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Agenda item 16

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REPORT OF THE LEGAL COMMITTEE ON THE WORK OF ITS 106TH SESSION

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1 INTRODUCTION

1.1 The Legal Committee held its 106th session at IMO Headquarters from 27 to 29 March 2019, 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, Associate Members and a non-Member, observers from the intergovernmental organizations with agreements of cooperation, and observers from non-governmental organizations (NGOs) in consultative status, as listed in document LEG 106/INF.1.

1.3 The session was also attended by the Chair of the Council, Mr. Xiaojie Zhang (China), and the Chair of the Governing Bodies of the London Convention and Protocol (LC/LP), Mrs. Azara Prempeh (Ghana).

Expression of condolences

1.4 The Committee joined the Secretary-General in extending condolences to the families of those who lost their lives as a result of the crash of Ethiopian Airlines flight ET 302 in Ethiopia on 10 March 2019, where the victims included United Nations staff members and delegates; the mosque shootings in Christchurch, New Zealand, on 15 March 2019; the tropical cyclone Idai which struck Malawi, Mozambique and Zimbabwe over several days in March 2019; and the capsizing of the Mosul ferry in Iraq on 21 March 2019.

1.5 The Committee also joined the Chair and the Director of the IOPC Funds in extending condolences to the family of Mr. Jerry Rysanek (Canada), the former Chair of the Assembly of the 1992 Fund and Chair of the joint Audit Body of the 1992 Fund and Supplementary Fund, who passed away in January 2019.

The Secretary-General's opening address

1.6 The Secretary-General welcomed participants and delivered his opening address, the full text of which can be downloaded from the IMO website at the following link: <http://www.imo.org/en/MediaCentre/SecretaryGeneral/Secretary-GeneralsSpeechesToMeetings/Pages/LEG-106-opening.aspx>.

General statements

1.7 The delegation of Peru made a statement on behalf of Argentina, Canada, Chile, Colombia, Guyana, Panama, Paraguay and Peru regarding their group's resolve not to recognize the legitimacy of the new presidential term of Mr. Nicolás Maduro, the Bolivarian Republic of Venezuela, and representatives of his Government. In their view, the Venezuelan presidential elections, which were held in May 2018, did not meet international standards for free and fair elections. This statement was supported by the delegation of the United States in a separate statement.

1.8 The delegation of the Russian Federation made a statement expressing the view that the attempt by the group to delegitimize the new presidential term of Mr. Nicolás Maduro amounted to interference in the internal affairs and sovereignty of Venezuela (Bolivarian Republic of) and would cause disharmony among delegates. The statement of the Russian Federation was supported by the delegation of Cuba. Uruguay stated that it did not support the statement of Peru. The delegation of Venezuela (Bolivarian Republic of) emphasized the legitimacy of the new presidential term of Mr. Nicolás Maduro and that the representatives of his Government were the legitimate representatives.

1.9 As requested by some of the above delegations, their full statements are attached to this report as annex 7.

Adoption of the agenda

1.10 The agenda for the session, as contained in document LEG 106/1, was adopted by the Committee.

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

Audio files: Wednesday, 27 March 2019: a.m. and p.m.

2 REPORT OF THE SECRETARY-GENERAL ON CREDENTIALS

2.1 The Committee noted the report of the Secretariat, which stated that the credentials of 85 delegations attending the session were in due and proper form.

Audio file: Thursday, 28 March 2019: p.m.

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

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

3.2 The Committee noted with appreciation that, on 28 June 2018, Denmark had deposited an instrument of ratification of the Protocol, thereby bringing the number to four Contracting States, each of which had more than two million units of gross tonnage.

3.3 The Committee also noted that the 2010 HNS Protocol needed only eight more States to ratify or accede to it, and that therefore the Convention was significantly closer to its entry into force.

3.4 The Committee further noted that, on 26 and 27 April 2018, a successful two-day workshop had been organized by IMO in cooperation with the IOPC Funds at IMO Headquarters to assist Member States in their work towards further ratifications of the Protocol.

Status of work on the 2010 HNS Protocol

3.5 The Committee noted document LEG 106/3 (Secretariat) reporting on the status of work on the 2010 HNS Protocol, as well as on the special two-day workshop on the HNS Convention held after LEG 105, the meetings of the IOPC Funds held in October 2018, and the Secretariat's intention to organize further regional and national workshops.

Domestic implementation of the 2010 HNS Convention

3.6 The Committee noted document LEG 106/3/1 (Canada) providing an overview of key issues and considerations for States in the domestic implementation of the 2010 HNS Convention, based on Canada's experience. In particular, the Committee noted Canada's offer to Member States working towards implementation and ratification or accession of some potential solutions to the most common issues faced during the reporting stage of the implementation.

3.7 The Committee was informed that article 5 of the 2010 HNS Convention provided States with the option to exclude certain small ships from the application of the Convention, which could remove a potential barrier to the effective implementation of the Convention.

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

- .1 several Member States stated that they had ratified or had reached an advanced stage in preparation for the ratification of the 2010 HNS Convention, including consultations with relevant stakeholders, and expressed their appreciation to Canada for the offer to assist other Member States in the implementation of the Convention;
- .2 several Member States indicated that they had already enacted legislation regarding ratification and, therefore, would be ready to report their HNS contributing cargo in the near future;
- .3 emphasis was placed on the importance of a coordinated approach to the ratification of the Convention among States, in order to ensure "a level playing field" between ports; in this regard, the Committee noted the IMO Secretariat's offer to deliver regional or national workshops, including in States which did not qualify for technical cooperation assistance under the IMO Integrated Technical Cooperation Programme (ITCP);
- .4 HNS incidents did occur, and examples from the recent past included the **Sanchi**, **Aulac Fortune**, **MSC Zoe** and **Grande America**, as well as the **Cason**; the cost of the damage was not known;
- .5 although statistics on HNS-related claims regarding incidents with ships carrying HNS were not easy to obtain, the International Group of Protection and Indemnity Associations (P & I Clubs) was invited to provide an update of statistics that were made available to the 2010 International Conference on HNS;
- .6 the HNS Convention was part of the broader context of risk management, in particular the issue of places of refuge;
- .7 concerns were expressed that, apart from the precautionary principle, the HNS Convention dealt with claims for HNS damage affecting human life caused by fire and explosion risks; and
- .8 the need for the HNS Convention was also demonstrated by the brochure *The HNS Convention: Why it is Needed* and the *Presentation of HNS Incident Scenarios* developed through the HNS Correspondence Group, and these tools had been developed for policymakers and were available in three languages.

3.9 Following the discussion, the Committee expressed its appreciation to the delegation of Canada for its submission. The Committee noted the efforts on reporting relevant HNS contributing cargo data by Member States that had already ratified or were in the process of doing so in the near future. The Committee also noted that a submission of an update of statistics on HNS-related claims at its next session by the P & I Clubs would assist Member States to ratify and bring into force the 2010 HNS Protocol as soon as possible.

Report on administrative preparations for the setting up of the HNS Fund

3.10 The Committee noted document LEG 106/3/2 (IOPC Funds) reporting on administrative preparations for the setting up of the HNS Fund, and the IOPC Funds Secretariat's intentions regarding the preparations for the first session of the HNS Assembly, which was to be convened by the IMO Secretary-General, in accordance with article 43 of the 2010 HNS Convention, when all entry-into-force criteria of the 2010 HNS Protocol had been met.

3.11 The Committee noted the involvement of the P & I Clubs in the preparatory work of the IOPC Funds and welcomed the cooperation between the two organizations. The Committee expressed its appreciation to the IOPC Funds for the preparatory work, in particular their continued engagement with the Member States which were considering ratifying or acceding to the Protocol and the industry stakeholders, via correspondence or through workshops and conferences.

Audio file: Thursday, 28 March 2019: 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, 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 amendments to the Maritime Labour Convention, 2006 (MLC, 2006) relating to the provision of financial security for abandonment, 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 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 noted that IMO ensured that all information received from flag States and port States, as well as from seafarer States, was shared for verification before being released for public access on the database website.

4.5 The Committee considered document LEG 106/4 and noted that the IMO Secretariat had consulted with the International Labour Organization (ILO) on the inclusion of information related to insurance, or lack thereof, in the database for each new case. The Committee also noted that this information was reflected in the database, as well as in the summary information annexed to document LEG 106/4.

4.6 The Committee was informed that on 31 December 2018 366 abandonment incidents had been listed in the database since it was established in 2004, affecting 4,866 seafarers. Of those incidents, 175 cases were resolved, 77 cases were disputed and 52 cases were inactive. There were still 52 unresolved cases. From 2011 to 2016, the number of cases per year ranged from 12 to 19.

4.7 The Committee was also informed that in 2017 and 2018 the cases reported increased drastically. In 2017, there were 55 cases reported, 14 of which were resolved that year and eight were resolved in 2018. In 2018, the total number of reported cases was 44 and, of those, 15 cases had been resolved as of 31 December 2018. Of the cases reported in 2018, eight involved flag States which had not ratified MLC, 2006. No additional cases reported in 2018 had been resolved in 2019.

4.8 The Committee was further informed that, as of the end of March 2019, there had been 13 new cases reported in 2019, none of which had been resolved, and that one such case concerned the new crew on board the **Sarem**, under the flag of Saint Vincent and the Grenadines, which on 21 February 2019 was reported to be abandoned in the United Arab Emirates. This occurred just after ILO and IMO were informed on 8 January 2019 that the abandonment of the previous crew of the **Sarem** was retroactively being resolved as at 20 August 2018. The Committee was informed that more examples of such practices existed in the database.

4.9 The Committee noted the adverse effect on seafarers of the lack of protection provided to them, despite the requirements contained in MLC, 2006. In this regard, the Committee was informed that on 12 December 2018, IMO had notified the United Arab Emirates, in their capacity as a flag and port State, that a total of 31 seafarers had recently been reported as abandoned by the International Seafarers' Welfare and Assistance Network (ISWAN) through the International Chamber of Shipping (ICS) on board the following ships: **Azraqmoiah**; **Tamim Aldar**; **MV Al Nader**; **MT Tamim** and **Abdulrazaq**. The Committee noted that some of those abandonment cases had lasted as long as 32 months.

4.10 The Committee was informed that, following the entry into force on 18 January 2017 of the 2014 amendments to MLC, 2006 concerning financial security in cases of abandonment, 97 abandonment cases had been reported to the IMO/ILO joint database. The Committee was also informed that, during the period between 18 January 2017 and 31 December 2018, there had been 11 reported cases of abandonment where the flag State was a party to MLC, 2006 but had not yet sent to ILO their declaration of acceptance of the 2014 amendments, and that those 11 cases, seven of which remained disputed or unresolved, concerned ships registered in Belize, the Netherlands in respect of Curaçao, India and Mongolia.

4.11 The Committee was further informed about the stressful and inhumane consequences for the abandoned crew on board and their families following the recent cases of a total of 14 Indonesian crew members in Port Alang, India, on board the **Miss Gaunt** and the **Northwind**. It was noted that both ships were registered in the Kingdom of the Netherlands in the registry of Curaçao.

4.12 The Committee was informed that in January and February 2019 IMO had continuously received messages from the crew that they were not being paid by the shipowner or by the insurer, and that therefore they could not provide the necessary means of living for their families and young children, whom they also had not seen for more than seven months. Additionally, the crew could also not be repatriated because the port State, India, claimed that the ships could not be moved to a safe lay-up harbour and that a new replacement (skeleton) crew was required. It was noted that these two abandonment cases were connected to the abandonment of another eight Indonesian seafarers on board the **AHT Carrier** in the port of Maputo in Mozambique, and that all three ships were insured with the same insurer and beneficially owned or managed by the same company.

4.13 The Committee also noted that, through the continuous and substantial involvement of the IMO and ILO Secretariats, the insurer had subsequently paid four months' wages of all the crew members of the **Miss Gaunt**, and that five members of this crew were finally

repatriated by the end of February 2019, with a similar solution seeming to be under way for the other three crew members and for the crew of the **Northwind**. Similarly, the crew of the **AHT Carrier** was also repatriated. It was noted, however, that these cases could only be considered as being resolved if all outstanding wages had been paid in full.

4.14 With regard to the information on the abandonment of seafarers provided in paragraphs 4.11 and 4.13 above, the Indian delegation made a statement expressing its view that, after the intervention of the Indian Maritime Administration and cooperation of the Consulate Generals of the Netherlands and Indonesia, the issue of the abandonment of Indonesian seafarers on board the vessel **Miss Gaunt** had been resolved and that all the Indonesian seafarers on board this vessel had been repatriated on 23 March 2019.

4.15 The Committee considered document LEG 106/4/1 (ICS) which provided information about the current global abandonment situation and current concerns, invited Member States and relevant organizations to advise ILO and IMO of any information in relation to cases listed in the IMO/ILO joint database, and also invited the Committee to consider ways in which it could address the current challenges faced by those affected by abandonment, including encouraging further ratification of MLC, 2006 and reminding States parties and other stakeholders of their responsibilities towards abandoned seafarers.

4.16 The Committee also considered document LEG 106/4/2 (International Transport Workers' Federation (ITF)) on cases of abandonment reported by ITF to the IMO/ILO joint database of abandonment of seafarers for a period of one year from 1 January to 31 December 2018.

4.17 The Committee further considered document LEG 106/4/3 (ITF) reporting 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 A2.5.2 of MLC, 2006, for the period 1 January to 31 December 2018.

4.18 The Committee considered document LEG 106/4/4 (ILO) about the reporting of abandonment cases to the IMO/ILO joint database, with a view to promoting and facilitating the reporting and prompt resolution of such cases. In particular, with reference to the request by the Committee at its previous session to look into creating a list of competent authorities and organizations that could assist in resolving the cases, the Committee noted that stakeholders not entitled to report abandonment cases and wishing to liaise with flag, port or labour-supplying States that were members of IMO or ILO, could extract the relevant information from the MLC database, which contained the contact details of the competent authorities of the majority of States that had ratified MLC, 2006 (<https://www.ilo.org/global/standards/maritime-labour-convention/database-ratification-implementation/lang--en/index.htm>). The Committee encouraged ratifying States that had not yet supplied the contact details of their competent authorities to do so in due course.

4.19 The Committee noted the documents submitted by the ILO and IMO Secretariats, ICS and ITF and expressed its appreciation to them for their submission. The Committee also noted the information contained in document LEG 106/4/4.

