

LEGAL COMMITTEE
108th session
Agenda item 16

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REPORT OF THE LEGAL COMMITTEE ON THE WORK OF ITS 108TH SESSION

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1 INTRODUCTION – ADOPTION OF THE AGENDA

1.1 The 108th session of the Legal Committee was held remotely from 26 July 2021 to 11 August 2021, in accordance with the programme of meetings for 2021 (PROG/129/Rev.2), under the coordination of the Chair, Mr. Volker Schöfisch (Germany), and the Vice-Chair, Ms. Gillian Grant (Canada).

1.2 The Members, Associate Members and observers listed in document LEG 108/INF.1 participated in the session.

Opening of the session

1.3 The 108th session of the Committee was declared open by the Chair pursuant to rule 35 of the Rules of Procedure of the Legal Committee, following the establishment of a quorum in accordance with rule 34, as well as paragraph 17 of the *Interim guidance to facilitate remote sessions of the Committees during the COVID-19 pandemic* (MSC-LEG-MEPC-TCC-FAL.1/Circ.1) (Interim Guidance), and taking into account the decisions of the Committee to:

- .1 waive rule 3 of its Rules of Procedure, in part, to allow sessions to be held remotely;
- .2 accept, for the purposes of facilitating remote sessions, electronically submitted credentials, with originals to follow, due to the exceptional circumstances caused by the COVID-19 pandemic; and
- .3 consider Members that had submitted valid credentials and were registered on the Online Meeting Registration System (OMRS), and also listed as participants in the remote session, as "present" within the meaning of rule 28(1) of its Rules of Procedure.

Secretary-General's opening address

1.4 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:

<https://www.imo.org/en/MediaCentre/SecretaryGeneral/Pages/LEG-108-opening.aspx>

Adoption of the agenda

1.5 The Committee adopted the agenda for the session as set out in document LEG 108/1 and endorsed the Chair's proposed arrangements for the remote session, contained in document LEG 108/1/1 (Chair).

1.6 The Committee, in particular, endorsed the proposed actions under each of the agenda items and documents considered by correspondence prior to the virtual meetings, contained in annex 2 to document LEG 108/1/1, as modified by document LEG 108/1/1/Add.1 (Chair) containing the comments received by correspondence and the Chair's explanations on how those comments had been addressed.

1.7 The specific decisions taken by the Committee in relation to the documents considered by correspondence (LEG 108/1/1 and LEG 108/1/1/Add.1) are reflected under the relevant agenda items in this report.

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

Audio files: Monday, 26 July 2021 and Friday, 30 July 2021

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 95 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: Monday, 26 July 2021 and Friday, 30 July 2021

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

3.1 The Committee recalled that, at its previous session, it had postponed the consideration of this agenda item to LEG 108, and noted the information provided in documents LEG 107/3 (IMO and IOPC Funds Secretariats), LEG 107/3/1 (International Group of Protection and Indemnity Associations (P & I Clubs)), LEG 107/3/2 (Republic of Korea) and LEG 108/3 (P & I Clubs), on the facilitation of the entry into force and harmonized interpretation of the 2010 HNS Protocol.

Audio file: Friday, 30 July 2021

4 FAIR TREATMENT OF SEAFARERS

(a) 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(a).1 The Committee recalled that, at its 103rd session, in light of the discussion on the serious issue of abandonment of seafarers, it had agreed that it should keep the issue under consideration.

4(a).2 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.

Report on the IMO/ILO joint database of abandonment of seafarers, and analysis of incidents of abandonment for the period 1 January to 31 December 2020

4(a).3 The Committee considered document LEG 108/4(a) (ILO and IMO Secretariats) containing, in its annex, a report on the IMO/ILO joint database of abandonment of seafarers for the period 1 January 2020 to 1 April 2021. 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, 20 cases had so far been resolved.

4(a).4 The Committee was also informed that from 1 January 2020 to 1 April 2021, a total number of 111 new cases had been reported, with 85 cases in 2020 and 26 cases in the first quarter of 2021. As of 23 July 2021, of this spike of 111 new cases, only 43 had been resolved. Approximately 18 of the cases that were reported since 1 January 2020 were related to consequences of the COVID-19 pandemic, further exacerbating the crew change situation of seafarers. In the three months leading up to LEG 108, a further 27 cases had been reported, bringing the total number of new cases in 2021 to 53, thus alarmingly surpassing the previous year's record of reported cases of abandonment.

4(a).5 The Committee noted that the examples of cases described in document LEG 108/4(a) were taken from the database and that each and every case of abandonment reported was about real people, who experienced stressful, inhumane and unsafe consequences, while their families were equally affected. They represented a sampling of cases that necessitated, or still necessitate, the substantial involvement of the IMO and ILO Secretariats, together with the International Transport Workers' Federation (ITF), International Chamber of Shipping (ICS) and others, in order to gain resolution.

4(a).6 The Committee was informed that, as a result of these combined efforts, the crew of the **Ula**, who were trapped for almost two years on board their ship under very difficult circumstances, were finally repatriated the previous month without their wages being paid. However, the Kuwaiti authorities had given an undertaking for their claims for outstanding wages on the ship, which was under arrest now. The Committee was also informed that the master of the **Kenan Mete** had been repatriated in late June 2021 but that the outstanding wages for himself and other crew members had so far not been paid. Both these cases could be considered as being disputed.

4(a).7 The Committee considered document LEG 108/4(a)/1 (ITF) containing an analysis of cases of abandonment reported by ITF to the IMO/ILO joint database of abandonment of seafarers for the period 1 January to 31 December 2020. The Committee was informed that during the period referred to, ITF reported the abandonment of 851 seafarers on 53 vessels, and that in total, 85 cases of abandonment were reported, involving over 1,300 seafarers.

4(a).8 In the ensuing discussion, the following views were expressed:

- .1 While the number of cases reported in 2020 was more than double in comparison with the previous year, this could only be partially attributed to the COVID-19 pandemic. There had been a systematic and global failure by Member States, both flag and port States, to comply with their obligations to facilitate repatriation of seafarers. This failure contributed to the crew change crisis and made abandonment cases much harder to solve.
- .2 In the **Ula** case, the crew had been abandoned without protection while there was an ongoing cargo dispute, amongst other issues. In the **Arrybas** and **Ptolemeos** cases, the port State initially did not allow the crew to be repatriated. The ILO and IMO Secretariats assisted in finding solutions in many individual cases.

- .3 The port State should facilitate the repatriation of abandoned seafarers, but a ship should not be left unmanned, and the issue of safety should not be ignored. Furthermore, the manning agents should cooperate in this respect; the Maritime Safety Committee should also consider this issue.
- .4 ILO and IMO should continue to closely monitor incidents of abandonment of seafarers and the IMO/ILO joint database should be accepted by all involved stakeholders.
- .5 Four years after the entry into force of the 2014 amendments to the Maritime Labour Convention, 2006 (MLC, 2006), there was still a large proportion of shipowners who continued to operate without the required financial security.
- .6 The maritime crisis caused by the COVID-19 pandemic had revealed a dramatic number of uninsured shipowners.
- .7 New national policies were introduced to address the difficulties that seafarers faced due to closed borders and cancelled flights. Furthermore, in certain ports, national vaccination campaigns were extended to seafarers of all nationalities.
- .8 Seafarers from India were on top of the list of abandoned seafarers. These were real challenges for the Committee, which needed to focus on appropriate solutions.
- .9 There were many cases listed on the database of abandoned seafarers in which the flag State was not a party to MLC, 2006. Therefore, MLC, 2006 should apply to all Member States as soon as possible.
- .10 Although the role of ITF was important, flag States had a major role, since there were many seafarers from different nationalities on ships registered in certain flag States. This systematic issue needed to be resolved.
- .11 The database should continuously be updated by reports from the port States. The flag States had a pivotal role in resolving the issues as shown in the **Ptolemeos** and **Arybbas** cases. Many cases were resolved when a ship was sold to a new shipowner. However, in cases where that did not happen, the seafarers remained trapped on board.
- .12 The crew change crisis made it very difficult to disembark seafarers who were forced to stay on board even if their ship complied with the financial guarantees for repatriation. In those cases, it was also important to be able to rely on the responsibility of the port State. Therefore, it was imperative to cooperate to avoid all serious consequences for the seafarers.
- .13 The abandonment cases affected the well-being and livelihood of seafarers and their families. Therefore, there was a need for cooperation between all the stakeholders and industry.
- .14 Recent revisions of the ILO Guidelines for flag State inspections under the Maritime Labour Convention, 2006, as amended,¹ and the ILO Guidelines for port State control officers carrying out inspections under MLC, 2006,²

¹ Found at the following link: https://www.ilo.org/sector/Resources/codes-of-practice-and-guidelines/WCMS_772510/lang--en/index.htm

² Found at the following link: https://www.ilo.org/sector/Resources/codes-of-practice-and-guidelines/WCMS_772506/lang--en/index.htm

have been issued. The high number of abandonment cases was not only due to the pandemic itself, but also due to the delay in crew changes caused by the pandemic.

.15 There could not be a trade-off between the safety of the port and the welfare of the crew, but there had to be a balance. Safety and repatriation were not mutually exclusive and MLC, 2006 should not be overridden by safety considerations.

.16 The provisions of MLC, 2006 should be given proper effect and there was an absolute obligation to facilitate the repatriation of seafarers.

4(a).9 Following the discussion, the Committee:

.1 noted the information provided in documents LEG 108/4(a) and LEG 108/4(a)/1;

.2 encouraged discussion relating to a solution to the problem of repatriation of abandoned seafarers;

.3 reminded Member States of the importance of resolution A.930(22) on *Guidelines on provision of financial security in case of abandonment of seafarers* and of the work of the Joint IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation Regarding Claims for Death, Personal Injury and Abandonment of Seafarers;

.4 highlighted the existence of the IMO/ILO joint database;

.5 encouraged Member States to report incidents of abandonment to the database when they occurred in their ports or on vessels flying their flag;

.6 encouraged Member States to further ratify and effectively implement MLC, 2006;

.7 reminded Member States of the *Recommended framework of protocols for ensuring safe ship crew changes and travel during the coronavirus (COVID-19) pandemic* (MSC.1/Circ.1636/Rev.1);

.8 reminded Member States of resolution A/75/17 of the United Nations General Assembly, adopted on 1 December 2020 on *International cooperation to address challenges faced by seafarers as a result of the COVID-19 pandemic to support global supply chains*;

.9 promoted to Member States the recently published toolkit, Maritime Human Rights Risks and the COVID-19 Crew Change Crisis, which was a joint initiative of the United Nations Global Compact (UNGC), the Office of the High Commissioner for Human Rights (UN Human Rights), ILO and IMO; and

.10 encouraged Member States to assist with the crew change crisis and noted that the issue, which was of great concern, needed to be dealt with because of the rising numbers of abandonment cases.

Audio files: Tuesday, 27 July 2021 and Wednesday, 28 July 2021

(b) FAIR TREATMENT OF SEAFARERS IN THE EVENT OF A MARITIME ACCIDENT

4(b).1 The Committee noted the information set out in document LEG 108/4(b) (ITF), on an analysis of the fair treatment of seafarers in the event of a maritime accident, including the development of cooperation on fair treatment of seafarers. The text of the statement made by ITF in this regard is set out in annex 9 to this report.

Audio file: Friday, 30 July 2021

(c) FAIR TREATMENT OF SEAFARERS DETAINED ON SUSPICION OF COMMITTING MARITIME CRIMES

4(c).1 The Committee noted that there were no documents submitted under this sub-item. However, the Secretariat and ILO provided the Committee with an oral update on the formation of the Joint ILO-IMO tripartite working group in connection with sub-item 4(d) of the agenda.

Audio files: Wednesday, 28 July 2021 and Friday, 30 July 2021

(d) GUIDELINES FOR PORT STATE AND FLAG STATE AUTHORITIES ON HOW TO DEAL WITH SEAFARER ABANDONMENT CASES

4(d).1 The Committee recalled that, at its previous session, it had agreed to 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.

4(d).2 The Committee also recalled that it invited concrete proposals to LEG 108 on the scope of the work on the new output.

4(d).3 The Committee further recalled that it had agreed to request, as a matter of urgency, the Special Tripartite Committee (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.

4(d).4 The Committee also recalled that ILO had informed the Committee that, similar to the new output on fair treatment of seafarers detained on suspicion of committing maritime crimes, the Fourth Meeting of the STC of MLC, 2006 of ILO, which took place in April 2021, 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.

4(d).5 The Committee recalled that both IMO and ILO would need to be involved in the development of the guidelines for this new output.

4(d).6 ILO provided the Committee with an update on the formation of the joint ILO-IMO tripartite working group.

4(d).7 The Committee was informed that, at the Fourth Meeting of the STC of MLC, 2006 of ILO, a proposal to establish the ILO-IMO tripartite working group, submitted by the IMO Secretariat, was considered under the agenda item on "Exchange of information related to the implementation of the MLC, 2006".

4(d).8 The Committee noted that the IMO submission was generally positively received, with firm support for work on the two issues identified in the IMO proposal, namely, fair treatment of seafarers detained on suspicion of committing maritime crimes and guidelines on how to deal with seafarer abandonment cases.

4(d).9 The Committee noted the information provided by ILO that:

- .1 in light of the discussion and the preference expressed for a pragmatic and expeditious response to the IMO request, and with a view to drawing up a resolution recommending the establishment of the joint IMO–ILO working group and also setting out the precise terms of reference of the new body, the Office (ILO Secretariat) would liaise with the IMO Secretariat and prepare a draft resolution in close consultation with, and under the overall guidance of, the Officers of the STC;
- .2 once a draft resolution had been finalized between the ILO and IMO Secretariats and approved unanimously by the Officers of the STC, it would be communicated to the STC members for possible adoption by correspondence by consensus;
- .3 if consensus was not reached, the text would be circulated again to the STC members for a formal vote by correspondence; and
- .4 if adopted by correspondence, the draft resolution would be included in the STC Chairperson's report, which would be submitted to the 343rd session of the ILO Governing Body for consideration and decision (October–November 2021), or alternatively to the 344th session (in March 2022), in the event that the proposals could not be agreed in time for its October–November session.

4(d).10 The Committee further noted that the ILO and IMO Secretariats had been in contact on this subject, and that the draft resolution was being developed by the Office (ILO Secretariat) in consultation with the Officers of the STC and would shortly be shared with the IMO Legal Affairs Office for consideration and comment. ILO would then follow the process as herewith outlined.

4(d).11 The Committee recalled that the Council, at its 125th regular session, endorsed the decision of the Maritime Safety Committee, at its 103rd session, to approve, in principle, the establishment of a standing joint ILO/IMO working group to identify and address seafarers' issues and the human element, subject to approval of the group's method of work, as provided in the resolution to be adopted by ILO, for use by relevant IMO Committees.

4(d).12 The Committee noted that, as per document PROG/130, the provisional programme of IMO meetings for 2022, the tentative dates for LEG 109 were 21 to 25 March 2022. Thus, in order to progress the work in relation to the Committee's outputs prior to LEG 109, the ILO Governing Body would need to approve the formation of the group at its 343rd session.

Proposal to establish a working group for the development of guidelines for port State and flag State authorities on how to deal with seafarer abandonment cases, including the possible establishment of a Seafarers Emergency Mutual Fund

4(d).13 The Committee considered document LEG 108/4(d) (China, Philippines and Indonesia) proposing the establishment of a working group for the development of guidelines for port State and flag State authorities on how to deal with seafarer abandonment cases, including the possible establishment of a Seafarers Emergency Mutual Fund.

4(d).14 The Committee noted the information provided in document LEG 108/4(d) and, in particular, its annex, which contained a preliminary outline of the proposed guidelines for consideration by the working group, if established.

4(d).15 The Committee also noted the information provided by the co-sponsors that cooperation between stakeholders was vital to resolve abandonment cases and that the intention was to accelerate the effective implementation of MLC, 2006 or any other international instrument in cases of abandonment of seafarers, taking into account relevant IMO instruments such as minimum requirements for safeguarding the safety of the vessel.

4(d).16 In the ensuing discussion the following views were expressed:

- .1 Seafarer abandonment was a serious issue that needed the full cooperation of flag, port and seafarer providing States and therefore the cooperation and swift action by the stakeholders was important.
- .2 The deplorable living and working conditions of abandoned seafarers continued to be a great concern during the COVID-19 pandemic and, therefore, it was timely to discuss guidelines that would assist in upholding the responsibilities of port and flag States under MLC, 2006.
- .3 The development of guidelines was welcome if they would expedite the well-being of seafarers and the resolution of abandonment cases.
- .4 Abandonment of seafarer cases were complex and therefore the apportionment of liabilities and responsibilities should be clearly defined.
- .5 The proposed outline for the guidelines was a good starting point and should be discussed in the ILO-IMO joint working group. ILO would need to be part of the considerations in a tripartite setting, however, that would not preclude further practical intersessional work.
- .6 The initiative was appreciated and merited further consideration, particularly regarding the recently adopted ILO Guidelines for flag State inspections and the ILO Guidelines for port State control officers carrying out inspections under MLC, 2006.
- .7 A correspondence group should discuss recommendatory guidelines which used wording such as "should" and the main responsibility should remain with the flag State with the cooperation of the port State.
- .8 A Seafarers Emergency Mutual Fund should be discussed but required detailed consideration of its possible resources and a new output before it could be established. The existing obligations of shipowners and industry should be considered in that context.
- .9 The Seafarers Emergency Mutual Fund should only deal with repatriation and not wages, and should not provide unfair advantages for flag States that were not fulfilling their obligations.
- .10 The Seafarers Emergency Mutual Fund could expedite the resolution of cases that were not resolved by voluntary guidelines.

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- .11 The Seafarers Emergency Mutual Fund should be carefully considered because the maintenance and support of the ship, as well as the replacement and abandoned crew, could quickly amount to considerable costs.
 - .12 Caution was expressed that the new guidelines should at least be discussed in a joint IMO-ILO working group, which would use MLC, 2006, in particular Standard 2.5, as the starting point. The guidelines should not replace the statutory provisions established through MLC, 2006, which should be the central focus of the discussion of abandoned seafarers. Moreover, some sections of the guidelines, as contained in the document, were at odds with the provisions of MLC, 2006.
 - .13 Abandoned ships were often not offered a berth but were at anchor and, therefore, the proposed solution for minimum safe manning would not solve the problem, but rather exacerbate the situation of seafarers.
 - .14 Amendments to MLC, 2006 came under the mandate of the STC of MLC, 2006, and any guidelines concerning implementation of MLC, 2006 would need to be updated, or developed, through a tripartite process.
 - .15 The development of guidelines should be more practical than legal in nature, since there should be no contradiction with existing obligations that were already covered in international instruments.
 - .16 The majority of seafarers were from developing countries and, in view of the crew change crisis, abandoned seafarers needed urgent assistance. There was a need for a pragmatic and practical implementation of the designation of seafarers as key workers and dedicated vaccination programmes.

4(d).17 The Committee, following the in-depth discussion on the proposal, agreed:

- .1 to recommend to the ILO Governing Body, in order to progress the work in relation to the Committee's outputs prior to LEG 109, to approve the formation of the joint IMO–ILO working group at its 343rd session; and
- .2 to invite interested Member States to submit proposals for a new output regarding the establishment of a Seafarers Emergency Mutual Fund to LEG 109 for consideration.

Establishment of an intersessional correspondence group

4(d).18 The Committee also agreed to establish an intersessional correspondence group, under the coordination of Indonesia,³ to further progress the work on the output on Guidelines for port State and flag State authorities on how to deal with seafarer abandonment cases, and instructed it, taking into consideration the comments, proposals and decisions made in plenary, to:

- .1 further develop practical guidelines, using the proposal in document LEG 108/4(d) (China, Indonesia and Philippines) as the base document;

³ **Coordinator:** Ms. G. Rarasanti,
Second Secretary (Political Affairs/International Maritime Organization)
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.2 if the joint ILO-IMO tripartite working group, proposed for establishment by the ILO Governing Body, met prior to LEG 109, submit a report directly to that working group; and

.3 submit a report to LEG 109.

4(d).19 The Committee also instructed the group to work intersessionally by correspondence, with the option of meeting virtually if the members of the group wished to do so.

4(d).20 The Committee agreed that the work of the group would not aim at substituting or interpreting obligations of States under international instruments but rather contribute to their implementation from a practical point of view.

Audio files: Tuesday, 27 July 2021 and Wednesday, 28 July 2021

(e) MATTERS RELATING TO THE WORK OF THE LEGAL COMMITTEE AND THE COVID-19 PANDEMIC

4(e).1 The Committee noted that there were no documents submitted under this sub-item.

Audio files: Wednesday, 28 July 2021 and Friday, 30 July 2021

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

Review of insurance problems with non-IG insurers

5.1 The Committee recalled that document LEG 108/5 (IOPC Funds) provided an update on the work carried out by the IOPC Funds on the problems encountered in some oil pollution incidents involving insurers who were not members of P & I Clubs. The Committee also recalled that the report referred to in the document included recommended measures and future tasks to be undertaken, as suggested by the IOPC Funds Audit Body, as well as a list of incidents involving non-P & I Clubs insurers with a brief description of the problems encountered. The Committee further recalled that the IOPC Funds had invited the Committee to provide feedback and guidance on the matter.

5.2 In the ensuing discussion, the following comments were made:

.1 Member States should share information about insurance providers as well as ensure good quality of the insurers; and GISIS could be a platform for information-sharing;

.2 problems with inadequate insurance were real and affected the effective implementation not only of the Civil Liability (CLC) and Fund Conventions, but the entire IMO civil liability regime, which could prevent victims from obtaining adequate compensation and could affect the sharing of the financial burden, namely for the contributors to the IOPC Funds;

.3 IMO should cooperate with shipowners and insurers to resolve this problem;

.4 guidelines for accepting insurance companies could be revisited and educational tools could be developed;

.5 Member States should disseminate a template document and request mandatory use of such a template, as recommended in paragraph 3.2.3 of

document IOPC/NOV20/5/5/1; however, the recommendation contained in paragraph 3.5.5 of that document to increase limits of liability in CLC without reopening the Convention should not be supported;

- .6 since this was a matter of vital importance to the shipping industry, the Committee should consider how to incorporate measures recommended in document IOPC/NOV20/5/5/1 into CLC;
- .7 Member States should be cautious when considering non-P & I Clubs insurance providers as the inadequacy of insurance had an impact not only on the victims of oil pollution, but also on abandoned seafarers;
- .8 a blacklist of insurers could be provided; and
- .9 this issue should be further examined and discussed, and a working group or a correspondence group could be established at the next session, or a new output could be proposed.

5.3 The Committee expressed its appreciation to the IOPC Funds and the Chair of the Audit Body for bringing to its attention the issue of inadequate insurance, and noted the information provided in document LEG 108/5 and the comments made.

5.4 The Committee also noted the intention of the delegation of Canada to submit a proposal for a new output at LEG 109 and expressed support for discussing insurance problems at its future sessions, taking into account the concerns raised by some delegations. Other delegations indicated willingness to co-sponsor a proposal for a new output.

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

5.5 The Committee recalled that document LEG 108/5/1 (Islamic Republic of Iran) drew its attention to the need for harmonized interpretation of the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (2001 Bunkers Convention). The Committee also recalled that the document discussed the concept 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 and raised the question of the definition of "unregistered ship" in the Bunkers Convention.

