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# CMI NEWS LETTER

*Vigilandum est semper; multae insidiae sunt bonis.*

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## This Issue Contains:



NICHOLAS J. HEALY
1910 – 2009

NICK HEALY died on May 20 at his home in Ireland, at the age of 99. I had the great privilege of being one of his many friends and to work with him in the CMI for many years. He has been a member of the CMI Executive Council from 1977 to 1979, a Vice President of the CMI from 1985 to 1991 and subsequently a Honorary Vice-President. My friendship with him started when he was made President of the Maritime Law Association in 1964 and continued since then. I

entitled to rely on the original figures for 2009. The revised figures for 2009 will be applied retroactively to the effect that for the associations that have already paid the 2009 subscription, any "excess" will be credited to the subscription for 2010.
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## NEWS FROM THE BRITISH MARITIME LAW ASSOCIATION

*The Editor of the CMI News Letter is very pleased to publish, with the kind permission of the author and of the British Maritime Law Association, the speech delivered by Sir Michael Wood at the Annual Dinner of the BMLA, on 13 October 2009.*

### PIRACY AND INTERNATIONAL LAW

SIR MICHAEL WOOD KCMG

It is a great pleasure to be invited to speak to you this evening. An undeserved pleasure since I am certainly no shipping lawyer. Years ago, I nearly became a pupil in a set of chambers then specializing in shipping law. But I was induced by the Foreign and Commonwealth Office to join their legal department without doing pupillage. At least that gave me the opportunity to spend many happy years at the Third United Nations Conference on the Law of the Sea, which took place over a nine year period from 1973 to 1982.
One issue that was not controversial at that conference, that might indeed in the 1970s have been thought to be of little current importance, was piracy. I think the question was even posed whether there was any need to retain provisions on piracy, since there were so few problems in the 1970s. The era of *hostes humani generis* seemed long past, only featuring in films. In the end the Conference decided simply to roll-over the provisions of the 1958 Convention.
The subject of piracy lay behind one of the wisest comments of the English courts on public international law. You may recall that the Privy Council, 75 years ago, in its 1934 advisory opinion *In re Piracy Jure Gentium*, said that 'a little common sense is a valuable quality in the interpretation of international law.' That's very

true. And sometimes overlooked.

Piracy has been the subject of so much attention of late, including on the part of lawyers, that it is hard to say anything new. We have had many conferences, at Wilton Park, at the British Institute of International and Comparative law, and very recently at Chatham House. What I aim to do in the next few minutes is simply to give a brief overview of the rules of public international law as they relate to modern-day piracy and armed robbery at sea.

There are of course many domestic legal questions relating to piracy, which may perhaps be of more immediate interest. These include questions relating to insurance – for example, is piracy 'terrorism' for the purposes of insurance cover; the law applicable to the payment of ransoms, where again a key issue may be whether pirates are terrorists or connected in some way with terrorists; legal aspects of using private armed guards on ships. But public international law often provides a framework for these other questions, and I shall confine myself to that.

Attention has focused over the last couple of years on efforts to stamp out piracy and armed robbery at sea off the coast of Somalia and more widely in the Gulf of Aden and the western Indian Ocean. These are among the busiest shipping lanes in the world. A particular feature here has been the taking hostage of ships and crew members. Attacks on shipping have also been a serious problem elsewhere, not least in that other vital sea-lane, the Straits of Malacca and Singapore. And in the Niger Delta and the Gulf of Guinea.

I wouldn't be entirely surprised if some of you have a general impression that public international law is vague, unenforceable, indeed hardly law at all. You probably think of the Iraq conflict of 2003, and wonder what the law on the use of force actually was on that occasion – whether, indeed, the law mattered. I don't propose to go into that, at least not today.

My overall theme this evening is that, in respect of piracy, the rules and institutions of international law are clear; sufficient; and for the most part respected. The problems, which are many, are practical ones, or relate to national law. They are not a result of shortcomings in applicable public international law and institutions.

