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107th session
Agenda item 18

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REPORT OF THE LEGAL COMMITTEE ON THE WORK OF ITS 107TH SESSION

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INTRODUCTION

I The 107th session¹ of the Legal Committee was held remotely from 27 November to 11 December 2020, in accordance with the revised meeting programme for 2020 (Circular Letter No.4213/Add.6, annex), under the coordination of the Chair, Mr. Volker Schöfisch (Germany), and the Vice-Chair, Ms. Gillian Grant (Canada).

CONDUCT OF THE REMOTE SESSION

II The Committee held virtual meetings on 27 and 30 November to 1 December 2020 in accordance with the *Interim guidance to facilitate remote sessions of the Committees during the COVID-19 pandemic* (Interim Guidance), adopted by the Committee at its first extraordinary session, held in September 2020 simultaneously with the extraordinary sessions of other IMO Committees (ALCOM/ES/5/1, annex 1). Furthermore, pursuant to the Committee's decision at its first extraordinary session and the provisions of rule 9 of its rules of procedure, the Committee agreed to accept electronically submitted credentials for this session, with originals to follow, due to the exceptional circumstances caused by the COVID-19 pandemic.

PARTICIPANTS

III All Members that had submitted valid credentials were registered on the Online Meeting Registration System (OMRS) and also listed as participants in the remote session were deemed as "present" within the meaning of rule 28(1) of the Rules of Procedure of the Legal Committee, and in accordance with paragraph 16 of the Interim Guidance. The Associate Members and observers listed in document LEG 107/INF.1 also participated in the session.

OPENING OF THE SESSION AND WAIVER OF RULES OF PROCEDURE

IV The Committee recalled that, at its first extraordinary session, it had agreed to waive rule 3 of its rules of procedure, in part, to allow its sessions to be held remotely.

V The 107th session of the Committee was declared open by the Chair following the establishment of a quorum, pursuant to rules 34 and 35 of the Rules of Procedure of the Legal Committee and paragraph 17 of the Interim Guidance.

THE SECRETARY-GENERAL'S OPENING ADDRESS

VI 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:
[Legal Committee, 107th session \(LEG 107\), 27 November, 30 November, 1 December 2020 \(imo.org\)](#)

GENERAL STATEMENTS

VII The delegation of Turkey made a statement regarding the boarding and search of a vessel flying its flag by a warship under command of operation Irini of the European Union in the Mediterranean Sea on 22 November 2020. The Turkish delegation stated that this intervention was conducted without the consent of either Turkey as the flag State or the master

¹ The 107th session of the Legal Committee, originally scheduled to be held from 16 to 20 March 2020, was postponed due to the COVID-19 pandemic, as advised in Circular Letter No.4213 of 6 March 2020.

of the vessel, in contradiction to the Protocol of 2005 to the SUA Convention. In response, the delegation of Germany made a statement expressing the view that the search referred to was conducted in accordance with the relevant United Nations Security Council resolutions.

VIII As requested, the full statements made by the delegations of Turkey and Germany are set out in annex 3 to this report.

Audio file: Friday, 27 November 2020

1 ADOPTION OF THE AGENDA

1.1 The Committee adopted its agenda for the session, contained in document LEG 107/1/Rev.1, and noted the annotations to the provisional agenda, contained in annex 1 to document LEG 107/1/1/Rev.1 (Secretariat) and in document LEG 107/1/1/Add.1 (Chair).

1.2 The Committee also noted the provisional timetable contained in annex 2 to document LEG 107/1/1/Rev.1 and agreed that the provisional timetable would be used as a guide for the work of the Committee, on the understanding that it would be subject to adjustments depending on the progress made each day.

1.3 The Committee further noted the following in relation to its agenda:

- .1 due to the addition of a new agenda item 10 on Matters relating to the work of the Legal Committee and the COVID-19 pandemic, agenda items 10 to 17 had been renumbered as items 11 to 18, respectively, in the revised provisional agenda; and
- .2 the Chair's intention was to combine the matters related to seafarers under agenda items 4, 5 and 10 into one consolidated discussion item for the Committee to take decisions as appropriate, and that the Committee would, in this context, also consider two new outputs related to seafarers under agenda item 15, immediately after consideration of agenda items 4, 5 and 10.

1.4 Due to time constraints, the Committee postponed consideration of all or part of agenda items 3, 11, 12, 13 and 14 to its 108th session. Details of items postponed are contained in the respective sections of this report.

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

Audio file: Friday, 27 November 2020

2 REPORT OF THE SECRETARY-GENERAL ON CREDENTIALS

2.1 The Committee noted the report of the Secretary-General, which stated that the credentials of 93 delegations attending the session were in due and proper form, pursuant to rule 9 of the Rules of Procedure of the Legal Committee.

Audio files: Friday, 27 November and Tuesday, 1 December 2020

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

3.1 Due to time constraints, the Committee decided to postpone the consideration of this agenda item to its 108th session.

Audio file: Tuesday, 1 December 2020

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 considered all documents related to seafarers under agenda items 4, 5 and 10, and the proposals for new outputs related to seafarers under agenda item 15, in one consolidated discussion, and took decisions under the respective agenda items as outlined below.

4.2 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.

4.3 The Committee also recalled that, at its previous sessions, 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 involved.

4.4 The Committee recalled that information about the procedures regarding reporting to the joint IMO/ILO database had been provided at its 106th session by the ILO and IMO Secretariats in document LEG 106/4, and by the ILO Secretariat in document LEG 106/4/4.

4.5 The Committee considered document LEG 107/4 (ILO and IMO Secretariats). The Committee was informed that all cases reported after 1 January 2004 were recorded on this database and that in 2019 the total number of reported cases was 40, and of these, 6 cases had been resolved as of 31 December 2019.

4.6 The Committee also considered document LEG 107/10/2, containing, in its annex, an addendum to the report on the IMO/ILO joint database of abandonment of seafarers as provided in document LEG 107/4, and was informed that all incidents recorded on the IMO/ILO joint database since 13 December 2019 were presented in the annex to document LEG 107/10/2.

4.7 The Committee was also informed that in 2020, a total number of 65 new cases had been reported, which represented a significant spike in cases reported from previous years. The right column of the annex to document LEG 107/10/2 indicated the status of the case (resolved, disputed, etc.), its current situation and the relevance to the COVID-19 pandemic.

4.8 The Committee was further informed that, as of 30 November 2020, of this spike of 65 new cases in 2020, only 18 had been resolved so far, and that about 17 of the cases that had been reported since 13 December 2019 were related to consequences of the COVID-19 pandemic that further exacerbated the crew change situation of seafarers.

4.9 The Committee considered document LEG 107/4/1 (International Transport Workers' Federation (ITF)) containing an analysis of cases of abandonment reported by ITF to the IMO/ILO joint database of abandonment of seafarers for the period from 1 January to 13 December 2019.

4.10 The Committee also considered document LEG 107/4/3 (International Chamber of Shipping (ICS)) which provided information about the current global abandonment situation and current concerns. The document also 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 the Maritime Labour Convention, 2006 (MLC, 2006) and reminding States Parties and other stakeholders of their responsibilities towards abandoned seafarers.

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

- .1 some delegations were of the opinion that there was a need to better clarify the status of cases that were contested, under litigation or even resolved regarding the information provided in the annex to document LEG 107/4, although they were aware that it was difficult to check information in other jurisdictions and therefore to update the database accordingly;
- .2 the delegation of the Islamic Republic of Iran stated that the reference in paragraph 9 of document LEG 107/4/1 should be to the "Persian Gulf" as the official name and that paragraph 20 of the same document did not properly reflect that the 2014 amendments to MLC, 2006 had not been accepted by the Islamic Republic of Iran, but that the insurance protection was followed in their national regulations;
- .3 despite the entry into force of the 2014 amendments to MLC, 2006 in 2017, there were no sufficient tools available for the resolution of abandonment cases in port States, which had caused a steep increase of abandonment cases. The situation was further exacerbated by the consequences of the COVID-19 pandemic. In particular, the abandonment cases of the **Ptolemeos** and **Arybbas** in Djibouti had revealed there were also serious issues in which abandoned seafarers were not granted access to shore-based medical assistance;
- .4 the delegation of Thailand announced that the 2014 amendments to MLC, 2006 had been incorporated in their national legislation and that acceptance of these amendments would soon be reported to ILO;
- .5 several delegations expressed the view that the documents made it sadly evident that the deplorable living conditions of abandoned seafarers continued to be a very serious issue, in particular with regard to the COVID-19 pandemic. Member States were encouraged to continue reporting cases of abandonment and to uphold all their MLC obligations regarding seafarers. Flag States were also encouraged to ensure that ships were insured by approved insurers only;
- .6 many delegations were grateful to the IMO and ILO Secretariats for maintaining the joint database which was very helpful in discussing and supporting the rights of seafarers, and having these incorporated in national legislation. In particular, the availability of a compulsory insurance guarantee

was one of the main issues for agreeing to a Seafarer Employment Agreement;

- .7 seafarers were considered as global key workers and, therefore, it was very essential that the ratification and implementation of MLC, 2006 was widespread. It was unacceptable that abandoned seafarers suffered difficulties caused by the non-compliance of the responsibilities of the shipowner. Furthermore, the resolution of abandonment cases should not create more burdens on seafarers;
- .8 several delegations provided information to the effect that many cases concerning ships registered in their countries or in their ports that were reported in 2019 had been resolved, and that the cases had been settled with the seafarers or the seafarers had been repatriated. Furthermore, the application of international sanctions had compromised the solution in one case and the rights of seafarers on board their ships had been violated;
- .9 many delegations stated that the financial cover for repatriation and payment of wages needed to be guaranteed and that the situation of seafarers needed to be improved. In port States, there were serious issues with safe manning requirements by which flag States were unable to support the repatriation of seafarers. This needed to be taken into account when finding solutions, and, in particular, reference was made to the relevant flag State requirements under article 94 of the United Nations Convention on the Law of the Sea (UNCLOS);
- .10 ICS stated that document LEG 107/4/3 reflected the global situation of seafarers as of late last year, but that it was out of date given the increase in cases in recent months. Furthermore, there was a need to have accurate reports and updates to promptly reflect the present abandonment cases which affected the seafarers and their families. Most ships appeared to have financial security certification required by the 2014 amendments to MLC, 2006, which entered into force in 2017. However, there was a gap in coverage for vessels of flag States still to ratify MLC, 2006. Furthermore, there were serious concerns about flag and port States reportedly not supporting the repatriation of abandoned seafarers due to safe manning requirements on board vessels. As requested, the full statement of ICS is set out in annex 3 to this report;
- .11 ILO stated that because of the increased reporting of abandonment of seafarer cases, the awareness of the issue had grown tremendously. In many cases, the port State was preventing the repatriation of seafarers in contradiction to its MLC responsibility to facilitate the repatriation of seafarers as the recent cases in Djibouti had shown. These practices were internationally unacceptable and ILO, together with IMO, ICS and ITF, would work to improve this situation; and
- .12 the Secretariat clarified that the report on the abandonment of seafarers as provided in the annex to document LEG 107/4 reflected the situation at the end of 2019 and would accurately be updated for consideration at LEG 108. The IMO and ILO Secretariats updated the database daily on the website and documents LEG 107/4 and LEG 107/2 were produced to facilitate the discussions in the Committee. Furthermore, it was clarified that according to the database procedures, the status of an abandonment case could only be

considered as being resolved if ILO had received clear advice from the Member State or relevant organization that:

- .1 the totality of the crew had been successfully repatriated; and
- .2 the totality of all outstanding remuneration and contractual entitlements had been paid and duly received by all the crew members.

Therefore, this needed to be confirmed first before the necessary modifications could be made on the database website.

4.12 Following the discussion, the Committee:

- .1 noted the information provided in documents LEG 107/4, LEG 107/4/1, LEG 107/4/3 and LEG 107/10/2;
- .2 reminded Member States of the importance of resolution A.930(22) on *Guidelines in the provision of financial security in the case of abandonment of seafarers*;
- .3 highlighted the existence of the IMO/ILO joint database;
- .4 encouraged Member States to report incidents of abandonment to the database when they occur in their ports or on vessels flying their flag, and to advise ILO and IMO of any information in relation to cases listed in the IMO/ILO joint database;
- .5 encouraged further ratification of MLC, 2006; and
- .6 urged Member States to take all necessary action to reduce the number of abandonment cases, in particular those exacerbated by the COVID-19 pandemic.

4.13 The Committee considered document LEG 107/4/4 (Ukraine) which provided comments on documents LEG 107/4 and LEG 107/4/1, as well as supplementary information to promote and facilitate the reporting of abandonment cases to the IMO/ILO joint database and their prompt resolution, and to strengthen the role of flag States and port State control (PSC) in this process.

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

- .1 the abandonment of seafarers remained a very serious issue despite the entry into force of the 2014 amendments to MLC, 2006. However, many delegations expressed their views on the issues under paragraph 23.2 of document LEG 107/4/4 that since MLC, 2006 was not an IMO instrument, it would be difficult to include it in the IMO Member State Audit Scheme;
- .2 the matter should also be discussed in ILO since the issue of abandonment of seafarers was a joint IMO/ILO issue; and
- .3 there was broad agreement on the issues under paragraphs 23.1, 23.3 and 23.6 of document LEG 107/4/4. However, the issue under paragraph 23.4 should preferably be first considered by the Sub-Committee on

Implementation of IMO Instruments (III Sub-Committee) for its advice and further guidance for consideration at a future session of the Legal Committee, while the issue raised in paragraph 23.5 would require more analysis by the Secretariat.

