

LEGAL COMMITTEE  
110th session  
Agenda item 18

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## REPORT OF THE LEGAL COMMITTEE ON THE WORK OF ITS 110TH SESSION

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## 1 INTRODUCTION

1.1 The Legal Committee held its 110th session at the IMO Headquarters from 27 to 31 March 2023, chaired by Ms. Gillian Grant (Canada). The Vice-Chair, Mr. Ivane Abashidze (Georgia), was also present.

1.2 The session was attended by delegations from Members and Associate Members, representatives from the United Nations and specialized agencies, observers from intergovernmental organizations with agreements of cooperation, and observers from non-governmental organizations (NGOs) in consultative status, as listed in document LEG.110/INF.1.

1.3 The session was also attended by the Chair of the Council, Mr. Víctor Jiménez (Spain), the Chair of the Marine Environment Protection Committee, Dr. Harry Conway (Liberia), and the Chair of the Sub-Committee on Human Element, Training and Watchkeeping, Mr. Haakon Storhaug (Norway).

### **The 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-\(LEG\)-110th-Session,-27---31-March-\(Opening-remarks\)-.aspx](https://www.imo.org/en/MediaCentre/SecretaryGeneral/Pages/Legal-Committee-(LEG)-110th-Session,-27---31-March-(Opening-remarks)-.aspx)

1.5 In expressing sympathies for victims of the devastating earthquake in Türkiye and the Syrian Arab Republic, the Secretary-General also took the opportunity to remind delegations of the Organization's Appeal for Funds as a mechanism to facilitate donations to those affected, on behalf of the IMO family, as provided in Circular Letter No.4696. The funding appeal, which commenced on 27 February 2023, had been open for four weeks until 27 March 2023. Subsequently, the donations collected would be sent to the United Nations Secretariat fund to support efforts in providing experts, emergency relief, food, medical supplies and other life-saving items.

1.6 The Secretary-General also expressed his sympathies for those affected by the continued conflict in the area of the Black Sea and the Sea of Azov, particularly seafarers, and in this regard, welcomed the recent extension of the Black Sea Grain Initiative.

### **Adoption of the agenda**

1.7 The agenda for the session, as contained in document LEG 110/1/Rev.1, was adopted by the Committee.

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

**Audio file:** Monday, 27 March 2023

## **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 98 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, 27 March 2023 and Friday, 31 March 2023

## **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, that four of these Contracting States had more than 2 million units of gross tonnage each, and that the Secretariat had verified the reported amounts of HNS contributing cargo received in all Contracting States in 2021.

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.

3.4 The Committee further recalled that the progress of adopting national legislation in Belgium and the Kingdom of the Netherlands would allow these States to ratify the 2010 HNS Protocol simultaneously with Germany, that the delegation of France had confirmed that the objective to ratify the 2010 HNS Protocol in 2023 should be achieved, and that the Philippines was in the final stages of ratifying the 2010 HNS Protocol.

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

3.5 The Committee noted the information contained in document LEG 110/3 (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.

3.6 The Committee was informed that the Secretariat had continued to engage with the delegation of Canada following the approval by the Committee, at its 109th session, to organize the forthcoming HNS Workshop, building upon the two-day workshop that was organized by IMO, in cooperation with the IOPC Funds, at IMO Headquarters in London in 2018. The workshop would assist the work of all Member States towards further ratifications of the 2010 HNS Protocol and, to best facilitate State representatives' participation, the workshop would be held in hybrid format on 3 and 4 April 2023, directly following the meeting of the Committee.

3.7 The Committee 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.

3.8 The Committee was informed by the IOPC Funds Secretariat of the work carried out by the 1992 Fund Secretariat with regard to the administrative tasks necessary for the setting up of the HNS Fund, and the Fund Secretariat's intentions regarding the preparations for the first session of the HNS Assembly. In particular, recent developments were highlighted regarding the HNS Action Plan, the implementation of reporting guidelines on HNS contributing cargo, and the HNS Convention claims manual, on which the Centre of Documentation, Research and Experimentation on Accidental Water Pollution (CEDRE), the International Chamber of Shipping (ICS), the P & I Clubs and ITOPF Limited (ITOPF), together with the IMO Secretariat, had exerted significant efforts.

3.9 Among the views expressed were the following:

- .1 the assistance provided by the IMO and IOPC Secretariats to Member States for the implementation and ratification of the HNS Protocol was very much appreciated;
- .2 delegations, including Belgium, France and the Kingdom of the Netherlands, reiterated their commitments towards ratification and further implementation of the HNS Protocol and expected the deposit of instruments by their countries in the course of 2023 and 2024. Many noted that it was important to coordinate their positions with other States where major ports were located to ensure a global level playing field;
- .3 the entry into force of the HNS Protocol was needed more than ever due to the change in transport of HNS substances in the context of climate change and the decarbonization of the shipping sector. The need for different fuels such as ammonia, ethanol, biodiesel and other new components that comprised alternative fuels was a paradigm shift that would also demand an appropriate liability and compensation regime;
- .4 the holding of the forthcoming HNS Workshop at IMO on 3 and 4 April 2023 was very much welcomed and all delegates in the Committee were encouraged to participate in the workshop and to work towards further ratifications of the HNS Protocol;
- .5 not only flag States, but also port and coastal States should be encouraged to ratify and implement the HNS Protocol;
- .6 the work of the IOPC Funds regarding the questionnaire on the reporting system was welcomed, since it was important for the implementation to have a correct HNS reporting system in place;
- .7 the regional workshops organized by the IMO and IOPC Funds Secretariats, in close cooperation with the P & I Clubs, were welcomed;
- .8 the shipping industry has supported the entry into force of the HNS Protocol since 2010 and was encouraged by the progress made regarding the implementation and ratification by Member States; and
- .9 developing countries should become more involved in the work on implementation and ratification of the HNS Protocol, including on the HNS Convention claims manual.

**Information on issues regarding reporting of HNS contributing cargo**

3.10 The Committee noted documents LEG 110/3/1 and LEG 110/INF.5 (IOPC Funds Secretariat) providing information on issues regarding reporting of HNS contributing cargo.

3.11 The Committee was informed about the progress made, on the basis of questionnaires, in particular regarding the process of reporting in cases where agents may indicate principals in different States, whether or not being a State Party to the HNS Protocol, and how corresponding amounts of contributing cargo could be reported. This issue would be further discussed in the HNS Workshop on 3 and 4 April 2023.

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

**Audio file:** Monday, 27 March 2023

**4 FAIR TREATMENT OF SEAFARERS**

**(a) Provision of financial security in case of abandonment of seafarers, and shipowners' responsibilities in respect of contractual claims for personal injury to, or death of, seafarers, in light of the progress of amendments to the ILO Maritime Labour Convention, 2006**

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

4(a).2 The Committee also recalled that, at its previous sessions, it had expressed its strong commitment to preserving the rights of seafarers in cases of abandonment and noted that providing accurate information to the IMO/ILO joint database was not only the responsibility of the flag State, but also that of the port State and other parties involved.

**Report on the IMO/ILO joint database of abandonment of seafarers, and analysis of incidents of abandonment for the period 1 January to 31 December 2022**

4(a).3 The Committee considered document LEG 110/4(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 23 December 2022. The Committee was informed that all cases reported after 1 January 2004 were recorded on this database and that, in 2021, the total number of reported cases was 95 and, of these, 47 cases had so far been resolved.

4(a).4 The Committee was also informed that, from 1 January 2022 to 23 December 2022, a total number of 109 new cases had been reported. Of these, 63 cases 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. For the third year in a row, last year's record of reported cases of abandonment had, alarmingly, been surpassed again.

4(a).5 The Committee noted the information provided in documents LEG 110/4(a)/1 and LEG 110/4(a)/2 (ITF) on the abandonment case statistics by flag States, location of abandonments, nationality of abandoned seafarers, vessel type, the duration of abandonment cases and the use of the financial security system for 2022. The Committee was informed that, during the period referred to, ITF reported the abandonment of 1,841 seafarers on 116 different vessels. The number of cases reported in 2022 was the highest number ever reported in one

year, and for the first time more than 100, which was an increase by some 24% in comparison with the cases reported in 2021. These new cases concerning 33 different flag States showed that the issue was widespread.

4(a).6 The Committee was further informed that, despite raising the alarm about vessels without appropriate financial security at LEG 109, the number of uncovered vessels rose to 55 cases. This was similar in proportion to 2021 showing that flag and port States had failed to take appropriate action to reduce the number of vessels not carrying financial security. Concerningly, more than half of those cases were on vessels flying the flag of States which have ratified the ILO Maritime Labour Convention (MLC), 2006.

4(a).7 The Committee thanked the submitters of the documents and all organizations that worked together to address cases of abandonment and maintain the database; and expressed its grave concern particularly with regard to the dramatic increase, in recent years, in abandonment cases, even after the pandemic had receded. In this context, the Committee noted the importance for all States to ratify and enforce the MLC, 2006 to ensure a level playing field of maritime labour standards.

4(a).8 The Committee further expressed its concern with regard to the lack of financial security for abandoned seafarers in many instances and encouraged all flag States to ensure that they and the shipowners meet their obligations under the MLC, 2006, and take appropriate enforcement actions where necessary. The Committee further encouraged flag and port States to implement the principle of the joint ILO/IMO Guidelines on how to deal with seafarer abandonment. The Committee also noted that port States could be more vigilant in ensuring that financial security for abandonment was present on vessels and that it is replaced when cancelled. This subject matter could be brought to the attention of the III Sub-Committee for further consideration.

4(a).9 The Committee noted the need to clarify the different roles and rights of seafarers and shipowners, and those of flag States and port States. With reference to some cases, views were also expressed on the need to recognize that the nationality of a seafarer may be different from that of the flag State, and that seafarers would benefit from training and awareness-raising on their entitlement, including being made aware that they were not obliged to stay on board a ship in cases of abandonment.

4(a).10 The Committee recognized that there was a need to update the procedures of the database and its data entry processes, which were sometimes too slow. Suggestions on improvements of the database included, but were not limited to, setting an expiry date for updating the information, finding ways to clarify if a ship was still considered to be in dispute when those on board the ship had been repatriated, and the ability to retrieve information on ships that no longer fell under the jurisdiction of the flag State at the time of the abandonment. There were also requests from various delegations to correct existing inaccuracies on the database to reflect the current situation.