There is an important degree of international co-operation, through the United Nations (including its Security Council) and the Contact Group on Piracy off the Coast of Somalia, created in January this year, which has four Working Groups, including a Working Group on Juridical Issues chaired by Denmark. In addition, the International Maritime Organization continues to play a central role in improving awareness of, and cooperation among Governments in countering piracy – and agreeing guidelines and other instruments. Indeed, the IMO was instrumental in getting the Security Council involved. And of course, industry plays a key role in many respects. To cite just one example, the International Chamber of Shipping does an excellent job in gathering information on piracy and armed robbery at sea from around the world.

I propose, first, to distinguish public international law from other legal systems that have a role to play. Second, I shall describe briefly the applicable rules of public international law, touching on a couple of points that may be thought to be controversial or unclear – but which in my view are not.

Next, I shall say something of the action taken by the UN Security Council.

Fourth, I shall touch on one of a number of wild ideas that seem to be out there, the suggestion – by some otherwise serious people – that there should be a new international tribunal for the trial of pirates.

And, finally, I shall say a word about the rules on the use of force as they apply to piracy.

*Different legal systems*

One reason why the law seems complex, or even unclear, is that a number of different legal systems come into play in the case of any particular piracy incident. But this is not unusual in the world of shipping. Relevant legal systems may include the law of the flag State of the pirate ship; the law of the flag State of the ship taking action against the pirate ship; the law of State or States in which the pirates are based, and from which they are supplied; the law of the State or States to which they transfer their ill-gotten gains; and the law of the State into whose custody, if captured, they are delivered.

Each of these is a national legal system, but that system may itself reflect rules of public international law, particularly as regards jurisdiction and human rights.

And standing apart from national law – I will not say above – since that depends on one's perspective, is public international law, the law applicable between States, and in particular the international law of the sea.

*Current international law*

It is occasionally suggested that the international law on piracy is not well understood because it is not readily accessible. I do not think this is so. But if anyone wants to see it set out clearly and in one place, with the relevant international instruments, they should try to obtain a copy of Dr. Douglas Guilfoyle's piece for the Contact Group on Piracy off Somalia.

The principal rules of international law relating to piracy are to be found in the United Nations Convention on the Law of the Sea of 1982 (often referred to as UNCLOS). That Convention currently has 159 States Parties, including the European Community. The UNCLOS rules on piracy largely repeat what was already to be found in the 1958 Geneva Convention on the High Seas. The 1958 Convention itself was based on drafts prepared by the International Law Commission in the 1950s, which themselves were inspired by a Harvard Research project of 1932. The UNCLOS provisions are by now generally considered to reflect customary international law. The Security Council has recently reiterated 'that international law, as reflected in [UNCLOS], sets out the legal framework applicable to piracy and armed robbery at sea'.

It would, nevertheless, help to strengthen the legal regime against piracy (and indeed other aspects of the law of the sea) if States not yet party to the United Nations Convention acceded to it promptly. In particular, it is unfortunate that the United States has still not acceded to the Convention – 27 years after its adoption, and 15 years after the application of its deep seabed mining provisions was adjusted to take account of all the concerns of the US Administration. This is essentially because of irrational opposition on the part of some who seek to portray the Convention as yet another example of 'United Nations governance' (it is never a good idea to name something the 'United Nations Convention' if you want the US Senate to give its advice and consent) and perhaps a certain lack of effort on the part of successive Administrations, including – thus far – that of President Obama. In any event, there is no question of 'UN governance' in the piracy field, where UNCLOS – appropriately – leaves matters very much to individual States.

Piracy is defined in UNCLOS as any illegal acts of violence or detention, or any sort of depredation, committed for private ends by the crew or the passengers of a private ship and directed against another ship on the high seas (which includes for this purpose the 200-mile exclusive economic zone). The definition also includes participation in the operation of a ship with knowledge of facts making it a pirate ship, including one intended to be used for future acts of piracy.