- 4.15 Following the discussion, the Committee agreed:
- .1 to add information on the financial security provider in the standard reporting form;
 - .2 that there was no need to complement the programme of the IMO Member State Audit Scheme, with regard to:
 - .1 the establishment and maintenance of an effective system to monitor compliance of the ships with the requirements of MLC, 2006, including with regard to financial security;
 - .2 the response by the flag State to report on ships operating without financial security and/or abandoned by the shipowner;
 - .3 the regularly updated contact details of the flag State officials responsible for handling claims of seafarers onshore; and
 - .4 the provision of information on national legislation regarding MLC, 2006;
 - .3 to request the IMO and ILO Secretariats to conduct an additional analysis on the effectiveness of regulation 4.2 of MLC, 2006 with regard to shipowners' liability for the payment of all contractual claims for personal injury to, or death of, seafarers; and to refer this analysis for further consideration during the forthcoming meeting of the Special Tripartite Committee (STC) of MLC, 2006 of ILO in 2021 and at LEG 108;
 - .4 to invite the III Sub-Committee to provide advice and further guidance for consideration at a future session of the Legal Committee concerning:
 - .1 the provision of information on insurance certificates, their validity period and contact information of financial security providers into the PSC Ship Inspection Report; and
 - .2 the conduct of a Concentrated Inspection Campaign (CIC) on financial security regarding the 2014 amendments to MLC, 2006;
 - .5 to invite the IMO and ILO Secretariats to provide further information to LEG 108 regarding supplementing the joint IMO/ILO database on abandonment of seafarers with the following modules:
 - .1 contact information of competent authorities and organizations that could assist in resolving the cases;
 - .2 contact details of financial security providers;

- .3 updated list of vessels with information on financial security provider, terms of validity of the certificate or other documentary evidence of financial security; and
- .4 contractual claims for personal injury to, or death of, seafarers and related shipowners' liability; and
- .6 to invite the Member States and non-governmental organizations (NGOs) to conduct additional training and information campaigns.

4.16 The Committee further considered document LEG 107/4/2 (India) which provided information on the difficulties faced by Member States and seafarers in situations when a ship was abandoned by the shipowner, and also proposed the adoption of a resolution, which could be discussed in the forthcoming meeting of the STC of MLC, 2006 of ILO in 2021, for a possible amendment to MLC, 2006, to incorporate provisions to enable the financial security necessary for the replacement of seafarers by the P & I insurer.

4.17 Although the Committee recognized the importance of the issue and the need to prevent the providing of a replacement crew to a vessel from further delaying the repatriation of abandoned seafarers, the Committee was also of the view that an amendment to MLC, 2006 was not within the remit of IMO. The Committee requested the IMO Secretariat to communicate the Committee's support on the issue to the STC of MLC, 2006 of ILO, scheduled to meet in April 2021.

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

- .1 in theory, it would be useful to protect the position of the seafarer to provide for financial security for the replacement of seafarers by the P & I insurer. However, in practice such a provision would be very difficult to implement; and
- .2 although the proposal would certainly have benefits and the concerns were shared in the Committee, it would not fall within the remit of IMO and should be discussed at the meeting of the STC of MLC, 2006 of ILO in April which was dealing with MLC, 2006 issues.

4.19 The Committee encouraged the delegation of India to submit the proposal for consideration to the meeting of the STC of MLC, 2006 of ILO in April 2021.

Audio file: Monday, 30 November 2020

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

5.1 The Committee noted that there were no documents submitted under this agenda item.

5.2 ITF expressed the view that maritime casualty accidents were a serious issue, and that further work should continue on this important matter. As requested, the full statement made by ITF is set out in annex 3 to this report.

Audio file: Monday, 30 November 2020

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

Compulsory insurance requirements under IMO conventions and insurance problems

6.1 With regard to document LEG 107/6 (Canada, Denmark, Italy, Japan, Norway and Republic of Korea), providing information on problems encountered in some oil pollution incidents involving insurers that were not members of the International Group of Protection and Indemnity Associations (P & I Clubs), such as inconsistencies between the documents provided by the non-International Group (IG) insurers and the underlying insurance policies, insolvency of the non-IG insurer and uncooperative action of such insurers, the Committee noted the information provided in the document and invited the co-sponsors of the document to submit concrete proposals to LEG 108 to revise the *Guidelines for accepting insurance companies, financial security providers and the International Group of Protection and Indemnity Associations (P & I Clubs)*.

6.2 Furthermore, the Committee invited the co-sponsors of the document to submit concrete proposals to LEG 108 on educational and practical information on the responsibilities of shipowners, insurers or other financial security providers, and States with regard to IMO liability conventions.

Uniform implementation of IMO conventions – measures to gather data required to evidence the need for amendments to liability limits

6.3 With respect to document LEG 107/6/1 (Australia and France), the Committee invited the co-sponsors of the document to submit a proposal to LEG 108 on the data collection system, aimed to address the need for a consistent, transparent and evidence-based approach to support future amendment of limits of liability.

6.4 As reported in paragraphs 9.8 and 9.10 below, document LEG 107/6/1 was also included in the chapeau of the terms of reference of the intersessional group, as this document contained parts which could be of interest for the discussion of the Unified Interpretation on the test for breaking the owner's right to limit liability under the IMO conventions.

Harmonized interpretation of the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (2001 Bunkers Convention)

6.5 The consideration of document LEG 107/6/4 (Islamic Republic of Iran), raising the issue of determination of "State of the ship's registry" in relation to an unregistered ship when calling at the ports of States Parties to the 2001 Bunkers Convention, was under agenda item 17 and the actions of the Committee in this respect are reflected in paragraph 17.7.

Unauthorized and unlawful issuance of certificates in respect of ships in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, temporarily occupied by the Russian Federation

6.6 The Committee noted document LEG 107/6/2 (Ukraine) drawing its attention 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.

6.7 In this context, the Committee also noted the view expressed by the delegation of the Russian Federation in its document (LEG 107/6/3) that the issues raised by Ukraine went beyond the scope of IMO due to their exclusively political nature, and that IMO had been

established to deal with solely technical matters related to international shipping under Article 1 of the IMO Convention.

Audio file: Tuesday, 1 December 2020

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 on a series of measures to prevent unlawful practices associated with the fraudulent registration and fraudulent registries of ships.

7.2 The Committee also recalled that the Assembly, at its thirty-first session, had adopted resolution A.1142(31) on *Measures to prevent the fraudulent registration and fraudulent registries of ships* (A 31/D, paragraph 11.2) containing the Procedure for the communication of information to the Organization on Registries of ships in the Contact Points module in GISIS approved by LEG 106.

7.3 The Committee further recalled that, taking into account the need to further consider several remaining proposals and issues, it had established the Correspondence Group on Further Measures to Prevent the Fraudulent Registration and Fraudulent Registries of Ships under the coordination of the United States and, based on the terms of reference (outlined in paragraph 7.26 of document LEG 106/16), had instructed the Group to submit a report to LEG 107.

Report of the Correspondence Group

7.4 In considering document LEG 107/7/2 (United States) containing the report of the Correspondence Group, the Committee noted that the Group had made some progress on the consideration of the definitions of "fraudulent registration" and "fraudulent registry" (in paragraph 10 of the report), although there had been no final agreement on the definitions. The Committee also noted that it had been suggested that additional terms be defined, such as "registry", "registration" and "fraudulent documentation" (paragraph 9 of the report).

7.5 In this context, the Committee further noted that there had been insufficient time to discuss the remaining proposals and issues in the terms of reference of the Group, and that, therefore, it had been suggested that these be referred to the Group to be established, for further consideration.

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

- .1 the issues of fraudulent registration of ships also affected fishing vessels and encouraged illegal, unregulated and unreported fishing, which also had a negative impact on the fishing industry;
- .2 the concept of genuine link was relevant and should be taken into account in the work of the intersessional group;
- .3 raising the issue of genuine link in this Committee had not occurred for a long time and was a cause for concern. There was a call for caution in attempting to connect the "genuine link" to the issue of fraudulent registration;
- .4 with regard to the definition of "fraudulent registry", the reference to the intention to misrepresent or to mislead was crucial;

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- .5 port State control personnel needed to be informed of these issues and also required training on how to identify fraudulently registered ships;
 - .6 it was also important to safeguard the legal rights of the seafarers working on board ships found to be fraudulently flying a flag, and not to treat them in an unfair manner;
 - .7 fraudulently registered ships did not comply with the international standards and threatened the security of the crew and the marine environment; and
 - .8 it was important to develop awareness courses on these issues.

7.7 The Committee expressed its appreciation to the Correspondence Group for its work and reiterated the importance of combating fraudulent registration and fraudulent registries of ships. The Committee supported the continuation of the work intersessionally and the submission of a report to LEG 108.

7.8 The Committee recalled that document LEG 107/7/3 (Secretariat) provided additional information on the work of the Secretariat on various matters related to the fraudulent registration and fraudulent registries of ships since LEG 106, in amplification of document LEG 107/7/2.

7.9 The Committee also recalled that document LEG 107/7/3/Add.1 (Secretariat) updated document LEG 107/7/3 regarding the communication of information to the Organization on registries of ships pursuant to resolution A.1142(31) and Circular Letter No.4190, as of 2 March 2020.

7.10 The Committee noted the update provided orally by the Secretariat that since the issuance of document LEG 107/7/3, the Kingdom of Cambodia had informed the Organization of the fraudulent use of its flag on vessel **Song Wong** and that this information had been circulated in Circular Letter No.4309 of 6 July 2020. Furthermore, that the Secretariat had been alerted to:

- .1 the fraudulent issuance of Samoan registration certificates by a company operating an illegal Samoa Ship Registry under the domain name <http://samoaregister.com/>;
- .2 the operation of an illegal ship registry for Zambia under the domain name <http://zambiaships.com/>; and
- .3 the attempt to fraudulently register ships under the flag of Gabon.

7.11 As requested, the text of the statement made by the delegation of Samoa in this context is set out in annex 3 to this report.

7.12 The Committee also noted that, as of 17 November 2020, there were 50 ships shown under False/Fraudulent flags in GISIS, which had been verified as fraudulently registered by IHS Markit after consultation with the respective flag States.

7.13 The Committee further noted that, since the issuance of document LEG 107/7/3/Add.1, the following Governments had provided information on their registries of ships: Antigua and Barbuda, Azerbaijan, Brazil, Canada, Cyprus, Finland, Islamic Republic of Iran, Morocco, Myanmar, Sweden, Trinidad and Tobago, and Turkey. In this context, the

Committee noted that the Secretariat encouraged all Member States to submit their information to the Secretary-General to allow for a complete database of registries.

Proposal for a draft Assembly resolution to encourage Member States and all relevant stakeholders to promote concrete actions for the prevention and suppression of fraudulent acts in the maritime sector

7.14 The Committee recalled that document LEG 107/7 (United Arab Emirates) promoted the exchange of information to detect and report fraudulent registration practices and the establishment of fraudulent registries and encouraged States to take appropriate action against such practices. In this context, the Committee noted that the document proposed the consideration of a draft Assembly resolution to encourage Member States and all relevant stakeholders to promote concrete actions for the prevention and suppression of fraudulent acts in the maritime sector.

7.15 There was broad support for the proposed resolution contained in document LEG 107/7. The majority of the Committee was of the opinion that it should be an Assembly resolution, but agreed that the group to be established to work intersessionally should further review the proposed resolution and the vehicle for its adoption, and make recommendations to LEG 108 accordingly.

7.16 After consideration, the Committee agreed with the proposal that a remote intersessional group be established at this session to work by correspondence, with the option of meeting virtually, if the members of the group wished to do so.

7.17 With regard to the proposed terms of reference for the intersessional work, as set out in document LEG 107/WP.4, some delegations expressed concerns with the proposed paragraph .2, reading "consider and finalize the definitions of 'registration' and 'registry' and advise the Committee accordingly", as they considered that these definitions were well established and any further discussions would only open political debates that would be difficult to resolve and would divert the work on effective measures to prevent fraudulent registration matters.

7.18 Other delegations supported the retention of the proposed paragraph .2 as drafted in document LEG 107/WP.4, as these terms were a source of confusion and their definitions would be helpful for the work of the group to be established. Others suggested that the paragraph should be reworded to mean that the intersessional group would consider the definitions of "registration" and "registry" as a basis for its work.

7.19 Several delegations expressed views that it was important to have clear definitions related to "fraudulent registration" and "fraudulent registry". However, priority should be given to the aim of this output in developing measures to prevent the fraudulent registration and fraudulent registries of ships, taking into consideration that the target completion of this output would be in the year 2021.

7.20 The Committee agreed to amend paragraph .4 of the proposed terms of reference by deleting the word "finalize" and replacing it with the words "taking into account the outcomes of consideration of paragraphs .1, .2 and .3 above, consider". Based on some of the views expressed during the discussion, the Committee agreed to remove the square brackets around paragraph .5 of the proposed terms of reference and to amend it slightly, to add "as necessary" after "identify items". However, the Committee also agreed that it was up to the intersessional group to decide on the priority of the terms of reference.

Establishment of a remote intersessional group

7.21 Subsequently, the Committee established a remote intersessional group under the coordination of the United States² and instructed it, taking into consideration documents LEG 107/7, LEG 107/7/2, LEG 107/7/3 and LEG 107/7/3/Add.1, as well as the comments, proposals and decisions made by the Committee, to work by correspondence, with the option of meeting virtually, if the members of the group wished to do so, and to:

- .1 finalize the proposed definitions of "fraudulent registration" and "fraudulent registry" and advise the Committee accordingly;
- .2 consider the definitions of "registration" and "registry" and advise the Committee accordingly;
- .3 consider the remaining recommendations, proposals and issues in documents LEG 106/7/2, LEG 106/7/4 and LEG 106/7/5 and advise the Committee accordingly;
- .4 taking into account the outcomes of consideration of paragraphs .1, .2 and .3 above, consider the text of the draft [Legal Committee] [Assembly] resolution on Encouragement of Member States and all relevant stakeholders to promote concrete actions for the prevention and suppression of fraudulent acts in the maritime sector, contained in the annex to document LEG 107/7, for adoption or approval by the Committee, and thereafter submission to C 126 and/or A 32 for consideration and adoption, as appropriate;
- .5 identify items, as necessary, for further consideration by the Legal Committee at its next session and develop a work plan; and
- .6 submit a report to LEG 108.

Audio file: Friday, 27 November 2020

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 105th session in April 2018, 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 with a target completion year of 2022.