5.6 In the ensuing discussion, the following comments were made:

- .1 the term "entitled to fly the flag" applied to unregistered ships that could be registered in a State, but where the process of registration was delayed;
- .2 the question of registration and the right to fly the flag fell under the United Nations Convention on the Law of the Sea (UNCLOS), which could be interpreted only by its Parties at the Meeting of States Parties to that Convention, and thus the Legal Committee of IMO, was not the competent forum to consider this issue;
- .3 there were pronouncements of the International Tribunal on the Law of the Sea (ITLOS) on the issue of registration and the right to fly the flag; and

- .4 there was no problem with the interpretation of the term "unregistered ship", which was a theoretical question without practical impact at this time. Therefore, there was no compelling need to consider this issue at present.

5.7 The Committee noted the comments made on document LEG 108/5/1 and invited interested parties to submit a proposal for a new output to a future session, in accordance with the *Organization and Method of Work of the Legal Committee* (LEG.1/Circ.9), including the demonstrated need.

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

5.8 The Committee noted document LEG 108/5/2 (Ukraine) regarding the unauthorized and 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. The text of the statement made by the delegation of Ukraine in this regard is set out in annex 9 to this report.

5.9 The Committee also noted the intervention by the delegation of the Russian Federation on this matter, the statement of which is set out in annex 9 to this report.

5.10 The Committee further noted the statements made by the delegations of Ukraine, Slovenia, on behalf of the European Union, and the United States, concurred with by the delegations of France, Georgia, Italy, Japan, the United Kingdom and the European Commission. As requested, the texts of the statements made by Ukraine, Slovenia and the United States regarding this matter are set out in annex 9 to this report.

Implementation of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation of 1988, as amended by the Protocol of 2005

5.11 The Committee noted document LEG 108/5/3 (Turkey) providing information regarding the unauthorized boarding of a Turkish-flagged merchant vessel by a warship. The Committee recalled that the document referred to articles 110 and 111 of UNCLOS, article 8*bis* of the SUA Convention and the United Nations Security Council resolution 2292 (2016), and raised the question of the "consent of a flag State" before a boarding operation on the high seas.

5.12 In the ensuing discussion, the following comments were made:

- .1 relevant information on this matter was communicated in Circular Letters Nos.4349, 4365, 4360 and 4366;
- .2 the SUA Convention explicitly excluded warships from its scope thus was not applicable in this case;
- .3 this was a political issue and IMO was not the appropriate forum to consider the matter; it should instead be discussed at the United Nations Security Council;
- .4 since the safety of navigation was one of the most important functions of the Organization, IMO could be deemed as the competent organization to consider this matter;

- .5 the SUA Convention required the consent of the flag State before boarding a ship on high seas and United Nations Security Council resolutions on the Libyan arms embargo did not overrule this obligation;
- .6 any flag State represented at IMO could be subject to intervention without its clear consent based on a random interpretation of an existing clause and, therefore, this issue concerned all flag States in ensuring freedom of navigation and preventing unnecessary and/or disproportionate intervention thereon;
- .7 during the preparations on the SUA Protocol, almost all Member States disagreed with the tacit consent procedure unless adopted by a clear declaration at the time of the ratification of the Protocol and, therefore, discussions in the Committee would facilitate understanding of the law of boarding by IMO Member States;
- .8 States' obligations under article 103 of the United Nations Charter should be recalled; and
- .9 the boarding and inspection conducted on a vessel had to be in accordance with the provisions set out in UNCLOS with respect to flag States as well as the freedom of navigation.

5.13 The Committee noted the comments made on document LEG 108/5/3. As requested, the text of the statement made by the delegation of Slovenia, on behalf of the European Union, which was supported by several delegations, is set out in annex 9 to this report.

Audio file: Wednesday, 28 July 2021

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

6.1 The Committee recalled that, at its last session, it had considered the report of the Correspondence Group on Further Measures to Prevent the Fraudulent Registration and Fraudulent Registries of Ships established at LEG 106 (LEG 107/7/2) and noted that the Group had insufficient time to agree on final definitions of "fraudulent registration" and "fraudulent registry" and discuss the remaining proposals and issues in its terms of reference. The Committee also recalled that it had reiterated the importance of combating fraudulent registration and fraudulent registries of ships and supported the continuation of the work intersessionally and the submission of a report to LEG 108.

6.2 The Committee further recalled that it had supported the proposed draft 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, contained in document LEG 107/7 (United Arab Emirates).

6.3 The Committee recalled that it had established a remote intersessional group to work by correspondence, with the option of meeting virtually if the members of the Group wished to do so, under the coordination of the United States, with the terms of reference set out in paragraph 7.21 of document LEG 107/18/2, and had instructed it to submit a report to LEG 108.

Report of the Correspondence Group

6.4 In considering document LEG 108/6 (United States) containing the report of the Correspondence Group on Fraudulent Registration and Fraudulent Registries of Ships, the Committee noted that the Group had been able to produce definitions of fraudulent registration and fraudulent registry, but that some parts of the definitions remained in square brackets.

6.5 The Committee also noted that the Correspondence Group had agreed on the text of the draft resolution on encouragement of Member States and all relevant stakeholders to promote actions for the prevention and suppression of fraudulent registration and fraudulent registries and other fraudulent acts in the maritime sector, as contained in the annex to document LEG 108/6, and that there was general agreement that this resolution should be a resolution of the Assembly rather than the Legal Committee, as some of the operative paragraphs touched on matters that fell within the purview of other IMO organs.

6.6 The Committee further noted that the Correspondence Group had not reached consensus on a few items in the draft resolution, which remained in square brackets, and that the Group had, therefore, proposed that a drafting group be established at LEG 108 to consider and finalize the draft resolution.

6.7 The Committee noted that the Group had had insufficient time to address the questions raised in paragraph 2 of document LEG 106/7/4 and had proposed that the Committee request the Secretariat to coordinate a study to address these questions and to include the United Nations Conference on Trade and Development (UNCTAD), the World Maritime University (WMU) and the International Maritime Law Institute (IMLI), as well as other interested parties, in light of the previous comprehensive in-depth study published by UNCTAD "Review and Analysis of Possible Measures to Minimize the Occurrence of Maritime Fraud and Piracy". The Committee also noted that the Group had had insufficient time to fully address point .5 of its terms of reference, namely, identify items, as necessary, for further consideration by the Legal Committee at its next session and develop a work plan. The Committee further noted that, consequently, the Group had recommended the extension of the target completion year of the output to 2022.

6.8 The Committee recalled that:

- .1 Document LEG 108/6/1 (China) provided comments on the definitions of "ship fraudulent registration", "fraudulent registries of ships" and a definition of the term "false documents". The document explained that fraudulent registration can involve a legal or an illegal registration institution. The document suggested that clarifying the meaning and scope of these terms would help to prevent and combat fraudulent registration and fraudulent registries.
- .2 Document LEG 108/6/2 (China) proposed that port State and flag State authorities should play an active role in the verification of fraudulently registered ships, in view of the serious impacts of fraudulent registration of ships on shipping and the hidden dangers for the safety of navigation. The document recommended that Member States collect and communicate information about fraudulently registered ships in a timely manner. It also recommended that Member States check and improve the information of Continuous Synopsis Records under the Contact Point module of GISIS and update it in a timely manner; and that cases, inspections and disposal procedures of fraudulently registered ships should be included in the relevant training courses to strengthen port State control officers' ability to identify fraudulently registered ships.

- .3 Document LEG 108/6/3 (United Arab Emirates) provided a comment and a proposal on the draft Assembly resolution on encouragement of Member States and all relevant stakeholders to promote actions for the prevention and suppression of fraudulent registration and fraudulent registries and other fraudulent acts in the maritime sector, as set out in the annex to the report of the Correspondence Group in document LEG 108/6.
- .4 Document LEG 108/6/4 (Secretariat) provided information on the work of the Secretariat on various matters related to the fraudulent registration and fraudulent registries of ships since LEG 107. In particular, the document informed the Committee on the improvements in GISIS on the display of "false" flags and of ships and owning/operating entities under United Nations sanctions.
- .5 Document LEG 108/6/5 (Democratic Republic of the Congo) provided comments on the definitions of "fraudulent registration" and "fraudulent registries of ships", as well as a proposal to prevent this illegal practice.
- .6 Document LEG 108/INF.5 (Secretariat) provided information on the IMLI/WMU Symposium on flag State responsibilities and the future of article 91 of the United Nations Convention on the Law of the Sea, co-hosted by IMO and ITLOS, which was held at IMO Headquarters on 5 March 2020.

Proposed definitions of fraudulent registration and fraudulent registry

6.9 There was broad support in the Committee for the definitions of "fraudulent registration" and "fraudulent registry" as developed by the Correspondence Group in document LEG 108/6. The Committee also agreed to delete the words "at the relevant time", which had remained between square brackets in that document.

6.10 The Committee supported the proposal to include a definition of "false documents", as proposed in document LEG 108/6/1 (China), to complement the definitions developed by the Correspondence Group; and agreed that this could be further considered intersessionally.

6.11 The Committee agreed to extend the target completion year of the output to 2022.

Draft Assembly resolution on encouragement of Member States and all relevant stakeholders to promote actions for the prevention and suppression of fraudulent registration and fraudulent registries and other fraudulent acts in the maritime sector

6.12 There was broad support in the Committee for the draft Assembly resolution, as developed by the Correspondence Group contained in document LEG 108/6. With regard to operative paragraph 2 of the draft resolution, the Committee supported the proposal to move this paragraph to the preamble and to include the amendments in the wording as proposed in document LEG 108/6/3 (United Arab Emirates).

6.13 Although there was some support to keep the words "public and private", which had remained between square brackets in operative paragraph 3(a) of the draft resolution, the Committee agreed with the majority view that these words should be deleted.

6.14 The majority of delegates who spoke in the Committee did not support the editorial amendments proposed by some delegations in plenary to the wording of some preambular and operative paragraphs.

6.15 The Committee agreed that a drafting group should be established to finalize the text of the draft Assembly resolution, based on the text developed by the Correspondence Group in document LEG 108/6, taking into account comments and changes agreed in plenary.

Remaining issues

6.16 The Committee agreed to request the Secretariat to coordinate a study to address the questions raised in paragraph 2 of document LEG 106/7/4 and to include UNCTAD, WMU and IMLI as well as other interested parties, in light of the previous comprehensive in-depth study published by UNCTAD "Review and Analysis of Possible Measures to Minimize the Occurrence of Maritime Fraud and Piracy". In this context, the Committee also agreed that the scope of the study should be further considered and discussed intersessionally.

6.17 The Committee agreed with the Chair that the proposal that port State and flag State authorities should play an active role in the verification of fraudulently registered ships, as contained in document LEG 108/6/2 (China), should be further considered and discussed intersessionally.

6.18 With regard to document LEG 108/6/5 (Democratic Republic of the Congo), while noting the concerns expressed by some delegations that the implementation of measures against ships fraudulently flying a flag was a matter for the national legislation of each country, the Committee agreed that the document raised important issues and also agreed with the proposal of the Chair that this should be further discussed intersessionally.

6.19 With regard to document LEG 108/INF.5 (Secretariat), reporting on the IMLI/WMU Symposium on flag State responsibilities and the future of article 91 of the United Nations Convention on the Law of the Sea, which was held at IMO Headquarters on 5 March 2020, the Committee noted the willingness of the Government of Malta to host an open-ended international workshop with interested partners to discuss tangible ways to enhance the exchange of information between flag States, including de-registration and denial of registration to ships engaged in sanctionable activities. The Committee also noted that the Government of Malta had already communicated its intention to the IMO Secretariat and that further details on this workshop would be provided in due course.

Establishment of a Drafting Group

6.20 The Committee agreed with the proposal of the Chair to establish a Drafting Group, chaired by Ms. Christina Tzalavra (Greece), and instructed it, taking into consideration the comments, proposals and decisions made in plenary, to:

- .1 finalize the text of the draft Assembly resolution on encouragement of Member States and all relevant stakeholders to promote actions for the prevention and suppression of fraudulent registration and fraudulent registries and other fraudulent acts in the maritime sector, based on the text prepared by the Correspondence Group in the annex to document LEG 108/6, for approval by the Committee and submission to the thirty-fourth extraordinary session of the Council and, thereafter, to the thirty-second regular session of the Assembly, for consideration and adoption; and
- .2 submit a written report on the work carried out, including the text of the final draft Assembly resolution, to plenary on Friday, 30 July 2021.

Report of the Drafting Group

6.21 Having considered the report of the Drafting Group (LEG 108/WP.8), the Committee approved it in general.

6.22 The Committee approved the draft Assembly resolution on encouragement of Member States and all relevant stakeholders to promote actions for the prevention and suppression of fraudulent registration and fraudulent registries and other fraudulent acts in the maritime sector, as set out in annex 1 to this report, for submission to the thirty-fourth extraordinary session of the Council and, thereafter, to the thirty-second regular session of the Assembly, for consideration and adoption.

Establishment of a remote intersessional group

6.23 In view of the need to further consider a number of issues and proposals related to the fraudulent registration and fraudulent registries of ships, the Committee established a remote intersessional group under the coordination of the United States⁴ and instructed it, taking into consideration documents LEG 108/6, LEG 108/6/1, LEG 108/6/2 and LEG 108/6/5, as well as the comments, proposals and decisions made by the Committee, to work intersessionally by correspondence, with the option of meeting virtually if the members of the group wished to do so, and to:

- .1 further consider and develop the definition of "false documents", based on the proposal in document LEG 108/6/1, paragraph 7.3;
- .2 further consider the categories of fraudulent registration proposed in document LEG 108/6/1, paragraph 6, and identify action required to address this proposal;
- .3 consider the name, aim, objectives, structure and scope of the study proposed in document LEG 108/6 and paragraph 2 of document LEG 106/7/4, and draft appropriate terms of reference;
- .4 consider the proposals in document LEG 108/6/2 regarding provision of information in GISIS and the development of training for PSCOs to identify fraudulently registered vessels and identify required action to address them;
- .5 consider the issues raised and the proposal in document LEG 108/6/5 regarding confiscation of fraudulently registered vessels and identify action required to address this proposal;
- .6 identify items, as necessary, for further consideration by the Legal Committee at its next session and develop a comprehensive work plan; and
- .7 submit a report to LEG 109.

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⁴ All parties wishing to participate in the correspondence group please contact:
Mr. Stephen Hubchen, Correspondence Group Coordinator
United States Coast Guard,
Office of Maritime and International Law (CG-LMI-P)
Tel: +1 202 372 1198
Email: stephen.k.hubchen@uscg.mil

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.

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

7.1 The Committee recalled that, at its 107th session in November/December 2020, it had decided to postpone the consideration of agenda item 8 (now agenda item 7) and the related documents to LEG 108, having noted that MSC 102 and FAL 44 had also postponed the consideration of their agenda items on maritime autonomous surface ships (MASS) to MSC 103 and FAL 45, respectively.

7.2 The Committee had the following documents for its consideration:

- .1 fifteen reports submitted by the volunteering Member States presenting the summary of the results of the regulatory scoping exercise (RSE) 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 LEG RSE: 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 RSE undertaken by LEG, MSC and FAL;
- .4 LEG 107/8/4 (Secretariat) and LEG 108/7 (Secretariat) reporting on the progress made on the RSE by MSC and FAL for the instruments under their purview; and
- .5 LEG 108/7/1 (Russian Federation) commenting on documents LEG 107/8 and LEG 107/8/17 in respect of legal regulation of MASS trials in the Russian Federation.

7.3 The Committee noted the update provided by the Secretariat on the finalization of the RSE for the use of MASS by MSC 103 in May 2021, and the decisions MSC took regarding its future work on MASS (LEG 108/7). The Committee also noted the oral update provided by the Secretariat on the progress made by FAL 45 in June 2021, which decided to hold an intersessional working group on MASS to complete the RSE of the Convention on Facilitation of International Maritime Traffic (FAL Convention), the outcome of which would be considered by FAL 46 in May 2022.

7.4 The ensuing discussion focused on the way forward regarding the consideration of MASS by the Legal Committee following the finalization of the LEG RSE. The Committee decided to finalize the LEG RSE at this session and agreed that, with the conclusion of the current output on MASS, any further work of the Legal Committee had to be guided by proposals for new outputs. There was general support for the establishment of a joint FAL/LEG/MSC working group on MASS in the future, to consider cross-cutting issues between the committees and to address any legal implications of the introduction of MASS, including under UNCLOS.

7.5 One delegation drew the attention of the Committee to the serious effects the introduction of MASS may have on seafarers' careers and lives, which should be studied further, as it could negatively influence young men and women to pursue a career at sea.

Establishment of the LEG Working Group on MASS

7.6 The Committee re-established the LEG Working Group on MASS, and, in the interest of time, decided to refer all other documents submitted under this agenda item, both to LEG 107 and LEG 108, to the Working Group for detailed consideration. Taking into account the comments and decisions made in plenary, the Committee instructed the Working Group to:

- .1 consider the results of the regulatory scoping exercise (RSE) of the Legal Committee reported in documents 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 develop, using the annex to document LEG 108/WP.6 as the basis, a document presenting the outcome of the RSE of the Legal Committee, which should contain as a minimum:
 - .1 information for all degrees of autonomy for every instrument under the purview of the Legal Committee expected to be affected by MASS operations;
 - .2 the most appropriate way(s) of addressing MASS operations in those instruments, as appropriate;
 - .3 identification of themes and/or potential gaps that require addressing, taking into account documents LEG 107/8, LEG 107/8/Corr.1, LEG 107/8/17 and LEG 107/8/18;
 - .4 identification of gaps and themes that are common with those of other relevant IMO instruments for which the RSE has been finalized, i.e. MSC 103/WP.8;
 - .5 identification of priorities for further work, taking into account the work undertaken by other committees; and
 - .6 references to the materials produced during the RSE; and
- .3 submit a written report to plenary by Friday, 30 July 2021.

Report of the LEG Working Group on MASS

7.7 Having considered the report of the LEG Working Group on MASS (LEG 108/WP.7), the Committee approved it in general and, in particular:

- .1 approved the outcome of the RSE and gap analysis of conventions emanating from the Legal Committee with respect to MASS, as set out in annex 2 to this report;

- .2 noted that, in general, MASS could be accommodated within the existing regulatory framework of LEG conventions without the need for major adjustments;
- .3 noted that coordination among the committees would be necessary moving forward, in particular regarding terminology and definitions;
- .4 invited Member States to submit proposals for a new output on MASS for those issues identified to be specific to LEG;
- .5 noted that conventions not under the auspices of IMO, such as UNCLOS and MLC, 2006, might need to be considered in IMO's future work on MASS, particularly if IMO developed an instrument regulating MASS operations; and
- .6 endorsed the Group's recommendation that the outcome of the LEG RSE should be circulated through a LEG circular.

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

8.1 The Committee recalled that, at its last session, it had considered the intersessional work undertaken 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.

8.2 The Committee also recalled that it had considered document LEG 107/9/2 providing 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 work of the International Law Commission (ILC) on subsequent agreements and subsequent practice in relation to the interpretation of treaties. The Committee had agreed that the vehicle for the adoption of the Unified Interpretation should be further considered intersessionally and at LEG 108.

8.3 The Committee further recalled that it had established a remote intersessional group to work by correspondence, with the option of meeting virtually, if the members of the group wished to do so, under the coordination of Georgia, with the terms of reference set out in paragraph 9.15 of document LEG 107/18/2; and instructed it to submit a report to LEG 108.

Report of the Correspondence Group

8.4 In considering document LEG 108/8 (Georgia) containing the report of the Correspondence Group on the Unified Interpretation on the test for breaking the owner's right to limit liability under the IMO conventions, the Committee noted that the Group had drafted the text of a draft resolution on interpretation of article 4 of the Convention on Limitation of Liability for Maritime Claims, 1976, article V(2) of the International Convention on Civil Liability for Oil Pollution Damage, 1992 and article 9 of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 2010, as contained in the annex to the document.

8.5 The Committee also noted that there was no disagreement in the Group on the substance of the text of the draft resolution. The Committee further noted that there was unanimous support within the Group for operative paragraphs 1(a), b(i), (c) and (d), and 2 of the draft resolution, which they considered represented an accurate reflection of the intention of the drafters regarding the meaning of the test, as reflected in documents LEG 107/9, LEG 107/INF.5 and the Travaux Préparatoires of the 1976 International Conference on Limitation of Liability for Maritime Claims.

8.6 The Committee further noted that the members of the Group had divergent views regarding retaining paragraphs 1(b)(ii) and (iii) as operative paragraphs, but that the majority view had been to retain them as operative paragraphs and not moving them to the preamble.

8.7 The Committee noted that there had been strong support within the Group for operative paragraph 1(d), although one delegation had made a reservation in that respect.

8.8 The Committee also noted that the Group had proposed that a drafting group be established at LEG 108 to consider and finalize the draft resolution.

8.9 The Committee further noted that the Group had also considered the vehicle for the adoption of the draft resolution and that the majority of the Group had been in favour of an Assembly resolution. The Committee noted that, in the draft text, the Group had decided to keep the square brackets around the three possible options for the adoption of the vehicle with the final decision to be taken by the Committee.

8.10 The Committee recalled that document LEG 108/8/1 (Secretariat) provided comments on document LEG 108/8 and more information on the different forums and vehicles for the adoption of the draft Unified Interpretation on the test. The document explained that the Legal Committee and the Assembly were two possible forums for the adoption of the Unified Interpretation on the test. It also explained that, as States Parties to an instrument were the best interpreters of their own agreement, and following the conclusions of ILC on subsequent agreements and subsequent practice, as set out in document LEG 107/9/2, the States Parties to the different conventions should be the ones interpreting the test and the wording of the resolution should reflect this agreement among them. The document further explained that, while the forum for the adoption could be the Legal Committee or the Assembly, the resolution should be a resolution of and by the States Parties to the relevant conventions. Consequently, the document proposed adjustments to the wording of the draft resolution.

8.11 The Committee noted that the resolution could be of the States Parties in the Assembly or the Legal Committee, and that it might not be necessary to convene a conference of States Parties for the sole purpose of adopting a Unified Interpretation. Such a resolution had the necessary legal weight, as long as it reflected the agreement by the States Parties to the relevant conventions regarding their interpretation.

8.12 In the ensuing discussion, the following views were expressed, and the following comments were made:

- .1 There was a need to adopt a Unified Interpretation on the test.
- .2 The most important criterion in determining the competent forum in which to adopt the Unified Interpretation on the test was the legal weight of the interpretation to be adopted.
- .3 The Assembly was the appropriate forum for the adoption of the Unified Interpretation.

