

LEGAL COMMITTEE  
105th session  
Agenda item 14

LEG 105/14  
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**REPORT OF THE LEGAL COMMITTEE ON THE WORK OF ITS 105TH SESSION**

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## 1 INTRODUCTION

1.1 The Legal Committee held its 105th session at IMO Headquarters from 23 to 25 April 2018, chaired by Mr. Volker Schöfisch (Germany). 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 105/INF.1.

1.3 The session was also attended by the Chair of the Facilitation Committee (FAL), Mr. Yury Melenas (Russian Federation).

### Expression of condolences

1.4 The Committee joined the Secretary-General in extending condolences to the family of the crew member who lost his life when the vessel **MV Geos** exploded at Miri, Malaysia, on 17 April 2018.

### The Secretary-General's opening address

1.5 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/MediaCentre/SecretaryGeneral/Secretary-GeneralsSpeechesToMeetings>.

### Adoption of the agenda

1.6 The agenda for the session, as contained in document LEG 105/1, was adopted by the Committee.

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

**Audio file:** Monday, 23 April 2018: 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 84 delegations attending the session were in due and proper form.

**Audio file:** Tuesday, 24 April 2018: 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 also recalled that, at its 104th session, it had agreed that the HNS Correspondence Group had completed all work items within the scope of its mandate, particularly the publication of the brochure *The HNS Convention: Why it is Needed*, the finalization of its work on the HNS Incident Scenarios presentation, a draft Assembly resolution (adopted as resolution A.1123 (30)) and a programme for a two-day workshop to be held on 26 and 27 April 2018.

3.3 The Committee noted, with appreciation, that Canada and Turkey had deposited, on 23 April 2018, instruments of ratification of the 2010 HNS Protocol and had thereby become, respectively, the second and third Contracting States to the Protocol.

3.4 The Committee also noted that there were, at present, three Contracting States to the Protocol. Each of these Contracting States had more than 2 million units of gross ship's tonnage. The three Contracting States received, in 2017, a total quantity of 28,713,155 tonnes of cargo contributing to the general account.

3.5 The Secretary-General noted that with these deposits, the 2010 HNS Protocol needed only nine more States, only one with more than 2 million gross tonnage of shipping, and that 72% of the contributing cargo required for entry into force had been achieved. With these revised figures, the Protocol was significantly closer to entry into force, and he welcomed this positive development.

3.6 The Committee noted further progress in the status of work on the 2010 HNS Protocol and that the issue would be dealt with in depth during a special workshop taking place at IMO on Thursday, 26 and Friday, 27 April just after LEG 105.

3.7 Several delegations provided updates on the domestic progress made towards the ratification of the 2010 HNS Protocol. In this regard, several delegations also emphasized the importance of a coordinated approach to the ratification of the Protocol amongst States, in order to ensure "a level playing field" between ports.

3.8 The Committee encouraged Member States to ratify and bring into force the 2010 HNS Protocol as soon as possible.

**Audio file:** Monday, 23 April 2018: a.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 that, at its 103rd session, in light of the discussion on the serious issue of abandonment of seafarers, and since ILO data indicated that there still remained a number of unresolved cases, it had agreed that it should keep the issue under consideration.

4.2 The Committee also recalled that, at its 104th session, it had noted the entry into force, on 18 January 2017, of the 2014 amendments to the Maritime Labour Convention, 2006 (MLC, 2006) relating to the provision of financial security for abandonment, and personal injury to and death of seafarers.

4.3 The Committee further recalled that, at its 104th session, it had expressed its strong commitment to preserving the rights of seafarers in cases of abandonment, and noted that providing accurate information to the IMO/ILO joint database of abandonment of seafarers was not only the responsibility of the flag State, but also that of the port State and other parties that were involved.

4.4 The Committee recalled that the update on the IMO/ILO joint database of abandonment of seafarers was of utmost importance in solving the urgent cases of abandonment, and that it had concluded that IMO, together with ILO, would take up further work to improve the functioning of the IMO/ILO database, and would report to LEG 105 and to the ILO Governing Bodies on the outcome of these consultations.

4.5 The Committee considered document LEG 105/4 and was informed that, as of 19 January 2018, there had been 316 abandonment incidents listed on the database, affecting 4,020 seafarers. Of those incidents, 156 cases were resolved, 58 cases were disputed and 50 cases were in inactive status. There were still 52 unresolved cases. In 2017, the cases reported increased drastically. From 2011 to 2016, the number of cases per year ranged from 12 to 19. In 2017, the number was 55. As of the beginning of April 2018, there were 11 new cases reported of which 1 case had been resolved.

4.6 The Committee was also informed about the cases that were reported during 2017, and that the **Turu**, the **C Star**, the **Geo Star**, the **Safe Sea** and the **Al Sharjah Moon** cases were considered to be resolved. This brought the total of resolved cases that were reported during 2017 to 19.

4.7 The Committee noted that the examples of cases described in document LEG 105/4 were taken from the database, as recorded on 19 January 2018. They represented a sampling of cases that necessitated the substantial involvement of the IMO and ILO Secretariats in order to gain resolution. The Committee also noted the following updates on the listed cases:

#### **Bramco 1** (unresolved since March 2015)

On 12 February 2018, the three Myanmar crew members of the original crew were repatriated from **Bramco 1** without payment of wages by the owner. The Bangladeshi master was still on board the ship, alone, without salary payment from either the management company or the owner. The master had received some support from charity organizations.

#### **Jerna S** (unresolved since August 2017)

The latest information, as of 28 March 2018, was that the 69-year old chief engineer was repatriated from Oman to Romania on the condition that his wages would be paid. However, the chief engineer had still not received any payment of his outstanding wages. Whilst on board, he signed a letter of guarantee with the owner accepting 75% of wages before repatriation, which was not honoured.

4.8 The Committee considered document LEG 105/4/2 (ITF) on cases of abandonment reported by ITF to the IMO/ILO joint database of abandonment of seafarers for a period of one year since the entry into force of the 2014 amendments to MLC, 2006 on 18 January 2017.

4.9 The Committee also considered document LEG 105/4/3 (ITF) focusing on the implementation of the requirement for financial security in respect of seafarer repatriation costs and liabilities as required under Regulation 2.5.2, Standard A 2.5.2 of MLC, 2006, during the first year following its entry into force.

4.10 The Committee further considered document LEG 105/4/4 (IMHA), providing comments on document LEG 105/4 and concerning IMHA's involvement in providing medical care for abandoned seafarers.

4.11 The Committee considered document LEG 105/4/1 (IMO and ILO Secretariats), and was informed about the result of the consultations between IMO and ILO on the functioning of the IMO/ILO database and improvements thereto.

4.12 The Committee was informed that in order to clarify existing procedures, text had been added on the database home page explaining that individual seafarers or fishers who wanted to have an abandonment case reported might wish to consult their trade union or contact their consulate or flag State.

4.13 The Committee was also informed that IMO ensured that all information received from flag States, port States as well as seafarer States was shared for verification before being released for public access on the database website. If necessary, information on actions taken or different points of view were reflected.

4.14 The Committee was further informed that after the verification of the IMO number, name, flag, type of vessel, company and registered owner on Equasis and GISIS, relevant Governments and organizations remained informed by IMO of an abandonment case being processed on the database. They were informed again whenever there was any new information or other relevant developments included in the database. That way, relevant Governments and organizations had the continuous opportunity to comment on the accuracy of the information provided.

4.15 The Committee was informed that the IMO and ILO Secretariats also worked with Governments or relevant organizations in cases that necessitated their substantial involvement in order to gain resolution.

4.16 The Committee noted the documents submitted by the ILO and IMO Secretariats, ITF and IMHA and thanked them for their submissions. The Committee also noted the information contained in document LEG 105/4/1.

4.17 In the ensuing discussion, the following views were expressed:

- .1 the examples of cases described in document LEG 105/4 illustrated that abandonment could be a very distressing and inhumane experience for seafarers;
- .2 some delegations provided further information regarding their respective cases to indicate that the status of the relevant cases should be changed and considered as resolved;
- .3 with respect to some cases still listed as unresolved or disputed, according to the applicable procedure, information that a case had been resolved should be provided by the organization which initiated the case on the database, even though the flag State considered them as resolved;
- .4 flag States informed that they cooperated actively with all parties involved as well as with charitable organizations in order to protect seafarers and resolve the cases;

- .5 abandonment was a very complex issue and even though flag States took active steps to deal with cases of abandonment, they needed time to gather information and could still face difficulties in resolving all cases; therefore States should not be blamed too hastily;
- .6 the updating method of the database should be improved to reflect the efforts made by maritime Administrations having many vessels on their register and therefore many cases of abandonment;
- .7 the database should correctly reflect the information and efforts should be made to ensure it was up to date;
- .8 many cases of abandoned vessels were reported before the entry into force of the 2014 amendments to MLC, 2006;
- .9 each maritime Administration should have a fund to cover costs and repatriate seafarers;
- .10 the analysis of abandonment of seafarers showed that abandonment was often a deliberate business decision of the shipowner and that it was difficult to obtain information pertaining to the seafarers and to their repatriation;
- .11 the seafarers' contracts, even if they had lapsed, could be deemed to have continued during the period of abandonment, until replacement seafarers had been provided or the port concerned had given permission to leave the vessel;
- .12 the shipowners' liability in cases of abandonment or deemed abandonment should include provision for the replacement of seafarers and payment of their wages and the same should be included in the P&I insurance cover, and that there should be a methodology for "blacklisting" such vessels and shipowners to ensure that no seafarer was employed on those vessels;
- .13 one delegation indicated that seafarers' access to justice and legal representation was a vital element for consideration in cases where seafarers brought their cases before courts in the port State for adjudication and also suggested the development of a list of competent authorities and organizations to assist seafarers in the most expeditious manner;
- .14 one delegation indicated that, as port State, it sent officers on board to check the practical situation, provide daily necessities and medical care for the abandoned seafarers and assisted seafarers to file lawsuits; it also advanced payment for the seafarers' repatriation;
- .15 one delegation proposed that the name of the insurer or the lack of insurance should be provided in the database;
- .16 port States should be informed in a timely and proper manner of abandonment cases;
- .17 port State control should ensure that certificates of insurance in respect of abandonment were examined and inspected thoroughly;

- .18 following the entry into force of the 2014 amendments to MLC, 2006 in January 2017, there was an initial period of activity during which seafarers who had been abandoned in the months preceding the entry into force sought to recover owed wages for such periods;
- .19 related repatriation costs and expenses were met by the International Group of P&I Associations (P&I Clubs) in cases where the crew wanted to be repatriated; however the P&I Clubs would not, and could not, repatriate crew against their wishes; and
- .20 MLC, 2006 did not recognize the reimbursement of the costs of the crew replacement by the insurer, and that was why those claims were not covered by P&I Clubs.