8.2 The Committee also recalled that, at its 106th session in March 2019, it had approved the framework for its regulatory scoping exercise and a plan of work and procedures, following the same two-step approach and the same methodology developed by the Maritime Safety Committee (MSC), comprising an initial review of the instruments under the purview of the

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Should the above email not be accessible or otherwise unresponsive, alternatively please contact led@imo.org and your comments will be forwarded to the coordinator.

Legal Committee with the agreed methodology and an analysis of the most appropriate way of addressing MASS operations.

8.3 The Committee further recalled that it had decided not to hold an intersessional working group on MASS, but instead requested the volunteering Member States, which had conducted the initial review and subsequent analysis of the most appropriate way of addressing MASS operations, to report the results of both steps of its regulatory scoping exercise to LEG 107.

8.4 The Committee received the following documents for its consideration:

- .1 15 reports submitted by the volunteering Member States presenting the summary of the results of the regulatory scoping exercise of the Legal Committee for each individual instrument that was reviewed (LEG 107/8/1, LEG 107/8/2, LEG 107/8/3, LEG 107/8/5, LEG 107/8/6, LEG 107/8/7, LEG 107/8/8, LEG 107/8/9, LEG 107/8/10, LEG 107/8/11, LEG 107/8/12, LEG 107/8/13, LEG 107/8/14, LEG 107/8/15 and LEG 107/8/16);
- .2 two documents providing a summary of the results of the regulatory scoping exercise of the Legal Committee: LEG 107/8 and its corrigendum (Comité Maritime International (CMI)) and LEG 107/8/17 (Secretariat);
- .3 LEG 107/8/18 (International Federation of Shipmasters' Associations (IFSMA)) commenting on documents LEG 107/8, LEG 107/8/1, LEG 107/8/5, LEG 107/8/6 and LEG 107/8/11 regarding the role of the master, which was identified as a common potential gap during the regulatory scoping exercise undertaken by LEG, MSC and the Facilitation Committee (FAL); and
- .4 LEG 107/8/4 (Secretariat) reporting on the progress made on the regulatory scoping exercise by MSC and FAL for the instruments under their purview.

8.5 The Committee expressed its appreciation to all volunteering Member States and others who provided a review and analysis of the instruments under the purview of the Committee.

8.6 The Committee recalled that the Regulatory scoping exercise for MASS was a common subject matter in relation to the conventions under the purview of LEG, FAL and MSC, and in this context, noted that MSC 102 and FAL 44 had postponed the consideration of their agenda items on MASS to MSC 103 and FAL 45, respectively.

8.7 The Committee considered the Chair's proposal that, in line with the decisions of FAL and MSC and the limited time available at the session, the consideration of agenda item 8 on Regulatory scoping exercise and gap analysis of conventions emanating from the Legal Committee with respect to Maritime Autonomous Surface Ships (MASS), and the respective documents submitted under this item, be postponed to LEG 108, pending the outcome of discussions on MASS by MSC.

Audio file: Friday, 27 November 2020

9 UNIFIED INTERPRETATION ON THE TEST FOR BREAKING THE OWNER'S RIGHT TO LIMIT LIABILITY UNDER THE IMO CONVENTIONS

9.1 The Committee recalled that, at its last session, it had agreed to include a new output on "Unified Interpretation on the test for breaking the owner's right to limit liability under the IMO conventions" in its 2020-2021 biennial agenda, with a target completion year of 2021.

9.2 The Committee also recalled that it had invited concrete proposals to LEG 107 on the scope of the work on the new output, and that P & I Clubs had offered to coordinate informal discussions on the proposals for LEG 107.

Intersessional work

9.3 The Committee recalled that document LEG 107/9 (Canada, Greece, Italy, Malta, Poland, ICS and P & I Clubs) reported on the intersessional work since LEG 106 on the development of a Unified Interpretation on the test for breaking the owner's right to limit liability under the IMO conventions (the test), and the review of the Travaux Préparatoires of the IMO liability and compensation conventions, as well as other related historical papers and documents that identified consistent themes and principles which highlighted the virtually unbreakable nature of the test.

9.4 The Committee noted that document LEG 107/INF.5 (Canada, Greece, Italy, Malta, Poland, ICS and P & I Clubs) contained the full review of the Travaux Préparatoires of the Convention on Limitation of Liability for Maritime Claims, 1976 (LLMC 1976) with specific reference to article 4 of the Convention and the test.

9.5 The Committee also recalled that document LEG 107/9/1 (Comité Maritime International) provided comments on documents LEG 107/9 and LEG 107/INF.5 and endorsed the analysis of the intersessional informal group on the development of a Unified Interpretation on the test and the proposed actions in paragraphs 11.2 and 11.3 of document LEG 107/9.

9.6 The Committee referred to the consistent themes and principles identified in paragraph 7.9 of document LEG 107/9, as follows:

- .1 the wording was based on the principle of "unbreakability";
- .2 the wording was intended to comprise a virtually unbreakable test;
- .3 it was presented and adopted as part of a package that was coupled with higher limits of liability (than the 1957 LLMC Convention);
- .4 it was linked to the insurability of the risk at reasonable cost and it was designed to link to the conduct of the shipowner under his insurance policy ("wilful misconduct") that would deprive him of the right to be indemnified under the insurance policy;
- .5 it did not constitute a threshold of "gross negligence", since that concept had been rejected for inclusion by States at the international conference; and
- .6 proposals discussed at the diplomatic conference to extend the test to include servants of the carrier, the master or other crew members were rejected and, as a result, the behaviour of such parties was not considered to be relevant for the purposes of applying the test.

9.7 In the ensuing discussion, the following comments were made on documents LEG 107/9, LEG 107/9/1 and LEG 107/INF.5 and the following views were expressed:

- .1 the principles and themes identified in document LEG 107/9 represented a crucial compromise to ensure the insurability of the risk and were fundamental to the operation of the liability conventions;
- .2 the liability conventions formed the foundation of the IMO work in terms of liability and it was important to continue to develop the work in this regard;
- .3 LLMC 1976 successfully struck a balance between the competing interests of claimants and defendants by adjusting the limits of liability as high as the shipowner could be covered by insurance at a reasonable cost, while making it virtually impossible to break the liability limits;
- .4 the Unified Interpretation could serve as a guidance for States and may or may not be considered binding by national courts;
- .5 in the case of a dispute regarding the liability of a master or a shipowner, the competent jurisdiction assessed the situation on the basis of specific facts and events rather than pure abstract principles;
- .6 a Unified Interpretation would not be able to take into account all possible situations relating to pollution accidents or liability at sea; and
- .7 it was also important to take into account other general principles such as the principles of certainty, balance and sustainability of the IMO liability and compensation conventions.

9.8 The Committee noted the comment made by some delegations that the development of a Unified Interpretation should also be based on the analysis provided in document LEG 107/6/1 (Australia and France), which would complement the work of the group to be established. At their request, the text of the statement made by the delegation of France in this context is set out in annex 3 to this report.

9.9 With regard to documents LEG 107/9, LEG 107/9/1 and LEG 107/INF.5, the Committee supported the adoption of a Unified Interpretation on the test as well as the continuation of the work intersessionally and the submission of a report to LEG 108. The Committee agreed that the principles and themes identified in paragraph 7.9 of document LEG 107/9 should be reflected in the Unified Interpretation.

9.10 The Committee agreed that document LEG 107/6/1 would be included in the chapeau of the terms of reference of the proposed intersessional group, as this document contained parts which could be of interest for the discussion of the Unified Interpretation. The Committee also agreed that the scope of the work of the intersessional group should remain focused on the Unified Interpretation and that the larger issues raised in document LEG 107/6/1, including the provision of any claims data, needed to be subject to a proposal for a new output at LEG 108 and then agreement at LEG 108 on any such proposal. The Committee further agreed that the discussion of the topic of the Unified Interpretation did not depend on the outcome of the discussions of that new output.

9.11 The Committee recalled that document LEG 107/9/2 (Secretariat) provided comments on documents LEG 107/9, LEG 107/9/1 and LEG 107/INF.5 and information on the possible mechanisms for the adoption of a Unified Interpretation on the test, based on paragraphs 3(a) and (b) of article 31 of the Vienna Convention on the Law of Treaties, 1969 (the Vienna Convention), as well as on the recent work of the International Law Commission (ILC) on subsequent agreements and subsequent practice in relation to the interpretation of treaties. The Committee also recalled that, based on the ILC conclusions, an interpretative resolution by the Parties, clearly expressing the agreement in substance among them, or their common understanding, regarding the interpretation of the test would constitute a subsequent agreement or subsequent practice under paragraph 3 of article 31 of the Vienna Convention.

9.12 The delegations that spoke regarding the vehicle for the adoption of the Unified Interpretation were of the opinion that, based on the analysis in document LEG 107/9/2, a resolution of a conference of States Parties would carry more legal weight. In this context, the Committee noted the explanation provided orally by the Secretariat that it was possible to hold a conference of the Parties in conjunction with a meeting of the Legal Committee and that the Committee would transition into a conference of the Parties of the relevant conventions in order for them to adopt the Unified Interpretation. The Committee also noted that, in that case, the resolution would be a resolution of the Parties, emanating from the Legal Committee.

9.13 The Committee noted the concern raised by some delegations that if a Unified Interpretation was adopted as a "subsequent agreement" or "subsequent practice" within the meaning of article 31(3)(a) and (b) of the Vienna Convention, it could cause complex legal questions vis-à-vis the States Parties that did not agree to the resolution and that, therefore, the intersessional group and LEG 108 should carefully consider the question of the format for adoption of any draft unified interpretation. The Committee therefore agreed that the vehicle for the adoption of the Unified Interpretation should be further considered intersessionally and at LEG 108, and that paragraph .2 of the proposed terms of reference should be amended accordingly.

9.14 After consideration, and bearing in mind paragraph 9.11 above, the Committee agreed with the proposal that a remote intersessional group be established at this session to work by correspondence, with the option of meeting virtually, if the members of the group wished to do so.

Establishment of a remote intersessional group

9.15 Subsequently, the Committee established a remote intersessional group under the coordination of Georgia³ and instructed it, taking into consideration documents LEG 107/9, LEG 107/9/1, LEG 107/9/2, LEG 107/INF.5 and LEG 107/6/1, as well as the comments, proposals and decisions made by the Committee, to work by correspondence, with the option of meeting virtually, if the members of the group wished to do so, and to:

- .1 develop the text of a draft unified interpretation on the test for breaking the owner's right to limit liability under the IMO conventions, reflecting the decisions taken at LEG 107 on the principles of the test;

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- .2 develop the text, and further consider the vehicle for the adoption, of a draft resolution of either a Conference of States Parties, the Assembly, or the Legal Committee for the Unified Interpretation; and
- .3 submit a report to LEG 108, with a view to finalization of the above Unified Interpretation, the text of the resolution and the vehicle for the resolution at that session.

Audio files: Friday, 27 November and Monday, 30 November 2020

10 MATTERS RELATING TO THE WORK OF THE LEGAL COMMITTEE AND THE COVID-19 PANDEMIC

10.1 The Committee was informed that agenda item 10 was a new agenda item that had been added in consideration of the impact of the COVID-19 pandemic on the work of the Committee.

10.2 In this context, the Committee considered document LEG 107/10/1 (Secretariat), providing an overview of the work of the Seafarer Crisis Action Team (SCAT) which had been established by the Secretary-General in April 2020 in response to the growing concern over the crew change crisis caused by the COVID-19 pandemic.

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

- .1 the active engagement of SCAT in the crew exchanges around the world was much appreciated, welcomed and supported;
- .2 policy directions from the Secretary-General were very helpful in developing national policies and approaches to crew changes;
- .3 the facilitation of safe crew changes was a shared responsibility of all stakeholders in the maritime industry, including flag States, port States and the home countries of seafarers;
- .4 the COVID-19 crisis had proven that maritime transport was essential to the world economy and therefore the designation of seafarers as key workers was of crucial importance;
- .5 seafarers were entitled to fair and decent conditions of work and MLC, 2006 should be strictly observed and enforced;
- .6 point 2 and point 3 of the terms of reference of SCAT should be adjusted as it was not appropriate for SCAT to write directly to ministers and to the United Nations Secretary-General. This should be done by the Secretary-General;
- .7 regarding point 4 of the terms of reference, the United Nations General Assembly would imminently adopt a resolution on crew changes. As a follow up, it was recommended to submit information under the item "Oceans and the Law of the Sea" of the United Nations General Assembly, that deals with IMO matters;
- .8 the number of ports where crew changes were allowed was still too low;

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- .9 the inclusion in charterparties of clauses preventing crew changes was contrary to good practice and the principles of corporate social responsibility, and undermined the efforts being made to facilitate crew changes to ensure the safety of the crew and of the ship;
 - .10 the charterparty clauses must not prohibit crew changes and the charterers enforcing such clauses act illegally;
 - .11 there had been a charterparty deviation clause for crew changes developed and approved by BIMCO, but, as yet, there was not much uptake for the new clause; and
 - .12 it was crucial that States cooperated to achieve a sustainable system which would allow seafarers to effectively travel to and from their home countries, to and from ships.

10.4 Following discussion, the Committee expressed its appreciation to the Secretary-General for establishing SCAT and thanked him and the members of the Team for their continuous efforts in addressing the crew changes crisis.

10.5 The Secretariat clarified that the activities of SCAT, as explained in paragraph 4 of document LEG 107/10/1, had evolved over time and any interaction at the ministerial level was conducted by the Secretary-General personally. The Secretary-General had also been closely working with the United Nations Secretary-General, who was very interested in resolving the crew changes crisis and had been very supportive of IMO and ILO efforts.

10.6 The delegation of Belgium informed the Committee that all relevant national and regional authorities in Belgium had adopted a protocol for crew changes. Under this protocol, all crew changes for all ships and seafarers of all nationalities were allowed in all Belgian ports. The delegation of Belgium offered to share this protocol with all interested delegations. As requested, the full statement made by the delegation of Belgium is reproduced in annex 3 to this report.