- .4 The most appropriate legal forum was for the States Parties to all these conventions to carry out the interpretation, even if the place where this interpretation would take place was the Assembly.
- .5 The Legal Committee was the appropriate and competent forum for the adoption of the Unified Interpretation on the test.
- .6 The Conference of States Parties would be the most appropriate forum.
- .7 In keeping with the principles of the original drafters of the conventions, the draft Unified Interpretation brought clarity for insurers and shipowners.
- .8 Under treaty law, the only legitimate way to carry out an interpretation was via consent of all States Parties to each of the instruments, as they were the only authentic parties able to interpret those instruments.
- .9 The provisions of article 4 of the Convention on Limitation of Liability for Maritime Claims, 1976, article V(2) of the International Convention on Civil Liability for Oil Pollution Damage, 1992 and article 9 of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 2010 could be made almost ineffective by the test as it introduced criteria which were relatively rigid and more normative than interpretive, and which would ultimately not facilitate implementation of the law by the competent jurisdictions.
- .10 The references to insurance policies and the principle of unbreakability were questionable.
- .11 Wilful misconduct was identified at such a level that it deprived the owner of the right to be compensated under the insurance policy and the loss of the right to limit liability would only be allowed in the hypothesis where insurability ended.
- .12 The criteria under the draft operative paragraphs 1(b) (ii) and (iii) were cumulative and could remove ab initio all insurability for the relevant accidents and neutralize the discretion of the judge in these cases.
- .13 The draft operative paragraph 1(d) did not seem to be in line with the guidance in article 3(b) of article 31 of the Vienna Convention.
- .14 Draft operative paragraph 1(d) could be accepted under the interpretation that the actions of the shipowner in engaging a crew should be taken into account and the wilfully culpable behaviour linked to the engagement of the crew by the shipowner could be regarded as analogous to wilful misconduct.
- .15 The primary goal of the robust discussion in the Correspondence Group was to ensure that the text clearly laid out the original intention of the States which adopted the conventions in question. This would ensure that those who would refer to the Unified Interpretation in the future when trying to establish the meaning of the test could do so with certainty on how the States Parties to these conventions had interpreted this feature. The second goal was that the resolution that adopted this Unified Interpretation be adopted by the States Parties to the conventions. The draft text would reduce any ambiguity in the future and ensure the longevity of the Unified Interpretation.

- .16 From a legal point of view, only States Parties to the conventions in question could interpret those conventions.
- .17 The International Court of Justice (ICJ) had decided that the interpretation of a convention without the support of all States Parties did not constitute a subsequent agreement. However, it was also important to adopt the Unified Interpretation quickly, and the proposal stipulated in paragraphs 19 and 20 of document LEG108/8/1 to adopt the Unified Interpretation via a resolution by the States Parties of relevant conventions present at the Assembly was a compromise to adopt it in a swift manner, while keeping in line with the pronouncements of the ICJ.
- .18 Unified Interpretations could only provide guidance to States; the revision of the conventions was the solution.
- .19 It would still be for national courts to decide whether they would apply the Unified Interpretation.
- .20 The final decision of the Committee was important in the context of the application of the 2001 Bunkers Convention.

8.13 A majority of the Committee agreed that the text of the draft Unified Interpretation on the test was acceptable, including operative paragraphs 1(b), (ii) and (iii) and 1(d), and that the text should be forwarded to a drafting group for finalization.

8.14 The Committee noted the views expressed by the delegation of France, supported by others, regarding the rigidity of the proposed interpretation of the test.

8.15 The Committee also noted the intervention by the delegation of the Netherlands, supported by the delegation of Belgium, that the draft operative paragraph 1(d) should be interpreted as not excluding the conduct of the shipowner in retaining the crew. The text of the statement made by the delegation of the Netherlands in this context is set out in annex 9 to this report.

8.16 With regard to the forum for the adoption of the Unified Interpretation on the test, a majority of the Committee agreed that the Assembly was the forum for the adoption of the resolutions on the Unified Interpretation by States Parties to the IMO conventions. The Committee also decided that, as there were different States Parties to the different conventions in force, separate resolutions, one for each convention, would need to be adopted. In this context, the Committee further noted that, since the 2010 HNS Convention had still not entered into force, that convention would not be included in a resolution at this stage. The Committee agreed that the wording of the resolutions should clearly reflect that the Unified Interpretation was an agreement of the States Parties to the relevant convention, present in the Assembly. The Committee also agreed that the Drafting Group should adjust the wording according to those decisions.

Establishment of a Drafting Group

8.17 Having considered the above matters, the Committee agreed with the proposal of the Chair to establish a virtual Drafting Group, chaired by Ms. Christina Tzalavra (Greece), and instructed it, taking into consideration the comments, proposals and decisions made in plenary, to:

- .1 finalize the text of the draft resolution[s] on the Unified Interpretation on the test for breaking the owner's right to limit liability under the IMO conventions,

based on the text prepared by the Correspondence Group in the annex to document LEG 108/8, for approval by the Committee and submission to the thirty-fourth extraordinary session of the Council and, thereafter, to the thirty-second regular session of the Assembly, for consideration and adoption; and

- .2 submit a written report on the work carried out, including the text of the final draft resolution[s], to plenary on Friday, 30 July 2021.

Report of the Drafting Group

8.18 Having considered the report of the virtual Drafting Group (LEG 108/WP.8), the Committee approved it in general.

8.19 The Committee, in particular, approved the draft resolutions on:

- .1 Interpretation of article 4 of the Convention on Limitation of Liability for Maritime Claims, 1976, as set out in annex 3 to this report, for submission to the thirty-fourth extraordinary session of the Council and adoption by the States Parties to the Convention on Limitation of Liability for Maritime Claims, 1976, present at the thirty-second regular session of the Assembly;
- .2 Interpretation of article 4 of the Convention on Limitation of Liability for Maritime Claims, 1976, as set out in annex 4 to this report, for submission to the thirty-fourth extraordinary session of the Council and adoption by the States Parties to the Protocol of 1996 to Amend the Convention on Limitation of Liability for Maritime Claims, 1976, present at the thirty-second regular session of the Assembly; and
- .3 Interpretation of article 6 of the Protocol of 1992 to Amend the International Convention on Civil Liability for Oil Pollution Damage, 1969, amending article V(2) of the International Convention on Civil Liability for Oil Pollution Damage, 1969, as set out in annex 5 to this report, for submission to the thirty-fourth extraordinary session of the Council and adoption by the States Parties to the Protocol of 1992 to Amend the International Convention on Civil Liability for Oil Pollution Damage, 1969, present at the thirty-second regular session of the Assembly.

Audio files: Tuesday, 27 July 2021 and Friday, 30 July 2021

9 PIRACY

9.1 The Committee recalled that, at its previous session, it had postponed full consideration of this agenda item to LEG 108, and noted the information provided in documents LEG 107/17/1 (Secretariat) and LEG 108/INF.4 (China), on matters relating to piracy.

9.2 In relation to document LEG 107/17/1, the Committee noted the comments made by the United Arab Emirates reflected in document LEG 108/1/1/Add.1 (Chair) and, in recognition of the important legal aspects attached to the issue of piracy, agreed that this item should remain on the agenda of the Legal Committee. The Committee also amended the title of the agenda item to read "Piracy and armed robbery against ships" in order to align it with the title of the corresponding agenda item of the Maritime Safety Committee.

Audio file: Friday, 30 July 2021

10 WORK OF OTHER IMO BODIES

10.1 The Committee, recalling that, at its previous session, it had postponed consideration of this agenda item to LEG 108, noted the information provided in documents LEG 107/11, LEG 107/11/Add.1 and LEG 108/10 (Secretariat) on the outcomes of A 31, FAL 43, MEPC 74, MSC 101, MSC 103, TC 69, TC 70, LC 41, C/ES.33, C/ES.34, NCSR 7 and NCSR 8, and that provided verbally by the Secretariat regarding MSC 102, FAL 44, FAL 45, C 124 and C 125 in relation to matters of relevance to its work.

10.2 In relation to document LEG 107/11, in particular, the Committee invited interested Member States and international organizations to submit relevant proposals to LEG 109 on action 12 of the *Action Plan to Address Marine Plastic Litter from Ships* (resolution MEPC.310(73)), concerning the most appropriate instrument to address the responsibility and liability for plastic consumer goods lost at sea from ships (MEPC 74/18, paragraphs 8.16, 8.36 and 8.40, and MEPC 74/18/Corr.1, paragraph 4).

10.3 With regard to document LEG 108/10, in particular, the Committee noted that:

- .1 TC 70 agreed to include a new item on the provisional agenda for TC 71 on "Long-term strategy for the review and reform of IMO's technical cooperation", as well as a sub-item on "Analysis of the viability of introducing an access fee to GISIS (public access) data" (TC 70/14, paragraph 11.2);
- .2 C/ES.33 approved the draft amendments to Articles 16, 17, 18, 19(b) and 81 of the IMO Convention and associated draft Assembly resolution and recommended them to A 32 for adoption (C/ES.33/D, paragraph 3.3 and the annex);
- .3 MSC 103 approved, in principle, the establishment of a standing joint ILO/IMO working group to identify and address seafarers' issues and the human element, subject to the approval of the terms of reference and other arrangements for the standing group as might be provided in the relevant resolution of the STC of MLC, 2006; and invited C 125 to endorse this decision, in principle, subject to approval of the group's method of work, as might be provided in the resolution, by relevant IMO Committees (MSC 103/21, paragraph 13.17). This decision was accordingly endorsed by C 125 (C 125/WP.1/Rev.1, paragraph 7.5.1);
- .4 MSC 103 adopted resolution MSC.490(103) on *Recommended action to prioritize COVID-19 vaccination of seafarers*, and requested the Secretariat to prepare a draft Assembly resolution consolidating issues related to crew change, access to medical care, "key worker" designation and vaccination to further highlight the relevance of these problems, for consideration at MSC 104, with a view to adoption by A 32 (MSC 103/21, paragraphs 20.9.3 and 20.9.4); and
- .5 NCSR 8 re-established the Correspondence Group on Revision of the Guidelines on Places of Refuge for Ships in Need of Assistance (resolution A.949(23)) to, inter alia, consider what issues should be brought to the attention of the Marine Environment Protection Committee and the Legal Committee, for their consideration; and submit a report to NCSR 9 (NCSR 8/14/1, paragraph 8.9).

Audio file: Friday, 30 July 2021

11 TECHNICAL COOPERATION ACTIVITIES RELATED TO MARITIME LEGISLATION

11.1 The Committee recalled that, at its previous session, it had postponed full consideration of this agenda item to LEG 108.

11.2 The Committee noted the information provided in documents LEG 107/12 (Secretariat), LEG 107/12/1 (IMO International Maritime Law Institute (IMLI)), LEG 107/INF.2 (IMLI), LEG 107/INF.3 (IMLI), LEG 108/11 (IMLI), LEG 108/11/1 (Secretariat), LEG 108/INF.2 (IMLI) and LEG 108/INF.3, on technical cooperation activities related to maritime legislation.

11.3 In this context, the Committee recalled that LEG 106 had invited the Council to initiate a programme to develop certified true copies of consolidated texts of all IMO conventions to assist in their implementation into domestic legislation. The Committee noted that C 125 considered this issue and:

- .1 endorsed the recommendation of the Working Group on Council Reform to proceed with the preparation of consolidated versions of IMO conventions;
- .2 invited the committees to develop a priority list of conventions for which a consolidated version would be most beneficial;
- .3 noted the discussion of the Group on the different options for financing the human resources required for the preparation of consolidated versions of IMO conventions, and requested the Secretariat to provide further detailed information on the available financing options; and
- .4 noted the recommendation of the Group to deal with the legal considerations pertaining to consolidation and certification at a later stage.

11.4 In relation to the Council's invitation to the committees to develop a priority list of conventions for which a consolidated version would be most beneficial, the Secretariat informed the Committee that it would submit, to LEG 109, the status of conventions and consolidation thereof, of treaties under the purview of the Committee.

11.5 In relation to document LEG 108/11/1 in particular, the Committee approved the thematic priorities for the Integrated Technical Cooperation Programme (ITCP) for 2022-2023.

11.6 With regard to document LEG 108/INF.3, the Committee congratulated Mr. Jose Manuel Pacheco Castillo from Peru for his dissertation entitled "A Legal Assessment of the Genuine Link and its Contribution to the Combat of IUU Fishing on the High Seas", which was awarded the IMO Secretary-General's Prize for Best Dissertation for the academic year 2019-2020.

11.7 The Committee recognized the importance of the work of IMLI regarding activities in capacity-building of States, under the Director's leadership, and of expanding those activities to the law of the sea which was part of the international rules underlying IMO instruments and their application.

11.8 The delegation of the Islamic Republic of Iran proposed some training ideas for consideration by IMLI and the full text of their statement, in this regard, is set out in annex 9 to this report.

Audio file: Friday, 30 July 2021

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

12.1 The Committee, recalling that, at its previous session, it had postponed the full consideration of this agenda item to LEG 108, noted the information contained in documents LEG 107/13 and LEG 108/12 (Secretariat), on the status of conventions and other treaty instruments emanating from the Legal Committee.

12.2 The Committee also noted the information set out in documents LEG 107/13/Add.1 and LEG 107/13/Add.2 (Secretariat), as well as that provided orally by the delegation of Iraq and the Secretariat, on a reservation made by the Republic of Iraq pursuant to article 16 of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988.

12.3 The Committee, in particular, noted that six States Parties to the Convention objected to the reservation, within the prescribed period of 12 months, on the grounds that it was formulated late. In this context, the Committee also noted that, without the withdrawal of the objections, the IMO Secretary-General, as Depositary, would not be in a position to accept the Republic of Iraq's late reservation. The Committee further noted that the Republic of Iraq could at any time approach these States Parties to request withdrawal of the objections.

12.4 As requested, the text of the statement made by the delegation of Iraq regarding the late reservation, is set out in annex 9 to this report.

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

12.6 The Committee noted the status of the 2010 HNS Protocol, which only had five Contracting States and was the only treaty emanating from the Legal Committee yet to enter into force; and encouraged Member States that had not yet done so to ratify the Protocol as soon as possible to enable its entry into force.

12.7 In this regard, the Committee welcomed the information provided by the delegations of Belgium and Germany (made by the Chair), regarding coordinated efforts with neighbouring states, including the Netherlands, towards the ratification and implementation of the 2010 HNS Protocol. The Chair informed the Committee that Germany intended to ratify the Protocol in the summer of 2022.

Audio file: Wednesday, 28 July 2021

13 WORK PROGRAMME

Proposals for new outputs

13.1 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 the development of measures to transparently assess whether there is a need to amend liability limits (LEG 108/13); and

- .2 a proposal for a new output on the development of a Claims Manual for the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (LEG 108/13/1).

13.2 In considering these two proposals, the Committee took into account the provisions of the document on the *Organization and method of work of the Legal Committee* (LEG.1/Circ.9) and the preliminary assessment of the two proposals undertaken by the Chair, in consultation with the Vice-Chair and the Secretariat (LEG 108/WP.4).

Development of measures to transparently assess whether there is a need to amend liability limits

13.3 The Committee considered document LEG 108/13 (Australia), proposing a new output on the development of measures to transparently assess whether there was a need to amend liability limits; and noted the information regarding the development of measures to transparently assess the need to amend liability limits when the required number of States Parties requested such review. The Committee also noted that no amendment to the liability limits was requested in the proposal.

13.4 The Committee, following an in-depth discussion, agreed that the development of measures to transparently assess whether there was a need to amend liability limits was an issue that needed to be addressed by the Legal Committee and expressed its general support for the proposed new output. Nevertheless, the Committee noted that there were several reservations concerning the following issues:

- .1 it would be potentially challenging to collect insurance data from insurers that were not members of the P & I Clubs;
- .2 there was no methodology provided on how to determine currency fluctuations which could vary from year to year;
- .3 although it was stated in the proposal that the tacit amendment procedures in relevant conventions would be followed, it was unclear whether the proposal could lead to a regular review of liability limits, which would pose an undue burden on countries that would then have to change domestic legislation on a regular basis; and
- .4 there were concerns about aspects of the "polluter pays" principle, and the proposal should not unintentionally result in tacit amendment of liability limits.

13.5 The Committee also noted that some delegations had expressed their serious concern that many of the proposed measures seemed to be inconsistent with the mechanism for tacit amendment of the limitation amount presupposed by the 1996 LLMC Protocol. In particular, it was noted that these proposals:

- .1 would lead to a de facto pre-emption of decisions of the States Parties in the procedure to amend limits of the 1996 LLMC Protocol;
- .2 ignored the difference between LLMC and other liability regimes that explicitly provided for regular review of the limitation amounts: and
- .3 could result in an overly inclusive standing agenda item.

13.6 The Committee further noted, with appreciation, that Australia⁵ would conduct informal intersessional work, taking into account the concerns that were raised.

13.7 In conclusion, the Committee agreed to:

- .1 include a new output on the development of measures to assess the need to amend liability limits in the 2022-2023 biennial agenda of the Legal Committee, with a target completion year of 2023;
- .2 invite concrete proposals to LEG 109 for consideration 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 109.

Development of a Claims Manual for the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001

13.8 The Committee considered document LEG 108/13/1 (Canada, Finland, Spain, United Arab Emirates, P & I Clubs, ITOFF Limited (ITOPF) and ICS), proposing a new output on the development of a Claims Manual for the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001.

13.9 The Committee noted the information contained in document LEG 108/13/1 that the development of dedicated and authoritative guidance would provide potential claimants with important information on the processes to follow before they submitted claims considered as falling within the scope of the Convention.

13.10 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 a Claims Manual for the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001, with the following comments:

- .1 the existing IOPC Funds manual would be a good starting point for the development of a Claims Manual for the 2001 Bunkers Convention. However, the differences should be duly taken into account between the two manuals. The IOPC Funds' Claims Manual was a manual published by the IOPC Funds describing its internal standard for admissibility of claims under the Fund Convention to its claimants, while the Bunkers Convention Claims Manual was guidance drafted by the Legal Committee to assist national courts, claimants and insurers to interpret the Bunkers Convention; and
- .2 the development of the Claims Manual for the 2001 Bunkers Convention would be very beneficial for claimants and would close a gap between other IMO conventions on liability and compensation.

13.11 In conclusion, the Committee agreed to:

- .1 include a new output under the work programme on the development of a Claims Manual for the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001, on the 2022-2023 biennial agenda, with a target completion year of 2023;

⁵ Interested delegations may contact Australia using the following email address: IMOLEG@amsa.gov.au

- .2 invite concrete proposals to LEG 109 on the scope of the work on the new output; and
- .3 include the item in the provisional agenda for LEG 109.

13.12 The Committee noted that delegations interested in taking this work forward on an intersessional basis could contact P & I Clubs.⁶

Audio file: Wednesday, 28 July 2021

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

13.13 The Committee was advised that the Council, at its 125th regular session:

- .1 endorsed the Committee's decisions, taken at its previous session, on outputs for the 2020-2021 biennium; and
- .2 approved the new strategic direction on the human element and its associated performance indicators to be included in the revised Strategic Plan, which would be submitted to the thirty-fourth extraordinary session of the Council, together with the revised table of performance indicators, the list of outputs for the 2022-2023 biennium, and the associated Assembly resolution.

13.14 The Committee noted the information contained in document LEG 108/13/2 (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.

13.15 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 annex 1 to document LEG 108/13/2. In particular, the Committee was invited to consider deleting the square brackets in the "Status of outputs for Year 2" of the present biennium.

13.16 Furthermore, the Committee considered the relevant outputs as attached in annex 2 to document LEG 108/13/2, which only referred to LEG as the parent organ and were proposed for inclusion in the post-biennial agenda of the Committee.

13.17 The Committee agreed on its report on the status of outputs for the current biennium and on the outputs to be included in its Post-Biennial Agenda, attached as annexes 6 and 7 to this report respectively, for submission to the Council.

Items for inclusion in the agenda for LEG 109

13.18 The Committee approved the list of substantive items for inclusion in the agenda for LEG 109, as contained in document LEG 108/WP.5 and attached as annex 8 to this report.

⁶ The contact point for P & I Clubs is Mr. David Baker, who may be contacted at: David.Baker@igpandi.org

Meeting time of the Committee's next session

13.19 The Committee recalled that the Council, at its 125th regular session, had approved, in principle, the regular budget outline for the 2022-2023 biennium, which was set on the basis of 34 meeting weeks (comprising 17.4 weeks for 2022 and 16.6 weeks for 2023) for the next biennium's IMO meetings, which would include two meetings of the Committee, with full interpretation services.

13.20 The Committee agreed that two meetings should be adequate for the 2022-2023 biennium and, in view of the present workload, agreed that the next session should be held during five meeting days with eight full sessions of interpretation.

Audio file: Wednesday, 28 July 2021

14 ELECTION OF OFFICERS

Election of the Chair

14.1 The Committee, in accordance with rule 18 of its Rules of Procedure, unanimously elected Ms. Gillian Grant (Canada) as Chair for 2022.

14.2 The Committee and the Secretary-General expressed their profound gratitude and appreciation to the outgoing Chair, Mr. Volker Schöfisch (Germany), for his accomplished leadership of the Committee between 2018 and 2021, as well as his outstanding service to the Organization over many years, and wished him a happy retirement.

Election of the Vice-Chair

14.3 The Committee, in accordance with rule 18 of its Rules of Procedure, unanimously elected Mr. Ivane Abashidze (Georgia) as Vice-Chair for 2022.

Audio file: Friday, 30 July 2021

15 ANY OTHER BUSINESS

15.1 The Committee noted that document LEG 108/1/1/Add.1 contained a reference to the United Arab Emirates' concerns regarding the IMO Seafarer Crisis Action Team (SCAT), and requesting that an update be provided to the Committee, under this agenda item. The Secretariat informed the Committee that a full update on the activities of SCAT would be provided to the next session of the Maritime Safety Committee (MSC 104).

Audio file: Friday, 30 July 2021

16 CONSIDERATION OF THE REPORT OF THE COMMITTEE ON ITS 108TH SESSION

16.1 Prior to the commencement of the virtual meetings of the session, Member States were invited to provide comments, by 16 July 2021, on the Chair's proposed actions on the agenda items to be considered by correspondence, as contained in document LEG 108/1/1. The comments received, as well as revised additional actions that the Chair proposed, were set out in document LEG 108/1/1/Add.1 and incorporated into the draft report of the Committee (LEG 108/WP.1), together with the decisions taken on agenda items considered during the virtual meetings.

16.2 The draft report (LEG 108/WP.1) was prepared by the Secretariat for consideration and review by the Committee on Friday, 30 July 2021, after which it was re-issued on

Wednesday, 4 August 2021 as LEG 108/WP.1/Rev.1. Taking into account the provisions of the *Interim guidance to facilitate remote sessions of the Committees during the COVID-19 pandemic*, an additional opportunity for comments was given for a further five working days, until Wednesday, 11 August 2021 at 23.59 UTC+1.

16.3 After the resolution of comments received as described in document LEG 108/16, the report of the Committee was adopted and the session was closed at 23.59 (UTC+1) on Wednesday, 11 August 2021, pursuant to rule 35 of the Rules of Procedure of the Legal Committee.