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

- .1 in light of the progress made in some cases, the status of an abandonment case should be changed and considered as resolved;
- .2 flag States and port States should inform and be informed in a timely and proper manner of abandonment cases;

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- .3 the vast majority of abandonment cases were reported by organizations with consultative status, such as ITF and ICS, but cases could also be reported by other NGOs through organizations already having a consultative status;
 - .4 there was a lack of funding for skeleton crews when seafarers needed to be repatriated;
 - .5 guidelines for cooperation between flag and port States to resolve abandonment cases needed to be established through ILO and IMO to expedite resolution;
 - .6 abandoned fishermen should be separated from abandoned seafarers in the database;
 - .7 the International Group of P & I Clubs had been involved in 41 abandonment cases after the entry into force of the 2014 amendments to MLC, 2006 on 18 January 2017, and the vast majority of these cases were effectively resolved within a reasonable time frame in cooperation with ITF;
 - .8 abandonment cases were often at the mercy of the original information provided by a Member State or relevant organization, whether or not accurate, thus there was a need for a more effective way of obtaining accurate information to resolve cases;
 - .9 under applicable MLC, 2006 clauses, the port State had an obligation to ensure that seafarers were able to exercise their right to repatriation;
 - .10 MLC, 2006 did not recognize the reimbursement of the costs of the crew replacement by the insurer, and, therefore, those claims were not covered by P & I Clubs;
 - .11 the primary responsibility of the flag State to repatriate seafarers was in conflict with interests of harbour safety and keeping costs low and needed to be further discussed; and
 - .12 some insurance companies should be made more aware of their obligations under the 2014 amendments to MLC, 2006 and further consideration was needed of the effects of the lapse and problems relating to financial security.

4.21 Some States indicated that they would submit proposals to the next session of the Committee and were therefore encouraged to do so.

4.22 The Committee encouraged those Member States that:

- .1 had not already done so, to consider ratifying MLC, 2006, at their earliest convenience; and
- .2 had ratified MLC, 2006 after the adoption but before the entry into force of the 2014 amendments, to send to ILO their declaration of acceptance at their earliest convenience.

Audio file: Thursday, 28 March 2019: a.m.

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

5.1 The Committee recalled that, at its 103rd session, it was informed that ITF was preparing guidance for States on the implementation of the 2006 *Guidelines on fair treatment of seafarers in the event of a maritime accident* (the Guidelines), in view of the different approaches that States had taken in implementing them.

5.2 The Committee considered document LEG 106/5 (ITF) informing of the outcome of the first regional meeting for Asia on the fair treatment of seafarers in the event of a maritime accident, which took place on 13 November 2018 in Manila, Philippines. The Manila Statement, adopted by that meeting, includes a commitment by participants to raise further awareness of the Guidelines, to develop training and human capacity and to enhance cooperation among States.

5.3 The Philippines reiterated its support for the Manila Statement and stated that it looked forward to further collaboration with ITF, Seafarers' Rights International (SRI), the maritime industry, other stakeholders and other Member States who shared the same objective of ensuring the fair treatment of seafarers, particularly in the event of a maritime accident.

5.4 The Committee noted the information provided and expressed its appreciation to ITF for organizing the regional meeting.

Audio file: Thursday, 28 March 2019: a.m.

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

6.1 The Committee noted document LEG 106/6 (Ukraine) on the implementation of IMO instruments in the northern part of the Black Sea, including the maritime areas adjacent to the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, temporarily occupied by the Russian Federation.

6.2 The Committee also noted document LEG 106/6/1 (Russian Federation) commenting on the submission by Ukraine.

6.3 The delegation of Romania made a statement on behalf of the European Union, which was supported by the delegations of Belgium, France, Georgia, Germany, Sweden and the European Commission, supporting the information contained in document LEG 106/6. Other statements in support of document LEG 106/6 were made by the delegations of Australia, Canada, the United Kingdom and the United States.

6.4 Upon request, the full statements of the delegations of Romania, the Russian Federation and Ukraine are set out in annex 7 to this report.

Audio file: Thursday, 28 March 2019: p.m.

7 MEASURES TO PREVENT UNLAWFUL PRACTICES ASSOCIATED WITH THE FRAUDULENT REGISTRATION AND FRAUDULENT REGISTRIES OF SHIPS

7.1 The Committee recalled that, at its last session, it had agreed to include a new output on "Measures to prevent unlawful practices associated with the fraudulent registration and fraudulent registries of ships" in its 2018-2019 biennial agenda, with a target completion year of 2021.

7.2 The Committee also recalled that it had invited concrete proposals to LEG 106 for consideration, and had agreed to take a decision on the scope of the new output, after detailed consideration of any proposed measures.

7.3 The Committee further recalled that, during the discussions at LEG 105, a number of interventions had suggested that a multi-pronged approach would be necessary to effectively address the issue and that the solution would involve making accurate information about the status of a nation's registry widely and quickly available to shipowners and insurers, as well as to public officials.

7.4 The Committee recalled that it was suggested to use the Global Integrated Shipping Information System (GISIS) as a tool to 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; and that GISIS should be a platform to share information and transfer expertise and experience about registers having problems with fraudulent practices.

7.5 In this context, the Committee had requested the Secretariat to conduct a study on the cases received reporting on fraudulent use of a flag or of a registry and to submit this information to LEG 106. The Committee had also requested the Secretariat 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.

7.6 The Committee had for its consideration the following documents:

- .1 LEG 106/7 and LEG 106/7/Add.1 (Secretariat) providing a summary of cases related to the fraudulent registration and fraudulent registries of ships received by the IMO Secretariat in the past few years;
- .2 LEG 106/7/1 (Secretariat) proposing the creation of a new module on Registries within the existing Contact Points module of GISIS to address the issue brought to the attention of the Committee related to the fraudulent registration and fraudulent registries of ships;
- .3 LEG 106/7/2 (United States) highlighting a host of deceptive shipping practices that undermined the administration of national shipping registers and weakened United Nations sanctions, and proposing concrete measures to prevent unlawful practices associated with the fraudulent registration and fraudulent registries of ships, including the establishment of a circular of best practices to assist in combating fraudulent registration;
- .4 LEG 106/7/3 (Ukraine) drawing the attention of the Committee to the unlawful issuance of certificates of the right to sail under the flag of the Russian Federation by the Russian authorities in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, temporarily occupied by the Russian Federation;
- .5 LEG 106/7/4 (United Arab Emirates) providing comments on documents LEG 106/7 and LEG 106/7/1 and proposing the establishment of a working group with wide participation from various stakeholders to develop measures to prevent unlawful practices associated with the fraudulent registration and fraudulent registries of ships, as well as the consideration of a draft Assembly resolution to facilitate the implementation of the proposed new GISIS module on Registries; and

- .6 LEG 106/7/5 (United Republic of Tanzania) providing comments on document LEG 106/7 with a view to updating the Legal Committee on the situation regarding ships fraudulently flying the Tanzanian flag and continuing issues with the company Philtex Corporation.

7.7 In considering document LEG 106/7, the Committee noted the recent discussions the Secretariat had had with IHS Markit to improve the display of information on a ship which had been confirmed by the Administration as not legally registered under that Administration's flag. In such a case, a "false flag" would be shown for the particular ship in the module on Ship and company particulars in GISIS, whereas "no flag" or "unknown flag" had been displayed in the past, as described in paragraph 5 of document LEG 106/7. This status would change as and when the ship was registered under a new flag.

7.8 The Committee also noted that the Organization had taken steps to thoroughly review requests to access IMO web accounts and check their authenticity, as it had been deceived as well by individuals purporting to represent Governments in order to gain access to IMO web accounts. However, a more robust procedure needed to be put in place for the communication of information to the Organization, to prevent the recurrence of such situations.

7.9 The Committee noted the additional information provided by the delegation of Vanuatu, on a new illegal Vanuatu international ship registry, recently set up by the company Ahapi Shipping Agents.

7.10 In response to a comment related to the work of the United Nations Security Council, the Director of the Legal Affairs and External Relations Division informed the Committee of the ongoing cooperation between the Organization and the United Nations Security Council Sanctions Committee.

7.11 The Committee agreed that the fraudulent registration and fraudulent registries of ships raised serious concerns affecting the safety, security and protection of the marine environment, and needed to be addressed.

7.12 In the ensuing discussion, there was broad support for the creation of a comprehensive database of registries, a "register of registries", which should contain accurate and up-to-date information and be publicly accessible at any time. There was also support for a robust secure procedure for the communication of information to prevent attempts to defraud the Organization, as proposed in the annex to document LEG 106/7/1.

7.13 There was further support for this procedure to be adopted through an Assembly resolution, as proposed in document LEG 106/7/4.

7.14 The Committee agreed that the documents submitted were a valuable basis for discussions and also agreed with the proposal to establish a working group, as contained in document LEG 106/7/4. Some delegations were of the opinion that the working group might not have enough time to complete the work and that it should consider if an intersessional correspondence group should be established and recommend to the Committee accordingly.

7.15 Some delegations stated that the issues raised in document LEG 106/7/3 were political in nature, did not fall within the purview of this agenda item and could not be considered by the Committee or by the working group to be established. In this context the statement of the Russian Federation is attached to this report as annex 7.

7.16 PEW Charitable Trust Fund provided information on fraudulent registration of fishing vessels and offered to provide further details to the next session of the Committee.

7.17 In its support of the work of the Legal Committee with respect to the fraudulent registries, the United Nations Office on Drugs and Crime (UNODC) provided information on its legal framework and extensive work to prevent and counter transnational organized crime committed at sea, particularly in relation to the following illegal practices, which were commonly interlinked: piracy and armed robbery at sea; smuggling of migrants and human trafficking; illicit drug trafficking; and organized crime within the fishing industry.

7.18 The United Nations Conference on Trade and Development (UNCTAD) recalled the long-standing history of fruitful collaboration between UNCTAD and IMO, in line with the two Organizations' respective mandates, including the joint negotiation and adoption of the International Convention on Maritime Liens and Mortgages, 1993 and the International Convention on Arrest of Ships, 1999. UNCTAD expressed its concern regarding the growing problem of fraudulent ship registries and noted that addressing fraudulent practices effectively was vital to promoting maritime safety, security and environmental protection. UNCTAD also highlighted that this issue was also closely related to the achievement of the Sustainable Development Goals, notably Goals 14 and 16, and reiterated its support for combating unlawful practices associated with fraudulent registration and registries. UNCTAD further noted that in the interests of achieving relevant public policy objectives, stakeholders, including shippers and charterers, should also have access to information concerning registration and registries.

Establishment of a working group

7.19 The Committee decided to establish the Working Group on Measures to Prevent the Fraudulent Registration and Fraudulent Registries of Ships, chaired by Mr. Stephen Hubchen (United States), and instructed it, taking into consideration documents LEG 106/7, LEG 106/7/Add.1, LEG 106/7/1, LEG 106/7/2, LEG 106/7/4 and LEG 106/7/5, and in particular the proposed questions in document LEG 106/7/4, as well as the comments, proposals and decisions made in plenary, to:

- .1 consider the proposal to develop a module on registries and a procedure for the communication of information related to the module, as set out in document LEG 106/7/1, and advise the Committee accordingly;
- .2 based on the outcome of consideration under .1 above, finalize the text of the draft Assembly resolution on Measures to prevent the fraudulent registration and fraudulent registries of ships, contained in the annex to document LEG 106/7/4, for approval by the Committee;
- .3 consider the proposed LEG circular on Recommended best practices to assist in combating fraudulent registration and fraudulent registries, as set out in document LEG 106/7/2, with a view to finalizing it;
- .4 consider the specific proposals and recommendations in documents LEG 106/7/2, LEG 106/7/4 and LEG 106/7/5 and advise the Committee accordingly;
- .5 identify items for further consideration by the Legal Committee at its next session and develop a work plan;
- .6 consider and recommend if an intersessional correspondence group on further measures to prevent unlawful practices associated with the fraudulent registration and fraudulent registries of ships should be established, and, if so, develop draft terms of reference for the correspondence group; and
- .7 submit a written report on the work carried out to plenary on Friday, 29 March 2019.

Report of the Working Group

7.20 Having approved the report of the Working Group on Measures to Prevent the Fraudulent Registration and Fraudulent Registries of Ships (LEG 106/WP.4) in general, the Committee took decisions as reflected in the following paragraphs.

New function on Registries of ships in GISIS

7.21 In considering the information that the new function on Registries of ships in GISIS would contain, as agreed by the Working Group (paragraphs 8 to 13 of document LEG 106/WP.4), the Committee agreed with the proposal of the International Association of Classification Societies (IACS) that a country could also submit information on an entity which, in that country's knowledge, had tried to fraudulently register ships or had actually fraudulently registered ships. This would be in addition to information on the date from which authority to register ships for the country had been given to an entity and the date from which withdrawal of authority to register ships for the country took effect (as indicated in paragraph 12 of document LEG 106/WP.4).

7.22 The Committee requested the Secretariat to develop the new function on Registries of ships within the Contact Points module in GISIS and ensure that there would be fields for additional information that countries might provide.

Draft Assembly resolution on Measures to prevent the fraudulent registration and fraudulent registries of ships

7.23 In considering the annex to the draft Assembly resolution containing the Procedure for the communication of information to the Organization on registries of ships in the contact points module in GISIS, the Committee agreed with the proposal of IACS to add a new paragraph in the text of the Procedure, to reflect the additional information that a country might wish to provide when communicating information on registries, as set out in paragraph 7.21 above, in order to make the Procedure as robust as possible to prevent fraudulent registration and fraudulent registries of ships.

7.24 The Committee also noted that countries which did not have a High Commission or an Embassy in the United Kingdom might not be able to comply with some provisions of the Procedure as drafted. The Committee therefore agreed to amend the text of the original paragraphs 2, 3 and 4 of the Procedure, to ensure that the information could be communicated through the Permanent or Accredited Representation to the Organization, or through direct communication between the Secretariat and the Government concerned. The same procedure would be followed for the verification of the information by the Secretariat. The Committee authorized the Secretariat to effect the required amendments.

