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Agenda item 15

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REPORT OF THE LEGAL COMMITTEE ON THE WORK OF ITS 104TH SESSION

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1 INTRODUCTION

1.1 The Legal Committee held its 104th session at IMO Headquarters from 26 to 28 April 2017, chaired by Dr. Kofi Mbiah (Ghana). The Vice-Chair, Ms. Gillian Grant (Canada), was also present.

1.2 The session was attended by delegations from Members and Associate Members, observers from the intergovernmental organizations with agreements of cooperation, and observers from non-governmental organizations in consultative status, as listed in document LEG 104/INF.1.

1.3 The session was also attended by the Chair of the Marine Environment Protection Committee (MEPC), Mr. Arsenio Domínguez (Panama), and the Chair of the Facilitation Committee (FAL), Mr. Yury Melenas (Russian Federation).

The Secretary-General's opening address

1.4 The Director of the Legal Affairs and External Relations Division, on behalf of the Secretary-General, welcomed participants and delivered his opening address, the full text of which can be downloaded from the IMO website at the following link:

<http://www.imo.org/en/MediaCentre/SecretaryGeneral/SpeechesByTheSecretaryGeneral/Pages/Default.aspx>

1.5 The Chair thanked the Director for his opening address and stated that his comments would be given every consideration in the deliberations of the Committee.

General remarks by the Democratic Republic of the Congo

1.6 The Democratic Republic of the Congo made general remarks on the fraudulent use of its flag by some vessels and in this regard expressed gratitude to France, Spain and INTERPOL for the assistance rendered in investigations to identify such vessels. The Democratic Republic of the Congo also expressed appreciation to the IMO Legal Affairs Office and the IHS for carrying out an inventory that identified approximately 73 vessels that were fraudulently flying its flag.

1.7 Furthermore, the Democratic Republic of the Congo expressed its concern on the adverse effects of such fraudulent use of its flag and in this regard urged all Member States to get involved in the establishment of preventive and protective measures against the fraudulent use of flags in general.

1.8 The Democratic Republic of the Congo also expressed its concern that illegal fishing was being carried out in its waters to its economic detriment, and in this regard noted the need for its maritime borders to be identified and protected. As requested by the Democratic Republic of the Congo, its full statement on the above matters is attached to this report as annex 9.

Adoption of the agenda

1.9 The agenda for the session, as adopted by the Committee, is set out in annex 1.

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

Audio file: Wednesday, 26 April 2017: a.m.

2 REPORT OF THE SECRETARY-GENERAL ON CREDENTIALS

2.1 The Committee noted the report of the Secretary-General that the credentials of 87 delegations attending the session were in due and proper form.

Audio file: Friday, 28 April 2017: p.m.

3 FACILITATION OF THE ENTRY INTO FORCE AND HARMONIZED INTERPRETATION OF THE 2010 HNS PROTOCOL

3.1 The Committee recalled that, with the entry into force of the Nairobi Wreck Removal Convention on 14 April 2015, the 2010 HNS Convention was the remaining gap in the global framework of liability and compensation conventions.

3.2 The Committee noted with appreciation that the Kingdom of Norway had deposited, on 21 April 2017, an instrument of ratification to the 2010 HNS Protocol and had thereby become the first Contracting State to the Protocol.

3.3 The Committee also recalled that it had agreed on the need for an internationally coordinated approach for ratification and implementation of the 2010 HNS Protocol, and that it had therefore extended the mandate of the HNS Correspondence Group.

3.4 The Committee considered the report of the HNS Correspondence Group contained in document LEG 104/3 and was informed by the Coordinator of the Group, Mr. François Marier (Canada), of the work done on the draft presentation on HNS Incident Scenarios (LEG 104/3, paragraphs 4 to 10 and annex 2), on the draft resolution on the implementation and entry into force of the 2010 HNS Protocol (LEG 104/3, paragraphs 11 to 14 and annex 3) and on the programme for a workshop (LEG 104/3, paragraphs 15 to 18 and annex 4).

3.5 The Committee was also informed of a recent decision in the framework of the Council of the European Union allowing its Member States to ratify or accede to the 2010 HNS Protocol.

3.6 The Committee expressed its appreciation to the Correspondence Group and its Coordinator and thanked the delegation of Canada for its submission.

3.7 Among the views expressed were the following:

on the presentation of HNS Incidents Scenarios

- the presentation of HNS Incidents Scenarios is another instrument in the toolbox of information on the HNS Convention which will assist in the implementation of the HNS Protocol and which most certainly will be useful for all stakeholders;
- statistics on HNS-related claims that are made available by the International Group of P&I Associations could be taken into account in the text of the presentation;
- the presentation on HNS Incident Scenarios should also be made available as a publication as was the case with the brochure *The HNS Convention: Why it is Needed*;

on the resolution

- the resolution on the implementation and entry into force of the 2010 HNS Protocol should reflect that one State has become a Contracting State, which is a milestone for the Protocol, and that States should work together;
- the resolution should be adopted by the Legal Committee so that it can easily be amended in the Committee, because the issue of the HNS Protocol remains active on its agenda; moreover it does not contain the language style of an Assembly resolution such as that of resolution A.1107(29) on *Entry into force and implementation of the 2012 Cape Town Agreement*;
- the resolution should be adopted by the Assembly because of the specific reference to the Strategic Direction relating to conventions that have not entered into force, and it should be adopted at the highest level in the Organization also because of the preceding Assembly resolution on the same issue;

on the HNS Workshop

- the HNS Workshop in conjunction with the meetings of the Committee and the IOPC Funds would be "preaching to the converted" and, in order to ensure cost and time benefits, the preference would be to organize it as part of technical cooperation activities;
- there is a need for one global workshop with a wider participation of States having a focus on implementation and ratification, rather than organizing several regional workshops; it should be organized in London, in 2018 and in conjunction with either the Legal Committee or the IOPC Funds meeting;
- the organization of the HNS Workshop back to back with planned meetings in London would reduce the costs and time involved for the experts that are responsible for the implementation and ratification of the HNS Protocol; and
- the HNS Workshop, as part of technical cooperation activities, would be a good idea for the longer term and, therefore, there could be lessons learned from organizing it first in conjunction with the meetings of the Legal Committee and the IOPC Funds, after which it could be rolled out as part of the thematic priorities of the Technical Cooperation Programme;

on the HNS Correspondence Group

- the ultimate goal of the continued global effort in the HNS Correspondence Group is the entry into force of the HNS Protocol;
- in case there is further work to be done by the HNS Correspondence Group, new terms of reference should be included which indicate the specific outcome;
- the HNS Correspondence Group was set up with a specific task, which was completed.

3.8 Following the discussion, the Committee agreed:

- to approve the presentation on HNS Incident Scenarios;
- that the draft resolution should be an Assembly resolution;
- not to include a reference to the work of the HNS Correspondence Group or to the delegation of authority to issue insurance certificates required under the 1992 Civil Liability Convention and 2010 HNS Convention;
- to include operative paragraph 4 on specific reports by the Committee to the Assembly on the progress made and practical issues encountered;
- to approve the draft programme for a two-day workshop to be held in 2018 in conjunction with the meetings of LEG 105 or the IOPC Funds. Further regional or other meetings would be considered in relation to the thematic priorities for technical cooperation; and
- not to extend the mandate of the HNS Correspondence Group.

Establishment of a drafting group

3.9 Having considered the above matters, the Committee concluded that there were still some drafting issues in the draft resolution and agreed with the proposal of the Chair to establish a drafting group, chaired by the Vice-Chair, Ms. Gillian Grant (Canada), and instructed it, taking into consideration the comments and decisions made in plenary, to:

- .1 consider, with a view to finalizing, the draft Assembly resolution on the implementation and entry into force of the 2010 HNS Protocol, contained in document LEG 104/3, annex 3, for approval and thereafter submission to C 118 and A 30 for consideration and adoption; and
- .2 submit a written report on the work carried out, including the text of the final draft Assembly resolution, to the plenary on Thursday, 27 April 2017.

Report of the Drafting Group

3.10 Having considered the report of the Drafting Group (LEG 104/WP.3), the Committee approved it in general.

3.11 The Committee approved the draft Assembly resolution on the implementation and entry into force of the 2010 HNS Protocol, as set out in annex 2 to this report, for submission to C 118 and thereafter A 30 for adoption.

3.12 In conclusion, the Committee encouraged Member States to ratify and bring into force the 2010 HNS Protocol as soon as possible.

Audio file: Wednesday, 26 April 2017: a.m. and Thursday, 27 April 2017: p.m.

4 PROVISION OF FINANCIAL SECURITY IN CASE OF ABANDONMENT OF SEAFARERS, AND SHIPOWNERS' RESPONSIBILITIES IN RESPECT OF CONTRACTUAL CLAIMS FOR PERSONAL INJURY TO OR DEATH OF SEAFARERS, IN LIGHT OF THE PROGRESS OF AMENDMENTS TO THE ILO MARITIME LABOUR CONVENTION, 2006

4.1 The Committee recalled the entry into force, on 20 August 2013, of the ILO Maritime Labour Convention, 2006 (MLC), and the adoption, in April 2014, of amendments relating to the provision of financial security for abandonment of, personal injury to and death of seafarers by the first meeting of the Special Tripartite Committee established under the MLC.

4.2 The Committee recalled also that the International Labour Conference (ILC), at the 103rd annual meeting of the International Labour Organization (ILO) in June 2014, had voted in favour of the MLC amendments in order to better protect abandoned seafarers and to provide financial security for compensation to seafarers and their families in cases of seafarers' death or long-term disability.

4.3 The Committee noted that the MLC amendments had entered into force on 18 January 2017.

4.4 The Committee recalled further that, at its 103rd session, in light of the discussion on the serious issue of abandonment of seafarers, and because the ILO data indicated that there still remained a number of unresolved cases, it had agreed that it should keep the issue under consideration.

4.5 The Committee was informed by the ILO Secretariat that the MLC, 2006 had now been ratified by 82 States and that other Member States were encouraged to join in the efforts to ensure decent working and living conditions for seafarers and a level playing field for shipowners by ratifying the Convention.

4.6 The Committee was also informed that the 2014 amendments established mandatory requirements for shipowners to maintain a financial security to cover abandonment, as well as death or long-term disability of seafarers owing to occupational injury and hazard. A certificate or other documentary evidence of financial security issued by the financial security provider would have to be carried on board ships flying the flag of States Parties to the MLC, 2006.

4.7 The Committee was further informed that there were high expectations that the new requirements would have an important impact on reducing the number of abandoned ships. As from November of this year, the ILO supervisory mechanisms would start reviewing governments' reports and checking compliance with these new requirements.

4.8 In relation to paragraph 8 of document LEG 104/4, the Committee noted that, since the publication of the document, Myanmar, New Zealand, Slovenia and Sri Lanka had submitted the declaration of acceptance of the amendments.

4.9 Thereafter, the Committee was provided with an update on the IMO/ILO joint database of abandonment of seafarers and noted that, as of January 2017, the database listed 248 abandoned merchant ships, some unresolved cases dating back to 2006. Many abandoned seafarers were working and living on board ships without pay, often for several months, and lack food and water supplies, medical care or means to return home. The accuracy of the abandoned seafarers database was critical not only for supporting the interested parties to help resolve incidents of abandonment, but also for providing information to the public, including entities involved in providing financial security for cases of abandonment, as required by the 2014 amendments to the MLC, 2006.

4.10 The Committee was informed that late in 2016 concerns were expressed, by both the industry and the media, that there were abandonment cases that had not been reported and some information in the database was not current. The ILO, IMO, the International Chamber of Shipping (ICS) and the International Transport Workers' Federation (ITF) had since been working to address these matters, and the database had been updated.

4.11 Furthermore, the Committee noted additional information from the IMO Secretariat that, since the entry into force of the MLC amendments on 18 January 2017, there had been a spike in new abandonment cases, with 11 cases thus far, compared to 5 in the same period in 2016 and 5 in 2015. Moreover, many of the cases reported since 18 January had been very complex and difficult to resolve. In 6 of the 11 cases, the shipowner had failed to carry the insurance required by the MLC amendments, making repatriation and payment of wages much more difficult. The Committee recognized the ITF, ICS, many of the flag States, the port States and the IMO Secretariat for their efforts in resolving these cases and ensuring that seafarers were paid and returned home to their families.

4.12 The observer delegation of ICS then introduced document LEG 104/4/1 commenting upon document LEG 104/4 and also inviting the Committee to consider what additional assistance could be given in order for the database to function more effectively. The suggestion was made that definitions should be listed in the introduction to the database so that anyone reporting or reviewing data had a full understanding.

4.13 In particular, the Committee was requested to consider that the intended meaning of the categories "Resolved", "Inactive", "Disputed" and "Unresolved" should be defined and that it would make more sense to alter the term "Disputed" to become "Partly Resolved". As regards inactive cases listed in the database, a deadline of three months (or an alternative defined short-term period) should be added, and if no further update could be provided, that these incidents should be formally closed on the database. Furthermore, additional assistance could be given to abandoned seafarers, for example on the basis of suitable tools that might be made available to the Organizations.

