, and to revise the basis of liability, creating strict liability for shipping incidents up to 250,000 SDR per passenger, with compulsory insurance and direct action against insurers, and an overall limit of 400,000 SDR. The insurance industry warned the Diplomatic Conference that there was insufficient capacity in the market to cover risks at this level, particularly in view of the very large cruise vessels being built, some of which can carry more than 3,000 passengers. A single casualty could be covered, but

7. The most recent version of the “opt in” provision appears at Art. 13(2) of document LEG92/4.

8. Carriage of passengers and their Luggage by Sea (United Kingdom Carriers) Order 1987 – S.I. 1987 No 855; now replaced by S.I. 1998 No 2917.

unlimited and immediate reinstatement of the cover after a total loss of such a ship was not insurable. Moreover the P and I Clubs warned that losses caused by terrorism were not covered by the Clubs, and that the existing War Risks Cover would not meet the insurance requirements of the Protocol.

Despite these warnings the Protocol was adopted, but Governments have found themselves unable to ratify it, since they cannot satisfy its insurance requirements. This should be borne in mind by the delegates of states working on the Wreck Removal Convention discussed above.

Since 2002 discussions⁹ have been going on between interested parties to see whether a formula can be found to bridge the gap. On 15th September two documents were published by IMO setting out a formula to enable ratification of the Protocol with the support of the governments of UK and Norway, the International Council of Cruise Lines and the International Chamber of Shipping.¹⁰ The essence of these documents is to align the requirements of the Protocol with the insurance available. The formula is a complex one, but in essence it enables the states parties to certify that the insurance arrangements are in accordance with the requirement of the Athens Convention as amended by the 2002 Protocol, despite the fact that such insurance cover is provided in two tranches by war and non-war risks insurers, and despite the fact also that the war risks cover will contain certain standard market exclusions, such as Bio-chem and Cyber attack. In addition the war risks (including terrorism) cover will be acceptable despite being capped at 340 million SDR per incident.

The achievement of this arrangement on an internationally agreed basis has required innovative drafting at an international law level. A set of Guidelines has been agreed setting out the terms of the arrangement enabling states to ratify the 2002 Protocol and thus to enable to enter into force. An agreed standard form of Reservation has also been drafted which will be made by all states ratifying the 2002 Protocol, effectively amending the Protocol retrospectively for those states which ratify it subject to these terms.

If however the insurance market develops other cover to meet the terms of the Athens Convention and 2002 Protocol, the Guidelines contain a provision enabling them to be amended by a resolution of the Legal Committee of the IMO, thus enabling the requirements of the Convention and Protocol to be kept in line with the cover available. Purists may reasonably ask themselves whether these arrangements align with generally accepted

principles of International Law, but in the face of a real need to enable passengers to benefit from an improved regime, and a general agreement among states that the proposed arrangement represents the best available, the use of a standard form of reservation, even if it is not enshrined in the terms of the Protocol itself, appears to be an effective way of ensuring uniformity between the states parties which adopt this form of Reservation.

It seems likely that the members of the European Union, who have for some time been under pressure from the Commission in Brussels to find a way of solving this knotty problem, will adopt the proposed formula and ratify the 2002 Protocol in the reasonably near future. However the real test of the wording adopted in Paris will be when we see other states adopt it too.

Fair Treatment of Seafarers in the Event of a Maritime Accident

This topic has been on the agenda for some time, particularly in the light of the detention of the Master of the “Prestige” in Spain and of the crew of the “Tasman Sea” in Pakistan. A set of guidelines for the Fair Treatment of Seafarers were developed by a joint IMO/ILO Working Group. They were adopted by the Legal Committee of the IMO at its meeting in February 2006¹¹ and by the Governing Body of the ILO in June 2006.

Certain reservations were expressed¹² at the April 2006 meeting of the Legal Committee, concerning details of the Guidelines, and at the Paris meeting in October these arguments were renewed by the USA¹³ with the support of Canada, Spain, the Netherlands and France. These were referred to a Working Group in the margins of the conference, but at the conclusion of their work it was recommended by the Working Group that while the Guidelines could be improved in certain respects, they should be given time to enter into effect before attempts were made to change them. This recommendation was adopted by the Legal Committee, with a proviso that the Committee should review the working of the Guidelines, particularly with reference to the points raised by the paper presented by the US, Canada and others, at its next meeting in October 2007.

If, as is hoped, the final text of the Wreck Removal Convention can be developed in time for submission to a Diplomatic Conference in May 2007, there will be no spring meeting of the Legal Committee, but most of the delegates will be meeting again under the blue skies of Nairobi.

RICHARD SHAW*

9. Led by Prof. Erik Rosaeg of Norway.

10. IMO documents LEG 92/5/2 and LEG 92/5/3; (see also LEG 92/5).

11. Document LEG 91 WP6 Annex 2.

12. Particularly by the delegation of the United States - see document LEG 91/5/2.

13. Document Leg 92/6/2.

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NEWS FROM IOPC FUND

MEETINGS 23– 27 October 2006

The Autumn meetings of the International Oil Pollution Compensation Fund Governing Bodies were held at the INMARSAT Building in London between 23rd and 27th October 2006.