7.25 The Committee approved the draft *Procedure for the communication of information to the Organization on Registries of ships in the Contact Points module in GISIS*, as amended, together with the draft requisite Assembly resolution, as set out in annex 1 to this report, to be submitted to C 122 and thereafter A 31 for adoption. The Committee authorized the Secretariat, when preparing the final text of the draft Assembly resolution, to effect any editorial corrections that might be identified and renumber paragraphs, as appropriate.

Establishment of a correspondence group

7.26 The Committee, taking into account the need to further consider several remaining proposals and issues, established a correspondence group on Further measures to prevent the fraudulent registration and fraudulent registries of ships under the coordination of the United States,¹ with the following terms of reference:

Taking into account the comments and decisions made at LEG 106, the correspondence group is instructed to:

- .1 further consider the definitions of "fraudulent registration" and "fraudulent registry", based on those proposed in paragraph 7 of document LEG 106/WP.4;
- .2 consider the remaining proposals and recommendations in paragraph 7, sub-paragraphs 2, 4, 5, 6 and 7 of document LEG 106/7/2;
- .3 consider the questions raised in paragraph 2 of document LEG 106/7/4;
- .4 consider the recommendations in document LEG 106/7/5; and
- .5 submit a report to LEG 107.

Recommended best practices to assist in combating fraudulent registration and fraudulent registries

7.27 The Committee approved LEG.1/Circ.10 on *Recommended best practices to assist in combating fraudulent registration and fraudulent registries of ships*, as set out in annex 2 to this report, and requested the Secretariat to inform the Maritime Safety Committee (MSC) accordingly.

7.28 The Committee also endorsed the recommendation of the Working Group that the Organization should work with the United Nations Security Council to establish an easily searchable database, by IMO number and vessel name, of vessels currently the subject of, or designated pursuant to, United Nations Security Council resolutions.

Audio files: Wednesday, 27 March 2019: a.m. and p.m. and Friday, 29 March 2019: p.m.

8 REGULATORY SCOPING EXERCISE AND GAP ANALYSIS OF CONVENTIONS EMANATING FROM THE LEGAL COMMITTEE WITH RESPECT TO MARITIME AUTONOMOUS SURFACE SHIPS (MASS)

8.1 The Committee recalled that, at its last session, it had agreed 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 its 2018-2019 biennial agenda and the provisional agenda for LEG 106, with a target completion year of 2022.

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8.2 The Committee also recalled that LEG 105 had invited 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.

8.3 The Committee had the following documents for its consideration:

- .1 LEG 106/8 (Secretariat) providing a list of mandatory instruments under the purview of the Legal Committee which may be considered as part of the LEG regulatory scoping exercise for the use of MASS;
- .2 LEG 106/8/1 (Secretariat) reporting on the outcome of MSC 99 and MSC 100 regarding the regulatory scoping exercise of instruments related to maritime safety and security for the use of MASS;
- .3 LEG 106/8/2 (Canada, Denmark, Finland, France, Georgia, Germany, Marshall Islands, Netherlands, Norway, Republic of Korea, United Arab Emirates, United Kingdom and International Group of P & I Clubs) proposing a framework, methodology and work plan for the Legal Committee's regulatory scoping exercise on MASS and highlighting that specific adjustments needed to be made to the MSC framework and methodology to make it better suited to analysing LEG instruments in a timely and effective fashion;
- .4 LEG 106/8/3 (China) suggesting the establishment of an intersessional correspondence group, and proposing that LEG should focus on two levels of autonomy only (manned and unmanned MASS); and
- .5 LEG 106/8/4 (Republic of Korea) proposing modifications to the framework, methodology and procedures developed by MSC to make them better suited to the LEG regulatory scoping exercise on MASS, and discussing the role of the remote operator within the liability regime.

8.4 The Committee noted the information provided in document LEG 106/8/1 and invited the Secretariat to continue updating the Committee on the progress of MSC regarding maritime autonomous surface ships.

8.5 In considering the framework and methodology of the LEG regulatory scoping exercise, there was broad support for the proposals set out in documents LEG 106/8/2, LEG 106/8/3 and LEG 106/8/4. The Committee agreed to use the MSC methodology as the basis with appropriate adjustments to accommodate the specificities of the conventions under the purview of the Legal Committee, so as not to over-complicate its work. The Committee also agreed that the differentiation between the four degrees of autonomy was not as relevant in the context of the LEG regulatory scoping exercise and that, at this point in time, a simplified approach should be used focusing on two levels of autonomy only. There was general consensus that the regulatory scoping exercise of the conventions under the purview of the Legal Committee should follow a common approach together with the other committees of the Organization.

8.6 The Committee considered the list of instruments for the purposes of the regulatory scoping exercise, as set out in the annex to document LEG 106/8, and concluded that the exercise should not only focus on the most recent versions of the conventions, but that it should also include the older versions (e.g. LLMC 1976). The Committee did not include the United Nations Convention on the Law of the Sea (UNCLOS) or MLC, 2006 in the LEG regulatory scoping exercise for the time being, but agreed that this decision might have to be revisited in the future.

8.7 The Committee supported the usage of the web platform developed by MSC. In addition, a number of delegations suggested the establishment of an intersessional correspondence group. In this regard, the Committee decided that the working group should be tasked to consider whether an intersessional correspondence group on MASS should be established and, if so, develop draft terms of reference for the correspondence group.

8.8 In considering document LEG 106/8/4, the Committee noted that the role of the remote operator within the liability regime would have to be considered by the Legal Committee at some stage. However, it was agreed that this discussion was not within the scope of the regulatory scoping exercise.

8.9 The Committee noted, inter alia, the following general comments: MASS should not compromise safety, security and environmental protection and should be discussed in a comprehensive manner; and considering the drastic effect the introduction of MASS might have on seafarers, their concerns needed to be taken into consideration.

8.10 The delegation of Liberia informed the Committee that, since the drafting of document LEG 106/8/1, Liberia had committed to reviewing the International Convention on Tonnage Measurement of Ships, 1969 and the International Convention on Load Lines, 1966.

Establishment of the LEG Working Group on MASS

8.11 The Committee established the LEG Working Group on MASS and instructed it, taking into account documents LEG 106/8, LEG 106/8/1, LEG 106/8/2, LEG 106/8/3 and LEG 106/8/4, and any comments and decisions made in plenary, to:

- .1 finalize the list of LEG instruments to be included in the LEG regulatory scoping exercise;
- .2 finalize the framework, methodology, plan of work and procedures for the LEG regulatory scoping exercise;
- .3 consider and recommend if an intersessional correspondence group on maritime autonomous surface ships should be established and, if so, develop draft terms of reference for the correspondence group;
- .4 if time permitted, test the methodology on selected articles of LEG conventions; and
- .5 submit a written report to plenary by Friday, 29 March 2019.

Report of the Working Group

8.12 In considering the report of the LEG Working Group on MASS (LEG 106/WP.5), the Committee noted the concern from one delegation, which reiterated the importance of looking at the possible impact MASS would have on seafarers and port operations. The Committee concurred that these were important and relevant considerations, and that issues related to the human element would be considered by MSC and the Sub-Committee on Human Element, Training and Watchkeeping (HTW), if tasked to do so.

8.13 The Committee also noted a statement by the International Federation of Shipmasters' Associations (IFSMA) referring to certain high level legal issues, which would need to be considered by the Organization as a whole, in particular concerning the notions of "seaworthiness" of a ship or "good seamanship", as required by article 94 of UNCLOS and

Rule 9 of the Convention on the International Regulations for Preventing Collisions at Sea, 1972 (COLREGs). As requested by IFSMA, the full statement is attached to this report as annex 7.

8.14 The Committee further noted a statement by one delegation that the regulatory scoping exercise should address some of the serious issues emerging in connection with the introduction of MASS regarding jurisdiction over and liability of the remote operator, the companies that employed them, as well as the providers of sensors or software based on artificial intelligence which would be involved in the operation of MASS.

8.15 Having considered the report of the LEG Working Group on MASS (LEG 106/WP.5), the Committee approved it in general and agreed to:

- .1 approve the framework for the LEG regulatory scoping exercise, including the plan of work and procedures as set out in annex 3 to this report;
- .2 invite Member States and observer organizations willing to volunteer to lead or support the initial review of specific instruments to inform the Secretariat no later than 30 April 2019; and
- .3 request the Secretariat to assist with certain tasks during the LEG regulatory scoping exercise, such as pre-populating the information, assigning relevant permissions to users and dealing with any other administrative issues, as appropriate.

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9 PIRACY

9.1 The Committee recalled that, at its 105th session, it had invited the Secretariat to continue reporting on piracy-related developments which had occurred since its last session, including relevant developments at ILO.

9.2 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), on the status of the Djibouti Code of Conduct, and on piracy-related decisions taken by other IMO bodies, such as MSC.

9.3 The Committee considered document LEG 106/9 (Secretariat) reporting on developments related to piracy which had occurred since the 105th session of the Legal Committee, specifically the considerations by MSC 99 and the progress made by UNODC on the issue of floating armouries; actions taken by MSC to tackle piracy and armed robbery against ships since MSC 98; the status of the Jeddah Amendment to the Djibouti Code of Conduct 2017; the twenty-first plenary session of the CGPCS, which took place in Nairobi from 12 to 13 July 2018; and the status of the amendments to the Code of the MLC, 2006, providing for the protection of seafarers' wages and other entitlements when they were held captive on or off the ship as a result of acts of piracy or armed robbery against ships, and expected to enter into force on 26 December 2020.

9.4 The representative of UNODC provided additional information to the Committee regarding the ongoing work of UNODC on piracy-related issues. The first annual Maritime Law Expert Conference convened by UNODC dealt with a wide range of issues such as floating armouries, terrorism at sea and privately contracted armed security personnel, which were also addressed in the second edition of the UNODC document "Maritime Crime: A Manual for

Criminal Justice Practitioners". UNODC also informed the Committee that it was working on the issue of stateless vessels and was preparing legal guidance on criminal jurisdiction and international judicial cooperation concerning these vessels, which would be finalized at the second annual Maritime Law Expert Conference with the involvement of IMO.

9.5 One delegation questioned the mandate of the Committee to consider piracy-related issues and argued that MSC was the competent Committee with regards to piracy-related matters.

9.6 The view was expressed that reporting on piracy-related matters to LEG would not infringe on the mandate of MSC and any decision on such matters would be referred to MSC.

9.7 The Committee noted the above information and invited the Secretariat to continue reporting on piracy-related matters.

Audio file: Thursday, 28 March 2019: p.m.

10 WORK OF OTHER IMO BODIES

10.1 The Committee noted the information provided in document LEG 106/10 (Secretariat) on the outcomes of MSC 99, MSC 100, HTW 5, FAL 42, TC 68, C 120, C 121, MEPC 73 and LC 40, in relation to matters of relevance to its work.

10.2 The Committee noted in particular the report of FAL 42 and the issues referred to it for noting, namely, decisions on the legal status of the appendices to the 1965 FAL Convention; the use of electronic certificates; the administrative requirements; the maritime single window prototype; the issues of unsafe mixed migration at sea and maritime corruption; and the FAL revised Rules of Procedure, and the *Organization and method of work* (FAL 42/17, paragraph 17.6).

10.3 The Committee also noted the decision of C 120 regarding access to information, particularly on the release of meeting audio files, documents and reports to the public (C 120/D, paragraph 4.9), and agreed to discuss the decision further under agenda item 13 (Work programme) in relation to the agenda for LEG 107.

10.4 The Committee endorsed the amendments to the *List of certificates and documents required to be carried on board ships, 2017* (FAL.2/Circ.131-MEPC.1/Circ.873-MSC.1/Circ.1586-LEG.2/Circ.3), as approved by MSC 99 (MSC 99/22, paragraph 22.6.2), and noted that a corrigendum on the amendments to the List had been issued on IMODOCS as FAL.2/Circ.131/Corr.1-MEPC.1/Circ.873/Corr.1-MSC.1/Circ.1586/Corr.1-LEG.2/Circ.3/Corr.1.

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11 TECHNICAL COOPERATION ACTIVITIES RELATED TO MARITIME LEGISLATION

Technical cooperation activities on maritime legislation for 2018

11.1 The Committee considered document LEG 106/11 (Secretariat) reporting on the technical cooperation activities relating to maritime legislation for 2018. The Committee noted, in particular, that during the period under review the Legal Affairs Office (LAO) had continued to deliver workshops on the IMO liability and compensation conventions to assist participating countries in obtaining a comprehensive overview of the conventions and developing relevant legislation to fully implement these instruments.

11.2 In this context, the Committee noted that the new publication *IMO Liability and Compensation Regime* was available for purchase from IMO Publishing (product code I455E), and that the publication, which contained all conventions related to liability and compensation emanating from the Legal Committee since its inception in 1967, was developed to assist Member States with the effective and uniform implementation of the IMO liability and compensation regime and provided a practical and comprehensive reference book for Administrations, NGOs and private companies alike.

11.3 The Committee also noted that the second workshop on general principles of drafting national legislation to implement IMO conventions had taken place at IMO Headquarters from 1 to 5 October 2018 for 20 countries scheduled to undergo the IMO Member State Audit in 2019 and 2020. The workshop was organized by LAO in collaboration with the Technical Cooperation Division (TCD) and was attended by 26 qualified lawyers, policymakers, legislative advisers and/or drafters, from both civil and common law systems. The Committee noted that the same workshop would be organized in October 2019.

11.4 The Committee was informed that several countries participating in the workshop had suggested that IMO should provide the official versions of the consolidated texts of all conventions, as these were needed for accession to IMO instruments or the submission of the national implementing legislation through the legislative process.

11.5 During the ensuing discussion, the following views were expressed:

- .1 the Organization's work in the framework of the technical cooperation activities relating to the drafting and implementation of maritime legislation was much appreciated;
- .2 the workshops on the drafting of maritime legislation should be open to wider participation;
- .3 there was a need for easily accessible official versions of consolidated texts of IMO conventions, particularly for ratification purposes and for implementation into national legislation; some delegations suggested that, while these consolidated texts should be made available, they should not necessarily be free, recognizing that providing such consolidated texts could potentially impact the Technical Cooperation Fund;
- .4 the consolidated texts should be available to the Member States free of charge; and
- .5 research by the Secretariat on the anticipated costs of producing official versions of consolidated texts of IMO conventions would be useful in determining whether or not to make the consolidated texts free.