4.14 Having been invited to comment on the information provided by the ILO and IMO Secretariats and the further comments provided by the observer delegation of ICS, the Committee expressed the following views:

on 2014 MLC amendments

- there is a need for further improvements and IMO and the ILO could benefit from looking into the best practices by some Member States on assistance to abandoned seafarers, and on compulsory insurance;
- protecting the rights of seafarers is a compelling need and has an especially high priority in cases of abandonment;
- measures to promote the welfare of seafarers have to be undertaken and concerns on shore leave for seafarers have to be addressed;
- the flag State and other maritime administrations should become more actively engaged in abandonment cases;
- the International Group of P&I Clubs put in place insurance cover arrangements for repatriation costs many years before the entry into force in August 2013 of the MLC Standard 2.5 on shipowner liability for repatriation costs;

- the P&I Clubs have issued approximately 140,000 insurance certificates in the name of the registered owner in time for the entry into force of the 2014 MLC amendments; the registered owner will always be the shipowner as defined in the MLC, 2006 and on this basis, seafarers are able to exercise their right to claim directly against the provider of the insurance certificate;
- in some cases, rather than direct payments by insurers, pressure is put by clubs on shipowners themselves to make required payments.

on IMO/ILO database

- the IMO/ILO database is considered to be a very helpful and useful tool to resolve the difficult human problems of paying wages and repatriation in cases of abandonment;
- the contact details of the information provider should be specified in the database in order to allow easy communication;
- it would not be appropriate to change "Disputed" cases to "Partly Resolved" if the dispute is still ongoing; likewise, unresolved cases should not be closed only because a certain time has passed;
- on the basis of the information provided in document LEG 104/4, further errors have been corrected in the joint IMO/ILO database; it would be helpful if consultations could take place with the flag State and the port State in advance of publication of information on the database;
- the active involvement of administrations, shipowners and seafarers should ensure that updated and relevant information is being provided;
- the accuracy of the database should be ensured, therefore, prior to the publication of data and consultation of the flag States and other interested States should be undertaken;
- there is a rise in abandoned seafarers and therefore the database should be managed so that accuracy is guaranteed by the provider; therefore, it would be helpful to indicate four different categories on the database;
- ILO, IMO, ICS, ITF and IG of P&I insurers have recently joined efforts and were able to solve many urgent cases of abandoned seafarers.

4.15 The Committee noted the information on the update on the IMO/ILO joint database of abandonment of seafarers, which it considered to be of utmost importance in solving the urgent cases of abandonment. The Committee also acknowledged the benefits of the amendments to the MLC relating to the provision of financial security for abandonment of, personal injury to and death of seafarers.

4.16 The Committee expressed its strong commitment to preserving the rights of seafarers in cases of abandonment and that providing accurate information to the IMO/ILO database was not only the responsibility of the flag State but also that of the port State and other parties that were involved. Consultations and contacts with the flag State should take place prior to publication on the database.

4.17 The Committee concluded that, as regards inactive cases listed in the ILO database, there should not be a set deadline, and even if no further update could be provided, these incidents should not be formally closed on the database. Also "Disputed" cases should not be changed to "Partly Resolved" if the dispute was still ongoing.

4.18 The Committee concluded also that IMO together with the ILO would take up further work to improve the functioning of the IMO/ILO database. In particular, the following issues would be addressed:

- improvements to the "status" field, including definitions;
- addition of contact information for those making reports;
- information on actions taken;
- methods to guarantee accuracy of information;
- ability to refresh information;
- consultations prior to publication; and
- the role of IMO in the management of the database.

The IMO and ILO Secretariats will report to LEG 105 and to the ILO Governing Bodies on the outcome of these consultations.

4.19 The Committee urged those Member States that had not already done so to consider ratifying the Maritime Labour Convention, 2006 at their earliest convenience.

Audio file: Wednesday, 26 April 2017: p.m. and Thursday, 27 April 2017: a.m.

5 FAIR TREATMENT OF SEAFARERS IN THE EVENT OF A MARITIME ACCIDENT

5.1 The Committee recalled that, at its 103rd session, it was informed that the International Transport Workers' Federation (ITF) was preparing guidance for States on the implementation of the *2006 Guidelines on fair treatment of seafarers in the event of a maritime accident* (the Guidelines). In view of the different approaches that States had taken in implementing the Guidelines, the representative of the ITF had suggested that an effective way to promote the Guidelines would be to organize regional or national workshops to discuss and refine the guidance being prepared, to make it useful for as many States as possible.

5.2 The Committee further recalled that, at that session, it concluded that the different approaches in the implementation of the Guidelines could be streamlined through the development of guidance and therefore decided that the workshop proposed by the ITF would be useful to provide assistance to Member States to give effect to the Guidelines in a uniform and consistent way.

5.3 The representative of the ITF introduced document LEG 104/5 inviting the members of the Committee to a one-day workshop organized by the ITF in London, on Friday, 23 June 2017 on the implementation of the Guidelines.

5.4 The representative of the ITF indicated that the workshop would be addressed by the IMO Secretary-General and welcomed all States, IGOs and NGOs to attend it and to make general statements on seafarers' issues of particular concern. The ITF also indicated that the draft guidance on the Guidelines would be circulated before the workshop and invited participants to the workshop to make relevant suggestions to ensure that a fully tested

guidance would be submitted to the Committee for endorsement. The representative of the ITF added that they were looking forward to the discussions during the workshop, whose date would coincide with the annual celebration of the Day of the Seafarer, on 25 June.

5.5 A number of delegations supported the organization of this workshop and expressed their intention to attend it. A view was expressed that the workshop should discuss the fact that the Guidelines would be mainly implemented and interpreted by national courts according to their own judiciary system. Some delegations informed the Committee that they were implementing the Guidelines into their national legislation.

5.6 The Committee expressed its appreciation to the ITF for the organization of the workshop and for its invitation to attend it.

Audio file: Thursday, 27 April 2017: a.m.

6 ADVICE AND GUIDANCE IN CONNECTION WITH THE IMPLEMENTATION OF IMO INSTRUMENTS

Delegation of authority to issue insurance certificates under the CLC and the HNS Convention

6.1 The Committee recalled that, at its 103rd session, it had considered document LEG 103/13/2 submitted by France on the delegation of authority to issue insurance certificates under the 1992 Civil Liability Convention (1992 CLC) and the 2010 Hazardous and Noxious Substances Convention (2010 HNS Convention) and requesting the Committee to consider the most appropriate approach to confirm the possibility for States Parties to delegate the authority to issue certificates of insurance under the two Conventions.

6.2 The Committee further recalled that it had supported the development of an Assembly resolution to allow for the delegation of authority to issue insurance certificates under the 1992 CLC and the 2010 HNS Convention and decided to establish an intersessional Correspondence Group under the coordination of Mr. Fabien Joret (France), with the instruction to further develop the draft Assembly resolution using the text in the annex to document LEG 103/13/2 as a basis, for consideration by LEG 104.

Report of the Correspondence Group

6.3 The Committee considered document LEG 104/6/1 providing the report of the Correspondence Group and the draft Assembly resolution on the delegation of authority to issue insurance certificates required under the 1992 CLC and the 2010 HNS Convention annexed thereto. Among other matters, the Correspondence Group discussed the question of States' liability in the context of the delegation of authority to issue certificates of insurance. The Group concluded that the delegation of authority to issue certificates of insurance should not have any impact on potential liability a delegating State might have in relation to those certificates. Moreover, the Group was of the view that States delegating the authority to issue certificates of insurance to institutions or organizations recognized by them could be guided by the Code for Recognized Organizations (RO Code). In this regard, the Group suggested that the Committee could seek the view of the Maritime Safety Committee (MSC) on whether the RO Code was adequate for the delegation of authority to issue certificates of insurance or whether the RO Code should be amended for this purpose.

6.4 The Chair opened the floor for comments, particularly on the conclusion on each of the issues dealt with by the Correspondence Group, as contained in paragraphs 6 to 16 of document LEG 104/6/1. In the ensuing discussion, the following comments were made:

- the possibility of delegating the authority to issue certificates of insurance is allowed in principle, although there is no specific provision to that effect in the 1992 CLC and the 2010 HNS Convention;
- the issuance of certificates of insurance can be delegated, but the liability remains with the delegating State;
- Member States delegating the authority should take the necessary steps to ensure that the certificates comply with the requirements of the conventions;
- the question of delegation of authority to issue certificates of insurance under the 1992 CLC and the 2010 HNS Convention should be resolved through the adoption of a unified interpretation;
- this matter should be resolved through appropriate amendments to the 1992 CLC and the 2010 HNS Convention;
- an amendment to the 2010 HNS Convention would delay even more the entry into force of that treaty;
- it was the decision of the Legal Committee at its 103rd session that this issue should be resolved through an Assembly resolution;
- the Assembly resolution should ensure that the 1992 CLC and the 2010 HNS certificates issued by a recognized organization should be accepted by the port State control officers in other Member States;
- this resolution should be brought to the attention of port State control authorities;
- the RO Code clearly provides that Administrations may authorize recognized organizations to issue certificates;
- the RO Code has been made mandatory under certain conventions only through appropriate amendments to them and therefore the reference to the RO Code is incorrect in the context of the liability conventions which had not been amended to make this Code mandatory under them;
- the question of the applicability of the RO Code is not the most important issue in this context and should not prevent the Committee from developing the draft Assembly resolution that would provide the legal certainty required;
- the RO Code could be applicable on a voluntary basis;
- the reference to the RO Code should be deleted from the draft resolution;
- the question of the applicability of the RO Code to the liability conventions should be brought to the attention of the MSC;

- this matter should not be referred to the MSC, as it is not the role of that Committee to check the instruments developed by the Legal Committee;
- the MSC should be informed about the decision of the Legal Committee on that matter;
- the resolution should rather refer to the Guidelines for accepting insurance companies, financial security providers and P&I Clubs (Circular Letter No.3464);
- the Assembly resolution should only apply to the delegation of authority to issue certificates of insurance under the 1992 CLC and the 2010 HNS Convention and should not set a precedent for other existing or future conventions; and
- the possibility for a State Party to delegate the authority to issue certificates of insurance under the 1992 CLC and the 2010 HNS Convention should only be for its own ships or for ships of non-Parties.

6.5 With regard to the scope of the RO Code, and upon the request of the Committee, the Secretariat indicated that many delegations were correct when stating that other conventions had to be amended in order to make the RO Code mandatory for those conventions. However, while the language of the RO Code was not mandatory in the case of the 1992 CLC and the 2010 HNS Convention, it was broad enough for Parties to use as a guide when authorizing recognized organizations to issue certificates of insurance, and it would be within the discretion of those Parties to do so.

Establishment of the Drafting Group

6.6 Having considered the above matters, the Committee concluded that it was not necessary for the Committee to request the advice of the MSC on the RO Code and that the operative clause no.6 of the draft Assembly resolution should be deleted. The Committee also concluded that there were still some drafting issues in the draft Assembly resolution and therefore agreed with the proposal of the Chair to establish a Drafting Group, chaired by Ms. Gillian Grant (Canada), and instructed it, taking into consideration the comments and decisions made in plenary, to:

- .1 consider, with a view to finalizing, the draft Assembly resolution on the delegation of authority to issue insurance certificates required under the 1992 CLC and the 2010 HNS Convention, based on the text prepared by the intersessional Correspondence Group in document LEG 104/6/1, for approval by the Committee and submission to C 118 and thereafter A 30 for consideration and adoption; and
- .2 submit a written report on the work carried out, including the text of the final draft Assembly resolution, to plenary on Thursday, 27 April 2017.

Report of the Drafting Group

6.7 Having considered the report of the Drafting Group (LEG 104/WP.3), the Committee approved it in general.

6.8 The Committee approved the draft Assembly resolution, as set out in annex 3 to this report, to be submitted to C 118 and thereafter to A 30 for adoption.

Audio file: Wednesday, 26 April 2017: p.m. and Thursday, 27 April 2017: p.m.

Legal advice on the status of the appendices to the FAL Convention

6.9 The Committee noted the information provided in document LEG 104/6/2 reporting on the outcome of the forty-first session of the Facilitation Committee, which requested the Legal Committee to provide legal advice on the status of the appendices to the Convention on Facilitation of International Maritime Traffic (FAL Convention). The document contains, in its annex, legal advice provided by the Legal and External Relations Division of the Secretariat to FAL 41, which had been prepared in response to a query on whether the formal amendment procedure had to be followed for a proposed amendment to appendix 3 of the annex to the FAL Convention, and which had concluded that the determining factor was whether or not the appendices formed an integral part of the Convention.

6.10 The Committee noted that the confusion on the status of the appendices mainly stemmed from the fact that the consolidated version of the FAL Convention adopted by resolution FAL.12(40) in 2016 only contained appendix 1, while the other appendices only appeared in the FAL Convention publication, even though references to appendices 2 and 3 were made in the Convention itself.

6.11 In considering the document, several delegations made detailed comments of substance in response to the request for legal advice and some drew the conclusion that appendices 1, 2 and 3 formed an integral part of the FAL Convention, while appendix 4 was an extract of the IMDG Code and could therefore not form part of another treaty. In this regard, one delegation made reference to article 2 of the Vienna Convention on the Law of Treaties, 1969, which provided that a "treaty" meant an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.

6.12 In considering the best way forward to address this request for legal advice, the Committee noted that the Facilitation Committee had eventually decided to issue a Unified Interpretation instead of amending the appendix. Nevertheless, the Legal Committee agreed that this matter should be dealt with expeditiously and in the most efficient manner so that the legal advice could be finalized at the next session of the Committee (LEG 105) for transmission to FAL 42. In this regard, the following views were expressed:

- considering the short period of time the Committee has available to prepare for the discussion of this request for legal advice, there is a need to establish an intersessional correspondence group to undertake a focused study of the issue, which should be submitted to LEG 105 for consideration;
- there is no need for an intersessional correspondence group, as Member States have to review their ratification and national implementation of the FAL Convention before considering the matter further at LEG 105;
- Member States should consult with each other intersessionally and submit relevant information to LEG 105;
- it is appropriate for the Secretariat to prepare a short questionnaire to be sent to all Contracting Governments of the FAL Convention requesting their views on the nature of each appendix, and in particular, whether they consider a specific appendix to be substantive or formative; and
- considering the complexity of the matter and the potential requirement for the involvement of treaty lawyers, a working group should be established at LEG 105 to enable a comprehensive discussion of the matter, following from which a detailed report should be provided to FAL 42.