4(a).11 As requested, statements under this agenda item by Panama, Singapore and Hong Kong, China, regarding their requests to update information on certain cases within the IMO/ILO joint database of abandonment of seafarers, are set out in annex 10 to the report.

4(a).12 Following the discussion, the Committee:

- .1 noted the information provided in documents LEG 110/4(a), LEG 110/4(a)/1 and LEG 110/4(a)/2;

- .2 encouraged discussion relating to a solution to the problem of repatriation of abandoned seafarers;
- .3 reminded Member States to ratify and effectively implement the relevant international instruments and amendments thereto;
- .4 highlighted the existence of the IMO/ILO joint database;
- .5 encouraged Member States to report incidents of abandonment to the database when they occurred in their ports or on vessels flying their flag;
- .6 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; and
- .7 encouraged States to take note of the link between abandonment and forced labour as referred to in article III of the MLC, 2006, as amended, in order to fulfil their obligations under MLC, 2006.

**Audio files:** Friday, 31 March 2023

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

4(b).1 The Committee noted the information contained in document LEG 110/4(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 16 years ago.

4(b).2 The Committee was informed that ITF and Seafarers' Rights International were conducting a new survey of States on the implementation of the Guidelines in national laws, and also that the Guidelines could be used as a model to develop similar guidelines on maritime crimes. Therefore, it was important to determine the extent to which the Guidelines are already being used in situations of maritime crimes.

4(b).3 The Committee noted the information provided in document LEG 110/4(b), as well as the comment made by one delegation regarding potential overlap between the work carried out with respect to the *Guidelines on fair treatment of seafarers in the event of a maritime accident* and the ongoing work on the draft guidelines on the fair treatment of seafarers detained on suspicion of committing maritime crimes.

**Audio file:** Wednesday, 29 March 2023

**(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, 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 The Committee recalled also that the Council, at its 125th regular session, had endorsed the establishment of a standing Joint ILO/IMO Working Group to identify and address seafarers' issues and the human element (JTWG).



4(c).3 The Committee was informed that the first meeting of JTWG had taken place from 13 to 15 December 2022, and that a second meeting on the issue of Fair treatment of seafarers detained on suspicion of committing maritime crimes was foreseen to take place in 2024.

4(c).4 The Committee recalled further that, at its 109th session, in order to progress the work on the Committee's output on "Fair treatment of seafarers detained on suspicion of committing maritime crimes", it had noted that 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).5 The Committee recalled that the delegation of the Philippines had offered to work with Ukraine and other interested parties on the submission of a document on this issue to LEG 110, and that it had extended the target completion year of the output on "Fair treatment of seafarers detained on suspicion of committing maritime crimes" to 2024.

4(c).6 The Committee considered a document submitted by the Philippines and co-sponsors proposing that the existing 2006 *Guidelines on Fair treatment of seafarers in the event of a maritime accident* (resolution A.1056/Rev.1(27)) be used as a model for new guidelines and suggesting the establishment of a working group (LEG 110/4(c)).

4(c).7 The Committee considered also a document submitted by Ukraine (LEG 110/4(c)/1) and co-sponsors that invited the Committee to expedite the development of new guidelines and, in particular, to include therein the notion that a master should not be criminally liable for anything that occurs on board his or her ship, regardless of whether there is knowledge or intent, and to evaluate cases of detention of seafarers with a view to establishing a relevant database, as well as to promote awareness-raising of seafarers' rights to fair treatment in cases of detention (LEG 110/4(c)/1).

4(c).8 The Committee considered further a document submitted by ICS and P & I Clubs (LEG 110/4(c)/2) which provided comments on the document submitted by the Philippines and co-sponsors, and which stated that it was important to ensure that the proposed guidelines are followed in cases where seafarers are detained on suspicion of committing maritime crimes. In particular, the Committee noted the prolonged imprisonment without trial of Captain Yu Yihai in Honduras, and the case of 26 seafarers on board the Marshall Islands flagged **Heroic Idun** who all remained under armed guard on board the vessel at anchor off the naval base at Port Harcourt in Nigeria.

4(c).9 The Committee noted information provided by ITF regarding the case of **MV Flying**, a Panama flagged vessel, whose crew containing nationals of Bangladesh, China and Myanmar had been detained in Madagascar since December 2018 for allegedly entering Malagasy territory without permission. The whole crew of 15 seafarers had been sentenced to five years in prison. Following this charge, on 18 November 2021, the Special Court in the Fight Against Trafficking of Rosewood and/or Ebony found the crew guilty of illegally attempting to export rose wood and sentenced them to 20 years forced labour and a fine of 100 million MGA. The judgment, issued by the Special Court in the Fight Against Trafficking of Rosewood and/or Ebony, did not contain any reasons for the conviction, so it was impossible for the crew or their legal representatives to assess the conviction and properly mount an appeal. There was no rose wood on the vessel, nor was there any evidence of rose wood logs for exporting along the Malagasy coastline at the time of the arrest. In addition, none of the crew had any information on the nature of the cargo they were collecting in Madagascar. They obtained jobs on the vessel via crewing agents in their respective countries. They travelled to the vessel and executed their orders in good faith. During their detention, the crew faced dire conditions including overcrowded prison cells, inadequate food and demands for money in return for good treatment. The crew had appealed all charges against them.

4(c).10 The Committee supported the creation of a working group as the fair treatment of seafarers in these situations was recognized as an urgent issue to be addressed.

4(c).11 There was also support to further discuss the concept of a database of cases of detention of seafarers on suspicion of committing maritime crimes, as data to understand the problem and raise its profile was considered to be critical. In this context, the privacy rights of seafarers should be protected.

4(c).12 The Committee agreed to use document LEG 110/J/4 as the base document; however, some concerns were expressed, specifically, that maritime accidents were fundamentally different from maritime crimes and that criminal law was a matter of national jurisdiction and sovereignty. National jurisdiction and the criminal procedure of port States had to be respected.

4(c).13 Views were expressed that the guidelines should make a distinction between criminal investigations and maritime incident investigations, and differentiate the responsibilities of shipowners and the seafarers depending on whether the seafarer is detained on suspicion of committing a crime whilst fulfilling their duties or on personal acts.

4(c).14 While some delegations stressed that, to be effective, the guidelines would need to be implemented in national legislation, other delegations stressed that this was not viable as matters of criminal law were subject to national jurisdiction. Furthermore, national legislation, judicial practices and issues related to language barriers should also be considered. In this context, the need for expeditious proceedings for seafarers under national legislation was recognized.

4(c).15 While there was support for creating a list of national focal points, concerns were raised that this would create confusion with the existing legal framework of the consular system. The role of consular functions required further consideration by the working group, including the application of the Vienna Convention on Consular Relations.

4(c).16 While some delegations underlined the need to develop preventive measures, others noted that port States did not have a mandate to prevent maritime crimes. It was necessary to consider how seafarers would not be deterred from reporting maritime crimes because of the risk of being accused of committing them or risk of retaliation.

4(c).17 There was also support for further educational materials and outreach to ensure that enforcement and judicial officers understood the maritime industry and the challenges faced by seafarers.

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

4(c).18 Having considered the draft terms of reference for the Working Group on Fair Treatment of Seafarers Detained on Suspicion of Committing Maritime Crimes, submitted by the Chair in document LEG 110/WP.2, the Committee agreed with them and established the Working Group, chaired by Ms. Ana Marie L. Hernando (Philippines), and instructed it, taking into account documents LEG 110/4(c), LEG 110/4(c)/1, LEG 110/4(c)/2, LEG 107/14, LEG 107/14/4 and the comments and decisions made in plenary, to:

- .1 further develop "Guidelines on fair treatment of seafarers detained on suspicion of committing maritime crimes" as the base document for consideration and further refinement at the joint ILO-IMO Tripartite Working Group to identify and address seafarers' issues and the human element (JTWG);

- .2 use the existing 2006 *Guidelines on fair treatment of seafarers in the event of a maritime accident* (resolution A.1056/Rev.1(27)) as a model for the new guidelines; and duly taking into account the sovereignty of the port State on criminal law and procedure;
- .3 further develop the concept of a database of incidents of the detention of seafarers suspected of committing a maritime crime;
- .4 further discuss the need of designating contact points for coordination of cases of detention of seafarers, taking into account the Vienna Convention on Consular Relations, 1963; and
- .5 submit a written report to plenary by Friday, 31 March 2023.

### Report of the Working Group

4(c).19 Having considered the report of the Working Group (LEG 110/WP.5/Rev.1), the Committee approved it in general, and:

- .1 agreed on the establishment of a correspondence group under the coordination of ITF<sup>1</sup> with the following term of reference:
  - further develop Guidelines on fair treatment of seafarers detained on suspicion of committing [maritime] crimes taking into account all comments made by the Working Group, as included under paragraph 7 of LEG 110/WP.5/Rev.1 and its annex, and report back to LEG 111;
- .2 agreed on the establishment of a working group at the commencement of LEG 111 to:
  - .1 finalize the draft guidelines on the basis of the work of the correspondence group as a base document for refinement at the joint ILO-IMO Tripartite Working Group to identify and address seafarers' issues and the human element (JTWG);
  - .2 continue consideration on the establishment of a database, taking into account the comments made, as included in paragraph 8 of the report; and
  - .3 further consider the need of designated contact points for coordination of cases of detention of seafarers, taking into account the Vienna Convention on Consular Relations, 1963.

4(c).20 As requested, the statements by Argentina, Ecuador and Ukraine under this agenda item are set out in annex 10 to the report.

**Audio files:** Monday, 27 March 2023 and Friday, 31 March 2023

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**(d) Guidelines for port State and flag State authorities on how to deal with seafarer abandonment cases**

**Part I – Adoption of Guidelines**

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.

4(d).2 The Committee also recalled that, at its 109th session, it had endorsed draft guidelines developed by the IMO Correspondence Group for consideration by the Joint ILO-IMO Tripartite Working Group to Identify and Address Seafarers' Issues and the Human Element (JTWG).

4(d).3 The Committee noted that the Governing Body of the ILO, at its 345th session, had decided that the first meeting of JTWG would be held from 13 to 15 December 2022, and that the purpose of the first meeting would be to discuss and adopt guidelines for port State and flag State authorities on how to deal with seafarer abandonment cases. The IMO Council, at its 127th session, had endorsed the establishment of JTWG.

