

LEGAL COMMITTEE  
109th session  
Agenda item 16

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**REPORT OF THE LEGAL COMMITTEE ON THE WORK OF ITS 109TH SESSION**

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## 1 INTRODUCTION – ADOPTION OF THE AGENDA

1.1 The 109th session of the Legal Committee was held remotely from 21 March to 5 April 2022, in accordance with the programme of meetings for 2022 (PROG/130), under the coordination of the Chair, Ms. Gillian Grant (Canada) and the Vice-Chair, Mr. Ivane Abashidze (Georgia).

1.2 The Members, Associate Members and observers listed in document LEG 109/INF.1 participated in the session.

### Opening of the session

1.3 The 109th 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/Legal-Committee,-109th-session,-21-25-March-2022-\(opening-remarks\)-.aspx](https://www.imo.org/en/MediaCentre/SecretaryGeneral/Pages/Legal-Committee,-109th-session,-21-25-March-2022-(opening-remarks)-.aspx)

### Adoption of the agenda

1.5 Taking into account that the Council, at its thirty-fifth extraordinary session, requested IMO committees to consider ways to enhance the efforts of Member States and observer organizations in supporting seafarers and commercial vessels affected by the situation in the Black Sea and the Sea of Azov, to consider also the implications of this situation for the implementation of the Organization's instruments, and to take appropriate action and report back to Council, the Legal Committee decided to add to its agenda, under item 5, Advice and guidance in connection with the implementation of IMO instruments, sub-item (a); Impact on shipping and seafarers of the situation in the Black Sea and the Sea of Azov.

1.6 The Committee adopted the agenda for the session, as set out in document LEG 109/1/Rev.1, and endorsed the Chair's proposed arrangements for the remote session, contained in document LEG 109/1/1/Rev.1 (Chair).

1.7 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 109/1/1, as modified by document LEG 109/1/1/Add.1 (Chair) containing the Chair's proposals to address those items.

1.8 The specific decisions taken by the Committee in relation to the documents considered by correspondence (LEG 109/1/1 and LEG 109/1/1/Add.1) are reflected under the relevant agenda items in this report.

1.9 A summary of deliberations of the Committee regarding all agenda items is set out below.

**Audio files:** Monday, 21 March 2022 and Friday, 25 March 2022

## **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 99 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, 21 March 2022 and Friday, 25 March 2022

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

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

3.2 The Committee noted, with appreciation, that on 10 January 2022, Estonia had deposited an instrument of accession to the Protocol, thereby bringing the number of Contracting States to six, and that four of these Contracting States had more than 2 million units of gross tonnage each.

3.3 The Committee also noted that the 2010 HNS Protocol needed only six more ratifications with the required contributing cargo, thus the Convention was significantly closer to its entry into force.

### **Status of work on the 2010 HNS Protocol**

3.4 The Committee noted the information contained in document LEG 109/3/1 (IMO and IOPC Funds Secretariats) reporting on the status of work on the 2010 HNS Protocol, as well as the efforts of both the IMO and IOPC Funds Secretariats to promote further ratifications to enable the entry into force of the HNS treaty, and the intention to organize further regional and national workshops.

3.5 The Committee also noted that, once the conditions for entry into force of the 2010 HNS Protocol were fulfilled, the Secretary-General of IMO would, in accordance with article 43 of the 2010 HNS Convention, convene the first Assembly of the HNS Fund.

3.6 The delegations of Belgium and the Netherlands provided information on the progress of adopting national legislation, which would allow them to ratify the 2010 HNS Protocol simultaneously with Germany. The delegation of France confirmed that the objective to ratify the 2010 HNS Protocol in 2023 should be achieved. Furthermore, the Committee was informed that the Philippines was in the final stages of ratifying the 2010 HNS Protocol.

### **Information on a forthcoming virtual workshop on the 2010 HNS Convention**

3.7 The Committee noted the information provided in document LEG 109/3 (Canada) on a forthcoming virtual workshop on the 2010 HNS Convention, as a follow-up to the two-day workshop organized by IMO, in cooperation with the IOPC Funds, at IMO Headquarters in 2018, to assist Member States in their work towards further ratifications of the Protocol.

3.8 The Committee was informed that the IMO Secretariat had investigated the possibility of conducting the proposed workshop as a technical cooperation activity in the framework of the IMO Integrated Technical Cooperation Programme (ITCP), which would allow IMO to provide resources to assist IMO Member States in their work towards further ratifications and implementation of the Protocol.

3.9 The Committee was also informed that provisional arrangements had been initiated to cover costs associated with running a virtual activity, noting that there would be technical support costs and, potentially, costs for interpreters, should the Kudo platform be used. A further option under study was the physical or hybrid modality of the workshop.

3.10 The Committee expressed its appreciation to the delegation of Canada for organizing, in cooperation with the IMO and IOPC Funds Secretariats, the HNS Workshop in September, October or November 2022, which would have a virtual option. Many delegations indicated their willingness to participate in the proposed workshop and requested that an appropriate date be determined, taking into account the IMO programme of meetings.

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

**Audio file:** Monday, 21 March 2022

#### **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.

4(a).3 The Committee recalled further that, at its 108th session, it had agreed to establish an intersessional correspondence group, under the coordination of Indonesia, to further develop practical guidelines for port State and flag State authorities on how to deal with seafarer abandonment cases, and to submit a report to LEG 109.

##### **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 2021**

4(a).4 The Committee considered document LEG 109/4(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 to 31 December 2021. The Committee was informed that all cases reported after 1 January 2004 were recorded on this database and that, in 2020, the total number of reported cases was 85 and, of these, 43 cases had so far been resolved.

4(a).5 The Committee was also informed that, from 1 January 2021 to 31 December 2021, a total number of 95 new cases had been reported. Of these cases, only 31 had been resolved. Approximately 21 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. During the first three months of 2022, a further 30 cases were reported, thus alarmingly surpassing last year's record of reported cases of abandonment.

4(a).6 The Committee noted the information provided in documents LEG 109/4(a)/1 and LEG 109/4(a)/2 (ITF) on the abandonment case statistics by flag States, location of abandonments, nationality of abandoned seafarers, vessel type and the duration of abandonment cases. The Committee was informed that, during the period referred to, ITF reported the abandonment of 1,399 seafarers on 94 different vessels. ITF also stated that repatriation continued to be an issue in abandonment cases and seafarers should not remain on board for periods beyond their contract.

4(a).7 In the ensuing discussion, the following views were expressed:

- .1 the accuracy of the database was critical, since, due to travel restrictions related to the COVID-19 pandemic still being in place, some crew changes and repatriations continued to be interrupted;
- .2 while the COVID-19 pandemic had an impact on crew changes, there was no justification under MLC, 2006 to keep seafarers on board for more than 11 months and that 23 months on-board would be an egregious breach;
- .3 institutional safeguards and cooperation with authorities in other States were necessary to protect the interests and welfare of seafarers;
- .4 the status of some cases on the IMO/ILO Joint Database of Abandoned Seafarers should be updated and information on reported cases should be shared with interested authorities;
- .5 the Committee should consider how to solve the problem of repatriation of abandoned seafarers and Member States should be encouraged to take the necessary actions to ensure that financial security was in place, as required by MLC, 2006;
- .6 the implementation of MLC, 2006 and its 2014 amendments should improve the situation of seafarers;
- .7 MLC, 2006 contained provisions that responded to the needs of seafarers regarding prevention of accidents, protection of health and safety, shipowners' liabilities in the occurrence of accidents, insurance and compensation. The most crucial element in making these provisions work was the linkage of direct support services from government authorities and well-meaning actors at the time and place when maritime accidents occurred;
- .8 flag and port States were encouraged to take action to ensure the presence of financial security; appropriate measures should be taken to protect seafarers when financial security was not in place;
- .9 abandonment cases in which there was no financial security available and cases caused by the COVID-19 pandemic had increased;

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- .10 the IMO and ILO Secretariats provided assistance to abandoned seafarers who experienced very difficult circumstances;
  - .11 considerable numbers of abandonment cases reported concerned vessels linked to flag States that had not ratified MLC, 2006;
  - .12 abandonment cases were widespread, both geographically as well as in terms of flag States involved;
  - .13 according to the guidelines of the database, a case of abandonment could only be considered as being resolved if ILO had received clear advice from the Member State or relevant organization that had reported the abandonment indicating that:
    - .1 the crew had been successfully repatriated; and
    - .2 all outstanding remuneration and contractual entitlements had been paid and duly received by all crew members; and
  - .14 all Member States should cooperate on the issue of abandonment of seafarers.

4(a).8 Following the discussion, the Committee:

- .1 noted the information provided in documents LEG 109/4(a), LEG 109/4(a)/1 and LEG 109/4(a)/2;
- .2 expressed profound concern regarding the increase in abandonment cases as a result of the COVID-19 pandemic;
- .3 thanked the IMO Secretariat, the IMO Seafarer Crisis Action Team, ILO and ITF for their efforts in helping to resolve abandonment cases;
- .4 encouraged discussion relating to a solution to the problem of repatriation of abandoned seafarers;
- .5 reminded Member States to ratify and effectively implement the relevant international instruments and amendments thereto;
- .6 highlighted the existence of the IMO/ILO joint database;
- .7 encouraged Member States to report incidents of abandonment to the database when they occurred in their ports or on vessels flying their flag;
- .8 encouraged Member States to continue to liaise with the IMO and ILO Secretariats to ensure adequate and accurate updates on the joint database; and
- .9 urged flag and port States to take further action to ensure the presence of financial security, as required by MLC, 2006 Standard A2.5.2, and to take appropriate action when financial security was not in place.

**Audio file:** Monday, 21 March 2022

**(b) Fair treatment of seafarers in the event of a maritime accident**

4(b).1 The Committee noted the information contained in document LEG 109/4(b) (ITF) highlighting resolution LEG.3(91) on *Guidelines on fair treatment of seafarers in the event of a maritime accident*, which was adopted on 27 April 2006, over 15 years ago. Despite the length of time since its adoption, there continued to be issues of concern regarding the treatment of seafarers involved in maritime accidents.

4(b).2 The Committee noted the statements by the Republic of Korea and ITF updating the Committee on the **Stolt Groenland** case, and Ukraine, regarding fair treatment of seafarers during armed conflicts. The full statements can be found in annex 5 to this report.

**Audio file:** Tuesday, 22 March 2022

**(c) Fair treatment of seafarers detained on suspicion of committing maritime crimes**

4(c).1 The Committee recalled that, at its 107th session, it had agreed on the proposal by Georgia, Malaysia, the Philippines, Ukraine, ICS, IFSMA, INTERTANKO, INTERCARGO, InterManager and WISTA International to include a new output on "Fair treatment of seafarers detained on suspicion of committing maritime crimes", with a target completion year of 2023.

4(c).2 However, the Committee noted that there were no documents submitted under this sub-item for consideration at its present session.

4(c).3 The Committee was informed that the Council, at its 125th regular session, had 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 by relevant IMO Committees.

4(c).4 The Committee was also informed that, following endorsement by C 125 of the establishment of a Joint Tripartite ILO/IMO Working Group to Identify and Address Seafarers' Issues and the Human Element, the 343rd session of the ILO Governing Body, which was held in November 2021, had approved its establishment. The first meeting is foreseen to take place during the second half of 2022. A second meeting on the issue of fair treatment of seafarers detained on suspicion of committing maritime crimes is expected to take place in 2024.

4(c).5 The Committee noted that, in order to progress the work on the Committee's output on "Fair treatment of seafarers detained on suspicion of committing maritime crimes", there was an urgent need to receive concrete proposals at LEG 110 for consideration and endorsement by the Committee and, thereafter, for forwarding to and consideration by the Joint Tripartite ILO/IMO Working Group.

4(c).6 As co-sponsor of the proposal to add a new output under the work programme on "Fair treatment of seafarers detained on suspicion of committing maritime crimes", the delegation of the Philippines offered to work with Ukraine and other interested parties on the submission of a document on this issue to LEG 110.

4(c).7 Following the consideration, the Committee:

- .1 invited concrete proposals to LEG 110; and



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- .2 extended the target completion year of the output on "Fair treatment of seafarers detained on suspicion of committing maritime crimes" to 2024.

**Audio file:** Monday, 22 March 2022

**(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 107th 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, at its 108th session, it had agreed to establish an intersessional correspondence group, under the coordination of Indonesia, to further progress the work on the output on the guidelines for port State and flag State authorities on how to deal with seafarer abandonment cases.

4(d).3 The Committee further recalled that, similarly to the output on "Fair treatment of seafarers detained on suspicion of committing maritime crimes", both IMO and ILO would need to be involved in the development of the guidelines for port State and flag State authorities on how to deal with seafarer abandonment cases, as part of the joint ILO-IMO Tripartite Working Group, to identify and address seafarers' issues and the human element.

4(d).4 The Committee was informed of the work of the intersessional Correspondence Group on Development of Guidelines for Port State and Flag State Authorities on How to Deal with Seafarer Abandonment Cases, as contained in the report of the Group (LEG 109/4(d)). The Group developed practical guidelines to address abandonment of seafarer cases for port States, flag States, and States of which seafarers were a national.

4(d).5 In the ensuing discussion, the following views were expressed:

- .1 The guidelines, as set out in the annex to document LEG 109/4(d), could greatly enhance the speedy resolution of cases of abandoned seafarers and would greatly promote the cooperation between flag and port States. They would act as a reminder to the industry and stakeholders to effectively implement their responsibilities.
- .2 Although the guidelines would be non-mandatory and non-legally binding in nature, they would assist, contribute to, and facilitate the development and implementation of practical steps for port State and flag State authorities to expeditiously and effectively resolve abandonment cases.
- .3 Every effort and mechanism should be made available to resolve abandonment cases, which would have a positive effect on the welfare of the seafarers.
- .4 The guidelines as currently drafted did not contain practical steps to resolve abandonment cases expeditiously and effectively. Circumstances for each case were unique. In one case, a vessel was inappropriately placed on the abandonment database because of a delay in repatriation, despite an agreed repatriation plan being in place.