4.18 In response to some of the comments, the Director of the Legal Affairs and External Relations Division thanked the flag States involved for working with the Secretariat on improving the database and for the responsiveness when contacted on relevant cases. Regarding closing some of the cases and listing them as resolved, he indicated that the criteria for updating the database provided in paragraph 7 of document LEG 105/4 were applied strictly by the IMO and ILO Secretariats and could not be deviated from unless changed. The Director also explained that the criteria listed in MLC, 2006 with respect to insurance and rights of seafarers abandoned were the purview of ILO within MLC, 2006 and that suggestions for improvements in this regard should be submitted to ILO.

4.19 The Committee agreed that proposals for additional improvements to the database should be submitted to LEG 106.

4.20 The Committee also requested the Secretariat to consult with ILO to include information related to insurance, or lack thereof, for inclusion in the database for each new case, and to report to LEG 106.

4.21 The Committee further requested that the Secretariats of IMO and ILO look into creating a list of competent authorities and organizations that could assist in resolving the cases and to report to LEG 106 on those matters.

4.22 The Committee also agreed that proposals for further measures to improve the situation of the seafarers should be submitted to LEG 106.

4.23 The Committee noted document LEG 105/INF.4 (Secretariat), which reported on the joint IMO/Consular Corps of London seminar on the abandonment of seafarers which was held at IMO Headquarters, London, on 22 June 2017.

**Audio file:** Monday, 23 April 2018: a.m. and p.m.

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

5.1 The Committee recalled that a comprehensive survey conducted by Seafarers' Rights International (SRI) in 2011-2012 had suggested that the rights of seafarers, as enshrined in the 2006 *Guidelines on fair treatment of seafarers in the event of a maritime accident* (the Guidelines), adopted jointly by IMO and ILO, were often subject to violation.

5.2 The Committee also recalled that the representative of the International Transport Workers' Federation (ITF) had informed its 103rd session that ITF was preparing guidance for States on the implementation of the Guidelines in view of the different approaches that States had taken in implementing them.

5.3 The Committee considered document LEG 105/5 (ITF) informing of the outcome of the international workshop on the fair treatment of seafarers that took place on 23 June 2017 at IMO, and also of a regional workshop that would take place in Asia in 2018.

5.4 The Committee noted the information provided and thanked ITF and SRI for the organization of the workshop and for the work done so far on the guidance.

5.5 The Committee noted that work on the implementation of the Guidelines should continue at a regional level to allow for more detailed discussions on the national legislation and that the first regional workshop would be hosted by the Government of the Philippines in Manila from 24 to 25 July 2018.

5.6 The delegation of the Philippines informed the Committee that its Government supported the hosting of the workshop in Manila for the Asian region and welcomed all members of the Committee to participate in it.

5.7 The delegation of Panama indicated that Panama would be ready to host any regional workshop that would be organized for the Latin American region.

**Audio file:** Tuesday, 24 April 2018: a.m.

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

### **Automated digital solution for issuing CLC and Bunkers certificates**

6.1 The Committee considered document LEG 105/6 (Norway) providing information on a digitalization project to issue electronic CLC and Bunkers certificates, initiated by Norway. The Committee was informed that these certificates were currently issued manually. The process was time-consuming and required a high degree of accuracy. In order to offer accurate certificates promptly, the proposed digital solution involved a machine-to-machine validation where the process of issuing and signing certificates was digital. This also meant that the communication between the insurers and the flag State would be digital and largely automated. The electronic certificates would be issued in accordance with the *Guidelines for the use of electronic certificates* (FAL.5/Circ.39/Rev.2).

6.2 During the ensuing discussion, one delegation informed the Committee that it was also ready to issue CLC and Bunkers certificates digitally. The view was expressed that a digital solution for the issuance of these certificates would reduce the administrative burden for the industry and that further information should be provided in the future.

6.3 The Committee noted the information provided in document LEG 105/6 and thanked Norway for the submission.

**Audio file:** Monday, 23 April 2018: p.m.

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

6.4 The Committee recalled that FAL 41 had 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).

6.5 The Committee also recalled that it had encouraged Member States to consult informally in the intersessional period and submit relevant information on the status of the appendices to LEG 105, so that the legal advice could be finalized at LEG 105 for transmission to FAL 42.

6.6 In this context, the Committee considered two documents: LEG 105/6/1 (Australia, France, Greece, Iceland and United States) presenting the intersessional work in relation to the request for legal advice on the status of the appendices to the FAL Convention; and LEG 105/6/2 (Secretariat) providing further background information on how each of the four appendices were introduced in the context of the FAL Convention. Having analysed these documents in detail, the Chair took the initiative to prepare draft legal advice (LEG 105/WP.3) summarizing the findings, to provide a basis for discussion and to facilitate the finalization of the legal advice by the Committee.

6.7 During the ensuing discussion, it transpired that while there was general consensus that the final decision on the status of the appendices to the FAL Convention was the prerogative of its Contracting Governments, the Committee was split over the question of what legal advice to provide to FAL. Many delegations who spoke supported the draft legal advice contained in the annex to document LEG 105/WP.3, which contained conclusive legal advice. However, many delegations also favoured Option B presented in document LEG 105/6/1, which recommended that Contracting Governments to the FAL Convention should decide whether they currently desired any or all of the appendices to be considered an integral part of the annex and the Convention, utilizing the article VII process to ensure the legal status of each appendix was properly reflected. Some delegations supporting Option B felt that it was not possible to provide a clear recommendation and firm conclusions on the status of the appendices to the FAL Committee, as there were different opinions on the status of some of the appendices.

6.8 Some delegations suggested that, while they considered Option B of document LEG 105/6/1 to be the most practical way forward, the legal analysis in document LEG 105/WP.3 constituted useful guidance for the FAL Committee when taking a decision on the status of the appendices. In view of this, the Chair offered to prepare revised draft legal advice combining Option B and the legal advice contained in document LEG 105/WP.3 and incorporating all comments made on the status of the different appendices.

6.9 Having considered the revised draft legal advice prepared by the Chair, as contained in the annex to document LEG 105/WP.5, the Committee approved it in general and agreed to submit it to the Facilitation Committee for its consideration, with the following amendments:

- .1 to correct the references in paragraph 24; and
- .2 to include paragraph 24 of document LEG 105/WP.3 as an additional paragraph in document LEG 105/WP.5.

6.10 The Chair informed the Committee that he would submit the approved legal advice to FAL 42 incorporating the agreed amendments, as set out in annex 1 to this report, and that he would participate in the meeting to introduce the document.

**Audio files:** Monday, 23 April 2018: p.m. and Tuesday, 24 April 2018: p.m.

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## **Implementation of IMO instruments in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol, Ukraine**

6.11 The Committee considered document LEG 105/6/3 (Ukraine), drawing its attention to Ukraine's concerns regarding the Russian Federation's actions in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, and the consequences of such actions for the implementation of IMO instruments.

6.12 In this context, the delegation of the Russian Federation expressed the view that the issues raised by Ukraine were political questions that could not, and should not, be considered by the Organization, and informed the Committee that the necessary measures ensuring safety and security were implemented in Crimea and the city of Sevastopol. The full statement of the Russian Federation is set out in annex 4 to this report.

6.13 The delegation of Estonia made a statement, as set out in annex 4 to this report, which was supported by Belgium, Denmark, France, Georgia, Norway, Spain and Sweden. Other statements in support of document LEG 105/6/3 were made by the delegations of Canada, the United Kingdom and the United States.

6.14 The Committee noted document LEG 105/6/3 and took note of the statements made.

**Audio file:** Monday, 23 April 2018: p.m.

## **7 PIRACY**

7.1 The Committee recalled that, at every session of the Legal Committee, the Secretariat reported on relevant developments related to piracy which had occurred since its last session.

7.2 The Committee also recalled that the Secretariat usually reported on relevant decisions taken by the Contact Group on Piracy off the Coast of Somalia (CGPCS), in particular the Virtual Legal Forum, and also on decisions taken by other IMO bodies.

7.3 The Committee considered document LEG 105/7 (Secretariat) reporting on developments related to piracy which had occurred since the 104th session of the Legal Committee, specifically the considerations by MSC 98 concerning floating armouries, the status of the Jeddah Amendment to the Djibouti Code of Conduct 2017, and the decisions taken at the twentieth plenary session of the CGPCS, which took place in Mauritius from 5 to 7 July 2017.