6.13 Having considered the different views on the way forward, the Committee encouraged Member States to consult informally and intersessionally, and to submit relevant information on the status of the appendices to LEG 105, without the requirement for a formal correspondence group. Should the need arise, a working group would be established at LEG 105 to enable a comprehensive and in-depth discussion of the matter. The delegation of the United States of America* offered to coordinate any informal, intersessional work on the matter and invited interested delegations to get in contact with them.

6.14 The Committee agreed that it would finalize the legal advice at LEG 105 for submission to FAL 42.

Audio file: Wednesday, 26 April 2017: p.m. and Thursday, 27 April 2017: a.m.

7 PIRACY

7.1 The Committee recalled that, at previous sessions of the Legal Committee, the Secretariat had reported on piracy-related matters based on information provided by Working Group 2 of the Contact Group on Piracy off the Coast of Somalia (CGPCS). The Committee also recalled that the Working Group had been restructured to make it more efficient and cost-effective and that it was renamed "Legal Forum of the CGPCS", which would convene on an ad hoc basis, as and when required.

7.2 The Committee noted the information provided by the Secretariat in document LEG 104/7 on the work of the Legal Forum of the CGPCS as well as the concerns raised by the International Transport Workers' Federation regarding the recent increase in piracy incidents off the coast of Somalia and in the Gulf of Aden. In this regard, the ITF stated that the CGPCS should provide further analysis on this increase in activity.

7.3 The Committee also noted the information provided in the same document (LEG 104/7) on the recent amendments to the Djibouti Code of Conduct. The following views were expressed concerning these amendments:

- the Djibouti Code of Conduct was preliminarily developed to address piracy and armed robbery against ships and it is important to keep the focus on these issues, in particular in view of recent incidents;
- IMO is not competent to deal with illegal, unreported and unregulated (IUU) fishing or the so-called "blue economy" and there are already treaties in place addressing these matters;
- the Secretariat is requested to take this comment into account when further reporting on the Djibouti Code of Conduct and related activities;
- there is general support for the Djibouti Code of Conduct;
- the signatories to the Djibouti Code of Conduct, as sovereign States, may decide to expand their cooperation and amend the Code accordingly;
- the Jeddah Amendment is exclusively addressed to the vessels flying the flag of the signatories of the Djibouti Code and any attempt to apply such amendment to vessels flying the flag of third parties might imply a breach of international law;

* Contact information for those wishing to participate may be sent to Captain Shannon Gilreath, USCG at Shannon.N.Gilreath@uscg.mil

- the tools provided by international law to combat piracy are specific remedies for that crime and cannot be analogically applied to other crimes committed at sea, which may be subject to a different regime; and
- the right to seize a vessel on the high seas involved in piracy and to detain and judge its crew, which is established in article 105 of the *United Nations Convention on the Law of the Sea* (UNCLOS), cannot be applied to illicit acts other than piracy, such as those related to fisheries, in particular IUU fishing, which according to the definition given by the Food and Agriculture Organization (FAO) through its International Plan of Action to Prevent, Deter and Eliminate IUU fishing (paragraph 3.4), is not necessarily contrary to applicable international law in all cases.

7.4 The Committee noted the views provided, in particular that piracy remained a very important subject and that the Organization should continue to focus on piracy and armed robbery at sea. In this regard, the Committee also noted a statement by the Islamic Republic of Iran, which, upon request by the latter, is attached to this report as annex 9.

7.5 The Committee then considered document LEG 104/7/1 (India) and noted the two issues raised regarding the provision of rescue, relief and rehabilitation to seafarers who had become victims of piracy, as follows:

- no adequate or updated information was available to the Member States to which the seafarers belonged regarding the efforts made by concerned authorities for their release, well-being, medical support and payment of their wages; and
- the short duration of seafarers' contracts, usually three to six months, often meant that contracts would run out during the captivity of the seafarer, resulting in a situation where there was no contractual obligation to pay their wages.

7.6 As regards the first issue, the document proposed the issuance of a circular to urge Member States to share with the maritime administrations of the seafarers' State information regarding the efforts made by concerned authorities for their release, well-being, medical support and payment of their wages. Having noted that the issue had already been addressed in operative paragraph 8(l) of Assembly resolution A.1044(27) on *Piracy and Armed Robbery against Ships in Waters off the Coast of Somalia*, adopted by the Assembly at its twenty-seventh session, the Committee did not see the need for an additional LEG circular. The Committee recalled that, in the resolution, the Assembly, inter alia, strongly urged Governments, which had not already done so, to promptly "establish, as necessary and when requested, plans and procedures to keep substantially interested States informed, as appropriate, about welfare measures for seafarers in captivity on ships entitled to fly their flag, measures being taken for the early release of such seafarers and the status of payment of their wages".

7.7 As regards the second issue, the document proposed to invite the ILO to explore the possibility of an amendment to the MLC 2006 to incorporate enabling provisions for the continuation of seafarers' contracts when seafarers were held in captivity for protracted periods. Having noted the information provided by the Secretariat and the ILO that an ILO working group of the Special Tripartite Committee (STC) established under the MLC 2006 was currently looking into exactly that matter and would submit its recommendations to the third meeting of the STC in April 2018, the Committee decided that this issue was already sufficiently addressed in the appropriate forum and there was no need to duplicate this work. Some delegations were in favour of the inclusion of such a provision in the MLC 2006 and noted that promising progress was being made within the ILO Working Group towards the adoption of such an amendment. Some delegations informed the Committee that their national legislation already contained a provision ensuring the continuation of seafarers' wages when in captivity.

7.8 The Committee expressed appreciation to the Government of India for bringing this important matter to its attention and recognized the relevance of the subject.

Audio file: Thursday, 27 April 2017: a.m. and p.m.

8 MATTERS ARISING FROM THE 116TH AND 117TH REGULAR SESSIONS OF THE COUNCIL

8.1 The Committee considered document LEG 104/8 providing information on matters arising from the 116th and 117th regular sessions of the Council.

8.2 The Committee took note of the information of relevance to it, including that the Council, at its 116th session:

- endorsed the Committee's decisions on outputs for the 2016-2017 biennium; and
- approved the report of LEG 103 in general and transmitted it to the thirtieth session of the Assembly.

Revised Rules of Procedure of the Committee

8.3 As requested by the Council, the Chair introduced document LEG 104/8/1 containing a proposal to amend the Committee's Rules of Procedure with a view to limiting the term of office of the Chair and the Vice-Chair to five years.

8.4 The Committee noted that the Council, at its 116th session, had agreed to harmonize the terms of office in the Rules of Procedure of committees (and by extension sub-committees); to limit the total term of office of the Chair and Vice-Chair to five years in office; and to establish the use of the new gender-neutral term "Chair" in the Rules of Procedure of the committees, and requested the relevant committees to amend their Rules of Procedure accordingly.

8.5 The Committee also noted that the Chairs of the MSC and the MEPC, having considered the Council's request, agreed to revise and harmonize the Rules of Procedure of the two Committees accordingly, so that the same Rules would apply to both Committees. In this regard, the Committee noted that MEPC 70 approved the harmonized revised Rules of Procedure of the MEPC, whilst MSC 97, when considering document MSC 97/18/1, did not approve the harmonized Rules, and invited Member States to submit comments to MSC 98 on (a) rule 2 regarding the number of Member States required to request an extraordinary session; (b) rule 14.3 on the items to be included in the provisional agenda owing to a proposal by a Member State; and (c) rule 34 on the number of Member States required for a quorum.

8.6 Furthermore, the Committee noted that the FAL Committee, at its forty-first session, also considered a proposal by its Chair to harmonize its Rules of Procedure with those of the MSC and MEPC. In this regard, the Committee noted document LEG 104/8/1/Add.1 containing a report on the outcome of FAL 41 in relation to the draft revised Rules of Procedure of the Facilitation Committee.

8.7 In this regard, the Committee considered the draft revised Rules of Procedure as set out in documents LEG 104/8/1, with further proposals in LEG 104/8/1 Add.1 and LEG 104/INF.3, prepared by the Chair in consultation with the Secretariat.

8.8 During the discussion, the following views were expressed:

- .1 the number of the Members required for a quorum, in draft rule 34, should be set at 25% of the Membership of the Organization;
- .2 participation records of Committee meetings indicate that the Committee would be able to meet the quorum requirement of 25% of the Membership;
- .3 the wording of draft rule 34 should be replaced with the one proposed in document LEG 104/8/1/Add.1;
- .4 the option of holding extraordinary sessions, in draft rule 3, should be kept to enable the Committee to meet urgently if necessary and to avoid negative impact on the reputation of the Organization;
- .5 the number of Members required to request an extraordinary session should be set at 20;
- .6 approval from the Council should be sought before an extraordinary session with budgetary implications can be held; and
- .7 the Rules of Procedure of LEG should be aligned with those of the MEPC and FAL;

8.9 In conclusion, the Committee adopted the revised Rules of Procedure of the Legal Committee, as set out in annex 8, with agreed modifications, and requested the Secretariat to effect any consequential editorial changes as may be necessary. In particular, the Committee decided to:

- .1 adopt a revised rule of procedure limiting the term of office for the Chair and Vice-Chair to no more than five years with the possibility of one additional year in exceptional circumstances;
- .2 require the use of gender-neutral language in the Committee's Rules of Procedure;
- .3 set the number of Members required to request the holding of an extraordinary session, in rule 3, at 20, subject to approval by the Council for the holding of an extraordinary session after consideration of the budgetary implications; and
- .4 change the language of rule 34 to determine the percentage required and provide more clarity on the purpose of a quorum to read: "The Chair may declare a meeting open and permit the debate to proceed when at least 25% of the Membership of the Organization are present. The presence of at least 25% of the Membership of the Organization, or other participants, as appropriate, shall be required for any decision to be taken".

Audio file: Thursday, 27 April 2017: p.m.

9 ANALYSIS AND CONSIDERATION OF RECOMMENDATIONS TO REDUCE ADMINISTRATIVE BURDENS IN IMO INSTRUMENTS AS IDENTIFIED BY THE SG-RAR

9.1 The Committee recalled that, at its 102nd session, it had noted the requirements considered by the Ad Hoc Steering Group for Reducing Administrative Requirements (SG-RAR) related to the work of the Legal Committee which had been identified as an administrative burden, along with the recommendations of the SG-RAR on how to alleviate the burden, together with a summary of the feedback obtained during the public consultation.

9.2 The Committee also recalled that, at its 102nd session, it had included a new output in the 2016-2017 HLAP on "Analysis and consideration of recommendations to reduce administrative burdens in IMO instruments as identified by the SG-RAR". The target completion year for this task is 2017.

9.3 The Secretariat then introduced document LEG 104/9 and recalled that, at its previous session, the Committee had considered document LEG 103/8 providing the Secretariat's analysis of the recommendations for each requirement identified as an administrative burden by the SG-RAR, and had decided, inter alia, to request the Secretariat to include insurance certificates under the 2002 Athens Convention, the 2007 Nairobi Wreck Removal Convention and the 2010 HNS Convention in the list of certificates and documents required to be carried on board ships contained in the annex to FAL.2/Circ.127-MEPC.1/Circ.817-MS.C.1/Circ.1462.

9.4 The Committee noted that the MEPC, at its seventieth session, when it approved the consolidated draft FAL.2-MEPC.1-MS.C.1-LEG.1 circular on List of certificates and documents required to be carried on board ships, 2017, had noted that the III Sub-Committee, at its third session, had agreed not to include insurance certificates under the 2010 HNS Convention in the consolidated draft list of certificates and documents because the Convention had not yet entered into force.

9.5 The Committee also noted that the MSC, at its ninety-seventh session, concurred with the decision of the MEPC, at its seventieth session, and approved the consolidated draft FAL.2-MEPC.1-MS.C.1-LEG.1 circular on List of certificates and documents required to be carried on board ships, 2017.

9.6 The Committee further noted that the FAL Committee, at its forty-first session, approved the consolidated draft circular.

9.7 The Committee approved the circular with the revised list of certificates and documents required to be carried on board ships as set out in the annex to document LEG 104/9. A new circular, including a LEG reference number, will be issued.

9.8 The Committee concluded that it had completed its work on the analysis and consideration of recommendations to reduce administrative burdens in IMO instruments including those identified by the SG-RAR, and that that would be reported to the Council.

Audio file: Thursday, 27 April 2017: p.m.

10 TECHNICAL COOPERATION ACTIVITIES RELATED TO MARITIME LEGISLATION

Technical cooperation activities on maritime legislation for 2016

10.1 The Secretariat introduced document LEG 104/10 reporting on IMO's technical cooperation activities related to maritime legislation for 2016. The Committee noted that the Legal Affairs Office of the Secretariat was providing training on the legal implementation of IMO conventions, aimed at improving the understanding of the principles of IMO instruments and their legal implications to facilitate the implementation of both technical and civil liability conventions. The Committee further noted that this training was helpful in raising awareness about the work of the Organization in developing international rules that ultimately require effective implementation into the domestic legislation and complemented IMO's technical cooperation activities focused on the technical aspects of the conventions. The training could also assist Member States from developing countries wishing to prepare for the IMO Member State Audit Scheme (IMSAS).

10.2 In this context, the Committee also noted that the Legal Affairs Office was organizing an IMO Course on the Legal implementation of IMO conventions into the domestic legislation, which would be held at IMO Headquarters from 11 to 15 September 2017, funded by the Technical Cooperation Fund. The findings of the voluntary and mandatory IMO Member State Audit Scheme showed that the biggest deficiencies were in the national legislation and that many IMO developing countries did not have the adequate maritime legislation in place to implement IMO conventions and found it difficult to cope with amendments to these conventions, brought into force through the tacit amendment procedure. Training was therefore needed for lawyers and legal drafters to understand the scope and context of the task of implementing the IMO treaty regime.

10.3 The course will be addressed to parliamentary and legislative drafters, members of Attorney General's Offices or Ministries of Justice, responsible for the legal and legislative implementation of IMO conventions into their domestic legislation.