- .5 The guidelines should clarify that, pursuant to the MLC, 2006, at least one of the three criteria for abandonment must be met prior to a case being considered as an abandonment. They should address the broad range of real scenarios of abandonment, such as vessels under commercial arrest or operators failing to pay wages due to liquidity problems. However, the guidelines should not address vessel safety matters or refer to judicial procedures.
- .6 The work of the Correspondence Group was very clear and effective, as were the guidelines, and the IMO/ILO Joint Working Group should not be an appellate body for the work done at IMO.
- .7 A mechanism should be considered for the recovery of costs associated with the abandonment of seafarers in line with MLC, 2006.

4(d).6 Following the discussion, the Committee agreed to:

- .1 endorse the draft guidelines for port State and flag State authorities on how to deal with seafarer abandonment cases (as attached in the annex to document LEG 109/4(d));
- .2 forward the report and the draft guidelines as a base document for consideration and further refinement to the joint ILO-IMO Tripartite Working Group to identify and address seafarers' issues and the human element;
- .3 consider the final approval of the guidelines at a future session of the Committee; and
- .4 extend the target completion year of the Committee's output on development of guidelines for port State and flag State authorities on how to deal with seafarer abandonment cases to 2023.

4(d).7 The Committee expressed its appreciation to Ms. Galuh Rarasanti (Indonesia) for coordinating the Correspondence Group and for the excellent work done.

4(d).8 The Committee considered document LEG 109/4(d)/1 (India) providing information on the difficulties faced by seafarers and Member States in the event of seafarer abandonment. This document also proposed to include distinct information about abandoned seafarers in the IMO/ILO joint database of abandonment of seafarers and to develop a mechanism to facilitate the expeditious exchange of information and response from the authorities of the flag State, the nearest port State, and the Member State of which the abandoned seafarer was a national.

4(d).9 In the ensuing discussion, the following views were expressed:

- .1 The intention of the proposals by India in document LEG 109/4(d)/1 was understood; however, concerns were expressed regarding the sharing of personal data of abandoned seafarers.
- .2 Personal information such as the name, the continuous discharge certificate (CDC) and seafarers' identity document (SID) numbers of the abandoned seafarers should be exchanged only among the parties, i.e. shipowners, flag States and port States, related to seafarers' abandonment case, as appropriate.

- .3 Abandoned seafarers' personal data should not be made widely available, via the IMO/ILO joint database, to persons and Member States not relevant to their cases. An alternative could be to provide only restricted access to the database.
- .4 The development of a mechanism to provide a rapid response in cases of abandonment should be discussed in the IMO/ILO Joint Working Group since the issues on the abandonment of seafarers also fell within the purview of the Maritime Labour Convention, 2006.
- .5 Flag States should assist labour-sending States with information that could facilitate the resolution of cases of abandoned seafarers. While personal data should be safeguarded, it was imperative that the database remain publicly accessible. It would be useful to include information on the database regarding the involvement of governmental authorities that were engaged with the resolution of abandonment cases.
- .6 On previous occasions, the Committee had agreed on amendments to the database reporting procedures in consultation with ILO. Any modification to the existing reporting procedures could be introduced on this basis, but it could also be part of the agenda of the newly established IMO/ILO Joint Working Group.

4(d).10 Following the discussion, the Committee agreed to:

- .1 note the information provided in document LEG 109/4(d)/1;
- .2 include information indicating a response from, or action taken by, the flag State, port State and Member State of which the seafarer was a national, in the reporting form of the IMO/ILO joint database of abandonment of seafarers;
- .3 refer the issue of inclusion of the name and CDC or SID number of abandoned seafarers to the IMO/ILO Joint Working Group to find solutions and report back to LEG 110; and
- .4 encourage Member States to develop a mechanism to provide a rapid response in cases of seafarer abandonment from the perspective of flag State, port State and State of which the seafarer was a national.

**Audio file:** Tuesday, 22 March 2022

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

### **5(a) Impact on shipping and seafarers of the situation in the Black Sea and the Sea of Azov**

5.1 The Committee considered document LEG 109/10/Add.1 (Secretariat) reporting on the outcome of the thirty-fifth extraordinary session of the Council (C/ES.35), held remotely between 10 and 18 March 2022, to discuss the impacts on shipping and seafarers of the situation in the Black Sea and the Sea of Azov and containing relevant abstracts from the draft report of C.ES/35. The Committee recalled that the Council had, inter alia, requested IMO committees to consider ways to enhance the efforts of Member States and observer

organizations in supporting affected seafarers and commercial vessels, consider also the implications of this situation for the implementation of the Organization's instruments, take appropriate action and report back to Council.

5.2 The Committee noted the interventions by the delegation of Ukraine relating to the documents, as set out in annex 5 to this report. The Committee also noted the interventions by the delegation of the Russian Federation on this matter, as set out in annex 5 to this report.

5.3 In the ensuing discussion, many delegations condemned Russia's invasion of Ukraine as a violation of international law and the United Nations Charter and raised concerns about the impact of the situation in the Black Sea and Sea of Azov on shipping and seafarers consistent with the decisions of the thirty-fifth extraordinary session of the Council. The Committee noted the statements made by a number of delegations in this regard, which are set out in annex 5 of the report.

5.4 The delegation of France, supported by Canada, the United Kingdom, Spain, Belgium, Germany, Poland, Denmark, Italy, Sweden, Croatia, Australia, New Zealand, Georgia, the Netherlands, Greece, Lithuania, Cyprus, Portugal, Latvia and Luxembourg proposed the following actions:

- .1 a specific item should be introduced in the agenda of the Legal Committee in order to deal with the impact on shipping and seafarers of the situation in the Black Sea and the Sea of Azov;
- .2 guidelines on the impact of the situation in the Black Sea and Sea of Azov on insurance certificates should be developed;
- .3 a working group should be established at this session of the Legal Committee to develop these guidelines; and
- .4 a J document, containing the proposed guidelines, would be submitted to the Secretariat.

5.5 In the ensuing discussion, there was widespread support for the Committee to include a specific agenda sub-item to deal with the impact on shipping and seafarers of the situation in the Black Sea and the Sea of Azov, so that appropriate measures could be taken with respect to the implementation of IMO instruments (see also paragraph 1.5 above). There was also widespread support for the establishment of a working group to develop guidelines on the impact of the situation in the Black Sea and the Sea of Azov on compulsory insurance requirements and insurance certificates under the 1992 Civil Liability Convention, the 2001 Bunkers Convention, the 2002 Athens Convention and the 2007 Nairobi Wreck Removal Convention.

5.6 Noting that there was broad support for a new sub-item on the agenda, the Committee agreed that, pursuant to rule 17 of the Rules of Procedure of the Legal Committee, the Secretariat would issue a revised agenda, including the proposed new agenda sub-item.

5.7 Regarding the establishment of a working group, the Committee agreed that one of the proponents of the J document should submit a draft of the guidelines to the Secretariat so that it could be posted on IMODOCS, for consideration by the Committee.

5.8 With regard to the procedural concerns raised, the Chair of the Committee made the following observations:

- .1 the situation in Ukraine was not anticipated when the 109th session of the Legal Committee was convened;

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- .2 this was such an urgent and important matter that an extraordinary session of the Council had been called on short notice to address it;
  - .3 at its thirty-fifth extraordinary session, the Council had expressly instructed the IMO Committees, including the Legal Committee, to "consider the implications of this situation for the implementation of the Organization's instruments and take appropriate action";
  - .4 the proposal to establish a working group to develop guidance on the impact of the situation in the Black Sea and the Sea of Azov on insurance certificates was consistent with this direction and was clearly within the Committee's mandate;
  - .5 the Rules of Procedure of the Legal Committee and the Organization and Method of Work of the Committee did not prohibit a working group from being convened at short notice to address an urgent situation, particularly when the Council had directed the Committee to act;
  - .6 in the past, IMO had convened working groups on an urgent basis to deal with pressing issues; the most recent example was the MSC resolution developed during the ALCOM session in September 2020 on *Action to Facilitate Crew Change, Access to Medical Care and Seafarer Travel During the COVID-19 Pandemic*, but it had also been done on other occasions;
  - .7 the proposed item was not a new output; it fell squarely under agenda item 5 on Advice and guidance in connection with the implementation of IMO instruments;
  - .8 rule 17 of the Rules of Procedure of the Legal Committee provided that no item should be discussed unless the relevant documents had been made available 24 hours in advance; however, rule 17 also allowed the Committee to waive this period;
  - .9 therefore, the Committee had the authority to convene a working group to address this item; and
  - .10 the documents containing the proposed guidelines and the provisional terms of reference for the group had been posted on IMODOCs.

5.9 The Committee agreed with these observations and conclusions. In addition, the Committee agreed with the additional clarification by the Chair of the Committee that rules 14.3 and 17 of the Rules of Procedure of the Legal Committee applied in the matter and had been followed, whereas rule 16 was not applicable.

5.10 The Committee also agreed with the clarification that a new sub-item (a) on the impact on shipping and seafarers of the situation in the Black Sea and Sea of Azov would be included in the agenda of the Legal Committee under the existing agenda item 5 on Advice and guidance in connection with the implementation of IMO instruments.

5.11 The Committee further agreed to convene a working group to develop guidance on the impact of the situation in the Black Sea and the Sea of Azov on the implementation of the instruments under the purview of the Legal Committee, as proposed in document LEG 109/J/4. In this context, the Committee agreed to waive the 24 hours' notice period provided for in rule 17.

### **Establishment of a working group**

5.12 Having considered the draft terms of reference for the Working Group submitted by the Chair in document LEG 109/WP.5, the Committee agreed with them and established a Working Group, chaired by Mr. Diego Ramirez (Marshall Islands), and instructed it, using document LEG 109/J/4 as a base document and taking into consideration comments, proposals and decisions made by the Committee, to:

- .1 finalize the guidance on the implications of the situation in the Black Sea and the Sea of Azov on the implementation of the conventions under the purview of the Legal Committee, and in particular on insurance certificates issued pursuant to these conventions;
- .2 advise the Committee on the format of such guidance (i.e. LEG resolution, LEG circular, decisions of the Committee, etc.); and
- .3 submit a written report on the work carried out, including the text of the final guidance, to plenary on Friday, 25 March 2022.

### **Report of the Working Group**

5.13 Having considered the report of the Working Group (LEG 109/WP.6), the Committee approved it in general.

5.14 The Committee agreed with the Working Group that the guidance should be issued as a circular of the Legal Committee. The Committee agreed with the text of the guidance, as contained in the annex to document LEG 109/WP.6. Consequently, the Committee approved LEG.1/Circ.12 on *Guidance on the impact of the situation in the Black Sea and the Sea of Azov on insurance or other financial security certificates*, as set out in annex 1 to this report.

### **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**

5.15 The Committee noted documents LEG 109/5 (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, and LEG 109/5/Add.1 (Ukraine) on consideration of implications of the situation in the Black Sea and the Sea of Azov caused by the armed aggression of the Russian Federation against Ukraine for the implementation of the Organization's instruments. With regard to document LEG 109/5/Add.1, the Committee also noted that the information in annex 1 provided the intention of the submitters to raise items at the 127th session of the Council, and that the information in annex 2 to that document would be considered by the Council, the Maritime Safety Committee (MSC) and the Sub-Committee on Implementation of IMO Instruments (III), as appropriate.

**Audio files:** Monday, 21 March 2022, Tuesday, 22 March 2022 and Friday, 25 March 2022

## **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 108 (LEG 108/6), and agreed with the

definitions of fraudulent registration and fraudulent registry. The Committee had also agreed that a definition of "false documents" should be developed, and that the Secretariat should coordinate a study to address the questions raised in paragraph 2 of document LEG 106/7/4, considering the previous comprehensive in-depth study published by the United Nations Conference on Trade and Development (UNCTAD) "Review and Analysis of Possible Measures to Minimize the Occurrence of Maritime Fraud and Piracy".

6.2 The Committee also recalled that the Assembly, at its thirty-second session, had adopted resolution A.1162(32) 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*, which had been approved by LEG 108.

6.3 The Committee further recalled that, in view of the need to further consider a number of remaining issues and proposals related to the fraudulent registration and fraudulent registries of ships, 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 terms of reference set out in paragraph 6.23 of document LEG 108/16/1; and instructed it to submit a report to LEG 109.

#### **Report of the Correspondence Group**

6.4 In considering document LEG 109/6 (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 develop the definition of "false documents", as set out in paragraph 9 of document LEG 109/6. The Committee also noted that the Group had developed the name, objective and terms of reference for the establishment of a study group on issues arising in connection with fraudulent registration and fraudulent registries of ships and possible measures to prevent them, as set out in paragraphs 5 to 8 of document LEG 109/6 and in its annex. The Committee further noted the request to the Secretariat to coordinate the study; to include UNCTAD, WMU and IMLI, and other interested parties; and to explore possible funding for the study.

6.5 The Committee noted that the Group had had insufficient time to consider point .6 of its terms of reference (identify items, as necessary, for further consideration by the Legal Committee at its next session and develop a comprehensive work plan). The Committee also noted that the Group had recommended that the output should remain open until 2024 in order to consider a report from the proposed study group at LEG 111.

#### ***Proposed definition of false documents***

6.6 The Committee agreed with the text developed by the Correspondence Group for "false documents". In addition, the Committee agreed that the definition should be of "forged/false documents".

6.7 The Committee noted the proposals made by a delegation to explore the feasibility of an international platform, either as an independent one or under the existing module on ship and company particulars in the Global Integrated Shipping Information System (GISIS), to enable administrations to share information on cancelled certificates of registration and to explore the possibility of having a QR code or bar code on the certificates of registration. In this regard, the Committee invited the submitters of the proposals to consider further submissions to the Committee or the study group to be established.

6.8 The Committee noted the importance of sharing information on these important matters. In this context, the Committee noted that Malta, together with the United Nations Office on Drugs and Crime (UNODC), had hosted a Virtual Symposium to explore ways of strengthening the maritime rule of law and combating illicit activities. The Symposium included speakers from various countries who, together with maritime policy experts from UNODC, the African Union and the European Union, discussed the latest trends and patterns in United Nations Security Council (UNSC) sanctions circumvention, and shared their experience on the loopholes which existed and were used, knowingly or unknowingly, to engage in illicit activities and the circumvention of UNSC sanctions. During the Symposium there was strong support from the participants for global sharing of information on problematic vessels.