16.4 The final report of the Committee was subsequently published on IMODOCS as document LEG 108/16/1.

Audio file: Friday, 30 July 2021

ANNEX 1

DRAFT ASSEMBLY RESOLUTION ON ENCOURAGEMENT OF MEMBER STATES AND ALL RELEVANT STAKEHOLDERS TO PROMOTE ACTIONS FOR THE PREVENTION AND SUPPRESSION OF FRAUDULENT REGISTRATION AND FRAUDULENT REGISTRIES AND OTHER FRAUDULENT ACTS IN THE MARITIME SECTOR

THE ASSEMBLY,

NOTING Article 1(a) of the Convention on the International Maritime Organization (the Convention) regarding the purposes of the Organization to provide machinery for cooperation among Governments in the field of governmental regulation and practices relating to technical matters of all kinds affecting shipping engaged in international trade; to encourage and facilitate the general adoption of the highest practicable standards in matters concerning maritime safety, the efficiency of navigation and the prevention and control of marine pollution from ships; and to deal with administrative and legal matters related to the purposes set out in Article 1 of the Convention,

RECALLING Article 15(j) of the Convention regarding the functions of the Assembly,

RECALLING ALSO its resolution A.1142(31) on *Measures to prevent the fraudulent registration and fraudulent registries of ships* and the creation of the Registries of ships function in the Contact Points module in the Global Integrated Shipping Information System,

RECALLING FURTHER its resolutions A.504(XII) on *Barratry, unlawful seizure of ships and their cargoes and other forms of maritime fraud* and A.923(22) on *Measures to prevent the registration of "phantom" ships*,

RECALLING its resolution A.1117(30) on *IMO ship identification number scheme* and Circular Letter No.1886/Rev.6 supporting the implementation of the IMO ship identification number scheme,

RECALLING ALSO its resolution A.1070(28) on the *IMO Instruments Implementation Code (III Code)* inviting Governments to give renewed consideration to the ratification and implementation of the conventions and instruments relating to maritime safety, in particular those dealing with the training and certification of seafarers and the procedures for the control of sub-standard ships adopted with a view to the eventual elimination of sub-standard conditions, which contribute to the prevention and suppression of maritime fraud,

NOTING resolution MSC.160(78) on the *Adoption of the IMO unique company and registered owner identification number scheme* to enhance maritime safety, security and environmental protection and to facilitate the prevention of maritime fraud and Circular Letter No.2554/Rev.3 supporting the implementation of resolution MSC.160(78),

RECALLING the recommended procedure for the transfer of ships between flag States adopted through MSC/Circ.1140-MEPC/Circ.424,

RECALLING ALSO the recommended best practices to assist in combating fraudulent registration and fraudulent registries of ships adopted through LEG.1/Circ.10,

ACKNOWLEDGING that the fraudulent registration of ships, proliferation of fraudulent registries and related deceptive shipping practices are a serious threat to the safety and security of international shipping, including the safety and well-being of the crew, and to the protection of the environment, and can facilitate illicit maritime trafficking and the evasion of sanctions,

RECOGNIZING the importance of maintaining and exchanging information between all stakeholders, through bilateral or multilateral mechanisms and in accordance with domestic and international law, across the maritime sector to prevent and counter such issues,

RECOGNIZING ALSO that the ratification and effective implementation of other IMO conventions and other relevant international instruments can make a significant contribution to the prevention and control of maritime fraud,

BELIEVING that the development and continuous review of national legislation would have a very significant contribution in countering fraudulent acts in the maritime sector,

DESIRING to promote actions by all relevant stakeholders for the prevention and suppression of fraudulent acts which gravely endanger the integrity of international seaborne trade,

HAVING CONSIDERED the recommendations made by the Legal Committee at its 108th session,

1 URGES all Governments and organizations concerned to cooperate fully in taking effective measures and exchanging information for the further prevention of maritime fraud bearing in mind that measures relating to documentation must not prejudice the facilitation of legitimate international maritime traffic and trade;

2 ENCOURAGES Governments to review the provisions in their national law relating to the prevention and suppression of all forms of maritime fraud and to make such additions or improvements, regarding, inter alia, the exercise of due diligence, as may be necessary for the prevention and suppression of such acts and practices, and for safeguarding the interests of all stakeholders concerned, having particular regard to:

- (a) administration of national registries of ships, including requirements for provisional registration, transfer of ownership, nationality, or change of name of ships;
- (b) documentary requirements, bearing in mind that measures relating to documentation must not prejudice the facilitation of legitimate international traffic and trade; and
- (c) appropriate legal penalties for fraudulent acts and practices in the maritime sector;

3 ALSO ENCOURAGES Governments to examine their national law enforcement procedures and resources, including the availability of appropriately trained personnel, and to take such action as may be necessary for the effective prevention, investigation and detection of all forms of maritime fraud and the prosecution of all those involved;

4 INVITES Governments and relevant international organizations to inform the Secretary-General of legal, administrative and other actions taken or contemplated to implement the aims of this resolution;

5 URGES Governments to take all possible measures of cooperation with each other and with relevant intergovernmental organizations and maritime stakeholders in order to maintain and develop coordinated actions in all relevant areas to combat maritime fraud, including the exchange of information and reporting the names of ships and registries involved in fraudulent acts;

6 URGES Governments, the IMO Secretary-General, port State control authorities, vessel owners and operators, non-governmental organizations, the private sector including the maritime insurance industry, ship brokers and other relevant maritime stakeholders to develop workshops that will focus on enhancing capabilities and due diligence practices for the prevention, detection and reporting of fraudulent registration documentation;

7 REQUESTS the Secretary-General to publish the information received from all Governments and relevant maritime stakeholders related to maritime fraud by way of a circular;

8 REQUESTS the Legal Committee to keep this matter under review and take such further action as it may consider necessary in light of developments.

ANNEX 2

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

1 INTRODUCTION

1.1 This document presents the outcome of the regulatory scoping exercise (RSE) and gap analysis of conventions emanating from the Legal Committee (LEG) with respect to maritime autonomous surface ships (MASS).

1.2 The outcome of the LEG RSE, approved by LEG 108 (26 to 30 July 2021), provides an overview of the extent to which the existing regulatory framework under its purview might require amending or interpreting to address MASS operations. It further provides guidance to LEG and interested parties to identify and decide on future work on MASS and, as such, facilitate the preparation of requests for, and consideration and approval of, new outputs.

1.3 This outcome document follows the content and structure of the *Outcome of the regulatory scoping exercise for the use of MASS* developed and approved by the Maritime Safety Committee (MSC) for conventions under MSC's purview (MSC.1/Circ.1638) in order to ensure a consistent approach to the MASS RSE across IMO's organs. However, where appropriate, deviations have been made in order to accommodate the particular nature of the conventions under LEG's purview.

2 BACKGROUND

2.1 MSC 98, in June 2017, noted that the maritime sector was witnessing an increased deployment of MASS to deliver safe, cost-effective and high-quality results. In this context, MASS could include ships with different levels of automation, from partially automated systems, which assisted the human crew, to fully autonomous systems, which were able to undertake all aspects of a ship's operation without the need for human intervention. Significant academic and commercial research and development (R&D) was ongoing on all aspects of MASS, including remotely controlled and autonomous navigation, vessel monitoring and collision avoidance systems.

2.2 Although technological solutions were being developed and deployed, delegations were of the view that there was a lack of clarity on the correct application of existing IMO instruments to MASS. Delegations believed that IMO needed to ensure that MASS designers, builders, owners and operators had access to a clear and consistent regulatory framework, guided by the *Principles to be considered when drafting IMO instruments* (resolution A.1103(29)), in order to be able to demonstrate compliance with IMO instruments.

2.3 Following consideration, MSC 98 agreed to include in its 2018-2019 biennial agenda an output on "Regulatory scoping exercise for the use of Maritime Autonomous Surface Ships (MASS)" with a target completion year of 2020.

2.4 In April 2018, LEG 105 also 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.

2.5 At MSC 99, in May 2018, the Committee started to develop a framework for the RSE and defined the aim, the objective, the preliminary definition of MASS and degrees of autonomy, the list of mandatory instruments to be considered and the applicability in terms of type and size of ships.

2.6 MSC 100, in December 2018, approved the framework for the RSE, which contained definitions, a methodology consisting of a two-step approach and a plan of work and procedures (MSC 100/20/Add.1, annex 2) and invited interested Member States and international organizations to participate actively in the exercise. The Committee also approved the holding of an intersessional meeting of the Working Group on MASS between MSC 101 and 102, with the aim of finalizing the RSE at MSC 102. Furthermore, the Committee requested the Secretariat to develop a web platform as part of the Global Shipping Information System (GISIS) to facilitate the RSE.

2.7 LEG 106, in March 2019, approved the framework for the LEG RSE and a plan of work and procedures (LEG 106/16, annex 3), following the same two-step approach and the same methodology developed by MSC 100, i.e. an initial review of the LEG instruments with the agreed methodology and an analysis of the most appropriate way of addressing MASS operations.

2.8 The LEG RSE followed the timeline set out in annex 3 to document LEG 106/16, which was subsequently updated and circulated through Circular Letter No.4030. LEG used the MASS module on GISIS as a web platform to share the initial review and analysis, provide comments and revise the initial review and the analysis based on the comments received.

2.9 LEG 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 the LEG RSE to LEG 107.

2.10 The Facilitation Committee (FAL), at its forty-third session in April 2019, also agreed to include in its 2020-2021 biennial agenda a new output on "Regulatory scoping exercise for the use of Maritime Autonomous Surface Ships (MASS)" with a target completion year of 2020. Like LEG, FAL decided to use the framework for the RSE for the use of MASS approved by MSC 100, and to use the MASS module on GISIS as a medium to share the initial review and analysis, provide comments and revise the initial review and the analysis based on the comments received. The FAL RSE was scheduled to be finalized at FAL 44 in April 2020.

2.11 Owing to the COVID-19 pandemic, both MSC 102 and LEG 107, in November and December 2020, respectively, deferred consideration of this matter to MSC 103 and LEG 108, respectively. FAL 44 (April 2020) and FAL 45 (June 2021) also postponed the consideration of its agenda item on MASS; instead FAL 45 decided to hold an intersessional Working Group on MASS in October 2021 to complete the FAL RSE.

2.12 MSC 103, in May 2021, finalized the RSE for the conventions under its purview and approved the outcome as set out in *Outcome of the regulatory scoping exercise for the use of MASS* (MSC.1/Circ.1638).

2.13 LEG 108, in July 2021, also finalized the RSE for the conventions emanating from LEG and approved the outcome as set out in this document.

3 FRAMEWORK AND PROCESS OF THE LEG RSE

Aim and objective

3.1 The aim of the LEG RSE was to determine how safe, secure and environmentally sound MASS operations and the related legal matters might be addressed in IMO instruments.

3.2 The objective of the RSE on MASS conducted by LEG was to assess the degree to which the existing regulatory framework under its purview might be affected in order to address MASS operations.

Glossary

3.3 LEG used the glossary developed by MSC for the RSE of instruments under its purview to ensure a consistent approach throughout the Organization. The glossary, in particular the degrees of autonomy, was developed specifically for the purpose of the RSE and does not pre-empt future definitions that may be considered at the later stage.

3.4 For the purpose of the RSE, "MASS" was defined as a ship which, to a varying degree, can operate independent of human interaction.

3.5 To facilitate the process of the RSE, the degrees of autonomy were organized as follows:

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

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

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

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

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

Instruments

3.7 The list of mandatory instruments that were considered as part of the LEG RSE is set out in appendix 1. These instruments were reviewed on an article or sub-paragraph level, as decided by the volunteering Member State. Some instruments emanating from the Legal Committee were not reviewed as part of the RSE, as no volunteer could be identified. Instruments that were not negotiated under the auspices of IMO were not considered as part of the LEG RSE, even though conventions dealing with the carriage of goods by sea, e.g. the Hague-Visby Rules or the Rotterdam Rules, and conventions dealing with the rights and working conditions of seafarers, such as the Maritime Labour Convention, 2006, may require attention in the context of MASS.

3.8 While the United Nations Convention on the Law of the Sea (UNCLOS) was not considered as part of the LEG RSE, as it is not an IMO Convention, MASS will need to operate within the legal framework set out in UNCLOS. As a result, UNCLOS will need to be considered in IMO's future work on MASS, particularly if IMO develops an instrument regulating MASS operations.

Type and size of ships

3.9 The application of the RSE was restricted to the applicability of the instruments under consideration.

Web platform for the conduct of the RSE

3.10 A web platform as part of GISIS was developed by the Secretariat to facilitate the RSE. The web platform was connected to the IMO web accounts, providing access only to registered IMO Members.¹ All IMO Members have read-only access to the web platform and the information contained in the web platform will be retained for future reference until the Committee decides otherwise.

Methodology

3.11 The review of instruments was conducted by volunteering Member States in two steps. The list of mandatory instruments, as set out in appendix 1, also contains the names of the volunteering Member States which undertook and supported the review of instruments. IMO Members were able to submit comments on the work done by the volunteering Member States through the web platform.

3.12 As a first step, an initial review of each article or sub-paragraph of each instrument was undertaken and, for each degree of autonomy, one of the following answers was allocated to each provision:

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

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

- I developing interpretations; and/or
- II amending existing instruments; and/or

¹ Whenever the term "IMO Member" is used in this document, it includes Member Governments, associated Member Governments, intergovernmental organizations with observer status and non-governmental organizations in consultative status.

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

- III developing new instruments; or
- IV none of the above as a result of the analysis.

4 RESULTS OF THE REGULATORY SCOPING EXERCISE AT INSTRUMENT LEVEL

4.1 The results of the RSE at instrument level are set out in appendix 2, which provides for all degrees of autonomy:

- .1 the most appropriate way(s) of addressing MASS operations in those instruments;
- .2 the reason for selecting the most appropriate way(s); and
- .3 an identification of potential gaps/themes that require addressing.

4.2 In general, the LEG RSE concluded that MASS could be accommodated within the existing regulatory framework of LEG conventions without the need for major adjustments.

4.3 While the introduction of MASS appears to be entirely unproblematic under some conventions under LEG's purview, others may require additional interpretations or amendments to address the common potential gaps and themes. It appears that a new instrument is not required for conventions emanating from LEG.

4.4 An overview of the most appropriate way of addressing MASS operations (I, II, III, or IV)³ for all instruments reviewed under the LEG RSE is set out in table 2 below:

IMO instruments	Degrees of autonomy ⁴			
	1	2	3	4
BUNKERS 2001	IV	IV	I, II	I, II
CLC 1969	I, II, III	I, II, III	I, II, III	I, II, III
CLC PROT 1976	IV	IV	IV	IV
CLC 1992 (unofficial consolidated text)	I, II, III	I, II, III	I, II, III	I, II, III
FUND 1992 (unofficial consolidated text)	IV	IV	IV	IV
FUND PROT 2003	IV	IV	IV	IV
NUCLEAR 1971	IV	IV	IV	I, II
PAL 1974	I	I	I, II	I, II
PAL 2002 (certified consolidated text)	I	I	I, II	I, II
PAL PROT 1976	IV	IV	IV	IV

³ See paragraph 3.12 for the different options of addressing MASS operations.

⁴ See paragraph 3.5 for a description of the degrees of autonomy.

IMO instruments	Degrees of autonomy ⁴			
	1	2	3	4
LLMC 1976	IV	II	II	II
LLMC PROT 1996 (unofficial consolidated text)	IV	II	II	II
HNS 2010 (unofficial consolidated text)	IV	I	I, II	I, II
SALVAGE 1989	IV	IV	I	I
NAIROBI WRC 2007	IV	I	I, II	I, II
SUA 1988	IV	IV	IV	IV
SUA 2005 (certified consolidated text)	IV	IV	IV	IV
SUA PROT 1988	IV	IV	IV	IV
SUA PROT 2005 (certified consolidated text)	IV	IV	IV	IV

Table 2 – Overview of the analyses of the most appropriate way of addressing MASS operations (second step analysis of LEG RSE)

5 COMMON POTENTIAL GAPS AND/OR THEMES AND POTENTIAL LINKS BETWEEN INSTRUMENTS

Common potential gaps and/or themes

5.1 Having reviewed the results of the RSE for the different conventions emanating from the Legal Committee, as set out in appendix 2, the following issues were identified as the main potential common gaps and/or themes that may require clarification to accommodate MASS within the existing regulatory framework:

- .1 the role and responsibility of the master;
- .2 the role and responsibility of the remote operator;
- .3 questions of liability;
- .4 definitions/terminology of MASS; and
- .5 certificates.

5.2 It should be noted that these potential gaps and themes are not exhaustive and that the order in which they are presented does not reflect any order of priority.

The role and responsibility of the master

5.3 The RSE identified those provisions that require an action by the master of the ship. It was concluded that, in these cases, it may be necessary to clarify who, if anybody, would have to satisfy the role of the master in the case of a MASS with no master on board;

if an owner (or charterer) would have additional duties or liabilities when operating a semi-autonomous or fully autonomous vessel; or if certain responsibilities that would normally belong to the master would transfer to those actually on board a vessel in cases of semi-autonomous vessels with limited crews, or could be carried out by personnel not on board the MASS.

The role and responsibility of the remote operator

5.4 The RSE also showed that it may be necessary to clarify the role and responsibility of the remote operator. In particular, it may be necessary to clarify whether the remote operator might fall within the scope of the terms, including but not limited to, "operator" or "servant or agent", which are used within the liability and compensation regime, in order for the liability, channelling and subrogation provisions in those conventions to clearly accommodate MASS. While the view was expressed that the term "operator" used in the conventions was intended to refer to the commercial operator of a ship, and not a remote operator in the context of MASS, it appears that a clarifying discussion on this issue may be needed. It was noted in document LEG 106/8/4 that the role of the remote operator within the liability regime would have to be considered by the Legal Committee at some stage but was not considered as part of the RSE.

Questions of liability

5.5 New technologies relating to MASS will introduce new actors, e.g. remote operators, remote control centres/stations, providers of network or computer systems, or system developers. In this regard, the RSE indicates that it may be necessary to decide whether and how these actors should be involved in the liability and compensation regime. Specifically, it may be necessary to consider whether the current list of exonerations, the provisions on channelling of liability and the provisions regarding subrogation are sufficient. While it was highlighted that the strict liability of the shipowner, as an overriding principle of the liability and compensation regime, should be maintained, it was also felt that the introduction of new actors and technologies raised policy questions regarding the apportionment of liability under the LEG conventions, which may have to be addressed in the future.

Definitions/terminology

5.6 In the context of new technologies and actors, existing definitions and general terminology of the liability and compensation regime must be examined to ensure they remain relevant. In this regard, it was noted that it may need to be clarified that MASS (in particular, those at degrees 3 and 4) fall within the various definitions of "ship" and that those conventions that do not contain a definition of "ship" also apply to MASS. Also, just as it was considered necessary to clarify whether a remote operator would fall within the scope of "manager and operator" or "any person", there might be uncertainty about whether the manufacturer or programmer of a MASS or its components would fall within the scope of "manager and operator" or "any person". Finally, it appears that the concepts "fault", "negligence" and "intention" may require consideration in the context of harm caused by autonomous technology. However, it was agreed that these considerations should not prevent the operation of MASS under the current framework of LEG conventions.

Certificates

5.7 A cross-cutting issue for most liability conventions was how the insurance certificate, which must be kept on board for port State control purposes, would be accessed on a MASS without any seafarers on board. This is a question across other IMO conventions with such a requirement.

Potential links between instruments

5.8 Table 1 shows the instruments under the remit of the Legal Committee, in which the common potential gaps and/or themes were identified, thus indicating the potential links between instruments.

	Master	Remote operator	Liability questions	Definitions/terminology	Certificates
BUNKERS 2001		✓	✓	✓	✓
CLC 1969		✓	✓		✓
CLC PROT 1976					
CLC 1992 (unofficial consolidated text)		✓	✓	✓	✓
FUND 1992 (unofficial consolidated text)			✓	✓	
FUND PROT 2003					
NUCLEAR 1971		✓		✓	
PAL 1974		✓	✓	✓	
PAL 2002 (certified consolidated text)		✓	✓	✓	✓
PAL PROT 1976					
LLMC 1976		✓	✓	✓	
LLMC PROT 1996 (unofficial consolidated text)		✓	✓	✓	
HNS 2010 (unofficial consolidated text)		✓	✓	✓	✓
SALVAGE 1989	✓	✓		✓	
NAIROBI WRC 2007	✓	✓			✓
SUA 1988	✓	✓		✓	
SUA 2005 (certified consolidated text)	✓	✓		✓	
SUA PROT 1988		✓			
SUA PROT 2005 (certified consolidated text)		✓			

Table 1 – Overview of potential common gaps and themes

Potential links with MSC instruments

5.9 The RSE undertaken by MSC for the instruments under its purview identified the following common potential gaps and/or themes (MSC.1/Circ.1638, paragraph 5.2):

- .1 meaning of the terms master, crew or responsible person;
- .2 remote control station/centre;
- .3 remote operator as a seafarer;
- .4 provisions containing manual operations, alarms to the bridge;

- .5 provisions requiring actions by personnel (fire, spillage cargo management, onboard maintenance, etc.);
- .6 certificates and manuals on board;
- .7 connectivity, cybersecurity;
- .8 watchkeeping;
- .9 implication of MASS in SAR;
- .10 information to be available on board and required for the safe operation; and
- .11 terminology.

5.10 It has been recognized that not all of these common potential gaps and/or themes are of the same nature. Some of them are critical and fundamental issues which may shape the course of addressing MASS operations, while others concern more technical aspects.

5.11 Some of these common potential gaps and/or themes are at the core of how to introduce MASS operation safely and effectively in the regulatory framework and are regarded as high-priority issues that cut through several IMO instruments and may require a policy decision before addressing individual instruments. Among these are, for instance:

- .1 meaning of the terms master, crew or responsible person;
- .2 remote control station/centre; and
- .3 remote operator designated as seafarer.

5.12 MSC concluded that the many common potential gaps and/or themes, which cut across several instruments, could preferably be addressed holistically through a new instrument (e.g. a MASS Code), which can be made mandatory by means of amending an existing IMO convention, such as SOLAS (MSC.1/Circ.1638, paragraph 6.2).

5.13 It was also recognized that consideration of amendments to instruments, or development of a new instrument, requires agreement on the use of terminology and is a policy decision. One of the issues to be addressed was considered to be the re-evaluation of the degrees of autonomy, taking into account the lessons learned during the RSE. This work could include the development of a glossary (MSC.1/Circ.1638, paragraph 6.4).

5.14 MSC agreed that any future proposals for changes in the regulatory framework required justification and, consequently, it was recognized that any future work on MASS needed to be approved following a proposal for a new output (MSC.1/Circ.1638, paragraph 6.10).

6 PRIORITIZATIONS OF COMMON POTENTIAL GAPS AND THEMES IDENTIFIED BY THE LEG RSE AND POTENTIAL NEXT STEPS

Prioritization of common gaps and themes

6.1 As identified by MSC, some common potential gaps and/or themes are at the core of how to introduce MASS operation safely and effectively in the regulatory framework and are regarded as high-priority issues that cut through several IMO instruments and may require a policy decision before individual instruments can be addressed.

6.2 Both MSC and LEG have concluded that the role and responsibilities of the master and the remote operator are such high-priority issues that must be addressed as a foundation for any further work. Any discussion on liabilities of different new actors that are introduced through the new technology related to MASS would rely on clear definitions of these new actors, including their roles and responsibilities.

6.3 In addition, it has been recognized by both committees that the terminology needs to be revisited and agreed. While a lot of the terminology requiring clarification overlaps between the committees, there are some specific legal terms that require consideration in the context of harm caused by autonomous technology, like the concepts of "fault", "negligence" and "intention". However, this could be done as a second step once the core terminology has been agreed, especially once the degrees of autonomy have been revisited.

6.4 One of the cross-cutting issues for most liability conventions is how the insurance certificate, which must be kept on board for port State control purposes, would be accessed on a MASS without any seafarers on board. While this is a question to be addressed across all IMO conventions with such a requirement, it is not one that must be addressed with the highest priority; instead, it can be addressed when the regulatory framework is adjusted or clarified in light of MASS operations.