10.4 The Committee thanked the Secretariat for the information provided and noted document LEG 104/10.

10.5 The Committee noted, with appreciation, that in the delivery of activities related to civil liability and compensation regime, the IMO Secretariat closely cooperated with the Secretariat of the IOPC Funds and the International Group of P&I Clubs.

10.6 One delegation suggested that a database collecting and categorizing judicial cases related to civil liability conventions should be developed in the future, which would help judicial authorities and lawyers to supplement training on these conventions.

Thematic priorities for the Integrated Technical Cooperation Programme (ITCP) for 2018-2019

10.7 The Secretariat introduced document LEG 104/10/2 inviting the Legal Committee to consider and agree on the thematic priorities for inclusion in the Integrated Technical Cooperation Programme (ITCP) covering the 2018-2019 biennium. The Committee noted that, with the implementation of the mandatory IMO Member State Audit Scheme, the IMO Secretariat was increasingly receiving requests for assistance in drafting, updating and bringing into force national maritime legislation for the effective implementation of IMO instruments.

10.8 The Committee considered the changes proposed by the Secretariat to the current thematic priorities, aimed at harmonizing the delivery of activities in the field of maritime legislation and at providing for a more effective delivery to maximize the impact of the ITCP. The Secretariat proposed to combine the existing thematic priorities Nos.2, 4 and 5 into one thematic priority, No.2, and to refer to the results and needs identified by the "IMO Member State Audit Scheme" instead of "Voluntary" Audit Scheme. Training on the implementation of the IMO civil liability conventions covering the CLC/Fund regime, the 1996/2010 HNS Convention, the 2001 Bunkers Convention, the 1976/1996 LLMC, the 2007 Nairobi Wreck Removal Convention and the 1974/2002 Athens Convention was covered under the existing general thematic priority No.3.

10.9 The Committee agreed to the modifications suggested to its thematic priorities for submission to the sixty-seventh session of the Technical Cooperation Committee (TCC) for inclusion in the ITCP covering the 2018-2019 biennium.

Activities to support the implementation of the international tanker oil pollution liability and compensation regime

10.10 The Director of the IOPC Funds introduced document LEG 104/10/3 reporting on the work that the IOPC Funds Secretariat has carried out in cooperation with IMO and regional organizations to promote the accession to, and implementation of, the 1992 CLC and the 1992 Fund Convention, in 2016.

10.11 The Committee thanked the IOPC Funds Secretariat and noted the information provided in document LEG 104/10/3.

IMO International Maritime Law Institute (IMLI)

10.12 The Director of IMLI introduced document LEG 104/10/1 reporting on the activities of IMLI for the year 2016.

10.13 The Committee noted that, in October 2016, IMLI launched a new specialized postgraduate programme leading to the degree of Master of Humanities (M.Hum.) in International Maritime Legislation and a new joint programme leading to the degree of Master of Science (M.Sc.) in International Maritime Law and Logistics in cooperation with Kühne Logistics University (KLU) in Hamburg.

10.14 The Committee also noted that a new two-year programme entitled "Joint Master of Philosophy (M.Phil.) in International Maritime Law and Ocean Policy" was being launched by IMLI and WMU.

10.15 The Committee further noted that, at the request of the Nippon Foundation, IMLI had launched a global project on "Ocean Governance: Security, Stability, Safety and Sustainability", as a follow-up to the address of Dr. Yohei Sasakawa (Chairman of the Nippon Foundation) to IMO and based on the long-standing fruitful collaboration between the Nippon Foundation and the Institute.

10.16 The Committee noted document LEG 104/INF.2 providing the list of dissertations and maritime legislation drafting projects undertaken by IMLI students in the 2015-2016 and 2016-2017 academic years.

10.17 The Committee also noted document LEG 104/INF.3 enclosing the IMO IMLI dissertation written by Ms. Daffodil D'vore Maxwell (Trinidad and Tobago) entitled "Determining Causes of the Problem of Ineffective Implementation and Enforcement of Maritime Conventions Particularly in Dualist States: A Trinidad and Tobago Perspective", which was awarded the IMO Secretary-General's Prize for Best Dissertation for the academic year 2015-2016. The Committee congratulated Ms. D'vore Maxwell, who was attending the session.

10.18 The Committee expressed its appreciation to IMLI and its sponsors and emphasized the importance of the Institute in building legal expertise that benefits both the maritime Administrations and the private sector.

10.19 During a discussion on the need to include human element in the IMLI curriculum, the Director of IMLI confirmed that the MLC, 2006 formed part of the teaching programme and that the Institute had engaged in discussions with the ITF to promote further this area of maritime law studies.

Audio file: Thursday, 27 April 2017: a.m.

11 REVIEW OF THE STATUS OF CONVENTIONS AND OTHER TREATY INSTRUMENTS EMANATING FROM THE LEGAL COMMITTEE

11.1 The Committee noted the information contained in document LEG 104/11 and its addendum on the status of conventions and other treaty instruments emanating from the Legal Committee.

11.2 Several delegations provided updates on progress with regard to the ratification and implementation of IMO instruments as follows:

- the delegation of Canada informed the Committee that following the adoption, by Parliament in December 2014, of the legislation implementing the 2010 HNS Convention, work towards the fulfilment of the contributing cargo reporting requirements had continued. The report was expected to be ready in early 2018 and ratification would follow suit in the same year. The delegation of Canada also informed the Committee that legislation on the NAIROBI WRC 2007 was expected to be introduced in the Canadian Parliament later in 2017. Canada intended, at the time of its accession, to extend the application of the Convention to wrecks located within its territory and territorial sea;
- the delegation of Australia, while reiterating its commitment to the objectives of the Ballast Water Management Convention, informed the Committee that the Australian Government had introduced in Parliament the final piece of legislation required to enable Australia to assume the obligations under the Convention. It was hoped that the Convention would enter into force for Australia when it entered into force globally on 8 September 2017;
- the delegation of New Zealand reported on the significant progress made towards the ratification of the FUND PROT 2003 as well as the SUA 2005 Convention and SUA 2005 Protocol. Further updates in this regard would be provided at LEG 105;
- the delegation of the Democratic People's Republic of Korea informed the Committee that the Minister of Foreign Affairs had just signed the instrument of accession to the NAIROBI WRC 2007, and that the deposit of the instrument would be expected in the next few days;

- the delegation of Finland informed the Committee that its Government was expected to deposit an instrument of acceptance to PAL PROT 2002 in May 2017 and that Finland had become party to the NAIROBI WRC 2007 in January 2017;
- the delegation of Cyprus informed the Committee that instruments of accession to the SUA 2005 Convention and SUA 2005 Protocol, as well as PAL PROT 2002, would be deposited with the Secretary-General in the second half of 2018. The Government of Cyprus would also, in the coming months, give preliminary consideration towards acceding to the 2010 HNS Protocol;
- the delegation of Greece informed the Committee that internal procedures regarding the ratification of the NAIROBI WRC 2007 were close to completion. Greece expressed its appreciation to the countries that had already ratified the Convention and were facilitating the international maritime community by issuing insurance certificates to ships flying other flags;
- the delegation of Thailand informed the Committee that its Parliament had approved their national legislation with regard to the CLC PROT 1992 and FUND PROT 1992. The acts would be published in the Thai Royal Gazette and the related instruments of accession would be deposited with the Secretary-General by June 2017;
- the delegation of Nigeria informed the Committee that Nigeria had constituted an Inter-Ministerial/Inter-Agency Standing Committee on the ratification and domestication of IMO Instruments, coordinated by the Ministry of Transportation, and that instruments, including the 2010 HNS Protocol, OPRS/HNS 2000 and the Hong Kong Convention, were high on the agenda of the Standing Committee;
- the delegation of the United Arab Emirates informed the Committee that its Government had approved the 2004 Ballast Water Management Convention and that the related instrument of accession would be deposited soon;
- the delegation of Brunei Darussalam informed the Committee of the recent acceptances of MARPOL Annexes III and V in early 2016. Progress towards the acceptance of MARPOL ANNEX IV and ratification of OPRC 1990 was under way and an update in this regard would be provided at LEG 105; and
- the delegation of Indonesia informed the Committee that instruments of accession to the SOLAS PROT 1988 as well as the Load Lines PROT 1988 would be submitted by the end of 2017.

11.3 The Director-General of the International Mobile Satellite Organization (IMSO) encouraged Member States to ratify the Convention on the International Mobile Satellite Organization and its 2008 amendments.¹

11.4 The Committee noted that, on 21 April 2017, Norway deposited an instrument of ratification of the 2010 HNS Protocol, accompanied by the submission of data on the total quantities of contributing cargo liable for contributions received in Norway during the preceding calendar year in respect of the general account and each separate account, pursuant to article 20, paragraph 4 of the Protocol. Therefore, there was currently one Contracting State to the Protocol. The Secretary-General welcomed this development and encouraged further

¹ There are currently, as at 28 April 2017, 103 States Parties to the IMSO Convention and 20 Governments accepting the 2008 IMSO amendments.

ratifications, as envisaged in the resolution on the implementation and entry into force of the 2010 HNS Protocol approved by this Committee with a view to submission to C118 and thereafter A30 for adoption.

11.5 The Committee encouraged Member States to ratify the 2002 PAL PROT and, while doing so, to include a reservation or declaration concerning a limitation of liability for carriers and a limitation for compulsory insurance for acts of terrorism, taking into account the current state of the insurance market. The wording for the recommended reservation was provided in the Guidelines adopted by the Committee in 2006 and made available by means of Circular Letter No.2758.

11.6 The Committee further encouraged Member States to accede to the NAIROBI WRC 2007 and, in so doing, to extend the application of the Convention to wrecks located within their territories, including the territorial sea. Member States that had already acceded to the Convention but had not notified IMO of the intention to apply the Convention in their territory, including the territorial sea, were also encouraged to do so, so as to rely on the strict liability under article 10 and on the compulsory insurance provisions under article 12 for incidents that occurred in their territorial waters, thus providing a greater degree of uniformity in the measures to be taken to locate, mark and remove wrecks.

11.7 With regard to the SUA 2005 Convention and 2005 Protocol, with a current number of 41 and 35 Contracting States, respectively, the Committee reiterated that a wider ratification would ensure their increasing usefulness in facilitating the arrest and prosecution of all those involved in criminal acts against the safety of navigation. Some States might also find these treaties of assistance in establishing jurisdiction and taking measures in the fight against piracy.

11.8 The Committee noted that the list of codes, recommendations, guidelines and other non-mandatory instruments related to the work of the Legal Committee, endorsed at LEG 103, had been migrated to the GISIS module on non-mandatory instruments.

11.9 The Committee further noted that the FAL Committee, at its forty-first session, had authorized the Secretariat to migrate the list of Codes, recommendations, guidelines and other non-mandatory instruments related to the work of the Facilitation Committee to the same GISIS module on non-mandatory instruments; the migration would take effect in July 2017.

11.10 The Committee encouraged delegations to work with their respective Governments towards achieving effective and uniform implementation of IMO conventions and to report any barriers to implementation to LEG for advice and guidance. It was also noted that many ratifications of IMO treaties directly resulted from successful technical cooperation activities. The Committee expressed its appreciation to the Technical Cooperation Programme of the Organization for providing these activities and encouraged further accessions to and ratifications of IMO conventions.

Audio file: Thursday, 27 April 2017: p.m.

12 WORK PROGRAMME

Report on the status of outputs for the current biennium (2016-2017)

12.1 The Committee recalled that the Council, at its 116th regular session, endorsed the Committee's decisions on outputs for the 2016-2017 biennium.

12.2 The Secretariat introduced document LEG 104/12 and reminded the Committee that, in accordance with paragraph 9.1 of the *Guidelines on the application of the Strategic Plan and the High-level Action Plan of the Organization* (resolution A.1099(29)), the reports on the status of the outputs included in the HLAP should be prepared and annexed to the report of each session of the sub-committees and committees, and to the biennial report of the Council to the Assembly. Such reports should separately identify new outputs accepted for inclusion in the biennial agendas.

12.3 The Committee was invited to consider the draft report on the status of outputs for the current biennium (2016-2017), including all outputs related to the Legal Committee, prepared by the Secretariat and attached as annex 1 to document LEG 104/12. In particular, the Committee was invited to consider deleting the square brackets in the "Status of outputs for Year 2" of the present biennium.

12.4 Moreover, the Committee considered the relevant outputs as attached in annex 2 to document LEG 104/12 which only referred to LEG as the parent organ and were proposed for inclusion in the post-biennial agenda of the Committee.

12.5 The Committee agreed on its report on the status of outputs for the current biennium and on the outputs to be included in its post-biennial agenda, attached as annexes 3 and 4 to this report respectively, for submission to the Council.

Alignment of the outputs of the Committee with the new Strategic Plan of the Organization for 2018-2023, including the proposed outputs of the Committee for the 2018-2019 biennium

12.6 The Committee recalled the decision of the Assembly, at its twenty-ninth session, to develop a new strategic framework for the Organization for 2018-2023 with a target completion year of 2017.

12.7 The Committee noted that C 117 agreed to a new Vision Statement, which set out overarching principles to be taken into account in all of the Organization's work and seven Strategic Directions as follows:

- .1 improve implementation;
- .2 integrate new and advancing technologies in the regulatory framework;
- .3 respond to climate change;
- .4 engage in ocean governance;
- .5 enhance global facilitation and security of international trade;
- .6 ensure regulatory effectiveness; and
- .7 ensure organizational effectiveness.