***Study group on issues arising in connection with fraudulent registration and fraudulent registries of ships and possible measures to prevent them***

6.9 The Committee supported, in general, the establishment of the study group, with the terms of reference developed by the Correspondence Group. The Committee agreed that the title and questions to be addressed by the study group should include the term "combat" after "prevent". The Committee also agreed that an additional question be included in question 1.8 in the terms of reference, which should read: "What other international and effective legal sanctions for fraudulent registration, such as criminal punishment and administrative measures, could be imposed?". The Committee further agreed to include, in question 2, the provision of examples of reported incidents and, in question 5, the provision of examples of State practice on prevention and deterrence cases.

6.10 The Committee noted the concerns expressed by delegations that ships using fraudulent certificates were able to trade around the world. These ships required bunkers, stores spares and crew and were only able to trade because some networks were facilitating their operations. In addition, there were repercussions for seafarers on board these ships. Therefore, the Committee agreed that the study group should also consider the wider question of how fraudulent certification facilitated such practices, which undermined legitimate international trade.

6.11 Taking into account that this addition to the terms of reference would broaden the scope of the work of the study group, the Committee agreed that the study group should make preliminary findings on this matter and report back to the Committee. The final terms of reference for the study group are set out in annex 2 to this report.

6.12 With regard to the funding for the study, the Committee encouraged States to provide funding for the study and to contact the Secretariat accordingly.

***Remaining matters***

6.13 The Committee encouraged Member States to provide relevant information on the Continuous Synopsis records in the relevant module of GISIS and to provide information on their ship registries in the Contact Points module in GISIS, using the form set out in the annex to Circular Letter No.4190 on *Communication of information to the Organization on registries of ships for input into the Registries of ships function in the Contact points module in GISIS*, pursuant to resolution A.1142(31) on *Measures to prevent the fraudulent registration and fraudulent registries of ships*.

6.14 Recalling paragraph 12 of document LEG 109/6, the Committee invited interested delegations to make proposals on the domestic enforcement measures on the confiscation of fraudulently registered ships.



6.15 The Committee agreed to extend the target completion year of the output to 2024 and encouraged interested delegations to make relevant submissions for the consideration of the Committee at the next session.

**Information in documents LEG 109/6/1 and LEG 109/6/1/Add.1**

6.16 The Committee recalled that documents LEG 109/6/1 and LEG 109/6/1/Add.1 (Secretariat) commented on the report of the Correspondence Group on Fraudulent Registration and Fraudulent Registries of Ships contained in document LEG 109/6 and provided an update on various matters related to the fraudulent registration and fraudulent registries of ships since LEG 108. In particular, the Committee recalled that the documents informed the Committee on the communications received from the Governments of the Republic of Zambia, of Guyana and of Vanuatu on the operations of fraudulent registries, and on information received from INTERTANKO on several instances of the use of fake identities by ships. The documents further updated the Committee on the list of fraudulently registered ships and on where to find this information in GISIS, as well as on the list of Governments that had provided information on their registries of ships pursuant to resolution A.1142(31) on *Measures to prevent the fraudulent registration and fraudulent registries of ships*.

6.17 The Committee noted the further information provided by the delegation of Vanuatu that the website of the fraudulent registry under the name of Vanuatu had shut down and that no further certificates had been issued since. The Committee also noted the information provided by the delegation of Singapore that, in relation to the company operating under the name "International Maritime Safety Agency for Guyana Pte. Ltd.", as reported in document LEG 109/6/1, their recent checks on the public register of business entities in Singapore had shown that the company had changed its name to "Laos Ship Registry and Maritime Safety Administration Pte. Ltd."

6.18 The Committee noted the further information provided orally by the observer of INTERTANKO regarding the ships listed under paragraph 4 of document LEG 109/6/1, which were trading internationally using fake identities and the same naming convention as the company Frontline. The ships were electronically seen in the following locations:

Front Creed: Northern Persian Gulf and Gulf of Guinea  
Front Stamina: Gulf of Guinea, Straits of Singapore and Yellow Sea  
Front Master: Gulf of Guinea and Yellow Sea  
Front Core: Multiple points in Gulf of Guinea  
Front Kingdom: Multiple points in Gulf of Guinea

and oil was loaded in the northern part of the Persian Gulf and then trans-shipped in the Gulf of Guinea to ships which discharged in the Yellow Sea. The Committee noted the concern that such activities were undermining international trade and could pose a risk if such ships were involved in an accident with catastrophic environmental consequences for the affected States.

6.19 Noting the concerns already raised by some delegations that AIS data were deliberately manipulated and that ships were able to operate transmitting fake data, the Committee agreed to inform MSC of this issue, as that Committee might wish to investigate how ships without proper registration were able to obtain MMSI numbers.

**Audio files:** Tuesday, 22 March 2022 and Wednesday, 23 March 2022

## **7 MEASURES TO ASSESS THE NEED TO AMEND LIABILITY LIMITS**

7.1 The Committee recalled that, at its last session, it had agreed to include a new output on the development of measures to assess the need to amend liability limits, in the 2022-2023 biennial agenda, with a target completion year of 2023. The Committee also recalled that it had invited concrete proposals to LEG 109 on the scope of the new output after detailed consideration of any proposed measures.

7.2 The Committee noted that three documents had been submitted under this agenda item: document LEG 109/7 (Australia and Republic of Korea) reporting on the informal intersessional work undertaken by interested parties to progress the work item and address concerns raised at LEG 108; document LEG 109/7/1 (Australia et al.) proposing the establishment of a formal intersessional correspondence group and other intersessional work; and document LEG 109/7/2 (P & I Clubs) reporting on the P & I Clubs' consideration of incident data in relation to future proposed methodologies on the development of measures to assess the need to amend liability limits.

7.3 In the ensuing discussion, most delegations who took the floor were in favour of progressing the work on this item through the establishment of a formal, intersessional correspondence group, although many delegations echoed the concerns highlighted by the P & I Clubs in document LEG 109/7/2 that the conventions to be considered by the correspondence group should be clearly identified. To address this concern, the Committee agreed that the work of the correspondence group should initially be limited to the consideration of the Convention on Limitation of Liability for Maritime Claims, 1976, as amended by the 1996 Protocol, acknowledging that the scope could be extended at a later stage.

7.4 Some delegations raised concerns that policy decisions on key principles needed to be taken before work could commence on the development of concrete methodologies, and that these important and fundamental issues should not be addressed by an intersessional correspondence group. Acknowledging the concerns that underlying principles still needed to be addressed, the Committee agreed to task the correspondence group with further refining the principles and policy considerations, with the expectation of forming a working group at LEG 110 to further progress this work.

7.5 Concerns were also raised with respect to potential impacts of its decisions on liability and compensation for bunker oil pollution under the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001; and that the review of limits of liability should not result in the reduction of the limits.

7.6 In conclusion, the Committee noted the information provided in documents LEG 109/7, LEG 109/7/1 and LEG 109/7/2, and agreed to establish an intersessional correspondence group, under the coordination of Australia,<sup>1</sup> and instructed it, taking into consideration documents LEG 108/13, LEG 108/16/1, LEG 109/7 and LEG 109/7/2, as well as the comments, proposals and decisions made by the Legal Committee, in particular that the work of this Correspondence Group shall initially be limited to the consideration of the Convention on Limitation of Liability for Maritime Claims, 1976, as amended by the 1996 Protocol, to work by correspondence, with the option of meeting virtually if the members of the Group wished to do so, and to:

- .1 develop a list of principles and policy considerations that would need to be decided by the Committee in order to finalize the methodologies;
- .2 begin development of elements that would need to be included in a draft methodology for the collection and periodic reporting of experience of incidents and damage resulting therefrom, including setting out the source(s) of such data and information, the means for its collection and verification (if required) and the content of, and procedure for, such reporting;

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<sup>1</sup> All parties wishing to participate in the correspondence group please contact:  
Elisa Boughton, Manager International and Domestic Engagement,  
Policy and Regulation,  
Australian Maritime Safety Authority  
Email: [elisa.boughton@amsa.gov.au](mailto:elisa.boughton@amsa.gov.au)  
Phone: +61 2 6279 5608

- .3 begin development of elements that would need to be included in a draft methodology for assessing changes in monetary value, reflecting advice provided on existing practices for assessing changes in monetary value and ensuring any such methodology was transparent, rigorous and repeatable, but not onerous; and
- .4 submit a report to LEG 110.

7.7 The Committee also instructed the Secretariat to:

- .1 work with the Committee to develop the "experience of incident" reporting procedure, which might include a new GISIS module; and
- .2 contact appropriate international organizations or regional bodies with similar liability regimes requesting advice for the Committee on existing practices for assessing changes in monetary value and share that information with the Correspondence Group by the end of June 2022.

7.8 In relation to incident data, the Committee noted a comment that this should include both casualty and incident data, as well as a comment that it was also important to consider data from coastal States.

**Audio files:** Wednesday, 23 March 2022 and Friday, 25 March 2022

## **8 CLAIMS MANUAL FOR THE INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR BUNKER OIL POLLUTION DAMAGE, 2001**

8.1 The Committee recalled that, at its last session, it had agreed to include a new output on the development of a Claims Manual for the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (2001 Bunkers Convention) in the 2022–2023 biennial agenda, with a target completion year of 2023.

8.2 The Committee also recalled that it had invited concrete proposals to LEG 109 on the scope of the work on the new output and that delegations interested in taking the work forward on an intersessional basis could contact the P & I Clubs.

### **Intersessional work**

8.3 The Committee considered document LEG 109/8 (Canada et al.) reporting on the intersessional progress made on the development of a Claims Manual for the 2001 Bunkers Convention by an informal group, in line with the direction given by the Committee at its 108th session. The Committee noted that the development of a Claims Manual for the 2001 Bunkers Convention was essential and would be of significant benefit to those that incurred losses due to pollution damage from a spill of ships' bunker oil in the waters of a State Party. The Committee also noted that the draft text contained in the annex to the document was quite substantive, but that further work was needed.

8.4 The Committee referred to the 10 directions (in paragraph 6 of document LEG 109/8) that guided the members of the group when developing the text of the draft Claims Manual, as contained in the annex to the document, as follows:

- .1 The Claims Manual for the 2001 Bunkers Convention text should be drafted in a manner that provides potential claimants with important information on the processes to follow when submitting claims potentially falling within the scope of the 2001 Bunkers Convention.

- .2 The Claims Manual for the 2001 Bunkers Convention should also seek to provide uniformity of treatment of claims throughout the world as well as providing useful guidance to loss adjustors and technical experts in order to facilitate a uniform approach to the assessment of claims.
- .3 The Claims Manual for the 2001 Bunkers Convention should seek to avoid conflicting and contradictory approaches in cases where pollution damage has occurred in different States Parties to the 2001 Bunkers Convention.
- .4 The IOPC Funds' Claims Manual provides a basis for the draft Claims Manual for the 2001 Bunkers Convention text and each of the four sections has been drafted by cross-referencing the corresponding section in the IOPC Funds' Claims Manual as a basis.
- .5 This is both relevant and important given that the definitions of "pollution damage" and "preventive measures" in the 2001 Bunkers Convention are identical to those in the International Convention on Civil Liability for Oil Pollution Damage, 1992 (1992 Civil Liability Convention) and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (1992 Fund Convention) (save for the reference in the 2001 Bunkers Convention to "bunker oil" rather than just "oil") and the drafters of the 2001 Bunkers Convention intended the scope of pollution damage in that Convention to be in line with the scope of pollution damage as governed by the 1992 Civil Liability Convention and 1992 Fund Convention.
- .6 It is recognized that the IOPC Funds' Claims Manual does not aim to explain the 1992 Civil Liability Convention and 1992 Fund Convention in detail or in legal terms, and the draft Claims Manual for the 2001 Bunkers Convention also does not seek to do so for the 2001 Bunkers Convention. They are generally intended to provide a usable guide that is accessible to a wide variety of potential claimants and audiences.
- .7 Unlike the 1992 Civil Liability Convention and 1992 Fund Convention regime, claimants cannot access a second tier of compensation (provided by receivers of persistent oil) where liability and compensation are governed by the 2001 Bunkers Convention.
- .8 The nature of a Claims Manual for the 2001 Bunkers Convention will therefore necessarily be different in parts from that of the IOPC Funds' Claims Manual. The IOPC Funds' Claims Manual is a manual agreed by the Funds' governing bodies, describing its practice to claimants and published by the IOPC Funds – the intergovernmental organizations established by the 1992 Fund Convention and the 2003 Supplementary Fund to provide compensation for oil pollution damage arising from spills of persistent oil from tankers.
- .9 As such, the draft Claims Manual for the 2001 Bunkers Convention may describe the type of claims that can be considered as falling within the scope of the 2001 Bunkers Convention. It may also provide information on general principles of admissibility of claims, but it cannot be an authoritative or definitive resource. Ultimately, the nature and admissibility of claims, and the general interpretation afforded to provisions of the 2001 Bunkers Convention are matters that fall to be determined by the national courts of States Parties.

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This has been made clear in the draft Claims Manual for the 2001 Bunkers Convention text, which has been drafted as a guidance document rather than prescribing a definitive position on admissibility of claims. However, it is recognized that further work on the drafting of the text may be needed to ensure that the draft Claims Manual for the 2001 Bunkers Convention reflects this reality.

- .10 There are several areas where the IOPC Funds' Claims Manual seeks to provide specific guidance but, in some instances, it has been felt preferable to leave issues of evidence and fact-finding in the draft Claims Manual for the 2001 Bunkers Convention text to national jurisdictions and their courts to determine.