11.6 The Committee noted that it would be for the Council to decide whether or not to produce certified true copies of consolidated texts of all IMO conventions, and whether or not to make them free.

11.7 With the understanding that any action suggested by the Legal Committee would need the Council's consideration, the Committee invited the Council to initiate a programme to develop certified true copies of consolidated texts of all IMO conventions to assist in their implementation into the domestic legislation.

11.8 The Committee expressed its appreciation to the Secretariat and noted the information provided in document LEG 106/11.

IMO International Maritime Law Institute (IMLI)

11.9 The Committee considered document LEG 106/11/1 (Secretariat) reporting on IMLI's activities for the year 2018. The Committee noted, in particular, that by the end of the academic year 2017-2018 a total of 949 students from 140 States and territories worldwide had undergone studies in all of IMLI's programmes and courses, of which 781 students from 136 States and territories had successfully undergone studies within IMLI's Master of Laws (LL.M.) programme and 9 students from 9 States and territories had successfully undergone studies within IMLI's Master of Humanities (M.Hum.) programme.

11.10 The Committee noted that during the current academic year 40 students from 28 States were pursuing studies under the LL.M. programme and 7 students from 7 States (Belize, Djibouti, Ghana, Greece, Malaysia, Seychelles and Tunisia) were pursuing studies under the M.Hum. programme. The Committee also noted that Djibouti, Gabon, Luxembourg, Saint Lucia, Somalia, and Turks and Caicos Islands were represented for the first time in the Institute's Master's programmes.

11.11 The Committee further noted that 2019 marked the 30th anniversary of IMLI in the service of the rule of international maritime law and that, to commemorate this important milestone, various activities were being organized throughout the academic year and would culminate with a Commemorative Seminar to be held at the IMO Headquarters in London on 25 June 2019.

11.12 The Committee noted document LEG 106/INF.2 (Secretariat) providing the list of dissertations and maritime legislation drafting projects for the academic years 2017-2018 and 2018-2019.

11.13 The Committee also noted document LEG 106/INF.3 (Secretariat) enclosing the IMO IMLI dissertation written by Mr. Watchara Chiemanukulkit (Thailand), entitled "Legislative Techniques for the Implementation of IMO Instruments into Domestic Legislation", which was awarded the IMO Secretary-General's Prize for Best Dissertation for the academic year 2017-2018.

11.14 The Committee congratulated Mr. Watchara Chiemanukulkit, who was attending the session as a member of the delegation of Thailand.

11.15 The Committee emphasized the importance of IMLI's contributions to building legal expertise and to the development of maritime law, and congratulated the Institute for celebrating 30 years of success. The Committee also expressed its appreciation to the Maltese Government for hosting IMLI.

Thematic priorities for the Integrated Technical Cooperation Programme (ITCP) for 2020-2021

11.16 The Committee considered document LEG 106/11/2 (Secretariat) related to the thematic priorities for inclusion in the ITCP covering the 2020-2021 biennium.

11.17 The Committee noted, in particular, that under the thematic priorities approved at its 104th session LAO was delivering two main types of technical cooperation activities in the field of maritime legislation: activities on general principles of drafting national legislation to implement IMO conventions; and activities on the IMO liability and compensation conventions, in support of strategic direction 1 of the Strategic Plan for the Organization for the six-year period 2018 to 2023, "Improve implementation".

11.18 The Committee also noted that many of the activities had been implemented following requests for assistance in drafting, updating and bringing into force national maritime legislation for the effective implementation of IMO instruments, received from Member States either preparing for the IMO Member State Audit Scheme (IMSAS) or as a result of IMSAS.

11.19 Having considered that assistance to Member States in relation to maritime legislation was covered under the three thematic priorities, as set out in the table in document LEG 106/11/2, the Committee approved them and instructed the Secretariat to forward these to the Technical Cooperation Committee for inclusion in the ITCP covering the 2020-2021 biennium.

Audio file: Thursday, 28 March 2019: p.m.

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

12.1 The Committee noted the information contained in document LEG 106/12 and its addendum on the status of conventions and other treaty instruments emanating from the Legal Committee.

12.2 The Committee encouraged Member States to ratify the 2010 HNS Protocol to enable its entry into force, as well as the 2005 SUA Protocols, and the 2002 PAL Protocol.

12.3 Member States were reminded to submit, at the time of accession to the 2010 HNS 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. Member States were also reminded to implement the increase in the liability limits into their national legislation, when ratifying the 1996 LLMC Protocol.

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

- .1 The delegation of Canada announced that, on 28 February 2019, it had adopted legislation for the implementation of the 2007 Nairobi Wreck Removal Convention, and that the instrument of accession to the Convention would be deposited in the next few weeks, accompanied by a declaration to extend the application of the Convention to wrecks located within its territorial sea.
- .2 The delegation of Indonesia informed the Committee about the significant national progress made in preparations for the ratification of a number of conventions, including the 1995 STCW-F Convention, the Fund Conventions and the 1990 OPRC Convention.

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- .3 The delegation of Japan informed the Committee that bills for the ratification of the 2007 Nairobi Wreck Removal Convention and the 2001 Bunkers Convention had been submitted for consideration by the relevant national authorities and that the instruments of accession to both Conventions would be deposited in due course. The delegation of Japan also announced that it had deposited its instrument of accession to the 2009 Hong Kong Convention on 27 March 2019 and encouraged Member States to take necessary action to ensure its early entry into force.
- .4 The delegation of Singapore informed the Committee that over the previous year, it had taken steps towards acceding to the 1996 LLMC Protocol and the 1989 SALVAGE Convention. Legislation to implement both treaties into domestic law had been passed by Parliament in January 2019; and Singapore would be depositing both instruments of accession in due course.
- .5 The delegation of Cyprus informed the Committee of the further progress made towards accession to the 2002 PAL Protocol and the 2005 SUA Protocols, including the drafting of the relevant national legislation, and that it anticipated the deposit of the requisite instruments of accession to the 2005 SUA Protocols by 2020. Cyprus, which had acceded to the 1996 HNS Convention in 2005, also informed the Committee that its Maritime Administration had given preliminary consideration towards the ratification of the 2010 HNS Protocol, and that it was drafting the relevant legislation.
- .6 The International Group of P & I Clubs invited delegations, when submitting instruments of ratification to the 2002 PAL Protocol, to do so with the 2006 reservation to ensure that war and terrorism liabilities were capped at \$500 million.

12.5 The Committee endorsed and supported the Secretary-General's continuing efforts to encourage Governments to consider accepting those treaties to which they were not yet parties; and encouraged delegations to work with their respective Governments towards achieving effective and uniform implementation of IMO conventions and to report any barriers to implementation to the Legal Committee for advice and guidance.

Audio file: Thursday, 28 March 2019: p.m.

13 WORK PROGRAMME

Proposal for a new output

13.1 The Committee considered document LEG 106/13 (Greece, Marshall Islands, ICS and International Group of P & I Clubs), proposing a new output to develop a Unified Interpretation on the test for breaking the owner's right to limit liability under the IMO liability and compensation conventions.

13.2 In considering this proposal, the Committee took into account the provisions of the document on the *Organization and method of work of the Legal Committee* (LEG.1/Circ.9) and the preliminary assessment of the proposal undertaken by the Chair, in consultation with the Vice-Chair and the Secretariat (LEG 106/WP.2).

13.3 Following an in-depth discussion on the proposal, there was broad support for the inclusion of the new output on a Unified Interpretation on the test for breaking the owner's right to limit liability under the IMO conventions. During the discussion, the following views were expressed:

- .1 A Unified Interpretation (UI) would contribute to consistency. However, it would be more appropriate if some examples of inconsistent interpretation were provided.
- .2 Courts in all States parties would not have the same understanding of provisions of conventions and national courts should be free to make their own interpretation in accordance with their national legal systems.
- .3 UIs were beneficial for consistency and could provide assistance to national courts.
- .4 The mechanism for interpretation should be discussed further. It was not clear whether a UI or other mechanisms, such as harmonized interpretation, was appropriate.
- .5 UI was a frequent practice at IMO in relation to technical conventions, but might not be appropriate in this particular case. The conventions were clear about the circumstances in which the shipowner could limit liability, and those provisions were accordingly applied by judges. A UI which would seem to restrict the freedom of interpretation of a judge on the liability of a shipowner could be misconstrued and could have consequences for the long-term viability of the system as well as for the reputation of IMO.
- .6 A UI was not an appropriate way to address the issue. There were other ways to examine this question, as was already raised during the IOPC Funds Assembly meeting in October 2017. In considering the shipowner's right to limit liability, the impact on other protected rights should be taken into account in order to ensure that they were not jeopardized in the process. This new output could be approved but the Committee should examine how to address it and invite concrete proposals to LEG 107. At LEG 107, a working group could be established and LEG 108 would consider the outcome of this working group.
- .7 The civil liability regime was one of the most successful of all IMO conventions and it was timely to examine those conventions. The regime would be at risk if the Committee did not develop the UI. Although the wording of conventions was clear, it was not applied in a unified manner and this output would assist in ensuring the consistent and successful operation of the liability regime.
- .8 There was an urgent need to provide clear guidance on the interpretation of liability conventions to avoid any discrepancies and this would significantly assist shipowners, insurers and other stakeholders.
- .9 Sometimes the text of the convention was interpreted against its spirit.
- .10 The shipowner's right to limit liability was a quid pro quo for them accepting strict liability.
- .11 A UI would greatly assist the equal treatment of claims.

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- .12 A UI was appropriate to achieve consistency and uniformity. This would not fetter the national courts' ability to interpret civil liability conventions. National courts could also interpret technical conventions for which UIs had been developed.
- .13 UIs might be considered by national courts as non-binding, and not having the same effect as an amendment. Therefore, the Committee might consider the option of possible amendments as a better way to achieve consistency in the interpretation of the treaties.
- .14 The proposal for the new output would not address all questions with respect to the implementation of the current liability and compensation regime. The entire regime should be examined in the new output and discussed further by the Committee.

13.4 In conclusion, the Committee agreed to:

- .1 include a new output on "Unified Interpretation on the test for breaking the owner's right to limit liability under the IMO conventions" in the 2020-2021 biennial agenda of the Legal Committee, with a target completion year of 2021;
- .2 invite concrete proposals to LEG 107 on the scope of the work on the new output;² and
- .3 include the item in the provisional agenda for LEG 107.

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

13.5 The Committee recalled that the Council, at its 120th regular session, had endorsed the Committee's decisions on outputs for the 2018-2019 biennium.

13.6 The Secretariat introduced document LEG 106/13/1 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 Assembly. Such reports shall identify new outputs accepted for inclusion in the biennial agendas.

13.7 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 annex 1 to document LEG 106/13/1. In particular, the Committee was invited to consider deleting the square brackets in the "Status of outputs for Year 2" of the present biennium, i.e. 2019.

13.8 Moreover, the Committee considered the relevant outputs as attached in annex 2 to document LEG 106/13/1 which only referred to LEG as the parent organ and were proposed for inclusion in the post-biennial agenda of the Committee.

² The International Group of P & I Clubs (P & I Clubs) offered to coordinate informal discussions on proposals for LEG 107. The contact point for P & I Clubs is Mr. David Baker, who may be contacted at David.Baker@InternationalGroup.org.uk.

13.9 The Committee agreed on its report on the status of outputs for the current biennium and on the outputs to be included in its Post-Biennial Agenda, attached as annexes 4 and 5 to this report respectively, for submission to the Council.

Items for inclusion in the agenda for LEG 107

13.10 The Committee approved the list of substantive items for inclusion in the agenda for LEG 107, as contained in document LEG 106/WP.3 and attached as annex 6 to this report.

Release of LEG 107 documents to the public

13.11 The Committee considered the information provided in document LEG 106/10 (paragraphs 20 and 38.3) regarding the decisions taken by the Council, at its 120th session, to remove any restriction explicit or implied on sponsors of documents, so that those who wished to release their documents to the public via IMODOCS prior to a meeting could do so; and also authorizing the release of Secretariat documents pre-meeting for committee meetings, with the ability for committees to designate specific Secretariat documents as private and non-releasable in advance.

13.12 The Committee noted that, in light of the above Council decisions, it was necessary for it to take a decision on the release of LEG 107 documents to the public, bearing in mind the following comments:

- .1 With regard to paragraph 20.5 of document LEG 106/10, one delegation raised a question regarding when an item under discussion would be considered "concluded," such that the Secretariat could report on the outcome to the media. The Secretariat indicated that whilst they would normally not need to wait until the report of the committee or subcommittee (i.e. WP.1) had been adopted, as decisions were not normally reversed at that point, they would not report on a decision until after the report of a working group or drafting group had been approved, or, if not relevant, the final decision had been taken by that committee or subcommittee.
- .2 With regard to paragraph 20.3 of document LEG 106/10, several delegations expressed the view that all Secretariat documents for LEG 107 should be released to the public pre-meeting.

13.13 In conclusion, the Committee:

- .1 invited co-sponsors of documents who wished to release their documents to the public via IMODOCS prior to LEG 107 to do so; and
- .2 designated all LEG 107 Secretariat documents as public and releasable to the public prior to LEG 107.

Meeting time in the next biennium

13.14 The Committee agreed that two meetings should be adequate for the 2020-2021 biennium and, in view of the present workload, agreed that the next session should be held during five meeting days with eight full sessions of interpretation, and that the budgetary implications of the increased meeting time required would be addressed at C 122.

Audio file: Friday, 29 March 2019: a.m.

14 ELECTION OF OFFICERS

Election of the Chair

14.1 The Committee, in accordance with rule 18 of its Rules of Procedure, unanimously re-elected Mr. Volker Schöfisch (Germany) as Chair for 2020.

Election of the Vice-Chair

14.2 The Committee, in accordance with rule 18 of its Rules of Procedure, unanimously re-elected Ms. Gillian Grant (Canada) as Vice-Chair for 2020.

Audio file: Thursday, 28 March 2019: p.m.

15 ANY OTHER BUSINESS

Fair treatment of seafarers on suspicion of committing maritime crimes

15.1 The Committee had for its consideration the following two documents:

- .1 LEG 106/15 (Georgia, Ukraine and ITF) providing information and justification for the creation of an IMO/ILO/ITF working group to develop guidelines and recommendations for the prevention of seafarers' involvement in criminal activities at sea, and violations of seafarers' rights when detained on suspicion of committing maritime crimes; and
- .2 LEG 106/15/1 (ILO) providing comments on document LEG 106/15 and information on the work of ILO and IMO on the fair treatment of seafarers on suspicion of committing maritime crimes.