12.8 The Committee noted the following information provided by the Secretariat on the new Strategic Plan (SP), which was expected to be adopted by the Assembly, at its thirtieth session:

- .1 the overall aim of the redevelopment of the SP is to simplify procedures and ensure it continues to serve the Organization by, for example, assisting in measuring performance;

- .2 the new structure of the SP does not change the ongoing work in the committees and sub-committees;
- .3 the SP should be focused over a six-year period, and it will be completely redeveloped every six years taking into account changing priorities. However, in order to ensure the Organization remains flexible and able to respond to emerging issues, the SP can be revised on a biennial basis, if necessary;
- .4 the new Strategic Directions will not cover all areas of work of the Organization, but only those that are considered to be strategic for the period in question;
- .5 not all outputs currently on the High-level Action Plan will be aligned to a Strategic Direction; those outputs that are aligned to one or more Strategic Directions will directly contribute to the realization of the particular Strategic Direction;
- .6 a number of performance indicators will be developed to monitor and measure progress in achieving the Strategic Directions;
- .7 outputs that are not aligned to Strategic Directions will still appear on the list of outputs along with those that are aligned to Strategic Directions, in order for all organs to review and consider their workload throughout the biennium;
- .8 the outputs of the Committee for the 2018-2019 biennium aligned to the new Strategic Directions agreed by C 117 are set out in document LEG 104/WP.4;
- .9 outputs should be recategorized according to their status as strategic and non-strategic;
- .10 a challenge in ensuring a consistent alignment is that some outputs are not phrased to actually describe the ongoing work. It would therefore be beneficial to review outputs to ensure that the descriptions represent the actual work to be undertaken in the 2018-2019 biennium; and
- .11 to ensure a smooth implementation of the new strategic planning process, the Council has requested the Secretariat to prepare a revised version of the document on *Application of the Strategic Plan and the High-level Action Plan of the Organization* (resolution A.1099(29)) which will be presented to C 118, along with the outputs for all organs for the 2018-2019 biennium aligned to the new Strategic Directions, and the proposed performance indicators that will be used to measure progress in achieving the strategic directions. A working group will be convened during C 118 to consider these matters with the aim of the Council being to forward the new Strategic Plan to the Assembly for adoption.

12.9 During the discussion, it was suggested that output 1.3.4.2 dealing with Abandonment of seafarers should not be linked in the new Strategic Direction to "Other Work", but rather to the overarching principle of the needs and wellbeing of seafarers.

12.10 It was proposed to move outputs 1.1.1.2. and 2.0.1.3 from Strategic Direction 1, output 1.3.1.1 from Strategic Direction 4 and output 6.2.2.1 from Strategic Direction 5 all to "Other Work".

12.11 Subject to the comments made in paragraph 12.10, the Committee approved the outputs for the 2018-2019 biennium aligned to the new Strategic Directions agreed by C 117, as set out in annex 6 for submission to C 118.

Items for inclusion in the agenda for LEG 105

12.12 The Committee approved the list of substantive items for inclusion in the agenda for LEG 105, as contained in document LEG 104/WP.2, and attached as annex 7 to this report.

12.13 The Committee noted Malta's invitation to interested parties for informal consultations expected to take place under the leadership of Malta on the future work programme of the Legal Committee.

Meeting time in the 2018-2019 biennium

12.14 The Committee agreed that two meetings should be adequate for the 2018-2019 biennium and, in view of the present workload, agreed that the next session should be held during three meeting days in conjunction with the meetings of the IOPC Funds and the HNS Workshop. The Secretariat would welcome any feedback on preferences for the arrangements of these meetings on the understanding that the two-day HNS Workshop could be held in between the April 2018 sessions of LEG and IOPC.

Audio file: Thursday, 27 April 2017: p.m.

13 ELECTION OF OFFICERS

Election of the Chair

13.1 The Committee, in accordance with rule 18 of its Rules of Procedure, unanimously elected Mr. Volker Schöfisch (Germany) as Chair for 2018.

Election of the Vice-Chair

13.2 The Committee, in accordance with rule 18 of its Rules of Procedure, unanimously re-elected Ms. Gillian Grant (Canada) as Vice-Chair for 2018.

13.3 The Member States and the Secretary-General expressed their heartfelt thanks and appreciation to the outgoing Chair, Dr. Kofi Mbiah of Ghana, for his steadfast and skilful leadership of the Committee between 2011 and 2017, and wished him well in his future endeavours.

Audio file: Friday, 28 April 2017: p.m.

14 ANY OTHER BUSINESS

Celebrating 50 years of the Legal Committee

14.1 The Committee noted that the year 2017 marked the 50th anniversary of the Legal Committee and recognized the achievements and activities during the past 50 years, which were highlighted in document LEG 104/14.

Audio file: Thursday, 27 April 2017: p.m.

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

14.2 The Committee recalled its agreement, at its ninety-ninth session, to inform the Council that it wished to further analyse the liability and compensation issues connected with transboundary pollution damage resulting from offshore oil exploration and exploitation activities, with the aim of developing guidance to assist States interested in pursuing bilateral or regional arrangements, without revising Strategic Direction 7.2. This decision was duly noted by C 108.

14.3 The Committee recalled also that, at its previous session, it had encouraged Indonesia, Denmark and other interested parties to finalize the guidance.

14.4 The delegation of Indonesia introduced document LEG 104/14/2, containing the finalized guidance for bilateral/regional arrangements or agreements on liability and compensation issues connected with transboundary oil pollution damage resulting from offshore exploration and exploitation activities for review by the Committee, which took into account comments made previously by the Committee, as well as those made by IMCA.

14.5 The observer delegation of IMCA introduced document LEG 104/14/1 and indicated that it was satisfied with the finalized guidance submitted by Indonesia and Denmark, as it had incorporated their suggestions.

14.6 The Committee made the following comments:

- the guidance will assist States in concluding bilateral agreements; and
- the guidance should be utilized on a voluntary basis and no further work is required in this respect.

14.7 The Committee noted the guidance provided by Indonesia and Denmark which was attached as an annex to document LEG 104/14/2 and would be available on the public side of IMODOCS. The Committee encouraged Member States and observer delegations to take the guidance into consideration when negotiating bilateral/regional arrangements or agreements connected with transboundary pollution damage from offshore exploration and exploitation activities.

14.8 The Committee expressed its appreciation to the delegations of Indonesia and Denmark for their submission, and thanked IMCA for its document.

Audio file: Thursday, 27 April 2017: p.m.

United Kingdom (UK) entry visas for delegations

14.9 The delegation of the Russian Federation expressed its concern that, despite having made early visa applications, two members of its delegation received their UK entry visas after the LEG 104 session had already commenced and therefore could not participate. Furthermore, the delegation of the Russian Federation expressed its concern that some members of previous Russian delegations had also either been denied UK entry visas or had received them too late to attend the meeting for which they were issued.

14.10 The Russian delegation noted that the absence of some of its members from LEG meetings on account of the UK entry visa difficulties was adversely affecting its contribution to the work of the Committee. These concerns were supported by the delegations of Indonesia and the Philippines, which reported having experienced similar difficulties in obtaining UK entry visas.

14.11 In response to the above-mentioned concerns, the Director of the Legal Affairs and External Relations Division informed the Committee that the Organization would continue to provide support, as appropriate, towards the visa applications for delegations to attend IMO meetings. Furthermore, the UK delegation informed the Committee that it would consult the responsible UK authorities regarding the UK entry visa concerns raised by the delegations.

Audio file: Thursday, 27 April 2017: p.m.

ANNEX 1

AGENDA FOR THE 104TH SESSION

Opening of the session

- 1 Adoption of the agenda
- 2 Report of the Secretary-General on credentials
- 3 Facilitation of the entry into force and harmonized interpretation of the 2010 HNS Protocol
- 4 Provision of financial security in case of abandonment of seafarers, and shipowners' responsibilities in respect of contractual claims for personal injury to, or death of seafarers, in light of the progress of amendments to the ILO Maritime Labour Convention, 2006
- 5 Fair treatment of seafarers in the event of a maritime accident
- 6 Advice and guidance in connection with the implementation of IMO instruments
- 7 Piracy
- 8 Matters arising from the 116th and 117th regular sessions of the Council
- 9 Analysis and consideration of recommendations to reduce administrative burdens in IMO instruments as identified by the SG-RAR
- 10 Technical cooperation activities related to maritime legislation
- 11 Review of the status of conventions and other treaty instruments emanating from the Legal Committee
- 12 Work programme
- 13 Election of officers
- 14 Any other business
- 15 Consideration of the report of the Committee on its 104th session

ANNEX 2

DRAFT ASSEMBLY RESOLUTION ON THE IMPLEMENTATION AND ENTRY INTO FORCE OF THE 2010 HAZARDOUS AND NOXIOUS SUBSTANCES PROTOCOL

THE ASSEMBLY,

RECALLING Article 15(j) of the Convention on the International Maritime Organization regarding the functions of the Assembly in relation to regulations and guidelines concerning maritime safety and the prevention and control of marine pollution from ships and other matters concerning the effect of shipping on the marine environment,

NOTING with concern that the Protocol of 2010 to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (2010 HNS Protocol) has not yet entered into force,

RECOGNIZING the dangers posed by the worldwide carriage by sea of hazardous and noxious substances (HNS) and the need to ensure that adequate, prompt and effective compensation is available to persons who suffer damage caused by incidents in connection with such carriage,

BEING AWARE that the transport of HNS by sea facilitates global trade; however, HNS incidents may happen where consequences can be significant and costly to individuals as well as to coastal States,

CONSIDERING that the entry into force of the 2010 HNS Protocol would result in filling a critical gap in the global regulatory framework of liability and compensation and that eight States are already signatories to the 2010 HNS Protocol,

RECOGNIZING the importance for States to coordinate if possible their implementation,

CONSCIOUS that the ultimate effectiveness and application of any instrument depends, inter alia, upon the support of all States:

- (a) to become a Party to the instrument,
- (b) to promote widespread ratification,
- (c) to implement it fully and effectively and ensure compliance,

WELCOMES the ratification by one State of the 2010 HNS Protocol on 21 April 2017,

HAVING CONSIDERED the recommendations made by the Legal Committee at its one hundred and fourth session,

1 CALLS ON States to consider ratifying, or acceding to, the 2010 HNS Protocol and implement it in a timely manner;

2 URGES all States to work together towards the implementation and entry into force of the 2010 HNS Protocol by sharing best practices, and in resolving any practical difficulties in setting up the new regime;

3 ENCOURAGES States to work with industry to assist in the implementation process by using the tools that are made available on identifying receivers, contributing cargo and other relevant information; and

4 RECOMMENDS that the Legal Committee specifically address the progress made and practical issues encountered in facilitating the acceptance and implementation of the HNS Protocol when reporting to the Assembly.

ANNEX 3

DRAFT ASSEMBLY RESOLUTION ON THE DELEGATION OF AUTHORITY TO ISSUE CERTIFICATES OF INSURANCE OR OTHER FINANCIAL SECURITY REQUIRED UNDER THE 1992 CIVIL LIABILITY CONVENTION AND THE 2010 HAZARDOUS AND NOXIOUS SUBSTANCES CONVENTION

THE ASSEMBLY,

RECALLING Article 15(j) of the Convention on the International Maritime Organization regarding the functions of the Assembly in relation to regulations and guidelines concerning maritime safety and the prevention and control of marine pollution from ships and other matters concerning the effect of shipping on the marine environment,

RECALLING ALSO that the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001, the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002 and the Nairobi International Convention on the Removal of Wrecks, 2007, allow a State Party to authorize an institution or organization recognized by it to issue certificates of insurance or other financial security required by these Conventions, subject to the conditions they prescribe,

NOTING that, in contrast, the International Convention on Civil Liability for Oil Pollution Damage, 1992 (the 1992 Civil Liability Convention), and the International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea, 2010 (the 2010 HNS Convention), do not provide an explicit legal provision for the delegation of authority to issue certificates of insurance or other financial security,

NOTING ALSO the advantages, in terms of efficiency and effectiveness, that may accrue from the delegation of authority to issue all certificates of insurance or other financial security required by the above-mentioned Conventions under similar conditions,

BEING CONSCIOUS of the need to provide certainty in the application of the 1992 Civil Liability Convention and the 2010 HNS Convention on the possibility to delegate the authority to issue certificates of insurance or other financial security, despite the absence of an explicit legal provision in those Conventions,

DESIRING to remove ambiguity and assist States Parties to the 1992 Civil Liability Convention and the 2010 HNS Convention to apply them in a uniform manner,

ACKNOWLEDGING the need to ensure that the delegation of authority in this context does not have any consequences for the relevant international compensation funds, and

HAVING CONSIDERED the recommendations made by the Legal Committee at its one hundred and third and one hundred and fourth sessions,

1 CONFIRMS that a State Party to the 1992 Civil Liability Convention or the 2010 HNS Convention can authorize an institution or an organization recognized by it to issue the certificates of insurance or other financial security required by these Conventions;

2 REMINDS States Parties that the delegation of authority to issue the certificates of insurance or other financial security required by the 1992 Civil Liability Convention and the 2010 HNS Convention would not affect the potential liability the delegating State may have in relation to those certificates;

3 EMPHASIZES that it is incumbent on the delegating State Party to perform due diligence to ensure that a certificate of insurance or other financial security issued on its behalf by an institution or an organization recognized by it, is equivalent to a certificate issued directly by that State Party;

4 AFFIRMS that a State Party, to meet its due diligence responsibilities for delegated certificates under the 1992 Civil Liability Convention and the 2010 HNS Convention, should follow the same requirements as provided by the conventions that include an explicit legal framework for such delegation;

5 RECOMMENDS therefore that a State Party delegating the authority to issue the certificates of insurance or other financial security required by the 1992 Civil Liability Convention and the 2010 HNS Convention should:

- (a) fully guarantee the completeness and accuracy of those certificates and undertake to ensure the necessary arrangements to satisfy this obligation;
- (b) notify the Secretary-General of:
 - (i) the specific responsibilities and conditions of the authority delegated to an institution or organization recognized by it,
 - (ii) the withdrawal of such authority, and
 - (iii) the date from which such authority or withdrawal of such authority takes effect;
- (c) empower the institution or organization authorized to issue certificates to withdraw these certificates if the conditions under which they have been issued are not complied with;
- (d) require the institution or organization to report such withdrawal to the State on whose behalf the certificate was issued; and
- (e) submit information on the delegation of authority to the GISIS system;

6 URGES Member States to instruct their port State authorities to accept 1992 Civil Liability Convention certificates issued on behalf of a State Party by an institution or an organization recognized by it, and, once the 2010 HNS Convention enters into force, HNS certificates issued on behalf of a State Party by an institution or an organization recognized by it;

7 INVITES Governments to bring this resolution to the attention of shipowners and insurers; and

8 REQUESTS the Secretary-General to circulate copies of the present resolution to all States which have signed or acceded to the 1992 Civil Liability Convention and the 2010 HNS Convention.