8.5 In the ensuing discussion, the following comments were made on the document and the following views were expressed:

- .1 the work on the draft Claims Manual should be continued on an intersessional basis, with a view to finalizing it for adoption at LEG 110;
- .2 the Claims Manual should be disseminated by means of a LEG circular and the intersessional correspondence group, if established, should develop the draft of such a circular;
- .3 the Claims Manual was not an interpretation of the 2001 Bunkers Convention;
- .4 the Claims Manual was not intended to delay the implementation of the provisions of the 2001 Bunkers Convention but rather should assist courts, victims, owners, insurers and other stakeholders and provide clarity in the case of pollution damage;
- .5 the Claims Manual would assist the Parties to the 2001 Bunkers Convention and those States that intended to accede to the Convention;
- .6 there was a value in providing an interpretative guidance that might assist in dealing with claims for compensation;
- .7 although the Claims Manual would not be binding in nature, the adoption by the Committee would represent endorsement of its content; and that content should therefore reflect the views of the Parties to the Convention as to the types of claims that were admissible for compensation;
- .8 whilst recognizing the relationship between the International Convention on Civil Liability for Oil Pollution Damage (CLC) and the 2001 Bunkers Convention, specific consideration should be given to which aspect of the IOPC Funds' Claims Manual should be adopted; therefore the proposed Correspondence Group should consider these issues and report to the Committee at LEG 110;
- .9 liability and compensation for bunker oil pollution damage was a matter of particular concern for vulnerable developing countries, including small island developing States that relied heavily on fisheries, aquaculture and tourism, and might be exposed to a bunker oil spill from ever larger vessels calling at their ports, or transiting in proximity to their coasts; therefore further

consideration should be given to some of the key issues that were of particular interest to claimants, including, inter alia, matters relating to limitation of the shipowner's liability under international agreements, the differences between direct claims against shipowners or their mutual insurers, and formal legal proceedings under the 2001 Bunkers Convention against any of the parties falling within the definition of "shipowner", as well as related considerations and procedural issues; and

- .10 the further work envisaged would benefit from broad consultation with stakeholders representing claimants' and environmental interests, as well as academic experts and active participation in this initiative by countries concerned about being affected by a bunker oil spill should also be encouraged.

8.6 The Committee supported the finalization of the Claims Manual and, noting the comments and suggestions made during the discussion, agreed that they should be forwarded to the proposed correspondence group for consideration and action. The Committee also agreed that the proposed correspondence group be tasked with determining the method of adopting the Claims Manual (circular or resolution of the Legal Committee) and developing a draft of that instrument. The Committee noted that the Claims Manual should highlight, and take into account, the differences between the 2001 Bunkers Convention and the CLC/Funds Conventions, as mentioned by some delegations, and as highlighted in paragraph 13.10 of document LEG 108/16/1. The statement by UNCTAD in this regard is contained in annex 5. The Committee agreed that the views of the correspondence group in this regard should be included in the report to the next session of the Committee.

8.7 In response to the suggestion to extend the date of the output, the Committee agreed to await the outcome of the intersessional work and consider the matter at LEG 110.

### **Establishment of a remote intersessional group**

8.8 Subsequently, the Committee established a remote intersessional group under the coordination of the Vice-Chair (Georgia)<sup>2</sup> and instructed it, taking into consideration document LEG 109/8, as well as the comments, proposals and decisions made by the Committee, to work by correspondence, with the option of meeting virtually, if the members of the group wished to do so, and to:

- .1 finalize the text of the Claims Manual for the 2001 Bunkers Convention;
- .2 determine the method of adopting the Claims Manual and develop a draft instrument for that purpose; and
- .3 submit a report to LEG 110, with the view to adoption of the Claims Manual for the 2001 Bunkers Convention by the Committee at that session.

8.9 The Committee encouraged wide participation in the intersessional work, especially of representatives from small island developing States and least developed countries to ensure that the outcome represented the broad membership of the Organization.

**Audio file:** Wednesday, 23 March 2022

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<sup>2</sup> Coordinator:  
Mr. Ivane Abashidze  
Deputy Director, LEPL "Maritime Transport Agency"  
Ministry of Economy and Sustainable Development of Georgia  
Mobile: +995 (577) 221625  
Email: [iv.abashidze@mta.gov.ge](mailto:iv.abashidze@mta.gov.ge) / [ivaneabashidze@gmail.com](mailto:ivaneabashidze@gmail.com)

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## 9 PIRACY AND ARMED ROBBERY AGAINST SHIPS

9.1 The Committee recalled that, at its previous session, it had 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.

9.2 The Committee noted the information provided in document LEG 109/9 reporting on developments related to piracy since the 107th session of the Legal Committee. In this context, the Committee noted that, in the future, the reports under this agenda item will relate to "Piracy and armed robbery against ships".

9.3 The Committee noted information provided by Kenya on the twenty-fourth Plenary Session of the Contact Group on Piracy off the Coast of Somalia, held in Nairobi on 27 January 2022. The meeting registered 145 delegates for both online and in-person participation from 20 States and 37 regional and international organizations. The Group deliberated and adopted a refocused Contact Group, namely "Contact Group on Illicit Maritime Activities in the Western Indian Ocean", in line with the United Nations General Assembly resolution on *Oceans and the Law of the Sea* (A/RES/76/72), which broadly addressed transnational organized crime committed at sea, including illicit traffic in narcotic drugs and psychotropic substances; illicit trafficking in wildlife; smuggling of migrants; trafficking in persons and illicit trafficking in firearms; and threats to maritime safety and security, including piracy, armed robbery at sea, smuggling and terrorist acts against shipping, offshore installations and other maritime interests. This follows the deadline for the validity of United Nations Security Council (UNSC) resolution 2608 on security measures off the coast of Somalia.

**Audio file:** Friday, 23 March 2022

## 10 WORK OF OTHER IMO BODIES

10.1 The Committee recalled that document LEG 109/10 and its corrigendum (Secretariat) provided information on the work undertaken by other IMO bodies since its 108th session which may be of interest to the Committee.

10.2 The Committee noted the outcomes of A 32, C 125, FAL 45, LC 43/LP 9, MEPC 76, MEPC 77, MSC 104, and III 7 that required action either by the Committee or the Legal Affairs Office. In particular, the Committee:

- .1 noted the decisions taken by MSC 104:
  - .1 on the preparation of a priority list of instruments under the remit of the Maritime Safety Committee for which consolidated versions would be most beneficial, for consideration at MSC 105; (MSC 104/18, paragraphs 2.7 and 2.8);
  - .2 on the new output on MASS (MSC 104/18, paragraph 15.9); and
  - .3 on matters related to seafarers' challenges during the COVID-19 pandemic (MSC 104/18, paragraphs 17.5 to 17.7);

- .2 noted that MEPC 77, in the context of the consideration of documents concerning marking of fishing gear, requested the Secretariat to provide legal advice regarding the definition of garbage for fishing gear in MARPOL Annex V, as raised in paragraphs 4 to 6 of document MEPC 77/8/2 (MEPC 77/16, paragraphs 8.8 to 8.15);
- .3 noted the outcomes of LC 43/LP 16, in particular:
  - .1 on the progress with the ratification of the 2009 amendment to article 6 of the London Protocol and with the deposit of declarations of provisional application of the amendment (LC 43/17, paragraphs 6.1 to 6.7); and
  - .2 on matters related to the management of radioactive wastes and the request to the Secretariat to provide legal advice on the issue of the scope of the LC/LP, in particular in relation to discharges from land-based facilities to the next meeting of the governing bodies in 2022 (LC 43/17, paragraphs 11.2 to 11.5);
- .4 noted the outcome of FAL 45 in relation to the regulatory scoping exercise on MASS (FAL 45/22, paragraph 1.7);
- .5 noted the outcome of C 125 in relation to the preparation of official, consolidated texts of IMO conventions (C 125/D, paragraph 3(b).6);
- .6 noted the outcome of A 32 in relation to the Rules of Procedure of the Assembly (A 32/D, paragraphs 2.1 to 2.4), the amendments to the Convention on the International Maritime Organization (A 32/D, paragraphs 5.1 to 5.4), the report and recommendations of the extraordinary session of the Committees (ALCOM) (A 32/D, paragraphs 11.1 and 11.2) and the reports and recommendations of the Legal Committee (A 32/D, paragraphs 13.1 to 13.3);
- .7 noted the outcome of III 7 concerning matters related to the financial security of seafarers in cases of abandonment (III 7/17, paragraph 5.37);
- .8 approved, subject to concurrent decision by MEPC, MSC and FAL, the draft joint circular FAL.2-MEPC.1-MS.1-LEG.2 on the *List of certificates and documents required to be carried on board ships, 2022* to supersede FAL.2/Circ.131-MEPC.1/Circ.873-MS.1/Circ.1586-LEG.2/Circ.3, noting that the items related to the amendments to MARPOL Annexes I, IV and VI regarding measures to reduce carbon intensity of international shipping and unmanned non-self-propelled (UNSP) barges, as adopted by resolutions MEPC.330(76) and MEPC.328(76) respectively, are put in square brackets pending acceptance according to the entry-into-force procedure (document III 7/17, paragraph 8.9 and annex 5); and
- .9 endorsed, with respect to the handling of issues related to the abandonment and fair treatment of seafarers, the III Sub-Committee's recommendation on alignment and integration of actions in favour of both seafarers and fishers, recognizing that both seafarers and fishers are often confronted with the same kinds of problems, becoming even more serious in the context of the pandemic (document III 7/17, paragraph 14.3).



10.3 The Committee recalled that document LEG 109/10/Add.1 (Secretariat) was considered under agenda item 5.

**List of priority conventions under the purview of the Legal Committee for which a consolidated version would be most beneficial**

10.4 The Committee recalled that the Council, at its 125th session, had considered document C 125/3(b)/1, which contained a proposal to develop consolidated certified texts of IMO conventions to assist in the Organization's technical cooperation and capacity-building efforts, so that the texts could be incorporated directly into the national legislation of Member States.

10.5 The Committee also recalled that C 125 had endorsed the recommendation of the Working Group on Council Reform to proceed with the preparation of consolidated versions of IMO conventions and invited the committees to develop a priority list of conventions for which a consolidated version would be beneficial.

10.6 The Committee recalled that document LEG 109/10/1 (Secretariat) provided the list of all instruments under the purview of the Legal Committee and indicated those for which the Secretariat believed a consolidated version would be beneficial, with proposals on the priority to be given to each consolidation. If instructed by the Committee, the Secretariat would prepare drafts of the high priority consolidated texts, to be submitted to a future session of LEG (subject to further guidance from the Council), for consideration by the Committee. The low and medium priority texts would be prepared for following, future sessions of the Committee.

10.7 The Committee noted the information provided in document LEG 109/10/1 and thanked the Secretariat for the excellent work done. In addition, the Committee:

- .1 endorsed the suggestion by the Secretariat to give high priority to the preparation of an official consolidated text of the Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976, incorporating the amendments adopted by resolution LEG.5(99) in order to ensure that States accede to the instrument as modified by the amendments;
- .2 endorsed the suggestion by the Secretariat to give high priority to the preparation of a consolidated text of the Convention on Limitation of Liability for Maritime Claims, 1976, as amended by the 1996 Protocol, including the amendments adopted by resolution LEG.5(99) in order to also assist States in the implementation of the instrument;
- .3 instructed the Secretariat to prepare the two above-mentioned consolidated texts for adoption by the Committee at a future session;
- .4 noted that the legal considerations pertaining to consolidation and certification would be discussed at a later stage; and
- .5 decided that the submission should be made under the standing agenda item on Review of the status of conventions and other treaty instruments emanating from the Legal Committee.

**Audio file:** Friday, 25 March 2022

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

11.1 The Committee noted the information provided in documents LEG 109/11 (Secretariat), LEG 109/11/1 (IMO International Maritime Law Institute (IMLI)), LEG 109/INF.2 (IMLI) and LEG 109/INF.3 (IMLI), on IMO and IMO IMLI activities related to maritime legislation.

11.2 With regard to document LEG 109/INF.3, the Committee congratulated Mr. Si Thu Aung (Myanmar) for his dissertation entitled "Overlapping Rights and Jurisdiction in the Grey Area: The Bay of Bengal Experience", which was awarded the IMO Secretary-General's Prize for Best Dissertation for the academic year 2020-2021.

11.3 The Committee recognized IMLI's efforts in managing to provide uninterrupted courses and Master's programmes throughout the entire pandemic, and maintaining its capacity-building activities, which benefitted many officers and officials from developing countries. The Committee commended IMLI on continuing to facilitate the participation of students from developing countries and for gradually and increasingly including aspects of the law of the sea in its curriculum. This recognition goes to all IMLI staff, in particular its Director, Judge David Attard.

**Audio file:** Friday, 25 March 2022

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

12.1 The Committee noted the information contained in document LEG 109/12 (Secretariat) on the status of conventions and other treaty instruments emanating from the Legal Committee.

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

**Audio file:** Friday, 25 March 2022

## **13 WORK PROGRAMME**

### **Proposals for new outputs**

13.1 The Committee noted that three 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 guidance for the proper implementation and application of IMO liability and compensation conventions (LEG 109/13); and
- .2 two proposals for new outputs regarding the development of measures to address maritime autonomous surface ships (MASS) in the instruments under the purview of LEG (LEG 109/13/1 and LEG 109/13/2).

13.2 In considering these three 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 proposals undertaken by the Chair, in consultation with the Vice-Chair and the Secretariat (LEG 109/WP.2).

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## **Development of guidance for the proper implementation and application of IMO liability and compensation conventions**

13.3 The Committee considered document LEG 109/13 (Canada, Denmark, Italy, Japan, and United Arab Emirates), proposing a new output on the "Development of guidance for the proper implementation and application of IMO liability and compensation conventions".

13.4 The Committee, following an in-depth discussion, agreed that the development of guidance for the proper implementation and application of IMO liability and compensation conventions was an issue that needed to be addressed by the Legal Committee and expressed its general support for the proposed new output. The Committee noted the following statements:

- .1 While the proposal for a new output to develop guidance for the proper implementation and application of IMO liability and compensation conventions received broad support, the potential implications for the human element would have to be assessed in consultation with ILO.
- .2 The proposal very clearly explained the problems inherent in the proper application and implementation of the liability conventions regarding shipowners, insurers and others. Any approach in drawing up guidelines should not lose sight of complementarity between these conventions regarding their scope and application. It would also be beneficial to organize seminars to disseminate the liability and compensation conventions.
- .3 The broad title should be clarified since the proposed work, which is commendable, could result in authoritative guidelines.

13.5 The Committee noted the statement by the delegation of Greece regarding the reference made in document LEG 109/1 to the incident involving the ship **Alfa 1**. The full statement is contained in annex 5.

13.6 In conclusion, the Committee agreed:

- .1 to include a new output on the "Development of guidance for the proper implementation and application of IMO liability and compensation conventions" in the 2022-2023 biennial agenda of the Legal Committee (and later the 2024-2025 biennial agenda), with a target completion year of 2024;
- .2 that Canada<sup>3</sup> would conduct informal intersessional work, taking into account the comments made by the Committee;
- .3 to invite concrete proposals to LEG 110 for consideration; and
- .4 to include the item in the provisional agenda for LEG 110.