6.5 The priorities identified by MSC link well with those priorities identified by LEG. At the core of the high-priority issues to be decided are general policy decisions on terminology and the roles and responsibilities of new actors concomitant with the introduction of new technologies relating to MASS. The consideration of these issues would best be addressed jointly between the committees, so that both technical and legal aspects and questions of liability are taken into account, when these terms are defined, while keeping in mind the different purposes and functions of conventions under the purview of LEG and those under MSC.

Potential next steps

6.6 The Legal Committee should invite proposals for a new output on MASS for those issues identified to be specific to LEG. To ensure a coordinated approach, LEG should also be involved in any MASS-related work with IMO's other committees, particularly with regard to MASS-related definitions and terminology.

7 REFERENCES TO THE MATERIAL PRODUCED BEFORE AND DURING THE LEG RSE

IMO documents

7.1 A list of all IMO documents related to the LEG RSE is provided in appendix 3.

7.2 A list of all IMO documents related to the MSC RSE is set out in appendix 3 of the *Outcome of the regulatory scoping exercise for the use of MASS* by the Maritime Safety Committee for conventions under its purview (MSC.1/Circ.1638).

The MASS module of GISIS

7.3 The detailed analyses by the volunteering Member States of the instruments reviewed in the course of the RSE, and all comments made by IMO Members, have been recorded in the MASS module of GISIS. This web platform is connected to the IMO web accounts, providing access to registered IMO Members only.

APPENDIX 1

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

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

* No volunteers came forward to review these instruments.

APPENDIX 2

Results of the regulatory scoping exercise at instrument level

The application of IMO instruments, as currently drafted, is divided in the following categories:

- A applied to MASS and prevented MASS operations; or
- B applied to MASS and did not prevent MASS operations and required no actions; or
- C applied to MASS and did not prevent MASS operations but might need to be amended or clarified, and/or might contain gaps; or
- D had no application to MASS operations.

The most appropriate way(s) of addressing MASS operations are categorized with the following four options:

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

1 International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (BUNKERS 2001)

Degree of autonomy	The most appropriate way(s)	Reason for selecting the most appropriate way(s) of addressing MASS operations	Potential gaps/themes that require addressing
DEGREE ONE	IV	The analysis indicates that the existing provisions of the Convention are effective for MASS at degree one and require no further action.	Whether the list of exonerations in article 3 is sufficient for the owner of MASS? Should the shipowner be held liable if the damage is caused by the fault of the decision support system?
DEGREE TWO	IV	The analysis indicates that the existing provisions of the Convention are effective for MASS at degree two and require no further action.	Whether the list of exonerations is sufficient for the owner of MASS? Should the shipowner be held liable if the damage is caused by failure of the remote-controlled system?

Degree of autonomy	The most appropriate way(s)	Reason for selecting the most appropriate way(s) of addressing MASS operations	Potential gaps/themes that require addressing
DEGREE THREE	I, II	It may need to develop amendments in order to address how can an unmanned MASS (without seafarers on board) carry on board the certificate and produce the certificate when entering or leaving ports or arriving at or leaving from offshore facilities. In this case, the most appropriate way of addressing MASS operation is II. As some comments indicate, the certificates do not have to be carried on board or produced on request, provided the certificate is instead provided in electronic format and accessible to all States Parties. This may be an alternative for MASS without amending the Convention. In this case, the most appropriate way is I.	Although the definition of operator is not provided in the Convention, it is intended to be commercial operator. Thus, a remote operator should not fall within the scope of ship operator in article 1(3). However, the meaning of the remote operator may need to be clearly prescribed separately to avoid ambiguity. Whether the list of exonerations is sufficient for the owner of MASS? Should the owner be held liable if the damage is caused by failure of the remote-controlled system?
DEGREE FOUR	I, II	It may need to develop interpretations or amendments in order to address how can an unmanned MASS (without seafarers on board) carry on board the certificate and produce the certificate.	Whether the list of exonerations is sufficient for the owner of MASS? Should the shipowner be held liable if the damage is caused by a wrong decision made by artificial intelligence or failure of the technical infrastructure?

2 International Convention on Civil Liability for Oil Pollution Damage, 1969 (CLC 1969)

Degree of autonomy	The most appropriate way(s)	Reason for selecting the most appropriate way(s) of addressing MASS operations	Potential gaps/themes that require addressing
GENERAL		A policy choice must be made on some issues in order to decide the most appropriate way to address MASS. Otherwise, consideration in the Working Group and the Committee can be wandering. Among others, the Legal Committee	

Degree of autonomy	The most appropriate way(s)	Reason for selecting the most appropriate way(s) of addressing MASS operations	Potential gaps/themes that require addressing
		<p>should decide whether or not to include persons or entities engaged in the new technological aspect of navigation, such as a remote controller, a provider of network or computer system, or a programmer of software, into the scope of the "channelling of liability" under CLC. If the Legal Committee thinks that these parties should be excluded from the liability for oil pollution, then that should be made explicit by amending article III(4) of CLC. In this case, the most appropriate solution is "II". However, taking into account the practice of quasi-amendment of some provisions of CLC, the Committee can make protocol to amend some provisions of CLC, including article III(4). In this case, the most appropriate way is "III". In contrast, if the Committee decides that such parties should not be excluded from the liability for oil pollution, CLC article III(4) can be left as it is ("IV"), just as manufacturers and classification societies are not mentioned there, or the Committee can develop an interpretation of article III(4) on this matter ("I"). Indeed, the Committee can also decide that such parties should be liable for oil pollution in some cases, then making new instrument ("III") can be the most appropriate way. But this choice can be beyond the scope of the "channelling of liability." While it is possible for the Committee not to make a clear decision at this point of time and leave the issue to domestic courts of the States, such an approach will produce legal uncertainty for the parties mentioned above, which might impede the</p>	

Degree of autonomy	The most appropriate way(s)	Reason for selecting the most appropriate way(s) of addressing MASS operations	Potential gaps/themes that require addressing
		development, or the commercial operations, of the MASS.	
DEGREE ONE	I, II, III, IV	A policy choice must be made on some issues in order to decide the most appropriate way to address MASS. Thus, it is appropriate to select all the possible ways, i.e. I, II, III and IV.	A policy choice must be made on some issues in order to decide the most appropriate way to address MASS on whether or not to include persons or entities engaged in the new technological aspect of navigation, such as a remote controller, a provider of network or computer system, or a programmer of software, into the scope of the "channelling of liability" under CLC.
DEGREE TWO	I, II, III, IV	A policy choice must be made on some issues in order to decide the most appropriate way to address MASS. Thus, it is appropriate to select all the possible ways, i.e. I, II, III and IV.	<p><i>1. New technology will introduce new actors providing such technology and new causes of exoneration relating to such technology</i> It would be necessary for the Legal Committee to make a decision on the policy of whether the current lists in the clause of exoneration (article III(2)), the channelling clause (article III(4)), and the clause of subrogation (article V(5)) are sufficient.</p> <p><i>2. Consideration of "intention to cause damage," "negligence" and "recklessness"</i> As to article III(3), it would be necessary for the Legal Committee to make a policy decision about what the owner of the tanker is required to prove to be exonerated from his/her liability in case that the vessel that suffers damages is a MASS. Suppose that a MASS collided with a tanker and suffered oil pollution damage since it has made a wrong manoeuvre without any human action due to an error in its program. In such a situation, there is no intention to cause damage nor negligence of the owner of the MASS. Should the owner of the tanker fully compensate for the oil pollution</p>

Degree of autonomy	The most appropriate way(s)	Reason for selecting the most appropriate way(s) of addressing MASS operations	Potential gaps/themes that require addressing
			<p>damage of the owner of the MASS, even in such a case? As to article V(2), it would be necessary for the Legal Committee to make a policy decision about what conduct of the owner of a tanker that is a MASS would constitute its "act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss probably result". For example, would the owner of a MASS tanker be denied of limitation when he/she had some knowledge on the error in the program of the MASS? If yes, knowledge about what facts will deprive the owner of a tanker of right to limit its liability? It would be beneficial either to have an interpretation or a new provision to introduce a clear-cut rule on this issue.</p>
DEGREE THREE	I, II, III, IV	<p>A policy choice must be made on some issues in order to decide the most appropriate way to address MASS. Thus, it is appropriate to select all the possible ways, i.e. I, II, III and IV.</p>	<p><i>1. New technology will introduce new actors providing such technology and new causes of exoneration relating to such technology</i> Please refer to the general comments and the comments in degree 2.</p> <p><i>2. Consideration of "intention to cause damage," "negligence" and "recklessness"</i> Please refer to the comments in degree 2.</p> <p><i>3. Others – Certificate (article VII(2), (4) and (12))</i> The Committee may need to reinterpret Article VII which provides the duty to carry the certificate on board of unmanned MASS. As many comments by IMO Members at the first step indicated, this issue might be resolved by developing interpretation. In this case, the most appropriate way is "I", considering the current widespread adoption of electronic certificates in the</p>

Degree of autonomy	The most appropriate way(s)	Reason for selecting the most appropriate way(s) of addressing MASS operations	Potential gaps/themes that require addressing
			<p>maritime sector. However, the Legal Committee may have an option to update the provisions of CLC, as article 7(13) of the Bunker Convention and article 12(13) of the Wreck Removal Nairobi Convention. In this case, the most appropriate way is "II". If the Committee decides to amend CLC for other reasons, the provisions of CLC related to the certificate should also be updated. In addition, it is also possible that the Legal Committee (or the FAL Committee) makes the legally binding instrument for resolving all the problem related to the certificate. In this case, the most appropriate way is "III", developing new instruments. The Committee may want to see different forms and formats of certificate, which are more suitable for unmanned MASS. In this case, there would be several choices for most appropriate way of doing so, i.e. I, II, III and IV.</p>
DEGREE FOUR	I, II, III, IV	<p>A policy choice must be made on some issues in order to decide the most appropriate way to address MASS. Thus, it is appropriate to select all the possible ways, i.e. I, II, III and IV.</p>	<p>Please refer to the comments in degree 3.</p>

3 Protocol [of 1976] to the International Convention on Civil Liability for Oil Pollution Damage, 1969 (CLC PROT 1976)

Degree of autonomy	The most appropriate way(s)	Reason for selecting the most appropriate way(s) of addressing MASS operations	Potential gaps/themes that require addressing
DEGREE ONE	IV	Has no application to MASS operations.	
DEGREE TWO	IV	Has no application to MASS operations.	
DEGREE THREE	IV	Has no application to MASS operations.	
DEGREE FOUR	IV	Has no application to MASS operations.	

4 International Convention on Civil Liability for Oil Pollution Damage, 1992 (CLC PROT 1992)

Degree of autonomy	The most appropriate way(s)	Reason for selecting the most appropriate way(s) of addressing MASS operations	Potential gaps/themes that require addressing
GENERAL		A policy choice must be made on some issues in order to decide the most appropriate way to address MASS. Otherwise, consideration in the Working Group and the Committee can be wandering. Among others, the Legal Committee should decide whether or not to include persons or entities engaged in the new technological aspect of navigation, such as a remote controller, a provider of network or computer system, or a programmer of software, into the scope of the "channelling of liability" under CLC. If the Legal Committee thinks that these parties should be excluded from the liability for oil pollution, then that should be made explicit by amending article III(4) of CLC. In this case, the most appropriate solution	

Degree of autonomy	The most appropriate way(s)	Reason for selecting the most appropriate way(s) of addressing MASS operations	Potential gaps/themes that require addressing
		<p>is "II". However, taking into account the practice of quasi-amendment of some provisions of CLC, the Committee can make protocol to amend some provisions of CLC, including article III(4). In this case, the most appropriate way is "III". In contrast, if the Committee decides that such parties should not be excluded from the liability for oil pollution, CLC article III(4) can be left as it is ("IV"), just as manufacturers and classification societies are not mentioned there, or the Committee can develop an interpretation of article III(4) on this matter ("I"). Indeed, the Committee can also decide that such parties should be liable for oil pollution in some cases, then making new instrument ("III") can be the most appropriate way. But this choice can be beyond the scope of the "channelling of liability." While it is possible for the Committee not to make a clear decision at this point of time and leave the issue to domestic courts of the States, such an approach will produce legal uncertainty for the parties mentioned above, which might impede the development, or the commercial operations, of the MASS.</p>	

Degree of autonomy	The most appropriate way(s)	Reason for selecting the most appropriate way(s) of addressing MASS operations	Potential gaps/themes that require addressing
DEGREE ONE	I, II, III, IV	A policy choice must be made on some issues in order to decide the most appropriate way to address MASS. Thus, it is appropriate to select all the possible ways, i.e. I, II, III and IV.	A policy choice must be made on some issues in order to decide the most appropriate way to address MASS on whether or not to include persons or entities engaged in the new technological aspect of navigation, such as a remote controller, a provider of network or computer system, or a programmer of software, into the scope of the "channelling of liability" under CLC.
DEGREE TWO	I, II, III, IV	A policy choice must be made on some issues in order to decide the most appropriate way to address MASS. Thus, it is appropriate to select all the possible ways, i.e. I, II, III and IV.	<p><i>1. New technology will introduce new actors providing such technology and new causes of exoneration relating to such technology</i></p> <p>It would be necessary for the Legal Committee to make a decision on the policy of whether the current lists in the clause of exoneration (article III(2)), the channelling clause (article III(4)), and the clause of subrogation (article V(5)) are sufficient.</p> <p><i>2. Consideration of "intention to cause damage," "negligence" and "recklessness"</i></p> <p>As to article III(3), it would be necessary for the Legal Committee to make a policy decision about what the owner of the tanker is required to prove to be exonerated from his/her liability in case that the vessel that suffers damages is a MASS. Suppose that a MASS collided with a tanker and suffered oil pollution damage since it has made a wrong manoeuvre without any human action due to an error in its program. In such a situation, there is no intention to cause damage nor negligence of the owner of the MASS. Should the owner of the tanker fully compensate for the oil pollution damage of the owner of the MASS, even in such a case? As to article V(2), it would be necessary for the Legal Committee to make a policy decision about what</p>

Degree of autonomy	The most appropriate way(s)	Reason for selecting the most appropriate way(s) of addressing MASS operations	Potential gaps/themes that require addressing
			<p>conduct of the owner of a tanker that is a MASS would constitute its "act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss probably result". For example, would the owner of a MASS tanker be denied of limitation when he/she had some knowledge on the error in the program of the MASS? If yes, knowledge about what facts will deprive the owner of a tanker of right to limit its liability? It would be beneficial either to have an interpretation or a new provision to introduce a clear-cut rule on this issue.</p> <p><i>3. Others – Definition of Ship (article I(1))</i> The IOPC Funds have the Guidance Document for the Definition of Ship, which presupposes the existence of competent seafarers on board and has not considered the emergence of remote-controlled ships or highly automated ships. The Legal Committee might wish to notify the Funds to deal with this issue.</p>
DEGREE THREE	I, II, III, IV	A policy choice must be made on some issues in order to decide the most appropriate way to address MASS. Thus, it is appropriate to select all the possible ways, i.e. I, II, III and IV.	<p><i>1. New technology will introduce new actors providing such technology and new causes of exoneration relating to such technology</i> Please refer to the general comments and the comments in degree 2.</p> <p><i>2. Consideration of "intention to cause damage," "negligence" and "recklessness"</i> Please refer to the comments in degree 2.</p> <p><i>3. Others</i> <i>(1) Definition of Ship (article I(1))</i> Please refer to the comments in degree 2. <i>(2) Certificate (article VII(2), (4) and (12))</i> The Committee may need to reinterpret article VII which</p>

Degree of autonomy	The most appropriate way(s)	Reason for selecting the most appropriate way(s) of addressing MASS operations	Potential gaps/themes that require addressing
			<p>provides the duty to carry the certificate on board of unmanned MASS. As many comments by IMO Members at the first step indicated, this issue might be resolved by developing interpretation. In this case, the most appropriate way is "I", considering the current widespread adoption of electronic certificates in the maritime sector. However, the Legal Committee may have an option to update the provisions of CLC as article 7(13) of the Bunker Convention and article 12(13) of the Wreck Removal Nairobi Convention. In this case, the most appropriate way is "II". If the Committee decides to amend CLC for other reasons, the provisions of CLC related to the certificate should also be updated. In addition, it is also possible that the Legal Committee (or the FAL Committee) makes the legally binding instrument for resolving all the problem related to the certificate. In this case, the most appropriate way is "III", developing new instruments. The Committee may want to see different forms and formats of certificate, which are more suitable for unmanned MASS. In this case, there would be several choices for most appropriate way of doing so, i.e. I, II, III and IV.</p>
DEGREE FOUR	I, II, III, IV	A policy choice must be made on some issues in order to decide the most appropriate way to address MASS. Thus, it is appropriate to select all the possible ways, i.e. I, II, III and IV.	Please refer to the comments in degree 3.

5 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (FUND PROT 1992)

Degree of autonomy	The most appropriate way(s)	Reason for selecting the most appropriate way(s) of addressing MASS operations	Potential gaps/themes that require addressing
DEGREE ONE	IV	No changes necessary.	<p>Japan provided the following comments:</p> <p>Article 4(2) for all degrees: The Legal Committee may wish to consider whether the current list of exoneration is sufficient for the Fund in cases in which a MASS is involved. In particular, it might wish to closely examine whether the Fund should be exonerated when a wrong decision by the artificial intelligence or a failure of the network, computer or other technological infrastructure caused the incident. For this reason, article 4(2) as a whole is classified as C.</p> <p>Article 4(3) for all degrees: It is not clear whether and how this provision is applied to cases in which a MASS suffers the damage. LEG may wish to clarify intent to cause damage when it comes to AI or systems of MASS. Therefore, vessels of degree 2 to 4 are classified as C.</p>
DEGREE TWO	IV	No changes necessary.	
DEGREE THREE	IV	No changes necessary.	
DEGREE FOUR	IV	No changes necessary.	

6 Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (FUND PROT 2003)

Degree of autonomy	The most appropriate way(s)	Reason for selecting the most appropriate way(s) of addressing MASS operations	Potential gaps/themes that require addressing
DEGREE ONE	IV	No changes necessary.	
DEGREE TWO	IV	No changes necessary.	
DEGREE THREE	IV	No changes necessary.	
DEGREE FOUR	IV	No changes necessary.	

7 Convention relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material, 1971 (NUCLEAR 1971)

Degree of autonomy	The most appropriate way(s)	Reason for selecting the most appropriate way(s) of addressing MASS operations	Potential gaps/themes that require addressing
DEGREE ONE	IV	Generally, no change needed, except in relation to article 3. In regard to article 3, please refer to comments under degree four.	
DEGREE TWO	IV	Generally, no change needed, except in relation to article 3. In regard to article 3, please refer to comments under degree four.	
DEGREE THREE	IV	Generally, no change needed, except in relation to article 3. In regard to article 3, please refer to comments under degree four.	
DEGREE FOUR	I, II	There are two options for proceeding: 1) In relation to articles 1 and 2, a provision could clarify which entities/individuals are included within the term 'any person'. In relation to article 3, a	Clarification as to who is the 'operator' and individuals/entities to be included in 'any person'.

Degree of autonomy	The most appropriate way(s)	Reason for selecting the most appropriate way(s) of addressing MASS operations	Potential gaps/themes that require addressing
		<p>provision could clarify who is the 'operator' (e.g. shipowner, operating company or another entity as appropriate).</p> <p>2) Developing an interpretation or interpretative document that provides for:</p> <p>a. articles 1 and 2 – clarification as to which individuals/entities are included within the term 'any person' if deemed appropriate. Consideration should be given to whether the term 'any person' requires clarification or narrowing due to MASS.;</p> <p>b. article 3 – clarification as to who is the 'operator'. The operator could be interpreted as either the 'shipowner' or the 'operating company, as appropriate. This article may require a policy decision as to whether liability should prima facie lie with the shipowner or the operating company or whether they should be jointly and severally liable. The development of an interpretation or interpretative document would be easier to implement but amending the Convention would provide a more permanent result. Considering this Convention only requires clarification, and many other Conventions may require significant amendment, we propose developing an interpretation as the preferred option.</p>	

8 Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 (PAL 1974)

Degree of autonomy	The most appropriate way(s)	Reason for selecting the most appropriate way(s) of addressing MASS operations	Potential gaps/themes that require addressing
DEGREE ONE	I	No specific difficulty has been identified for the application of the Athens 1974 Convention as regards ships with degree one of autonomy.	None.
DEGREE TWO	I	<p>Few difficulties have been identified for the application of the Athens 1974 Convention with regard to ships with degree two of autonomy. These difficulties could be resolved through developed interpretations, but there was no consensus on whether such interpretations were actually really needed, or if the 1974 Convention is providing enough clarity. The points on which clarifications may be necessary are listed below:</p> <p>Does the notion of "servants or agent of the carrier, acting within the scope of their employment" cover the persons or entity that would supervise the autonomous operation of the ship (such as persons in charge of shore based remote control)?</p> <p>Could an accident caused by a defect in a MASS system be regarded as a "fault or neglect of the carrier"? Could a defect of the autonomous systems of a MASS – including on the shore side – be considered as a "defect of the ship"? Could accidents caused by autonomous systems and equipment lead to a loss of the right to limit liability?</p>	<p>The following notions require specific care:</p> <ul style="list-style-type: none"> - servants or agents of the carrier; - fault or neglect of the carrier; and - defect of the ship and of loss of the right to limit liability, as related to the operations of the autonomous system and to the person supervising it.

Degree of autonomy	The most appropriate way(s)	Reason for selecting the most appropriate way(s) of addressing MASS operations	Potential gaps/themes that require addressing
DEGREE THREE	I, II	Some difficulties have been identified for the application of the Athens 1974 Convention with regard to ships with degree three of autonomy. These difficulties could be addressed by developing interpretations or amendments; however, there was no consensus on whether such interpretations or amendments are actually necessary. The points on which clarifications may be necessary are below listed: Could the remote operator be considered as the performing carrier? Would a defect of a MASS system, including its land-based components, be considered a "defect of the ship" within the meaning of the Convention? Would those who supervise the autonomous operations of the ship be considered as "servant or agent of the carrier"? Could the carrier lose its right to limit liability in relation with an accident caused by a MASS system? Does the liability of the MASS designer need special consideration?	<p>The following notions require specific care:</p> <ul style="list-style-type: none"> - servants or agents of the carrier; - fault or neglect of the carrier; and - defect of the ship and of loss of the right to limit liability, as related to the operations of the autonomous system and to the person supervising it. <p>The question of the liability of the MASS designer requires specific consideration.</p>
DEGREE FOUR	I, II	Some difficulties have been identified for the application of the Athens 1974 Convention with regard to ships with degree four of autonomy. These difficulties could be addressed by developing interpretations or amendments; however, there was no consensus on whether such interpretations or amendments are actually necessary. The points on which clarifications may be necessary are below listed: Could the remote operator be considered as the performing carrier? Would a defect of a MASS system, including its land-based components, be considered a "defect of the ship" within the meaning of	<p>The following notions require specific care:</p> <ul style="list-style-type: none"> - servants or agents of the carrier; - fault or neglect of the carrier; and - defect of the ship and of loss of the right to limit liability, as related to the operations of the autonomous system and to the person supervising it. <p>The question of the liability of the MASS designer requires specific consideration.</p>

Degree of autonomy	The most appropriate way(s)	Reason for selecting the most appropriate way(s) of addressing MASS operations	Potential gaps/themes that require addressing
		the Convention? Would those who supervise the autonomous operations of the ship be considered as "servant or agent of the carrier"? Could the carrier lose its right to limit liability in relation with an accident caused by a MASS system? Does the liability of the MASS designer need special consideration? Difficulty of conceiving certain obligations of the carrier arising from the status of luggage in a fully autonomous context, unless it is understood that catering personnel could be aboard despite a fully autonomous navigation.	