15.2 There was broad support for the proposal in document LEG 106/15 to create a joint IMO/ILO/ITF working group to address the issues raised.

15.3 Many delegations highlighted the inadequacy of the current guidelines as they were limited to the fair treatment of seafarers in the case of a maritime accident and did not adequately address the fair treatment of seafarers detained on suspicion of committing maritime crimes.

15.4 A number of delegations expressed the view that any new guidelines should not overlap with existing international and domestic law.

15.5 One delegation welcomed the proposal but requested more information on how the working group would function, as well as a demonstration that there was a clear need, bearing in mind the costs involved and the current workload of the Committee.

15.6 The Committee noted the comments and invited interested parties to submit a proposal for a new output, in accordance with the *Organization and method of work of the Legal Committee* (LEG.1/Circ.9), to LEG 107.

15.7 The Committee requested the Secretariat to coordinate with ILO on the potential activation of a joint working group on the fair treatment of seafarers detained on suspicion of committing maritime crimes, and provide relevant information at LEG 107, to be considered in conjunction with any proposal for a new output.

Safety and security of masters and crew

15.8 ICS made a statement regarding a safety and security incident following the rescue of 108 people by the tanker **Elhiblu 1**. ICS stated that the ship was subsequently reported to have been secured by Maltese authorities and expressed its appreciation for the swift and decisive action taken. ICS urged Member States to ensure that whatever the circumstances of a rescue, or the situation on board a ship thereafter, action should be taken to ensure the safety and security of masters and crew that had met their legal and moral obligations under UNCLOS and SOLAS. The statement made by ICS was supported by IFSMA in a separate statement.

15.9 The Committee noted the statements of ICS and IFSMA which, upon request, are set out in full in annex 7 to this report.

Provision of satellite services to vessels

15.10 The delegation of the Islamic Republic of Iran made a statement, drawing the Committee's attention to recent instances of a satellite service provider denying some satellite services to Iranian shipping companies and vessels based on the possibility of differentiation between safety and commercial communications. The statement of the Islamic Republic of Iran was supported by ITF in a separate statement.

15.11 The delegation of the United States did not support the statement made by the Islamic Republic of Iran and encouraged delegations and companies with questions about the relevant sanctions to consult its offices that were implementing them.

15.12 The Russian Federation made a separate statement expressing its view that the unilateral imposition of restrictions on States outside the existing mechanisms of the United Nations system and the refusal to provide publicly available services in shipping for political or other reasons were destructive factors for the reputation of both those who imposed such restrictions and for IMO as a whole and should not be accepted.

15.13 The International Mobile Satellite Organization (IMSO) noted the questions raised by the delegation of the Islamic Republic of Iran on satellite services and stated that it would carry out follow-up action on the issues that fell within its scope of work and would advise the Islamic Republic of Iran and the Secretariat on the outcome.

15.14 The Committee noted the statements of the delegations of the Islamic Republic of Iran, the Russian Federation and the United States which, upon request, are set out in full in annex 7 to this report.

Audio file: Friday, 29 March 2019: a.m. and p.m.

ANNEX 1

**DRAFT ASSEMBLY RESOLUTION ON MEASURES TO PREVENT THE FRAUDULENT
REGISTRATION AND FRAUDULENT REGISTRIES OF SHIPS**

THE ASSEMBLY,

RECALLING Article 15 of the Convention on the International Maritime Organization regarding the functions of the Assembly,

NOTING the duties of the flag State under the international law of the sea, including the provisions of articles 91 and 94 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS),

NOTING ALSO the increase in the number of cases of fraudulent registration and related practices and fraudulent registries of ships received by the Organization,

RECALLING the Legal Committee's discussions about measures to prevent such unlawful practices,

RECOGNIZING that the fraudulent registration of ships and the operation of fraudulent registries endangers the integrity of maritime transport, and undermines the legal foundation of the Organization's treaty and regulatory regime,

ACKNOWLEDGING that the consequences of not addressing the issues could contribute to the proliferation of fraudulent registries and may lead to adverse impacts on maritime safety, security and protection of the environment,

BEING DEEPLY CONCERNED that some ships have been registered on the basis of false or forged documentation,

RECOGNIZING the undesirability of the registration of ships through unlawful practices,

BEARING IN MIND that existing instruments of IMO or the United Nations do not adequately address the fraudulent registration and fraudulent registries of ships,

BELIEVING that these issues could be better prevented if accurate and complete information on the legitimate bodies authorized to register ships for Governments is available to all maritime users at all times,

RECOGNIZING that the Global Integrated Shipping Information System (GISIS) could be used as a centralized repository of this information,

RECOGNIZING ALSO that the information regarding the legitimate registries should be transmitted securely to the Secretary-General,

CONVINCED that the efforts of Governments and the Secretary-General will be assisted by procedures of communication designed to secure the transmission of information between Governments and the Secretary-General,

HAVING CONSIDERED the recommendations made by the Legal Committee at its 106th session,

- 1 ADOPTS the Procedure for the communication of information to the Organization on Registries of ships in the Contact Points module in GISIS, as set out in the annex to the present resolution;
- 2 URGES Governments to submit information on their Registries of ships to the Organization using the Procedure in the annex;
- 3 REQUESTS the Legal Committee to keep the Procedure under review and to take further action as it may consider necessary in light of developments;
- 4 REQUESTS the Secretary-General to bring this Assembly resolution to the attention of the Secretary-General of the United Nations for information.

ANNEX

PROCEDURE FOR THE COMMUNICATION OF INFORMATION TO THE ORGANIZATION
ON REGISTRIES OF SHIPS IN THE CONTACT POINTS MODULE IN GISIS

1 Governments should transmit to the Secretary-General the name of their national governmental body(ies), or authorized/delegated entities in charge of registration of ships, together with the list of any field offices maintained by that/those body(ies) or entities, accompanied by the name(s), address(es), telephone/fax numbers and email(s) of the person(s) and/or entities authorized to register ships, as well as the website(s) of the national and field office(s).

2 Governments may provide additional information, such as the date from which authority to register ships for the country concerned has been given to an entity and the date from which withdrawal of authority to register ships for the country concerned takes effect, as well as information on an entity that has tried to fraudulently register ships, or has actually fraudulently registered ships.

3 The complete information shall be communicated to the Secretary-General in writing. It should be communicated through the Embassy/High Commission or Permanent Mission of the Government concerned in the United Kingdom, if so established.

4 If the Government concerned does not have an Embassy or High Commission in the United Kingdom or Permanent Mission, the information should be communicated through the Embassy/High Commission in another country or the Permanent or Accredited Representation to the Organization. If none of these exists, the Secretariat shall liaise directly with the Government concerned.

5 The Secretariat shall verify the information received, through direct communication with the Ambassadors, Permanent or Accredited Representatives, Members of Permanent Missions or Liaison Officers to ensure its accuracy before accepting it. If none of these exists, the Secretariat shall liaise directly with the Government concerned.

6 The Secretariat shall enter the verified information on the Registries of ships in the Contact Points module in GISIS without delay.

7 The information on the Registries of ships shall be regularly reviewed and updated as needed by the Governments.

8 Any change to the name and/or contact details of the Registries of ships shall be made known in writing to the Secretary-General, without delay, following the procedure described in paragraphs 1 and 2 above.

ANNEX 2



E

4 ALBERT EMBANKMENT
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LEG.1/Circ.10
8 May 2019

**RECOMMENDED BEST PRACTICES TO ASSIST IN COMBATING FRAUDULENT
REGISTRATION AND FRAUDULENT REGISTRIES OF SHIPS**

1 The Legal Committee, at its 106th session (27 to 29 March 2019), received proposals for measures to prevent unlawful practices associated with the fraudulent registration and fraudulent registries of ships. Fraudulent registration practices and related unlawful practices include the registration of vessels without the knowledge or approval of the relevant national maritime administration. Such fraudulent registrations are accomplished through a combination of tactics that may include falsified documentation, seemingly-legitimate registry websites, and shell companies purporting to conduct lawful functions of the cognizant flag State. Other fraudulent registration practices include vessels, formerly entitled to fly the flag of a given State, continuing to fly that flag after its registration has expired or has otherwise been terminated, fraudulent representations made to the International Maritime Organization (IMO) without knowledge of the flag State, and physically or constructively altering vessel identification. Fraudulent registration is often used to conceal illicit activity on board a vessel, and undermine United Nations sanctions.

2 The Committee, therefore, recommended the following best practices:

- .1 Flag State Administrations should verify IMO numbers of vessels when receiving an application for registration. The IMO numbers can be verified through the GISIS Ship and Company Particulars module. If the IMO number and ship name do not clearly match, additional investigation should be conducted prior to proceeding to register the vessel. In particular, the receiving flag State should contact the previous flag State to confirm the application information and its intended release from its registry.
- .2 Flag State Administrations should ensure their Continuous Synopsis Record Contact Information in the Contact Points module in GISIS is entered and up to date.
- .3 For vessels required to comply with SOLAS, regulation 5 of SOLAS chapter XI-1 outlines requirements for the Continuous Synopsis Record, which is intended to provide an onboard record of the history of the ship. It is required to be issued by the flag Administration and includes the name of the ship, the ship's IMO number, registered owner and operators, date of registration, date registration ended and other important information. Regulation 5 also outlines the responsibilities of Contracting Administrations in regards to sharing, reviewing and updating the Continuous Synopsis

Record. As a best practice it is recommended that the receiving flag State review and confirm the Continuous Synopsis Record with the current flag State before completing the registration. Relatedly, current flag States are reminded of their duty, under regulation 5.8 of SOLAS chapter XI-1, to transmit to the receiving flag State Administration a copy of the Continuous Synopsis Record covering the period during which the ship was under their jurisdiction, together with any Continuous Synopsis Records previously issued to the ship by other States.

- .4 Prospective flag States should also review the United Nations Security Council Sanctions List Search webpage at: <https://scsanctions.un.org/search/>
- .5 Interested parties should verify the relevant information pertaining to Registries of ships in the Contact Points module in GISIS.

ANNEX 3

FRAMEWORK FOR THE LEG REGULATORY SCOPING EXERCISE

Aim

1 The aim of the regulatory scoping exercise is to determine how safe, secure and environmentally sound Maritime Autonomous Surface Ships (MASS) operations and the related legal matters might be addressed in IMO instruments.

Objective

2 The objective of the regulatory scoping exercise on MASS conducted by the Legal Committee is to assess the degree to which the existing regulatory framework under its purview may be affected in order to address MASS operations.

Glossary¹

3 For the purpose of the regulatory scoping exercise, "Maritime Autonomous Surface Ship (MASS)" is defined as a ship which, to a varying degree, can operate independent of human interaction.

4 To facilitate the process of the regulatory scoping exercise, the degrees of autonomy are organized as follows:

Degree one: *Ship with automated processes and decision support:* Seafarers are on board to operate and control shipboard systems and functions. Some operations may be automated and at times be unsupervised but with seafarers on board ready to take control.

Degree two: *Remotely controlled ship with seafarers on board:* The ship is controlled and operated from another location. Seafarers are available on board to take control and to operate the shipboard systems and functions.

Degree three: *Remotely controlled ship without seafarers on board:* The ship is controlled and operated from another location. There are no seafarers on board.

Degree four: *Fully autonomous ship:* The operating system of the ship is able to make decisions and determine actions by itself.

5 The above list does not represent a hierarchic order. It should be noted that MASS could be operating at one or more degrees of autonomy for the duration of a single voyage.

Instruments

6 The list of mandatory instruments to be considered as part of the LEG regulatory scoping exercise is set out in appendix 1.

¹ The glossary developed by the Maritime Safety Committee is used to ensure a consistent approach throughout the Organization.

Type and size of ships

7 The application of the regulatory scoping exercise should be restricted to the applicability of the instruments under consideration.

Methodology

8 As a first step, the regulatory scoping exercise will undertake a provision by provision review of each instrument to be considered as part of the LEG regulatory scoping exercise and allocate one of the following answers:

- .A apply to MASS and prevent MASS operations; or
- .B apply to MASS and do not prevent MASS operations and require no actions; or
- .C apply to MASS and do not prevent MASS operations but may need to be amended or clarified, and/or may contain gaps; or
- .D have no application to MASS operations.

9 Appendix 2 provides the template to be used to guide the documentation of results and, if necessary, present the results of the first step of the regulatory scoping exercise.

10 Once the first step is completed, a second step will be conducted to analyse and determine the most appropriate way of addressing MASS operations, taking into account the human element,² by:

- .I developing interpretations; and/or
- .II amending existing instruments; and/or
- .III developing new instruments; or
- .IV none of the above as a result of the analysis.

Plan of work and procedures

11 A plan of work and procedures for the regulatory scoping exercise is provided in appendix 3.

² Refer to resolution A.947(23), *Human element vision, principles and goals for the Organization*.