## **Regulation of MASS in the existing regulatory framework under the purview of LEG**

13.7 The Committee considered document LEG 109/13/1 (Japan, Russian Federation and United Arab Emirates) and document LEG 109/13/2 (Canada and the Republic of Korea), both inviting the Committee to add a new output under the work programme regarding the regulation of MASS in the existing regulatory framework under the purview of LEG.

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<sup>3</sup> The contact point for Canada is Mr. François Marier, who may be contacted at: [francois.marier@tc.gc.ca](mailto:francois.marier@tc.gc.ca).

13.8 The Committee agreed that the operation of MASS needed to be addressed in the instruments under the purview of LEG and that the two proposals for new outputs should be combined in line with the Chair's proposal in document LEG 109/WP.2 (annex, paragraph 3.4.2). The Committee noted that the human element should be an important aspect to consider in the completion of this output, as well as the fact that MASS should operate within the legal framework of the United Nations Convention on the Law of the Sea (UNCLOS), as also noted in paragraph 3.8 of the *Outcome of the Regulatory Scoping Exercise and Gap Analysis of Conventions emanating from the Legal Committee with respect to MASS* (LEG.1/Circ.11, annex). In this regard, the Committee noted an intervention from a representative of the Division for Ocean Affairs and the Law of the Sea of the United Nations (UN DOALOS), who informed the Committee that UN DOALOS was following IMO's work on MASS with great interest and that they were hopeful that, in its work, IMO would continue to take into account the uniform and consistent application of UNCLOS, and that UN DOALOS hoped to be more involved as this work proceeded, bearing in mind that it was up to the States Parties to UNCLOS to interpret that Convention.

13.9 In conclusion, the Committee agreed to:

- .1 include a new output under the work programme on "Measures to address maritime autonomous surface ships (MASS) in the instruments under the purview of the Legal Committee" on the 2022-2023 biennial agenda, and subsequently the 2024-2025 biennial agenda, with a target completion year of 2025;
- .2 invite concrete proposals to LEG 110 on the scope of the work on the new output and a draft road map to have a common understanding of the steps to be taken by the Legal Committee; and
- .3 include the item in the provisional agenda for LEG 110.

### **Proposal for a joint MSC-LEG-FAL Working Group on MASS**

13.10 The Committee considered document LEG 109/13/3 (Chairs of the Maritime Safety, Legal and Facilitation Committees) proposing the establishment of, and terms of reference for, a joint MSC-LEG-FAL Working Group on MASS to consider common gaps and themes identified during the regulatory scoping exercises conducted by the three Committees; and document LEG 109/13/5 (United Arab Emirates) proposing to include the development of a comprehensive road map as part of the draft terms of reference for the joint MSC-LEG-FAL Working Group on MASS.

13.11 In the ensuing discussion, full support was expressed for the establishment of a joint MSC-LEG-FAL Working Group on MASS in line with the proposal by the Chairs of MSC, LEG and FAL (LEG 109/13/3). In relation to the proposal by the United Arab Emirates (LEG 109/13/5) to include an additional point in the terms of reference regarding the development of a comprehensive road map, the Committee noted the explanations provided by the Chair of the Maritime Safety Committee, in particular that the original proposal was made on the understanding that the joint working group would be a subsidiary body of the three Committees and would only work on common issues affecting the work of the three Committees, or provide input upon request from the Committees. The Chair of MSC clarified that the Chairs of the three Committees, when proposing the establishment of a joint working group, did not envision that the group would oversee, monitor or supervise the MASS work of the Organization. To address a request for clarity from one delegation on what "the common issues identified by the three Committees" would be, the Chair of MSC also highlighted that the FAL regulatory scoping exercise, expected to be completed at FAL 46, should include a section on issues common to all three Committees, which could become the starting point for the joint working group.

13.12 Upon the proposal of the Chair, the Committee agreed to include a modified additional point in the terms of reference for the joint MSC-LEG-FAL Working Group on MASS to address the concerns raised by the MSC Chair. The Committee agreed that an additional point would be included before point 2.1 of the draft terms of reference to read "develop a work plan taking into account the road maps developed and updated by the three Committees".

13.13 In this regard, the Committee noted concerns raised by one delegation that revising the draft terms of reference, as proposed by the Chairs of MSC, LEG and FAL in the annex to document LEG 109/13/3, would risk delaying the work of the joint Working Group, if this additional point was subsequently not approved by the other Committees. To address these valid concerns, the Committee agreed that the additional point would be subject to the subsequent approval by MSC and FAL. Should these Committees not approve the additional point in the terms of reference, the Legal Committee agreed that the joint MSC-LEG-FAL Working Group on MASS should operate under the terms of reference as originally proposed by the Chairs of the three Committees, as set out in the annex to document LEG 109/13/3.

13.14 In conclusion, the Committee agreed to:

- .1 approve the establishment of a joint MSC-LEG-FAL Working Group on MASS;
- .2 approve the terms of reference for the joint Working Group, as set out in the annex to document LEG 109/13/3;
- .3 approve the inclusion of an additional point in the terms of reference of the joint Working Group before point 2.1 of the draft terms of reference, as set out in the annex to document LEG 109/13/3, to read "develop a work plan taking into account the road maps developed and updated by the three Committees", subject to approval by MSC and FAL;
- .4 instruct the Secretariat to make the necessary arrangements for the holding of the first meeting of the Joint Working Group as soon as possible after C 127 in July 2022, subject to MSC, FAL and the Council's approval; and
- .5 encourage Member States and observer organizations to submit proposals to the Joint Working Group on common issues.

#### **Report on the status of outputs for the current biennium (2022-2023)**

13.15 The Committee was advised that the Council, at its thirty-fourth extraordinary session, had endorsed the Committee's decisions, taken at its previous session, on outputs for the 2022-2023 biennium.

13.16 The Committee noted the information contained in document LEG 109/13/4 (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.

13.17 The Committee was invited to consider a draft report on the status of outputs for the current biennium (2022-2023), including all outputs related to the Legal Committee, prepared by the Secretariat and attached as an annex to document LEG 109/13/4. In particular, the Committee was invited to consider deleting the square brackets in the "Status of outputs for Year 1" of the present biennium, which is the year 2022.

13.18 The Committee agreed on its report on the status of outputs for the current biennium, attached as annex 3 to this report, for submission to the Council.

#### **Items for inclusion in the agenda for LEG 110**

13.19 The Committee approved the list of substantive items for inclusion in the agenda for LEG 110, as contained in document LEG 109/WP.4/Rev.1 and attached as annex 4 to this report.

#### **Meeting time of the Committee's next session**

13.20 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 2022-2023 biennium's IMO meetings, which would include two meetings of the Committee, with full interpretation services.

13.21 The Committee agreed, in view of the present workload, that the next session should be held during five meeting days with eight full sessions of interpretation.

**Audio files:** Wednesday, 23 March 2022 and Friday, 25 March 2022

### **14 ELECTION OF OFFICERS**

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

14.1 The Committee, in accordance with rule 18 of its Rules of Procedure, unanimously re-elected Ms. Gillian Grant (Canada) as the Chair and Mr. Ivane Abashidze (Georgia) as the Vice-Chair for 2023.

**Audio file:** Friday, 25 March 2022

### **15 ANY OTHER BUSINESS**

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

15.2 The Committee noted the interventions of Japan, the Republic of Korea, France, the United States, the United Kingdom, Germany and the Democratic People's Republic of Korea regarding the launch, on 24 March 2022, of intercontinental ballistic missiles by the Democratic People's Republic of Korea, which landed in the Exclusive Economic Zone of Japan.

15.3 The statements of those delegations who requested it made in connection with this matter are contained in annex 5.

**Audio file:** Friday, 25 March 2022

### **16 CONSIDERATION OF THE REPORT OF THE COMMITTEE ON ITS 109TH SESSION**

16.1 The draft report (LEG 109/WP.1) was prepared by the Secretariat for consideration and review by the Committee on Friday, 25 March 2022, after which it was re-issued on Tuesday 29 March 2022 as LEG 109/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 full working days, until 5 April 2022 at 23.59 (UTC+1).

16.2 After the resolution of comments received as described in document LEG 109/16, the report of the Committee was adopted and the session was closed at 23.59 (UTC+1) on 5 April 2022, pursuant to rule 35 of the Rules of Procedure of the Legal Committee.

16.3 The final report of the Committee was subsequently published on IMODOCS as document LEG 109/16/1.

**Audio file:** Friday, 25 March 2022

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## ANNEX 1

### GUIDANCE ON THE IMPACT OF THE SITUATION IN THE BLACK SEA AND THE SEA OF AZOV ON INSURANCE OR OTHER FINANCIAL SECURITY CERTIFICATES

1 At the thirty-fifth extraordinary session of the IMO Council, relating to the conflict in Ukraine, the Council requested that IMO committees consider ways to enhance the efforts of Member States and observer organizations in supporting affected seafarers and commercial vessels, consider also the implications of this situation for the implementation of the Organization's instruments, take appropriate action and report back to Council.

2 In accordance with this request, the Legal Committee notes the following implications for IMO instruments under its purview:

- .1 The International Convention on Civil Liability for Oil Pollution Damage, 1969 (1969 Civil Liability Convention), the Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969 (1992 CLC Protocol), the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (2001 Bunkers Convention), the Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 (2002 Athens Protocol) and the Nairobi International Convention on the Removal of Wrecks, 2007 (2007 WRC) require that State Parties issue certificates attesting that insurance or other financial security is in force which meets the requirements of the conventions.
- .2 Due to recent sanctions against Russian banks and other interests, including prohibitions on certain origin cargoes and ships from the Russian Federation, insurers or other financial security providers will be required to comply with the applicable sanctions or measures in their respective jurisdictions. The introduction of these economic sanctions may in some cases restrict the insurers or other financial security providers referred to in the certificate from processing claims or prohibit the payment of claims arising under these conventions. This could lead to the insurer or financial security provider cancelling the coverage.
- .3 The absence of insurance or other financial security in accordance with the requirements of the conventions may lead to insufficient compensation for States and victims of pollution and other incidents. It may also expose the IOPC Funds and its contributors to the risk of having to pay all of the compensation for oil spills from tankers because there is not sufficient insurance to cover the shipowner's liability.

3 Against this background, the Legal Committee recommends the following actions:

- .1 If a State Party to the following Conventions has issued certificates pursuant to article VII of the 1969 Civil Liability Convention, article 7 of the 1992 CLC Protocol, article 7 of the 2001 Bunkers Convention, article 12 of the 2007 Nairobi WRC and article 4*bis* of the 2002 Athens Protocol, the issuing State or its designated authority should ensure that it cancels the certificate in accordance with the conventions if or when they receive notification of termination of the insurance or other financial security.

- .2 In the meantime, State Parties to these conventions should continue to honour their obligations by complying with the recommendations set out in Circular Letter No.3464 and this guidance.
- .3 In particular, flag or certifying States issuing certificates based on Russian insurers or Russian financial security providers should verify that the coverage meets the criteria outlined in Circular Letter No.3464. Port States encountering certificates involving Russian insurers or financial security providers should consult with the issuing or certifying State whose responsibility is to ensure that the insurance or financial security remains adequate, as called for in the IMO liability and compensation conventions.

4 The Committee requests that Member States bring the contents of this circular to the attention of the managers of their shipping registries, port State control authorities and other interested parties.

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## ANNEX 2

### **TERMS OF REFERENCE FOR THE ESTABLISHMENT OF A STUDY GROUP ON ISSUES ARISING IN CONNECTION WITH FRAUDULENT REGISTRATION AND FRAUDULENT REGISTRIES OF SHIPS AND POSSIBLE MEASURES TO PREVENT AND COMBAT THEM**

Title of the study: Issues arising in connection with fraudulent registration and fraudulent registries of ships and possible measures to prevent and combat them.

Objective: The Legal Committee requested that the Secretariat coordinate a study to identify the issues of fraudulent registration and fraudulent registries of ships with a view to developing possible measures to prevent them, with the participation of the United Nations Conference on Trade and Development (UNCTAD), the World Maritime University (WMU), the IMO International Maritime Law Institute (IMLI) and other interested parties with the below terms of reference.

- 1 The Study Group should indicatively address the following questions:
  - .1 What are the practices and types of fraudulent registration and fraudulent registries of ships?
  - .2 Where is it occurring and under which flags? Examples of reported incidents should be provided.
  - .3 What are the reasons for and features of fraudulent registration and fraudulent registries of ships?
  - .4 What are the adverse impacts of fraudulent registration and fraudulent registries of ships?
  - .5 Is there any best practice of national, regional or international arrangements to cooperate and exchange information to combat such an issue? Examples of State practice on prevention and deterrence case should be provided.
  - .6 Who are the various stakeholders that could assist in preventing such fraud?
  - .7 How can GISIS be used to disseminate information on registries?
  - .8 Would this issue be considered as a crime or an offence? Is it national or regional or international in nature? What other international and effective legal sanctions for fraudulent registration, such as criminal punishment and administrative measures, could be imposed?
  - .9 What are the conventions, treaties and resolutions related to this issue?
  - .10 Possible preventative and combative measures going forward?
- 2 The Study Group may identify items, as necessary, for further consideration by the Study Group.
- 3 The Study Group, assisted by the IMO Secretariat, could, as required, contact Member States, through their IMO representative, for more information on cases of fraudulent registration and fraudulent registries of ships, as well as on other issues pertinent to its work.
- 4 The Study Group should submit the study to LEG 111.