7.4 Following up on the document submitted by India to the last session of the Committee (LEG 104/7/1), which highlighted the issue of the short duration of seafarers' contracts, which 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, the Committee noted the information provided orally by the Secretariat on the prospective discussions during the third meeting of the Special Tripartite Committee (STC) established under MLC, 2006, which took place in parallel to LEG 105.

7.5 During the debate, the following views were expressed:

- .1 IMO was the appropriate forum to discuss both legal and technical aspects of piracy and to undertake efforts to combat piracy and armed robbery at sea;

- .2 with regard to wages of seafarers who were being kept captive by pirates, the Secretariat should continue to update the Committee on regulatory developments at ILO and respective MLC amendments;
- .3 a growing number of piracy attacks and seafarers being held captive in the Gulf of Guinea was of deep concern;
- .4 some delegations provided further information on the efforts to support the Djibouti Code of Conduct and the Jeddah Amendments and on the developments of the national safety and security legislation to implement the amendments; and
- .5 with regard to the proposal of the draft guidelines for floating armouries submitted to the Maritime Safety Committee, as reported in paragraph 9.2 of document LEG 105/7, one delegation informed the Committee that it did not support this development.

7.6 The delegation of Japan reiterated its continuous support to the Djibouti Regional Training Centre and confirmed its financial contribution to implement sustainable training programmes in the West Indian Ocean and the Gulf of Aden.

7.7 The Committee welcomed and noted the information provided and supported all efforts to combat piracy and armed robbery at sea.

7.8 The Committee invited the Secretariat to continue reporting on piracy-related matters, including the relevant developments at ILO.

**Audio file:** Tuesday, 24 April 2018: a.m. and p.m.

## **8 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**

8.1 The Committee considered two documents submitted by the Secretariat: document LEG 105/8 containing the report on 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; and document LEG 105/13 providing additional information on the work undertaken by other IMO bodies since the 104th session of the Legal Committee.

8.2 The Committee also considered the proposal to amend agenda item 8 to become "Work of other IMO bodies", to ensure that the Legal Committee was well informed about the considerations of the Council, the Assembly and also of the other committees, particularly in light of the Committee's decision to add the issue of maritime autonomous surface ships to its work programme (see paragraph 11.11).

8.3 The Committee noted the information provided in documents LEG 105/8 and LEG 105/13, and decided to rename and amend agenda item 8 to become "Work of other IMO bodies" and requested the Secretariat to report on the outcome of all organs of the Organization on issues relevant to the work of the Legal Committee.

**Audio file:** Tuesday, 24 April 2018: p.m.

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## **9 TECHNICAL COOPERATION ACTIVITIES RELATED TO MARITIME LEGISLATION**

### **Technical cooperation activities on maritime legislation for 2017**

9.1 The Committee considered document LEG 105/9/1 (Secretariat) reporting on IMO's technical cooperation activities related to maritime legislation for 2017. The Committee noted that the main focus of the technical assistance activities in the field of maritime legislation was on training lawyers and drafters on the legal implementation of IMO conventions through the development of national legislation. The primary objective was to improve the understanding of the principles of IMO instruments and their legal implications and ultimately facilitate the implementation of both technical and civil liability conventions, in support of Strategic Direction 1 of the Strategic Plan for the Organization for the six-year period 2018 to 2023, namely *Improve implementation*.

9.2 In this context, the Committee also noted that the first workshop on general principles of drafting national legislation to implement IMO conventions took place at IMO Headquarters from 18 to 22 September 2017, for 20 countries scheduled to undergo the IMO Member State Audit in 2018 and 2019. The workshop was organized by the Legal Affairs Office in collaboration with the Technical Cooperation Division (TCD) and was attended by 27 qualified lawyers, policymakers, legislative advisers and/or drafters, from both civil and common law systems. One of the recommendations of the workshop was that lawyers and drafters should be invited to participate in IMO technical cooperation activities provided for the maritime administrations, including training focused on IMSAS. Training these actors, who were critical to the success of the effective implementation of IMO instruments, and yet often not enough reached out to, appeared to be the missing link in the current cooperation system.

9.3 The Committee noted that the same workshop would be organized in October 2018 and also noted the information provided in document LEG 105/9/1.

9.4 Following comments made by a number of delegations, the Committee noted that requests for assistance in drafting national legislation and for participation in the workshop to be held at IMO in October 2018 needed to be made through the Technical Cooperation Division. The Committee also noted that the Secretariat was ready to provide similar workshops on a regional basis, and that it was examining ways to make the information provided at the workshops available to Member States unable to attend.

9.5 The Committee was informed that the Secretariat had prepared a new publication to assist Member States with the effective and uniform implementation of IMO's liability and compensation regime, which contained the consolidated texts of all relevant conventions and related documents, which would be available for purchase from IMO Publications in the near future.

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

9.6 The Committee considered document LEG 105/9/2 (IOPC Funds) reporting on the work that the IOPC Funds Secretariat carried out in cooperation with IMO and regional organizations to promote the adoption and support the implementation of the 1992 CLC, the 1992 Fund Convention and the 2003 Supplementary Fund Protocol.

9.7 The Committee thanked the IOPC Funds Secretariat and noted the information provided in document LEG 105/9/2, as well as the information provided orally by the Director of the IOPC Funds Secretariat.

**IMO International Maritime Law Institute (IMLI)**

9.8 The Committee considered document LEG 105/9 (Secretariat) reporting on the activities of IMLI for the year 2017. The Committee noted that, at the end of the academic year 2016-2017, 38 Graduates had received their degree from IMLI, joining a network of 739 IMLI Graduates from 135 States. Training at IMLI continued to attract widespread support, which was reflected in the resolution of the UN General Assembly adopted on 5th December 2017, recognizing the importance of IMLI's work as a centre of training in maritime law and confirmed its effective capacity-building role.

9.9 The Committee also noted that, in September 2017, IMLI launched a new specialized postgraduate programme leading to the degree of Master of Philosophy (MPhil.) in International Maritime Law and Ocean Policy in cooperation with WMU. During the first year of studies, students would attend ocean policy courses offered by WMU with a particular focus on sustainability, governance and management. The second year of studies would be completed at IMLI with courses focusing on international maritime law, including law of the sea, shipping law, marine environmental law and maritime security law.

9.10 The Committee further noted that a three-volume "IMLI Treatise on Global Ocean Governance" had been completed by IMLI as a result of the IMLI-Nippon Foundation Project on Global Ocean Governance.

9.11 The Committee noted document LEG 105/INF.2 providing the list of dissertations and maritime legislation drafting projects undertaken by IMLI students in the 2016-2017 and 2017-2018 academic years.

9.12 The Committee also noted document LEG 105/INF.3 enclosing the IMO IMLI dissertation written by Lt. Liliana Diaz Medina (Mexico) entitled "*The Effectiveness of Current International Ship-Boarding Provisions to Combat Crime at Sea*", which was awarded the IMO Secretary-General's Prize for Best Dissertation for the academic year 2016-2017.

9.13 The Committee congratulated Lt. Liliana Diaz Medina, who was attending the session.

9.14 The Committee expressed its sincere appreciation to the Director of IMLI and to the sponsors of IMLI and emphasized the important role the Institute was playing in training maritime legal experts in the hope that the skills and knowledge gained by IMLI students were utilized by Member States.

9.15 Following comments made by a number of delegations, the Director of IMLI indicated that every graduate must produce a maritime legislation drafting project implementing an IMO convention into its domestic law and that, along the years, IMLI had trained over 700 lawyers in legislative drafting and would continue in this direction. Further, he indicated that IMLI was happy to conduct further seminars on legislative drafting. He also indicated that, currently, English was required to attend IMLI, but that classes of technical English were provided to students from non-English speaking countries. In the future, more workshops in the main official languages of IMO could be envisaged.

**Audio file:** Tuesday, 24 April 2018: p.m.

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

10.1 The Committee noted the information contained in document LEG 105/10 and its addendum on the status of conventions and other treaty instruments emanating from the Legal Committee.

10.2 The Committee also noted that, following the deposit of instruments of ratification by Canada and Turkey on 23 April 2018, the 2010 HNS Protocol now had three Contracting States. Member States were reminded to submit, at the time of accession to the Protocol, the data on the total quantities of contributing cargo liable for contributions received during the preceding calendar year in respect of the general account and each separate account, in accordance with article 20(4) and (5) of the Protocol.

10.3 The Committee further noted that the SUA Convention and SUA Protocol of 1988 remained the most widely ratified treaties that had emanated from its work, followed by the 1992 CLC Protocol. The Committee also took note of the good progress with the 2007 Nairobi Wreck Removal Convention which had received seven further ratifications since LEG 104.

10.4 The Committee encouraged Member States to work towards the ratification of all the conventions developed under the aegis of the Legal Committee, in particular the 1996 LLMC Protocol, the 2001 Bunkers Convention, the 2002 PAL Protocol, the 2005 SUA Protocols and also the 2010 HNS Protocol to enable its entry into force as soon as possible.