In other words, piracy must be committed beyond the territorial sea of any State (normally 12 nautical miles wide). If such acts take place within the territorial sea, they tend to be referred to as armed robbery at sea, and different rules may apply.

The words in the definition – 'for private ends'- have given rise to some confusion. Some suggest that they exclude acts of terrorism, which may be said to be committed for political ends. That is not the general view. In fact, the words 'for private ends' are best understood as distinguishing pirates from acts officially sanctioned by the State – privateers, as they used to be called. Sir Francis Drake was not a pirate. He was on government business.

You will have noted that the definition contains the 'two ship' rule. Action by passengers or crew internal to the ship is not piracy. In the *Achille Lauro* incident of 1985, Palestinians terrorists, who were embarked as passengers, hijacked an Italian cruise ship with over 400 persons on board, and murdered one elderly and disabled passenger, Leon Klinghoffer. As the criminal acts were internal to the ship they were not within the definition of piracy under international law, including the Convention. Following this incident, a new convention was drafted within the IMO, one of a series of counter-terrorism conventions in particular fields, the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation of 1988 (known as the 1988 SUA Convention).

The first and most basic rule set out in UNCLOS (the 1982 Convention) is that 'all States shall to cooperate to the fullest extent possible in the repression of piracy'. According to the International Law Commission, which drafted this provision as long ago as the 1950s, 'any State having the opportunity of taking measures against piracy, and neglecting to do so, would be failing in a duty laid upon it by international law'. A duty to cooperate in international law does have real meaning, and may be applied by international courts and tribunals. And the duty is a most insistent one – 'shall cooperate to the fullest extent'.

Notwithstanding the general rule of the exclusive

jurisdiction of the flag state over ships on the high seas, any warship or other government ship may visit and search a ship that it has reasonable grounds for suspecting is engaged in piracy; and may seize any pirate vessel and arrest any pirates. This, as we have seen, includes a ship which is under the control of persons intending to use it for future acts of piracy.

Under customary international law, piracy is a crime of universal jurisdiction. In other words, all States are entitled to take jurisdiction over crimes of piracy committed on the high seas. It is unclear whether they have a duty to do so (perhaps derived from the duty to cooperate to which I have just referred). It is a fact that by no means all States have taken universal jurisdiction over piracy as a matter of domestic law. They should. Nor does the Convention contain any obligation to extradite or prosecute an alleged offender present in one's territory or on board one's ship.

Apart from the 1982 Law of the Sea Convention, other treaties may be relevant in particular circumstances, in particular the 1988 SUA Convention, already referred to, and the Taking of Hostages Convention. These do provide for an obligation to extradite or prosecute. Since they also apply to acts committed on the high seas, there will often be an obligation to extradite or prosecute for acts that are also acts of piracy, at least for the parties to these widely accepted conventions.

*Action by the United Nations Security Council*

The Security Council of the United Nations had in recent years made an important contribution to the political and legal armoury against piracy. As you know, the Security Council is the organ of the United Nations upon which the Members of the Organization have conferred primary responsibility for the maintenance of international peace and security. Where there is a threat to the peace, breach of the peace or act of aggression, the Council, acting under Chapter VII of the UN Charter, may take decisions that have legal force for all Member States under international law.

The Security Council has been dealing with the situation in Somalia – a classic 'failed State' – as a threat to international peace and security since 1992. Prompted by the International Maritime Organization, in March 2006 the Security Council issued a statement encouraging States to take action to protect shipping against piratical acts. Again prompted by the IMO, in 2008 the Council adopted a series of resolutions aimed at piracy based in Somalia. If the legal significance of these is debatable, their political importance is considerable. Even if they do not add greatly, if at all, to the powers that States already have under general international law they give a degree of legitimacy for the participating States. Indeed, some (like Germany) might find it harder domestically to participate in enforcement measures without being able to rely on the authority of the Security Council.