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**ANNEX 3**

**BIENNIAL STATUS REPORT 2022-2023**

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		
1. Improve implementation	1.4	Analysis of consolidated audit summary reports	Annual	Assembly	MSC / MEPC / LEG / TCC / III	Council	No work requested		MEPC 61/24, paragraph 11.14.1; MSC 88/26, paragraph 10.8; C 120/D, paragraphs 7.1 and 7.2
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		

Legal Committee (LEG)									
Reference to SD, if applicable	Output number	Description	Target completion year	Parent organ(s)	Associated organ(s)	Coordinating organ	Status of output for Year 1	Status of output for Year 2	References
1. Improve implementation	1.31	Measures to prevent unlawful practices associated with the fraudulent registration and fraudulent registries of ships	2024	LEG			Extended		
2. Integrate new and advancing technologies in the regulatory framework	tbc	Measures to address maritime autonomous surface ships (MASS) in the instruments under the purview of the Legal Committee	2025	LEG			In progress		
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		MEPC 72/17, section 12; MEPC 73/19, section 13; MEPC 74/18, section 12
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		

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
5. Enhance global facilitation and security of international trade	5.13	IMO's contribution to addressing unsafe mixed migration by sea	2022	MSC / FAL / LEG			Postponed		FAL 41/17, paragraph 7.15; MSC 98/23, paragraph 16.14; FAL 43, paragraph 10.7; MSC 101/24, paragraph 19.8; MSC 104/18, para. 9.5*
6. Address the human element	6.4	Consideration of reports on the application of the joint IMO/ILO Guidelines on the fair treatment of seafarers and consequential further actions as necessary	Annual	LEG			Completed		

\* MSC 104 concurred with the decision of FAL 45 to extend the target completion year to 2022, with the aim of keeping the Maritime Safety Committee informed of developments.

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. Address the human element	6.7	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	2023	LEG			In progress		
6. Address the human element	6.8	Fair treatment of seafarers detained on suspicion of committing maritime crimes	2024	LEG			Extended		
6. Address the human element	6.9	Guidelines for port State and flag State authorities on how to deal with seafarer abandonment cases	2023	LEG			Extended		
7. Ensure regulatory effectiveness	7.1	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		MSC 76/23, paragraph 20.3; MSC 78/26, paragraph 22.12



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
7. Ensure regulatory effectiveness	7.12	Strategies developed to facilitate entry into force and harmonized interpretation of the HNS Protocol	2023	LEG			In progress		
7. Ensure regulatory effectiveness	7.17 (New)	Measures to transparently assess whether there is a need to amend liability limits	2023	LEG			In progress		
7. Ensure regulatory effectiveness	7.18 (New)	Claims Manual for the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001	2023	LEG			In progress		
7. Ensure regulatory effectiveness	tbc	Guidance for the proper implementation and application of IMO liability and compensation conventions	2024	LEG			In progress		
8. Ensure organizational effectiveness	8.1	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		
8. Ensure organizational effectiveness	8.9	Revised documents on organization and method of work, as appropriate	2023	Council	MSC / MEPC / FAL / LEG / TCC		No work requested		LEG.1/Circ.9

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 3	Endorsed proposals for new outputs for the 2022-2023 biennium as accepted by the Committees	Annual	Council	MSC / MEPC / FAL / LEG / TCC		Completed		
OW. Other work	OW 4	Advice and guidance on issues under UNCLOS relevant to the role of the Organization	Annual	LEG			Completed		
OW. Other work	OW 5	Provide advice and guidance on issues brought to the Committee in connection with implementation of IMO instruments	Annual	LEG			Completed		
OW. Other work	OW 7	Provide advice and guidance to support availability of information on comprehensive national legislation and judicial capacity-building	Annual	LEG			Completed		LEG 105/14, paragraph 11.20
OW. Other work	OW 8	Cooperate with the United Nations on matters of mutual interest, as well as provide relevant input/guidance	2023	Assembly	MSC / MEPC / FAL / LEG / TCC	Council	In progress		C 120/D, paragraphs 17(a).1-17(a).5 LEG 105/14, paragraph 11.20

Legal Committee (LEG)									
Reference to SD, if applicable	Output number	Description	Target completion year	Parent organ(s)	Associated organ(s)	Coordinating organ	Status of output for Year 1	Status of output for Year 2	References
OW. Other work	OW 9	Cooperate with other international bodies on matters of mutual interest, as well as provide relevant input/guidance	2023	Assembly	MSC / MEPC / FAL / LEG / TCC	Council	In progress		C 120/D, paragraphs 17(a).1-17(a).5

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## ANNEX 4

### **SUBSTANTIVE ITEMS FOR INCLUSION IN THE AGENDA FOR THE 110TH SESSION OF THE LEGAL COMMITTEE**

Substantive items for inclusion in the agenda of the 110th session of the Legal Committee are proposed as follows:

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

Fair treatment of seafarers:

- Provision of financial security in case of abandonment of seafarers, and shipowners' responsibilities in respect of contractual claims for personal injury to, or death of seafarers, in light of the progress of amendments to the ILO Maritime Labour Convention, 2006
- Fair treatment of seafarers in the event of a maritime accident
- Fair treatment of seafarers detained on suspicion of committing maritime crimes
- Guidelines for port State and flag State authorities on how to deal with seafarer abandonment cases

Advice and guidance in connection with the implementation of IMO instruments

- Impact on shipping and seafarers of the situation in the Black Sea and the Sea of Azov

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

Guidance for the proper implementation and application of IMO liability and compensation conventions

Measures to address maritime autonomous surface ships (MASS) in instruments under the purview of the Legal Committee

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 110th session

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## ANNEX 5

### STATEMENTS BY DELEGATIONS

#### AGENDA ITEM 4(a)

##### Statement by the delegation of Hong Kong, China

Thank you Chair.

Hong Kong, China would like to thank ILO and IMO Secretariats for their submission of document LEG 109/4(a) regarding the IMO/ILO joint database of abandonment of seafarers for the period of the calendar year 2021.

As mentioned in paragraph 2 of the document LEG 109/4(a), the accuracy of the abandoned seafarer database is critical. With this in mind, Hong Kong, China would like to provide corrected information to the Committee on the alleged abandonment case onboard the Hong Kong registered vessel "OSG BEAUTECH", which was included in the database on 25 October 2021. This record is annexed to document LEG 109/4(a), and the relevant entry is given on page 8 of the Annex.

Chair, since the outbreak of COVID-19 pandemic, many shipowners have reported to us on their difficulties in arranging crew changes due to various travel restrictions imposed by ports. This case on "OSG BEAUTECH" is no exception, where the root cause of delay in repatriation was something out of control of the shipowner.

Due to these restrictions, the three seafarers were unable to be repatriated, despite various efforts being made. When the incident was reported to the ILO, Hong Kong, China as the Flag Administration of the concerned vessel, had been working with the shipowner for several months to effectuate repatriation at the earliest opportunity. Finally, the shipowner managed to repatriate the concerned three seafarers to their home countries safely, with one in November 2021 and two in January 2022.

In fact, while the shipowner was looking for the earliest opportunity to conduct crew changes, the three seafarers were serving onboard with valid Seafarers Employment Agreements (SEA). The seafarers were supplied with necessary maintenance and were paid the contractual wages monthly in full under their SEA. Their final repatriations were arranged by the shipowner at the shipowner's account without financial burden on the seafarers.

Chair, on the basis of the aforementioned facts, Hong Kong, China believe that the case on "OSG BEAUTECH" was not an incident of seafarer abandonment as referred to in Paragraph 2 of Standard A 2.5.2 of the MLC 2006, as amended.

Chair, Hong Kong, China treats abandonment of seafarers seriously, and the 2014 amendments to MLC 2006 are applicable to ships registered in Hong Kong, China well before the alleged case of seafarer abandonment occurred.

For records purpose, we are separately communicating with the IMO Secretariat for correcting this entry in the seafarer abandonment database.

We would like to request the IMO Secretariat to attach this statement to the meeting report, and we will send in this Statement by email to the Secretariat.

Thank you Chair.

#### AGENDA ITEM 4(b)

##### Statement by the delegation of the Republic of Korea

First of all, the Republic of Korea (hereinafter "ROK" or "Korea") expresses our sincere regret for the hardship of the Russian seafarers who are staying in ROK due to the investigation of the explosion accident of the Stolt Groenland occurred at the port of Ulsan.

Since the accident was the most catastrophic explosion in the port under the jurisdiction of ROK, it caused considerable damages to the fire fighters who were dispatched to the scene, and financial damages to the port facilities, and the vessels in the vicinity of the port.

With regard to the accident, there are ongoing investigation and judicial trial for the seafarers in accordance with Korean law. In addition, the mobile phone owned by a seafarer is being investigated as an evidence in order to determine the cause of the accident in the judicial proceeding.

In case of criminal investigation and trial regarding maritime accident, it is general for departure suspension order to be taken regardless of nationality in accordance with the Immigration Act. The disposition can be disputed by objection and the seafarers of the current case have actually gone through such review procedure.

Unfortunately, there was a difficulty in regard to the revocation of departure suspension, considering the scale of the accident which caused human loss and economic damage, and the situation that agreement and compensation with the victims were not completed at the time.

However, the ROK strove to provide much convenience for the seafarers who does not have domestic residence during their stay in Korea for the purpose of the investigation. In particular, we provided interpreters in order to expedite the confirmation of the statement and facts for the investigation, and took several measures to ensure their right to defense in criminal procedure such as proceeding with the investigation without detention so that they could stay at a hotel.

Korean investigative agencies and courts having been making their best efforts to guarantee a fair trial and to prevent unfair treatments towards the seafarers in the proceedings related. According to the request of the Russian diplomatic mission about prompt closure of the case, the prosecution coordinated the investigation schedule for the seafarers via an interview with the Russian diplomatic mission, and strove to expedite the judicial procedure while dealing with the circumstances of the accident and damage very carefully. The court is also striving for a prompt ruling by setting the date of sentence immediately after having a hearing once.

Further, related agencies such as investigative agencies and courts, are amicably being in contact with the seafarers while taking the situations, causes of the accident, the scale of the damage into account comprehensively. Owing to the active cooperation of the seafarers, the judicial procedure is proceeding smoothly and the court of first instance will make its decision in the coming days.

### **Statement by ITF**

Chair,

The ITF and Seafarers' Rights International have made repeated interventions at this Committee regarding the situation of seafarers who have been detained following a maritime accident, often in circumstances that we consider unfair.

It is of serious concern to us that such cases continue to occur.

Our paper to this Committee, LEG 109/4(b) draws attention to one case where three crew members were detained and charged following a cargo tank explosion and fire on a chemical tanker in 2019.



Since submission of our paper, the hearing of the three crew members involved has taken place. The Master and Chief Officer were due to be sentenced on 10 March 2022, but this has been postponed to 24 March 2022.

The maritime accident occurred in September 2019 and the matter is not yet resolved. The crew therefore have been detained for almost 30 months. Whilst there may have been reasons for this delay during Covid-19, we consider that detention of seafarers for over two years is unfair.

Generally speaking and without reference to this particular case, we consider there is a risk that if States are unable to conduct investigations in an expeditious way, and seafarers are detained for prolonged periods, then crew could feel that they have no option but to plead guilty to seek an end to the situation they find themselves in. We consider this is unfair.

Seafarers are often detained without bail because they are considered to be flight risks since mostly they will not have permanent addresses in the country where they are detained. We consider this is unfair.

When seafarers are detained, shipowners do not always support them throughout the investigation and legal processes. Crew can be abandoned by their employers and left to the mercy of local legal aid systems, sometimes with no legal representation. Again we consider this is unfair. There should in our view be a mechanism to guarantee legal assistance.

Chair, we would like to remind members of the Committee that IMO Assembly Resolution A.987(24) invites Member Governments and non-governmental organisations to record instances of unfair treatment of seafarers in the event of maritime accidents.

We believe that there is an urgent need for all Members of this Committee to bring such cases to the attention of this Committee.

Thank you Chair

## **AGENDA ITEM 5**

### **Statement by the delegation of Ukraine**

Madam Chair,

The UN Charter at the present time, because of the Russia's role in the Security Council, has become a mockery of common sense.

Let's be aware – Russian actions are nothing but a contempt of the IMO Convention, as they go in contrast with the goals of the establishment of the Organization.

Needless to say, the aggression of the Russian Federation against Ukraine, which has acquired unprecedented proportions since February 24 this year, has already led to the violation of all possible documents concluded under the IMO auspices and created implications for their implementation not only for my country but also for other Black Sea coastal states and beyond.

And at that time, the aggressor state, on completely conventional, legal conditions, is still a part of the supreme governing body – the IMO Council.

A state, whose fleet is prohibited from entering the ports of civilized states, whose governmental classification society was expelled from the IACS in disgrace, a state that destroyed the ports of a neighbouring country, captured or shot neutral merchant vessels, and continues to intimidate its crews, mined vast sea areas.

Today's threat is much more serious than the problems that we solve daily in the field of shipping. And the source of this threat to everyone, I emphasize, to all people on Earth, is Russia.

Madam Chair,

Unfortunately, we observe attempts to return to the practice of a formal attitude to global maritime problems, and sometimes a desire to move away from solving them as a whole.

Let us not put ourselves in a situation where the whole maritime community becomes a hostage to a group of thugs, which by occasion call themselves the Russian Federation. It is already clear that the time for cosmetic corrections has passed.

We call on all IMO member states to show determination Ukraine and support the development of measures not only to deprive the aggressor of the right to be present in the Council but to expel it completely from our Organization.

Such political determination is not something empirical. It was a driving force behind the creation of the IMO (then IMCO); acceptance to its ranks of those states, not even members of the UN at that time; gradual adoption of new editions of SOLAS; the appearance of new maritime security issues on the IMO's agenda in October 1985 after the hijacking of the Italian ocean liner "Achille Lauro"; the appearance of a comprehensive package of maritime security measures in 2002, including the ISPS Code and SUA Protocols, after the horrifying 9/11 terrorist attacks; the joint approval by the IMO and the ILO of the 2006 Maritime Labour Convention. It is also worth mentioning that the problem of piracy, which the IMO essentially renounced to deal with from the very beginning, has grown into a daily effective work of the Organization.

Finally, let's recall where our Legal Committee came from? It was originally established in 1967 to address the legal issues caused by the Torrey Canyon accident, and later became a permanent IMO body to resolve any, I repeat, any legal aspects that fall within the Organization's remit.

The proposals set out in the document in Annexes to LEG 109/5 / Add.1 are clear and logical. We are convinced that they can and, most importantly, should become a starting point for transforming the IMO into a qualitatively new platform for the functioning of all its main and working bodies, in accordance with today's realities.

We urge the IMO Members to give our proposals a thorough consideration. The response to Russia's actions must be urgent and inevitable. The recent decision of the Danube Commission is a good example to follow.

Madam Chair,

This delegation is thankful to all those Member States who have lent support to Ukraine and continue to do so not only by their words but also by deeds.

We call on others to back these endeavours on a national basis and to adopt drastic measures: imposing new powerful sanctions against Russia; closing your ports for Russia-flagged or affiliated ships; banning your ships from entering Russian ports; ceasing cooperation with Russian companies in the maritime sector or provision of our own territory for their operation.