4(d).4 The Committee considered two documents submitted by the ILO and IMO Secretariats which reported on the outcome of the first meeting of the Joint ILO-IMO Tripartite Working Group to identify and address seafarers' issues and the human element (JTWG). JTWG adopted new guidelines on how to deal with seafarer abandonment cases and was held in hybrid format in Geneva from 13 to 15 December 2022 (LEG 110/4(d) and LEG 110/INF.6).

4(d).5 The Committee was informed that the first meeting of JTWG meeting brought together more than 250 representatives and observers from Governments, shipowners' and seafarers' representative organizations. The guidelines on how to deal with seafarer abandonment, which were attached as annex 1 to LEG 110/4(d), sought to address the significant rise in cases of abandonment of crews reported to ILO and IMO and to provide for practical guidance on how to resolve abandonment cases.

4(d).6 The Committee was further informed that the guidelines aimed to improve coordination among countries, including flag States, port States, States in which seafarers are national or resident, and States in which recruitment and placement services operate to resolve abandonment cases more quickly, including getting seafarers paid and repatriated home to their families.

4(d).7 The Committee expressed its widespread support for the draft resolution and for the Guidelines and thanked the IMO and ILO Secretariats, as well as participants in JTWG.

4(d).8 The delegation of France informed the Committee that in 2013 they had already implemented a legal framework pursuant to which abandonment of seafarers constituted a crime with a provision which targeted ships of their flag, as well as foreign ships if the crime was committed on their territory. The penalty for this crime is five years of imprisonment and €75,000 fine.

4(d).9 Increasing number of abandonments is a cause of a great concern. The guidelines add significant value in resolving abandonment cases and would help to improve the treatment and repatriation of seafarers and therefore Member States and interested parties are encouraged to implement them.

4(d).10 In many cases, the financial security expires without notice and thus flag States should ensure that sufficient annual financial security is provided and a mechanism to verify it should be established.

4(d).11 Some delegations expressed views that the guidelines could be improved and that monitoring effectiveness was necessary. If needed, the guidelines should be revised. In this context, the delegation of India brought the attention of the Committee to their document LEG 109/4/(d)1.

4(d).12 Following the discussion, the Committee:

- .1 noted the information provided in documents LEG 110/4(d)) and LEG 110/INF.6;
- .2 adopted a resolution which, in its operative paragraphs, adopts the guidelines on how to deal with seafarer abandonment cases, attached in annex 1 to the report; and
- .3 agreed to keep the guidelines under review.

## **Part II – TORs for the establishment of a Task Force**

4(d).13 The Committee was requested by the observer delegation of ILO, in relation to part IV of the annex of LEG 110/INF.6 on "Other business related to the work of the Joint Tripartite Working Group", to consider at LEG 111 and at the ILO Governing Body draft terms of reference (ToRs) for the establishment of a Task Force to review the procedural and technical aspects of the joint ILO/IMO abandonment of seafarers database. This Task Force was proposed by the shipowners at the closing of the first meeting of JTWG. It was supported by the seafarers and the Governments group. ICS and ITF had proposed to provide financial support for the Task Force.

4(d).14 Following the discussion, the Committee:

- .1 noted that there would be informal intersessional work led by ICS and ITF, financially supported and contributed to by both organizations, which would also develop the terms of reference of the Task Force, for consideration at the next session of the Legal Committee;
- .2 noted the information provided in Part IV of the annex to LEG 110/INF.6; and
- .3 invited concrete proposals to LEG 111, including draft ToRs for the establishment of a Task Force to review the joint ILO/IMO database of abandonment of seafarers.

4(d).15 As requested the statement by Indonesia under this agenda item is set out in annex 10 to the report.

**Audio files:** Friday, 31 March 2023

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

5.1 The Committee considered document LEG 110/5 (Australia et al.) raising awareness of the consequences and concerns for the global liability and compensation regime of the increase in ship-to-ship transfers in the open ocean. The Committee noted that the dangerous practice of ship-to-ship transfers in the open ocean, as well as the methods used to obscure ship identities and turning off AIS transponders, undermined the spirit of the regulation of ship-to-ship operations of tankers as prescribed by MARPOL. The Committee was informed that a fleet of between 300 to 600 tankers, primarily comprised of older ships, including some not inspected recently, having substandard maintenance, unclear ownership and a severe lack of insurance, was currently operated as a "dark fleet" or "shadow fleet" to circumvent sanctions and high insurance costs. The Committee was also informed about a media article describing that among these ships was a 26-year-old tanker, **Turba**, last surveyed in 2017 and last inspected by port State control in 2010, flying a flag black-listed by the Paris MoU, and yet carrying Russian crude oil.

5.2 The Committee also noted that the tankers in the dark fleet posed a real and high risk of incident particularly when engaged in ship-to-ship transfers, as they disguised the cargoes' destinations or origins, or avoided oversight or regulation by flag or coastal States. This practice, in many cases, transferred the risk of oil pollution damage to coastal States that were not involved in, or benefiting from, the oil being transferred. According to the document, coastal States may be bearing all the increased risk of an oil pollution incident, without accruing any of the benefits. The Committee further noted that the practice of going dark, as well as other methods to obscure a ship's identity or ownership, not only increased the risk of oil spill or collisions but could also result in a participating shipowner evading its liability under the 1992 Civil Liability Convention (CLC) and the Bunkers Convention in the case of other ships, placing also an increased risk on coastal States and the IOPC Funds.

5.3 The Committee noted that the document called on flag States and port States to take a number of measures, as set out in paragraph 8 of the document, including better enforcement when ship-to-ship transfers violate regulations, encouragement of shipowners to adhere to regulations, as well as the spirit of IMO safety conventions such as requiring tanker owners to notify their flag States when engaged in ship-to-ship transfers in mid-ocean operations, and increased port State control inspections for ships that "go dark" with notification to the respective ships' flag administrations, as appropriate. The document also encouraged other committees to look at this issue and its impacts to marine safety and environmental protection.

5.4 In the ensuing discussion, the concerns raised in the document with regard to the unsafe ship-to-ship transfers in the high seas, as well as the risk of proliferation of the "dark fleet", were echoed by several other delegations who also highlighted the additional risks to the ships involved, the potential delays to assistance operations, the risks of accidents which could lead to pollution or risk of pollution and damage to coastal States, and which undermined the whole regulatory regime developed by IMO. In this context, the delegation of Ecuador alerted to the risk posed by the large number of fishing vessels accompanied by tankers carrying out ship-to-ship transfers and forming a group of 300 to 400 ships navigating very close to the Exclusive Economic Zone of Ecuador and which could cause damage to particularly sensitive areas like the Galapagos. Most delegations were also of the opinion that this issue should be reported to other IMO bodies, as well as to relevant UN organizations.

5.5 In relation to the recommended measures in paragraph 8 of the document, the delegation of Spain highlighted the importance that flag States should guarantee that tankers flying their flag should only carry out ship-to-ship transfers in areas authorized by port States. The delegation also called on coastal States to collaborate to improve monitoring of these

practices and operations through agreements to set out specific areas for ship-to-ship transfers when those States are close enough to be affected by the impacts of the pollution. In this context, the delegation informed the Committee that it intended to collaborate with other interested delegations, in order to submit a draft resolution on this matter to the thirty-third regular session of the Assembly. The statement by the delegation of Spain, as set out in annex 10 to the report, and the proposal to develop a resolution of the Assembly were supported by many delegations. As requested, the statement by the delegation of Ukraine in this regard is set out in annex 10 to the report.

5.6 While seeing the benefit in a recommendation that flag and port States should monitor ship-to-ship transfers and ensure that IMO instruments were properly implemented to guarantee maritime safety and the prevention of pollution of the marine environment, the delegation of the Russian Federation stressed that the source of the current concerns was rooted in illegitimate sanctions, the use of which had been seriously abused in an attempt to restrict actions of other States.

5.7 Some delegations stated that sanctions directed at unlawful conduct could not be blamed for substandard, unsafe shipping practices.

5.8 Following the discussion, the Committee considered that ship-to-ship transfers in the high seas were high-risk activities that undermined the international regime with respect to maritime safety, environmental protection and liability and compensation, and needed to be urgently addressed.

5.9 The Committee also noted the concerns expressed regarding the dark fleet being used to evade sanctions. Concern was also expressed about the dark fleet being used to engage in illegal unreported and unregulated fishing and wildlife trade, as well as other illicit activities.

5.10 While noting that one delegation had commented that more information might be needed to develop further preventive measures, the Committee broadly supported the recommended measures in paragraph 8 of the document, as follows:

- .1 flag States are called upon to ensure that tankers under their flag adhere to measures which lawfully prohibit or regulate ship-to-ship transfers, and that such vessels further adhere to the spirit of the safety requirements in IMO conventions and practice safe shipping standards to minimize the risk of oil pollution;
- .2 flag States should consider requiring that vessels update their ship-to-ship operations manuals to include notifying their flag State when they are engaged in a mid-ocean operation;
- .3 port States should ensure enforcement of the safety and liability conventions on these vessels and ensure that ship-to-ship transfer operations are conducted in accordance with the applicable safety requirements in IMO conventions; and
- .4 should port States become aware of any ships "going dark", they should consider subjecting such vessels to enhanced inspections as authorized, and of notifying the respective vessel's flag administration as appropriate.

5.11 The Committee noted the wide support expressed that other IMO committees should also work on this topic as there were important safety and environmental protection related issues.

5.12 Noting the interest expressed by many delegations in contributing to the drafting of an Assembly resolution on this matter, as proposed by Spain, the Committee invited interested delegations to contact the delegation of Spain in this regard.

5.13 The Committee also decided that other UN agencies should be informed of the issues discussed, and concerns and challenges raised, so that they could also take action for matters under their remit.

**Audio file:** Tuesday, 28 March 2023

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

5(a).1 The Committee recalled that the Council, at its thirty-fifth extraordinary session, had 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 the Council.

5(a).2 The Committee also recalled that, at its last session, it had decided to add to its agenda, under agenda item 5, Advice and guidance in connection with the implementation of IMO instruments, sub-item (a) on Impact on shipping and seafarers of the situation in the Black Sea and the Sea of Azov.

5(a).3 The Committee noted document LEG 110/5(a) (Secretariat), complementing document LEG 110/12 on the work of other IMO bodies, and providing a comprehensive listing of the outcome of MSC 105, MSC 106, FAL 46, MEPC 78, MEPC 79, TC 72, C 127 and C 128 with respect to the ongoing military conflict between the Russian Federation and Ukraine and its effect on international shipping and seafarers; and regarding the Black Sea Grain Initiative.