9 Protocol of 1976 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 (PAL PROT 1976)

Degree of autonomy	The most appropriate way(s)	Reason for selecting the most appropriate way(s) of addressing MASS operations	Potential gaps/themes that require addressing
DEGREE ONE	IV	<i>Question raised:</i> Does the introduction of the Special Drawing Right as the Unit of Account in place of the gold franc impact the future MASS liability regime? <i>Analysis:</i> There is no impact in the MASS context. <i>Conclusion:</i> No amendment required.	
DEGREE TWO	IV	See comment under degree one.	
DEGREE THREE	IV	See comment under degree one.	
DEGREE FOUR	IV	See comment under degree one.	

10 Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002 (PAL PROT 2002)

Degree of autonomy	The most appropriate way(s)	Reason for selecting the most appropriate way(s) of addressing MASS operations	Potential gaps/themes that require addressing
DEGREE ONE	I	No difficulty was identified for the application of the Athens 2002 Convention in case of ships with level one autonomy.	None.
DEGREE TWO	I	Few difficulties were identified for the application of the Athens 2002 Convention in case of ships with level two autonomy. They could be addressed by developing interpretations, but there was no consensus on whether such interpretations were actually really needed, or if the Convention was clear enough. The points that may need clarification were: Whether the notion of "servants or agent of the carrier, acting within the scope of their employment" covers the persons or entity that would supervise the autonomous operation of the ship (such as persons in charge of shore based remote control)? Whether an accident caused by a defect in a MASS system could be counted as a "fault or neglect of the carrier"? Whether a defect of the autonomous systems of a MASS, including on the shore side, could be considered a "defect of the ship? Whether accidents caused by autonomous systems and equipment could lead to a loss of the right to limit liability?	Notions of servants or agents of the carrier, of fault or neglect of the carrier, of defect of the ship and of loss of the right to limit liability, as related to the operations of the autonomous system and to the person supervising it.

Degree of autonomy	The most appropriate way(s)	Reason for selecting the most appropriate way(s) of addressing MASS operations	Potential gaps/themes that require addressing
DEGREE THREE	I, II	Some difficulties were identified for the application of the Athens 2002 Convention in case of ships with level three autonomy. They could be addressed by developing interpretations or amendments, but there was no consensus on whether such interpretations or amendments were actually really needed. The issues that may need clarification were: Could the remote operator be considered as the performing carrier? Could a defect of a MASS system, including its land-based components, be considered a "defect of the ship" within the meaning of the Convention? Would those who supervise the autonomous operations of the ship be "servant or agent of the carrier"? Could the carrier lose its right to limit liability in relation with an accident caused by a MASS system Does the liability of the MASS designer need special consideration?	<p>Notions of servants or agents of the carrier, of fault or neglect of the carrier, of defect of the ship and of loss of the right to limit liability, as related to the operations of the autonomous system and to the person supervising it.</p> <p>Liability of the MASS designer</p>
DEGREE FOUR	I, II	Some difficulties were identified for the application of the Athens 2002 Convention in case of ships with level four autonomy. They could be addressed by developing interpretations or amendments, but there was no consensus on whether such interpretations or amendments were actually really needed. The issues that may need clarification were: Could the remote operator be considered as the performing carrier? Would a defect of a MASS system, including its land-based components, be considered a "defect of the ship" within the meaning of the Convention? Would those who	<p>Notions of servants or agents of the carrier, of fault or neglect of the carrier, of defect of the ship and of loss of the right to limit liability, as related to the operations of the autonomous system and to the person supervising it.</p> <p>Liability of the MASS designer</p>

Degree of autonomy	The most appropriate way(s)	Reason for selecting the most appropriate way(s) of addressing MASS operations	Potential gaps/themes that require addressing
		supervise the autonomous operations of the ship be "servant or agent of the carrier"? Could the carrier lose its right to limit liability in relation with an accident caused by a MASS system? Difficulty of conceiving certain obligations of the carrier in relation to luggage in a fully autonomous context, unless it is understood that catering personnel could be aboard despite a fully autonomous navigation. Does the liability of the MASS designer need special consideration?	

11 Convention on Limitation of Liability for Maritime Claims, 1976 (LLMC 1976)

Degree of autonomy	The most appropriate way(s)	Reason for selecting the most appropriate way(s) of addressing MASS operations	Potential gaps/themes that require addressing
DEGREE ONE	IV	All of the MASS applications at degree one are categorized as "B", which means that it requires no actions.	
DEGREE TWO	II	In particular, there is ambiguity about the remote operator. Some provisions (e.g. articles 1(2), 1(4)) may need to be amended or clarified, and/or may contain gaps.	It is necessary to clarify whether the remote operator might fall within the scope of "manager and operator", or the definition of "any person". There is no definition of "ship" in the Convention. A definition might be preferable to remove doubt over whether a MASS at degrees 3 and 4 is a ship.

Degree of autonomy	The most appropriate way(s)	Reason for selecting the most appropriate way(s) of addressing MASS operations	Potential gaps/themes that require addressing
DEGREE THREE	II	In particular, there is ambiguity about the remote operator. Some provisions (e.g. articles 1(2), 1(4)) may need to be amended or clarified, and/or may contain gaps.	It is necessary to clarify whether the remote operator might fall within the scope of "manager and operator", or the definition of "any person". There is no definition of "ship" in the Convention. A definition might be preferable to remove doubt over whether a MASS at degrees 3 and 4 is a ship.
DEGREE FOUR	II	In particular, there is ambiguity about the manufacturer or other programmers. Some provisions (e.g. articles 1(2), 1(4)) may need to be amended or clarified, and/or may contain gaps.	It is necessary to clarify whether a manufacturer or other programmers of a MASS at degree 4 might fall within the scope of "operator", or the definition of "any person". There is no definition of "ship" in the Convention. A definition might be preferable to remove doubt over whether a MASS at degrees 3 and 4 is a ship.

12 Convention on Limitation of Liability for Maritime Claims, 1976, as amended by the 1996 Protocol (LLMC PROT 1996)

Degree of autonomy	The most appropriate way(s)	Reason for selecting the most appropriate way(s) of addressing MASS operations	Potential gaps/themes that require addressing
DEGREE ONE	IV	All of the MASS applications at degree one are categorized as "B", which means that it requires no actions.	
DEGREE TWO	II	In particular, there is ambiguity about the remote operator. Some provisions (e.g. articles 1(2), 1(4)) may need to be amended or clarified, and/or may contain gaps.	It is necessary to clarify whether the remote operator might fall within the scope of "manager and operator", or the definition of "any person". There is no definition of "ship" in the Convention. A definition might be preferable to remove doubt over whether a MASS at degrees 3 and 4 is a ship.

Degree of autonomy	The most appropriate way(s)	Reason for selecting the most appropriate way(s) of addressing MASS operations	Potential gaps/themes that require addressing
DEGREE THREE	II	In particular, there is ambiguity about the remote operator. Some provisions (e.g. articles 1(2), 1(4)) may need to be amended or clarified, and/or may contain gaps.	It is necessary to clarify whether the remote operator might fall within the scope of "manager and operator", or the definition of "any person". There is no definition of "ship" in the Convention. A definition might be preferable to remove doubt over whether a MASS at degrees 3 and 4 is a ship.
DEGREE FOUR	II	In particular, there is ambiguity about the manufacturer or other programmers. Some provisions (e.g. articles 1(2), 1(4)) may need to be amended or clarified, and/or may contain gaps.	It is necessary to clarify whether a manufacturer or other programmers of a MASS at degree 4 might fall within the scope of "operator", or the definition of "any person". There is no definition of "ship" in the Convention. A definition might be preferable to remove doubt over whether a MASS at degrees 3 and 4 is a ship.

13 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988 (SUA 1988)

Degree of autonomy	The most appropriate way(s)	Reason for selecting the most appropriate way(s) of addressing MASS operations	Potential gaps/themes that require addressing
DEGREE ONE	IV	As a result of the analysis, no amendment or new instrument is necessary to maintain the applicability of the Convention with respect to MASS degree 1. The Convention is enacted and enforced by signatory Member States through domestic legislation and prosecutions. To the extent any signatory Member State has jurisdictional, terminological, or other MASS-related legal concerns, those are matters that may be addressed in that signatory Member	

Degree of autonomy	The most appropriate way(s)	Reason for selecting the most appropriate way(s) of addressing MASS operations	Potential gaps/themes that require addressing
		State's legal system and domestic implementation of the Convention. Australia, the United Kingdom, and Switzerland recommended category I, i.e. that no changes be made to the Convention, but interpretative guidance be created. The United States carefully considered all positions, but recommends category IV, i.e. that no changes are needed.	
DEGREE TWO	IV	See comment under degree one.	
DEGREE THREE	IV	See comment under degree one.	
DEGREE FOUR	IV	See comment under degree one.	

14 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 1988 (SUA PROT 1988)

Degree of autonomy	The most appropriate way(s)	Reason for selecting the most appropriate way(s) of addressing MASS operations	Potential gaps/themes that require addressing
DEGREE ONE	IV	As a result of the analysis, no amendment or new instrument is necessary to maintain the applicability of the Convention with respect to MASS degree 1. The Convention is enacted and enforced by signatory Member States through domestic legislation and prosecutions. To the extent any signatory Member State has jurisdictional, terminological, or other MASS-related legal concerns, those are matters	

Degree of autonomy	The most appropriate way(s)	Reason for selecting the most appropriate way(s) of addressing MASS operations	Potential gaps/themes that require addressing
		<p>that may be addressed in that signatory Member State's legal system and domestic implementation of the Convention.</p> <p>Although the United Kingdom recommended that guidance or amendment clarify that offences against a fixed platform can be perpetrated on land, such as by a land-based remote operator, a remote operator could be prosecuted in a domestic legal system through a variety of means, including, but not limited to, the passage of domestic legislation that expressly holds remote operators liable; through any aiding and abetting provisions of existing criminal provisions; or through a Member State's criminal provisions on conspiracy. Moreover, with respect to jurisdiction, article 3(4) and article 3(5) expressly provide that the jurisdictional provisions do not exclude additional means of exercising criminal jurisdiction in accordance with national law. No effort by IMO is required.</p>	
DEGREE TWO	IV	See comment under degree one.	
DEGREE THREE	IV	See comment under degree one.	
DEGREE FOUR	IV	See comment under degree one.	

15 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 2005 (SUA 2005)

Degree of autonomy	The most appropriate way(s)	Reason for selecting the most appropriate way(s) of addressing MASS operations	Potential gaps/themes that require addressing
DEGREE ONE	IV	<p>As a result of the analysis, no amendment or new instrument is necessary to maintain the applicability of the Convention with respect to MASS degree 1. The Convention is enacted and enforced by signatory Member States through domestic legislation and prosecutions. To the extent any signatory Member State has jurisdictional, terminological, or other MASS-related legal concerns, those are matters that may be addressed in that signatory Member State's legal system and domestic implementation of the Convention.</p> <p>Alternatively, Australia, Switzerland and the United Kingdom support guidance to clarify that SUA offences can be perpetrated on land, such as by a land-based remote operator. Switzerland further recommends guidance that unmanned law enforcement vessels have indicia or markings that indicate its status as a law enforcement vessel.</p>	
DEGREE TWO	IV	See comment under degree one.	
DEGREE THREE	IV	See comment under degree one.	
DEGREE FOUR	IV	See comment under degree one.	

16 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 2005 (SUA PROT 2005)

Degree of autonomy	The most appropriate way(s)	Reason for selecting the most appropriate way(s) of addressing MASS operations	Potential gaps/themes that require addressing
DEGREE ONE	IV	<p>As a result of the analysis, no amendment or new instrument is necessary to maintain the applicability of the Convention with respect to MASS degree 1. The Convention is enacted and enforced by signatory Member States through domestic legislation and prosecutions. To the extent any signatory Member State has jurisdictional, terminological, or other MASS related legal concerns, those are matters that may be addressed in that signatory Member State's legal system and domestic implementation of the Convention.</p> <p>Although the United Kingdom recommended that guidance or amendments clarify that offences against a fixed platform can be perpetrated on land, such as by a land-based remote operator, a remote operator could be prosecuted in a domestic legal system through a variety of means, including, but not limited to, the passage of domestic legislation that expressly holds remote operators liable; through any aiding and abetting provisions of existing criminal provisions; or through a Member State's criminal provisions on conspiracy. Moreover, with respect to jurisdiction, articles 3(4) and 3(5) make express that the jurisdictional provisions do not exclude additional means of exercising criminal jurisdiction in accordance with national law. No effort by IMO is required.</p>	
DEGREE TWO	IV	See comment under degree one.	

Degree of autonomy	The most appropriate way(s)	Reason for selecting the most appropriate way(s) of addressing MASS operations	Potential gaps/themes that require addressing
DEGREE THREE	IV	See comment under degree one.	
DEGREE FOUR	IV	See comment under degree one.	

17 International Convention on Salvage, 1989 (SALVAGE 1989)

Degree of autonomy	The most appropriate way(s)	Reason for selecting the most appropriate way(s) of addressing MASS operations	Potential gaps/themes that require addressing
DEGREE ONE	IV		
DEGREE TWO	IV		
DEGREE THREE	I	The issue of the remote operator/master is an overriding issue that needs to be solved taking into account all instruments in coordination with all responsible committees.	
DEGREE FOUR	I	The issue of the master is an overriding issue that needs to be solved taking into account all instruments in coordination with all responsible committees.	

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

Degree of autonomy	The most appropriate way(s)	Reason for selecting the most appropriate way(s) of addressing MASS operations	Potential gaps/themes that require addressing
GENERAL		Some States have expressed the wish to discuss the need to increase the list of cases of exoneration regarding liability claims in article 10 of the Convention.	
DEGREE ONE	IV	There seems to be no need for changes, i.e. there should be no problem with applying the Convention as it is for ships with degree one autonomy.	
DEGREE TWO	I	Some clarification may be needed regarding the role of the master and remote operator concerning certain reporting obligations.	
DEGREE THREE	I, II	The analysis has shown that some articles of the Convention will need to be clarified or amended before they can be applied to remotely controlled ships without seafarers on board. This includes the obligation to carry certificates on the vessel and the requirements relating to the reporting of wrecks.	
DEGREE FOUR	I, II	For fully autonomous ships amendments and clarifications will be needed in relation to the same articles as for degree three.	

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

Degree of autonomy	The most appropriate way(s)	Reason for selecting the most appropriate way(s) of addressing MASS operations	Potential gaps/themes that require addressing
GENERAL		MASS can be accommodated within the existing HNS 2010. However, MASS do raise certain policy questions, such as how to appropriately classify the remote operator for the purposes of the channelling provisions in the Convention that may benefit from further consideration. Depending upon the outcomes of these discussions it may be necessary to develop common interpretations and/or consider amendments to the conventions to more clearly implement the desired policy outcome.	
DEGREE ONE	IV	The Convention can accommodate MASS at this degree of autonomy without the need for further changes.	Product liability: should the owner be held liable if the pollution damage results from a fault by an automated system? Is there a need to consider further exemptions to the owner's liability in articles 7 and 14?
DEGREE TWO	I	MASS can be accommodated at this degree of autonomy without the need for further changes. It may be necessary to consider whether it is necessary to clarify if a remote operator can be considered a servant or agent of the owner for the purpose of the channelling provisions in article 7.	Product liability: should the owner be held liable if the pollution damage results from a fault within the remote-controlled system? Is there a need to consider further exemptions to the owner's liability in articles 7 and 14?
DEGREE THREE	I, II	MASS can be accommodated at this degree of autonomy. It may be necessary to either develop interpretations or consider amendments (e.g. to article 12) in order to address the requirement for	Product liability: should the owner be held liable if the pollution damage results from a fault within the remote-controlled system? Is there a need to consider further exemptions to the owner's liability in articles 7 and 14?

Degree of autonomy	The most appropriate way(s)	Reason for selecting the most appropriate way(s) of addressing MASS operations	Potential gaps/themes that require addressing
		<p>the certificate of insurance to be on board the vessel if there are no seafarers on board.</p> <p>It may be necessary to consider interpretations or amendments to clarify whether the remote operator may be considered a servant or agent of the owner for the purpose of the channelling provisions in article 7.</p>	
DEGREE FOUR	I, II	<p>It may be necessary to either develop interpretations or consider amendments (e.g. to article 12) in order to address the requirement for the certificate of insurance to be on board the vessel if there are no seafarers on board.</p> <p>It may be necessary to consider interpretations or amendments to clarify whether the remote operator may be considered a servant or agent of the owner for the purpose of the channelling provisions in article 7.</p>	<p>Product liability: should the owner be held liable if the pollution damage results from a fault within the remote-controlled system? Is there a need to consider further exemptions to the owner's liability in articles 7 and 14?</p>

APPENDIX 3

IMO documents related to the LEG RSE

LEG 105/11/1	Canada, Finland, Georgia, Marshall Islands, Norway, Republic of Korea, Turkey, Comité Maritime International, International Chamber of Shipping, and International Group of Protection and Indemnity Associations	Proposal for a regulatory scoping exercise and gap analysis with respect to Maritime Autonomous Surface Ships (MASS)
LEG 105/14	Secretariat	Report of the Legal Committee on the work of its 105th session
LEG 106/8	Secretariat	List of instruments under the purview of the Legal Committee
LEG 106/8/1	Secretariat	Outcomes of MSC 99 and MSC 100 regarding MASS
LEG 106/8/2	Canada, Denmark, Finland, France, Georgia, Germany, Marshall Islands, Netherlands, Norway, Republic of Korea, United Arab Emirates, United Kingdom, and International Group of Protection and Indemnity Associations	Proposed framework, methodology and work plan for the regulatory scoping exercise
LEG 106/8/3	China	Proposal on the action plan for the regulatory scoping exercise for MASS
LEG 106/8/4	Republic of Korea	Considerations on the instruments, framework and methodology for the Legal Committee's regulatory scoping exercise
LEG 106/WP.5	Secretariat	Report of the LEG Working Group on MASS
LEG 106/16	Secretariat	Report of the Legal Committee on the work of its 106th session
LEG 107/8	Comité Maritime International	Summary of results of analysis of IMO instruments under the purview of the Legal Committee

LEG 107/8/Corr.1	Comité Maritime International	Summary of results of analysis of IMO instruments under the purview of the Legal Committee
LEG 107/8/1	Sweden	Summary of results of the first and second steps of the RSE for the Nairobi International Convention on the Removal of Wrecks, 2007
LEG 107/8/2	Japan	Summary of results of the LEG regulatory scoping exercise for the International Convention on Civil Liability for Oil Pollution Damage, 1992 (1992 CLC)
LEG 107/8/3	Australia	Summary of results of the LEG regulatory scoping exercise for the Convention relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material, 1971
LEG 107/8/4	Secretariat	Progress on regulatory scoping exercise and gap analysis by MSC and FAL
LEG 107/8/5	United States of America	Summary of results of the LEG regulatory scoping exercise for the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988
LEG 107/8/6	United States of America	Summary of results of the LEG regulatory scoping exercise for the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 2005
LEG 107/8/7	United States of America	Summary of results of the LEG regulatory scoping exercise for the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, 1988
LEG 107/8/8	United States of America	Summary of results of the LEG regulatory scoping exercise for the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, 2005
LEG 107/8/9	China and Republic of Korea	Summary of results of the LEG regulatory scoping exercise for the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001
LEG 107/8/10	Republic of Korea and United Kingdom	Summary of results of the LEG regulatory scoping exercise for the Convention on Limitation of Liability for Maritime Claims, 1976 (LLMC 1976) and the Protocol of 1996 to amend LLMC 1976 (LLMC PROT 1996)
LEG 107/8/11	Finland	Summary of results of the LEG regulatory scoping exercise of the International Convention on Salvage, 1989

LEG 107/8/12	France and Marshall Islands	Summary of results of the LEG regulatory scoping exercise for the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974
LEG 107/8/13	France and Marshall Islands	Summary of results of the LEG regulatory scoping exercise for the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002
LEG 107/8/14	France and Marshall Islands	Summary of results of the LEG regulatory scoping exercise for the Protocol of 1976 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974
LEG 107/8/15	Canada	Summary of results of the LEG regulatory scoping exercise for the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 2010
LEG 107/8/16	Germany	Summary of results of the LEG regulatory scoping exercise for the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992
LEG 107/8/17	Secretariat	Summary of main gaps and common themes in instruments under the purview of the Legal Committee
LEG 107/8/18	International Federation of Shipmasters' Associations	Comment on documents LEG 107/8, LEG 107/8/1, LEG 107/8/5, 107/8/6 and LEG 107/8/11 regarding the role of the master
LEG 107/18/2	Secretariat	Report of the Legal Committee on the work of its 107th session
LEG 108/7	Secretariat	Finalization of regulatory scoping exercise and gap analysis by MSC 103
LEG 108/7/1	Russian Federation	Comments on documents LEG 107/8 and LEG 107/8/17 in respect of legal regulation of MASS trials in the Russian Federation
LEG 108/WP.7	Secretariat	Report of the LEG Working Group on MASS
LEG 108/16/1	Secretariat	Report of the Legal Committee on the work of its 108th session

ANNEX 3

DRAFT RESOLUTION ON INTERPRETATION OF ARTICLE 4 OF THE CONVENTION ON LIMITATION OF LIABILITY FOR MARITIME CLAIMS, 1976

THE STATES PARTIES TO THE CONVENTION ON LIMITATION OF LIABILITY FOR MARITIME CLAIMS, 1976, PRESENT AT THE THIRTY-SECOND SESSION OF THE ASSEMBLY OF THE INTERNATIONAL MARITIME ORGANIZATION,

RECALLING that the International Maritime Organization has adopted a comprehensive limitation, liability and compensation regime that seeks to ensure that claimants receive prompt and adequate compensation, without the need for legal recourse, and that this regime represents a carefully negotiated compromise that balances the obligations and interests of governments, claimants and industry,

RECALLING ALSO that this regime encompasses the International Convention on Civil Liability for Oil Pollution Damage, 1992 (the 1992 Civil Liability Convention), the International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea, 2010 (the 2010 HNS Convention), the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (the 2001 Bunkers Convention) and the Nairobi International Convention on the Removal of Wrecks, 2007 (the 2007 Nairobi Wreck Removal Convention) (together the Conventions),

RECALLING FURTHER that the Organization has adopted the Convention on Limitation of Liability for Maritime Claims, 1976 (the 1976 LLMC Convention), as amended by the Protocol of 1996 to Amend the Convention on Limitation of Liability for Maritime Claims, 1976 (the 1996 LLMC Protocol), that provides that the shipowner may limit liability for certain specific claims as prescribed in article 2 of that Convention,