We once again applaud the IACS for its decision to exclude the notorious Russian Maritime Register of Shipping (RMRS), widely known for its ties with Russian intelligence. We are also grateful to our partners for expanding their sanctions regimes to include this and many other Russian companies, which support and fuel the aggressive war.

Madam Chair, distinguished delegates,

Before raising questions about how all the outlined measures may affect the Russian maritime sector or the population of this rogue state in general, please keep in mind that, according to recent polls, over 70% of Russians openly endorse Putin's aggressive war against Ukraine and pledge their support for the war crimes and crimes against humanity committed by the occupying forces.

Since the very start of the Russian invasion, its forces practice looting, deliberate destruction of residential buildings, shootings of columns with people trying to evacuate from the cities, where fierce fighting is taking place, deliberate shelling of settlements where there are no military facilities, destruction of civilian and critical non-military infrastructure, taking hostages, rapes and other crimes.

Over 3,5 thousand objects of civilian infrastructure were destroyed, including 400 schools and universities, over 100 hospitals. Millions of internally displaced persons, with over 3 million looking for a refuge in neighbouring countries. Thousands of civilians are dead and wounded. Every day, at least 5 children die at the hands of Russian invaders. And as of today, more than 100 children are dead, and hundreds seriously injured. Think about it when you come home after a hard day's work and hug your kids.

Given these facts, I ask you – would you still prefer to hide behind standard expressions of deep concern, requests to continued monitoring and planning unnecessary formal consultations, while still doing blood-soaked business with Russia, or shall we act jointly and vigorously to eliminate the Russian threat?

We are convinced that by giving frank answers to these questions, all of you will finally realize the role the IMO must play in this situation, not just for the sake of Ukraine but for our common secure future.

We kindly ask to publish this statement as an annex to the Committee's report.

I thank you.

### **Statement by the delegation of France**

Madame la Présidente,

D'emblée, au nom de l'Union européenne, la France souhaite exprimer sa pleine solidarité avec l'Ukraine et le peuple ukrainien. Nous condamnons avec la plus grande fermeté l'acte d'agression non provoqué et injustifié de la Fédération de Russie contre l'Ukraine, qui viole grossièrement le droit international et la Charte des Nations unies. Nous exigeons que la Fédération de Russie cesse immédiatement ses actions militaires, retire toutes ses troupes de l'ensemble du territoire de l'Ukraine et se conforme à la résolution de l'Assemblée générale des Nations unies intitulée "Agressions contre l'Ukraine", soutenue par 141 États lors de la 11e session extraordinaire d'urgence.

Madame la Présidente,

À l'OMI, la 35e session extraordinaire du Conseil a adopté il y a dix jours par consensus une déclaration condamnant fermement la violation par la Fédération de Russie de l'intégrité territoriale et de la souveraineté de l'Ukraine, y compris de ses eaux territoriales, qui représente un grave danger pour la vie et un risque sérieux pour la sécurité de la navigation et l'environnement marin. Cette déclaration a souligné les conséquences désastreuses de cette situation sur la sécurité et le bien-être des marins et sur la sécurité du transport maritime international, ainsi que la nécessité de préserver les chaînes d'approvisionnement qui font vivre les autres nations et le peuple ukrainien. En conséquence, les comités de l'OMI ont été invités à examiner les implications de cette situation pour la mise en œuvre des instruments de l'Organisation, et à prendre les mesures appropriées.

C'est pourquoi la France souhaite suggérer l'introduction d'un point spécifique à l'ordre du jour du comité juridique afin de traiter de l'impact sur la navigation et les marins de la situation en mer Noire et en mer d'Azov. Nous pensons qu'il est essentiel que ces questions soient examinées de manière systématique et approfondie afin que les mesures appropriées soient prises en ce qui concerne la mise en œuvre des instruments de l'OMI.

Madame la Présidente,

Cet impact peut varier et prendre différentes formes. En ce qui concerne le comité juridique, un thème spécifique a été identifié en relation avec la question des assurances. Les Conventions CLC et Bunker, ainsi que les Conventions d'Athènes et de Nairobi exigent que les États parties délivrent des certificats attestant qu'il existe une assurance ou une autre garantie financière répondant aux exigences des conventions. En raison de contraintes financières, il se peut que les assureurs et les fournisseurs de garantie financière russes ne soient pas en mesure de remplir leurs obligations au titre de ces conventions de l'OMI. La situation peut également, dans certains cas, empêcher l'émetteur de la carte bleue ou du certificat d'assurance de traiter les demandes d'indemnisation ou interdire le paiement des demandes découlant de ces conventions. Cela pourrait conduire l'assurance ou la garantie financière à annuler la couverture.

Si un État partie aux conventions suivantes a délivré des certificats en vertu de l'article VII de la Convention de 1992 sur la responsabilité civile, de l'article 7 de la Convention sur les hydrocarbures de soute, de l'article 12 de la Convention sur l'enlèvement des épaves et de l'article 4bis du Protocole d'Athènes de 2002, l'État émetteur ou son autorité désignée doit veiller à annuler le certificat conformément aux conventions si ou lorsqu'il reçoit une notification de résiliation de la carte bleue ou du certificat d'assurance de la part de l'assureur ou du fournisseur de garantie financière.

Dans l'intervalle, les États parties aux conventions internationales devraient continuer à honorer leurs obligations en se conformant aux recommandations énoncées dans la lettre circulaire n° 3464 et dans les présentes directives. En particulier, les États du pavillon qui délivrent des certificats reposant sur des assureurs russes ou des fournisseurs de sécurité financière russes devraient vérifier que la couverture répond aux critères énoncés dans la lettre circulaire n° 3464. Les États du port qui rencontrent des certificats impliquant des assureurs ou des fournisseurs de garantie financière russes devraient consulter l'État émetteur ou certificateur pour s'assurer que l'assurance ou la garantie financière reste adéquate, comme le prévoient les conventions de l'OMI en matière de responsabilité.

La France souhaite que ce Comité donne son avis et établisse des lignes directrices sur les certificats d'assurance. Nous suggérons qu'un projet de document soit publié en tant que J Paper, et qu'un groupe de travail soit mis en place au cours de cette session afin de finaliser

une circulaire aux Etats membres avec des lignes directrices sur les certificats d'assurance. Par ailleurs la France prend bonne note du document LEG 109/5/Add.1 soumis par l'Ukraine qui sera renvoyé au Comité de la Sécurité Maritime et au Conseil, comme proposé à l'article 9 du document.

Merci Madame la Présidente.

### **Statement by the delegation of Ukraine**

Madam Chair,

By its decision of the 35 C.ES has highlighted the need for establishing "blue safe maritime corridors" to evacuate vessels stranded in Ukrainian seaport after the start of Russian full-scale invasion. This work has been already started by the IMO Secretariat and Ukraine pledged its willingness to cooperate on this track.

Yet, following facts should be taken into the account.

The effective implementation of this process could be only available if the Russian Federation ceases the military hostilities, withdraws its troops from the region, stops naval blockade, and ensures that the internationally promulgated sea routes are free to operate. There are several implementation issues beyond those listed above.

Firstly, the unpreparedness of many ships to leave the ports (many of those are no longer able to do this in view of the fact that their crews have been reduced to a minimum, as their members evacuated in the early days of Russian invasion).

Meanwhile, the Ukrainian port authorities, together with the agents, supply the remaining crews of the ships with water and food. This is happening against the background of the fact that the Russian occupying forces continue to terrorize the local population and loot in the temporarily occupied territories, exporting food and other materiel to the Russian Federation. Secondly, the minefields at sea that the Russian navy has placed, and by no surprise the Russian Federation tries to shift the responsibility for this onto Ukraine.

The possible solution to the last problem would be to organize a joint naval-marine humanitarian operation of Black Sea coastal states like Ukraine, Turkey, Bulgaria and Romania in order to carry out mine-sweeping actions. To ensure the effectiveness of these activities, States should also set up an air reconnaissance group to assist the naval units in their demining operations.

The purpose of creating such naval and air groups should be not only to demine the Black Sea, but also to create safe conditions for the evacuation of dozens of merchant ships from different ports of Ukraine.

These actions are in line the obligations of the coastal states to ensure the safety of shipping and other types of maritime activities in their territorial sea and EEZs.

At the same time, we ask the NATO members to consider deploying the Standing NATO Mine Countermeasures Group 2 to facilitate this process.

We kindly ask to publish this statement as an annex to the Committee's report.

I thank you.

### **Statement by the delegation of Canada**

Thank you Chair.

As we said at last week's Council session Canada condemns in the strongest possible terms Russia's egregious attack on Ukraine.

This invasion is not just an attack on Ukraine. This is an attack on international law, democracy, freedom, and human rights.

The invasion also severely threatens the safety of and security of merchant shipping, the protection of the marine environment, the lives of seafarers and the integrity of global supply lines.

Russia must be held accountable for its aggression in Ukraine. Canada has taken swift action to ban any ship that is Russian registered, owned, operated or chartered from docking in Canada or passing through our internal waters. And we will not stop there.

In keeping with the direction of the Council for each committee to consider the implications of the Russian Federation's invasion the implementation of its instruments, Canada also supports the proposal of France for the Legal Committee to provide advice and guidance related to certificates issues in accordance with the IMO Conventions at LEG 109. This guidance could build on what is in Circular Letter No. 3464.

We believe that this guidance is urgently needed as it is essential for upholding the polluter-pays principle and ensuring that victims of a marine incident can receive compensation for which they are entitled to.

Should sanctions against Russia result in the insurance or financial security no longer satisfy the requirements of the Conventions, the issuing or certifying State of the certificate should cancel the certificate in accordance with the Conventions.

I ask that my Statement be attached to the record of decision.

### **Statement by the delegation of the United States**

The United States thanks the distinguished delegation of Ukraine for its paper LEG 109/5, and we note the concerns it raises regarding Russia's unlawful actions and its premeditated, unprovoked, and unjustified war in Ukraine, extending to the maritime areas in the Black Sea and Sea of Azov. We would also like to align ourselves with the comments made by Canada and France.

The United States recalls the recent decisions of the IMO Council's thirty-fifth extraordinary session, strongly condemning the Russian Federation's violation of the territorial integrity and the sovereignty of Ukraine, extending to its territorial waters, which is inconsistent with the principles of the Charter of the United Nations and the purposes of the IMO as set forth in Article 1 of the Convention.

The United States expresses grave concern regarding Russia's war of choice against Ukraine. In recent days, Russia has increased shelling in Ukraine, striking hospitals, demolishing schools, leveling civilian infrastructure, and killing hundreds of civilians. The United States deplores these attacks, as well as the attacks of the Russian Federation aimed at commercial vessels, threatening maritime safety and security in the region, and the safety and welfare of seafarers and the marine environment.

We again strongly condemn Russia's unlawful efforts to impede access to the Kerch Strait and Sea of Azov and demand that Russia respect Ukraine's sovereignty and territorial integrity within its internationally recognized borders, extending to its territorial waters. Specifically, the United States condemns the suspension of innocent passage in territorial sea areas in the Black Sea.

We call on Russia to withdraw its forces from Ukraine and respect its obligations under relevant international treaties and conventions.

Thank you, Chair.

### **Statement by the delegation of the United Kingdom**

Thank you, Chair

The United Kingdom, along with our international partners, stand united in condemning the Russian government. Russia's assault on Ukraine is an unprovoked, premeditated attack against a sovereign democratic State which constitutes a flagrant violation of international law and the international rules-based order. The UK remains fully committed to upholding the sovereignty and territorial integrity of Ukraine within its internationally recognised borders.

As a Permanent Member of the UN Security Council, Russia has a particular responsibility to uphold international peace and security. Instead, it is violating the borders of another country and its actions are causing widespread suffering.

The Russian Government has shown that it was never serious about engaging in diplomacy – it has deliberately worked to mislead the world, in order to mask its carefully planned aggression.

As the UN Secretary-General has said, such unilateral measures conflict directly with the United Nations Charter – the use of force by one country against another is the denial of the principles that every country has committed to uphold.

The UK condemns these actions and we call for the Russian Government to cease its military actions in Ukraine and immediately de-escalate the situation.

I thank France for highlighting the issue concerning Russian insurers and Russian security providers. The UK fully supports the proposal for a circular to be produced and encourage the secretariat to draft a J paper and establish a group to discuss the matter further.

Finally Chair, the UK is steadfast in standing with the people of Ukraine in this moment of agony. We are joined in our outrage by friends and allies around the world. We will work with them – for however long it takes – to ensure that the sovereignty and independence of Ukraine is restored.

Thank you, Chair

### **Statement by the delegation of Spain**

España condena en los términos más enérgicos la agresión militar no provocada e injustificada de la Federación de Rusia contra Ucrania, que viola gravemente el derecho internacional y la Carta de las Naciones Unidas y, socava la seguridad y la estabilidad europeas y mundiales, así como la seguridad marítima y de los marinos en el mar Negro y mar de Azov.

Demandamos a la Federación de Rusia el cese de las acciones militares y la retirada de tropas de territorio ucraniano.

Nos gustaría aprovechar esta oportunidad para expresar nuestra más sincera solidaridad con el pueblo ucraniano

En línea con las decisiones adoptadas por el CE 35 España apoya la propuesta de Francia de incluir un punto específico en la agenda del Comité jurídico que trate el impacto en el transporte marítimo y la gente de mar como consecuencia de la situación en el Mar negro y mar de Azov.

Igualmente, apoyamos la propuesta de Francia en relación con la elaboración de un documento J y el establecimiento de un grupo de trabajo para que el comité pueda finalizar unas directrices en relación con la emisión de los certificados de seguro.

#### **Statement by the delegation of New Zealand**

Thank you, Madam Chair,

New Zealand condemns in the strongest possible terms Russia's invasion of Ukraine. It is a clear act of aggression, a blatant breach of Ukraine's sovereignty and territorial integrity, and a violation of international law.

New Zealand recognises that Russia's invasion of Ukraine is putting the safety and security of all maritime transport in the region at risk and is endangering the life of seafarers on board merchant ships sailing near and in the Black Sea and the Sea of Azov waters.

New Zealand supports the proposal made by France to introduce a specific agenda item at the Legal committee in order to deal with the impact on shipping and seafarers of the situation in the Black sea and the Sea of Azov.