10.7 ITF requested the Committee to encourage cooperation between Member States to implement the framework of protocols to ensure safe ship crew changes as well as encourage Member States to implement systems to allow shore leave to be taken, ensure medical care for seafarers and recognize seafarers as key workers. As requested, the full statement made by ITF is reproduced in annex 3 to this report.

10.8 The Committee noted the information contained in document LEG 107/10/1 and encouraged interested delegations to submit proposals regarding the use of "no crew change clauses" in charterparties to LEG 108 for consideration.

Audio file: Monday, 30 November 2020

11 PIRACY

11.1 Due to time constraints, the Committee decided to postpone the full consideration of this agenda item, and of renumbered document LEG 107/17/1, to its 108th session.

11.2 The delegations of the Marshall Islands and Saint Kitts and Nevis made statements regarding recent piracy incidents which, as requested, are set out in annex 3 to this report.

Audio file: Tuesday, 1 December 2020

12 WORK OF OTHER IMO BODIES

12.1 Due to time constraints, the Committee decided to postpone the consideration of this agenda item to its 108th session.

Audio file: Tuesday, 1 December 2020

13 TECHNICAL COOPERATION ACTIVITIES RELATED TO MARITIME LEGISLATION

13.1 Due to time constraints, the Committee decided to postpone the full consideration of this agenda item to its 108th session.

13.2 The Committee congratulated Ms. Kamyla Alejandra Barrientos Pineda from Guatemala, who was attending the remote session, for her dissertation entitled "A Legal Analysis of Measures Adopted to Prevent Unlawful Practices Associated with the Fraudulent Registration of Ships", which was awarded the IMO Secretary-General's Prize for Best Dissertation for the academic year 2018-2019.

Audio file: Tuesday, 1 December 2020

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

14.1 Due to time constraints, the Committee decided to postpone the full consideration of this agenda item to its 108th session.

14.2 The delegation of the United Arab Emirates informed the Committee of the progress made towards the accession to the 1996 LLMC Protocol and the 2001 Bunkers Convention, and stated that the respective instruments of accession would be deposited with the Secretary-General in due course.

Audio file: Tuesday, 1 December 2020

15 WORK PROGRAMME

Proposals for new outputs

15.1 The Committee noted that two proposals for new outputs had been submitted to this session of the Legal Committee:

- .1 a proposal to add a new output on Fair treatment of seafarers detained on suspicion of committing maritime crimes (LEG 107/14, LEG 107/14/3 and LEG 107/14/4); and
- .2 a proposal for a new output on the development of guidelines for port State authorities on how to deal with seafarer abandonment cases (LEG 107/14/1 and LEG 107/14/5).

15.2 In considering these two proposals, the Committee took into account the provisions of the document on *Organization and method of work of the Legal Committee* (LEG.1/Circ.9) and the preliminary assessment of the two proposals undertaken by the Chair, in consultation with the Vice-Chair and the Secretariat (LEG 107/WP.2).

Fair treatment of seafarers detained on suspicion of committing maritime crimes

15.3 The Committee considered document LEG 107/14 (Georgia, Malaysia, Philippines, Ukraine, ICS, IFSMA, International Association of Independent Tanker Owners (INTERTANKO), International Association of Dry Cargo Shipowners (INTERCARGO), International Ship Managers' Association (InterManager), ITF and Women's International Shipping and Trading Association Limited (WISTA International), proposing a new output on Fair treatment of seafarers detained on suspicion of committing maritime crimes, and document LEG 107/14/4 (InterManager) commenting on document LEG 107/14.

15.4 The Committee, following an in-depth discussion, agreed that "Fair treatment of seafarers detained on suspicion of committing maritime crimes" was an issue that needed to be addressed by the Legal Committee and expressed its general support for the proposed new output. The Committee made the following comments:

- .1 criminalization and unfair treatment of seafarers detained on suspicion of committing crimes was an issue of human rights. Detained seafarers should get legal representation, access to medical care, consular assistance and be treated fairly;
- .2 seafarers should be considered innocent until proven guilty and should enjoy their human rights irrespective of their nationality and the flag the vessel. All efforts should be made to improve the welfare of seafarers;
- .3 in considering the fair treatment of seafarers, the existing international legal framework should be taken into account and reference to fair treatment should be understood as equitable treatment, as referenced in all human rights instruments; and
- .4 bearing in mind that various domestic legal systems existed, the guidelines would be very helpful to ensure fair treatment of seafarers in all jurisdictions. The guidelines should take into account that fair treatment of seafarers was regulated in domestic legislation.

15.5 In conclusion, the Committee agreed to:

- .1 include a new output on "Fair treatment of seafarers detained on suspicion of committing maritime crimes" in the 2020-2021 and 2022-2023 biennial agendas of the Legal Committee, with a target completion year of 2023;
- .2 invite concrete proposals to LEG 108 for consideration and to take a decision on the scope of the new output after detailed consideration of any proposed measures; and
- .3 include the item in the provisional agenda for LEG 108.

15.6 Several delegations, including the observer delegations of ITF, IFSMA, ICS and InterManager, brought to the attention of the Committee the fact that seafarers were detained even though they did not voluntarily commit any crime. In some instances, they were detained for prolonged periods of time, without a fair trial and in violation of their basic human rights. As requested, the statements of those delegations are reproduced in annex 3 to this report.

15.7 The Committee noted document LEG 107/14/3 (Secretariat) providing information requested by the Committee at its 106th session regarding coordination with ILO on the potential activation of a joint working group on the fair treatment of seafarers detained on suspicion of committing maritime crimes.

15.8 The Committee noted that the IMO and ILO Secretariats had met on 6 December 2019 to discuss possible ways forward. In conclusion, the Committee agreed to request, as a matter of urgency, the STC of MLC, 2006 of ILO to authorize the establishment of an ILO-IMO tripartite working group to identify and address seafarers' issues and the human element, which would need to be endorsed by the ILO Governing Body during its meeting in November 2021, as recommended by the ILO Sectoral Meeting; and invited MSC to make a similar request to the Council when considering the report of the sixth session of the Sub-Committee on Human Element, Training and Watchkeeping (HTW 6) in document MSC 102/13/2 submitted by the Secretariat.

Guidelines for port State and flag State authorities on how to deal with seafarer abandonment cases

15.9 The Committee considered document LEG 107/14/1 (China) proposing a new output on the development of guidelines for port State authorities on how to deal with seafarer abandonment cases, and document LEG 107/14/5 (Indonesia and the Philippines) commenting on document LEG 107/14/1 and proposing elements for the development of the guidelines.

15.10 The Committee noted the information contained in document LEG 107/14/1 that the development of a set of guidelines for port State authorities when dealing with seafarer abandonment cases would provide for a unified procedure to follow and serve the purpose of sustainable development of the shipping industry.

15.11 The Committee also noted the proposal in document LEG 107/14/5 to establish a working group to incorporate several elements in specific draft guidelines on the protection of seafarers in abandonment cases, and to conduct a gap analysis regarding the handling of seafarers' abandonment cases.

15.12 The Committee, following an in-depth discussion on the proposal, expressed its broad support for the inclusion of the new output on the development of guidelines for port State and flag State authorities on how to deal with seafarer abandonment cases, bearing in mind the following comments:

- .1 seafarer abandonment cases were a shared responsibility of port States and flag States and therefore the title of the output should also include flag States;
- .2 after the 2014 amendments to MLC, 2006 entered into force in 2017, there had been a spike in abandonment cases. Although the amendments provided for an obligation to maintain insurance, they did not cover the cost of the repatriation and the replacement crew;
- .3 the cost of repatriation was already addressed in the 2014 amendments and the associated guidelines; and
- .4 this issue was within the mandate of IMO and ILO, therefore flag States and port States guidelines for abandonment cases had to be dealt with jointly. This needed to be addressed by the STC and also by the joint IMO/ILO working group that, hopefully, would be established.

15.13 In conclusion, the Committee agreed to:

- .1 include a new output under the work programme on the development of guidelines for port State and flag State authorities on how to deal with

seafarer abandonment cases on the 2020-2021 and 2022-2023 biennial agendas, with a target completion year of 2022;

- .2 invite concrete proposals to LEG 108 on the scope of the work on the new output; and
- .3 include the item in the provisional agenda for LEG 108.

15.14 ILO informed the Committee that, similar to the new output on fair treatment of seafarers detained on suspicion of committing maritime crimes, the STC of MLC, 2006 of ILO should also be informed of this new output, as part of the establishment of an ILO-IMO tripartite working group to identify and address seafarers' issues and the human element described in paragraph 15.8. Both IMO and ILO would need to be involved in the development of the guidelines for this new output.

Audio file: Tuesday, 1 December 2020

Report on the status of outputs for the current biennium (2020-2021)

15.15 The Committee recalled that the Council, at its 122nd regular session, had endorsed the Committee's decisions on outputs for the 2018-2019 biennium and on the outputs for the current biennium.

15.16 The Committee noted the information contained in document LEG 107/14/2 submitted by the Secretariat that in accordance with paragraph 9.1 of the *Application of the Strategic Plan of the Organization* (resolution A.1111(30)), the reports on the status of outputs included in the list of outputs shall be annexed to the report of each session of the sub-committees and committees, and to the biennial report of the Council to the Assembly. Such reports shall identify new outputs accepted for inclusion in the biennial agendas.

15.17 The Committee was invited to consider a draft report on the status of outputs for the current biennium (2020-2021), including all outputs related to the Legal Committee, prepared by the Secretariat and attached as an annex to document LEG 107/14/2. In particular, the Committee was invited to consider deleting the square brackets in the "Status of outputs for Year 1" of the present biennium.

15.18 The Committee agreed on its report on the status of outputs for the current biennium, attached as annex 1 to this report, for submission to the Council.

Items for inclusion in the agenda for LEG 108

15.19 The Committee approved the list of substantive items for inclusion in the agenda for LEG 108, as contained in document LEG 107/WP.3 and attached as annex 2 to this report.

Meeting time of the Committee's next session

15.20 The Committee agreed that the next session should be held during 5 meeting days with eight full sessions of interpretation.

Audio file: Tuesday, 1 December 2020

16 ELECTION OF OFFICERS

Election of the Chair and Vice-Chair

16.1 The Committee, in accordance with rule 18 of its rules of procedure, unanimously re-elected Mr. Volker Schöfisch (Germany) as Chair for 2021 and Ms. Gillian Grant (Canada) as Vice-Chair for 2021.

Audio file: Tuesday, 1 December 2020

17 ANY OTHER BUSINESS

New GISIS module on National Maritime Legislation

17.1 The Committee noted document LEG 107/16 (Secretariat) providing information on the launch of a new GISIS module on National Maritime Legislation to facilitate the notification and circulation of information on the national legislation implementing IMO conventions.

17.2 The Committee encouraged Governments to use the module and to submit comments, remarks or suggestions for its improvement to the Secretariat.

New UNCITRAL instrument on the foreign judicial sales of ships and their recognition

17.3 The Committee noted the information contained in document LEG 107/16/1 (Secretariat) on developments on the draft instrument on the judicial sale of ships in relation to the work carried out by the United Nations Commission on International Trade Law (UNCITRAL). One of the issues for consideration in UNCITRAL concerned a proposed centralized online repository for the publication of notices and certificates of judicial sale.

17.4 The Committee was informed that the UNCITRAL Secretariat had contacted the IMO Secretariat to explore options for IMO to host a possible online repository under the draft instrument, as a new GISIS module, and that the IMO Secretariat had preliminarily indicated that this arrangement would need to be approved by the Legal Committee and be reported to the IMO Council.

17.5 During the discussion, the following views were expressed:

- .1 CMI stated that it would be most beneficial to have a centralized repository for receiving copies of both notices as well as certificates of judicial sales. The idea of having a centralized repository would certainly assist flag registries, mortgagees, prospective buyers, creditors of the vessels, maritime industry participants and courts. As requested, the full statement of CMI is set out in annex 3 to this report;
- .2 the issue of the location of the UNCITRAL repository at IMO should be further explored; and
- .3 bearing in mind that the Committee had not taken a final decision on this matter at LEG 103, the issue of judicial sale of ships should be discussed further.

17.6 The Committee invited the Secretariat to make the necessary arrangements to host a possible online repository under the draft UNCITRAL instrument on the foreign judicial sale of ships and their recognition, as an additional GISIS module, and provide a progress report to LEG 108.

Harmonized interpretation of the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 and Claims Manual for the 2001 Bunkers Convention

17.7 The Committee invited the Islamic Republic of Iran to submit further information in relation to document LEG 107/6/4 to LEG 108.

17.8 With regard to document LEG 107/17 (P & I Clubs), the Committee supported the development of a Claims Manual for the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001, under the auspices and in the name of the Organization.

17.9 The Committee noted the concerns raised by some delegations relating to the fact that, contrary to the 1992 Fund Claims Manual, there was no corresponding fund for the claims under the Bunkers Convention, and that the proposed manual would implicitly address how a national court would interpret the Bunkers Convention, and would have the character of a unified interpretation of the Convention by the Legal Committee.

17.10 The Committee also noted that careful consideration should be given to the drafting of the proposed manual, as, on the one hand, it should not create inconsistencies with the 1992 Fund Claims Manual, and on the other hand, its nature was different from the 1992 Fund Claims Manual.

17.11 The Committee invited P & I Clubs to submit a more detailed proposal on document LEG 107/17 to LEG 108, for further consideration at that session, and taking into consideration the comments made and the concerns raised.

17.12 The Committee noted that delegations interested in taking this work forward on an intersessional basis could contact P & I Clubs.⁴

Audio file: Tuesday 1 December 2020

18 CONSIDERATION OF THE REPORT OF THE COMMITTEE ON ITS 107TH SESSION

18.1 The draft report of the Committee (LEG 107/WP.1/Rev.1) was prepared by the Secretariat for consideration and adoption by the Committee taking into account the provisions of the Interim Guidance.