These were the last meetings to be attended by Mans Jacobsson as Director. He has held that post since February 1985, and his retirement will take effect on 1st November 2006, so he has been in post for over 20 years. As he told delegates and guests at the reception held in his honour at the Old Hall of Lincoln's Inn on the 24th October, there were only 30 member states of the original 1971 Fund when he took on the job as Director. There are now 98 member states of the 1992 Fund which has replaced it, and 19 member states of the Supplementary Fund. The maximum sum of money available to the victims of oil pollution has increased in the same period from 45 million SDR (US\$65,250,000 at the time) to 750 million SDR (US\$1.1 billion) today.

Mans Jacobsson has certainly maintained a steady hand on the helm of the Funds throughout the period of his Directorship, and the various receptions held during the week to mark his retirement were the occasion for glowing tributes from many members of the International Shipping Community, including the Secretary-General of the IMO. His successor Willem Oosterveen of the Netherlands, was warmly welcomed. He is no stranger to the IOPC Fund system, having chaired the Executive Council and Assembly of the 1992 Fund in years past. A carefully planned hand-over should ensure that there is no interruption in the high level of service which the Fund Secretariat gives to member states and pollution victims alike.

There were no major new oil spills reported to the meetings, although the spill of 2081 tonnes of fuel oil in the Phillippines from the sinking of the tanker "Solar 1" is likely to produce compensation claims in excess of that vessel's CLC limit. However, the implementation of the new STOPIA Agreement means that the ship's P and I Club will bear the first £15.8 million (20 million SDR) of pollution claims in place of her CLC limit of £3.6 million. If this limit is not exceeded, the IOPC Funds will not be concerned.

This is the first case in which the STOPIA Agreement has been invoked, and its workings will be watched closely by member states, since this agreement is an important element in the re-balancing of contributions to pollution damages between ship and cargo interests since the entry into force of the Supplementary Fund Protocol adopted in 2002. A positive and proactive approach by the vessel's P and I Club, and by the Funds, has already led to a speedy clean-up of the oil spill and has hopefully contained the scale of claims within reasonable limits.

This case led to a more general review of the circumstances in which intervention to remove a wreck, or at least the oil remaining in a wreck, was justified. Each case must, of course, be judged on its own particular facts, but the thrust of the debate was that claims for early intervention to remove oil from a wreck, or of the entire wreck, would be considered more favourably in future cases.

The "Erika" and "Prestige" cases are moving steadily towards final resolution, thanks in both cases to the governments concerned agreeing to "stand last in the queue" for payment of compensation. This has enabled the Funds to pay 100% of all other established claims in the case of the "Erika" and 30% of such claims in the case of the "Prestige", the balance being paid by the Government of Spain. The "Nissos Amorgos" case remains unresolved, with two very large, but identical, claims brought by the Government of Venezuela in two different Courts in that country. High level discussions have taken place recently with a view to an overall amicable settlement of this case, but to date there is no apparent prospect of a deal in the reasonably near future, although the Funds and the Gard P and I Club have already settled almost all the small fishermen's claims in full. The problems in closing this file are increasing the difficulties encountered by member states in completing the winding up of the 1971 Fund, which covered claims in Venezuela at the time of the "Nissos Amorgos" casualty in 1997.

At an administrative level there was an interesting debate on the measures which should be taken with regard to states which have failed, in breach of their treaty obligations, to file returns of the contributing oil imported into their countries for the years in question. Without such oil reports it is not possible for the Secretariat to calculate the respective contributions to claims funds of oil importers in the states in question. Considerable efforts have been made by the Director and his staff to induce defaulting states to produce the required information, in many cases with positive results, but about 33 states, including 7 states which are still members of the 1971 Fund, have failed to provide the information required. Without this it will be very difficult to complete the winding up of the 1971 Fund, which has ceased to cover future oil pollution damage claims but from which significant sums are due in respect of past accidents.

The Working Group on non-technical measures to promote quality shipping, set up earlier in 2006 and chaired by Birgit Solling Olsen of Denmark, delivered its first report. Among its proposals is a study to identify the legal obstacles to the sharing of information between insurers on shipping organisations which do not meet the standards of quality required by the insurers in question. Particular fears concerned the risk of allegations of anti-competitive conduct, which could provoke severe responses, particularly at a European level. The Secretariat has, at the suggestion of the Working Group, contacted the CMI with a view to a joint study of this question.

The meetings of the IOPC Funds in 2007 will take place during the weeks commencing 12th March, 11th June and 15th October. The March meeting will be held in London, again at INMARSAT, and the June meeting at the ICAO Building in Montreal. It is hoped that the refurbishment work currently under way on the IMO Building will be completed in time for the October meeting.

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