New Zealand also supports the proposal of France to establish guidelines on insurance certificates and that a working group is set up during this session in order to finalise the circular.

We ask for the statement to be attached to the report.

Thank you Chair.

#### **Statement by the delegation of the Netherlands**

The delegation of the Netherlands supports the intervention made by France.

As we have stated in the Council Extraordinary session, like many world leaders, our Dutch Prime minister and our Foreign Secretary have condemned the Russian invasion of Ukraine in the strongest possible terms. This unprovoked act of aggression is a serious violation of Article 2(4) of the UN Charter, which prohibits the threat or use of force against the territorial integrity or political independence of any State.

We have seen the impact of this aggression on shipping, seafarers and the marine environment in the Black Sea and the Sea of Azov.

The IMO is the organization for co-operation among Governments in the field of regulation and practices relating to the safety at sea and protection of the marine environment. We therefore should act and work together on practices which increase the safety of ships and seafarers. This also includes guidance of insurance issues, as proposed by France.

We ask that this statement will be attached to the report.



### **Statement by the delegation of Portugal**

Portugal fully and strongly supports the intervention made by France and also supports the request for a new output and a set-up of a working group.

### **Statement by the delegation of Australia**

Thank you Chair.

Australia associates itself with the interventions made by France, the United Kingdom, the United States, Canada and others.

Australia is a strong and consistent supporter of Ukraine's sovereignty and territorial integrity. Australia condemns Russia's unprovoked, unjustified and unlawful invasion of Ukraine in the strongest possible terms. It is a gross violation of international law, including the Charter of the United Nations.

Following Russia's invasion of Ukraine, the Russian Navy launched an amphibious assault on Ukraine through the Sea of Azov, bringing thousands of naval personnel ashore. At least three merchant ships have been hit by Russian attacks in the Black Sea.

Russia's actions present an immediate and ongoing threat to the safety and security of international shipping. The safety of ships, seafarers and port workers are of the utmost importance. We urge Russia to ensure the welfare of seafarers and the safety of ships, respect the territorial rights of Ukraine, and implement relevant instruments adopted under the IMO. Australia fully supports the proposals made by the French delegation, including the proposal for a new specific agenda item on the situation in the Black Sea and the Sea of Azov, and the development of a circular regarding Russian insurers and security providers.

At the IMO Council's thirty-fifth Extraordinary Session, Australia supported Ukraine's proposal for consideration of amendments to the IMO Convention. We would support further consideration of that proposal at the upcoming 127th Session of the IMO Council.

Thank you.

### **Statement by the delegation of Ukraine**

Madam Chair,

With regard to the Russian delegations' allegations concerning the "unsubstantiated" statements made by the delegation of Ukraine, we would like to state the following.

There are three types of lies: simple, shameless, and lies of the government of the Russian Federation, including of its representative to the IMO.

We have just received a message from Odessa where today Russian navy vessels conducted a heavy bombardment of shore facilities and residential areas. This is what Russia calls "doing everything possible for the safe evacuation of ships".

This is nothing more than a provocative actions, specifically for today's IMO meeting, with the intention of undermining the implementation of the Council's decisions. Same happened during these weeks in Mykolaiv, Berdiansk and Mariupol.

To make you all aware, who is behind the shellings of cities and ports in the Black Sea and the Sea of Azov, Ukraine stands ready to share video evidence of these crimes.

I thank you.

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

Российская Федерация хотела бы подтвердить создание гуманитарного безопасного морского коридора в Черном море. Мы также хотели бы отклонить любые необоснованные обвинения и инсинуации, выдвинутые против этих действий. Эти действия соответствуют решениям 35-го внеочередного заседания Совета. Безопасность торговых судов и их экипажей требует срочных мер, не оправдывающих их отсрочки, как это было предложено делегацией Украины. В этой связи еще раз подчеркиваем, что Российская Федерация делает все возможное для обеспечения безопасности судов и свободы судоходства.

В практическом плане создан гуманитарный безопасный морской коридор протяженностью 80 миль в Черном море, простирающийся в юго-западном направлении от указанного района сбора. Все торговые суда в этом районе могут использовать этот коридор для выхода из украинских портов. В то же время призываем все заинтересованные стороны, в том числе украинскую сторону, предпринять все необходимые шаги для обеспечения безопасного выхода торговых судов из указанных портов.

Дополнительно необходимо отметить, что то же самое уже сделано в Азовском море, где торговым судам были обеспечены пути для безопасного выхода из портов и продолжения запланированных рейсов. Этот вопрос координируется с Секретариатом ИМО. Мы будем держать государства-члены ИМО в курсе развития ситуации.

The Russian Federation would like to confirm that the blue safe maritime corridor is being set up in the Black Sea. We would also like to dismiss any unjustified allegations and insinuations presented against these actions. These actions correspond to the decisions of the 35-th extraordinary session of the Council. The safety of merchant vessels and their crews require urgent measures not warranting their postponement as was suggested by the delegation of the Ukraine. In this regard we emphasize once again that the Russian Federation does its utmost to promote safety of ships and freedom of navigation.

In practical terms the safe 80-miles long humanitarian maritime corridor has been created in the Black Sea stretching in the southwest direction from the indicated assembly area. All merchant vessels in the area may use this corridor to leave the Ukrainian ports. At the same time we call on all relevant stakeholders, including the Ukrainian side, to take all necessary steps to provide for the safe departure of merchant vessels from the said ports.

Additionally it is necessary to highlight that the same has already being done in the Sea of Azov where the merchant vessels had been provided with the ways for the safe departure from ports and proceed further on their planned voyages. These actions had been coordinated with the IMO Secretariat. We will keep IMO Member-States updated on this issue.

**Statement by the delegation of Ukraine**

**Statement by the delegation of Ukraine  
at 109<sup>th</sup> session of the Legal Committee  
(25/03/2022)**

**Madam Chair,**

Ukraine would like to express its utmost concern about the Russian Federation's recent announcements in its state media about the establishment of humanitarian corridors at sea to evacuate ships from Ukrainian ports starting from 25 March 2022.

These actions of the Russian side are nothing but a provocation and an attempt by the aggressor state to whitewash its name. Any agreement on evacuation corridors should be reached during the negotiations between Ukraine and Russia, facilitated by the IMO Secretary-General, as it was called for in the decision of the 35th extraordinary session of the IMO Council. None of this has happened to this day. Attempts to unilaterally implement this bold project and persistent calls of the Russian navy for all ships on the open channel to report their position and leave the ports immediately using these corridors may indicate an intention to endanger civilian ships, including by using them as a human shield for the offensive operation.

As this delegation noted on Monday, the international community has no confidence in Russia's readiness to stop the hostilities and allow ships to safely navigate in the area and preserve the security of international shipping, including the supply chains providing necessary food and medicines to the people of Ukraine. The current security situation in the region and the real threats of mines the Russian navy set up on sea routes in the Black Sea also prevent us from achieving these goals.

Another evidence of Russia's lies are the shellings of a Ukrainian evacuation train with civilians on 24 March 2022, and the regular bombings of Mariupol, Kharkiv, and Chernihiv even during the operation of the mutually agreed humanitarian corridors.

Let me also remind you that Russia is brutally violating a binding Order of the International Court of Justice of 16 March 2022. Russia was ordered to suspend the military operations commenced on 24 February 2022 and ensure that any military or irregular armed units which may be directed or supported by it, as well as any organizations and persons which may be subject to its control or direction, take no steps in furtherance of the military operations. This also includes the actions at sea.

**I thank you.**

## **AGENDA ITEM 6**

### **Statement by the delegation of Ukraine**

#### **Statement by the delegation of Ukraine under a.i. 6 (comments on document LEG 109/6) (22/03/2022)**

**Madam Chair,**

We would like to thank the United States for the presentation of this paper, and to completely endorse definition of "false documents" in three-point hypostases.

Ukraine's position has always been that the measures to prevent unlawful practices associated with the fraudulent registration are of the utmost importance. It is with particular concern that we perceive deliberate manipulations of AIS data in order to change relevant identification information, as well as to reflect completely different vessel in such a data.

While viewing the proposed terms of reference for the establishment of a study group, notably set of questions, we would make a logistical assumption that this list is silent on degree of responsibility for the crimes committed in this sphere. With that respect this delegation suggested the inclusion of meaningful additional question in the proposed roster concerning mechanisms available to ensure accountability for the committed crimes.

**I thank you.**

## **AGENDA ITEM 8**

### **Statement by UNCTAD**

Madame Chair, distinguished delegates.

Document LEG 109/8 was submitted in response to the Committee's request for "concrete proposals to LEG 109 on the scope of the work on the new output" (LEG 108/16/1 at para. 13.11). It already includes a detailed 24 page text of a Draft Claims Manual text, set out in the Annex. This focuses on direct claims against shipowners or their insurers and is closely modelled after the IOPC Funds' Claims Manual. We would like to express our appreciation to the delegations involved, for all their work in preparing such a detailed document.

Given the length and detail of the proposed Draft Claims Manual document, it is not possible to provide considered comments here. However, we would like to provide some brief comments regarding the scope of the work, in particular from the perspective of developing countries.

Liability and compensation for bunker oil pollution damage is a matter of particular concern for vulnerable developing countries, including Small Island Developing States, that rely heavily on fisheries, aquaculture and tourism, and may be exposed to a bunker oil spill from ever larger vessels calling at their ports, or transiting in proximity to their coasts. From the perspective of claimants, adequate compensation for any losses sustained is a priority, as is clarity regarding the amount of compensation that may be available.

Against this background and bearing in mind the main aim and purpose of the proposed Claims Manual, we think that further consideration should be given to some of the key issues that are of particular interest to claimants. This would include matters relating to limitation of shipowner liability under international agreements referred to in Art 6 of the Bunkers Convention, in particular the 1976 LLMC, and its 1996 Protocol; the differences between direct claims against

shipowners or their mutual insurers, and formal legal proceedings under the Bunkers Convention against any of the parties falling within the definition of "shipowner", as well as related considerations and procedural issues. Moreover, the Claims Manual should be transparent in respect of issues that may be subject to differing legal interpretation or controversial, such as the question of whether some claims might be considered to fall outside the types of claims subject to limitation under the LLMC. Further information / guidance relevant to environmental damages and recovery of costs of reinstatement of the environment based on experience of the IOPC Funds would also be particularly valuable for potential claimants. As concerns reliance on the IOPC Funds Manual, due account should be taken of the specific differences highlighted in the report of the last meeting (LEG 108/16/1 at para. 13.10). In this context, it is also worth recalling that the 1992 FUND Convention, unlike the Bunkers Convention, does not govern the liability of the shipowner, and only comes into play where compensation from the shipowner under the 1992 CLC is unavailable or inadequate. Finally, further work would benefit from broad consultation with stakeholders representing claimants' and environmental interests, as well as academic experts. Active participation in this initiative by countries concerned about being affected by a bunker oil spill should also be encouraged.

Thank you very much.

#### **AGENDA ITEM 10**

##### **Statement by the delegation of the Islamic Republic of Iran**

109/10/1 The Islamic Republic of Iran fully supports the document. Preparing consolidated text of each international convention is one of the duties of the depositary. Moreover, because of the application of the tacit acceptance procedure and the frequency of the IMO Conventions amendments, it deems necessary to take prompt action for consolidating the texts with the assistance of the secretariat. As referred to in paragraph 13 of LEG 109/13, one of the reasons that could hinder the proper enforcement of international conventions is the non-consolidation of such conventions. The access to consolidated text of conventions could help the parties in taking ample action in their legal system, leading to proper enforcement of those documents. Moreover, the access to consolidated texts of IMO conventions should be free of charge for state parties. This delegation asks the Committee to annex this statement to the final report.

#### **AGENDA ITEM 13**

##### **Statement by the delegation of Greece**

This delegation would like to refer to paragraph 11.4 of the working document LEG 109/13 and the reference made to ship "ALFA 1" stating that "A certificate in accordance with the CLC 1992 was issued to the ship despite this underinsurance situation".

This is not accurate since it is understood from its wording, that the said certificate was issued by fault of the Port Authority of Piraeus. What happened is that the CLC certificate was issued by the competent port authority following a blue card presented by the shipowner. That blue card was issued by the insurer, under the provisions of the CLC 1992, stating his compliance with the provisions of the relevant convention and with no indication for underinsurance of the above ship.

## **AGENDA ITEM 15**

### **Statement by the delegation of Japan**

On March 24th, North Korea launched a ballistic missile, which is believed to be a new ICBM-class, without any prior notification. Japan expresses serious concern regarding the launch which is critically problematic and dangerous to the safety of ships. In particular, the recent ballistic missile landed in Japan's Exclusive Economic Zone (EEZ), which is absolutely unacceptable for Japan.

Japan strongly condemns repeated launches of ballistic missiles including the most recent one on 24th by North Korea which are the violation of the UN Security Council Resolutions and seriously threatening the safety of international shipping in the region.

In order to ensure the safety of international shipping, Japan continues to work closely with the IMO and relevant countries to urge North Korea to implement the relevant UN Security Council Resolutions and the IMO Council decision of 2017.

### **Statement by the delegation of the Democratic People's Republic of Korea**

Thank you, Madam Chair,

Good morning, distinguished delegates,

Our missile launches were conducted in a vertical launch mode based on scientific calculation, so there had been no slight adverse impact on the safety of neighbouring countries and international shipping.

Instead, this delegation would like to highlight that the greatest and real threats to the safety and security in Korean peninsula waters, are from the United States.

Even recently, the U.S. and Republic of Korea have increased hostile military tension against the DPR Korea by carrying out their frequent attack weapon tests and aggressive joint military exercises.

The DPR Korea's missile launches are exercises of the right to self-defence in order to modernize its national defence capability and defend the destiny of the country and the life of our people.

Regarding implementation of the UN Security Council Resolution against the DPR Korea, we have never acknowledged the partial and illegal UN "resolution" which seriously infringes upon the right to existence and development of sovereign states.

This delegation would like to reiterate that this forum is not appropriate for discussing political issues like the implementation of the UN Security Council Resolution because it is beyond the mandate of the IMO.

In this meaning, this delegation totally rejects the previous interventions and strongly suggests that such discussion should be restrained because it makes our virtual meeting inefficient.

Thank you, Madam Chair,