18.2 In this context, during the virtual meeting held on Tuesday, 1 December 2020, delegations were given an opportunity to provide comments on the draft report and thereafter, those wishing to further comment on the decisions of the Committee were given a deadline of Thursday, 10 December 2020, 11.59 p.m. (GMT) to do so by correspondence, as outlined by the Chair in document LEG 107/18.

18.3 After the resolution of comments received as described in document LEG 107/18/1, the report of the Committee was adopted and the session was closed at 11.59 p.m. (GMT) on Friday, 11 December 2020, pursuant to rule 35 of the Rules of Procedure of the Legal Committee.

18.4 The final report of the Committee was subsequently published on IMODOCS as document LEG 107/18/2.

Audio file: Tuesday, 1 December 2020

⁴ The contact point for P & I Clubs is Mr. David Baker, who may be contacted at: David.Baker@igpandi.org

ANNEX 1

BIENNIAL STATUS REPORT 2020-2021

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		
1. Improve implementation	1.4	Analysis of consolidated audit summary reports	Annual	Assembly	MSC/MEPC/ LEG/TCC/III	Council	No work requested		C 120/D, paragraphs 7.1 and 7.2
1. Improve implementation	1.7	Identify thematic priorities within the area of maritime safety and security, marine environmental protection, facilitation of maritime traffic and maritime legislation	Annual	TCC	MSC/MEPC/ FAL/LEG		No work requested		
1. Improve implementation	1.31	Measures to prevent unlawful practices associated with the fraudulent registration and fraudulent registries of ships	2021	LEG			In progress		
2. Integrate new and advancing technologies in the regulatory framework	2.20	Regulatory scoping exercise and gap analysis of conventions emanating from the Legal Committee with respect to Maritime Autonomous Surface Ships (MASS)	2022	LEG			In progress		

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
4. Engage in ocean governance	4.2	Input to ITCP on emerging issues relating to sustainable development and achievement of SDGs	Continuous	TCC	MSC/MEPC/ FAL/LEG		No work requested		
5. Enhance global facilitation and security of international trade	5.4	Revised guidance relating to the prevention of piracy and armed robbery to reflect emerging trends and behaviour patterns	Annual	MSC	LEG		No work requested		
6. Ensure regulatory effectiveness	6.1	Unified Interpretation of provisions of IMO safety, security, facilitation, environment, and liability and compensation-related conventions	Continuous	MSC/MEPC/ LEG/FAL	CCC/III/NCSR, PPR/SDC/SSE		Ongoing		
6. Ensure regulatory effectiveness	6.12	Strategies developed to facilitate entry into force and harmonized interpretation of the HNS Protocol	2021	LEG			In progress		
6. Ensure regulatory effectiveness	6.20	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		
7. Ensure organizational effectiveness	7.9	Revised documents on organization and method of work, as appropriate	2021	Council	MSC/MEPC/FAL/ LEG/TCC		No work requested		LEG.1/Circ.9

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 13	Endorsed proposals for new outputs for the 2020-2021 biennium as accepted by the Committees	Annual	Council	MSC/MEPC/FAL/LEG/TCC		In progress		
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			Postponed		
OW. Other work	OW 18	Advice and guidance on issues under UNCLOS relevant to the role of the Organization	Annual	LEG			Postponed		
OW. Other work	OW 20	Provide advice and guidance on issues brought to the Committee in connection with implementation of IMO instruments	Annual	LEG			Postponed		
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		
OW. Other work	OW 23	Cooperate with the United Nations on matters of mutual interest, as well as provide relevant input/guidance	2021	Assembly	MSC/MEPC/FAL/LEG/TCC	Council	In progress		

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	2021	Assembly	MSC/MEPC/FAL/LEG/TCC	Council	In progress		
OW. Other work	OW 37	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	2021	LEG			In progress		
OW. Other work	OW 44	IMO's contribution to addressing unsafe mixed migration by sea	2021	MSC/FAL/LEG			In progress		
OW. Other work	tbc	Fair treatment of seafarers detained on suspicion of committing maritime crimes	2023	LEG			In progress		
OW. Other work	tbc	Guidelines for port State and flag State authorities on how to deal with seafarer abandonment cases	2022	LEG			In progress		

ANNEX 2

ITEMS TO BE INCLUDED IN THE AGENDA FOR LEG 108

Substantive items for inclusion in the agenda for the 108th session of the Legal Committee

1 Substantive items for inclusion in the agenda of the 108th session of the Legal Committee are proposed as follows:

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

Fair treatment of seafarers:

- 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
- Fair treatment of seafarers detained on suspicion of committing maritime crimes
- Guidelines for port State and flag State authorities on how to deal with seafarer abandonment cases
- Matters relating to the work of the Legal Committee and the COVID-19 pandemic

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 108th session

ANNEX 3

STATEMENTS BY DELEGATIONS

OPENING

Statement by the delegation of Turkey

On 22 November 2020, during morning hours, a warship under command of Operation Irini of European Union, hailed and interrogated in detail the Turkish-flagged container vessel "M/V Roseline A" which was sailing in the high seas and carrying commercial goods and humanitarian aid from Turkey to Libyan port Misrata.

Even though, the master of the vessel acted cooperatively and shared detailed information on her cargo and route via radio communication, armed elements of Operation Irini boarded the vessel and conducted a lengthy "inspection" for hours. All crew members, including the shipmaster, were forcibly searched, gathered and confined in a single location, the containers were searched by use of force, while the shipmaster was placed under the custody of an armed serviceman. While the Protocol of 2005 to the SUA Convention states that all persons on board should be treated in a manner which preserves their basic human dignity, the armed inspection team obviously violated this rule; ill-treated them and denied their basic needs.

This intervention was conducted without the consent of either Turkey, as the flag State, or the master of the vessel, in contradiction to Protocol of 2005 to the SUA Convention. In spite of the declaration of the shipmaster regarding the nature of the cargo, the intervention was launched upon vague suspicion and lasted until after midnight and was only terminated upon persistent objections of Turkey. The armed personnel continued to remain on board, delayed its course, unjustifiably hindered M/V Roseline A's freedom and left her in the morning of the following day.

Until now, no clear evidence has been put forward for the inspection. The statement made by Operation Irini indicates that the pattern of navigation of the vessel was a reasonable ground to suspect that she is acting in violation of the UNSC arms embargo.

Dear distinguished delegates, the ship operates under widely-reputable company, and flies reputable flag of a State who is one of IMO founder States and its Council Member more than two decades. Navigation pattern of a vessel cannot be solely considered as a reasonable ground that she is violating the UN arms embargo nor justifies the disproportionate measures taken.

Otherwise, taking into consideration all possible reasons, most of the ships in the world can be inspected arbitrarily based on their routes, which is totally unacceptable.

Turkey strictly bounds herself with UNSC resolutions. We would like to underline that according to Protocol of 2005 to the SUA Convention, it is unquestionably clear that obtaining flag State consent before interfering with commercial ships in high seas is essential. UN Security Council resolutions on the Libyan arms embargo do not overrule this obligation. Operation IRINI stated this intervention was commenced without flag State's consent and also stated the inspection was suspended when the flag State notified Operation IRINI of refusing to grant the permission for the inspection of the vessel. Should there is no need to obtain flag State's consent, why did they suspend the intervention based on flag State's request. The statements of operation Irini contradict each other and the facts remain unclear.

As you know, the core mission of IMO is ensuring safe, secure, sustainable shipping and we all know that IMO attaches the highest priority to the need of ensuring that its numerous rules and standards contained in the Conventions are properly implemented.

We deeply regret that our vessel, which as became apparent has not violated the arms embargo, was withheld from her route for hours under severe weather conditions. We also regret to say that during the inspection, the seafarers, who were cooperative during the search, were detained and inhumanely-treated, gathered at a confined space and unallowed their basic needs, this behaviour is also in contravention of Protocol of 2005 to the SUA Convention and UNSCR 2292 which stresses Member States' obligations under international human rights law.

Dear distinguished delegates, as all you know seafarers are conducting a very difficult duty due to the COVID-19 pandemic and with the leadership of Mr. Secretary-General, this Organization is trying to make seafarers life easier.

Turkey declares again that this intervention has violated the basic principles of international law, jeopardizes the principle of freedom of navigation and the operation of international commercial shipping. Illegitimate practices by this operation will thus no doubt hinder freedom of navigation in the Mediterranean, where world maritime trade is highly dense. We invite all Member States to respect the human rights of the seafarers, freedom of navigation and continuity of maritime transport without unnecessary and unlawful interruption.

We protest this unlawful and forceful act. We believe, further action should be taken by this Organization so as to prevent and suppress this kind of unlawful acts against international shipping and basic human dignity of the seafarers in the future. Turkey reserves all rights to compensation for the damages and losses that may arise as a result of this unlawful and forceful act.

Finally, I would like to highlight that Turkey will take all necessary steps for the prevention of such occurrences in the future, including submitting new proposals at related IMO bodies in this regard.

Statement by the delegation of Germany

Thank you for giving me the floor, Mr. Chair.

In fact, we cannot comment on the military details regarding the case reported by the distinguished Delegation of Turkey.

However, we trust that all naval forces deployed in the Mediterranean Sea fully comply with the rules and the mandate of the Security Council of the United Nations by resolution 2292/2016, which is actually in force aiming at the interdiction of illegal transports of military cargo to Libya.

This case is however not appropriate for a political discussion in IMO.

Thank you, Mr. Chair.

AGENDA ITEM 4

Statement by the delegation of Panama

Muchas gracias Sr. Presidente.

Buenos días distinguidos delegados,

En esta oportunidad nos gustaría hacer varios comentarios con relación a los documentos en discusión. Para esto, citaremos primeramente el documento LEG 107/4. Con respecto a este documento, quisiéramos manifestar mediante esta intervención que en nuestro registro se realizó un análisis comparativo de la información contenida en el anexo de este documento y los datos que se mantienen en nuestro registro y que incluyen todos los casos de la base de datos conjunta OMI/OIT, percatándonos de lo siguiente:

- Este informe habla de 93 casos registrados como buques de bandera panameña, sin embargo, 34 buques, en la actualidad, no se encuentran en el registro por diferentes situaciones tales como desguace, cancelación de oficio, cambio de bandera, venta judicial entre otros.
- Por tal razón, resaltamos que solo 59 buques del registro de Panamá se encuentran activos; de los cuales 28 casos han sido resueltos; 14 se encuentran en disputa ante los Tribunales; 11 no se han resueltos; y 6 están inactivos.

Con respecto al documento LEG 107/4/1, la República de Panamá, agradece a la ITF por su gran labor y por presentarnos este documento donde se presenta un análisis de los casos de abandono, que comprende el periodo entre el 1 de enero y el 31 de diciembre de 2019. Durante dicho período, la ITF notificó el abandono de 231 marinos en 19 buques, en donde Panamá solamente tiene un caso reportado en este documento. Aunado a esto, reconocemos que en el documento LEG 107/10/2 tenemos listados otros incidentes, los cuales nuestro registro, caracterizado por su responsabilidad y compromiso con nuestra gente de mar, se encuentra trabajando en resolver.

Nuestra administración considera necesario mencionar el caso de "SHAN YUAN BAO", donde se señala que *"Panamá le retiró el pabellón...por presuntas infracciones de sanciones internacionales. Esto dio lugar a grandes problemas para organizar la repatriación de la tripulación, que no cobró ninguno de sus salarios adeudados."* En este caso en particular, consideramos que es importante notificar que nuestro registro tomó esa decisión de cancelar el pabellón debido a una comunicación/solicitud recibida por parte del Comité de Seguridad de las Naciones Unidas, de tomar medidas enérgicas ante estas infracciones internacionales y por ende, se acató la solicitud.

Para finalizar nos gustaría llamar la atención sobre el documento LEG 107/4/3 presentado por la Cámara Naviera Internacional en donde nuestra administración desea manifestar que, a la fecha, Panamá tiene el caso de "QUEEN HELENA" el cual fue reportado en la base de datos el 28 de febrero de 2020, sin embargo, la queja inició en abril de 2019. En este caso, Panamá activó la garantía financiera, y el P&I pagó los cuatros meses acorde a la garantía financiera y repatrió 12 de los 16 tripulantes a bordo. La tripulación restante no había podido ser repatriada por el impedimento por parte del Estado rector de puerto. A pesar de los diversos intentos de Panamá, e inclusive con asistencia diplomática, finalmente los tripulantes restantes fueron repatriados el 06 de octubre 2020, y este hecho debería ser considerado como una violación a los derechos humanos de la tripulación a bordo, y el no cumplimiento a la Norma A.2.5.1.8 del Convenio sobre el trabajo marítimo, 2006.

Nuestra Administración considera que el tema del impedimento de repatriar a los tripulantes, por parte de las autoridades o Estados, hasta tanto la tripulación sea reemplazada debe ser ampliamente discutido, y recomendamos adoptar medidas que busquen garantizar que estas situaciones no persistan.

Nuestra Administración apoya la recomendación realizada por la Cámara Naviera Internacional, de alentar a más Estados a ratificar el Convenio sobre el trabajo marítimo, 2006, y recordar a los Estados Parte y a las otras partes involucradas sus responsabilidades en lo que respecta a la gente de mar abandonada.

Quisiéramos que esta intervención se haga constar en el informe final de este comité.

Muchas gracias Sr. Presidente.

Statement by ICS

Thank you, Chair,

ICS would like to thank the IMO and ILO secretariats for their assistance in trying to resolve abandonment cases. ICS is concerned about the increase in cases over recent months which have not been formally reported at this meeting and note the particular challenges experienced in the wake of the COVID-19 pandemic. ICS would however encourage all parties to honour their responsibilities towards seafarers affected by abandonment. Our thanks also to the various parties who submitted papers for this meeting due to be held earlier this year.

Our document LEG 107/4/3 commented on the global abandonment of seafarers' situation late last year and highlighted some ongoing concerns but it is out of date given the increase in cases on recent months.