ANNEX 4

BIENNIAL STATUS REPORT 2016-2017

LEGAL COMMITTEE (LEG)								
Output number	Description	Target completion year	Parent organ(s)	Associated organ(s)	Coordinating organ(s)	Status of output for Year 1	Status of output for Year 2	References
1.1.1.1	Cooperate with the United Nations on matters of mutual interest, as well as provide relevant input/guidance	2017	Assembly	MSC/MEPC/ FAL/LEG/TCC	Council	In progress	Completed	
1.1.1.2	Consideration of reports on the application of the joint IMO/ILO Guidelines on the fair treatment of seafarers and consequential further actions as necessary.	Annual	LEG			Postponed	Completed	
1.1.2.1	Cooperate with other international bodies on matters of mutual interest, as well as provide relevant input/guidance	2017	Assembly	MSC/MEPC/ FAL/LEG/TCC	Council	In progress	Completed	
1.3.1.1	Advice and guidance on issues under the United Nations Law of the Sea Convention relevant to the role of the Organization	Annual	LEG			Completed	Completed	
1.3.4.2	Consider reports on the issue of financial security in case of abandonment of seafarers, and shipowners' responsibilities in respect of contractual claims for personal injury to, or death of seafarers, in light of the progress of the amendments to ILO MLC 2006	2017	LEG			In progress	Completed	

LEGAL COMMITTEE (LEG)								
Output number	Description	Target completion year	Parent organ(s)	Associated organ(s)	Coordinating organ(s)	Status of output for Year 1	Status of output for Year 2	References
2.0.1.3	Provide advice and guidance on issues brought to the Committee in connection with implementation of IMO instruments	Annual	LEG			Completed	Completed	
2.0.1.4	Strategies developed to facilitate entry into force and harmonized interpretation of the HNS Protocol	2017	LEG			In progress	Extended	
2.0.2.1	Analysis of consolidated audit summary reports	Annual	Assembly	MSC/MEPC/LEG/TCC/III	Council	No work requested	No work requested	
3.4.1.1	Input on identifying emerging needs of developing countries, in particular SIDS and LDCs to be included in the ITCP	Continuous	TCC	MSC/MEPC/FAL/LEG		No work requested	No work requested	
3.5.1.1	Identify thematic priorities within the area of maritime safety and security, marine environmental protection, facilitation of maritime traffic and maritime legislation	Annual	TCC	MSC/MEPC/FAL/LEG		No work requested	Completed	
3.5.1.2	Input to the ITCP on emerging issues relating to sustainable development and achievement of the MDGs	2017	TCC	MSC/MEPC/FAL/LEG		No work requested	No work requested	
4.0.1.3	Endorsed proposals for new outputs for the 2016-2017 biennium as accepted by the Committees	Annual	Council	MSC/MEPC/FAL/LEG/TCC		No work requested	Completed	

LEGAL COMMITTEE (LEG)								
Output number	Description	Target completion year	Parent organ(s)	Associated organ(s)	Coordinating organ(s)	Status of output for Year 1	Status of output for Year 2	References
4.0.2.1	Endorsed proposals for the development, maintenance and enhancement of information systems and related guidance (GISIS, websites, etc.)	Continuous	Council	MSC/MEPC/ FAL/LEG/TCC		No work requested	Completed	
4.0.3.1	Development of a new strategic framework for the Organization for 2018-2023	2017	Council		MSC/MEPC/ FAL/LEG/TCC	In progress	Completed	
4.0.5.1	Revised Guidelines on organization and method of work, as appropriate	2016	Council		MSC/MEPC/ FAL/LEG/TCC	Postponed	Completed	
5.1.2.3	IMO's contribution to addressing Unsafe Mixed Migration by Sea	2017	MSC/FAL/ LEG			In progress	Extended	
6.2.1.2	Revised guidance relating to the prevention of piracy and armed robbery to reflect emerging trends and behaviour patterns	Annual	MSC	LEG		No work requested	No work requested	
6.2.2.1	Provide advice and guidance to support international efforts to ensure effective prosecution of perpetrators (piracy); and to support availability of information on comprehensive national legislation and judicial capacity-building ²	Annual	LEG			Postponed	Completed	

² LEG 103 decided to change the description of the output. New title: Provide advice and guidance to support availability of information on comprehensive national legislation and judicial capacity-building.

LEGAL COMMITTEE (LEG)								
Output number	Description	Target completion year	Parent organ(s)	Associated organ(s)	Coordinating organ(s)	Status of output for Year 1	Status of output for Year 2	References
8.0.3.1	Requirements for access to, or electronic versions of, certificates and documents, including record books required to be carried on ships	2017	FAL		MSC/MEPC/LEG/III	In progress	Completed	
14.0.1.1	Analysis and consideration of recommendations to reduce administrative burdens in IMO instruments including those identified by the SG-RAR	2017	Council	III/HTW/PPR/CCC/SDC/SSE/NCSR	MSC/MEPC/FAL/LEG	In progress	Completed	

ANNEX 5
POST-BIENNIAL AGENDA

LEGAL COMMITTEE (LEG)								
PROPOSED POST-BIENNIAL OUTPUTS								
Number	Biennium (when the output was placed on the post-biennial agenda)	Reference to High-level Actions	Description	Parent organ(s)	Associated organ(s)	Coordinating organs(s)	Timescale (sessions)	References
1.1.1.2	2015-2017	1.1.1	Consideration of reports on the application of the joint IMO/ILO Guidelines on the fair treatment of seafarers and consequential further actions as necessary	LEG			2	Annual output
1.3.1.1	2015-2017	1.3.1	Advice and guidance on issues under the United Nations Convention on the Law of the Sea relevant to the role of the Organization	LEG			2	Annual output
1.3.4.2	2015-2017	1.3.5	Consider reports on the issue of financial security in case of abandonment of seafarers, and shipowners' responsibilities in respect of contractual claims for personal injury to or death of seafarers, in light of the progress of the amendments to ILO MLC 2006	LEG			2	
2.0.1.4	2015-2017	2.0.1	Strategies developed to facilitate entry into force of the HNS Protocol and harmonized interpretation	LEG			2	
2.0.1.3	2015-2017	2.0.1	Provide advice and guidance on issues brought to the Committee in connection with implementation of IMO instruments	LEG			2	Annual output
5.1.2.3	2015-2017	5.1.2	IMO's contribution to addressing Unsafe Mixed Migration by Sea	MSC/ MEPC/ LEG			2	
6.2.2.1	2015-2017	6.2.1	Provide advice and guidance to support availability of information on comprehensive national legislation and judicial capacity-building	LEG			2	Annual output

ANNEX 6

**OUTPUTS OF THE LEGAL COMMITTEE FOR THE 2018-2019 BIENNIUM ALIGNED WITH THE
NEW STRATEGIC DIRECTIONS AGREED BY C 117**

	Current No.	Output	Target completion year	Parent organ(s)	Associated organ(s)	Coordinating organ(s)
SD 1 Improve implementation	1.1.1.1	Cooperate with the United Nations on matters of mutual interest, as well as provide relevant input/guidance	2017	Assembly	MSC / MEPC / FAL / LEG / TCC	Council
	1.1.2.1	Cooperate with other international bodies on matters of mutual interest, as well as provide relevant input/guidance	2017	Assembly	MSC / MEPC / FAL / LEG / TCC	Council
	2.0.2.1	Analysis of consolidated audit summary reports	Annual	Assembly	MSC / MEPC / LEG / TCC / III	Council
	3.4.1.1	Input on identifying emerging needs of developing countries, in particular SIDS and LDCs to be included in the ITCP	Continuous	TCC	MSC / MEPC / FAL / LEG	
	3.5.1.1	Identify thematic priorities within the area of maritime safety and security, marine environmental protection, facilitation of maritime traffic and maritime legislation	Annual	TCC	MSC / MEPC / FAL / LEG	
	6.2.1.2	Revised guidance relating to the prevention of piracy and armed robbery to reflect emerging trends and behaviour patterns	Annual	MSC	LEG	

	Current No.	Output	Target completion year	Parent organ(s)	Associated organ(s)	Coordinating organ(s)
SD 2 Integrate new and advancing technologies in the regulatory framework	1.1.1.1	Cooperate with the United Nations on matters of mutual interest, as well as provide relevant input/guidance	2017	Assembly	MSC / MEPC / FAL / LEG / TCC	Council
	1.1.2.1	Cooperate with other international bodies on matters of mutual interest, as well as provide relevant input/guidance	2017	Assembly	MSC / MEPC / FAL / LEG / TCC	Council
SD 3 Respond to climate change	1.1.1.1	Cooperate with the United Nations on matters of mutual interest, as well as provide relevant input/guidance	2017	Assembly	MSC / MEPC / FAL / LEG / TCC	Council
	1.1.2.1	Cooperate with other international bodies on matters of mutual interest, as well as provide relevant input/guidance	2017	Assembly	MSC / MEPC / FAL / LEG / TCC	Council
	3.5.1.2	Input to the ITCP on emerging issues relating to sustainable development and achievement of the MDGs	2017	TCC	MSC / MEPC / FAL / LEG	
SD 4 Engage in ocean governance	1.1.1.1	Cooperate with the United Nations on matters of mutual interest, as well as provide relevant input/guidance	2017	Assembly	MSC / MEPC / FAL / LEG / TCC	Council
	1.1.2.1	Cooperate with other international bodies on matters of mutual interest, as well as provide relevant input/guidance	2017	Assembly	MSC / MEPC / FAL / LEG / TCC	Council
	3.4.1.1	Input on identifying emerging needs of developing countries, in particular SIDS and LDCs to be included in the ITCP	Continuous	TCC	MSC / MEPC / FAL / LEG	
	3.5.1.2	Input to the ITCP on emerging issues relating to sustainable development and achievement of the MDGs	2017	TCC	MSC / MEPC / FAL / LEG	

	Current No.	Output	Target completion year	Parent organ(s)	Associated organ(s)	Coordinating organ(s)
SD 5 Enhance global facilitation and security of international trade	1.1.1.1	Cooperate with the United Nations on matters of mutual interest, as well as provide relevant input/guidance	2017	Assembly	MSC / MEPC / FAL / LEG / TCC	Council
	1.1.2.1	Cooperate with other international bodies on matters of mutual interest, as well as provide relevant input/guidance	2017	Assembly	MSC / MEPC / FAL / LEG / TCC	Council
	6.2.1.2	Revised guidance relating to the prevention of piracy and armed robbery to reflect emerging trends and behaviour patterns	Annual	MSC	LEG	
	8.0.3.1	Requirements for access to, or electronic versions of, certificates and documents, including record books required to be carried on ships	2017	FAL	MSC / MEPC / LEG / III	
SD 6 Ensure regulatory effectiveness	1.1.1.1	Cooperate with the United Nations on matters of mutual interest, as well as provide relevant input/guidance	2017	Assembly	MSC / MEPC / FAL / LEG / TCC	Council
	1.1.2.1	Cooperate with other international bodies on matters of mutual interest, as well as provide relevant input/guidance	2017	Assembly	MSC / MEPC / FAL / LEG / TCC	Council
	2.0.1.4	Strategies developed to facilitate entry into force and harmonized interpretation of the HNS Protocol	2017	LEG		
	2.0.2.1	Analysis of consolidated audit summary reports	Annual	Assembly	MSC / MEPC / LEG / TCC / III	Council

	Current No.	Output	Target completion year	Parent organ(s)	Associated organ(s)	Coordinating organ(s)
SD 7 Ensure organizational effectiveness	1.1.1.1	Cooperate with the United Nations on matters of mutual interest, as well as provide relevant input/guidance	2017	Assembly	MSC / MEPC / FAL / LEG / TCC	Council
	1.1.2.1	Cooperate with other international bodies on matters of mutual interest, as well as provide relevant input/guidance	2017	Assembly	MSC / MEPC / FAL / LEG / TCC	Council
	4.0.2.1	Endorsed proposals for the development, maintenance and enhancement of information systems and related guidance (GISIS, websites, etc.)	Continuous	Council	MSC / MEPC / FAL / LEG / TCC	
	4.0.5.1	Revised guidelines on organization and method of work, as appropriate	2016	Council	MSC / MEPC / FAL / LEG / TCC	
other work	1.1.1.2	Consideration of reports on the application of the Joint IMO/ILO Guidelines on Fair Treatment of Seafarers and consequential further actions as necessary	Annual	LEG		
	1.3.1.1	Advice and guidance on issues under UNCLOS relevant to the role of the Organization	Annual	LEG		
	1.3.4.2	Consider reports on the issue of financial security in case of abandonment of seafarers, and shipowners' responsibilities in respect of contractual claims for personal injury to, or death of, seafarers, in light of the progress of the amendments to the ILO MLC 2006	2017	LEG		
	2.0.1.3	Provide advice and guidance on issues brought to the Committee in connection with the implementation of IMO instruments	Annual	LEG		
	4.0.1.3	Endorsed proposals for new outputs for the 2016-2017 biennium as accepted by the committees	Annual	Council	MSC / MEPC / FAL / LEG / TCC	

	Current No.	Output	Target completion year	Parent organ(s)	Associated organ(s)	Coordinating organ(s)
	5.1.2.3	IMO's contribution to addressing Unsafe Mixed Migration by Sea	2017	MSC / FAL / LEG		
	6.2.2.1	Provide advice and guidance to support international efforts to ensure effective prosecution of perpetrators (piracy); and to support availability of information on comprehensive national legislation and judicial capacity building	Annual	LEG		

ANNEX 7

ITEMS TO BE INCLUDED IN THE AGENDA FOR LEG 105

Facilitation of the entry into force and harmonized interpretation of the 2010 HNS Protocol

Provision of financial security in case of abandonment of seafarers, and shipowners' responsibilities in respect of contractual claims for personal injury to, or death of seafarers, in light of the progress of amendments to the ILO Maritime Labour Convention, 2006

Fair treatment of seafarers in the event of a maritime accident

Advice and guidance in connection with the implementation of IMO instruments

Piracy

Matters arising from the 118th and 119th regular sessions of the Council, the twenty-ninth extraordinary session of the Council and the thirtieth regular session of the Assembly

Technical cooperation activities related to maritime legislation

Review of the status of conventions and other treaty instruments emanating from the Legal Committee

Work programme

Election of officers

Any other business

Consideration of the report of the Committee on its 105th session

ANNEX 8

RULES OF PROCEDURE OF THE LEGAL COMMITTEE

Membership

Rule 1

For the purpose of these Rules, the term "Member" means a Member of the Organization and "other Participant" means a State not a Member of the Organization but Party to a treaty or other international instrument in respect of which the Committee performs functions as provided therein. Membership of the Committee shall be open to all Members and other Participants.