APPENDIX 1

List of instruments emanating from the Legal Committee

A CONVENTIONS UNDER THE PURVIEW OF THE LEGAL COMMITTEE

- (1) **BUNKERS 2001** – International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001
- (2) **CLC 1969** – International Convention on Civil Liability for Oil Pollution Damage, 1969
- (3) **CLC PROT 1976** – Protocol of 1976 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969
- (4) **CLC PROT 1992** – Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969
- (5) **FUND PROT 1992** – Protocol of 1992 to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971
- (6) **FUND PROT 2003** – Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992
- (7) **NUCLEAR 1971** – Convention relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material, 1971
- (8) **PAL 1974** – Athens Convention relating to the Carriage of Passengers and Their Luggage by Sea, 1974
- (9) **PAL PROT 1976** – Protocol of 1976 to the Athens Convention relating to the Carriage of Passengers and Their Luggage by Sea, 1974
- (10) **PAL PROT 2002** – Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and Their Luggage by Sea, 1974
- (11) **LLMC 1976** – Convention on Limitation of Liability for Maritime Claims, 1976
- (12) **LLMC PROT 1996** – Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976
- (13) **SUA 1988** – Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988
- (14) **SUA PROT 1988** – Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 1988
- (15) **SUA 2005** – Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation
- (16) **SUA PROT 2005** – Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf
- (17) **SALVAGE 1989** – International Convention on Salvage, 1989

(18) **NAIROBI WRC 2007** – Nairobi International Convention on the Removal of Wrecks, 2007

(19) **HNS PROT 2010** – Protocol of 2010 to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996

B CONVENTIONS EMANATING FROM THE LEGAL COMMITTEE, WITH SHARED COGNIZANCE WITH OTHER IMO COMMITTEES

(1) **INTERVENTION 1969** – International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969

(2) **INTERVENTION PROT 1973** – Protocol relating to Intervention on the High Seas in Cases of Pollution by Substances other than Oil, 1973

C JOINT TREATIES WITH IMO AND OTHER UN BODIES, EMANATING FROM THE LEGAL COMMITTEE

(1) International Convention on Maritime Liens and Mortgages, 1993 (joint with UNCTAD)

(2) International Convention on Arrest of Ships, 1999 (joint with UNCTAD)

APPENDIX 2

TEMPLATE FOR THE LEG REGULATORY SCOPING EXERCISE

Instrument: [Name of instrument]

Provision	First step		
	Degree of autonomy	MASS application (.A, .B, .C, .D)	Comments/Remarks (explain analysis conducted in determining "MASS application" and potential gaps)
	Degree one		
	Degree two		
	Degree three		
	Degree four		
	Degree one		
	Degree two		
	Degree three		
	Degree four		

References:

Degrees of autonomy:

- Degree one: Ship with automated processes and decision support
- Degree two: Remotely controlled ship with seafarers on board
- Degree three: Remotely controlled ship without seafarers on board
- Degree four: Fully autonomous ship

MASS application:

- .A apply to MASS and prevent MASS operations; or
- .B apply to MASS and do not prevent MASS operations and require no actions; or
- .C apply to MASS and do not prevent MASS operations but may need to be amended or clarified, and/or may contain gaps; or
- .D have no application to MASS operations.

APPENDIX 3

PLAN OF WORK AND PROCEDURES FOR THE LEGAL COMMITTEE REGULATORY SCOPING EXERCISE

1 General

1.1 This note provides procedures for the Legal Committee (LEG) regulatory scoping exercise on Maritime Autonomous Surface Ships (MASS).

1.2 The regulatory scoping exercise should be conducted taking into account the agreed framework and methodology and any relevant decisions of the Committee.

2 Web platform for the conduct of the regulatory scoping exercise

2.1 The web platform developed for the purposes of the MSC regulatory scoping exercise as part of GISIS will be adopted to facilitate the LEG regulatory scoping exercise.

2.2 The web platform will be connected to the IMO web accounts, providing access only to registered IMO Members.³ All IMO Members will have read-only access to the web platform.

2.3 The web platform should make a clear distinction between the first and the second step of the agreed methodology.

2.4 The information contained in the web platform should be retained for future references until the Committee decides otherwise.

3 First step

3.1 Initial review of IMO instruments

3.1.1 The initial review should be conducted by volunteering Member States, either individually or as a group. In case of a group, only one Member State will be provided with access to upload and edit the information.

3.1.2 The initial review involves only the first step of the agreed methodology.

3.1.3 Only users authorized by the Member State conducting the initial review of a specific instrument will be allowed to upload and edit the information.

3.1.4 If necessary, the Secretariat will assist with the pre-population of the number and titles of rules and regulations on the web platform.

3.1.5 Upon completion of the initial review, the web platform will be locked for editing.

3.2 Commenting stage

3.2.1 Once the initial review is completed, IMO Members will be authorized to submit comments through the web platform.

³ Whenever the term "IMO Member" is used in this document, it includes Member Governments, associated Member Governments, intergovernmental organizations with observer status and non-governmental organizations in consultative status.

3.2.2 Comments could be submitted either on specific provisions or as general comments on the instrument under review (e.g. in case of gaps in regulations).

3.2.3 As part of the commenting stage, the web platform should provide an option to indicate whether the IMO Member agrees or disagrees with the initial review. If the option "disagree" is chosen, then an explanatory comment should be provided specifying the alternative MASS application.

3.2.4 Each IMO Member will only be able to submit one comment per provision and degree of autonomy under consideration and one general comment on the instrument under consideration. In order to facilitate the subsequent consideration, comments on specific provisions and general comments on the instrument under consideration will be limited to specific number of characters (to be determined according to IT functionalities).

3.2.5 After an agreed period, the web platform will be locked for comments.

3.3 Consideration of comments and presentation of results

3.3.1 The volunteering Member State(s) that conducted the initial review should consider all comments received and modify the initial review, as appropriate.

3.3.2 In order to facilitate the consideration of comments, the web platform should provide statistics of the number of IMO Members that had agreed or disagreed with the initial review.

3.3.3 The volunteering Member State(s) should also prepare a summary of results addressing in particular the main issues identified during step one in respect to specific degrees of autonomy and the specific gaps identified, if any.

4 Second step

4.1 Analysis of the most appropriate way of addressing MASS operations

4.1.1 The initial analysis should be conducted, preferably, by the volunteering Member State(s) that conducted the initial review.

4.1.2 The initial analysis involves the second step of the agreed methodology.

4.1.3 Only users authorized by the Member State conducting the initial analysis of a specific instrument will be allowed to upload and edit the information related to the second step.

4.1.4 Upon completion of the initial analysis, the web platform will be locked for editing.

4.1.5 The initial analysis should be high level and should not be conducted provision by provision.

4.2 Commenting stage

4.2.1 Once the initial analysis is completed, IMO Members will be authorized to submit comments through the web platform.

4.2.2 As part of the commenting stage, the web platform should provide an option to indicate whether the IMO Member agrees or disagrees with the initial analysis. If the option "disagree" is chosen, then an explanatory comment should be provided, specifying the most appropriate way of addressing MASS operations.

4.2.3 Each IMO Member will only be able to submit one comment per analysis.

4.2.4 After an agreed period, the web platform will be locked for comments.

4.3 Consideration of comments and presentation of results

4.3.1 The volunteering Member State(s) that conducted the initial analysis should consider all comments received and modify the initial analysis, as appropriate.

4.3.2 In order to facilitate the consideration of comments, the web platform should provide statistics of the number of IMO Members that had agreed or disagreed with the initial analysis.

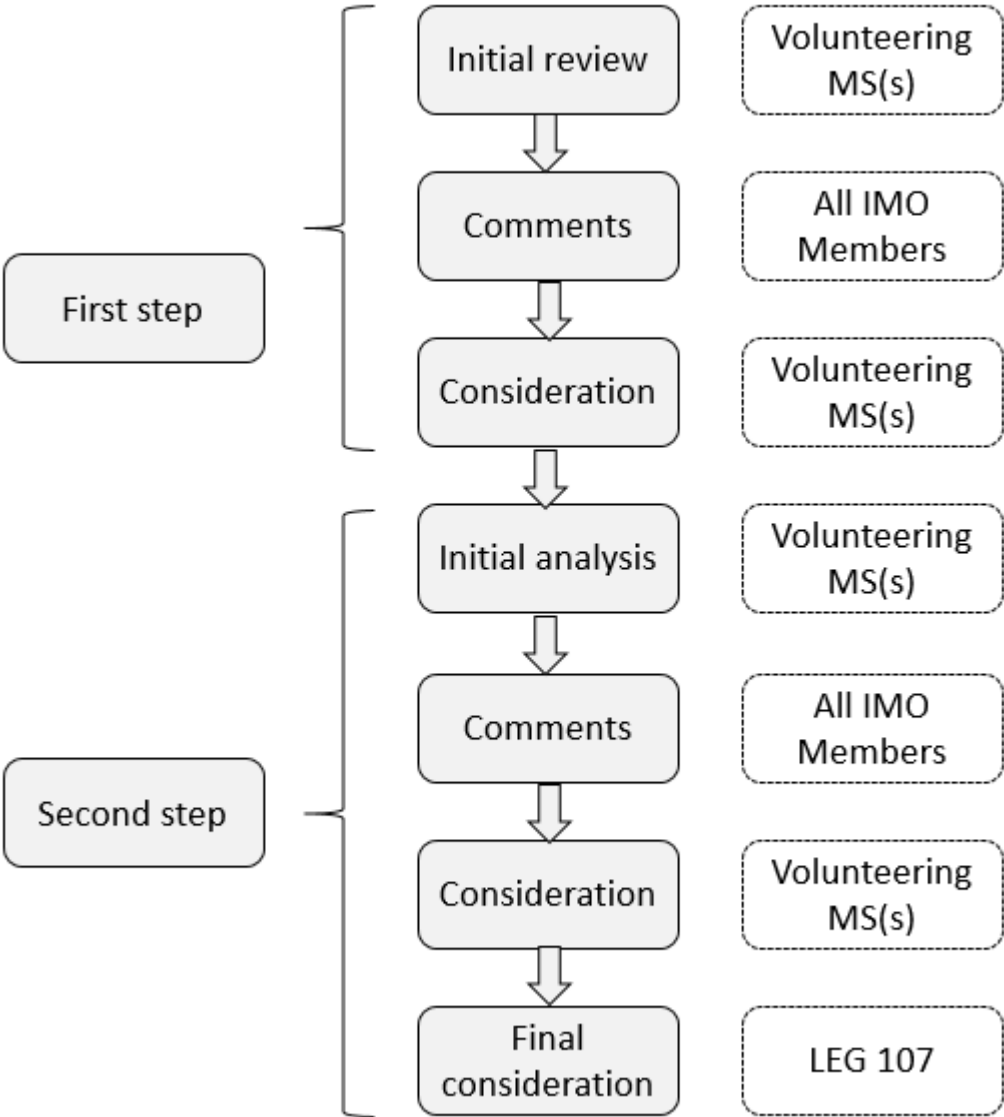
4.3.3 The volunteering Member State(s) should also prepare a summary determining the most appropriate way of addressing MASS operations specific to degrees of autonomy.

4.3.4 The above summary should be submitted by the volunteering Member State(s) for the Committee's consideration.

4.4 Final consideration

4.4.1 The Committee should consider the results of the first and second steps taking into account any relevant information, as appropriate.

Process for the LEG regulatory scoping exercise



TIMELINE FOR THE REGULATORY SCOPING EXERCISE

Action	Deadline	Who?
Upload of the initial review of IMO instruments	May 2019	Volunteering Member State(s)
Commenting stage related to the initial review	June/July 2019 (two months)	All IMO Members
Consideration of comments and finalization of results for the first step	August 2019 (one month)	Volunteering Member State(s)
Analysis of the most appropriate way of addressing MASS operations (second step)	September 2019 (one month)	Volunteering Member State(s)
Commenting stage related to the initial analysis	October 2019 (one month)	All IMO Members
Consideration of comments and presentation of results	November/December 2019 (two months) – deadline for submissions to LEG 107	Volunteering Member State(s)
Final consideration	March 2020	LEG 107

List of instruments and volunteering IMO Members undertaking or supporting the review of instruments

Instrument	Member State preparing the initial review	Supporting/assisting
BUNKERS 2001	China	Republic of Korea
CLC 1969	Japan	
CLC PROT 1976	Japan	
CLC PROT 1992	Japan	
FUND PROT 1992	Germany	Japan
FUND PROT 2003	Germany	Japan
NUCLEAR 1971	Australia	
PAL 1974		
PAL PROT 1976		
PAL PROT 2002		
LLMC 1976	Republic of Korea	United Kingdom
LLMC PROT 1996	Republic of Korea	United Kingdom
SUA 1988	United States	Switzerland
SUA PROT 1988	United States	Switzerland
SUA 2005	United States	Switzerland
SUA PROT 2005	United States	Switzerland
SALVAGE 1989	Finland	CMI
NAIROBI WRC 2007	Sweden	Luxembourg, Netherlands
HNS PROT 2010	Canada	
INTERVENTION 1969		
INTERVENTION PROT 1973		
International Convention on Maritime Liens and Mortgages, 1993		
International Convention on Arrest of Ships, 1999		

ANNEX 4

BIENNIAL STATUS REPORT 2018-2019

LEGAL COMMITTEE (LEG)									
Reference to SD, 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 ITCP	Continuous	TCC	MSC / MEPC / FAL / LEG		No work requested	Completed	LEG 105/14, paragraph 11.20
1. Improve implementation	1.4	Analysis of consolidated audit summary reports	Annual	Assembly	MSC / MEPC / LEG / TCC / III	Council	No work requested	No work requested	MEPC 61/24, paragraph 11.14.1; MSC 88/26, paragraph 10.8; C 120/D, paragraphs 7.1 and 7.2; LEG 105/14, paragraph 11.20
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	Completed	LEG 105/14, paragraph 11.20

LEGAL COMMITTEE (LEG)									
Reference to SD, 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	1.31 (New)	Measures to prevent unlawful practices associated with the fraudulent registration and fraudulent registries of ships	2021	LEG			In progress	In progress	
Notes:	LEG 105/14, annex 2								
2. Integrate new and advancing technologies in the regulatory framework	2.7	Regulatory scoping exercise for the use of Maritime Autonomous Surface Ships (MASS)	2022	MSC	LEG		In progress	In progress	MSC 98/23, paragraph 20.2.11
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	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	No work requested	
6. Ensure regulatory effectiveness	6.1	Unified interpretation of provisions of IMO safety, security, and environment, and liability and compensation-related conventions	Continuously	MSC, MEPC, LEG	CCC, III, NCSR, PPR, SDC, SSE			Ongoing	

LEGAL COMMITTEE (LEG)									
Reference to SD, 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
6. Ensure regulatory effectiveness	6.12	Strategies developed to facilitate entry into force and harmonized interpretation of the HNS Protocol	2019	LEG			In progress	In progress	
6. Ensure regulatory effectiveness	tbc	Unified Interpretation on the test for breaking the owner's right to limit liability under the IMO conventions	2021	LEG				In progress	
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	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		LEG.1/Circ.9
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		LEG 105/14, paragraph 11.20

LEGAL COMMITTEE (LEG)									
Reference to SD, 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 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	Postponed	
OW. Other work	OW 18	Advice and guidance on issues under UNCLOS relevant to the role of the Organization	Annual	LEG			Completed	Completed	
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	Completed	
OW. Other work	OW 22	Provide advice and guidance to support availability of information on comprehensive national legislation and judicial capacity building	Annual	LEG			Postponed	Completed	
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	In progress	C 120/D, paragraphs 17(a).1-17(a).5; LEG 105/14, paragraph 11.20