5(a).4 The Committee also noted that the Black Sea Grain Initiative, which allows for the facilitation of safe navigation for the exports of grain and related foodstuffs and fertilizers, including ammonia, from designated Ukrainian seaports, had been recently extended, for the second time, from 18 March 2023, and that during the first two terms of the initiative, some 25 million metric tonnes of grain and foodstuffs had been moved to 45 countries, helping to bring down global food prices.

5(a).5 The Committee further noted that, as requested by the Council, the Secretary-General would continue to actively pursue all avenues to develop, negotiate and facilitate the safe departure of vessels not covered by the Black Sea Grain Initiative.

5(a).6 The Committee considered document LEG 110/5(a)/1 (Ukraine) drawing its attention and that of the IMO Member States to Ukraine's concerns about the devastating impacts on shipping and seafarers in the Black Sea and the Sea of Azov of the Russian Federation's ongoing armed aggression, including impacts on the global supply chains and international shipping, on the safety and security of navigation, on marine environment and on seafarers and the protection of their rights. The document proposed actions to be taken by the Committee, as set out in paragraph 26 of the document, including calling on the in-depth assessment of the infringements of the IMO conventions and instruments by the Russian Federation.



5(a).7 The Committee was informed that more recently, repeated shelling of the port of Kherson had damaged two general cargo ships under the flag of Vanuatu operated by Turkish companies, and one cargo ship under the flag of Türkiye.

5(a).8 The Committee was also informed that, on 14 November 2022, the UN General Assembly had adopted resolution A/RES/ES-11/5 entitled "Furtherance of remedy and reparation for aggression against Ukraine", which recognized the need for the establishment, in cooperation with Ukraine, of an international mechanism for reparation for damage, loss or injury, and arising from the internationally wrongful acts of the Russian Federation in or against Ukraine. The UN General Assembly also recommended the creation of an international register of damage to serve as a record, in documentary form, of evidence and claims information on damage, loss or injury to all natural and legal persons concerned, as well as the State of Ukraine, caused by internationally wrongful acts of the Russian Federation, as well as to promote and coordinate evidence-gathering. This element also formed a part of the recently adopted UNGA resolution A/RES/ES-11/6 entitled "Principles of the Charter of the United Nations underlying a comprehensive, just and lasting peace in Ukraine", on 23 February 2023.

5(a).9 The Committee was further informed that the International Telecommunication Union had already started collecting and reporting on damages to telecommunication infrastructure in Ukraine and noted that IMO had been called on to launch a similar project to assess the damages caused by the Russian armed invasion of Ukraine on trade shipping, maritime critical infrastructure and education institutions, as well as seafarers, and to cooperate with concerned UN agencies like ILO, UNCTAD and FAO in this context. As requested, the full statement of the delegation of Ukraine in this regard is set out in annex 10 to the report.

5(a).10 In the ensuing discussion, many delegations reiterated their unwavering support for Ukraine and the people of Ukraine, and strongly condemned the Russian Federation's unprovoked and unjustified military aggression against Ukraine, in violation of international law and the UN Charter. The statements also reiterated that the invasion of Ukraine threatened the safety and security of merchant shipping, the protection of the marine environment, the lives and safety of seafarers, the integrity of global supply lines, and the freedom of navigation. These statements demanded that the Russian Federation immediately cease its military actions, withdraw all its troops from the entire territory of Ukraine, and fully respect Ukraine sovereign and territorial integrity within its international recognized borders extending to its territorial waters.

5(a).11 Several delegations expressed their gratitude for the extension of the Black Sea Grain Initiative and thanked the IMO Secretary-General, the UN and Türkiye for their efforts in this regard, ensuring that food was delivered to all countries. They also urgently asked all parties to prioritize a diplomatic and peaceful solution and to continue efforts to safely evacuate all ships and seafarers still stranded in the conflict areas and to include other ports in the Black Sea Grain Initiative. In this context, the delegation of Türkiye emphasized that the Black Sea Grain Initiative continued to inspire hope for a diplomatic exit, as so far it had allowed almost 26 million tons of various grain products carried by more than 800 vessels to reach world markets and that the country remained engaged in all efforts to achieve a comprehensive, just and lasting peace in Ukraine.

5(a).12 As requested, the statements of the delegations of United States, Sweden, Türkiye, Canada, Poland, France, Georgia, Germany, Italy, Spain, Cyprus, United Kingdom, Kingdom of the Netherlands and Lithuania, supported by the delegations of Croatia, Finland, Portugal, Belgium, Estonia, Denmark, Latvia, Malta, Luxembourg, Greece and European Commission, are set out in annex 10 to the report.

5(a).13 With regard to the proposal in paragraph 26.3 of document LEG 110/5(a)/1, many delegations recalled the UNGA resolution A/RES/ES-11/5 recognizing the need for the establishment, in cooperation with Ukraine, of an international mechanism for reparation from the internationally wrongful acts of the Russian Federation in or against Ukraine, and supported the proposal that IMO contributed to this international effort and started collecting and assembling relevant information falling within IMO's remit.

5(a).14 These delegations also recognized that this project may have budgetary implications for the Organization. Therefore, as a way forward, they requested the Secretariat to consider possible options for collection of information and assembling information on damages to commercial vessels, infrastructure in Ukraine that fall under IMO's remit, including ports, port facilities, maritime training institutions and the marine environment in Ukraine that had suffered damage or been destroyed as a result of Russia's unlawful invasion.

5(a).15 The delegation of the Russian Federation objected to the Committee considering the assessment proposed in paragraph 26.3 of document LEG 110/5(a)/1 as this was a political matter going beyond the mandate of the Committee, as set out in Article 33 of the IMO Convention, pursuant to which the mandate to examine this matter and to take decision on it had not been given to the Legal Committee by the Assembly or the Council or by any international instrument. As requested, the statement of this delegation is set out in annex 10 to the report.

5(a).16 The Secretary-General highlighted the importance of the issues discussed and stated that the proposed assessment project was relevant to all IMO committees and to the work of the Organization in terms of safety, environment protection and efficiency of navigation, as per the IMO Convention. He also stated that, as requested, the Secretariat would prepare relevant options and budget implications for the consideration and decision of the Council.

5(a).17 Following the discussion on the actions requested of it in paragraph 26 of document LEG 110/5(a)/1:

- .1 The Committee strongly condemned the Russian Federation's armed aggression against Ukraine that started in 2014 and subsequently took the form of a full-scale invasion on 24 February 2022, which is a violation of the territorial integrity and the sovereignty of a UN Member State, extending to its territorial waters, and inconsistent with the principal purposes of IMO.
- .2 The Committee expressed grave concern over the negative impact of the Russian Federation's invasion of Ukraine on international shipping in the northern part of the Black Sea, the Sea of Azov and the Kerch Strait, safety of commercial vessels and well-being of seafarers.
- .3 The Committee supported IMO's assistance in the implementation of UNGA resolution A/RES/ES-11/5 to establish an international register to document the Russian Federation's wrongful acts associated with the invasion of Ukraine and the damages resulting therefrom. In the IMO context, the Committee was of the view that this project could be scoped to include a collection of information on damages that fell under IMO's remit to include commercial vessels and maritime infrastructure, including ports, port facilities, maritime training institutions and the marine environment in Ukraine that had suffered damage or been destroyed as a result of Russia's unlawful invasion, as well as impacts and damages with respect to seafarers.

- .4 In order to move forward with this proposal, the Committee invited the Secretary-General to contact relevant UN organizations and develop options for the assessment, with appropriate costing, and then, given the potential budgetary implications, submit these options to Council 129 for consideration.
- .5 The Committee demanded that the Russian Federation immediately cease the use of force against Ukraine, stop the atrocities and withdraw its troops from Ukraine, and abide by its obligations under relevant international treaties and conventions, in particular to ensure unhindered and free passage of vessels in the northern part of the Black Sea, the Sea of Azov and the Kerch Strait, in accordance with international law.
- .6 The Committee decided on keeping this matter under review and invited concerned Member States to provide relevant reports to the Committee to conduct the analysis of the infringements of IMO conventions and instruments by the Russian Federation's unlawful actions, as well as to call on other IMO bodies to follow this approach in respect of the instruments within their remit.

**Audio file:** Tuesday, 28 March 2023

## **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 Fraudulent Registration and Fraudulent Registries of Ships established at LEG 109 (LEG 109/6) and agreed on a definition of forged/false documents. The Committee noted the importance of sharing information on fraudulent practices, in particular on fraudulent certificates of registration and also noted the concerns expressed by delegations that ships using fraudulent certificates were able to trade around the world.

6.2 The Committee also recalled that it had established a Study Group to initiate a comprehensive study to address all issues arising in connection with fraudulent registration and fraudulent registries of ships, and possible measures to prevent and combat them, and requested the Secretariat to coordinate the study, with the participation of WMU, UNCTAD, IMO IMLI and other interested parties.

6.3 The Committee further recalled that it had invited interested delegations to make proposals on the domestic enforcement measures on the confiscation of fraudulently registered ships, agreed to extend the target completion year of the output to 2024 and had encouraged interested delegations to make relevant submissions for the consideration of the Committee at its next session.

### **Interim report of the Study Group submitted by the World Maritime University, the IMO International Maritime Law Institute and the United Nations Conference on Trade and Development and Reports on cases of fraudulent registration and fraudulent registries of ships**

6.4 In considering document LEG 110/6 (Secretariat) containing the interim report of the Study Group, the Committee noted that the Secretariat had engaged the services of WMU, using ITCP funds, to take the lead of the Study Group and work with UNCTAD, IMO IMLI and other interested parties to consider and address the questions contained in the terms of reference of the Study Group.

6.5 The Committee thanked the Secretariat and the Study Group for the interim report submitted and noted the preliminary findings of the responses to the questionnaire compiled by the Study Group, as well as the proposed way forward, as described in paragraphs 11 and 12 of the document. The Committee also noted the comments by WMU in plenary regarding the fact that only 31 States, representing 22.75% of the world fleet, had responded to the questionnaire.

6.6 The Committee noted the concerns expressed by several delegations on the impacts of fraudulent registration and fraudulent registries of ships on the safety and welfare of seafarers on board the ships concerned. The Committee also noted that the proliferation of the "dark fleet" (discussed under agenda item 5) could also be linked to the fraudulent registration matters.