The first Security Council resolution, adopted in June 2008, emphasised the effect of piracy on the World Food Programme's operations to deliver food aid to the people of Somalia. The Council decided that, for a six-month period, States cooperating with the Government of Somalia might 'enter the territorial waters of Somalia 'for the purpose of repressing piracy and armed robbery at sea, in a manner consistent with such action permitted on the high seas' and use 'all necessary means' to this end.

The effect of the resolution was to extend the international rules on piracy to action within the territorial sea of Somalia, and to incidents involving a single ship. This was seen as quite a dramatic development because a foreign State is not usually entitled to take enforcement action in the territorial sea of another State, which is an area within the sovereignty of the latter. The Security Council resolution was therefore hedged about with safeguards. The authorization was only given for six months. The resolution expressly states that the authorization was provided only with the consent of the coastal State, Somalia. It requests cooperating States to ensure that they do not to impair the right of innocent passage. And – an indication of the attachment of States to their sovereignty, and their fear of setting precedents – the resolution expressly provided that 'it shall not be considered as establishing customary international law'. (That is – so far as I am aware – an unprecedented provision, which raises the question whether other resolutions of the Security Council have established customary international law.)

Following a request by Somalia, and in the face of escalating attacks, in December 2008 the Security Council renewed the authorization to use force for 12 months, this time addressing to regional organizations as well as to States (it had in mind NATO and the EU, whose operations it welcomed, especially the EU operation Atalanta). In a subsequent resolution, also adopted in

December 2008, the Council turned its attention to the need for capacity-building and other arrangements to ensure the effective prosecution of suspected pirates in regional States. Among other things, it invited States and regional organizations to conclude special agreements with countries willing to take custody of pirates in order to embark law-enforcement officials ('shipriders') from the latter countries.

This last resolution also authorized States to 'take all necessary measures that are appropriate in Somalia, for the purpose of suppressing acts of Piracy and armed robbery at sea'. So the authorization to use force now extends to action on and over land. This followed an incident in April 2006 when French forces pursued pirates into the Somali mainland and arrested them. It is widely recognized that an exclusively sea-based approach to piracy is not sufficient. It was only when action was taken on land, as well as at sea, by Indonesia in particular, that the scourge of armed robbery in the Malacca Straits began to be effectively fought.

The main reason why these Security Council resolutions do not, on one view, add significantly to the entitlement of States to use force, is that the authorizations were at the request and with the consent of the territorial State, Somalia. However, they are very significant. In practice, that consent might not have been forthcoming outside the framework of the IMO and the Security Council; and the Security Council resolutions avoid any serious questioning of the entitlement of the fragile Somali authorities, the Transitional Federal Government (TFG), to give consent. As one commentator has put it, "for those States that recognized the TFG as the government of Somalia, [the resolution ... ] accomplishes no more than what Somalia and cooperating States could have accomplished on their own; however, for those who have not publicly recognized the TFG, the Resolution provides the legal basis for repressing piracy in Somalia's territorial sea". Another point is that, in the past at least, Somalia has claimed a 200 mile territorial sea; this has not been accepted by other States, and is incompatible with international law and UNCLOS, to which Somalia is a party. But any lingering doubts are overcome by the Security Council resolutions.

Within this framework of international law, regional States have also taken important initiatives. 17 coastal States in the region adopted in January 2009 a non-binding Code of Conduct Concerning the Repression of Piracy and Armed Robbery against Ships in the Western Indian Ocean and the Gulf of Aden (the Djibouti Code of Conduct). The intention is to convert the Code into a legally binding treaty within two years. It is a well considered and well drafted instrument that hopefully will go a long way towards encouraging effective measures and cooperation in the region. Many of the key non-regional States were associated with the exercise as observers.