10.5 The Committee welcomed the information on the progress made with regard to the ratification and implementation of IMO instruments, provided by several delegations, as follows:

- .1 The delegation of the Philippines announced the deposit, on 24 April 2017, of the instruments of accession to SOLAS PROT 1978, LL PROT 1988 and MARPOL PROT 1997. The delegation further informed the Committee of their imminent deposit of the instruments of accession to AFS 2001 and SOLAS PROT 1988 and that its Senate had passed the associated resolutions. The delegation of the Philippines expressed, on behalf of its Government, appreciation to the Legal Affairs and External Relations and Technical Cooperation Divisions for their assistance in facilitating the ratification of IMO treaties.
- .2 The delegation of New Zealand informed the Committee that New Zealand had ratified the 2005 SUA Protocols in February 2018 (document LEG 105/10, annex, refers) and that, with the internal procedures towards the ratification of FUND PROT 2003 almost completed, the Secretary-General could expect the deposit of the instrument of accession in the very near future.
- .3 The delegation of Canada informed the Committee that in October 2017, the Canadian Parliament considered a draft Bill on the accession to the 2007 Nairobi Wreck Removal Convention and that the draft Bill was expected to be finalized by the end of 2018. The deposit of the instrument of accession could therefore be expected in 2019.

- .4 The delegation of Cyprus informed the Committee that steps had been taken towards the ratification of PAL PROT 2002 and the 2005 SUA Protocols and that, following the approval, by Parliament, of the Bill on the 2004 Ballast Water Management Convention, the deposit of the associated instrument was expected in the very near future.
- .5 The delegation of the United Arab Emirates informed the Committee that its Government had deposited, on 10 April 2018, an instrument of accession to FAL 1965 (LEG 105/10/Add.1, annex, refers).
- .6 The delegation of Greece informed the Committee that, following its Government's accession to the 2004 Ballast Water Management Convention in June 2017 (LEG 105/10, annex, refers), the associated national legislation also entered into force in the same month. The delegation further informed that there was good progress with the internal procedures towards the ratification of the 2007 Nairobi Wreck Removal Convention.
- .7 The delegation of Indonesia informed the Committee that it had acceded to SOLAS PROT 1988 and LL PROT 1988 (LEG 105/10, annex, refers) during the thirtieth regular session of the Assembly in November 2017, and that it was making progress towards the ratification of OPRC 1990. The delegation reiterated Indonesia's commitment to the work of IMO.

10.6 The Committee encouraged delegations to work with their respective Governments towards the achievement of effective and uniform implementation of IMO conventions and to report any barriers to implementation to the Legal Committee for advice and guidance. The Committee was reminded that the Secretariat remained ready to provide any assistance Member States might require towards the ratification of any IMO treaties.

**Audio file:** Tuesday, 24 April 2018: p.m.

## **11 WORK PROGRAMME**

### **Proposals for new outputs**

11.1 The Committee noted that two proposals for new outputs had been submitted to this session of the Legal Committee: a proposal to add a new output on measures to prevent unlawful practices associated with the fraudulent registration of ships (LEG 105/11); and a proposal for a regulatory scoping exercise and gap analysis with respect to Maritime Autonomous Surface Ships (MASS) (LEG 105/11/1).

11.2 In considering these two proposals, the Committee took into account the provisions of the document on the *Organization and method of work of the Legal Committee* (LEG.1/Circ.8) and the preliminary assessment of the two proposals undertaken by the Chair, in consultation with the Vice-Chair and the Secretariat (LEG 105/WP.2).

### ***Measures to prevent unlawful practices associated with the fraudulent registration of ships***

11.3 The Committee considered document LEG 105/11 (Cyprus, Democratic Republic of the Congo, Fiji, Germany, Morocco, Spain and Vanuatu), proposing a new output on measures to prevent unlawful practices associated with the fraudulent registration of ships and document LEG 105/11/5 (United Arab Emirates) commenting on document LEG 105/11. The delegation of the Democratic Republic of the Congo introduced document LEG 105/11. The full text of the delegation's statement in this regard is set out in annex 4 to this report.

11.4 The Committee, following an in-depth discussion, agreed that fraudulent registration of ships was an issue that needed to be addressed by the Legal Committee and expressed its general support for the proposed new output. The Committee made the following comments, inter alia:

- .1 the effective international regulation of ships was the responsibility of all States, thus fraudulent registration was a public law issue that the Legal Committee, with its expertise, was well placed to address;
- .2 the issue of ship registration was quite complex, as it involved aspects of public international law and private law, which might be beyond the remit of IMO;
- .3 a multi-pronged approach would be necessary to effectively address the issue and the solution would involve making accurate information about the status of a nation's registry widely, quickly and accurately available to shipowners and insurers as well as public officials;
- .4 effective enforcement measures to discourage the practice and to prevent ships with fraudulent registration from operating should be considered;
- .5 specific proposals needed to be made to the next session of the Committee given the existing regulatory gap to address the issue;
- .6 the objective of the new output needed to be clarified to ensure that work would not duplicate what was being done in the area of the United Nations Convention on the Law of the Sea (UNCLOS);
- .7 the measures to be discussed to prevent fraudulent practices should be considered within the framework of IMO's conventions and without affecting the work of effective registers;
- .8 the scope of the problem should be clarified as some cases reported involved fraudulent certificates and not fraudulent registries; the output should also be linked to the Strategic Plan of the Organization;
- .9 the issue of fraudulent registration would have to be looked at from different angles: registration in a flag State where no international registry existed; the issuance of fraudulent certificates, i.e. falsified certificates of registration; and obtaining a legitimate certificate of registration by fraudulent means;
- .10 one delegation suggested that the following possible areas of work should be explored: a study of the cases of fraudulent use of some States' flags as well as their geographical distribution; making a reliable and up-to-date database available to all maritime actors including through a process of validation by flag States of the vessels registered under their flag;
- .11 one delegation indicated that they would be ready to provide examples of e-certificates and digital solutions which they had been implementing;
- .12 GISIS could include a list of national bodies which were authorized to issue certificates so that shipowners would be assured that the flag existed and had been verified and approved by the competent authorities with IMO;

- .13 GISIS should also be used as a tool to share information and transfer expertise and experience about registers having problems with fraudulent practices;
- .14 more methods for online verification of ships' documents should be developed;
- .15 in view of the true nature of the work needed, the title of the proposed output should be reviewed to include measures to prevent fraudulent registries;
- .16 the Committee should not discuss the legal eligibility of a ship to be accepted for registry; and
- .17 in addition to including a new output, the Committee should explore new options, in a harmonized context, to facilitate the transfer of experience and coordinated support with regard to security controls for ships' registries.

11.5 In response to the comments related to interagency cooperation, the Director of the Legal Affairs and External Relations Division informed the Committee of the ongoing cooperation between the IMO Secretariat, the Division for Ocean Affairs and the Law of the Sea (DOALOS) and the United Nations Conference on Trade and Development (UNCTAD) on the topic of fraudulent registration of ships and of the support of UNCTAD in this regard. A full statement regarding UNCTAD's support is set out in annex 4 to this report. On the use of GISIS as a tool, the Director indicated that, if acceptable to the Committee, the Secretariat would provide information to LEG 106 on how GISIS could be used to address the issue.

11.6 In conclusion, the Committee agreed to:

- .1 include a new output on "Measures to prevent unlawful practices associated with the fraudulent registration and fraudulent registries of ships" in the 2018-2019 biennial agenda of the Legal Committee, with a target completion year of 2021;
- .2 invite concrete proposals to LEG 106 for consideration, and to take a decision on the scope of the new output, after detailed consideration of any proposed measures;
- .3 include the item in the provisional agenda for LEG 106; and
- .4 request the Secretariat to conduct a study on the cases received and to provide information on the capabilities of GISIS to address the issue, to potentially include contact points, sample certificates and a listing of registries, and to submit this information to LEG 106.

**Audio file:** Monday, 23 April 2018: p.m. and Tuesday 24 April 2018: a.m.

***Regulatory scoping exercise and gap analysis with respect to Maritime Autonomous Surface Ships (MASS)***

11.7 The Committee considered document LEG 105/11/1 (Canada, Finland, Georgia, Marshall Islands, Norway, Republic of Korea, Turkey, CMI, ICS and P&I Clubs) proposing a new output for a regulatory scoping exercise and gap analysis of the conventions under the purview of the Legal Committee, to establish the extent to which the international regulatory framework should be modified to integrate the new and advancing technology of Maritime Autonomous Surface Ships (MASS).

11.8 The Committee, following an in-depth discussion on the proposal, expressed its broad support for the inclusion of the new output on the regulatory scoping exercise and gap analysis, bearing in mind the following comments:

- .1 the inclusion of this output in the agenda of the Legal Committee was very timely and a scoping exercise by the Legal Committee was essential;
- .2 the regulatory scoping exercise and gap analysis should be limited to the conventions under the purview of the Legal Committee to complement the work undertaken by the Maritime Safety Committee (MSC);
- .3 the discussions in the Legal Committee should be based on the definitions, terminology and scope (e.g. levels of automation ranging from partially automated systems to fully automated ones) which would be agreed by MSC;
- .4 the work of the Legal Committee on the matter could also include the provision of legal assistance to other committees, where appropriate, and the Legal Committee needed to ensure that there was no gap or discrepancy in the international legal framework related to MASS;
- .5 the work of the Legal Committee would be complex, and needed to be coordinated with the other IMO bodies working on the subject matter, in particular MSC, to ensure alignment throughout the Organization; and the interdivisional task force established within the Secretariat could assist with this coordination;
- .6 an intersessional correspondence group could be established in the future to progress the discussions;
- .7 the inclusion of this output on the work programme of the Legal Committee did not anticipate the position by Member States as to whether MASS were permissible under international law;
- .8 the issue of MASS raised various questions in relation to UNCLOS;
- .9 the Committee needed to take into account the significant impact the introduction of MASS would have on seafarers, i.e. the human element and seafarers' welfare should be included in the considerations of the Committee; and
- .10 before undertaking the scoping exercise, the Committee should consider the desirability of MASS, as no State had so far voiced its willingness or readiness to register MASS, to allow MASS into its waters or ports or to grant MASS the right of safe passage.