Subsidiary bodies

Rule 2

1 The Committee may establish such subsidiary bodies as it considers necessary. Such subsidiary bodies shall follow these Rules, except for Rules 3, 9, 14, 15 and 16.

2 Periodically, the Committee shall examine the need for the continued existence of any subsidiary body.

Sessions

Rule 3

The Committee shall meet at least once a year in regular session and more frequently with the approval of the Council. The Committee may meet in an extraordinary session upon a request made in writing to the Secretary-General by at least twenty of its respective Members. Sessions of the Committee shall be held at the Headquarters of the Organization unless convened elsewhere in accordance with a decision of the Committee approved by the Assembly or the Council.

Rule 4

The Secretary-General, acting on the direction of the Chair, shall notify Members and other Participants at least two months in advance of the holding of a session of the Committee, and shall also notify the Chairs of other interested IMO bodies who shall have the option of attending sessions as observers.

Observers

Rule 5

1 The Secretary-General, with the approval of the Council, may invite States having made applications for membership, States which have signed but not accepted the Convention on the International Maritime Organization, and States which are Members of the United Nations or of any specialized agency and liberation movements recognized by the African Union or the League of Arab States to send observers to sessions of the Committee.

2 The Secretary-General shall invite to be represented as observers at each session of the Committee:

- .1 the United Nations, including the United Nations Environment Programme; and;
- .2 any of the specialized agencies of the United Nations and the International Atomic Energy Agency.

3 The Secretary-General shall invite to be represented by observers at each session of the Committee at which matters of direct concern to them are on the agenda:

- .1 other intergovernmental organizations with which an agreement or special arrangement has been made; and
- .2 non-governmental international organizations with which the Organization has established relationships in accordance with the rules governing consultations with such organizations.

4 Upon invitation by the Chair and with the consent of the Committee concerned, such observers may participate without vote on matters of direct concern to them.

Rule 6

1 Representatives of the United Nations, the International Atomic Energy Agency and of the specialized agencies shall receive copies of all documents issued to the Committee, subject to any arrangements as may be necessary for the safeguarding of confidential material.

2 Observers shall have access to non-confidential documents and to such other documents as the Secretary-General, with the approval of the Chair, may decide to make available.

Delegations and credentials

Rule 7

Each Member or other Participant shall designate a representative and such alternates, advisers and experts as may be required.

Rule 8

Each Member or other Participant shall notify the Secretary-General in writing as soon as possible, and in any case not later than the opening day of a session, of the composition of its delegation to that session.

Rule 9

1 Each Member or Government entitled to participate in a session of the Committee shall transmit to the Secretary-General the credentials of its representatives and alternates, if any. The credentials shall be issued by the Head of State, Head of Government, Minister for Foreign Affairs, Minister concerned or by an appropriate authority properly designated by one of them for this purpose. The Secretary-General shall examine the credentials of each representative and alternate and report to the Committee thereon without delay.

2 All representatives shall be seated provisionally with the same rights until the Secretary-General has reported on credentials and the Committee has given its decision.

Publicity

Rule 10

1 The Committee may decide to hold meetings in private or public. In the absence of a decision to hold meetings in public, they shall be held in private.

2 Notwithstanding the aforesaid, and in accordance with the *Guidelines for media access to meetings of Committees and their subsidiary bodies* approved by the Council, the media may attend meetings of the Committee unless the Committee decides otherwise. Meetings of working and drafting groups established by the Committee shall be held in private.

Agenda

Rule 11

The provisional agenda for each session of the Committee shall be prepared by the Secretary-General and approved by the Chair, and shall normally be communicated with the basic supporting documents to the Members and other Participants two months before the opening of a session.

Rule 12

The first item on the provisional agenda for each session shall be the adoption of the agenda.

Rule 13

Subject to the provisions of Rule 14, any item of the agenda of a session of the Committee, consideration of which has not been completed at that session, shall be included in the agenda of a subsequent session unless otherwise decided by the Committee.

Rule 14

The provisional agenda for each session of the Committee shall include:

- .1 all items the inclusion of which has been requested by the Assembly or the Council;
- .2 all items the inclusion of which has been requested by the Committee at a previous session;
- .3 any item proposed by a Member;
- .4 subject to the provisions of a treaty or other international agreement in respect of which the Committee performs functions, any amendment proposed by a Party to that treaty or other international agreement;
- .5 subject to such preliminary consultations as may be necessary, any item proposed by any other subsidiary body of the Organization, by the United Nations or by any of its specialized agencies, or by the International Atomic Energy Agency; and
- .6 any item proposed by the Secretary-General.

Rule 15

The Secretary-General shall report on the technical, administrative and financial implications of any substantive agenda items submitted to the Committee and, unless the Committee decides otherwise, no such item shall be considered until the Secretary-General's report has been available to the Committee for at least 24 hours.

Rule 16

In circumstances of urgency the Secretary-General, with the approval of the Chair, may include any question suitable for the agenda which may arise between the dispatch of the provisional agenda and the opening day of the session in a supplementary provisional agenda which the Committee shall examine together with the provisional agenda. The Secretary-General shall advise Members and other Participants immediately of the intention to include an item in a supplementary provisional agenda.

Rule 17

Unless it determines otherwise, the Committee shall not proceed to the discussion of any item on the agenda until at least 24 hours have elapsed after the relevant documents have been made available to Members and other Participants.

Chair and Vice-Chair

Rule 18

1 The Committee shall elect from among its Members a Chair and a Vice-Chair who shall each hold office for a term of one calendar year. They shall both be eligible for re-election for up to four further consecutive terms of office. In exceptional circumstances they may be re-elected for one additional consecutive term of office.

2 The Chair, or the Vice-Chair acting as Chair, shall not vote.

3 The Chair and Vice-Chair shall be elected at the end of the last regular session in each calendar year and shall assume their functions at the beginning of the following calendar year.

Rule 19

If the Chair is absent from a session, or any part thereof, the Vice-Chair shall preside. If the Chair, for any reason, is unable to complete the term of office, the Vice-Chair shall act as Chair pending the election of a new Chair.

Secretariat

Rule 20

The Secretary-General shall act as Secretary of the Committee. This function may be delegated to a member of the Secretariat.

Rule 21

The Secretary-General, or any member of the Secretariat designated for the purpose, may make either oral or written statements concerning any question under consideration.

Rule 22

It shall be the duty of the Secretariat to receive, translate and circulate to Members and other Participants all reports, resolutions, recommendations and other documents of the Committee.

Languages

Rule 23

The official languages of the Committee are Arabic, Chinese, English, French, Russian and Spanish; the working languages are English, French and Spanish.

Rule 24

Speeches at the Committee shall be made in one of the official languages and shall be interpreted into the other five official languages.

Rule 25

1 All supporting documents to agenda items of the Committee shall be issued in the working languages.

2 All reports, resolutions, recommendations and decisions of the Committee shall be drawn up in one of the official languages and translated into the other five official languages.

Voting

Rule 26

1 When considering matters not connected with functions performed by the Committee in respect of treaties or other international agreements, all Members and other Participants may participate, but only Members of the Organization shall be entitled to vote.

2 Each Member entitled to vote shall have one vote.

3 When the Committee performs functions as provided for in a treaty or other international agreement, all Members and other Participants shall be entitled to participate in the proceedings, but voting on amendments to the treaty or other agreement shall be in accordance with the provisions of that treaty or agreement.

Rule 27

Subject to the provisions of any treaty or other international agreement which confers upon the Organization functions to be undertaken by the Committee, decisions of the Committee shall be made and reports, resolutions and recommendations adopted by a majority of the Members or other Participants entitled to vote, present and voting.

Rule 28

1 For the purpose of these Rules, the phrase "Members or other Participants entitled to vote, present and voting" means such Members or other Participants entitled to vote, casting an affirmative or negative vote. Those abstaining from voting or casting an invalid vote shall be considered as not voting. The phrase "Members present" means Members at the meeting, whether they cast an affirmative or negative vote, whether they abstain, whether they cast an invalid vote or whether they take no part in the voting.

2 The provisions in Rule 28.1 above shall apply only if the quorum laid down in Rule 34 is obtained at the meeting at which the vote is taken.

3 Participants in the session who are not present at the meeting at which voting takes place shall be considered as not present.

Rule 29

The Committee shall normally vote by show of hands. However, any Member or other Participant entitled to vote may request a roll-call which shall be taken in the alphabetical order of the names of the Members or other Participants entitled to vote in English, beginning with the Member or other Participant whose name is drawn by lot by the Chair.

The vote of each Member or other Participant in any roll-call shall be inserted in the report of the session concerned.

Rule 30

If a vote is equally divided, a second vote shall be taken at the next meeting. If this vote is equally divided, the proposal shall be regarded as rejected.

Elections

Rule 31

Officers of the Committee shall be elected by secret ballot, unless the Committee decides otherwise.

Rule 32

In a secret ballot, two scrutineers shall, on the proposal of the Chair, be appointed by the Committee from the delegations present and shall proceed to scrutinize the votes cast. All invalid votes cast shall be reported to the Committee.

Rule 33

If one person only is to be elected and no candidate obtains a majority in the first ballot, a second ballot shall be taken confined normally to the two candidates obtaining the largest number of votes. If in the second ballot the votes are equally divided, the election shall be deferred until the ensuing session, when, if another tie results, the Chair shall decide between the candidates by drawing lots.

Conduct of business

Rule 34

1 The Chair may declare a meeting open and permit the debate to proceed when at least 25% of the Membership of the Organization are present. The presence of at least 25% of the Membership of the Organization, or other participants, as appropriate, shall be required for any decision to be taken.

2 When a treaty or other international instrument in respect of which the Committee performs functions contains a provision relating to the quorum, such provision shall apply in respect of such functions.

Rule 35

In addition to exercising the powers conferred elsewhere by these Rules, the Chair shall declare the opening and closing of each session of the Committee; direct the discussion and ensure observance of these Rules; accord the right to speak; put questions to the vote; and announce decisions resulting from the voting.

Rule 36

Proposals and amendments shall normally be introduced in writing and handed to the Secretary-General who shall circulate copies to delegations. As a general rule, no proposal shall be discussed or put to the vote at any meeting of the Committee unless copies of it have been circulated to delegations not later than the day preceding the meeting. The Chair may, however, permit the discussion and consideration of amendments or of motions as to procedure even though these amendments and motions have not been circulated or have only been circulated the same day.

Rule 37

The Committee may, on proposal of the Chair, limit the time to be allowed to each speaker on any particular subject under discussion.

Rule 38

1 During the discussion of any matter, a Member or other Participant may rise to a point of order and the point of order shall be decided immediately by the Chair, in accordance with these Rules. A Member or other Participant may appeal against the ruling of the Chair. The appeal shall be put to the vote immediately and the Chair's ruling shall stand unless overruled by a majority of the Members or other Participants present and voting.

2 A Member or other Participant rising to a point of order may not speak on the substance of the matter under discussion.

Rule 39

1 Subject to the provisions of Rule 38, the following motions shall have precedence, in the order indicated below, over all other proposals or motions before the meeting:

- .1 to suspend a meeting;
- .2 to adjourn a meeting;
- .3 to adjourn the debate on the question under discussion; and
- .4 for the closure of the debate on the question under discussion.

2 Permission to speak on a motion falling within Rule 39.1 above shall be granted only to the proposer and in addition to one speaker in favour of and two against the motion, after which it shall be put immediately to the vote.

Rule 40

If two or more proposals relate to the same question, the Committee, unless it decides otherwise, shall vote on the proposals in the order in which they have been submitted.

Rule 41

Parts of a proposal or amendment thereto shall be voted on separately if the Chair, with the consent of the proposer, so decides, or if any Member or other Participant requests that the proposal or amendment thereto be divided and the proposer raises no objection. If objection is raised, permission to speak on the point shall be given first to the mover of the motion to divide the proposal or amendment, and then to the mover of the original proposal or amendment under discussion, after which the motion to divide the proposal or amendment shall be put immediately to the vote.

Rule 42

Those parts of a proposal which have been approved shall then be put to the vote as a whole; if all the operative parts of the proposal or amendment have been rejected, the proposal or amendment shall be considered to be rejected as a whole.

Rule 43

A motion is considered to be an amendment to a proposal if it merely adds to, deletes from or revises part of that proposal. An amendment shall be voted on before the proposal to which it relates is put to the vote, and if the amendment is adopted, the amended proposal shall then be voted on.

