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Agenda item 4

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DRAFT CONVENTION ON WRECK REMOVAL

**Submitted by the International Group of P&I Associations (P&I Clubs)
and the International Chamber of Shipping (ICS)**

SUMMARY

Executive summary: This document sets out the responses of the International Group of P&I Associations and the International Chamber of Shipping to the comments on the terrorism issue raised in document LEG 92/4/2

Action to be taken: Paragraph 10

Related document: LEG 92/4/2

1 The International Group of P&I Associations (P&I Clubs) and the International Chamber of Shipping (ICS) have read the document submitted by the Netherlands (document LEG 92/4/2) with great interest, in particular paragraphs 2 to 8 which relate to draft article 11, paragraph 1.

2 The concerns of the P&I Clubs and ICS, in relation to the issue of the liability of the registered owner and the insurer for acts of terrorism, have been raised on many occasions, both in the context of the draft wreck removal convention (DWRC) and also the Athens Convention, 2002, and are well known to delegates.

3 In view of those concerns, both the P&I Clubs and ICS are very surprised at the conclusion reached by the Netherlands that, on the basis of the P&I Clubs document on "Frequently Asked Questions" (FAQ's) which is appended to document LEG 92/4/2, there is no need to change draft article 11, paragraph 1 as it presently stands.

4 It is certainly correct, as stated in the document, that shipowners purchase some war risk cover, which includes cover for acts of terrorism, and the P&I Clubs collectively purchase additional war risk cover, currently \$500m, on behalf of their shipowner members.

5 However, the points made by the Netherlands in support of their conclusion appear to overlook the following matters:

- (i) although the level of war risk cover purchased by shipowners and the P&I Clubs would, of itself, generally be sufficient to cover the great majority of wreck removals, it must be borne in mind that the cover must meet all liability claims arising out of a terrorism incident, which would not generally be confined to wreck removal;

- (ii) as will be known from the discussions concerning the Athens Convention, 2002, the war risk insurance purchased is subject to a seven day cancellation clause (FAQ 6). Clause 13(7) of the DWRC provides that insurance shall not satisfy the requirements of the convention if it can be terminated before three months after notice of termination has been given to the relevant authorities;
- (iii) war risk cover is notoriously volatile and the market may contract or disappear altogether in the event of a terrorist incident or series of incidents (FAQ 7);
- (iv) the structure of war risk cover, i.e., a number of different underwriters writing different layers (levels) of cover up to the cover limit, makes it difficult, if not impossible, for one set of underwriters to issue the certificate required under the convention (FAQ 8). Moreover such insurers could not, in any event, certify that the insurance provided met the requirements of the convention since it would not meet the three month termination provision (see (ii) above);
- (v) the document suggests that the “bio-chem exclusion” (which is contained in all war risk policies), is not of importance, as wreck removal operations relate to material damage only. We do not share this view. What is of importance under the DWRC is not the operation of removing the wreck but the liability that it imposes on the registered owner. If, for instance, a terrorist act was in the form of a biological attack which rendered the crew unable to navigate the vessel properly, as a result of which the vessel became a wreck, and the shipowner was unable to prove that the terrorist act was wholly caused by a third party with intent to cause damage (paragraph 11.1 (b)), the shipowner would be 100% liable and have no insurance cover by virtue of the bio-chem exclusion; and
- (vi) as a consequence of (iv) above, it seems to the P&I Clubs and ICS that it would be necessary for an entity to be found that would be prepared to provide certificates of financial responsibility (“Blue Cards”) for war risks to permit compliance with the convention as has been proposed in the context of the Athens Convention, 2002. Experience has shown that, even if achievable, such an arrangement will prove unwieldy without achieving major benefits.

6 The P&I Clubs and ICS do not, therefore, believe that leaving draft article 11.1 as it presently stands, as proposed by the Netherlands delegation, is a satisfactory solution for resolving the terrorism issue in the context of the DWRC, for the reasons set out above, particularly given the difficulty that this issue has caused in relation to the Athens Convention, 2002, where implementation has been significantly delayed.

7 It was recognized, at the ninety-first session of the Legal Committee, that any solution which might be found for resolving the terrorism issue in the context of the Athens Convention, 2002, would not necessarily be appropriate in the context of wreck removal, a view which the P&I Clubs and ICS shared.

8 As the P&I Clubs and ICS have pointed out previously, the main purpose of providing for certification and conferring a right of direct action against an insurer is to furnish a consumer claimant with additional protection. In the case of wreck removal, the sole claimant will be an individual Member State or neighbouring State and to that extent no “consumer interest” in the accepted sense of the term is involved.

9 The P&I Clubs and ICS therefore believe that the simplest and most effective way of resolving the issue would be to include the word "terrorism" in article 11.1(a) and would commend this solution to the Legal Committee.

Action requested of the Legal Committee

10 The Legal Committee is invited to take note of the information contained in this document and to comment and decide as appropriate.