6.7 The Committee expressed concern that, to date, the participation in the study had been very low and that the data was likely to be inadequate to bring worthwhile results. In this context, the Committee supported the proposal by the Secretariat for enhanced outreach to States to increase participation and reiterated the encouragement expressed by many delegations to Member States to respond to the questionnaire.

6.8 The Committee agreed that proposals 4, 5, 6 and 7 under paragraph 12 of the interim report were of particular interest and needed to be further explored and considered. The Committee also agreed that a consolidated summary of the responses received would be helpful for future proceedings. Noting the intervention by WMU in plenary, in particular asking whether, in the opinion of Member States, the problem of fraudulent registration was inextricably linked to the lack of minimum requirements for due and effective ship registration, the Committee agreed that that the Study Group should also focus on this question.

6.9 The Committee also agreed that it would be helpful to consider what the registries did when they received reports of fraudulent registration of their ships or fraudulent registries activities. In this context, the Committee was reminded of Assembly resolution A.1162(32), which should also form part of the study.

6.10 In conclusion, the Committee agreed that the three additional questions asked by WMU in plenary should be added to the initial questionnaire, as follows:

- .1 Do we consider fraudulent registration and related practices a real threat to the shipping community as a whole?
- .2 Considering that only 31 registries, accounting for 22.75% of the world fleet, responded to the questionnaire addressed to them, what is the message generated to the perpetrators of these illegal/reprehensible acts?
- .3 Is the problem of fraudulent registration inextricably linked to the lack of minimum requirements for due and effective ship registration and, if yes, should we direct the research of the Study Group to that issue?

6.11 The Committee also agreed that a separate questionnaire containing these three additional questions would be sent to the Member States that had already responded to the initial questionnaire. For the Member States that had yet to respond, a combined questionnaire containing the initial questions and the three additional ones would be sent.

6.12 The Committee reiterated its encouragement to Member States to provide funding for the study and to contact the Secretariat accordingly.

6.13 The Committee noted document LEG 110/6/1/Rev.1 (Secretariat) providing an update on various matters related to the fraudulent registration and fraudulent registries of ships since LEG 109. In particular, the document informed the Committee on communications received from the Governments of Guyana and Equatorial Guinea on fraudulent registration matters and specific ships of interest in this context. The document further updated the Committee on the list of fraudulently registered ships in GISIS, as well as on the list of Governments that have provided information so far on their registries of ships pursuant to A.1142(31) on *Measures to prevent the fraudulent registration and fraudulent registries of ships*.

6.14 The Committee also noted the comment by the delegation of Singapore that, as reported at LEG 109, the company operating under the name "International Maritime Safety Agency for Guyana Pte. Ltd.", which had been registered in Singapore, had changed its name to "Laos Ship Registry and Maritime Safety Administration Pte. Ltd."

6.15 The Committee noted document LEG 110/6/1/Add.1 (Secretariat) updating document LEG 110/6/1/Rev.1 and providing information regarding five ships fraudulently flying the flag of the Gambia.

6.16 The Committee reiterated its encouragement to Member States 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*.

**Proposal to establish a database of fraudulent registration and fraudulent registries of ships in GISIS and information on a case of ship fraudulent registration and related countermeasures**

6.17 The Committee considered document LEG 110/6/2 (China) proposing the establishment of a dedicated new module in GISIS containing a database of fraudulent registration and fraudulent registries of ships to disseminate information to flag States and port States and to facilitate the tracking and exchange of information and case handling of fraudulent registration and fraudulent registries of ships. In this new module, flag States would be in charge of collecting and uploading relevant information about fraudulently registered ships or fraudulent registries. Port States would then be able to get in contact with the flag State for a timely response. This information would be open and available to the Member States. In addition, the document recommended the issuance of e-certificates or the establishment of an online verification channel for paper certificates to prevent the spread of "false documents" and provided the elements and functions that should be contained in the proposed database. The document also called for the sharing of experience and information on registration and deregistration matters and for the development of guidance to flag States in this context.

6.18 In the ensuing discussion, the Committee agreed that access to information was key to combating the problem of fraudulent registration and fraudulent registries of ships and that more information needed to be collected in this regard, to be made readily available to Member States, flag States and port States. In this context, there was broad support in principle for the creation of a database for flag States and port States to share information on fraudulent registration and fraudulent registries of ships. There was also support for developing methods for validating the authenticity of ships' certificates.

6.19 The Committee was informed by the S & P Global representative attending the meeting pursuant to rule 47 of the Rules of Procedure of the Legal Committee, that they relied on data provided to them by the flag States for the issuance of the IMO Numbers and the yearly

tonnage assessment. S & P Global are already providing data on ships they know are fraudulently registered. They have agreements with various flag administrations and always check with the flag administration before recording any information on a ship. This information is weekly forwarded to IMO and then uploaded onto GISIS. S & P Global encouraged all flag Administrations to provide them with the information and have regular data exchanges with S & P Global.

6.20 While there was support for the idea of a database in principle, several delegations raised concerns regarding the modalities of the database, including whether the existing GISIS module on ships and companies' particulars, which already contained information on false flags and ships and companies under UN sanctions, should be modified or if a new stand-alone module should be created. There were also a number of questions regarding who would be responsible for entering and verifying the data and what associated procedures would be in place for accurate reporting and record-keeping. The Committee also considered that adding a new database or modifying an existing one had associated costs that may necessitate consideration by the Council. In this context, the Committee was reminded that the Secretariat was currently working on improving GISIS as a whole and would be reporting to Council in this regard. Therefore, it would be beneficial to have the results of this report before creating a new module.

6.21 One delegation considered that more information was needed including the process to indicate the beneficial owner of a ship regardless of the flag under which it is registered. On this matter, the S & P Global explained that it was difficult, and at times expensive, to obtain information on the beneficial owner.

6.22 Consequently, the Committee agreed that the Secretariat should consult with S & P Global and submit a document to the next session of the Committee describing the different options with regard to the proposed database on fraudulent registration and fraudulent registries of ships, together with cost implications.

6.23 The Committee noted document LEG 110/INF.4 (China) providing information on a case of fraudulent registration of ships, and on the measures taken by China, as a port State, against fraudulent registration, as well as the regulations on the identification and administrative penalties against the fraudulent registration of ships in different circumstances under relevant Chinese laws.

### **The wrongful exploitation of the IMO identification number**

6.24 The Committee considered document LEG 110/6/3 (Georgia and the United Arab Emirates) providing information regarding instances of fraudulent use of the IMO identification number schemes by companies and matters related to the IMO identification number schemes. The document called for due diligence to be exercised by flag State Administrations when involving ships in the IMO unique company and registered owner identification number scheme, in line with the obligations of flag States to exercise adequate control over their ships, as provided in article 94 of UNCLOS, and of the whole regulatory regime developed by IMO.

6.25 In the ensuing discussion, the Committee noted the concerns expressed about the consequences of the fraudulent registration on the central role played by the IMO identification number schemes and for the potential of such wrong exploitation to undermine the balance of rights and obligations of flag and coastal States under UNCLOS. There was support in principle for the establishment of a correspondence group to consider the elements of due diligence.

6.26 The Committee was reminded that there was no convention or treaty on ship registration in force globally. The Committee noted the comment by one delegation that ship registration was a matter for national legislation, which differed from country to country and that, in this delegation practice, the screening by the flag Administration did not include the IMO number.

6.27 The Committee also noted the comment by one delegation recalling CL.2554 on the Implementation of the *IMO unique company and registered owner identification number scheme* (resolution MSC.160(78)), and requested more information on how the issue raised in the document had happened, how widespread this was and what the loopholes were.

6.28 The Committee further noted the comment by one delegation that the determination of the actual ultimate beneficial owner should be considered an element of any registration process and that due diligence should thus include reasonable efforts to pierce the corporate veil to identify persons behind the corporate entities that may appear as beneficial owners of the ship. Care should be taken however to ensure that such work does not duplicate or conflict with the work of the Study Group.

6.29 The Committee noted the explanation by S & P Global about IMO identification numbers. S & P Global issue the numbers on behalf of IMO, carrying out as much due diligence as they can. They always insist on getting a copy of the company registration certificate and they verify the fact that the company is registered. They also request the number of the ship the company intends to manage. However, they indicated they were limited in the information they can request.

6.30 Based on the comments in plenary, the Committee agreed that more information on the abuse of the IMO number scheme, including how widespread the problem was and whether there were loopholes in the system, should be provided. The Committee also agreed that this issue should not be added to the work of the Study Group. In this context, the Committee further agreed to extend the target completion year of the output to 2025 and encouraged interested delegations to make relevant submissions for the consideration of the Committee at the next session.

6.31 In conclusion, and taking into account the comments and decisions made in plenary, the Committee also agreed to establish a correspondence group, as proposed in document LEG 110/6/3, under the coordination of Ecuador,<sup>2</sup> with the following terms of reference:

"Taking into consideration document LEG 110/6/3 as well as the comments, proposals and decisions made by the Committee, the intersessional correspondence group is instructed to:

- .1 define and develop the elements of "due diligence" to be exercised in the process of registration of ships under the flag of a State when involving vessels in the IMO unique company and registered owner identification number scheme;

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<sup>2</sup>

**Coordinator of the Correspondence Group on Due Diligence and IMO Identification Number Schemes:**

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- .2 consider the additional factors raised with regard to the abuse of the IMO identification number schemes, how widespread the issue is and the possible loopholes in the system; and
- .3 submit a report to LEG 111.

6.32 The Committee noted the intervention by the representative of the Paris MoU on the issue of false flags. The Paris MoU have compared the list of false flags available in GISIS (with 106 ships reported as "false flag") with the data in their own database THETIS. Twelve of these reported ships operated in the Paris MoU region or did so in the past five years, maybe while flying a different flag. The ships had been inspected during their port visits, as they had been assigned a high inspection priority based on the Paris MoU risk-based inspection regime. Where the registration of ships and the flag register were not regulated in a convention and therefore not enforceable by port State control in the context of the Paris MoU, this did not apply to certificates issued by or on behalf of flag States stating that the ship meets the requirements of a number of IMO and ILO conventions. Such certificates can only be issued by the genuine flag State or by the organization recognized or authorized by the genuine flag State. To verify this, it was essential that relevant flag States could be contacted. In the absence of response from the flag State, it was not always desirable to unduly detain the ship in question. If the information in the GISIS database was completely reliable, the ship could perhaps be prevented from leaving pending the response from the flag State. However, the correctness of the ship registration was not easy to verify and in a number of cases, the information in the database was not in line with the response received from the alleged flag State, when the response was received. For the 12 ships mentioned above, a notification was included in the Paris MoU database THETIS, increasing the priority for inspection and informing the members of the Paris MoU about the questionable status of the ship registration. The other issue was whether the organizations recognized by false flags could be regarded as false ROs. The Paris MoU was willing and able to contribute to the work of the Study Group.