A major practical concern is to ensure that captured suspect pirates are brought to justice. A warship or other vessel that has captured a suspect may either bring that person to its State of nationality for trial, but this may well be neither possible as a matter of law nor practical, or transfer him to a state in the region. I understand that several EU States participating in the EU operation would have difficulty prosecuting without some national nexus. Kenya has received a large number of such persons, pursuant to Memoranda of Understanding. The practical difficulties involved in holding trials may be considerable. For example, witnesses may not be easily available if they are needed on their vessels, such as the captain or crew members of the vessels. The shipping industry needs to be ready to cooperate in this respect.

One thing that should not be an obstacle is jurisdiction, because of the rule of customary international law providing for universal jurisdiction over crimes of piracy. But as written in UNCLOS this is only a permissive rule. States are not expressly required to take jurisdiction as a matter of domestic law, except to the extent that the offences are covered by other conventions, such as the SUA Convention or the Taking of Hostages Convention) as they will often be. Not having legislation in place allowing for the prosecution of pirates may amount to a failure to fulfil the duty to cooperate to the fullest extent possible to which I referred earlier.

The United Nations is making assistance available to States to ensure that they can conduct effective trials of pirates, in conformity with international human rights standards. The Office of Legal Affairs of the UN Secretariat, the UN Office of Drugs and Crime (UNODC), and the International Maritime Organization are assisting with efforts to encourage more States to share the burden of prosecuting and imprisoning pirates, which has so far largely been borne by Kenya. The EU, the UK and the USA have entered into MOUs with Kenya to regulate the transfer of pirates. I

believe that about 111 suspected pirates have so far been transferred to Kenya. Of these 10 have been convicted, and their appeals decided by the Court of Appeal. 10 other trials are in progress. But Kenya is not necessarily happy to continue receiving suspect pirates, if the international community is perceived as not offering it sufficient help. The Kenyan Attorney General said in September 2009 that Kenya might have to say 'no' to any more, if this help is not forthcoming.

In a statement earlier October, the United Nations said that it was helping countries to review their counter-piracy laws, providing training for prosecutors, developing court facilities in Mombasa, delivering witnesses for trial and working to improve prisons in Puntland and Somaliland to allow the transfer of convicted pirates. Indeed, work to build up Somali institutions generally is vital in the long term also for the eradication of piracy. Various parts of the United Nations System, including UNODC, UNDP and the IMO, are involved in this work.

In May 2009, four shipping nations, Bahamas, Liberia, Marshall Islands and Panama adopted the 'New York Declaration' concerning best practices to avoid, deter or delay acts of piracy, self-protection measures in other words. In September they were joined by Cyprus, Japan, Singapore, the UK and the United States.

The SUA Convention, which covers many acts amounting to piracy, contains an important provision to the effect that the master of a ship of a State Party may deliver to the authorities of any other State Party any person whom he has reasonable grounds to believe has committed an offence under the Convention. The latter State is required to accept the delivery, and to prosecute or extradite the suspect, though it may request (request, not require) the flag State to accept delivery of the person. This is in line with the general need for a ship to disembark a suspect as soon as practicable. This is for obvious practical reasons, but also because of the potential reach of international human rights law.

The judgment of the European Court of Human Rights of 19 July 2008 in the case of *Medeyev v France* is sometimes referred to in this connection, though that concerned the rather different circumstances of drug smuggling, The Court held that the right 'to be brought promptly before a judge or other officer authorized by law to exercise judicial power' was in principle engaged, that detention for an extended period on board a vessel was contrary to art 5 (3), though on the facts it found no violation of that provision.

*An international tribunal?*

The perceived practical difficulties with domestic trials in some countries have led one or two States, perhaps desperate to be seen to be doing something, to put forward the idea that we should establish yet another international criminal tribunal, specifically for the trial of pirates, an "international piracy court". A variation on this theme is to extend the jurisdiction of the existing International Criminal Court in The Hague to include the crime of piracy. That would require amendment of the Rome Statute. The Review Conference for the Statute will be held in Kampala in 2010. However, I understand the Conference is very unlikely to take up this suggestion.