As the ILO Shipping industry Social Partner ICS has been actively involved in all international discussions relating to abandonment since 1998 and on amendments to the ILO Maritime Labour Convention relating to crew claims and abandonment, which entered into force in 2017. The fifth Joint IMO/ILO Working Group meeting in January 2004 established a need to establish a database on abandonment of seafarer cases to be hosted by ILO. The database contains a list of vessels reported as abandoned in various global ports.

It is important for all to maintain an accurate list of cases. Press articles have mentioned abandonment cases not reported in the database. Some were bona fide but others not. Cases reported swiftly are often resolved quickly, whereas cases left unreported are much more complex to resolve, often severely affecting seafarers and their families. In many such cases, the situation on board the vessels quickly deteriorates; food, fuel and water diminish, and health issues arise.

Early evidence suggests most ships appear to have financial security certification required by the 2014 MLC amendments, which entered into force in 2017. However, there is a gap in coverage for vessels of flag States still to ratify the MLC. Most outstanding cases before 2018 arose before entry into force of the need for financial security and they are more complicated to resolve. ICS will continue to monitor this situation closely and has requested ILO to consider providing technical assistance to these countries to encourage ratification of the MLC to require their ships to have necessary insurance coverage.

ICS is also very concerned about various instances of flag and port States reportedly not supporting the repatriation of abandoned seafarers due to safe manning requirements on board vessels resulting in seafarers being kept on board unsafe and poorly equipped vessels

for long periods in dangerous circumstances resulting in demands for replacement seafarers to be sent to abandoned vessels and replacement seafarers being deployed to work on vessels without knowing funds are not available for payment of wages, provision of food and other daily living requirements. While ICS understands the issues relating to safe manning, it would be useful if the Committee could review ways to address this situation to the benefit of all affected. The Legal Committee is invited to note this information and invite Member States and relevant organizations to advise ILO and IMO of any information regarding cases listed in the database; and to consider how to 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.

AGENDA ITEM 5

Statement by ITF

The ITF and Seafarers' Rights International ("SRI") are continuing our work with States in respect of the Guidelines on the fair treatment of seafarers in the event of a maritime accident, including educational activities around the Guidelines which have been delayed in 2020 due to the COVID-19 pandemic, but which will resume again in 2021.

The Guidelines remain of critical importance in our view given the numbers of shipping incidents and total losses that continue to be reported. In particular there has been a recent spate of grim casualties – including the *Wakashio* and the *Gulf Livestock I* – and we are closely following the treatment of the crew and the families following these tragic incidents.

The sequence of events that occurs when maritime casualties, incidents and accidents happen can be very complex and the ITF and SRI are concerned about some of the responses to these events, in particular as concerns the crews. Therefore, we will be continuing our work in this important area to ensure the fair treatment of seafarers in all circumstances and inform your Committee as appropriate.

Finally, we want to put it on record that we are very grateful for the cooperation that we are having with many States and industry players on this subject and we look forward to continuing this important work.

Thank you.

AGENDA ITEM 7

Statement by the delegation of Samoa

Chair,
Distinguished Delegates,

Samoa wishes to congratulate the Legal Committee and the IMO Secretariat on the successful organization of this virtual session during these challenging, uncertain times.

We commend the work that the Legal Committee has undertaken thus far to address the issue of fraudulent vessel registries. Samoa is encouraged by the progress made since the issue was first raised in the Assembly a few years back. We also welcome the draft IMO resolution on "Measures to prevent the fraudulent registration and fraudulent registries of ships" which promotes better communication and information to enable early identification of possible misconduct. However, much work still needs to be done.

Samoa still receives reports of new attempts to fraudulently register vessels under the Samoan flag including a fake website set up. To this end, we applaud the work of the IHS Markit in keeping us informed of these attempts.

Samoa urges this Committee to continue to adopt strict measures to detect and deter fraudulent ships and registries. Further, foreign ships fraudulently using flags of closed registries must be prohibited from entering ports of Member States' as one of the measures to be considered and adopted.

We strongly reiterate for all Member States in this Committee that Samoa is and remains a **closed registry**. Samoa asks Member States to continue to cooperate in the detection and deterrence of these fraudulent ships by strengthening port state controls under respective regional Memoranda of Understanding. Samoa sees these regional frameworks of port state control as an effective means of establishing vital communications between member Maritime Administrations to verify suspicious ships and their flags.

Samoa further condemns the establishment of fraudulent registries and we strongly urge this Committee to consider and adopt measures to facilitate prosecutions of those fraudulent registries within Member State jurisdictions.

To end, we request the Legal Committee and the IMO membership as a whole to look into how we can better cooperate and to consider next steps – how do we ensure that those that commit these criminal activities be brought to justice and our reputation is not further harmed by these perpetrators?

Chair, we would like for our statement to be annexed to the final report of this Committee.

Thank you.

AGENDA ITEM 9

Statement by the delegation of France

La France souhaite remercier les auteurs du document LEG 107/9.

Nous soutenons en particulier la poursuite de ce travail dans le cadre d'un groupe intersession.

Notre délégation souhaite insister sur le fait que la problématique de l'interprétation uniforme ne peut être traitée de manière objective que si des données d'assurance claires et précises sur les sinistres sont fournies et étudiées par notre comité.

Aussi nous pensons que les éléments présentés avec l'Australie dans notre document LEG 107/6/1 constituent un préalable nécessaire et complémentaire aux résultats du groupe de travail.

A ce stade nous pensons que le développement d'une interprétation doit être basé sur cette analyse.

Par ailleurs, concernant l'opportunité de cette interprétation uniforme nous souhaitons rappeler qu'en cas de contentieux la responsabilité du capitaine du navire ou de son propriétaire s'apprécie par les juridictions judiciaires de manière très concrète en se fondant sur les faits précis et non de manière purement abstraite. Aussi une interprétation uniforme ne pourra pas

prendre en compte toutes les situations particulières identifiées dans les sinistres de pollution ou de responsabilité en mer.

Par ailleurs les clauses des conventions portant sur les conditions d'application du droit du propriétaire du navire de limiter sa responsabilité pourraient difficilement être plus précises qu'elles ne le sont aujourd'hui. Pour ce faire il faudrait des règles plus rigides afin de rendre impossible la mise en jeu des garanties en cas de faute intentionnelle des personnes responsables. Et ceci n'est pas l'objet des conventions, et ceci viendrait rompre leur équilibre.

Nous souhaitons que ce travail se poursuive en prenant en compte ces éléments et en particulier les éléments du document LEG 107/6/1.

Nous souhaitons que notre déclaration soit annexée au rapport.

AGENDA ITEM 10

Statement by the delegation of Belgium

First of all, we would like to thank the Secretariat, especially for their hard work done in de Seafarer Crisis Action Team, and all others involved in their actions in response to the COVID-19 pandemic.

As many countries, Belgium has recognized seafarers as key workers. The current crisis has proven to the world that maritime transport is essential to the world economy. Without the hard work of all seafarers around the world, the necessary logistic chains would have been broken. The Belgian Government, as recently expressed by the new appointed Minister for Maritime Affairs before the Parliament, will strongly enforce all the provisions of the Maritime Labor Convention.

In cooperation with local representatives of ITF, Belgian Port State Control will and shall continue to enforce strictly on the maximum allowed time on board under the MLC. Around 30 ships were detained in Belgian ports since the end of the first wave of the Coronavirus. Sometimes seafarers were on board for more than 15 months. We urge all IMO Member States, as flag and port State, to help seafarers to get home safe and to reunite them with their families when they have the right to do so under the MLC.

We understand the many challenges for crew changes at this moment. For these reasons, all involved national and regional authorities have agreed to a protocol for crew changes. Under this protocol, crew changes remain possible for all ships and all nationalities and at all times in Belgian ports. This protocol has received positive feedback from the industry stakeholders, like ship owners and crewing agencies.

Statement by the delegation of Greece

- Greece would like to express its appreciation to the Secretariat for the submitted documents, particularly regarding the work of the IMO Seafarers Crisis Action Team.
- For Greece, the need for facilitating the movement of seafarers was from the outset of the COVID-19 pandemic a subject of serious interest and concern. This initiative brings the spotlight upon international shipping and its human element for both practical and ethical reasons.
- During the exceptional and demanding situation of COVID-19 pandemic, the Organization has responded promptly and effectively, providing the necessary guidance to the Member

States for maintaining the smooth operation of the international maritime transport chain, while securing high standards for the protection of public health.

- In this respect, we commend the Secretary-General for his wise leadership to address seafarers-related issues occurred during the pandemic, by adopting targeted initiatives such as the establishment of IMO SCAT. We strongly believe that this cooperation and interaction between the Team and the Member States, relevant UN bodies, industry groups etc should be pursued and further enhanced, contributing to the resolution of seafarers-related issues promptly and effectively, as the second wave of COVID-19 culminates.
- It is, however, a reality that, while there has been some progress on the conduct of safe and unhindered crew changes, we are still witnessing cases where seafarers have neither been designated as "key workers", nor flexible procedures providing them with the right to travel and transit safely, in line with Resolution MSC.473(ES.2), have been established.
- To this effect allow me to refer to an important issue already raised by our delegation to HE the Secretary-General. Given the very promising recent news from major pharmaceutical companies about the forthcoming availability of COVID-19 vaccines, we believe that the Organization could undertake relevant initiatives attempting to influence the international community to consider prioritizing seafarers for COVID-19 vaccination, along with other categories of workers such as medical personnel, and vulnerable people. Such an initiative could substantially and practically contribute to smooth conduct of safe and unhindered crew changes.
- In any case, bearing in mind the volatility of the situation and the uncertainty that lies ahead intrinsically in a worldwide health crisis, the issue of crew change and repatriation should remain a top priority in our agendas.

Statement by ITF

The ITF would like to thank the IMO for the establishment of SCAT and the assistance provided in some very difficult cases. Special thanks go to Mr. Jan De Boer and Mr. Fred Kenney for their help in resolving some very difficult cases.

While we appreciate the difficulties governments face in addressing the complexities of the crew change crisis, too little progress has been made by States to bring in the practical protocols issued by the International Maritime Organization to help end this humanitarian emergency. The Protocols were advanced by a broad range of workers' organizations and industry bodies, including the ITF and the International Chamber of Shipping (ICS). They were drawn up with significant input from the airline industry, international organizations, and the insurance sector, thereby providing a holistic and workable blueprint of how governments can facilitate crew changes.

Failure to adhere to the Protocols, or alternative appropriate action to relieve and support seafarers, has resulted in widespread non-compliance with the Maritime Labour Convention, 2006, by ratifying member States. This represents a collective failure of the international community to protect the lives and well-being of seafarers who continue to drive the global economy and maintain global supply chains during a worldwide pandemic.

It is crucial that states cooperate to achieve a sustainable system which will allow seafarers to effectively transit from their home countries to and from vessels. We have seen port states refuse transit, we have seen labour sending states refuse to allow their own nationals to return home, and to facilitate this we have seen flag states extend the maximum allowable period of service. All of these practices must come to an end.

It should be noted that, while there may now be a vaccine, it may take many months before international travel can resume at pre-pandemic levels and the need for effective crew change during that period will remain as important as ever.

It should also be noted that many crew have also experienced issues accessing shore leave and shore-based medical treatment. While restrictions on shore leave may be understandable in the circumstances, the failure to provide shore based medical care to those in need is inexcusable.

ITF asks the Committee to:

- Encourage cooperation between member states to implement the framework of protocols for ensuring safe ship crew changes
- Encourage members to implement systems to allow for shore leave to be taken in an appropriate fashion
- Request that member states fulfil their obligations in respect of providing shore based medical care to seafarers in need of such
- Encourage members to recognise seafarers as key workers

Statement by ICS

Thank you, Chair,

ICS thanks the Secretariat for the information in document LEG 107/10/1. We have asked to take the floor today to draw the attention of this Committee to a relatively new development in this crisis and which is causing grave concern to the shipping industry.

Distinguished delegates will already be aware of the difficulties that seafarers have faced in exercising their right to disembark ships at the end of their contractual period of service and return home, as they are entitled under the provisions of the Maritime Labour Convention, 2006.

Seafarers, like all workers, are entitled to fair conditions of work and this includes time for due rest. These are basic human rights. Aside from these fundamental rights, seafarers operate some of the largest pieces of machinery and equipment in a hugely sensitive environment. For the safety of their good health and the marine environment, it is vitally important they operate these ships safely which means that they should not be fatigued or stressed.

ICS, together with other organizations – most importantly the IMO and ILO, has been heavily engaged these past months to try and relieve this crisis through the development and implementation of practical Guidance and Protocols to help governments facilitate crew changes safely. I would take this opportunity to express my sincere thanks to the IMO, and the Secretariat in particular, for the good and close cooperation in developing and updating these Protocols and the initiative and work summarized in Doc LEG 107/10/1 to address all aspects of the crisis experienced by the industry. The Protocols in particular have been hugely important in demonstrating that crew changes can be done safely.

The efforts by some national governments to allow crew changes in recent weeks has improved the situation slightly but it is by no means resolved; delays continue and the number of ports where crew changes are permitted is still few. These continuing delays has given rise to a new development and one which is of immense concern and which needs to be drawn to the attention of this Committee: increasingly, we are hearing of charterers presenting

shipowners with clauses in their charterparty contracts which seek to prevent crew changes from taking place during the charterparty - even where shipowners are paying the costs of these vital operations.

This is completely contrary to good practice and principles of corporate social responsibility and undermines all the efforts being made to facilitate crew changes for the safety of the crew and the ship. The actions of charterers are not only legally questionable under a charterparty or carriage of contract under which the shipowner and master is responsible for the safety of the ship and crew, but morally the clauses are reprehensible, and show a lack of care and regard for the safety of those very people who are performing their contractual services at a time of a global health crisis.

This unprecedented crisis has demonstrated more than any other, the need for all parties, organizations, governments and industry sectors, to cooperate to ensure that global trade continues throughout to ensure the delivery of vital supplies and medicines to help defeat this pandemic. We and our seafarers are playing our part. But Charterers also have a part to play to allow crew changes and not impede them or seek to prevent them when they can be carried out safely. We therefore urge all distinguished delegates to press this upon the companies in their jurisdictions and to discourage this practice in the strongest terms.