LEGAL COMMITTEE (LEG)									
Reference to SD, 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 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	In progress	C 120/D, paragraphs 17(a).1-17(a).5; LEG 105/14, paragraph 11.20
OW. Other work	OW 44	IMO's contribution to addressing unsafe mixed migration by sea	2019	MSC / FAL / LEG			In progress	In progress	FAL 41/17, paragraph 7.15; MSC 98/23, paragraph 16.14
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	Completed	

ANNEX 5
POST-BIENNIAL AGENDA

LEGAL COMMITTEE (LEG)								
PROPOSED POST-BIENNIAL OUTPUTS								
Number	Biennium (when the output was placed on the post-biennial agenda)	Reference to strategic direction, if applicable	Description	Parent organ(s)	Associated organs(s)	Coordinating organ(s)	Timescale (sessions)	References
1.7	2018-2019	1	Measures to prevent unlawful practices associated with the fraudulent registration and fraudulent registries of ships	LEG			2	
6.1	2018-2019	6	Unified interpretation of provisions of IMO safety, security, and environment and liability and compensation related conventions	MSC, MEPC, LEG	CCC, III, NCSR, PPR, SDC, SSE		Continuous	
6.12	2018-2019	6	Strategies developed to facilitate entry into force and harmonized interpretation of the HNS Protocol	LEG			2	
tbc	2018-2019	6	Unified Interpretation on the test for breaking the owner's right to limit liability under the IMO conventions	LEG			2	
OW 17	2018-2019	OW	Consideration of reports on the application of the joint IMO/ILO Guidelines on the fair treatment of seafarers and consequential further actions as necessary	LEG			2	

LEGAL COMMITTEE (LEG)								
PROPOSED POST-BIENNIAL OUTPUTS								
Number	Biennium (when the output was placed on the post-biennial agenda)	Reference to strategic direction, if applicable	Description	Parent organ(s)	Associated organs(s)	Coordinating organ(s)	Timescale (sessions)	References
OW 18	2018-2019	OW	Advice and guidance on issues under UNCLOS relevant to the role of the Organization	LEG			Annual	
OW 20	2018-2019	OW	Provide advice and guidance on issues brought to the Committee in connection with implementation of IMO instruments	LEG			Annual	
OW 22	2018-2019	OW	Provide advice and guidance to support availability of information on comprehensive national legislation and judicial capacity-building	LEG			Annual	
OW 44	2018-2019	OW	IMO's contribution to addressing unsafe mixed migration by sea	MSC, FAL, LEG			2	
OW 45	2018-2019	OW	Consider reports on the issue of financial security in case of abandonment of seafarers, and shipowners' responsibilities in respect of contractual claims for personal injury to or death of seafarers, in light of the progress of the amendments to ILO MLC 2006	LEG			2	

ANNEX 6

ITEMS TO BE INCLUDED IN THE AGENDA FOR LEG 107

Substantive items for inclusion in the agenda for the 107th session of the Legal Committee

1 Substantive items for inclusion in the agenda of the 107th session of the Legal Committee are proposed as follows:

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 of ships

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

Unified Interpretation on the test for breaking the owner's right to limit liability under the IMO conventions

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 107th session

ANNEX 7

STATEMENTS BY DELEGATIONS

ITEM 1

Statement by the delegation of Peru

H.E. Mr. Kitack Lim
Secretary-General
International Maritime Organization
London

Dear Secretary General

The undersigned, member countries of the Lima Group established in 2017 to respond to the situation in Venezuela, write to you regarding the status of the Venezuelan Representatives at the International Maritime Organization.

In the Lima Group Declaration of January 4th, 2019, the aforementioned group resolved not to recognize the legitimacy of the new presidential term of Nicolas Maduro, inaugurated on January 10th, 2019 following the illegitimate elections held in May 2018 without the international standards required, such as participation of opposition political parties or the presence of international observers. This situation was also addressed by the Permanent Council of the Organization of the American States in its Resolution 1117(2200/19), dated January 10th, 2019.

Further to the above decision we will not recognize the Permanent and Alternate Representatives or any other delegates of the illegitimate regime of Nicolas Maduro at the International Maritime Organization.

Our participation in all the bodies at the Organization does not imply any tacit recognition of the Venezuelan representatives or the regime of Nicolas Maduro.

We kindly request this letter be distributed among the member countries of the International Maritime Organization.

For the Government of Argentina
For the Government of Chile
For the Government of Guyana
For the Government of Paraguay

For the Government of Canada
For the Government of Colombia
For the Government of Panama
For the Government of Peru

Statement by the delegation of the Russian Federation

Мы делаем наше заявление в связи с заявлением, только что сделанным Перу. Российская Федерация выражает глубокое разочарование в связи с выступлением представителей государств, сейчас это было Перу от лица многих стран группы Лимы, поддерживающих так называемого «временного президента» Венесуэлы Х.Гуайдо.

Категорически не разделяем содержание указанных заявлений, главной целью которых является в очередной раз попытаться делегитимизировать законное правительство суверенной страны, используя для этого авторитетную многостороннюю площадку.

Эти попытки идут вразрез с Уставом ООН, основополагающими принципами международного права и являются неприкрытым вмешательством во внутренние дела государства-члена ООН.

Прискорбно, что ряд участников сессии пошли по пути нагнетания конфронтации, и вносят разлад в работу сессии. Такие шаги не способствуют поиску путей урегулирования ситуации в Венесуэле. Все это мешает и решению стоящих перед Юридическим комитетом задач, для обсуждения которых мы здесь собрались.

Считаем, что солидарность необходимо проявлять не в нападках на отдельную страну, а в совместном поиске ответов на острые вызовы и проблемы судоходной отрасли».

We make this statement in light with the statement just made by Peru.

The Russian Federation expresses its deep disappointment with the statement made by the representatives of states , now it was Peru on behalf of a number of States of Lima Group that support so called "acting President of Venezuela" Juan Guaidó.

We categorically do not share the content of this statement, the main aim of which is yet again to attempt to delegitimize the Government of the sovereign State, using for this purpose an authoritative multilateral forum.

These attempts run counter to the UN Charter and fundamental principles of international law. Clearly, it is flagrant interference in the internal affairs of the Member of the United Nations.

It is regrettable that a number of participants of the session took a course of whipping up the confrontation, introducing disharmony and discord to the work of the session. Such steps do not contribute to the quest for finding a settlement to the situation in Venezuela. All this also hampers the solution of the tasks before the Legal Committee, for the discussion of which we are convened in this room today.

We consider that solidarity must be displayed not in attacks on individual country, but in a joint quest for solutions to the acute challenges facing global shipping».

Statement by the delegation of Uruguay

Gracias Sr. Presidente, buenas tardes.

En nombre del gobierno de Uruguay, debo expresar que no se comparte las expresiones manifestadas por la distinguida delegación del Perú en nombre de países integrantes del Grupo de Lima.

Solicito que la presente declaración quede en el informe final correspondiente.

Muchas gracias Sr. Presidente.

Thank you, Mr. Chair, good afternoon.

On behalf of the Government of Uruguay, I must say that the expressions made by the distinguished delegation of Peru on behalf of the countries that are in the Lima Group are not shared.

I request that this statement be included in the corresponding final report.

Thank you very much, Mr. Chair.

ITEM 6

Statement by the delegation of Romania

Sir,

Five 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.

Moreover, the European Union condemns the lengthy Russian inspection regime for cargo vessels coming from Ukraine's ports in the Azov Sea or heading towards them and the hindrance to shipping that Russia's construction of the Kerch Bridge between the Crimean Peninsula and the Russian Federation has caused.

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

I would ask to have this statement included in the report of the Committee. Thank you.

Statement by the delegation of the Russian Federation

Г-н Председатель,

Прежде всего хотели бы отметить, что документ Украины LEG/106/6 посвящен исключительно политическому вопросу, который выходит за пределы компетенции Юридического комитета и ИМО, поэтому не может и не должен рассматриваться настоящей Организацией.

Одновременно вновь хотели бы заверить членов Комитета в добросовестном выполнении своих обязательств по международным договорам, принятым под эгидой ИМО, на всей территории России, включая Крым и г. Севастополь.

Юридический комитет в ходе своей 105-й сессии принял к сведению эту информацию, о чем имеется соответствующая запись в итоговом докладе Комитета.

Г-н Председатель,

Решительно отвергаем любые обвинения в свой адрес относительно незаконных действий в Азовском море и Керченском проливе, включая якобы имеющие место притеснения коммерческих судов и ограничение международного судоходства.

Правовой статус Азовского моря определяется Договором между Российской Федерацией и Украиной о сотрудничестве в использовании Азовского моря и Керченского пролива от 24 декабря 2003 г. Его ст. 1 предусматривает, что Азовское море и Керченский пролив исторически являются внутренними водами Российской Федерации и Украины. Во внутренних водах российские пограничники вправе осматривать любые суда по целому ряду оснований.

Таким образом, осуществляемые Погранслужбой России проверки судов в Азово-Керченской акватории обоснованы, правомерны и не носят дискриминационного характера. Помимо судов под флагом Украины и третьих государств проверяются также суда под флагом России. По имеющейся статистике, за девять месяцев 2018 года общее число проверенных судов под флагом Российской Федерации превышает количество проверенных украинских судов. Вся необходимая статистика приведена в нашем комментирующем документе.

В заключение хотели бы отметить, что увеличение числа проверок во многом стало вынужденной мерой в ответ на многочисленные угрозы, которые озвучивались в отношении Крымского моста со стороны не только украинских радикальных сил и маргинальных элементов, но и высокопоставленных политиков Украины. Россия воспринимает подобные угрозы в качестве реальных и вынуждена проводить необходимые профилактические мероприятия для обеспечения безопасности российских граждан и объектов стратегической инфраструктуры.

Г-н Председатель,
Обращаясь через Вас к Комитету, просим принять к сведению вышеприведенную информацию».

Statement by the delegation of Ukraine

Thank you, Chair.

Distinguished delegates,

Ukraine is pleased to introduce document LEG 106/6 on the implementation of IMO instruments in the maritime areas adjacent to the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, temporarily occupied by the Russian Federation (hereinafter "Crimea").

At the outset, I wish to recall that during 105th session of this Committee Ukraine presented document LEG 105/6/3 regarding the Russian Federation's unlawful, unilateral claims and actions in Crimea and the consequences of such actions for the implementation of IMO instruments.

My delegation is however compelled to state that, due to continued illegal actions of the Russian Federation, Ukraine is still facing great challenges in carrying out its international obligations in the maritime areas appertaining to the Crimean peninsula, including the provision of safety and security of navigation, and search and rescue.

The incident on 25 November 2018, when three Ukrainian naval vessels conducting a routine transfer from Odesa to Mariupol were blocked, shot at and seized in international waters in the Black Sea by the Russian Coast Guard, clearly proves Russia's disregard of all norms and principles of international law as well as existing bilateral agreements.

Russia has de facto expanded its military aggression against Ukraine to the sea.

United Nations General Assembly resolution 73/194 of 17 December 2018 expressed its utmost concern about the unjustified use of force by the Russian Federation against Ukraine as well as the serious wounding of a number of Ukrainian servicemen and called upon the Russian Federation to release the vessels and 24 members of their crews and equipment unconditionally and without delay.

Moreover, the General Assembly condemned the Russian Federation's harassment of commercial vessels and restriction of international navigation in the Black Sea and the Sea of Azov, including the Kerch Strait. The UN General Assembly specifically called on Russia to refrain from impeding the lawful exercise of navigational rights and freedoms in these maritime areas in accordance with applicable international law, in particular provisions of the United Nations Convention on the Law of the Sea.

Notwithstanding the overwhelming international condemnation, the Russian Federation continues to insist that it "has taken on the responsibility of ensuring the implementation of all obligations and compliance with all requirements deriving from the relevant IMO mandatory instruments in the sea areas adjacent to the Crimea coast and in the sea ports of the Crimean peninsula".

The Russian Federation's claim to be responsible for implementing IMO instruments in the maritime areas appertaining to Crimea reflects an ongoing usurpation of Ukraine's rights in those areas relating to maritime navigation, including the safety and security of navigation, protection of the marine environment, search and rescue, ship registration and certification of crew members, and violates international law and the legislation of Ukraine.

The Russian Federation's usurpation of Ukraine's rights impermissibly infringes on Ukraine's rights as the coastal State for those areas, and is unlawful and invalid to the extent they violate those rights.

Mr Chair,

Control over the maritime areas adjacent to Crimea is a current Russian target, after the belligerent occupation of Crimea. There is a principle of international law – *ex injuria jus non oritur*, which literally means that a right cannot derive from the wrong or that a wrongful act cannot produce any effects or results beneficial to the wrongdoer. And it cannot be denied. A state invading the territory of another state may not claim any title of sovereignty over that piece of territory, including its territorial waters. I repeat, no country has the right to benefit from its illegal actions.

The Russian Federation's reckless behaviour and provocative actions in the Black Sea, the Sea of Azov and the Kerch Strait have resulted in a dangerous escalation of tensions, with grave implications for the safety and security of navigation.

Consistent with the United Nations General Assembly's call for non-recognition of the Russian Federation's violations of international law in Crimea, Ukraine calls on all UN Member States to condemn the Russian Federation's unlawful unilateral actions in the northern part of the Black Sea and to refrain from any action or dealing that might be interpreted as recognizing the Russian Federation's unilateral actions that preclude Ukraine from carrying out its international obligations under applicable treaties and conventional instruments

Finally, the Committee is invited to note the information provided in document LEG 106/6 and to comment as it may deem appropriate.

Thank you.

ИТЕМ 7

Statement by the delegation of the Russian Federation

Мы внимательно изучили случаи фиктивной регистрации судов в практике различных государств, которые были доведены до сведения Секретариата. На наш взгляд, у членов Комитета сложилось устойчивое представление о том, что необходимо понимать под фиктивной регистрацией судна.

Это понимание было зафиксировано в нескольких документах. В частности, в LEG 105/11, который как раз и содержал одобренное на прошлой сессии предложение о включении в программу работ Комитета нового результата в целях выработки мер по борьбе с фиктивной регистрацией судов. Кроме того, Секретариат воспроизвел это определение в документе LEG 106/7 9 (пункт 3), который представлен на нынешнюю сессию и который содержит краткий обзор случаев фиктивной регистрации судов.