6.33 The Committee also noted the statement by the delegation of the United Kingdom informing it that the United Kingdom had been looking into UNCLOS, and in particular to the issue of the so-called "genuine link" between ships and their flag State. This had highlighted the United Nations Convention on Conditions for Registration of Ships adopted in 1986. This Convention, which has not yet entered into force, establishes international standards for the registration of vessels in a national registry, including references to the genuine link, ownership, management, registration, accountability and the role of the flag State. The objective of the Convention was to strengthen the genuine link between a State and ships flying its flag. It was the delegation's understanding that the Convention originally belonged to UNCTAD, however the remit of UNCTAD had changed since the Convention had been agreed and the Convention was effectively now "homeless" in the UN system. The delegation believed that the appropriate home for this Convention should be IMO and asked the Secretariat what the process was for transferring this Convention to IMO. As the shipping world has changed significantly since the Convention was drafted, the delegation informed the Committee that the United Kingdom planned to submit a request for a new planned output to review this Convention and to determine what changes were required for it to best reflect global ship registry today – including topics about links between a vessel and the State in which they are registered.

6.34 In response, the Director of the Legal Affairs and External Relations Division recalled Article 68 of the IMO Convention which provides that "Subject to approval by a two-thirds majority vote of the Assembly, the Organization may take over from any other international organizations, governmental or non-governmental, such functions, resources and obligations within the scope of the Organization as may be transferred to the Organization by international agreements or by mutually acceptable arrangements entered into between competent



authorities of the respective organizations". It was therefore possible for IMO to begin work on the UN Convention on Conditions for Registration of Ships, adopted by the Conference of plenipotentiaries which met at Geneva from 20 January to 7 February 1986 under the auspices of UNCTAD, in accordance with resolution 37/209 of the General Assembly of the United Nations dated 20 December 1982 (UNGA Res A 37/209, pg. 139). With the consent of the United Nations General Assembly and the IMO Assembly, such an output could go forward to the Legal Committee if the Members so decided.

**Audio file:** Wednesday, 29 March 2023

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

7.1 The Committee recalled that, at its last session, it had agreed to establish the Intersessional Correspondence Group on Measures to Transparently Assess the Need to Amend Liability Limits under the coordination of Australia and instructed it to submit a report to LEG 110. The Committee also recalled that it had 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.

7.2 The Committee noted with appreciation the report of the Correspondence Group on Measures to Transparently Assess the Need to Amend Liability Limits, as set out in document LEG 110/7 (Australia), and, specifically, that the Correspondence Group had invited the Committee to consider and decide on the principles and policy matters that required decision by the Committee to progress this work; to establish the process by which development of methodologies will be finalized; to extend the duration of this work item into the 2024-2025 biennium to facilitate completion of the work; and to provide guidance to the Secretariat to develop the "experience of incident" reporting procedure.

7.3 The Committee noted that further work was required to finalize this output and agreed to extend its target completion to the 2024-2025 biennium.

7.4 With regard to the principles and policy considerations, the Committee noted that the majority of the delegations that took the floor supported the principles and policies set out in paragraphs 1 to 7 of annex 1 to document LEG 110/7 for finalization. However, doubts were raised regarding the principles and policy considerations set out in paragraphs 8, 9, 10 and 12. The main concern was related to the informal appraisal of the liability limits, as that would lead to a de facto replacement of the procedures for amending the limits of liability.

7.5 Following discussion, the Committee decided to refer these matters to a working group for detailed consideration. The Committee established the Working Group on Liability and Compensation and, taking into account document LEG 110/7 and the comments and decisions made in plenary, instructed it to:

- .1 finalize the principles and policy considerations that will need to be taken into account when developing methodologies to transparently assess the need to amend liability limits for endorsement by the Committee;
- .2 commence development of a 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, and the content of, and procedure for, such reporting;

- .3 consider the support required from the Secretariat for the "experience of incident" reporting procedure;
- .4 commence development of a 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;
- .5 prepare a work plan for the finalization of the two methodologies with a view to completion in 2025; and
- .6 submit a written report to plenary by Friday, 31 March 2023.

7.6 Having considered the part of the report of the Working Group relating to agenda item 7 (LEG 110/WP.6, paragraphs 5 to 12 and 18; and annexes 1 to 4), the Committee approved it in general and took the following action:

- .1 endorsed the principles and policy considerations to be taken into account when developing methodologies to transparently assess the need to amend liability limits, as set out in annex 1 to document LEG 110/WP.6;
- .2 noted the progress made on the development of a methodology for the collection and reporting of experience of incidents and damage resulting therefrom;
- .3 noted the progress made on the development of a methodology for assessing changes in monetary value;
- .4 noted the outline document for the development of methodologies to assess the need to amend liability limits to guide the work of an intersessional correspondence group, as set out in annex 2 to document LEG 110/WP.6;
- .5 approved the work plan for the finalization of the two methodologies with a view to completion in the 2024-2025 biennium, as set out in annex 4 to document LEG 110/WP.6;
- .6 agreed to re-establish the intersessional Correspondence Group on the Development of Methodologies to Transparently Assess the Need to Amend Liability Limits under the coordination of Japan<sup>3</sup> with updated terms of reference as set out in annex 3 to document LEG 110/WP.6; and
- .7 endorsed the re-establishment of the Working Group on Liability and Compensation at LEG 111.

**Audio files:** Monday, 27 March 2023 and Friday, 31 March 2023

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<sup>3</sup> **Coordinator for the Correspondence Group on the Development of Methodologies to Transparently Assess the Need to Amend Liability Limits:**

Mr. Satoshi Ishida

Director of Ministry of Land, Infrastructure, Transport and Tourism, Japan

Email: [ishida-s2yb@mlit.go.jp](mailto:ishida-s2yb@mlit.go.jp)

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## **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 established a remote intersessional group under the coordination of Georgia and instructed it to:

- .1 finalize the text of the Claims Manual for the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001;
- .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.

8.2 The Committee also recalled that it had 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.

8.3 The Committee considered document LEG 110/8 (Georgia) containing the outcome of the Correspondence Group. The Committee noted that the Correspondence Group had finalized the text of the Claims Manual for the 2001 Bunkers Convention, had agreed that the vehicle for the adoption of the Claims Manual should be a circular of the Legal Committee and had drafted the text of that circular, which was contained in the annex to the report. The Committee also noted that the text of the Claims Manual had been proofread by the International Group of P & I Clubs.

8.4 The Committee thanked Georgia, in particular the Vice-Chair of the Committee, for coordinating the work of the Correspondence Group and the members of the Correspondence Group for their work and for completing their terms of reference.

8.5 There was broad support in the Committee for adopting the Claims Manual as submitted in document LEG 110/8, and for disseminating it via a circular of the Legal Committee, as drafted in that document.

8.6 Some delegations, supporting the adoption of the Claims Manual, underlined that its purpose was to serve as a neutral and helpful tool to assist claimants with claims for compensation under the 2001 Bunkers Convention, as opposed to being an implementation guide for States or serving as a definitive interpretation of the Convention.

8.7 While there was broad support for the adoption of the Manual as drafted, a small number of delegations raised concerns that there were issues not addressed by, and gaps in, the Manual, including lack of information on how limitation funds work, the fact that there may be competing claims and that claimants needed to be educated on what was being covered. In the opinion of the observer delegation of UNCTAD, information was also missing about the time limit for legal proceedings, and the fact that the Bunkers Convention did not apply to pollution damage as defined in the 1992 Civil Liability Convention (CLC), which includes bunker oil spills from any ship constructed or adapted for the carriage of oil in bulk as cargo. Concern was also raised about the need to highlight the possibility for Contracting States of entering reservations regarding claims in respect of wreck removal under the Convention on Limitation of Liability for Maritime Claims, 1976 (LLMC), and under the LLMC Protocol of 1996, at any time.

8.8 Some delegations noted that the Claims Manual was to be a guidance document only and did not deal with the admissibility of claims, which was left to national courts.

8.9 Noting that paragraph 2 of the draft LEG circular stated that the Committee would keep the Claims Manual under review, the Committee noted that the issues raised could always be brought back to its attention in the future.

8.10 The Committee also noted that the changes proposed by an observer delegation had either already been proposed to the Correspondence Group or had not been provided to the Committee in advance in the form of a commenting document and could therefore not be taken into consideration at this stage.

8.11 Consequently, the Committee:

- .1 approved the finalized text of the Claims Manual for the 2001 Bunkers Convention, as set out in document LEG 110/8;
- .2 decided that the Committee should keep the Claims Manual text under review;
- .3 agreed that the Claims Manual should be disseminated by way of a circular of the Legal Committee;
- .4 approved the text of the LEG circular, as set out in document LEG 110/8, which will contain the Claims Manual;
- .5 authorized the Secretariat to make minor editorial and formatting changes to the text of the Claims Manual, if necessary, to ensure consistency with IMO style;
- .6 instructed the Secretariat to issue Circular LEG.1/Circ.13 and the Claims Manual on IMODOCS at the earliest convenience;
- .7 invited Member States, and all other interested parties, to use the Claims Manual, as appropriate, and to bring it to the attention of all parties concerned; and
- .8 noted that it had completed its work under this output.

**Audio file:** Tuesday, 28 March 2023

## **9 PIRACY AND ARMED ROBBERY AGAINST SHIPS**

9.1 The Committee noted that no documents had been submitted under this agenda item.

9.2 The Committee also noted the following updates provided orally by the Director of the Legal Affairs and External Relations Division on legal matters that may be of interest to the Committee.

### **Piracy and armed robbery at sea off the Coast of Somalia**

9.3 The work of the Contact Group on Piracy off the Coast of Somalia (CGPCS), which had been traditionally reported under this agenda item, has wound down since the non-extension, as of March 2022, of authorizations under United Nations Security Council

resolution 2608 (2021). Plenary participants to the CGPCS have agreed to change the name of the Group to the Contact Group on Illicit Maritime Activities in the Western Indian Ocean at its twenty-fourth session in January 2022, and to a proposal to reposition itself as a forum for strategic dialogue on illicit maritime activities in the region.