AGENDA ITEM 11

Statement by the Marshall Islands

Thank you, Chair.

The Marshall Islands delegation would like to draw the Committee's attention to the continued attacks endured by merchant vessels and their crews in the Gulf of Guinea. Four of these attacks have occurred on Marshall Islands flag tankers in the past month.

Earlier in November, Motor Tanker LA BOHEME and Motor Tanker JANE evaded attack. In both of these incidents, the attacks were aborted after the vessels took evasive manoeuvres, and the ships and crew are reported to be safe.

Unfortunately, on Monday the Motor Tanker AGISILAOS came under attack while underway approximately 70 nautical miles offshore Lome, Togo. Information on this most recent incident is still being gathered, but it appears the vessel was boarded by the attackers and four crew members were abducted. This brings the total number of kidnapped crew to 122 over 24 attacks in 2020 alone.

This is not an acceptable situation.

This delegation recognizes the importance of multi-stake holder co-operation to develop options for the near-term mitigation of these threats and ultimately the eradication of these unnecessary stresses from shipping and more importantly, from our crews.

Thank you, Chair.

Statement by the delegation of Saint Kitts and Nevis

Mr Chair, Saint Kitts and Nevis wishes to bring to the attention of the committee a current case of piracy against the General Cargo ship, Milan which is registered under Saint Kitts and Nevis.

At approximately 12:57 hours London time on Thursday, 26 November 2020, it was advised to the Head Office of the International Ship Registry that the vessel had been approached by Pirates and all crew onboard had been kidnapped.

The location of the vessel was stated as Middleton Oilfield in the Gulf of Guinea, fully charged and unanchored.

I am, however, able to notify the committee that two (2) of the twelve (12) seafarers working onboard were later discovered safe onboard the vessel.

We are yet to be updated on the safety of the captured 10 seafarers.

From sources known to the delegation, it is an unconfirmed 13th incident of Piracy in that region in the four (4) calendar weeks and we are deeply concerned by this information.

Saint Kitts and Nevis calls for a more unified approach to stopping Piracy in affected regions and coastal states in regions where Piracy is a serious threat must do more. Piracy continues to have a detrimental effect on the shipping industry which is already fragile because of the COVID-19 Pandemic.

Saint Kitts and Nevis would like to praise the efforts of the Piracy Reporting Centre of the International Maritime Bureau for their concerted efforts so far and trust the same level of dedication is received throughout this sensitive time.

Mr Chair, we would request our statement is included in the meeting report and our proposal for a more unified effort is strongly recommended.

AGENDA ITEM 15

Statement by the delegation of Cyprus

Thank you Mr. Chair.

We thank the Secretariat for their papers as well as the sponsors and co-sponsors of all papers under this agenda item.

Cyprus shares the view expressed in the papers submitted under this agenda item that, criminalization is one of the most serious threats global seafarers face today. The fact that over 90% of world trade is carried by sea, undoubtedly exposes seafarers to worldwide diverse legal systems and national criminal procedures like no other category of workers. Seafarers should be offered a fair and expeditious trial and protected against unnecessary detentions and prolonged criminal procedures and investigations.

Cyprus, shows particular interest to this issue as the flag State of vessel UBC SAVANNAH mentioned in paper **LEG 107/14/4** by InterManager. This vessel was arrested in July 2019 along with its Polish Captain Lasota who faces serious health issues while still remaining in prison in Mexico.

Cyprus has extended to UBC SAVVANAH and to her master and crew the warranted diplomatic protection and has made, as a result of the incident, a number of systematic diplomatic representations to Mexico on the case. Cyprus has also informed all the relevant European Union Services on the issue and asked for their support and involvement.

The judicial proceedings in Mexico against the master of the ship are ongoing since July 2019. Despite the efforts made, the current proceedings prevent the Cyprus Maritime Administration from having access to the various evidence, deposition and other legal documents which the prosecution contemplates to present to the court of law before which the case is brought. As a result, and whilst respecting the ongoing judicial process in Mexico, Cyprus, regrettably, is unable, at this stage, to comment in anyway on the case.

On the broader issue of *Fair treatment of seafarers detained on suspicion of committing maritime crimes*, irrespective of the nature of the incident or act on board, and/or, the consequences this may have ashore, Cyprus believes that seafarers serving on board can only be held accountable for their errors or omission or voluntary actions contributing or causing the event in the first place and, not for aspects which are beyond, what can reasonably be considered as being within, their purview and control, such as involuntary and inadvertent carriage of illicit drugs.

Cyprus is of the view that IMO and ILO constitute the most appropriate Fora for establishing relevant internationally accepted practices for the benefit of seafarers.

Therefore, Cyprus fully supports:

- the proposal to add a new output under the work programme of this Committee on fair treatment of seafarers detained on suspicion of committing maritime crimes (**Document LEG 107/14**);
- the establishment of an IMO-ILO tripartite working group to identify and address seafarers issues and the human element as proposed in Secretariat's paper **LEG 107/14/3**;

Thank you, Mr. Chair.

Statement by the delegation of Indonesia

Mr. Chair,

Distinguished delegates,

1. In principle, Indonesia supports the proposal submitted by China regarding the development of guidelines to deal with seafarer abandonment cases as set out in document LEG 107/14/1.
2. However, such guideline should not only address the Port State's obligations, but also those of the shipowners' and Flag States' whom all have the burden of responsibility to resolve seafarer abandonment cases as stipulated by the 2006 Maritime Labour Convention ("MLC") and its amendments.
3. As one of the biggest labour sending countries, Indonesia has dealt with numerous cases of Indonesian seafarers abandoned overseas working from either merchant ships or fishing vessels.
4. The key lesson learned from our experiences is that the fulfillment of the seafarers' contractual rights relies heavily on the shipowners' ability to perform their obligations. Problem often occur when the shipowners were unable or unwilling to perform their obligations and that relevant States would turned a blind eye, or for those who have not yet become a party to the 2014 Amendment of the MLC, even claimed that they do not have the responsibility over an abandoned seafarer. In some cases, the rights

of seafarers even being ignored or neglected under the point of view that the working contracts of seafarers fall under their private business.

5. Therefore, there is an urgency to develop the guidelines for the following reasons:
 - a. First, despite the comprehensive provisions of 2006 MLC and its amendments, the abandonment of seafarers remains a serious issue. According to the IMO – ILO database, in 2019, 474 seafarers on 40 ships were abandoned, while in 2018 a total of 44 cases were reported, and in 2017 the number of the cases reached 55.
 - b. Second, after the 2014 amendments entered into force in 2017, there are growing concerns that the implementation of the provision on financial security is still far from effective in resolving seafarers abandonment cases. One of the reasons is because not all vessels are covered by such a financial security scheme, although they are flying the flags of States that have ratified 2006 MLC and its 2014 amendments.
 - c. Third, even when a financial security is available, the coverage may not be sufficient to pay for the repatriation and outstanding wages if the abandonment cases has been going on for more than four months. Further, it also does not cover the cost for hiring replacement crews that is essential for the repatriation process of the abandoned seafarers.

6. Consequently, it is in our view that abandonment cases can only be improved if the guidelines are to address these undertakings:
 - a. First, strengthening the cooperation among states, particularly between Flag States and Port States. Their roles are crucial in protecting the rights of the abandoned seafarers, especially during the early stage of abandonment to provide immediate assistance and facilitation of immediate repatriation as prescribed under Guideline B2.5.2; and
 - b. Second, provide clear direction for all parties to perform their obligations based on the 2006 MLC and its amendments, including when to perform it in the event of a failure to fulfil such obligation by shipowners. In doing so, all parties are expected to carry out their roles more effectively in resolving abandonment cases. Our aim is to expedite the resolution of the cases, and more importantly, bring about accountability of the IMO members involved.

7. Having considered all the above, Indonesia would like to propose several elements to be taken into consideration in developing the guidelines. The proposed elements are stated in our joint submission with Philippines in document LEG 107/14/5.

8. Indonesia would like to invite Member States, to consider the establishment of working group to conduct a gap analysis on the handling of seafarers abandonment cases, and to develop specific guidelines on the protection of seafarers in abandonment cases, particularly to identify the duties of stakeholders and mechanisms to address the inability or unwillingness of the responsible party.

9. Considering that the human elements of the 2006 MLC are under purview of ILO, we are also open for the possibility of the establishment of a joint working group between IMO and ILO to discuss this matter.

10. Lastly, reflecting on our joint effort with regard to the UNGA resolution on International Cooperation to address challenges faced by seafarers as a result of COVID-19 pandemic to support global supply chain, it is understood that the protection of seafarers is our common interest and thus, the objective itself would be effectively reached through our efforts and cooperation.

Thank you, Mr. Chair.

Statement by the delegation of Mexico

Declaración de México sobre punto 14 del orden del día del 107 LEG.

Gracias Sr. Presidente: Saludos a todos los distinguidos Delegados

La Delegación de México desea primero que nada agradecer a todos los autores de documentos presentados bajo este punto del orden del día, en particular, en los que se propone incluir un nuevo resultado en el programa de trabajo sobre "Trato justo a la gente de mar detenida como sospechosa de haber cometido delitos marítimos.

Son documentos que fueron presentados antes de la irrupción de la pandemia del COVID-19. Sin embargo, ahora más que nunca, en congruencia con los esfuerzos realizados durante los últimos meses para garantizar el cumplimiento de las reglas marítimas internacionales sobre seguridad, salud y bienestar de la gente de mar, en suma para brindar un trato justo a la gente de mar, resulta prioritario que todos, Estados de abanderamiento, Estados que proveen mano de obra, Estados rectores de puertos, y organizaciones de propietarios de buques, brindemos la mayor atención a este tema, a fin de evitar un trato injusto de la gente de mar detenida como sospechosa de haber cometido delitos marítimos y, sobre todo, contribuir a prevenir que la gente de mar participe en la comisión de éstos.

Concordamos en lo general con el análisis que nos presenta el documento LEG 107/14 para la inclusión de un nuevo resultado en el programa de trabajo de este Comité. México considera que el trato injusto de la gente de mar, bajo cualquier circunstancia, plantea una amenaza para la sostenibilidad futura de la marina mercante, así como el delito marítimo es un gran riesgo a la seguridad de la gente de mar, el comercio y la estabilidad regional.

Por ello, el Gobierno de México ha tomado acciones firmes en cuanto al combate del tráfico de drogas y el crimen organizado por la vía marítima que se encuentran debidamente tipificadas y sancionadas en la legislación penal nacional mexicana. Este combate ha costado la vida de muchas personas en mi país.

En ese sentido, tomamos nota con sumo interés del contenido del documento LEG 107/14/4, al referirse al caso de la detención del Capitán Andrej Lasota, en cuya embarcación, el UBC SAVANNAH, se encontró un importante cargamento (225 kilogramos) de cocaína, que se buscaba introducir por el puerto de Altamira, el 27 de julio de 2019.

Como bien se señala en el párrafo 16 del documento LEG107/14, la falta de principios, recomendaciones y directrices uniformes sobre el trato justo de la gente de mar detenida como sospechosa de cometer delitos marítimos plantea retos considerables para garantizar sus derechos en diversas jurisdicciones.

En virtud de lo anterior, y en apego a lo dispuesto en las Convenciones de Viena de Relaciones Diplomáticas y de Relaciones Consulares, el Gobierno de México acompañó y garantizó de inmediato las acciones de asistencia consular al Capitán Lasota, por parte de las

autoridades polacas. Vía los canales diplomáticos, no sólo se ha facilitado la interacción con las instancias correspondientes para dar atención a este tema, sino que se ha acompañado y reforzado diversas gestiones como el garantizar que el Sr. Lasota reciba un trato y la atención médica adecuadas.

Desafortunadamente, las circunstancias excepcionales derivadas de las medidas de contención del COVID-19, son extensivas a los órganos jurisdiccionales, lo cual, como en muchos países, afectó y postergó las actividades relacionadas, como es el caso del Capitán Lasota.

El Gobierno de México continúa actualmente realizando gestiones para facilitar y avanzar en el proceso a la brevedad posible, pero como en todo proceso judicial, el avance del caso depende, en gran medida, tanto de las acciones de la fiscalía como de la defensa.

Cabe subrayar el compromiso de México de hacer valer el marco jurídico en vigor. Ello requiere el respeto a la autonomía de la Fiscalía General de la República y a la división entre el Poder Ejecutivo y el Poder Judicial.

Implica también llevar a cabo acciones en el ámbito de gobierno que hagan valer la legislación interna y los tratados internacionales en vigor y, en este tenor, como Estado Miembro de la OMI, nuestro compromiso es firme también con el cumplimiento de la Convención de las Naciones Unidas sobre el Derecho del Mar (1982) y de la Convención de las Naciones Unidas contra el Tráfico Ilícito de Estupefacientes y Sustancias Psicotrópicas (1988).

En suma, Presidencia, México da la bienvenida a la propuesta de nuevo resultado contenida en el documento 107/14 y su inclusión en el orden del día del próximo Comité LEG108. Ello implicará asesoramiento importante de la Dirección Jurídica de la Secretaría y la articulación de acciones con otros organismos internacionales, incluido el establecimiento de un Grupo de trabajo tripartito OIT-OMI. No será una tarea sencilla dado que implicará, sobre todo, garantizar el respeto de la legislación interna de cada país y de los Tratados internacionales existentes, así como considerar que no todos los países se han adherido al Convenio sobre el Trabajo Marítimo, 2006.

Muchas gracias,

Statement by the delegation of New Zealand

Thank you, Chair,

We would like to thank the submitters and co-sponsors for the proposition to add a new output in the agenda.

In the case of a maritime incident or accident, seafarers working on ships that operate within and across different national jurisdictions can be charged with criminal offenses and accordingly be subject to diverse national criminal laws.

The practice of charging seafarers with criminal offences have resulted in creating concerns and raised the urgency of dealing with the issue of fair treatment of seafarers detained on suspicion of committing maritime crimes.

In those circumstances, the need for seafarers to be able to receive fair treatment and to rely on safeguards in procedures and appropriate legal representation is high.