11.9 The Committee also noted the information provided by the Comité Maritime International (CMI) concerning its work related to unmanned shipping. CMI informed the Committee that it had set up an International Working Group on Unmanned Ships to study the current international legal framework and considered what amendments and/or adaptations and/or clarifications may be required in relation to unmanned ships. So far, eight IMO conventions had been analysed: SOLAS, MARPOL, COLREG, STCW, FAL, SAR, SUA and SALVAGE.

11.10 The Committee further noted that CMI had submitted document MSC 99/INF.8 to MSC 99, which reported on the work conducted by the CMI International Working Group on Unmanned Ships, and that the comprehensive documentation of the work of the International Working Group was available on the CMI website at [www.comitemaritime.org](http://www.comitemaritime.org) under "Work in Progress" and "Unmanned Ships".

11.11 In conclusion, the Committee agreed:

- .1 to include a new output entitled "Regulatory scoping exercise and gap analysis of conventions emanating from the Legal Committee with respect to Maritime Autonomous Surface Ships (MASS)" in the biennial agenda of the Legal Committee and the provisional agenda for LEG 106, with a target completion year of 2022; and
- .2 to invite concrete proposals and comments on the new output and a plan of action to LEG 106 for consideration, taking into account the outcome of MSC 99 and MSC 100, so that LEG 106 would be able to start its work on the new output.

#### ***Additional session of interpretation for the Legal Committee***

11.12 In view of the decision of the Committee to include two new outputs on its biennial agenda and the related workload, the Committee agreed to request that the Council authorize one additional session of interpretation for LEG 106, that is, a three-day meeting with six full sessions of interpretation, vice five.

**Audio file:** Tuesday, 24 April 2018: a.m.

#### **Organization and method of work of the Legal Committee**

11.13 The Committee considered two documents proposing amendments to the document on the *Organization and method of work of the Legal Committee* (LEG.1/Circ.8): document LEG 105/11/2 (Secretariat) presenting draft amendments emanating from the adoption of the new Strategic Plan and the amended document on the *Application of the Strategic Plan of the Organization* approved by the Assembly at its thirtieth regular session; and document LEG 105/11/3 (Secretariat) proposing the inclusion of human element considerations into the document on the *Organization and method of work of the Legal Committee*.

11.14 In considering document LEG 105/11/2, the Committee recalled that the Assembly, at its thirtieth regular session, adopted resolution A.1110(30) on *Strategic Plan for the Organization for the six-year period 2018 to 2023* and resolution A.1111(30) on *Application of the Strategic Plan of the Organization*, which requested the Council and the committees to review and revise, during the 2018-2019 biennium, the documents on the organization and method of their work, taking into account resolution A.1111(30).

11.15 In considering the proposal in document LEG 105/11/3 concerning the inclusion of human element considerations into the document on the *Organization and method of work of the Legal Committee*, the Committee agreed that the human element should be included in the future considerations of the Committee, as described in document LEG 105/11/3.

11.16 Having approved both sets of draft amendments to the document on the *Organization and method of work of the Legal Committee* (LEG.1/Circ.8), as set out in documents LEG 105/11/2 and LEG 105/11/3, the Committee instructed the Secretariat to prepare a consolidated version of all amendments approved by the Committee, making any necessary editorial changes, and circulate it by means of a revised LEG circular (LEG.1/Circ.9).

**Audio file:** Wednesday, 25 April 2018: a.m.

### **Report on the status of outputs for the current biennium (2018-2019)**

11.17 The Committee recalled that the Council, at its 118th regular session, endorsed the Committee's decisions on outputs for the 2018-2019 biennium.

11.18 The Secretariat introduced document LEG 105/11/4 and reminded the Committee that, in accordance with paragraph 9.1 of the *Application of the Strategic Plan of the Organization* (resolution A.1111(30)), the reports on the status of outputs included in the list of outputs shall be 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 shall identify new outputs accepted for inclusion in the biennial agendas.

11.19 The Committee was invited to consider a draft report on the status of outputs for the current biennium (2018-2019), including all outputs related to the Legal Committee, prepared by the Secretariat and attached as an annex to document LEG 105/11/4. In particular, the Committee was invited to consider deleting the square brackets in the "Status of outputs for Year 1" of the present biennium.

11.20 The Committee agreed on its report on the status of outputs for the current biennium, attached as annex 2 to this report, for submission to the Council. With regard to output Other work 22: "Provide advice and guidance to support availability of information on comprehensive national legislation and judicial capacity-building [on piracy]" the Committee decided to delete the words "on piracy" from the description.

**Audio file:** Wednesday, 25 April 2018: a.m.

### **Items for inclusion in the agenda for LEG 106**

11.21 The Committee approved the list of substantive items for inclusion in the agenda for LEG 106, as contained in document LEG 105/WP.4, and attached as annex 3 to this report.

**Audio file:** Wednesday, 25 April 2018: a.m.

## **12 ELECTION OF OFFICERS**

### **Election of the Chair**

12.1 The Committee, in accordance with rule 18 of its Rules of Procedure, unanimously re-elected Mr. Volker Schöfisch (Germany) as Chair for 2019.

### **Election of the Vice-Chair**

12.2 The Committee, in accordance with rule 18 of its Rules of Procedure, unanimously re-elected Ms. Gillian Grant (Canada) as Vice-Chair for 2019.

**Audio file:** Tuesday, 24 April 2018: p.m.

## **13 ANY OTHER BUSINESS**

### **Work of other IMO bodies**

13.1 The Committee recalled that document LEG 105/13 (Secretariat) had been considered under agenda item 8.

### **New GISIS module on National Maritime Legislation**

13.2 The Committee considered document LEG 105/13/1 (Secretariat) reporting on a new GISIS module on National Maritime Legislation developed by the Secretariat in the context of resolutions A.1029(26) on *Global Integrated Shipping Information System (GISIS)* and A.1074(28) on *Notification and circulation through the Global Integrated Shipping Information System (GISIS)*. With this development, facilities will be available for Contracting Governments or Parties to directly upload their national maritime legislation to fulfil their obligation to communicate national legislative texts as required under the provisions of the relevant IMO conventions. Member States can also upload their national maritime legislation implementing IMO conventions which do not contain the mandatory reporting or communication of information requirements. The module will facilitate dissemination and awareness of the information collected and support the work related to the IMO Member State Audit Scheme, while minimizing the administrative burden on Member States and the Secretariat. The module allows Member States to use hyperlinks to national websites as an alternative to uploading PDF documents, which may allow better access to current legislation rather than potentially outdated information held by IMO.

13.3 The delegation of the Philippines informed the Committee that its administration could encounter difficulties in uploading PDF copies of its national legislation onto the new GISIS module, due to the format in which the legislation was adopted. In response to this comment, the Director of the Legal Affairs and External Relations Division informed the Committee that the new GISIS module was meant to be as flexible as possible to enable Contracting Governments or Parties to fulfil their obligation to communicate national legislative texts as required under the provisions of the relevant IMO conventions. In this regard, the Director informed the Committee that hardcopies of national legislation would be accepted from national administrations that were not able to download PDF copies or provide links to national legislation websites.

13.4 The delegation of Malta informed the Committee that its national legislative texts were available up to date for download in PDF format, by title and number, but that earlier versions of these national legislative texts were not available for download. The delegation also informed the Committee that it would add links to its national legislation website on the new GISIS module, and further that it would continue to fulfil its obligation of communicating national legislative texts as required under the provisions of the relevant IMO conventions.

13.5 The Committee noted the information provided and encouraged Member States to use the new module when it went online.

### **Activities of the Iberoamerican Institute of Maritime Law during the 2016-2018 biennium**

13.6 The Committee noted the information provided in document LEG 105/INF.5 (IIDM) on the activities of the Iberoamerican Institute of Maritime Law (IIDM) during the 2016-2018 biennium.

### **Submission of photographs by delegates during registration for meetings of the Legal Committee**

13.7 The Committee considered a proposal for delegates to submit their photographs as part of the registration process for meetings of the Committee.

13.8 The Committee noted that the Secretariat would be submitting information in this regard to C 120, and that the Secretariat would provide it with a report on the outcome of C 120 on this matter. In this regard, the Committee agreed not to consider the matter further, pending the outcome of C 120.

### **European Union General Data Protection Regulation**

13.9 In response to a question from one delegation, the Secretariat provided information on the European Union General Data Protection Regulation (GDPR), which would take effect on 25 May 2018, and the Secretariat's participation in a working group of the Legal Advisers of the United Nations system, examining the issues involved. The delegation of Malta expressed the view that GDPR could affect certain reporting obligations of Member States, e.g. under the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1978. This would concern not only IMO Member States that were Members of the European Union (EU), but also non-EU IMO Member States that would be transferring personal data of EU citizens.

13.10 The Committee noted the information provided by the Secretariat and the delegation of Malta, and agreed that the most appropriate IMO organ to discuss general issues relating to GDPR was the Council.

**Audio files:** Monday, 23 April 2018: a.m., Tuesday, 24 April 2018: p.m. and Wednesday, 25 April 2018: a.m.

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## ANNEX 1

### LEGAL ADVICE TO FAL 42 ON THE STATUS OF THE APPENDICES TO THE FAL CONVENTION

#### Issue

1 FAL 41 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) in order to determine the appropriate amendment procedure for prospective amendments to the appendices. The issue arose because FAL Convention publications in various editions contain "additional information on facilitation requirements" which is organized in "appendices", whilst the certified true copy of the authentic text adopted by the Contracting Governments, and available under the "Treaties" section of IMODOCS, contains only appendices 1 and 3.