9.4 In relation thereto, the Secretary-General of the United Nations submitted to the UN Security Council in November 2022 a report on *The situation with respect to piracy and armed robbery at sea off the coast of Somalia (S/2022/819)* noting the achievements of international cooperation efforts, including the CGPCS, and calling for continued support by the international community in addressing the root causes of piracy.

### **Piracy and armed robbery at sea in the Gulf of Guinea**

9.5 The UN Security Council also issued resolution 2634 of 31 May 2022 on *Maritime Security in the Gulf of Guinea*, by which it requested the Secretary-General of the United Nations to continue to report and support States and subregional organizations in their efforts to combat piracy and armed robbery at sea in the Gulf of Guinea, including with respect to mobilizing resources following the adoption of the Yaoundé Code of Conduct.

9.6 Pursuant to the said resolution, the Secretary-General of the United Nations also submitted to the Security Council a report on the *Situation of piracy and armed robbery at sea in the Gulf of Guinea and its underlying causes (S/2022/818)* in November 2022, calling upon the Gulf of Guinea States to effectively translate the provisions of the Yaoundé Code of Conduct into their respective national frameworks. The same document reports on the adoption in July 2022, of the ECOWAS *Supplementary Act on the Conditions of Transfer of Persons Suspected of Having Committed Acts of Piracy and their Associated Property and/or Evidence*, which provides a legal framework for ECOWAS member States that do not have the requisite national legislation to transfer arrested piracy suspects and associated evidence or property from the sea, to another member State that does have the required national legislation for trial.

### **Work of the International Law Commission on piracy**

9.7 The International Law Commission, at its seventy-third session (2022), decided to include the topic "Prevention and repression of piracy and armed robbery at sea" in its programme of work, under the lead of the Special Rapporteur on the topic, Mr. Yacouba Cissé. Pursuant thereto, the Commission requested the Secretariat of the United Nations to invite States and relevant international organizations, including IMO, to provide information relevant to their work on piracy and armed robbery at sea (A/77/10), which information will be provided by the Secretariat in due course.

**Audio files:** Monday, 27 March 2023

## **10 GUIDANCE FOR THE PROPER IMPLEMENTATION AND APPLICATION OF IMO LIABILITY AND COMPENSATION CONVENTIONS**

10.1 The Committee recalled that, at its last session, it had agreed to include a new output on the development of guidance for the proper implementation and application of IMO liability and compensation conventions in its 2022-2023 biennial agenda, with a target completion year of 2024, and that the Committee had invited concrete proposals to LEG 110 for consideration.

10.2 The Committee noted with appreciation the information provided in document LEG 110/10 (Canada et al.) on the informal intersessional work undertaken by the co-sponsors to the document proposing various measures related to the guidance for the proper

implementation and application of IMO liability and compensation conventions. The co-sponsors had identified three projects that could be completed within the scope and timelines of the output: (1) development of information pamphlets on the IMO liability and compensation conventions; (2) review of the guidance in Circular Letter No.3464; and (3) development of a GISIS module to facilitate the validation of certificates.

10.3 The Committee thanked the delegations of Spain and the International Group of Protection and Indemnity Associations for volunteering to lead the informal intersessional work on the Athens Convention pamphlet, as proposed in document LEG 110/10, and encouraged other delegations to contribute to this effort.<sup>4</sup>

10.4 Having noted the broad support for the three projects proposed in document LEG 110/10, as listed in paragraph 10.2 above, the Committee decided to refer this item to a working group to progress the work. The Committee established the Working Group on Liability and Compensation, and taking into account document LEG 110/10 and the comments and decisions made in plenary, instructed it to:

- .1 finalize the text of the three pamphlets on the Bunkers Convention, Civil Liability Convention and Wreck Removal Convention, as set out in annexes 2, 3 and 4 of document LEG 110/10 with a view to approval by the Committee;
- .2 consider and finalize the draft terms of reference of a formal intersessional correspondence group to review the Guidelines for accepting insurance companies, financial security providers and the International Group of Protection and Indemnity Associations (P & I Clubs) in Circular Letter No.3464, as set out in annex 1 to document LEG 110/10;
- .3 consider and refine the proposal to create a new GISIS module listing points of contact for issuing certificates within each State Party; and
- .4 submit a written report to plenary by Friday, 31 March 2023.

10.5 Having considered the part of the report of the Working Group relating to agenda item 10 (LEG 110/WP.6, paragraphs 13 to 18 and annexes 5, 6 and 7), the Committee approved it in general and took the following action:

- .1 approved the text of the three pamphlets on the Bunkers Convention, Civil Liability Convention and Wreck Removal Convention, as set out in annexes 2, 3 and 4;
- .2 instructed the Secretariat to make any editorial corrections that may be identified as appropriate, including updating references within the document on a regular basis, and to design, translate and publish the pamphlets on the IMO website;
- .3 agreed to the establishment of a formal intersessional correspondence group to review the *Guidelines for accepting insurance companies, financial security providers and the International Group of Protection and Indemnity*

<sup>4</sup> Delegations interested in supporting the informal intersessional work on the Athens Convention pamphlet should contact:

Víctor Jiménez Fernández (Spain) at [vjfernandez@mitma.es](mailto:vjfernandez@mitma.es); and  
David Baker (International Group of P & I Clubs) at [david.baker@igpandi.org](mailto:david.baker@igpandi.org).

*Associations (P & I Clubs)* in Circular Letter No.3464 under the coordination of Canada,<sup>5</sup> with the terms of reference as set out in annex 1 to document LEG 110/10; and

- .4 instructed the Secretariat to create a new GISIS module entitled "Certificates of insurance" listing points of contact for issuing certificates within each State Party under the existing GISIS module on "Contact Points".

**Audio files:** Monday, 27 March 2023 and Friday, 31 March 2023

## **11 MEASURES TO ADDRESS MARITIME AUTONOMOUS SURFACE SHIPS (MASS) IN INSTRUMENTS UNDER THE PURVIEW OF THE LEGAL COMMITTEE**

11.1 The Committee recalled that LEG 109 had agreed to:

- .1 include a new output under the work programme on this agenda item 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.

11.2 The Committee also recalled that MSC 105, LEG 109 and FAL 46 had agreed to establish the Joint MSC-LEG-FAL Working Group on MASS (MASS-JWG) as a cross-cutting mechanism to address common high-priority issues identified by the respective regulatory scoping exercises for the use of MASS conducted by MSC, LEG and FAL.

### **Joint MSC-LEG-FAL Working Group on Maritime Autonomous Surface Ships (MASS-JWG)**

#### ***Report of MASS-JWG 1***

11.3 The Committee, having considered document LEG 110/11 (Secretariat), containing the report of the first meeting of MASS-JWG (MASS-JWG 1), held from 7 to 9 September 2022, noted with appreciation the work of the Co-Chairs, Mr. Henrik Tunfors and Prof. Gen Goto, during the first session of the MASS-JWG. The Committee approved the report of MASS-JWG 1 in general, and in particular:

- .1 noted that the Group had agreed to appoint two Chairs for MASS-JWG, so as to provide a balance of both the technical and legal perspectives;
- .2 noted that the Group had agreed on organizing a seminar on legal issues, including UNCLOS, to be considered in the development of a MASS Code and MASS-related measures, preferably back-to-back with the next MASS-JWG meeting;

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<sup>5</sup> **Coordinator of the Correspondence Group on the Review of Circular Letter No.3464:**

Caitlin O'Boyle  
 Manager, Liability, Compensation and Insurance  
 Transport Canada, Marine Policy, Government of Canada  
 Email: [Caitlin.Ob Boyle@tc.gc.ca](mailto:Caitlin.Ob Boyle@tc.gc.ca)

- .3 noted that the Group had agreed to use a table to identify and collect information on options for interpretations for the common issues in the instruments under the purview of the three Committees (LEG 110/11, annex 1);
- .4 noted that the table's content had not been discussed or agreed upon, and that Member States and international organizations were invited to submit documents to the next MASS-JWG meeting, using the table in annex 1;
- .5 endorsed the work plan for the Joint MSC-LEG-FAL Working Group on MASS (LEG 110/11, annex 2);
- .6 agreed to the proposal to convene two sessions of the Joint MSC-LEG-FAL Working Group on MASS in 2023;
- .7 agreed to the proposal to convene a five-day meeting of MASS-JWG 2 in spring 2023, as concurrently approved by MSC and FAL and endorsement by the Council; and
- .8 agreed that MASS-JWG could meet before all three Committees had considered its report.

#### ***Work plan and future meetings***

11.4 The Committee, having also noted information provided orally by the Co-Chair of MASS-JWG, Prof. Goto (Japan), agreed to concurrently approve with MSC 106 and FAL 47 the following recommendations of MASS-JWG:

- .1 to hold a hybrid five-day meeting of the MASS-JWG from 17 to 21 April 2023;
- .2 that the MASS-JWG could meet before all three Committees had considered its report(s), bearing in mind that the meeting dates of the three Committees, which advanced their work on MASS at different speeds, would have an impact on the work of the Group and the scheduling of its meetings; and
- .3 to authorize the MASS-JWG to meet twice in each calendar year until decided otherwise by the three Committees, subject to endorsement by C 129 (July 2023).

#### ***Seminar on legal issues, including UNCLOS, during MASS-JWG 2***

11.5 The Secretariat invited the Committee's attention to information provided in Circular Letter No. 4697 on the holding of the seminar on legal issues, including UNCLOS, as agreed by MASS-JWG (paragraph 11.4.2), on the first day of MASS-JWG 2 on 17 April 2023. The seminar will feature panel discussions on issues that concern the work of the Legal Committee, including the relationship between UNCLOS and MASS, the role and responsibilities of the master in MASS operations, and the liability and compensation regime for MASS.

#### ***Progress on the consideration of MASS before MSC and FAL***

11.6 The Committee, having considered document LEG 110/11/1 (Secretariat), and information provided orally by the Secretariat, noted the progress of the intersessional Correspondence Group on MASS established by MSC 105 and the MASS Working Group established by MSC 106, in the development of a draft non-mandatory goal-based MASS Code.