RECOGNIZING that the effective operation of the regime is dependent upon a uniform implementation and application that is consistent with the aims and objectives agreed at the time of their adoption, and that will ensure the Conventions are applied equally and equitably to all parties and claimants,

RECOGNIZING ALSO the need to provide legal certainty in the interpretation and application of the Conventions and to assist present and future States Parties to the Conventions, the 1976 LLMC Convention and the 1996 LLMC Protocol to apply them in a uniform manner,

CONSCIOUS that the purpose and objectives of the Conventions, to ensure that claimants receive prompt and adequate compensation, are achieved through the mechanisms establishing strict liability of the shipowner, the channelling of liability to the shipowner irrespective of fault and a requirement to maintain insurance or other financial security,

CONSCIOUS ALSO that the Conventions, the 1976 LLMC Convention and the 1996 LLMC Protocol are underpinned by the right of the shipowner, their insurer or provider of financial security, to limit their liability, and that the nature of such a right is inextricably linked to higher limits of liability and the insurability of such liabilities,

CONSCIOUS FURTHER that the 1992 Civil Liability Convention, the 2010 HNS Convention and the 1996 LLMC Protocol all provide for increases to these limits of liability in prescribed circumstances,

NOTING that the right to limit liability is prescribed in article 1(1) of the 1976 LLMC Convention, article V(1) of the 1992 Civil Liability Convention and article 9(1) of the 2010 HNS Convention,

RECALLING the references to the right to limit liability under the 1976 LLMC Convention, as amended, in article 6 of the 2001 Bunkers Convention and article 10(2) of the 2007 Nairobi Wreck Removal Convention,

BEING AWARE that the 1976 LLMC Convention, the 1992 Civil Liability Convention and the 2010 HNS Convention provide that the shipowner shall not be entitled to limit its liability if it is proved that the pollution damage, damage or loss, resulted from his or her personal act or omission, committed with the intent to cause such pollution damage, damage or loss, or recklessly and with knowledge that such pollution damage, damage or loss would probably result (the test for breaking the right to limit liability),

BEING AWARE ALSO that the Conventions provide that, even if the shipowner is not entitled to limitation of liability, their insurer or provider of financial security may avail themselves of, or benefit from, the limits of liability prescribed therein,

RECOGNIZING that the test for breaking the right to limit liability was presented and adopted at the 1976 International Conference on the LLMC Convention as part of a package that was coupled with higher limits of liability (than the International Convention Relating to the Limitation of the Liability of Owners of Seagoing Ships, 1957),

CONSIDERING the difficulties which might arise from differing, and inconsistent, interpretations of the test for breaking the right to limit liability, and that without a Unified Interpretation of the test, eligible claimants may be deprived of prompt compensation,

CONCERNED that inconsistent application or interpretation of the test for breaking the right to limit liability that differs in scope from the intention could result in confusion and uncertainty and an unequal treatment of claimants,

ACKNOWLEDGING the importance of a Unified Interpretation of the test for breaking the right to limit liability to the long-term sustainability of the regime, and that the test can only operate and be effective if the States Parties affirm the meaning of the test in line with the principles which gave birth to it,

NOTING that the principles underpinning the test for breaking the right to limit liability are identified in the Travaux Préparatoires of the 1976 LLMC Convention,

DESIRING to reaffirm these principles by means of a Unified Interpretation,

UNDERSTANDING ALWAYS that the courts in States Parties are the final arbiters on the interpretation of the Conventions, the 1976 LLMC Convention and the 1996 LLMC Protocol, but that an affirmation of the test for breaking the right to limit liability in the form of a Unified Interpretation would assist courts, as well as governments, claimants, shipowners and insurers, in their interpretation and understanding of the test,

RECOGNIZING that, under the Vienna Convention on the Law of Treaties, 1969, "*A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.*" (Article 31(1)) and that "*Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31 (...)*" (article 32),

HAVING CONSIDERED the recommendations made by the Legal Committee at its 108th session,

1 AFFIRM that the test for breaking the right to limit liability as contained in article 4 of the 1976 LLMC Convention is to be interpreted:

- (a) as virtually unbreakable in nature, i.e. breakable only in very limited circumstances and based on the principle of unbreakability;
- (b) to mean a level of culpability analogous to wilful misconduct, namely:
 - (i) a level higher than the concept of gross negligence, since that concept was rejected by the 1976 International Conference on Limitation of Liability for Maritime Claims;
 - (ii) a level that would deprive the shipowner of the right to be indemnified under their marine insurance policy; and
 - (iii) a level that provides that the loss of entitlement to limit liability should begin where the level of culpability is such that insurability ends;
- (c) that the term "recklessly" is to be accompanied by "knowledge" that such pollution damage, damage or loss would probably result, and that the two terms establish a level of culpability that must be met in their combined totality and should not be considered in isolation of each other; and
- (d) that the conduct of parties other than the shipowner, for example the master, crew or servants of the shipowner, is irrelevant and should not be taken into account when seeking to establish whether the test has been met;

2 REQUEST the Secretary-General of the International Maritime Organization to circulate copies of the present resolution to all States which have signed, ratified or acceded to the 1976 LLMC Convention;

3 ALSO REQUEST the Secretary-General of the Organization to circulate copies of the present resolution to all Member States of the Organization.

ANNEX 4

DRAFT RESOLUTION ON INTERPRETATION OF ARTICLE 4 OF THE CONVENTION ON LIMITATION OF LIABILITY FOR MARITIME CLAIMS, 1976

THE STATES PARTIES TO THE PROTOCOL OF 1996 TO AMEND THE CONVENTION ON LIMITATION OF LIABILITY FOR MARITIME CLAIMS, 1976, PRESENT AT THE THIRTY-SECOND SESSION OF THE ASSEMBLY OF THE INTERNATIONAL MARITIME ORGANIZATION,

RECALLING that the International Maritime Organization has adopted a comprehensive limitation, liability and compensation regime that seeks to ensure that claimants receive prompt and adequate compensation, without the need for legal recourse, and that this regime represents a carefully negotiated compromise that balances the obligations and interests of governments, claimants and industry,

RECALLING ALSO that this regime encompasses the International Convention on Civil Liability for Oil Pollution Damage, 1992 (the 1992 Civil Liability Convention), the International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea, 2010 (the 2010 HNS Convention), the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (the 2001 Bunkers Convention) and the Nairobi International Convention on the Removal of Wrecks, 2007 (the 2007 Nairobi Wreck Removal Convention) (together the Conventions),

RECALLING FURTHER that the Organization has adopted the Convention on Limitation of Liability for Maritime Claims, 1976 (the 1976 LLMC Convention), as amended by the Protocol of 1996 to Amend the Convention on Limitation of Liability for Maritime Claims, 1976 (the 1996 LLMC Protocol), that provides that the shipowner may limit liability for certain specific claims as prescribed in article 2 of that Convention,

RECOGNIZING that the effective operation of the regime is dependent upon a uniform implementation and application that is consistent with the aims and objectives agreed at the time of their adoption, and that will ensure the Conventions are applied equally and equitably to all parties and claimants,

RECOGNIZING ALSO the need to provide legal certainty in the interpretation and application of the Conventions and to assist present and future States Parties to the Conventions, the 1976 LLMC Convention and the 1996 LLMC Protocol to apply them in a uniform manner,

CONSCIOUS that the purpose and objectives of the Conventions, to ensure that claimants receive prompt and adequate compensation, are achieved through the mechanisms establishing strict liability of the shipowner, the channelling of liability to the shipowner irrespective of fault and a requirement to maintain insurance or other financial security,

CONSCIOUS ALSO that the Conventions, the 1976 LLMC Convention and the 1996 LLMC Protocol are underpinned by the right of the shipowner, their insurer or provider of financial security, to limit their liability, and that the nature of such a right is inextricably linked to higher limits of liability and the insurability of such liabilities,

CONSCIOUS FURTHER that the 1992 Civil Liability Convention, the 2010 HNS Convention and the 1996 LLMC Protocol all provide for increases to these limits of liability in prescribed circumstances,

NOTING that the right to limit liability is prescribed in article 1(1) of the 1976 LLMC Convention, article V(1) of the 1992 Civil Liability Convention and article 9(1) of the 2010 HNS Convention,

RECALLING the references to the right to limit liability under the 1976 LLMC Convention, as amended, in article 6 of the 2001 Bunkers Convention and article 10(2) of the 2007 Nairobi Wreck Removal Convention,

BEING AWARE that the 1976 LLMC Convention, the 1992 Civil Liability Convention and the 2010 HNS Convention provide that the shipowner shall not be entitled to limit its liability if it is proved that the pollution damage, damage or loss, resulted from his or her personal act or omission, committed with the intent to cause such pollution damage, damage or loss, or recklessly and with knowledge that such pollution damage, damage or loss would probably result (the test for breaking the right to limit liability),

BEING AWARE ALSO that the Conventions provide that, even if the shipowner is not entitled to limitation of liability, their insurer or provider of financial security may avail themselves of, or benefit from, the limits of liability prescribed therein,

RECOGNIZING that the test for breaking the right to limit liability was presented and adopted at the 1976 International Conference on the LLMC Convention as part of a package that was coupled with higher limits of liability (than the International Convention Relating to the Limitation of the Liability of Owners of Seagoing Ships, 1957),

CONSIDERING the difficulties which might arise from differing, and inconsistent, interpretations of the test for breaking the right to limit liability, and that without a Unified Interpretation of the test, eligible claimants may be deprived of prompt compensation,

CONCERNED that inconsistent application or interpretation of the test for breaking the right to limit liability that differs in scope from the intention could result in confusion and uncertainty and an unequal treatment of claimants,

ACKNOWLEDGING the importance of a Unified Interpretation of the test for breaking the right to limit liability to the long-term sustainability of the regime, and that the test can only operate and be effective if the States Parties affirm the meaning of the test in line with the principles which gave birth to it,

NOTING that the principles underpinning the test for breaking the right to limit liability are identified in the Travaux Préparatoires of the 1976 LLMC Convention,

DESIRING to reaffirm these principles by means of a Unified Interpretation,

UNDERSTANDING ALWAYS that the courts in States Parties are the final arbiters on the interpretation of the Conventions, the 1976 LLMC Convention and the 1996 LLMC Protocol, but that an affirmation of the test for breaking the right to limit liability in the form of a Unified Interpretation would assist courts, as well as governments, claimants, shipowners and insurers, in their interpretation and understanding of the test,

RECOGNIZING that, under the Vienna Convention on the Law of Treaties, 1969, "*A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.*" (Article 31(1)) and that "*Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31 (...)*" (article 32),

HAVING CONSIDERED the recommendations made by the Legal Committee at its 108th session:

1 AFFIRM that the test for breaking the right to limit liability as contained in article 4 of the 1976 LLMC Convention is to be interpreted:

- (a) as virtually unbreakable in nature i.e. breakable only in very limited circumstances and based on the principle of unbreakability;
- (b) to mean a level of culpability analogous to wilful misconduct, namely:
 - (i) a level higher than the concept of gross negligence, since that concept was rejected by the 1976 International Conference on Limitation of Liability for Maritime Claims;
 - (ii) a level that would deprive the shipowner of the right to be indemnified under their marine insurance policy; and
 - (iii) a level that provides that the loss of entitlement to limit liability should begin where the level of culpability is such that insurability ends;
- (c) that the term "recklessly" is to be accompanied by "knowledge" that such pollution damage, damage or loss would probably result, and that the two terms establish a level of culpability that must be met in their combined totality and should not be considered in isolation of each other; and
- (d) that the conduct of parties other than the shipowner, for example the master, crew or servants of the shipowner, is irrelevant and should not be taken into account when seeking to establish whether the test has been met.

2 REQUEST the Secretary-General of the International Maritime Organization to circulate copies of the present resolution to all States which have signed, ratified or acceded to the 1996 LLMC Protocol.

3 ALSO REQUEST the Secretary-General of the Organization to circulate copies of the present resolution to all Member States of the Organization.

ANNEX 5

DRAFT RESOLUTION ON INTERPRETATION OF ARTICLE 6 OF THE PROTOCOL OF 1992 TO AMEND THE INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR OIL POLLUTION DAMAGE, 1969 AMENDING ARTICLE V(2) OF THE INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR OIL POLLUTION DAMAGE, 1969

THE STATES PARTIES TO THE PROTOCOL OF 1992 TO AMEND THE INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR OIL POLLUTION DAMAGE, 1969, PRESENT AT THE THIRTY-SECOND SESSION OF THE ASSEMBLY OF THE INTERNATIONAL MARITIME ORGANIZATION,

RECALLING that the International Maritime Organization has adopted a comprehensive limitation, liability and compensation regime that seeks to ensure that claimants receive prompt and adequate compensation, without the need for legal recourse, and that this regime represents a carefully negotiated compromise that balances the obligations and interests of governments, claimants and industry,

RECALLING ALSO that this regime encompasses the International Convention on Civil Liability for Oil Pollution Damage, 1992 (the 1992 Civil Liability Convention), the International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea, 2010 (the 2010 HNS Convention), the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (the 2001 Bunkers Convention) and the Nairobi International Convention on the Removal of Wrecks, 2007 (the 2007 Nairobi Wreck Removal Convention) (together the Conventions),

RECALLING FURTHER that the Organization has adopted the Convention on Limitation of Liability for Maritime Claims, 1976 (the 1976 LLMC Convention), as amended by the Protocol of 1996 to Amend the Convention on Limitation of Liability for Maritime Claims, 1976 (the 1996 LLMC Protocol), that provides that the shipowner may limit liability for certain specific claims as prescribed in article 2 of that Convention,

RECOGNIZING that the effective operation of the regime is dependent upon a uniform implementation and application that is consistent with the aims and objectives agreed at the time of their adoption, and that will ensure the Conventions are applied equally and equitably to all parties and claimants,

RECOGNIZING ALSO the need to provide legal certainty in the interpretation and application of the Conventions and to assist present and future States Parties to the Conventions, the 1976 LLMC Convention and the 1996 LLMC Protocol to apply them in a uniform manner,

CONSCIOUS that the purpose and objectives of the Conventions, to ensure that claimants receive prompt and adequate compensation, are achieved through the mechanisms establishing strict liability of the shipowner, the channelling of liability to the shipowner irrespective of fault and a requirement to maintain insurance or other financial security,

CONSCIOUS ALSO that the Conventions, the 1976 LLMC Convention and the 1996 LLMC Protocol are underpinned by the right of the shipowner, their insurer or provider of financial security, to limit their liability, and that the nature of such a right is inextricably linked to higher limits of liability and the insurability of such liabilities,

CONSCIOUS FURTHER that the 1992 Civil Liability Convention, the 2010 HNS Convention and the 1996 LLMC Protocol all provide for increases to these limits of liability in prescribed circumstances,

NOTING that the right to limit liability is prescribed in article 1(1) of the 1976 LLMC Convention, article V(1) of the 1992 Civil Liability Convention and article 9(1) of the 2010 HNS Convention,

RECALLING the references to the right to limit liability under the 1976 LLMC Convention, as amended, in article 6 of the 2001 Bunkers Convention and article 10(2) of the 2007 Nairobi Wreck Removal Convention,

BEING AWARE that the 1976 LLMC Convention, the 1992 Civil Liability Convention and the 2010 HNS Convention provide that the shipowner shall not be entitled to limit its liability if it is proved that the pollution damage, damage or loss, resulted from his or her personal act or omission, committed with the intent to cause such pollution damage, damage or loss, or recklessly and with knowledge that such pollution damage, damage or loss would probably result (the test for breaking the right to limit liability),

BEING AWARE ALSO that the Conventions provide that, even if the shipowner is not entitled to limitation of liability, their insurer or provider of financial security may avail themselves of, or benefit from, the limits of liability prescribed therein,

RECOGNIZING that the test for breaking the right to limit liability was presented and adopted at the 1976 International Conference on the LLMC Convention as part of a package that was coupled with higher limits of liability (than the International Convention Relating to the Limitation of the Liability of Owners of Seagoing Ships, 1957),

CONSIDERING the difficulties which might arise from differing, and inconsistent, interpretations of the test for breaking the right to limit liability, and that without a Unified Interpretation of the test, eligible claimants may be deprived of prompt compensation,

CONCERNED that inconsistent application or interpretation of the test for breaking the right to limit liability that differs in scope from the intention could result in confusion and uncertainty and an unequal treatment of claimants,

ACKNOWLEDGING the importance of a Unified Interpretation of the test for breaking the right to limit liability to the long-term sustainability of the regime, and that the test can only operate and be effective if the States Parties affirm the meaning of the test in line with the principles which gave birth to it,

NOTING that the principles underpinning the test for breaking the right to limit liability are identified in the Travaux Préparatoires of the 1976 LLMC Convention,

DESIRING to reaffirm these principles by means of a Unified Interpretation,

UNDERSTANDING ALWAYS that the courts in States Parties are the final arbiters on the interpretation of the Conventions, the 1976 LLMC Convention and the 1996 LLMC Protocol, but that an affirmation of the test for breaking the right to limit liability in the form of a Unified Interpretation would assist courts, as well as governments, claimants, shipowners and insurers, in their interpretation and understanding of the test,

RECOGNIZING that, under the Vienna Convention on the Law of Treaties, 1969, "*A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.*" (Article 31(1)) and that "*Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31 (...)*" (article 32),

HAVING CONSIDERED the recommendations made by the Legal Committee at its 108th session,

1 AFFIRM that the test for breaking the right to limit liability as contained in article 6 of the Protocol of 1992 to Amend the International Convention on Civil Liability for Oil Pollution Damage, 1969 amending article V(2) of the International Convention on Civil Liability for Oil Pollution Damage, 1969 is to be interpreted:

- (a) as virtually unbreakable in nature, i.e. breakable only in very limited circumstances and based on the principle of unbreakability;
- (b) to mean a level of culpability analogous to wilful misconduct, namely:
 - (i) a level higher than the concept of gross negligence, since that concept was rejected by the 1976 International Conference on Limitation of Liability for Maritime Claims;
 - (ii) a level that would deprive the shipowner of the right to be indemnified under their marine insurance policy; and
 - (iii) a level that provides that the loss of entitlement to limit liability should begin where the level of culpability is such that insurability ends;
- (c) that the term "recklessly" is to be accompanied by "knowledge" that such pollution damage, damage or loss would probably result, and that the two terms establish a level of culpability that must be met in their combined totality and should not be considered in isolation of each other; and
- (d) that the conduct of parties other than the shipowner, for example the master, crew or servants of the shipowner, is irrelevant and should not be taken into account when seeking to establish whether the test has been met;

2 REQUEST the Secretary-General of the International Maritime Organization to circulate copies of the present resolution to all States which have signed, ratified or acceded to the Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution damage, 1969;

3 ALSO REQUEST the Secretary-General of the Organization to circulate copies of the present resolution to all Member States of the Organization.

ANNEX 6

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 the ITCP	Continuous	TCC	MSC / MEPC / FAL / LEG		No work requested	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	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	No work requested	
1. Improve implementation	1.31	Measures to prevent unlawful practices associated with the fraudulent registration and fraudulent registries of ships	2022	LEG			In progress	Extended	

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
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	Completed	
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	No work requested	
5. Enhance global facilitation and security of international trade	5.4	Revised guidance relating to the prevention of piracy and armed robbery to reflect emerging trends and behaviour patterns	Annual	MSC	LEG		No work requested	No work requested	
6. Ensure regulatory effectiveness	6.1	Unified interpretation of provisions of IMO safety, security, facilitation, environment, and liability and compensation-related conventions	Continuous	MSC, MEPC, LEG, FAL	CCC, III, NCSR, PPR, SDC, SSE		Ongoing	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	Extended	

Legal Committee (LEG)									
Reference to SD, if applicable	Output number	Description	Target completion year	Parent organ(s)	Associated organ(s)	Coordinating organ	Status of output for Year 1	Status of output for Year 2	References
6. Ensure regulatory effectiveness	6.20	Unified Interpretation on the test for breaking the owner's right to limit liability under the IMO conventions	2021	LEG			In progress	Completed	
7. Ensure organizational effectiveness	7.1	Endorsed proposals for the development, maintenance and enhancement of information systems and related guidance (GISIS, websites, etc.)	Continuous	Council	MSC / MEPC / FAL / LEG / TCC		Ongoing	Ongoing	
7. Ensure organizational effectiveness	7.9	Revised documents on organization and method of work, as appropriate	2021	Council	MSC / MEPC / FAL / LEG / TCC		No work requested	No work requested	LEG.1/Circ.9
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		Completed	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	Postponed	
OW. Other work	OW 18	Advice and guidance on issues under UNCLOS relevant to the role of the Organization	Annual	LEG			Postponed	Postponed	

Legal Committee (LEG)									
Reference to SD, if applicable	Output number	Description	Target completion year	Parent organ(s)	Associated organ(s)	Coordinating organ	Status of output for Year 1	Status of output for Year 2	References
OW. Other work	OW 20	Provide advice and guidance on issues brought to the Committee in connection with implementation of IMO instruments	Annual	LEG			Postponed	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	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	Extended	
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	Extended	

Legal Committee (LEG)									
Reference to SD, if applicable	Output number	Description	Target completion year	Parent organ(s)	Associated organ(s)	Coordinating organ	Status of output for Year 1	Status of output for Year 2	References
OW. Other work	OW 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	Extended	
OW. Other work	OW 44	IMO's contribution to addressing unsafe mixed migration by sea	2021	MSC / FAL / LEG			In progress	Extended	
OW. Other work	tbc	Fair treatment of seafarers detained on suspicion of committing maritime crimes	2023	LEG			In progress	In progress	
OW. Other work	tbc	Guidelines for port State authorities on how to deal with seafarer abandonment cases	2022	LEG			In progress	In progress	

ANNEX 7
POST-BIENNIAL AGENDA

LEGAL COMMITTEE (LEG)								
PROPOSED POST-BIENNIAL OUTPUTS								
Number	Biennium (when the output was placed on the post-biennial agenda)	Reference to strategic direction, if applicable	Description	Parent organ(s)	Associated organs(s)	Coordinating organ(s)	Timescale (sessions)	References
1.7	2020-2021	1	Measures to prevent unlawful practices associated with the fraudulent registration and fraudulent registries of ships	LEG			1	
6.1	2020-2021	6	Unified interpretation of provisions of IMO safety, security, environment and liability and compensation related conventions	MSC, MEPC, LEG	CCC, III, NCSR, PPR, SDC, SSE		Continuous	
6.12	2020-2021	6	Strategies developed to facilitate entry into force and harmonized interpretation of the HNS Protocol	LEG			2	
OW 17	2020-2021	OW	Consideration of reports on the application of the joint IMO/ILO Guidelines on the fair treatment of seafarers and consequential further actions as necessary	LEG			2	
OW 18	2020-2021	OW	Advice and guidance on issues under UNCLOS relevant to the role of the Organization	LEG			Annual	

LEGAL COMMITTEE (LEG)								
PROPOSED POST-BIENNIAL OUTPUTS								
Number	Biennium (when the output was placed on the post-biennial agenda)	Reference to strategic direction, if applicable	Description	Parent organ(s)	Associated organs(s)	Coordinating organ(s)	Timescale (sessions)	References
OW 20	2020-2021	OW	Provide advice and guidance on issues brought to the Committee in connection with implementation of IMO instruments	LEG			Annual	
OW 22	2020-2021	OW	Provide advice and guidance to support availability of information on comprehensive national legislation and judicial capacity building	LEG			Annual	
OW 37	2020-2021	OW	Consider reports on the issue of financial security in case of abandonment of seafarers, and shipowners' responsibilities in respect of contractual claims for personal injury to or death of seafarers, in light of the progress of the amendments to ILO MLC 2006	LEG			2	
OW 44	2020-2021	OW	IMO's contribution to addressing unsafe mixed migration by sea	MSC, FAL, LEG			2	
OW tbc	2020-2021		Fair treatment of seafarers detained on suspicion of committing maritime crimes	LEG			2	

LEGAL COMMITTEE (LEG)								
PROPOSED POST-BIENNIAL OUTPUTS								
Number	Biennium (when the output was placed on the post-biennial agenda)	Reference to strategic direction, if applicable	Description	Parent organ(s)	Associated organs(s)	Coordinati ng organ(s)	Timescale (sessions)	Reference s
OW tbc	2020-2021		Guidelines for port State authorities on how to deal with seafarer abandonment cases	LEG			2	
6 tbc	2020-2021		Measures to transparently assess whether there is a need to amend liability limits	LEG			2	
6 tbc	2020-2021		Claims Manual for the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001	LEG			2	

ANNEX 8

ITEMS TO BE INCLUDED IN THE AGENDA FOR LEG 109

1 Substantive items for inclusion in the agenda of the 109th 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; and
- Guidelines for port State and flag State authorities on how to deal with seafarer abandonment cases.