The objective seems to be to facilitate trials, and to ensure that those concerned receive a fair and effective trial. The idea is both unnecessary and impractical. It is rather like the equally misguided proposal that the International Criminal Court should have jurisdiction to try 'international terrorists' (whoever they may be) or over major drugs offences. It is unnecessary, because it should be possible to conduct the trial of pirates, like the trial of 'terrorists' or drug dealers, perfectly well in national courts. The crime of piracy cannot be equated to genocide, war crimes, and crimes against humanity, where in reality national trials may often be excluded because of the complicity or incapacity of the authorities. (Of course, some States may prefer to shrug off responsibility for what may be a challenging and costly trial, but that is not a sufficient reason to think of an international court.)

And it is impractical. Not only would the resources needed to establish another international criminal tribunal be prohibitive. It is much better to put the resources into capacity-building in domestic legal systems where there is a need. But the complexities of setting up a new international jurisdiction would, as even its proponents admit, mean that its establishment would take years. It offers no solution in the short-term; there is no alternative to effective national trials. Efforts should be aimed towards that end, not diverted into the no doubt fascinating task of creating another international tribunal.

*Use of force*

Before concluding, I turn briefly to the rules on the use of force in counter-piracy operations. Of course, the threat or use of force may reduce the risk, but it is not a complete answer. That lies in tackling the root causes, the political instability and economic plight of the region. What I am going to say applies first and foremost to the use of force by warships. There is of course the hugely controversial matter of the arming of merchant vessels. I will not enter into the policy pros and cons of this, but I would note that private parties are also bound by rules on the use of force, including those under applicable national laws.

On the facts as they stand at present it cannot be said that an armed conflict exists between the States with warships patrolling the western Indian Ocean and the various pirate groups operating from particular places within the territory of Somalia. The applicable law is not therefore the law of war (otherwise known as international humanitarian law), but the rules applicable to law enforcement operations at sea. Suspected pirates are criminals, and should be treated as such. They are not persons taking part in armed hostilities who may, when identified, be targeted with lethal force. *Hostes humani generis* they may be, but they are not outlaws.

The international law on the use of force in law-enforcement operations at sea is pretty clear, and has been the subject of recent pronouncements by international tribunals. It is to be found not in UNCLOS itself but in general (customary) international law. The International Tribunal for the Law of the Sea (ITLOS), based in Hamburg, considered the matter in its first (and so far only) full case, the *MV Saiga (No. 2)*. ITLOS seems to have had little difficulty in finding that Guinea had used excessive force and endangered human life before and after boarding the *Saiga*, and thereby violated the rights of Saint Vincent and the Grenadines under international law. The deliberate firing of large calibre rounds from an automatic weapon, without warning shots, into a slow-moving unarmed vessel suspected of customs violations. The Hamburg Tribunal found that in cases of stopping, boarding, and arresting a vessel, international law requires:

> "that the use of force must be avoided as far as possible and, where force is unavoidable, it must not go beyond what is reasonable and necessary in the circumstances. Considerations of humanity must apply in the law of the sea, as they do in other areas of international law.
>
> These principles have been followed over the years in law enforcement operations at sea. The normal practice used to stop a ship at sea is first to give an auditory or visual signal to stop, using internationally recognized signals. Where this does not succeed, a variety of actions may be taken, including the firing of shots across the bows of the ship. It is only after the appropriate actions fail that the pursuing vessel may, as a last resort, use force. Even then, appropriate warning must be issued to the ship and all efforts should be made to ensure that life is not endangered ..."

So international law recognizes that force may be used to enforce a right to stop, board and arrest a ship, provided that such force is unavoidable, reasonable and necessary.

In addition, general international law recognizes that force may be used by individuals in situations when it is necessary to protect life, subject to the requirement that the degree of force used shall not exceed that reasonably required in the circumstances.

All efforts should be made *not* to endanger life in the process of enforcing a right to stop and board a ship.