Rule 44

If two or more amendments are moved to a proposal, the Committee shall first vote on the amendment furthest removed in substance from the original proposal and then on the amendment next furthest removed therefrom and so on, until all amendments have been put to the vote. The Chair shall determine the order of voting on the amendments under this Rule.

Rule 45

A motion may be withdrawn by its proposer at any time before voting on it has begun, provided that the motion has not been amended or that an amendment to it is not under discussion. A motion withdrawn may be reintroduced by any Member or other Participant having the right to submit such a motion.

Rule 46

When a proposal has been adopted or rejected, it may not be reconsidered at the same session of the Committee unless the Committee, by a majority of the Members or other Participants present and voting, decides in favour of reconsideration. Permission to speak on a motion to reconsider shall be accorded only to the mover and one other supporter, and to two speakers opposing the motion, after which it shall be put immediately to the vote.

Invitation of experts

Rule 47

The Committee may invite any person whose expertise it may consider useful for its work to participate in a meeting. A person invited under this Rule shall not have the right to vote.

Amendments of Rules of Procedure

Rule 48

These Rules may be amended by a decision of the Committee, taken by a majority of the Members present and voting.

Suspension of Rules of Procedure

Rule 49

A Rule may be suspended by a decision of the Committee taken by a majority of the Members present and voting, provided that 24 hours' notice of the proposal for suspension has been given. This notice may be waived if no Member objects.

Overriding authority of the IMO Convention

Rule 50

In the event of any conflict between a provision of these Rules and a provision of the Convention, the Convention shall prevail.

ANNEX 9

STATEMENTS BY DELEGATIONS

AGENDA ITEM 1

Statement by the Democratic Republic of the Congo regarding the fraudulent use of its flag

**DECLARATION DE LA REPUBLIQUE DEMOCRATIQUE DU CONGO A LA
104ème SESSION DE LA COMMISSION JURIDIQUE DE L'ORGANISATION
MARITIME INTERNATIONALE**

**Monsieur le Secrétaire Général,
Monsieur le Directeur du Comité Juridique,
Monsieur le Directeur de la Division Juridique,
Messieurs les Membres du Bureau de l'OMI,
Mesdames et Messieurs**

1. Il y a presque une décennie depuis que les Etats Membres de l'OMAOOC ont approuvé le Mémoire d'Entente sur le Réseau Sous-Régional de Garde-côtes et la R.D. Congo, figure parmi les premiers à l'avoir signé. La R.D. Congo a depuis lors reconnu l'importance de disposer d'une Police Maritime pour assurer la sécurité et la sûreté de ses intérêts en Mer d'une part, et d'autre part, de la Sous-région Ouest africaine.
2. Pour l'instant, la R.D. Congo utilise son unité de la Force Navale qui fait office de la Fonction de Garde-côtes pour assurer l'action de l'Etat en Mer.
3. Disposant d'une façade maritime, la R.D. Congo renferme dans sa Zone Economique Exclusive (ZEE) des intérêts vitaux pour son développement économique dont notamment, les installations off shore, les ressources halieutiques et aquatiques. Il faut ajouter à cela huit (8) installations portuaires qui assurent environ 90 % de notre commerce extérieur et nos échanges commerciaux.
4. Comme nous le savons tous, la région du Golfe de Guinée est devenue un champ de prédilection du terrorisme et de la piraterie maritime à l'encontre des navires marchants, à l'exploitation illégale des ressources halieutiques des Zones Economiques Exclusives des Etats Membres, à l'immigration clandestine, au trafic de la drogue et du stupéfiant. Ces fléaux menacent la sécurité et la sûreté maritimes de notre région et influent négativement sur notre développement économique.

**Monsieur le Secrétaire Général,
Monsieur le Directeur du Comité Juridique,
Monsieur le Directeur de la Division Juridique,
Messieurs les Membres du Bureau de l'OMI,
Mesdames et Messieurs**

5. En dehors de ces fléaux qui menacent la sûreté et la sécurité maritime dans le Golfe de Guinée, la R.D. Congo mon pays est victime d'une autre menace caractérisée par le piratage de son pavillon. Cette situation qui a été

constatée depuis 2015 grâce à une franche collaboration des services de l'Interpole de l'Espagne et de la France dont je salue la bravoure et la vigilance, au nom de mon Gouvernement, services qui ont permis de constater l'existence de ce fléau, dans le trafic maritime international.

6. En effet, il a fallu la vigilance des services de l'interpole du Royaume d'Espagne et de la France qui ont arraisonné, successivement les navires SAN TRELLA et JUST RHEMA en 2015, pour constater l'existence des navires qui sillonnent dans les ports du monde avec des faux titres à bord, battant frauduleusement pavillon de la République Démocratique du Congo. L'arraisonnement de ces navires par l'Interpole a permis de constater que ces derniers transportaient à leur bord des stupéfiants (haschichs) dont la quantité était estimée à environ 15.000 tonnes.
7. Pendant que mon Gouvernement s'attelait à dépêcher une commission rogatoire pour investiguer sur ces deux premiers cas, le Centre d'Intelligence Contre le Terrorisme et Crimes Organisés « CITCO » en sigle, du Royaume d'Espagne sollicitera encore l'autorisation de la RDC pour intervenir par un contrôle appuyé sur un troisième navire « COMMANDER TIDE » intercepté au large de la cote d'Espagne, arborant frauduleusement le Pavillon de la RDC et transportant de la cocaïne.
8. Face à l'expansion de ce fléau, mon Gouvernement dépêchera, en novembre 2016, une mission d'investigation auprès de l'OMI, concomitamment aux enquêtes sur les navires arraisonnés en Espagne ci-haut cités, en vue de collecter toutes les informations en rapport avec l'état des lieux de la flotte des navires enregistrée dans votre système d'information et de gestion sous le pavillon de la République Démocratique du Congo.
9. C'est au terme des séances de travail que les experts de la RDC ont eues avec le Département Juridique de l'OMI et du bureau IHS à Coulsdon Town qu'il a été constaté l'ampleur de la piraterie d'un nombre de 73 navires au minimum qui arborent frauduleusement le pavillon de la RDC.

**Monsieur le Secrétaire Général,
Monsieur le Directeur du Comité Juridique,
Monsieur le Directeur de la Division Juridique,
Messieurs les Membres du Bureau de l'OMI,
Mesdames et Messieurs**

10. Au moment où la R.D. Congo a sollicité l'appui de l'OMI et de l'Interpole pour traquer ces navires, les bureaux de classification qui se livrent à ces actes de lucre pour assurer l'enregistrement des navires, s'emploient, depuis la publication de la Circulaire de l'OMI, à renommer les navires identifiés dans cette piraterie.
11. Je tiens à vous informer que la dernière séance de travail tenue, la semaine dernière, à Coulsdon Town entre les experts de la République Démocratique du Congo et le bureau IHS nous ont amené à constater (i) la sortie en totalité de ces navires sous le pavillon de la RDC, migrant ainsi vers d'autres pavillons ; (ii) la géolocalisation avec le système AIS a permis de constater que les navires qui étaient arraisonnés et mis en détention par la Justice espagnole, notamment SAN TRELLA et JUST RHEMA, ont déjà repris leur

navigation au long court. Nous profitons de cette occasion pour demander aux amis membres de l'OMI, en l'occurrence l'Espagne et la France, de nous faciliter la tâche dans les actions d'investigation qui y sont projetées.

**Monsieur le Secrétaire Général,
Monsieur le Directeur du Comité Juridique,
Monsieur le Directeur de la Division Juridique,
Messieurs les Membres du Bureau de l'OMI,
Mesdames et Messieurs**

12. Ce nombre décrié ici ne constitue qu'un échantillon recueilli auprès du bureau IHS.
13. En effet: Un bureau dénommé DRCSR (Democratic Republic of Congo Shipping Registry) qui serait basé en Grèce, en Chypre en Syrie, en Ukraine, disposerait un nombre d'environ 140 navires qui seraient enregistrés sous le pavillon de la R.D. Congo.
14. Un autre bureau ARADOS MARITIME qui serait installé en Syrie et en Egypte se livrerait aussi à ces actes pirates de lucre pour l'enregistrement frauduleux sous le pavillon de la RD Congo. Ce bureau aurait enregistré dans le passé des navires sous notre pavillon, comme c'est le cas du navire MAYAR 1 dont le port d'attache serait en Bolivie.
15. Des informations collectées auprès du bureau IHS ont permis de constater l'existence d'un sujet Guinéen, dénommé AHMED ZOUHIAS DARWEESH basé au QATAR qui assure aussi l'enregistrement des navires sous le pavillon de la R.D. Congo.

**Monsieur le Secrétaire Général,
Monsieur le Directeur du Comité Juridique,
Monsieur le Directeur de la Division Juridique,
Messieurs les Membres du Bureau de l'OMI,
Mesdames et Messieurs**

16. Comme cela ne suffisait pas, aujourd'hui encore, en dehors de ce fléau de piraterie sur notre pavillon, la R.D. Congo est encore victime de la pêche illégale effectuée par les navires étrangers sur nos eaux. Elle déplore aussi l'empiétement de ses champs pétrolifères off shore par ces mêmes navires. La détermination de la limite de notre frontière maritime constitue une autre guerre non encore entamée.
17. Nous assistons devant ce spectacle et sommes impuissants de réagir car notre Police Maritime est quasi absente sur le terrain.
18. La République Démocratique du Congo est peut être le premier pays qui subit cette forme de piraterie constaté dans le secteur maritime en Afrique, et particulièrement dans le Golfe de Guinée. Cette menace doit interpeller l'Organisation Maritime Internationale pour entrevoir des mécanismes de protection des pavillons de chaque pays.
19. C'est pour nous une opportunité de présenter nos remerciements au Secrétaire Général de l'OMI pour avoir lancé, depuis le 23 mars 2017, la lettre Circulaire n°3717 pour la traque de ces navires qui battent

frauduleusement pavillon de la RDC suite à la lettre de dénonciation n° 0095/CAB/VPM/TVC du 24 janvier 2017 adressée par le Vice Premier Ministre, Ministre des Transports et Voies de Communication de mon pays, à Son Excellence Monsieur le Secrétaire Général de l'OMI.

20. En dehors de la matérialisation effective du système d'Informations Automatique de Géolocalisation (AIS) des navires au niveau international, l'OMI devra aussi entrevoir des dispositions de protection de pavillons des différents Etats membres. C'est ici l'opportunité d'étudier la mise en œuvre d'un formalisme d'homologation, par le Département Juridique de l'OMI, des bureaux habilités à servir de relais dans les formalismes de gestion des pavillons des Etats membres. Ces formalismes devraient être conçus dans une logique à impliquer les Administrations Maritimes des Etats du pavillon.
21. Seule, une véritable force de dissuasion et de répression ainsi qu'un appui institutionnel de l'OMI aidera nos Etats à pouvoir sécuriser cette espace maritime. Et, ensemble nous pouvons relever ce défi que si nos forces qui assurent la fonction Garde-côtes dans nos pays sont équipées en matériels adéquat et requis pour les opérations à mener en Mer.
22. C'est pour nous une occasion de présenter nos remerciements pour l'organisation de cette session qui, nous l'espérons, constitue un cadre légal pour faire entendre ce cri de détresse et solliciter l'appui institutionnel de l'OMI en vue de l'adhésion de tous les pays membres dans les facilitations dans la traque des bureaux qui délivrent ces faux documents d'enregistrement auprès des armateurs.
23. Nous appuyons solidement l'OMAOOC dont la RD Congo assure la Présidence afin que le Mémoire d'Entente sur le Réseau Sous-régional de Garde-côtes soit d'application effective et devienne réellement efficiente sur le terrain.
24. La R.D. Congo qui se bat farouchement grâce aux efforts inlassables que déploie Son Excellence Monsieur le Président Joseph KABILA KABANGE, Chef de l'Etat pour son émergence d'ici 2030, voudrait capitaliser tous ses efforts pour son développement harmonieux parmi lesquels le secteur maritime occupe une place importante.
25. Voilà pourquoi la R.D. Congo, à travers le Vice Premier Ministre, Ministre des Transports et Voies de Communication, Président en exercice de l'OMAOOC, remercie au haut point la prise en compte de ce problème au cours de cette 104^{ème} session afin de réveiller et de sensibiliser la Communauté Internationale pour que celle-ci s'associe à nous dans le combat de cette nouvelle forme de piraterie.
26. C'est pourquoi, voulant capitaliser l'expression qui dit « le feu brule plus haut si chacun apporte un morceau de bois », la R.D. Congo voudrait au sorti de cette session obtenir, par le biais de notre chère institution, l'implication des Etats membres de l'OMI dans la traque de ces navires en vue de la sécurité et de la sûreté maritime.

« Ensemble, unissons-nous pour l'intérêt de la sécurité et de la sûreté de navigation maritime internationale »

Je vous remercie.

Fait à Londres, le 26 avril 2017

AGENDA ITEM 7

Statement by the Islamic Republic of Iran on Piracy

Thank you Chair,

We have noted document LEG 104/7, we would like to seek some clarification on the issues set out in the paper. As you may all know the Djibouti Code was primarily drawn for the subject of "Piracy "and emanated from UN Security Council Resolution 1851 of 2008 to "facilitate the discussion and coordination of actions among States and organizations fighting piracy off the Coast of Somalia".

Unfortunately we don't have the text of the 2017 amendments to the said Code in front of us, but we would like to know if a new mandate has been given by the UN on the expansion of the scope of it and if not, what was the justification for such expansion?

In any way, it should not duplicate or affect other relevant international arrangements which are already in place, in regard to the issues contained in Para 8 of the document (LEG 104/7).

We feel also concern about using of unclear ambiguous words and phrases such as "other illegal activities at sea" in para 8 of the document, which to this delegation is very broad.

Thank you