For those reasons, we agree to include this new output in the agenda of the Legal Committee and the provisional agenda for LEG 108.

We would like this statement to be attached to the report.

Thank you, Chair.

Statement by the delegation of Panama

Muchas gracias Sr. Presidente,

Buenos días distinguidos delegados,

Primeramente, permítanos agradecerles a todas las organizaciones internacionales y Estados Miembros de esta Organización que han unido esfuerzos para mejorar de una u otra forma el trato que se le debe de dar a la gente de mar.

Tomamos esta oportunidad para mostrar nuestro pleno respaldo a que se elaboren directrices para darle el trato justo a la gente de mar que se sospeche que haya cometido algún acto ilícito y de esta forma no violar sus derechos. Dicho esto, aceptamos que se incluya este nuevo resultado en el orden del día provisional del LEG 108 y reconocemos la necesidad imperiosa que hay de elaborar estas directrices ya que tuvimos la experiencia de vivir el trato injusto que se le dio a los tripulantes que se encontraban a bordo del buque STAR BALBOA mientras estuvo bajo investigación por presuntos actos delictivos. Sin duda alguna, se violaron todos los derechos de los tripulantes y no se le brindó la atención médica adecuada ni mucho menos se siguieron los protocolos establecidos para abordar la embarcación e incluso algunos de ellos se contagiaron del virus del COVID-19.

Aunado a lo expresado anteriormente, esta delegación comparte y apoya los comentarios plasmados por InterManager en su documento LEG 107/14/4 donde han resaltado que se deberían tomar más medidas para garantizar que la gente de mar es considerada inocente hasta que se demuestre su culpabilidad y que reciba asistencia y un trato justo durante todo el tiempo que dure la investigación garantizando así que no se violen sus derechos humanos.

En este contexto, la República de Panamá alienta a los Estados Miembros a que contribuyan con esta labor y a que le brinden un trato justo a la gente de mar cuando estén en sus aguas jurisdiccionales sin importar el pabellón que este enarbolando el buque.

Muchas gracias Sr. Presidente.

Statement by the delegation of the Philippines

Thank you, Mr Chair.

This delegation believes that fair treatment of seafarers in case of their detention on suspicion of committing maritime crimes is of great importance to seafarers, particularly to seafaring states.

As co-sponsor to document LEG 107/14, the Philippines, being a seafaring state, finds it important that its seafarers are duly protected while on board foreign-registered ships. It should be emphasized that the proposed guidelines should not be in conflict with any national legislation of any port state. However, in view of the existence of cultural barriers, as well as

the diversity of the domestic legal systems, it would be appropriate that these guidelines be developed so as to assist the seafarers to have fair trials based on the basic principles of international human rights law.

It is our view that the new guidelines will also apprise seafarers of their basic rights in accordance with international law and so as to give them confidence and equal protection when facing any criminal charge while they are in foreign port.

Thus, we humbly enjoin other Member States to consider and support the proposals in the subject document. Finally, may we request that this statement be appended to the report of the Committee.

Thank you for your attention.

Statement by the delegation of Poland

One of the most stark examples of such unfair treatment of seafarers is the case of Captain Andrzej Lasota, as highlighted by the International Ship Managers' Association. Captain Lasota, a Polish citizen, is being detained in very difficult conditions and without access to his prescribed medicines, which affects his physical and mental health. Polish consular services continue to help Captain Lasota and intervene with the appropriate Mexican authorities. However, the actions of the Republic of Poland are so far to no avail.

Therefore, the Republic of Poland would like to express its deep concern and disappointment over the continued detention of Captain Lasota by the Mexican authorities. Given the above, we strongly support adding a new output on the work programme of the Committee – *on Fair treatment of seafarers detained on suspicion of committing maritime crimes*.

We also support proposals made by the IMO Secretariat in document LEG 107/14/3.

Statement by ICS

LEG 107/14/4

On behalf of the IG of P&I Clubs and ICS, we would like to express our appreciation to InterManager for the submission of their document and for raising awareness in particular of Captain Lasota's plight in Mexico, where he remains in prison following the seizure of the UBC Savannah at the end of summer last year after illegal narcotics were found on board by the crew and reported to the authorities. Captain Lasota's position has deteriorated further since InterManager's document was submitted in January.

We have heard already that he has now been imprisoned for some 16 months without trial and the judicial proceedings have been repeatedly delayed – and this even before the present global pandemic – and we understand that he is currently being held without any date set for his next court hearing. And as we have also heard, during this time his physical and mental health deteriorated, and the impact on his loved ones is, frankly, unimaginable.

Our two organizations wholeheartedly concur with Intermanager that there have been too many incidents of this nature in recent years where the Master and/or crew have been detained on drug smuggling charges when it does appear from an early stage of investigations that they are not complicit in the smuggling, but in any case, without going into the facts of this particular case before the trial takes place, it is evident that much more needs to be done at

the international level to ensure that all seafarers are treated in a fair and humane manner when such allegations are made.

We are under no illusions that seeking to reduce the instances of such cases occurring worldwide is easy or straightforward. We fully understand the damage caused to countries by the trafficking of illegal narcotics and the need to suppress and deter this criminal activity, including through the prosecution of offenders using the full force of the criminal law. However, the plight of seafarers who are unjustly caught up in such criminal activities needs to be recognised and addressed in the context of their fair treatment, and hopefully this will be the case with the further work that is proposed on the Fair Treatment guidelines – needless to say, we are very supportive of the proposed output in this respect.

In the meantime, Captain Lasota's employer and our two organizations and other delegations are engaged in seeking both a resolution to his case and, in the interim, that he be released from custody (on bail) at least and to return home to his family until such time as he may be needed to assist in any further investigation, or the judicial proceedings. Whilst we recognise that this Committee and this body has no locus over the matter, our two delegations would again make that plea to the Mexican administration as part of this wider debate on the Fair Treatment guidelines.

LEG 107/14/1 and LEG 107/14/5

We thank China for its submission in LEG 107/14/1 proposing a new output on the development of guidelines for port State authorities on how to deal with seafarer abandonment cases and Indonesia and the Philippines for LEG 107/14/5 proposing that the guidelines suggested by China should be expanded to include sections for flag States, shipowners, and insurers. ICS however wishes to draw the attention of the Committee to the fact that the responsibilities of flag, port, and labour supply States, and shipowners, and insurers are already laid out in the MLC 2006 and in the Resolution of the IMO Assembly and the ILO Governing Body, when it adopted the Guidelines on provision of financial security in case of abandonment of seafarers. These deal with the obligations and responsibilities concerning repatriation of the crew and associated costs.

The two papers have raised concerns also with regard to the condition of the abandoned ship and the safety of the environment as the ship deteriorates as a consequence of prolonged detention. These are separate from the costs of repatriation already dealt with in MLC and the abandonment guidelines. We agree that these aspects would benefit from further examination and the ILO/IMO database could help in this regard. Therefore, we can support this part of the proposal in LEG 107/14/1. We suggest that this examination could be undertaken within the scope of the existing agenda.

Our knowledge of the cases suggest however that these safety and environmental concerns arise when there has been prolonged detention of the ship while the seafarers are on board and unable to be repatriated. This indicates a need to have the issue of repatriation addressed swiftly both for the wellbeing of the seafarers and the safety of the ship and environment. We would also say that we do not believe that there was ever an intention for there to be insurance to cover costs, expenses and liabilities for the purpose of finding and supplying crew or costs for maintaining a vessel with skeleton crew. ICS suggests that these aspects are also already addressed through other mechanisms also already available to member states such as invoking a judicial sale and recovering costs in that and other means.

With regard to any concerns on repatriation costs, ICS stresses that the shipping industry has accepted its responsibilities for abandoned seafarers through the provisions of the MLC and the 2014 amendments and related Guidelines to pay for repatriation costs and we suggest that

it would be more appropriate to focus on measures to encourage universal ratification of the MLC 2006 and the 2014 amendments. If this Committee however wishes for action to be taken, we would also note as this is a matter for the Special tripartite Committee of the ILO, that is the forum to progress this.

Statement by IFSMA

Chair, IFSMA is a co-sponsor of LEG 107/14 to add a new output under the work programme on fair treatment of seafarers detained on suspicion of committing maritime crimes. We thank Intermanager for their Paper LEG 107/14/4 and very strongly support their position in highlighting the injustice and appalling treatment of this Shipmaster. This is not the only case and IFSMA would wish to highlight the plight of the Shipmaster and Chief Mate of the MV Wakashio following the much publicised grounding on the coast of Mauritius on the 25 July this year. The Shipmaster and Chief Mate were both arrested on uncorroborated provisional charges under Mauritius Piracy Act as the severity could involve a very long custodial sentence and as such enables the police to keep them in custody. They have remained in police custody ever since. This clearly does not constitute fair treatment of these seafarers in any way and we call on the Government of Mauritius to respect their basic human rights. Thank you Chair and I have forwarded this statement for inclusion in the report of the Committee.

Statement by InterManager

Thank you for giving me the floor, Mr Chair.

Distinguished delegates, you will recall that the intent of our document LEG 107/14/4 is to support the proposal in LEG 107/14 to add a new output under the work programme on fair treatment of seafarers detained on suspicion of committing maritime crimes.

With that in mind, it set out to reveal the plight of the dry cargo vessel **UBC SAVANNAH**, following the discovery of cocaine packets found by the crew in a hold when unloading coal in the port of Altimara, Mexico on July the 27th 2019, some 16 months ago.

The crew was arrested and held for several months before being exonerated and released, apart from the Master of the vessel, Captain Losata. He was charged with "alleged negligence in failing to be aware that the ship he commanded **may** have been carrying prohibited substances".

I think you will agree that it is somewhat difficult to understand how the Master could possibly be aware of a cocaine haul buried under several thousand tons of coal, discovered when unloading.

You will wish to be aware that Captain Lasota is still in prison awaiting a court case in which he is held virtually **GUILTY** without having been charged. Following a prolonged spell of very poor health, he has finally been given access to a competent, empathetic doctor, as a result of which his health has greatly improved.

As a matter of reflection, I cannot help but wonder what other profession or Industry on this planet, could live with the plight and welfare of an Officer treated so woefully badly.

Mr. Chair, I trust that this intervention will lend impetus to the granting of the new output of fair treatment under the work programme as already described, and request that the purport of this intervention will be reflected in the Committee's final report.

Thank you, Mr. Chair.

Statement by ITF

The ITF has – from the outset – supported the proposal to add a new output on the work programme on Fair treatment of seafarers detained on suspicion of committing maritime crimes and we take the floor to emphasise again the importance of this work and our ongoing commitment to the subject of the fair treatment of seafarers detained in any circumstances.

The issues thrown up when seafarers face maritime crimes are sometimes the same as the issues that occur when seafarers face detention following a maritime accident. But there are also very distinct issues that need to be addressed in the context of maritime crimes.

The original Guidelines concerning maritime accidents were never intended to apply to maritime crimes and we consider it is appropriate that guidelines in relation to maritime crimes should be developed separately. We also think that raising the profile of maritime crimes situations will be educational for seafarers who may be inadvertently caught up in maritime crimes.

We therefore advocate that this issue be included as a new output on the work programme and ITF with the assistance and experiences of Seafarers Rights International is committed to contribute and support this work.

Thank you.

AGENDA ITEM 17

Statement by CMI

Thank you Chair. On behalf of the CMI I would like to thank you for the time to address this meeting in connection with the Draft Instrument on the International Effects of Judicial Sales, currently being deliberated by Working Group V1 of the United Nations Committee on International Trade Law.

As a number of the distinguished delegates here may already know and recall, the CMI had for many years worked on a draft convention – The Beijing Draft – on the international recognition of judicial sales which stemmed from the absolute need to ensure that when, following an arrest, a vessel is sold in a judicial sale to a third party, that third party purchases the vessel free and unencumbered so that he may use the vessel freely as an integral link in the chain of international trade without any fear that the vessel's old creditors could interfere with his free use of the vessel.

The instrument is being debated by Working Group V1 at UNCITRAL and considerable progress has been made over the past 18 months from when the Beijing Draft was first deliberated in New York in May 2019. UNCITRAL Working Group VI has met twice to discuss the form and substance of the instrument, and will meet again virtually in 2 weeks. The current draft is in the form of a treaty and reflects the deliberations of those two meetings and has retained the essential elements of the CMI draft. Two of these elements are the notice of judicial sale, which is served or published prior to the judicial sale, and the certificate of judicial sale, which is issued after the judicial sale to facilitate recognition of the judicial sale abroad.

It was felt by the Working Group that it would be most beneficial for there to be a centralised Repository to receive copies of both the notices as well as the certificates of judicial sales. The idea of having a centralised repository would certainly assist flag Registries, mortgagees, prospective buyers, creditors of the vessels, maritime industry participants, and courts, to check whether any of the vessels they have an interest in are A. About to be sold and/ or B. Whether a sale has actually taken place.

Since then, the UNCITRAL secretariat has been looking into options for possible hosts for the online repository, and we understand that it has made enquiries with the IMO secretariat about hosting the repository as an additional module within the Global Integrated Shipping Information System (GISIS). As the UNCITRAL secretariat noted in a report to the Working Group for its forthcoming meeting, using the GISIS platform could offer a range of benefits, including visibility within the maritime industry, as well as the ability to use an existing platform thus reducing operating costs.

It is to be noted that numerous States have expressed support for exploring the possibility of the IMO hosting the repository within the GISIS platform maintained by IMO as an additional module.

I wish to clarify that we are here not talking about a **Depository** for the International Convention, that will be taken care of by UNCITRAL of course, but a **Repository** limited to hosting the notice and certificate of judicial sale. After all we are talking about ship identified by their IMO number and we cannot think of a more appropriate host for such a repository.

The CMI wholly supports this idea and is of the firm view that this would be a perfect opportunity for two UN organs such as the International Maritime Organization, and the United Nations Commission for International Trade Law to provide a solution to a matter which has such important ramifications and effects on international shipping and international trade.