2 The Legal Committee's advice is contained herein. However, as a preliminary matter, the Legal Committee wishes to point out that it is the Contracting Governments of the FAL Convention, through the FAL Committee, that must take final decisions on the issues raised. The intent of the Contracting Governments is paramount, and is best known and expressed by those Contracting Governments themselves.

3 The strongest means of establishing the intent of the Contracting Governments of the FAL Convention in the future would be to amend the Convention to include appropriate appendices to the annex through the process in article VII of the FAL Convention and incorporate those into the certified text of the treaty. This method is referred to as "Option B" in document LEG 105/6/1 and was supported by several delegations at LEG 105.

4 Other methods of establishing the intent of the Contracting Governments include, in descending order of legal weight, a declaration, through a FAL resolution, establishing the intent of the Committee, a unified interpretation, or a decision of the FAL Committee.

5 When taking decisions on both the status of any particular appendix to the annex to the FAL Convention, and the method to communicate such decisions, the FAL Committee might wish to take the following consideration into account:

In order to determine the status of the appendices to the FAL Convention, general principles of treaty interpretation should be applied. The main guiding principle for the determination as to whether or not an appendix constitutes an integral part of the FAL Convention should be the intention of the Contracting Governments when introducing the appendices, i.e. the legislative history. To ascertain this intention, the Contracting Governments should in particular look at whether or not an appendix was adopted or amended pursuant to the formal article VII amendment procedure of the FAL Convention. In addition to the legislative history, the following general principles of treaty interpretation should also be taken into account: the ordinary meaning of the text and terms in the context of the Convention and the Convention's object and purpose, i.e. the promotion of measures to bring about uniformity and simplicity in the documentary requirements and procedures associated with the arrival, stay and departure of ships engaged in international voyages.

### **Appendix 1 to the FAL Convention**

6 Appendix 1 contains seven different IMO FAL Forms. FAL Forms 1 to 6 were developed by a working group and subsequently adopted by the Assembly at its fifth session (resolution A.136(V)) inviting governments to consider adopting forms conforming to these six model forms. FAL Form 7 had initially been circulated as circulars.<sup>1</sup> Appendix 1 was first mentioned in the 2002 amendments to the FAL Convention adopted by resolution FAL.7(29), which contains an instruction that the "[a]ppendices should be renumbered as follows [...]"<sup>2</sup> and also contains an amendment to appendix 1.<sup>3</sup>

7 Subsequently, appendix 1 has been amended several times through the formal article VII amendment procedure, as follows:

- .1 Resolution FAL.8(32) containing the 2005 amendments to the FAL Convention stipulates in paragraph 67 under the heading "Appendix 1 – IMO FAL Forms" that "[t]he IMO FAL Forms 1 to 7 are amended as follows"; subsequently, all seven forms are set out in detail.
- .2 Resolution FAL.10(35) containing the 2009 amendments to the FAL Convention stipulates in paragraph 17 under the heading "Appendix 1 – IMO FAL Forms" that "[t]he existing IMO FAL Forms are deleted and replaced by the following ones"; subsequently, all seven forms are set out in detail.
- .3 Resolution FAL.12(40) containing the 2016 amendments to the FAL Convention adopts a consolidated version of the Annex to the FAL Convention, including appendix 1 (but none of the other appendices).

8 Further, a reference to appendix 1 was added in Standard 2.19 of the consolidated version of the annex to the FAL Convention, adopted by resolution FAL.12(40), which reads as follows:

"2.19 **Standard.** If errors are found in the data transmitted as provided for in appendix 1 of this annex, which have been signed by or on behalf of a shipowner or master, or otherwise authenticated, no penalties shall be imposed until an opportunity has been given to satisfy the public authorities that the errors were inadvertent, not of a serious nature, not due to recurrent carelessness and not made with intent to violate the laws or regulations of the port State."

9 When considering amendments to the IMO FAL Forms set out in appendix 1 to the annex of the Convention, the Facilitation Committee has explicitly stated that it would require the adoption of relevant amendments in order to change the forms.<sup>4</sup>

10 It appears that, by requiring amendments to the FAL Convention to change the forms, the Facilitation Committee may have recognized that appendix 1 constitutes an integral part of the FAL Convention. An indicator of the possible intent of the Contracting Governments is the consolidated version of the annex to the FAL Convention (adopted by resolution FAL.12(40)), which includes appendix 1.

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<sup>1</sup> FAL.2/Circ.49, FAL.2/Circ.51 and FAL.2/Circ.51/Rev.1.

<sup>2</sup> Resolution FAL.7(29), paragraph 14 of the annex.

<sup>3</sup> Resolution FAL.7(29), paragraph 17 of the annex.

<sup>4</sup> Document FAL 35/17, paragraph 5.6.

11 The adoption of uniform and simple documentary requirements in the form of the seven FAL forms is fully in line with the object and purpose of the Convention, which is a further indication of the intent of the Contracting Governments.

12 Some delegations at LEG 105 expressed the legal view that this evidence of intent was insufficient to conclude that appendix 1 was an integral part of the FAL Convention. However, a majority of delegations were of the legal view that the FAL Committee could conclude, if it so decided, that appendix 1 was an integral part of the Convention.

### ***Appendix 2 to the FAL Convention***

13 Appendix 2 contains a possible format for a covering letter referred to in Standard 3.3.1. Like all other appendices, it was first mentioned in the 2002 amendments to the FAL Convention, adopted by resolution FAL.7(29), which contains an instruction that the "[a]ppendices should be renumbered as follows [...]".<sup>5</sup> However, the form itself was never set out in a FAL resolution. It was also never amended through the formal article VII amendment procedure and does not form part of the consolidated version of the annex to the FAL Convention, which was adopted by resolution FAL.12(40).

14 It is only referenced in a footnote to Standard 3.3.1, which reads "A possible format for a covering letter is given in appendix 2." This footnote is, however, only contained in the publication version of the FAL Convention, but footnotes do not form part of the certified true copy of the authentic text. Paragraph 9 of the *Guidelines on methods for making reference to IMO and other instruments in IMO conventions and other mandatory instruments* (resolution A.911(22)) states that "[s]tandards and specifications referred to in footnotes should not appear in the authentic text of the convention and may be updated by the Secretariat as necessary when a new edition of the relevant publication is prepared." The footnote to Standard 3.3.1 is not reflected in the certified true copy of resolution FAL.12(40).

15 As appendix 2 was never set out in a FAL resolution and has never been amended through the formal article VII amendment procedure, there is a strong indication that appendix 2 was not intended to form part of the Convention. All delegations speaking at LEG 105 were of this legal view. However, if the Contracting Governments wished to make appendix 2 an integral part of the Convention, they could do so by further amending the Convention.

### ***Appendix 3 to the FAL Convention***

16 Appendix 3 contains the form of stowaway details referred to in Recommended Practice 4.6.2. Like all other appendices, appendix 3 was first mentioned in the 2002 amendments to the FAL Convention, adopted by resolution FAL.7(29), which contains the instruction to "[a]dd the following new Appendix 3 – Form referred to in Recommended Practice 4.6.2".<sup>6</sup> Appendix 3 and the form of stowaway details referred to in Recommended Practice 4.6.2 is then set out. Appendix 3 was therefore adopted through the formal article VII amendment procedure, in parallel with the adoption of the referencing Recommended Practice 4.6.2.

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<sup>5</sup> Resolution FAL.7(29), paragraph 14 of the annex.

<sup>6</sup> Resolution FAL.7(29), paragraph 15 of the annex.

17 The reference to appendix 3 in Recommended Practice 4.6.2 reads as follows:

"4.6.2 Recommended Practice. When gathering relevant details for notification, masters should use the form as specified in appendix 3."

18 While the reference to appendix 3 in Recommended Practice 4.6.2 remains in the consolidated version of the annex to the FAL Convention, which was adopted by resolution FAL.12(40), the form itself is not included as an appendix. The intent of the Contracting Governments appears to have been that appendix 3 be considered an integral part of the Convention, which is also supported by a plain reading of the term "to add" the new appendix 3. It is unclear, however, why it was eventually not included in the authentic text of the consolidated version of the annex to the FAL Convention (resolution FAL.12(40)).

19 Given this legislative history, there are two options the Facilitation Committee might wish to consider:

- .1 that the Contracting Governments omitted appendix 3 intentionally from the consolidated version of the annex to the FAL Convention because they did not intend it to form an integral part of the Convention; or
- .2 the omission of appendix 3 from the consolidated version was an error, which could be corrected by the Secretariat using normal procedures for correction.

20 The Legal Committee was of the view that, using the information provided in this legal advice, with respect to appendix 3, the FAL Committee could take a decision on the options provided above.

#### ***Appendix 4 to the FAL Convention***

21 Appendix 4 contains a full excerpt of chapter 5.4 of the International Maritime Dangerous Goods Code (IMDG Code). The method by which appendix 4 was introduced is not clear. Like all other appendices, it was first mentioned in the 2002 amendments to the FAL Convention adopted by resolution FAL.7(29), which contains an instruction that the "[a]ppendices should be renumbered as follows [...]".<sup>7</sup> However, the extract of the IMDG Code itself was never set out in a FAL resolution. The IMDG Code constitutes part of another IMO treaty and, therefore, was never amended through the FAL article VII amendment procedure. Moreover, it does not form part of the consolidated version of the annex to the FAL Convention, which was adopted by resolution FAL.12(40). Appendix 4 is not referenced at all in the body of the annex.