It does not appear that the Security Council has enlarged the right to use force. The relevant Security Council resolutions each includes the words 'all necessary means', the generally accepted formula of words for granting authority to use force under Chapter VII of the Charter. However, such action is expressly to be used 'in conformity with international law' or 'in a manner consistent with such action permitted on the high seas'. Therefore, force has to be used in manner that it is *already* permitted by international law. Also relevant is SOLAS. Sometimes pirates have to be arrested because they are in unseaworthy vessels. One difficulty upon initial detention may be determining who are the pirates and who the hostages.

On a practical level, national Rules of Engagement need to be appropriate to the specific nature of the counter-piracy mission, which is not a war operation. The warships and other authorised vessels should carry weapons appropriate to deal with the small and often fragile, though sometimes well armed, pirate vessels they are likely to encounter. And there should be an effective

enquiry following any use of force that leads to death or serious injury. The 1990 United Nations Basic Principles for the Use of Force and Firearms by Law Enforcement Officials are a good starting point for best practice in this and other respects.

*Conclusion*

This has been a rapid overview of part of a complex subject. As I said at the outset, I believe that so far as concerns public international law the rules are clear and satisfactory, and do not give rise to any great problems. A recent conference at Chatham House entitled "Piracy and the Law" reached the same conclusion: "The multinational agreements and customary international law do provide sufficient legal powers for government vessels to seize pirate vessels, using appropriate levels of force. And there is an adequate international legal regime providing powers to arrest, hand over, prosecute or extradite persons responsible for piracy." There are many practical issues, and often serious problems of implementation at the level of national law – but those I can leave to others.

## NEWS FROM INTERGOVERNMENTAL AND INTERNATIONAL ORGANIZATIONS

### NEWS FROM IMO

IMO LEGAL COMMITTEE MEETING, 5-9 OCTOBER 2009

The Autumn meeting of the IMO Legal Committee took place at the IMO Building in London between 5th and 9th October 2009. Few of the matters discussed are likely to interest the general public, but some important decisions were taken.

1. *Single Certificate of Insurance to cover various liability Conventions*

The growing number of International Conventions which impose strict liability on the ship owner and require every ship to carry evidence of insurance means that Ship's Papers are becoming ever more voluminous. A working Group under the chairmanship of Jan de Boer of the Netherlands has produced a draft certificate which lists the various conventions requiring such a certificate, with boxes to be ticked in the case of those to which the certificate applies, and this was the subject of lengthy discussion.

However at the end of the debate it was decided that the practical obstacles in the way of acceptance of such a combined certificate outweighed the potential benefits, and the idea was dropped. Of the Conventions to which such a certificate might apply, only the 1969 and 1992 CLC Conventions on Compensation for Oil Pollution Damage and the 2001 Bunker Liability Convention are in force at the present time. The Protocol to the 1996 HNS[1] Convention will be debated at a Diplomatic Conference in April 2010[2], and the compulsory insurance cover required by the 2001 Athens Convention on Passenger Claims is still not available. Without this cover states are not in a position to issue the certification required by that Convention and are therefore unable to ratify it. Only the 2007 Nairobi Convention on Removal of Wrecks shows any reasonable prospect of imminent entry onto force.

It was the view of the majority of delegations that, while a combined certificate would simplify administrative procedures, it would present problems if it referred to conventions which were not yet in force, and would also run the risk of proving unacceptable in some jurisdictions without an amendment to the relevant conventions. In such circumstances a prudent ship owner would have to supply his ships' masters with copies of both the single convention certificate expressly referred to in the relevant convention and the combined certificate. Not an attractive prospect.

Delegates were also conscious of the provision in the Bunkers and Wreck Removal Conventions foreseeing the possibility of an electronic database of the information contained in such certificates, which would render the issue of paper certificates unnecessary[3]. The evolution of such databases has

1 International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea 1996.

2 To be held probably between 26 and 30 April 2010 at the IMO.

3 Article 7.13 of the 2001 Bunker Liability Convention and Article 12.13 of the 2007 Wreck Removal Convention.