Согласно этому определению, которое также было повторено Директором Юридического департамента Секретариата ИМО в его выступлении на этой сессии, под фиктивной регистрацией судна понимается регистрация, произведенная без разрешения и ведома страны, чей флаг (незаконно) используется соответствующим судном.

Теперь что касается судна «Норд», официально подтверждаем, что в ноябре 2014 г. данное судно по обращению его собственника было зарегистрировано в государственном судовом реестре Российской Федерации в соответствии с установленным порядком. Иными словами, регистрация была произведена с разрешения и ведома морской администрации Российской Федерации. Выданное судовладельцу свидетельство о регистрации носит подлинный характер и подтверждает право судна «Норд» плавать под государственным флагом Российской Федерации.

Кроме того, стоит отметить, что собственник судна «Норд» в августе 2014 г. направлял запрос в Государственную инспекцию Украины по безопасности на морском и речном транспорте с целью исключения судна из Государственного судового реестра Украины. Однако ответ на это обращение не был получен.

С учетом изложенного считаем, что ситуация с судном «Норд» заведомо не подпадает под данный пункт повестки дня, документ LEG 106/7/3 носит политический характер и данная ситуация не может и не должна рассматриваться ни Комитетом в целом ни любой рабочей группой, которая может быть создана в ходе работы.

Подытоживая, хотели бы подчеркнуть, насколько важно, чтобы члены Комитета одинаково понимали термин фиктивная регистрация судна. В противном случае вообще не имеет смысла заниматься этой проблемой, поскольку не понятно, с чем мы боремся.

В заключении предложили бы украинским коллегам прекратить искусственно политизировать работу ИМО, и вместо того, чтобы осложнять жизнь морякам и судовладельцам, наоборот подумать, как защитить их права и интересы».

We have studied carefully the cases of fraudulent registration of vessels in practice of various States, brought to the attention of the Secretariat. In our opinion, the Members of the Committee have developed the steadfast view on what the fraudulent registration of ships means.

This understanding was enshrined in a number of documents, particularly document LEG 105/11, which contained indeed the proposal adopted at the last session to include to the work program of the Committee a new output with a view of developing measures to combat fraudulent registration of ships. Moreover, the Secretariat reproduced this definition in document LEG 106/7 (paragraph 3) submitted to this very session and which contains a brief overview of cases of fraudulent registration of ships.

According to this definition, which was also repeated by the Director of Legal Affairs and External Relations Division of the IMO Secretariat during his intervention at this session, by fraudulent registration of ships we understand the registration which was conducted without the permission or knowledge of the State whose flag is illegally used by the relevant vessel.

As regards the vessel "Nord" referred to in document LEG 106/7/3 we officially state that in November 2014 this vessel at the request of its owner was registered in the State shipping registry of the Russian Federation in accordance with established procedure. In other words the registration was conducted with the permission and knowledge of the Maritime Administration of the Russian Federation. The certificate issued to the shipowner on registration is authentic in nature and it confirms the right of the vessel "Nord" to sail under the State flag of the Russian Federation.

Furthermore, we wish to point out that the owner of the vessel "Nord" sent a request to Ukraine's Inspectorate for Safety on Maritime and River Transport in August 2014 in order to have the vessel struck from the Ukrainian shipping registry. However, he received no response to this request.

In a light of the above, in our opinion it is obvious that the situation surrounding the vessel "Nord" is quite concisely not within the purview of this agenda item. Document LEG 106/7/3 is political in nature and this situation cannot and must not be examined either by the Committee as a whole or by any working group which might be set up in the course of its work.

Summing up of this part of our intervention, we would like to stress how it's important to have the common understanding of the term "fraudulent registration of ships". Otherwise, it is absolutely no point in dealing with this problem, since it will not be understood what we are actually fighting with.

In conclusion, we would like to suggest our Ukrainian colleagues to stop artificially politicizing the work of the Organization and instead of complicating the life of seafarers and shipowners rather to think how we can protect their rights».

ITEM 8

Statement by IFSMA

Chair,
IFSMA took an active part in "WG1" over the last two days and would like to take the opportunity to thank the Chair of the WG, Ms Gillian Grant, for her excellent work in steering this WG.

Chair, you left it to the WG to decide whether the LEGAL Committee should consider "manned MASS" (levels 1 & 2) and "unmanned MASS" (levels 3 & 4), and the WG recommended that all 4 levels of autonomy, agreed by MSC, be considered by the LEGAL Committee, as appropriate.

However, this raises high level legal issues under **Article 94 of UNCLOS (Duties of a flag State)** so far as (a) the “seaworthiness” of MASS are concerned [(Article 94 (3)(a)] and (b) the manning of unmanned MASS, [under Article 94 (2)(b), (3)(b) and (4)(b) & (c)], where “good seamanship” is required, as is also made clear in **Rule 8 (Action to avoid Collision)** of the **COLREGs**.

[It is unclear to IFSMA how any algorithm can properly address good seamanship, where there has to be a sentient human being in the loop of “Command and Control” of a MASS; like any other ship.]

IFSMA respectfully suggests that these “high level” legal issues might at least be mentioned in the Report of “LEG 106”. That is, in order that the IMO Secretariat might have the opportunity to raise these important public international legal issues with DUALOS in NYC, USA, since these key issues will, in the opinion of IFSMA, concern not only all flag States @IMO, but also:

All Seafarers, on All Voyages, on All Ships, on All Seas....

That is, not only large Merchant Ships, on International voyages, under SOLAS Chapter 1, but also All Ships, on All Voyages, on All Seas under **SOLAS Chapter V (Safety of Navigation)**.

In other words, All Seafarers....

Thank you !

ITEM 15

Statement by the delegation of the Islamic Republic of Iran

The issue which this delegation would like to draw the attention of legal committee is a recent action of some satellite service providers on denying some kind of satellite services to Iranian shipping companies and vessels based on the presumption of possibility of differentiation between safety communication and commercial communication. As all distinguished delegations are well aware, providing satellite services to commercial vessels and rendering these services is one of the necessary conditions to insure safety in commercial shipping in international sphere. There are different levels of needs to the satellite services. Although there are some instances with pure safety technical nature, such as distress alerts or call via Inmarsat there could also be some other cases such as grounds for the communication of seafarers with their family, fulfilling their emotional needs through using these services or other cases such as the seafarer's access to the necessary medical services on board vessels that could be considered as examples of safety communication but not commercial communication nature.

As mentioned in the opening speech of S.G at the beginning of this session, 1.6 million seafarers work on the shipping all around the world, we are of the opinion that satellite services are to protect safety of shipping including the lives of all seafarers globally.

Through a recent correspondence by one of the Inmarsat service providers, we have been informed that as per the advice by the Inmarsat Company, communication services contractors are advised to note the US sanctions against Iran and its shipping industry.

It is worth noting that denying of providing some necessary satellite services such as those which have already been mentioned, i.e. seafarer's needed services; should not be deemed as commercial ones, while they have no pure technical nature.

Further considerations clarified that the base of denying satellite service providing is a letter dated 11 September 2018 titled as: "Inmarsat communication on US sanctions against Iran". Based on this letter, some of satellite service provider companies announced through correspondence with some Iranian shipping companies, the termination of providing satellite services to Iranian vessels and shipping companies, as mentioned in letter dated 2nd September 2018 Marlink Company.

It is worth noting that denying the above-mentioned services is based on the differentiation between commercial communication and safety communication to justify this illegal action. This separation is absolutely vague and it is not possible in practice to separate these two aspects from each other. Is it possible to call a seafarer's communication with her/his family to be informed of their circumstances and meet her/his emotional and human needs as a commercial one? Is receiving medical advice through satellite communications on board a vessel or ashore, which is the subject matter of Standard A.1 of Maritime Labour Convention 2006, a commercial contact?

In view of this delegation, denying access to satellite services, as have already been mentioned, is resulted from recent illegal and inhuman sanctions and it is in apparent contrast with provisions of some international conventions namely SOLAS, MARPOL and MLC 2006 and more important, violates the human rights of seafarers. In annex III of this statement we provide some of those provisions of international maritime conventions that are in contradiction with any restriction of access to satellite services. It is worth mentioning that the effects of this situation are not confined to Iranian nationals, but also affect international shipping and other seafarers as a whole.

According to the resolution 1110(30), the IMO mission statement is: "to promote safe, secure, environmentally sound, efficient and sustainable shipping through cooperation". Now the question is, whether this kind of restriction is in conformity with the IMO mission? since this issue is related to IMO functions, especially the effective implementation of international maritime conventions, we would like to raise this issue that denying or disruption of satellite service providing is deemed to be an apparent example of discriminatory and unjustified restriction that affects shipping in international trade, which is the subject of Article 1(b) of convention on the international maritime organization (IMO convention).

According to article 33(a) of IMO Convention: "The Legal Committee shall consider any legal matters within the scope of the Organization". Since the issue in discussion is a legal matter related to the IMO functions, Mr. Chairman, this delegation would like to put this on the table as an important legal issue to see how legal committee would address that.

At the end, it is necessary to announce that Islamic Republic of Iran has resorted to any possible means to ensure the safety of its vessels and continuously will do so.

Thank you

Statement by the delegation of the United States

Thank you, Chair.

The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) has sanctioned more than 700 Iranian individuals, entities, aircraft, and vessels. These actions are a critical part of the re-imposition of the remaining U.S. nuclear-related sanctions that were lifted or waived in connection with the Joint Comprehensive Plan of Action, or JCPOA.

The United States is imposing tougher sanctions on the Iranian regime than ever before because it continues to pose a threat to the United States and the world. We will continue to work with our allies to counter the Iranian regime's destabilizing activities in the region, block their financing of terror, and address Iran's proliferation of ballistic missiles and other advanced weapons systems that threaten international peace and stability.

Among those in Iran's shipping sector that have been sanctioned are Iran's national maritime carrier, the Islamic Republic of Iran Shipping Lines (IRISL), and the National Iranian Tanker Company (NITC), both of which were identified pursuant to Executive Order 13599 as falling within the definition of "the Government of Iran."

The Iranian shipping industry is reviving previously employed deceptive practices in an effort to obfuscate these sanctioned entities' interests in vessels and other property, including unsafe practices such as turning off AIS and falsifying vessel documents. The global maritime industry should be on alert for Iran's use of such tactics and should make every effort to prevent Iran from using their jurisdictions to create front companies; to terminate the registration of Iranian-owned or operated vessels; and to deny other means that enable Iran to conceal its interest in the vessels.

Whether sanctions apply in particular scenarios may be a complex matter. We encourage delegations and companies with questions about these sanctions to consult our offices that are implementing them. For further information and answers to commonly asked questions, such as questions relating to the effect of these sanctions on services provided in connection with mandatory IMO instruments, we are happy to provide details on contacting the U.S. Department of the Treasury.

Thank you, Chair.

Statement by the delegation of the Russian Federation

Главной задачей этой Организации является принятие и обеспечение выполнения международных инструментов в различных областях безопасности мореплавания и защиты морской среды. Последовательное и единообразное выполнение этих обязательств всеми государствами-сторонами на недискриминационной основе, подчеркиваем на недискриминационной основе, является залогом успешного функционирования всей системы международно-правовых норм в области судоходства.

Одностороннее введение ограничений в отношении государств в обход существующих механизмов системы ООН, отказ в предоставлении общедоступных услуг в области судоходства по политическим или иным мотивам служат разрушительными факторами для репутации как тех, кто вводит такие ограничения, так и для Международной морской организации (ИМО) в целом, и не должны допускаться».

The main purpose of this Organization is to adopt and ensure implementation of the international instruments in the various areas of maritime safety and protection of marine environment. Consistent and uniform implementation of these obligations by all Parties to those instruments on a non-discriminatory basis, we emphasize on a non-discriminatory basis, is a guarantee of successful operation of the whole system of international legal standards in the field of shipping.

The unilateral imposition of restrictions on States aside of the existing mechanisms of the UN system, the refusal to provide publicly available services in shipping for political or other reasons are destructive factors for the reputation of both those who impose such restrictions and for the International Maritime Organization (IMO) as a whole and should not be accepted».

Statement by ICS

The Committee will be aware of reports in the media regarding a safety and security incident following a rescue of 108 persons by the tanker 'Elhiblu 1'. The ship is now reported to have been secured by Maltese Authorities and ICS expresses its appreciation for the swift and decisive action taken. ICS will continue to monitor developments, and hope that further verified information on the incident will become available in due course so that any appropriate lessons can be learned.

ICS reported to MSC 100 that 2018 had seen a reduction in the number of merchant ships that were being called upon to discharge their moral and legal obligations for rescue at sea in the Central Mediterranean. But that there were still incidents taking place in increasingly complex situations which in turn complicated the rescue and disembarkation of those rescued and posed risks also to the safety of the crew.

Whatever the particular facts of the Elhiblu 1 turn out to be – and I stress that no comment is made in that regard until more information is made known – there is a concern that when ships – especially laden ships – are taking on board a number of rescued person in multiples of the number of crew on board, then clearly issues can arise and these issues pose risk and danger to the rescuing crew, the ship, the environment and other ships in the region.

With this in mind, whilst appreciating that migration is a sensitive and complex political issue, we would take this opportunity to strongly urge member States to ensure that whatever the circumstances of a rescue, or the situation on board a ship thereafter, action is taken to ensure the safety and security of Masters and crews that have met their legal and moral obligations under UNCLOS and SOLAS. Along with the littoral states in the region, we as an industry are presented with an impossible situation to resolve and where lives are at risk, not only those of the persons rescued, but also the rescuers. The only way to resolve this is to work in cooperation in the short term to resolve the immediate situation – as indeed appears to have happened here – but in the long term to develop a solution to prevent these situations from occurring.

Statement by IFSMA

Thank you Chair, IFSMA fully supports the Statement made by ICS and we would like to express our sincere thanks to Maltese Authorities for their very speedy and successful intervention. This is a subject which IFSMA has been making for some time following incidents in the past where Shipmasters have been threatened and indeed I was asked to attend a meeting of the European Union Security and Defence Committee Working Group Meeting where I raised my concerns about the potential of this sort of situation occurring. Thank you Chair.