Advice and guidance in connection with the implementation of IMO instruments

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

Measures to assess the need to amend liability limits

Claims Manual for the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001

Piracy and armed robbery against ships

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 109th session

ANNEX 9

STATEMENTS BY DELEGATIONS

AGENDA ITEM 4

Statement by ITF

Thank you, Mr. Chairman,
I would like to draw the Committee's attention to several incidents of detention of seafarers following maritime accidents.

This Committee developed the Guidelines on fair treatment of seafarers because of concerns about seafarers being detained for prolonged periods following maritime accidents. The Guidelines state that their objective is to ensure that seafarers are treated fairly following a maritime accident, and during any investigation and detention by public authorities, and that detention is for no longer than necessary. Member States were invited to implement the Guidelines as from 1 July 2006. Today, 15 years later, there continue to be a number of incidents where questions can be raised about whether the seafarers are being treated fairly in full accordance with the principles set out in the Guidelines.

We refer to a few examples. The grounding of the **Wakashio** in Mauritius was widely reported when it occurred one year ago this month. The Captain and Chief Officer were arrested on 18 August 2020 and have been detained now for almost a year. Both have been denied bail on any circumstances, the primary concern being that they are considered to be flight risks. We understand that they are charged with violating the rules of innocent passage, charges that carry prison sentences.

Our attention has also recently been drawn to the tragic incident in 2019 when the **MV Viking Sigyn** collided with a pleasure boat on the River Danube in Budapest, killing 28 people. The captain has been in custody since the accident and is currently under house arrest with a tracking device. We understand that the criminal case is underway and the captain may face a long prison sentence.

Another Captain facing criminal charges is the Russian captain of the Singapore flagged **X-Press Pearl** who is prohibited from leaving the country Sri Lanka as the investigation into the casualty continues. Lawyers for the shipping company are reported to have said in court that the investigation seems to be one-sided.

Cases have also been reported previously to this Committee where seafarers have been detained for lengthy periods on suspicion of committing maritime crimes, such as the Captain Gavrylov of the **Avant Guard** who was detained for six years, also in Sri Lanka, and then we understand was acquitted of any charges, and the Captain Lasota of the UBC **Savannah** who was detained in Mexico for almost two years before a court refused to continue with charges against him and then again it was reported that he was eventually acquitted.

Only last week, we have learned of two more cases. One involving the master and officers of the **MSC CAPUCINE R** (Liberia) have been arrested in Turkey after authorities found drugs inside a container. It should be clear that the crew of container vessels have no idea what is inside the containers they transport. We hope they will avoid the fate of the crew of the **Artin 10**, who were arrested in February 2020 and kept in custody in Iran for over a year before being released. Notably, they found that there was no one to repatriate them on release and relied on local charity to survive until the ITF stepped in to assist.

Mr Chair, the Guidelines state that seafarers are recognized as a special category of worker and, given the global nature of the shipping industry and the different jurisdictions that they may be brought into contact with, they need special protection, especially in relation to contacts with public authorities.

We would ask States to recognise the importance of the Guidelines and to ensure that the Guidelines are implemented in practice. This is ever more important when there appear to be increases in the number of reported shipping casualties or incidents. It should also be stressed that seafarers are spending longer periods at sea due to crew change issues caused by COVID. The fatigue that these seafarers suffer may well be playing an increasing role in the incidence of accidents. Mr Chair, the ITF and SRI will continue to monitor the fair treatment of seafarers following maritime accidents and to report matters of concern to this Committee. Thank you.

Statement by UNCTAD (in relation to paragraph 4(d).16.16 of the report)

The majority of seafarers were from developing countries and, in view of the worsening crew change crisis, abandoned seafarers needed urgent assistance; collaborative efforts needed to be accelerated to address the situation, which was exacerbated by the COVID-19 pandemic. There was a need for a pragmatic and practical implementation of the designation of seafarers as key workers and priority vaccination programmes, which should go hand in hand; countries like Belgium should be commended for their pragmatic decision to vaccinate all foreign seafarers. Serious practical problems in ensuring access to medical facilities/repatriation in accordance with international agreements also needed to be addressed collectively; and sector specific guidance for this group of global key worker, on measures to prevent and deal with COVID-19 outbreaks at sea, needed to be regularly updated in the light of empirical information and in line with developing scientific insights.

AGENDA ITEM 5

Statement by the delegation of Japan

Amendment of paragraph 5.2.5

Member States should disseminate a template document and request mandatory use of such a template, as recommended in paragraph 3.2.3 of document IOPC/NOV20/5/5/1; however, the recommendation contained in paragraph 3.5.5 of that document to increase limits of liability in CLC without reopening the Convention should not be supported;

Statement by the delegation of the Russian Federation

В связи с документом Украины LEG 108/5/2 хотели бы отметить тот факт, что Ассамблея, данный Комитет и другие рабочие органы ИМО неоднократно принимали во внимание российскую позицию по данному вопросу, в общем и целом.

Кроме того, Комитет по безопасности на море, в частности, неоднократно приходил к выводу о том, что этот вопрос, настойчиво поднимаемый делегацией Украины на площадке ИМО, выходит за пределы круга ведения Организации. В представленном на прошлую сессию этого Комитета российском документе, а также в других подобных российских документах приводились все необходимые ссылки на релевантные решения и положения.

В этой связи мы обращаем внимание на пункт 2 документа LEG 108/5/2, в котором авторы документа пытаются ввести в заблуждение Ваш Комитет, господин Председатель, отмечая, что Ассамблея отклонила мнение Российской Федерации,

которое изложено в соответствующем документе А 31/11/2, о том, что “ИМО не является подходящим форумом для подобного вопроса”. Ассамблея ИМО никогда не принимала такого решения, да и не могла принять – это очевидно и может быть легко проверено.

В заключении, господин Председатель, еще раз хотели бы подчеркнуть, что Российская Федерация, как ответственный член международного сообщества и член ИМО добросовестно выполняет все свои обязательства по международным договорам, принятым под эгидой этой Организации. В частности, все необходимые меры, направленные на обеспечение безопасности на море и защиты морской среды от загрязнения, а также защиты прав и интересов моряков, приняты и выполняются в установленном порядке на всей территории Российской Федерации.

Просим Комитет принять данную информацию к сведению, а также просим Вас приложить текст данного выступления к финальному отчету Комитета.

With regard to the document of the Ukraine LEG 108/5/2, we would like to highlight the fact that the Assembly, this Committee and other working bodies of the IMO have repeatedly taken into account the Russian position on this issue, in general.

In addition, the Maritime Safety Committee, in particular, has repeatedly come to the conclusion that this issue, persistently raised by the Ukrainian delegation at the IMO site, went beyond the scope of the Organization. In the Russian document presented at the last session of this Committee, as well as in other similar Russian documents, all the necessary references to the relevant decisions and provisions were given.

In this connection, we would like to draw the attention to paragraph 2 of document LEG 108/5/2, in which the authors of the document are trying to mislead your Committee, Mr. Chair, stating that the Assembly rejected the opinion of the Russian Federation, which is set out in the corresponding document А 31/11/2, that "IMO is not an appropriate forum to discuss the matter". The Assembly has never taken such a decision and could not have taken it – this is obvious and can be easily verified.

In conclusion, Mr. Chair, we would like to emphasize once again that the Russian Federation, as a responsible member of the international community and a member of IMO, fulfils in good faith all its obligations under the international treaties adopted under the auspices of this Organization. In particular, all the necessary measures aimed at ensuring safety at sea and protecting the marine environment from pollution, as well as protecting the rights and interests of seafarers, have been adopted and are being implemented in accordance with the established procedures throughout the territory of the Russian Federation.

We request the Committee to take note of this information and also ask you to attach the text of this statement to the final report of the Committee.

Statement by the delegation of Slovenia on behalf of the European Union

Mr Chair, distinguished delegates,

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

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

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

The decision of the Russian Federation to close certain parts of the Black Sea until 31 October and to restrict air space access over the illegally-annexed Crimea are further violations of international law, and further destabilise the region. We call on Russia to annul this decision.

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

I would ask for this statement to be appended to the report of the Committee.

Thank you, Mister Chair.

Statement by the delegation of Slovenia

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

Regarding document LEG 108/5/3 presented by Turkey, we would firstly refer back to the exchange of correspondence set out in circular letters on the incident. We are explicitly referring to the IMO Circular Letters No.4349 and 4365 submitted by Turkey and the IMO Circular Letters No.4360 and 4366 submitted in response by Germany and Portugal, respectively.

Following this, we will not again comment on the facts or the military details regarding the case reported by Turkey.

However, we would like to make the following observations:

First, the SUA Convention explicitly excludes warships from its scope of application; and

Secondly, the application of UNCLOS and UNSC Resolutions are under the remit of other UN bodies. In line with the existing and repeated position by several IMO committees regarding political subjects, which are not under IMO remit, the IMO is not the appropriate forum to discuss the matter at hand.

Having said this, 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 resolutions 2292/2016 and 2526/2020, which are currently in force aiming to prevent the illegal transport of military cargo to Libya.

We would ask for this statement to be appended to the report of the Committee.

Thank you, Mr. Chair.

Statement by the delegation of Ukraine

Mr. Chair,

1. Unfortunately, since 2014 the international legal order faces great challenges in the certain areas of the Black Sea, Sea of Azov and Kerch Strait adjoining the Crimea, temporarily occupied by the Russian Federation. The latter continues to interfere with the execution of Ukraine's rights as the coastal state in the region and infringe the implementation of my country's international obligations under the respective IMO treaties.

On its part, Russia, as the Occupying Power, fails to ensure the provision of safety and security of navigation, regulation of maritime traffic, protection of the marine environment, search and rescue that as proved by the number of marine casualties and incidents.

In addition, it is obvious that Russian Federation is intentionally taking steps in order to cut off Ukraine from the Sea of Azov which is entirely unprecedented act in Europe's postwar history.

2. My delegation would like to remind all of you about the obligation non to recognize the purported annexation of Crimea by the Russian Federation, assumed by states under the international law and reaffirmed under the respective UNGA resolutions, adopted through 2014-2020. More to come this year.

This also relates to the attempts to issue registration certificates for ships to fly the flag of the Russian Federation. Respective list is growing from year to year, in particular due to those ships, which were excluded from the maritime registers of other states for violating the regime of closed seaports announced by Ukraine as well as the relevant sanctions regimes introduced by the EU and other states.

Ukraine reiterates that any documents issued after 15 July 2014 by the Russian occupation authorities in Crimea should be considered unauthorized and unlawful.

This delegation kindly requests the IMO members to go further and regard ships, fraudulently registered by Russian occupation authorities in Crimea, as those without nationality, with all legal consequences this may entail under UNCLOS.

3. Let me be clear.

This is not just an issue between Ukraine and the Russian Federation.

This is not just about something ordinary happening in the Black Sea and the Sea of Azov. This is not actually a "political matter" like some delegations are trying to represent the problem.

If the international community allows current situation to be put aside, this would have a serious impact on strategic, shipping, economic and energy interests all over the maritime world.

I thank you.

Statement by the delegation of the United States

The United States thanks the distinguished delegation of Ukraine for its paper LEG 108/5/2, and we note the concerns it raises regarding Russia's unlawful actions in and around occupied Crimea, including the maritime areas adjacent to Crimea.

Russia's occupation of Ukraine's Crimean Peninsula remains an unprecedented threat to European and Transatlantic security, necessitating deeper and increased security cooperation. Russia's actions have considerable implications for the safety and security of navigation in the sea areas in and around Crimea, protection of the marine environment, and the safety of seafarers. We reiterate our condemnation of Russia's unlawful efforts to impede access to the Kerch Strait and Sea of Azov, as well as our earlier call on Russia to respect Ukraine's sovereignty and territorial integrity within its internationally recognized borders, extending to its territorial waters. In this regard, the United States condemns the suspension of innocent passage in territorial sea areas in the Black Sea.

The United States joins the international community again to reaffirm that Crimea is part of Ukraine. We condemn Russia's occupation of Crimea. The United States does not – and will not ever – recognize Russia's purported annexation of Crimea. We remain committed to upholding the sovereignty and territorial integrity of Ukraine within its internationally recognized borders.

Thank you, Chair.

AGENDA ITEM 8

Statement by the delegation of Japan

Amendment of paragraph 8.12.17

The International Court of Justice had decided that the interpretation of a convention without the support of all States Parties did not constitute a subsequent agreement. However, it was also important to adopt the Unified Interpretation quickly and the proposal stipulated in paragraphs 19 and 20 of LEG 108/8/1 to adopt the Unified Interpretation via a resolution by the State Parties of relevant conventions present at the Assembly can be supported as a compromise to adopt it in a swift manner while keeping in line with the pronouncement of the International Court of Justice.

Statement by the delegation of the Netherlands

In the LEGAL Correspondence Group "UNIFIED INTERPRETATION ON THE TEST FOR BREAKING THE OWNER'S RIGHT TO LIMIT LIABILITY UNDER THE IMO CONVENTIONS" the Netherlands made a reservation in respect of operative paragraph 1, under d. You can find our reservation in LEGAL 108/8, paragraph 18. The background of this reservation is that we wanted to stress out that the actions of the shipowner in engaging a crew should be taken into account. For the delegation of the Netherlands it is important to emphasize that although the actions of the crew could not be taken into account, the actions of the ship owner in engaging such crew could be. This means that wilfully culpable behaviour linked to the engagement of the crew by the shipowner could be regarded as analogous to wilful misconduct. Under this interpretation of the Unified Interpretation, we can accept the operative paragraph 1 under d.

Statement by CMI

Dieter Schwampe

This is my first attendance of a Legal Committee Meeting, and it is a great honour for me to be allowed to speak here.

Please allow me a short introduction on my person:

I am speaking to you as one of the two Vice Presidents of CMI, which is the Comité Maritime International, which will celebrate its 125th anniversary next year in 2022. As you will be aware, the CMI is the international head organization of Maritime Law Associations around the Globe, and we count 49 MLAs from all continents as members. I am also the President of the German Maritime Law Association, and I am a practicing shipping and marine insurance lawyer, regularly engaged also in matters involving breaking of limitation of liability.

In 2019, CMI has instituted an International Working Group on Unified Interpretation, which I am one of the two Chair Persons of. The International Working Group has members from France, Greece, Ireland, Spain, United Kingdom, United States and Venezuela.

The CMI had submitted a position paper on the subject, which is document LEG 107/9/1.

CMI has a significant interest in the matter. As you are aware, CMI was heavily involved in the drafting of article 4 of LLMC 1976, the text of which remains unchanged in the Protocol of 1996.

Having said this, the CMI fully supports the Communication Group's recommended wording for the text of the Unified Interpretation. Given the significant importance, which the test for breaking the owner's right to limit liability has, CMI strongly believes that such option should be chosen that carries the greatest legal weight.

In this context, it should be borne in mind that Art. 31 paragraph 3 (a) of the 1969 Vienna Convention on the Law of Treaties refers to the

quote

subsequent agreement between the parties regarding the interpretation of the treaty

unquote

CMI concludes, thus, that the resolution carrying the greatest legal weight is a resolution by the State Parties to the respective conventions.

With this in mind, while CMI recognizes that all of the three options provided may be appropriate for the interpretation of conventions, the CMI supports a resolution by the Assembly rather than a resolution by the Legal Committee alone.

Moreover, CMI supports that such Assembly resolution should be made as suggested in paragraph 20 first alternative of LEG 108/8/1. Namely that there will be separate resolutions in respect of each of the respective conventions, starting with the opening words

quote

"The States Parties to the convention, present at the session of the Assembly...";

Unquote

It is CMI's distinguished view that such a resolution will carry more weight than a resolution by

Quote

The Assembly, including the States Parties

This completes the statement of CMI on the matter.

Thank you, Mr. Chair.

Dieter Schwampe
as Vice President for and on behalf of the Comité Maritime International

Statement by UNCTAD (in relation to paragraph 8.12.20 of the report)

The final decision of the Committee was important in the context of limitation of liability for bunker oil spills under the 2001 Bunkers Convention, which was adopted after the LLMC 1976 and 1996 Protocol but refers to these in its Article 6. A recent case illustrating the issue was the devastating 2020 bunker oil spill incident (The **Wakashio**), off the coast of Mauritius, where negligence on the part of the master appears to have played a role.

AGENDA ITEM 11

Statement by the delegation of the Islamic Republic of Iran

Having studied comprehensive report of IMLI contained in the document LEG 108/11 it would be necessary to congratulate all managers and their colleagues in IMLI because of their marvellous efforts. This delegation would also like to present a new training idea in this area.

In short, it seems that the most important goal of IMLI training activities is to enhance capacity building in order to improve effective implementation of IMO conventions and other maritime international instruments. It seems that effective implementation could be divided into two categories.

First, effective administrative implementation which mostly is duty of competent maritime administrative authorities. Second, so-called, effective judicial implementation which is related to recognition of applicable law and then application of proper laws in each case. Therefore, judges have the key role in judicial implementation. For this reason, in the view of this delegation it is time that IMLI considered this issue, i.e. effective judicial implementation of maritime conventions and other maritime international instruments.

Having said above mentioned statement, this delegation would like to present followings training ideas:

- Setting training programmes, especially short time workshops, for improving the knowledge of judges in the field of maritime law and IMO maritime instrument;
- Collection of important leading maritime cases or awards specially in the field of maritime conventions, their circulation and their analysis;
- Encourage students to do academic research and concentrate on judicial decisions. For example, the title of research could be "ships mortgages in the light of judicial decisions.

At the end, this delegation hopes that these training ideas will be helpful and therefore considered by IMLI.

AGENDA ITEM 12

Statement by the delegation of Iraq

شكرا سيادة الرئيس
وطابت يومكم جميعا

نشكر الأمانة على اعداد الوثيقة LEG 107/13/Add.1 والوثيقة المرقمة LEG 107/13/Add.2 بشأن تحفظ العراق على الفقرة 2 من المادة 16 من اتفاقية قمع الأعمال غير المشروعة ضد سلامة الملاحة البحرية لعام 1988 وهي المادة التي تنظم آلية فض النزاعات الناشئة عن تفسير وتطبيق الاتفاقية المذكورة.

تتضمن وثيقة الأمانة الأولى عدم قبول ايداع التحفظ المذكور لدى الأمين العام بسبب اعتراض 6 دول أعضاء على التحفظ المذكور. وهنا نود توضيح الآتي:

أولا. ابدى العراق تحفظه على المادة المذكورة في صلب قانونه الوطني الخاص بالانضمام الى الاتفاقية وهو القانون رقم 113 لسنة 2012 النافذ، حيث نصت المادة الأولى منه على انضمام العراق الى الاتفاقية، في حين نصت المادة الثانية على ابداء التحفظ المذكور. وبالتالي فإن عدم قبول التحفظ سوف يتعارض مع القانون الوطني العراقي.

ثانيا. أن فترة الانضمام الى الاتفاقية وما تلتها شهدت ظروفًا استثنائية مر بها العراق أبرزها ظروف الحرب على الأرهاب والوضع الأمني والتي أثرت بدورها على اجراءات ايداع التحفظ، في حين لم يكن لدى العراق ممثلية دائمة لدى المنظمة البحرية الدولية أو ملحقية بحرية في لندن تعنى بهذه الأمور في تلك الفترة كما هو الحال الآن.

ثالثا. لا يوجد نص في اتفاقية قمع الأعمال غير المشروعة ضد سلامة الملاحة البحرية لعام 1988 ينظم فترة الاعتراض على التحفظ بـ (12) شهرا والمشار إليها في كتاب الأمانة، كما لا تعتبر هذه الفترة عرفا دوليا ملزما لأنها تستند الى مشورة صادرة في عام 2000 وبالتالي لم تستوفي شروط نشوء القاعدة العرفية الملزمة.

رابعا. ان العراق ليس طرفا في اتفاقية فيينا لقانون المعاهدات لعام 1969 التي استندت لها المشورة المذكورة.

خامسا. نرى أن الاعتراضات على التحفظ تسري بحق الدول المعترضة فقط ولا ينسحب أثرها على بقية الدول التي لم تبدي اعتراضا على التحفظ.

مما تقدم نرجو من الأمانة تلبية أحد الطلبين الآتيين:

1. قبول ايداع التحفظ مع سريان الاعتراضات بالنسبة للدول المعترضة فقط، أو
2. تأجيل النظر في موضوع ايداع التحفظ الى الدورة القادمة للجنة القانونية لغرض منح العراق الوقت الكاف للتباحث مع الدول المعترضة من اجل سحب تلك اعتراضاتها على التحفظ.

❖ نرجو تثبيت كلمتنا هذه في تقرير اللجنة وشكرا جزيلًا.

AGENDA ITEM 13

Statement by the delegation of Japan

Insertion of the new paragraph 13.5

13.5 The Committee also noted that some delegations had expressed their serious concern that many of the proposed measures in paragraph 45 of LEG 108/13 seem to be inconsistent with the mechanism for tacit amendment of the limitation amount presupposed by Article 8 of the 1996 LLMC Protocol. In particular, it was noted that items 3 and 4

of paragraph 45.1 would lead to a de facto preemption of decisions of the State Parties in the procedure under Article 8, that items 6 and 7 of paragraph 45.1 ignored the difference between LLMC and other liability regimes that explicitly provided for regularly review of the limitation amount, and that the standing agenda item proposed in paragraph 45.2 of LEG 108/13 could be overly inclusive.

Amendment of paragraph 13.9.1

The existing IOPC Funds manual would be a good starting point for the development of a Claims Manual for the 2001 Bunkers Convention but should duly take into account the differences between the nature of the IOPC Funds' Claims Manual, which is a manual published by the IOPC Funds as the obligor under the Fund Convention describing its internal standard for admissibility of claims to its claimants, and that of the Bunker Convention Claims Manual, which is a guidance drafted by the Legal Committee to assist national courts, claimants and insurers to interpret the Bunker Convention; and