22 It should be noted that excerpts from other conventions would not be introduced in other IMO instruments by full citation of the same. Instead, the relevant paragraphs of the instrument would be expressly referred to in the text of the relevant convention and amendments to the referenced instrument would follow the amendment procedure laid down in the referenced instrument (see resolution A.911(22)). This is also the case in the FAL Convention: each new edition of the publication of the FAL Convention contains the latest version of chapter 5.4 of the IMDG Code. The 2006 edition contained amendment 33-06, the 2011 edition contained amendment 35-10 and the latest 2017 edition contains amendment 38-16. Appendix 4 therefore does not follow the formal article VII amendment procedure of the FAL Convention, but the amendment procedure that applies to the IMDG Code.

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<sup>7</sup> Resolution FAL.7(29), paragraph 14 of the annex.

23 All delegations who spoke at LEG 105 were of the legal view that appendix 4 was not intended to form part of the Convention, but that it was added to the publication for information purposes only.

### **Recommended way forward**

24 This legal advice recommends that the Contracting Governments to the FAL Convention could clarify the status of the different appendices by taking appropriate decisions in that regard using the various methods described in paragraphs 3 and 4 and taking into account the legal analysis contained in paragraphs 6 to 23.

25 It is recommended that the decision by the Contracting Governments be reflected in the report of the Facilitation Committee, and that the next edition of the FAL Convention should differentiate between those appendices forming an integral part of the Convention and those which do not.

### **Action requested of the Facilitation Committee**

26 The Facilitation Committee is invited to consider the legal advice provided in this document and decide as appropriate.

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**ANNEX 2**

**BIENNIAL STATUS REPORT 2018-2019**

Legal Committee (LEG)									
Reference to SDs, if applicable	Output number	Description	Target completion year	Parent organ(s)	Associated organ(s)	Coordinating organ	Status of output for Year 1	Status of output for Year 2	References
1. Improve implementation	1.2	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		
1. Improve implementation	1.4	Analysis of consolidated audit summary reports	Annual	Assembly	MSC / MEPC / LEG / TCC / III	Council	No work requested		
1. Improve implementation	1.7	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		
1. Improve implementation; 2. Integrate new and advancing technologies in the regulatory framework	TBC <sup>1</sup>	Measures to prevent unlawful practices associated with the fraudulent registration and fraudulent registries of ships	2019	LEG	MSC / MEPC / FAL / TCC		In progress		

<sup>1</sup> New output approved by LEG 105. Number of the output to be assigned by C 120.

Legal Committee (LEG)									
Reference to SDs, if applicable	Output number	Description	Target completion year	Parent organ(s)	Associated organ(s)	Coordinating organ	Status of output for Year 1	Status of output for Year 2	References
1. Improve implementation; 2. Integrate new and advancing technologies in the regulatory framework; 6. Ensure regulatory effectiveness	TBC <sup>2</sup>	Regulatory scoping exercise and gap analysis of conventions emanating from the Legal Committee with respect to Maritime Autonomous Surface Ships (MASS)	2019	LEG	MSC / MEPC / FAL / TCC		In progress		
4. Engage in ocean governance	4.2	Input to the ITCP on emerging issues relating to sustainable development and achievement of the SDGs	2019	TCC	MSC / MEPC / FAL / LEG		No work requested		
5. Enhance global facilitation and security of international trade	5.4	Revised guidance relating to the prevention of piracy and armed robbery to reflect emerging trends and behaviour patterns	Annual	MSC	LEG		No work requested		
6. Ensure regulatory effectiveness	6.12	Strategies developed to facilitate entry into force and harmonized interpretation of the HNS Protocol	2019	LEG			In progress		

<sup>2</sup> New output approved by LEG 105. Number of the output to be assigned by C 120.

Legal Committee (LEG)									
Reference to SDs, if applicable	Output number	Description	Target completion year	Parent organ(s)	Associated organ(s)	Coordinating organ	Status of output for Year 1	Status of output for Year 2	References
7. Ensure organizational effectiveness	7.1	Endorsed proposals for the development, maintenance and enhancement of information systems and related guidance (GISIS, websites, etc.)	Continuous	Council	MSC / MEPC / FAL / LEG / TCC		Ongoing		
7. Ensure organizational effectiveness	7.9	Revised documents on organization and method of work, as appropriate	2019	Council	MSC / MEPC / FAL / LEG / TCC		Completed		
OW. Other work	OW 13	Endorsed proposals for new outputs for the 2018-2019 biennium as accepted by the Committees	Annual	Council	MSC / MEPC / FAL / LEG / TCC		Completed		
OW. Other work	OW 17	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			Completed		
OW. Other work	OW 18	Advice and guidance on issues under UNCLOS relevant to the role of the Organization	Annual	LEG			Completed		

Legal Committee (LEG)									
Reference to SDs, if applicable	Output number	Description	Target completion year	Parent organ(s)	Associated organ(s)	Coordinating organ	Status of output for Year 1	Status of output for Year 2	References
OW. Other work	OW 20	Provide advice and guidance on issues brought to the Committee in connection with implementation of IMO instruments	Annual	LEG			Completed		FAL 42/3/1
OW. Other work	OW 22	Provide advice and guidance to support availability of information on comprehensive national legislation and judicial capacity-building	Annual	LEG			In progress		LEG 105/13
OW. Other work	OW 23	Cooperate with the United Nations on matters of mutual interest, as well as provide relevant input/guidance	2019	Assembly	MSC / MEPC / FAL / LEG / TCC	Council	In progress		
OW. Other work	OW 24	Cooperate with other international bodies on matters of mutual interest, as well as provide relevant input/guidance	2019	Assembly	MSC / MEPC / FAL / LEG / TCC	Council	In progress		
OW. Other work	OW 44	IMO's contribution to addressing unsafe mixed migration by sea	2019	MSC / FAL / LEG			In progress		FAL 41/17, paragraph 7.15, MSC 98/23, paragraph 16.14

Legal Committee (LEG)									
Reference to SDs, if applicable	Output number	Description	Target completion year	Parent organ(s)	Associated organ(s)	Coordinating organ	Status of output for Year 1	Status of output for Year 2	References
OW. Other work	OW 45	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	2019	LEG			In progress		

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### **ANNEX 3**

#### **ITEMS TO BE INCLUDED IN THE AGENDA FOR LEG 106**

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

Measures to prevent unlawful practices associated with the fraudulent registration and fraudulent registries of ships

Regulatory scoping exercise and gap analysis of conventions emanating from the Legal Committee with respect to Maritime Autonomous Surface Ships (MASS)

Piracy

Work of other IMO bodies

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 106th session

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## ANNEX 4

### STATEMENTS BY DELEGATIONS

#### ITEM 6

##### **Statement by the delegation of Estonia on behalf of the Bulgarian EU Presidency**

Four years on from the illegal annexation of the Autonomous Republic of Crimea and the city of Sevastopol by the Russian Federation, the European Union remains firmly committed to Ukraine's sovereignty and territorial integrity.

The European Union reiterates that it does not recognise and continues to condemn this violation of international law. It remains a direct challenge to international security, with grave implications for the international legal order that protects the unity and sovereignty of all states.

The European Union remains committed to fully implementing its non-recognition policy, including through restrictive measures. The EU calls again on United Nations Member States to consider similar non-recognition measures in line with the United Nations General Assembly Resolution 68/262.

##### **Statement by the delegation of the Russian Federation**

«Подготовленный Украиной документ LEG/105/6/3 посвящен исключительно политическим вопросам, которые выходят за пределы компетенции Юридического комитета и ИМО в целом. Считаем, что они не могут и не должны рассматриваться в рамках настоящей Организации.

В этой связи в очередной раз выражаем приверженность уставным целям ИМО, которая призвана решать исключительно технические вопросы, затрагивающие международное торговое судоходство. Уверены, что только строгое следование мандату Организации обеспечит успешное выполнение стоящих перед ней задач.

Одновременно вновь хотели бы заверить членов Комитета в том, что Российская Федерация добросовестно выполняет свои обязательства, вытекающие из международных договоров, принятых под эгидой ИМО.

В частности, на всей территории России, включая Крым и г. Севастополь, должным образом реализуются предусмотренные договорами меры, направленные на обеспечение безопасности и охраны международного судоходства, защиту морской среды от загрязнения, а также защиту прав и интересов моряков. С учетом этого считаем, что утверждение Украины о превращении северной части Черного моря в "серую зону" не соответствует действительности».

"The document LEG/105/6/3 submitted by Ukraine is exclusively dedicated to political issues which go beyond the scope of not only this Committee but IMO as a whole. In our opinion these issues cannot and should not be considered within the framework of this Organization.

In this connection once again we reaffirm our commitment to the statutory goals of IMO which is designed to deal with solely technical issues related to the international trade shipping. We believe that strictly following to the IMO mandate is the only way to ensure successful conclusion of the IMO tasks.

At the same time we would like to reassure the members of the Committee that the Russian Federation is fulfilling in good faith its obligations under the all international treaties adopted under the IMO auspices.

In particular, necessary measures under the treaties aimed to ensure maritime safety and security, protect maritime environment from pollution and also to protect rights and interests of seafarers are duly implemented throughout the territory of the Russian Federation including Crimea and the city of Sevastopol. Therefore the allegation put forward by Ukraine about turning of the northern part of the Black Sea into a "grey zone" does not reflect reality."

## **ITEM 11**

### **Statement by the delegation of the Democratic Republic of the Congo**

Merci Monsieur le Président.

La République Démocratique du Congo est honorée de présenter cette proposition pour un nouveau sujet au nom des coauteurs.

Monsieur le Président, le Comité se souviendra qu'au LEG 104, mon pays avait dénoncé l'utilisation frauduleuse qui était faite de son pavillon et s'est déclaré préoccupé par les effets néfastes d'une telle utilisation frauduleuse de son pavillon.

Les enquêtes menées par la suite, en collaboration avec le Secrétariat de l'OMI et IHS Markit, ont révélé que 73 avaient été immatriculés à l'insu de l'Administration maritime ou sans l'approbation de cette dernière depuis 2015 et utilisaient frauduleusement le pavillon de la RDC.

Les coauteurs souhaiteraient attirer l'attention du Comité sur le fait qu'un certain nombre d'États Membres ont pris contact avec le Secrétariat de l'OMI au cours des dernières années pour signaler des cas similaires d'utilisation frauduleuse de leur pavillon. Lorsque cela lui était demandé, le Secrétariat a diffusé ces renseignements par lettres circulaires Nos 3597, 3717, 3734 et 3798 afin que les fonctionnaires chargés du contrôle par l'État du port soient informés de ces situations et prennent les mesures qui s'imposent contre l'utilisation frauduleuse de pavillons par les navires.

L'année dernière, la République démocratique du Congo a prié instamment tous les États Membres d'œuvrer en faveur de la mise en place de mesures de prévention et de protection contre l'utilisation frauduleuse de pavillons en général.

Dans ce contexte, les coauteurs souhaiteraient insister sur la gravité du problème que pose ce type d'activité frauduleuse et sur le fait que tous les pays, organisations intergouvernementales et organisations non gouvernementales doivent coopérer dans toute la mesure du possible pour promouvoir l'adoption d'une démarche concertée par l'ensemble des parties prenantes concernées en vue de prévenir et d'éliminer les actes frauduleux d'immatriculation de navires, actes qui compromettent gravement la sécurité et la sûreté du transport maritime et l'intégrité du commerce maritime international.

Les coauteurs invitent donc le Comité à inscrire au programme de travail un nouveau point consistant à examiner les mesures qui pourraient permettre de prévenir les pratiques illicites liées à l'immatriculation frauduleuse de navires.

Cette proposition entre dans le cadre de la mission de l'OMI qui est l'institution spécialisée des Nations Unies chargée d'assurer la sécurité et la sûreté des transports maritimes et de prévenir la pollution des mers par les navires. En tant que telle, l'OMI a la responsabilité de promouvoir

la sécurité et l'efficacité des pratiques maritimes internationales et devrait participer à l'élaboration des mesures juridiques et administratives visant à prévenir l'immatriculation frauduleuse de navires et à lutter contre cette pratique, car ces questions sont essentielles à l'ordre juridique et la bonne administration, ainsi qu'à la sécurité et à la sûreté des transports maritimes.

Les États concernés par l'utilisation frauduleuse de leur pavillon savent qu'il est important que l'État du pavillon exerce effectivement sa juridiction et son contrôle sur les navires battant son pavillon et connaissent les procédures pertinentes associées aux éléments fondamentaux de l'immatriculation des navires qui ont été mis au point par l'OMI pour prévenir la fraude maritime.

Au fil des ans, l'OMI a développé des processus pertinents associés aux éléments substantiels liés à l'immatriculation des navires. Cependant, si la plupart des États du pavillon disposent de solides procédures d'immatriculation, il existe des preuves évidentes que des exploitants peu scrupuleux parviennent à tromper des propriétaires de navires. En effet, les personnes participant à de tels actes illicites sont bien organisées et peuvent obtenir des renseignements et établir des documents faux ou falsifiés convaincants. Il est souvent difficile pour les États qui sont victimes de fraude de remonter la trace de ces sociétés.

Les coauteurs craignent que ces pratiques frauduleuses continuent à se développer dans certaines parties du monde. Tous les cas signalés au Secrétariat de l'OMI concernent l'utilisation de pavillons de pays en développement ou de petits États insulaires en développement qui disposent de peu de moyens pour se protéger contre de telles activités frauduleuses et sollicitent donc l'assistance de l'OMI afin pour s'attaquer à ce problème.

Les coauteurs du présent document estiment que les instruments existants de l'OMI et des Nations Unies, qu'ils soient obligatoires ou non, ne permettent pas d'empêcher l'immatriculation frauduleuse de navires.

Bien qu'ils apprécient l'assistance apportée par le Secrétariat de l'OMI et de IHS Markit, et malgré les lettres circulaires diffusées à tous les États Membres de l'OMI et aux mémorandums d'entente sur le contrôle par l'État du port, les coauteurs sont d'avis que cela ne suffit pas pour répondre au nouveau défi que pose l'utilisation frauduleuse d'un pavillon national pour le monde de la marine marchande dans son ensemble, c'est une menace pouvant qu'on peut qualifier de "piraterie des temps modernes".

Les propriétaires et exploitants de navires, les personnes compétentes à terre et les autres parties concernées devraient également être informées et il faudrait diffuser des renseignements à tous les acteurs avant que le problème n'entre dans le cadre de la juridiction de l'État du port.

Pour les raisons exposées ci-dessus, les coauteurs proposent que l'Organisation examine des mesures visant à prévenir les pratiques illicites liées à l'immatriculation frauduleuse de navires. Dans le contexte du droit international public, l'immatriculation détermine la compétence et les lois de l'État applicables à bord et constitue l'activité fondamentale à partir de laquelle découlent les réglementations relatives à la sûreté, à la sécurité et à la protection du milieu marin. Nous sommes donc d'avis que les questions d'enregistrement devraient être traitées par le Comité juridique.

Le résultat proposé vise à fournir la première étape.

À l'issue des échanges de vues, le Comité devra examiner la meilleure façon de procéder pour résoudre les problèmes soulevés.

Les mesures visant à prévenir les pratiques illicites liées à l'immatriculation frauduleuse des navires devraient viser à fournir, à tous les acteurs de l'industrie maritime, des informations claires, fiables et actualisées sur les besoins nationaux en matière d'immatriculation des navires pour le compte d'un État. On pense que cela réduirait et, éventuellement, empêcherait l'immatriculation frauduleuse des navires. Les résultats de notre travail à cet égard peuvent avoir des répercussions sur les autres comités et devraient leur être communiqués en conséquence. Les coauteurs notent que les conséquences de ne pas aborder les questions discutées ci-dessus pourraient contribuer à la prolifération des registres frauduleux et pourraient avoir un impact négatif sur la sécurité maritime, la sauvegarde et la protection de l'environnement. Nous estimons que le travail pour résoudre le problème pourrait être achevé en trois sessions.

Je vous remercie Monsieur le Président.

### **Statement by the United Nations Conference on Trade and Development (UNCTAD)**

Since its establishment, more than 53 years ago, UNCTAD, the United Nations Conference on Trade and Development, has been the focal point within the United Nations system for the integrated treatment of trade and development as well as interrelated issues of finance, technology, investment and sustainable development. Developing countries, especially the most vulnerable among them, including the LDCs, SIDS and LLDCs, continue to be at the heart of UNCTAD's mandate and of its work. In the field of transportation, UNCTAD's focus is particularly on the economic and commercial aspects of international maritime transport, which carries over 80% of the volume of world trade and provides access to global markets for all countries, including those that are landlocked.

UNCTAD and IMO have a longstanding history of fruitful collaboration, in line with the two Organizations' respective mandates, including inter alia the joint negotiation and adoption of two international Conventions, namely the *International Convention on Maritime Liens and Mortgages, 1993* and the *International Convention on the Arrest of Ships, 1999*, which entered into force in 2006 and in 2011, respectively.

Having reviewed the IMO LEG meetings documentation, we note with concern the growing problem of fraudulent ship registries and their potential impact on the safety, security and environmental compliance of ships. As a matter of public policy, the development and enforcement of measures to prevent and combat crime, including all forms of fraudulent practices, is in the interests of the global community as a whole; this is also reflected as part of the international community's agreed 2030 Sustainable Development Agenda, with its 17 goals and associated 169 targets, which are "integrated and indivisible, global in nature and universally applicable." Worth noting in this context are especially SDG 16 (Promote just, peaceful and inclusive societies), and SDG 14 (Conserve and sustainably use the oceans, seas and marine resources for sustainable development), which is of particular relevance in the context of maritime transport, ship-source pollution control, and ship safety and includes a dedicated target 14(c), focusing on implementation of "international law as reflected in UNCLOS, which provides the legal framework for the conservation and sustainable use of oceans and their resources (...)"<sup>1</sup>

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<sup>1</sup> 14 c: "Enhance the conservation and sustainable use of oceans and their resources by implementing international law as reflected in UNCLOS, which provides the legal framework for the conservation and sustainable use of oceans and their resources, as recalled in paragraph 158 of The Future We Want."

Against this background and recalling UNCTAD's mandate and longstanding engagement with international efforts to combat maritime fraud, promote transparency and accountability, and strengthen flag-state control – such as the 1983 UNCTAD report on *Review and Analysis of Possible measures to minimize the occurrence of Maritime Fraud and Piracy*, the adoption of the *United Nations Convention on Conditions for Registration of Ships*, 1986, and of the *UNCTAD Minimum Standards for Shipping Agents*, 1988, as well as the preparation of two UNCTAD reports, published in 2014, with a focus on Maritime Piracy<sup>2</sup> – we welcome and support the proposed consideration, by the IMO Legal Committee, of measures to prevent unlawful practices associated with the fraudulent registration of ships, and we look forward to cooperating in this respect as appropriate.

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<sup>2</sup> Available at [unctad.org/tl/legal](http://unctad.org/tl/legal).