11.7 The Committee also noted the information provided by the Secretariat on the progress in the consideration of MASS within the Facilitation Committee, including, in particular:

- .1 the approval by FAL 46 of the *Outcome of the regulatory scoping exercise and gap analysis of the FAL Convention with respect to MASS* (FAL.5/Circular.49) and the establishment of MASS-JWG;
- .2 the inclusion in the FAL Committee's 2022-23 biennial agenda of an output on "Measures to address maritime autonomous surface ships (MASS) in the instruments under the purview of the Facilitation Committee" with a target completion year of 2025; and
- .3 the establishment by FAL 47 of the Working Group on FAL MASS to develop a road map on addressing MASS issues related to the FAL Convention, and to review and identify any common issues that might need to be addressed by MASS-JWG.

### **Work of the Legal Committee on MASS**

11.8 The Committee had for its consideration five documents concerning legal issues relating to MASS, including matters that had been identified by MASS-JWG 1 as among the common gaps and themes in instruments under the purview of LEG, MSC and FAL.

11.9 In view of the fact that these submissions raised legal issues that were intertwined with matters also being considered by MASS-JWG, and that the outcome of its meetings scheduled for 2023 would likely inform the work of the Committee, delegations provided specific views on which of these issues were either ripe for discussion in the Committee, or best referred to MASS-JWG for its further consideration. This two-pronged approach was also shaped by the following premises:

- .1 that it would be beneficial for the Committee to await the reports of MASS-JWG from its two sessions in 2023, when deciding whether to convene a working group at its next session and agreeing on the terms of reference thereof;
- .2 that concrete output proposals on how to address MASS in the conventions under the purview of the Legal Committee were needed in order to effectively follow up on the outcome of the regulatory scoping exercise of the Committee; and
- .3 that the Organization as a whole needed clarity on definitions and concepts relating to MASS, before advancing amendments to its conventions and other legal instruments.

### **Liability and compensation issues in relation to MASS**

11.10 The Committee had for its consideration the following documents which raised liability and compensation issues in relation to MASS:

- .1 document LEG 110/11/2 (Secretariat), which resubmits document MSC 103/5/7 (Russian Federation) to the Committee. MSC 106, in establishing the Working Group on MASS, instructed it to review the documents in MSC.1/Circ.1638, appendix 3, marked as "to be kept in abeyance for future consideration", the list of which includes

document MSC 103/5/7. Following review by the Working Group, MSC 106 requested that document MSC 103/5/7 be referred to LEG 110, after it concluded that apart from the issues therein that had been considered in the regulatory scoping exercise of MSC, the remaining item on liability insurance was a legal matter; and

- .2 document LEG 110/11/4 (Russian Federation) which provides information on the development of a section on operational context in the draft MASS Code.

11.11 During the discussion, one delegation shared the view that while it was not certain that there was no particular risk specific to the operation of MASS as opposed to conventional ships, the evaluation of such a risk was a matter to be decided by insurers and was not a legal issue per se. Furthermore, the legal issue to be decided in the Committee should rather be the applicability to MASS of the mandatory insurance requirements in the conventions under the purview of the Legal Committee. In that regard, the delegation was of the view that there was no difference between MASS and conventional ships.

11.12 Another delegation disagreed with the view that there is no difference on how issues of liability in relation to MASS should be treated, particularly with regard to MASS of degrees 3 and 4 of autonomy. Furthermore, from the point of view of a coastal State, the applicability of strict liability should be further analysed.

### ***The master in MASS operations***

11.13 The Committee had for its consideration the following documents on legal issues relating to the master in MASS operations:

- .1 document LEG 110/11/5 (China), which provides suggestions on the implementation of provisions related to the master in instruments under the purview of the Legal Committee; and
- .2 document LEG 110/11/6 (IFSMA) on legal issues relating to the master in MASS operations.

11.14 The decision of the Committee with respect to streamlining the consideration of issues raised in the above documents and the discussion is outlined in paragraphs 11.20-11.22 below.

### ***Implications of UNCLOS for MASS***

11.15 The Committee had for its consideration document LEG 110/11/3 (United Arab Emirates), which provides an initial analysis on selected articles of UNCLOS and their potential implications on MASS.

11.16 The Committee agreed that issues with respect to MASS and UNCLOS were complex, but there was agreement that UNCLOS did not prevent the regulation of the operation of MASS.

11.17 A strong majority of delegations that took the floor felt that UNCLOS did not impede the regulation of MASS by IMO. Moreover, IMO was the competent international organization for shipping, with the ability to develop rules and regulations related to the safety of navigation, including for new technologies, which was consistent with UNCLOS' role as a framework convention.

11.18 There was broad support for the suggestions made in document LEG 110/11/3 (United Arab Emirates), including its views on UNCLOS. After a good and fulsome exchange, the Committee agreed that the discussions had provided a clear direction on how MASS could be accommodated under UNCLOS and agreed to report the same to MASS-JWG.

11.19 However, not all delegations agreed with this view stating that the competent body to be interpreting the provisions of UNCLOS with respect to MASS are the States Parties to UNCLOS, and not IMO. The delegation of Argentina further clarified that there was a need to consider some legal aspects in light of the provisions of UNCLOS, and that the interpretation of UNCLOS pertains to a competent body, which is not IMO. The delegation also stated that it reserves the right to adopt legislation it believes conforms to UNCLOS with regard to MASS in its jurisdictional waters. The statement of the delegation is attached in annex 10.

### **Streamlining of the consideration of legal issues relating to MASS operations**

11.20 Following its discussion on the above legal issues, the Committee decided that the following legal issues would remain for the consideration of the Legal Committee, with a view to establishing the Working Group on MASS at LEG 111:

- .1 issues with respect to liability arising from MASS operations discussed in documents LEG 110/11/2 (Secretariat) and LEG 110/11/4 (Russian Federation), in particular:
  - .1 paragraph 9 of document MSC 103/5/7, as reproduced in the annex to document LEG 110/11/2;
  - .2 the section on "Specific functional requirements for the MASS operation responsibility" detailing functional requirement numbers 3.1 to 3.3 in the annex to document LEG 110/11/4; and
  - .3 entries referring to UNCLOS and the conventions under the purview of the Legal Committee in rows 2 to 4 of the table in the annex to document LEG 110/11/4;
- .2 issues with respect to the implementation of provisions in instruments under the purview of the Legal Committee, as discussed in document LEG 110/11/5 (China), in particular paragraphs 5, 6, 7, 8.1 and 9 thereof, as well as its annex; and
- .3 issues relating to UNCLOS and its potential implications on MASS operations as discussed in documents LEG 110/11/3 (United Arab Emirates) and LEG 110/11/6 (IFSMA).

11.21 In relation to document LEG 110/11/5 (China), the Committee requested that a concrete proposal on the scope of the work under the output on this agenda item be developed, for the consideration of the Committee at its next session.

11.22 The Committee also decided that the following should be forwarded to MASS-JWG for consideration at its next session:

- .1 legal issues relating to the role of the master in the following documents: LEG 110/11/2 (Secretariat) and LEG 110/11/4 (Russian Federation); document LEG 110/11/5 (China), in particular paragraphs 4 and 8.2 thereof; and LEG 110/11/6 (IFSMA); and

- .2 the proposal in paragraph 25.3 of document LEG 110/11/3 (United Arab Emirates).

**Audio files:** Wednesday, 29 March 2023

## **12 WORK OF OTHER IMO BODIES**

12.1 The Committee noted the information provided in document LEG 110/12 (Secretariat) on the outcomes of C 127, C 128, MSC 105, MSC 106, MEPC 78, MEPC 79, FAL 46, CCC 8, PPR 9 and LC 44/LP 17, in relation to matters of relevance to the work of the Legal Committee, and in particular that:

- .1 MSC 105 had invited all relevant IMO bodies to assess their respective involvement in the human element within their remit and invite submissions on this subject to a future session of the Maritime Safety Committee;
- .2 the Secretariat would submit information regarding the activities of the Committee on the human element to MSC 107; and
- .3 C 127 had invited other organs of the Organization to report on their experience with hybrid meetings.

12.2 The Committee also invited submissions by delegations to a future session of the Committee on their experience with hybrid meetings.

12.3 As regards the Organization's relations with the United Nations and its specialized agencies, the delegation of Argentina, recalling the recent adoption of an international legally binding instrument under the United Nations Convention on the Law of the Sea (UNCLOS) on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (BBNJ), inquired as to how the said instrument might interact with matters within the remit of the Organization, in particular the MARPOL Convention. In response thereto, the Director of the Legal Affairs and External Relations Division advised that this matter would be dealt with under the standing agenda item of the Council and the Assembly on external relations. The Secretariat, having participated in the final session of the BBNJ intergovernmental conference from 20 February to 3 March 2023, would be reporting to the Council on the outcome thereof.

### **Guidelines on places of refuge for ships in need of assistance**

12.4 The Committee recalled that MSC 106 had approved the draft Assembly resolution on the revision of the Guidelines on places of refuge for ships in need of assistance (resolution A.949 (23)), following the finalization thereof by NCSR 9, and that MEPC and the Legal Committee were invited to approve the same, with a view to adoption by the Assembly at its thirty-third session.

12.5 The Committee considered document LEG 110/12/1 which contains the draft Assembly resolution on the revision of the Guidelines on places of refuge for ships in need of assistance, and the draft revised Guidelines in its annex. The Director of the Legal Affairs and External Relations Division advised that since its approval by MSC 106, the Secretariat had made minor editorial changes to the text of the Guidelines as reflected in the annex to document LEG 110/12/1 using the "track changes" function, and that these editorial changes were being suggested only for clarity and to improve the readability of the Guidelines, without introducing substantive modifications to the text thereof. Furthermore, five additional instruments had been added to the list in the appendix to section 1 of the draft revised

Guidelines on "Applicable International Conventions" providing the legal context within which coastal States, flag States and ships should act when facing the envisaged circumstances. These were instruments within the purview of the Legal Committee and MEPC, as follows: the 2000 OPRC-HNS Protocol, 1997 MARPOL Protocol, London Protocol, 1996 LLMC Protocol and the 2003 Supplementary Fund Protocol.

12.6 In view of the substantial technical work that had been undertaken to produce the current text of the draft revised Guidelines, particularly by the NCSR Sub-Committee, delegations were advised to focus their interventions on outstanding legal issues, rather than editorial remarks. In this regard, the delegation of Argentina raised its concerns regarding paragraph 4.3 of the Guidelines, which referred to "the right of a foreign ship to enter a port or internal waters of another State in situations of force majeure or distress" as constituting "internationally accepted practice". In this delegation's view, the provision contradicted the fourth preambular paragraph of the draft Assembly resolution on the Guidelines recalling that "coastal States are not, under international law, under any obligation to grant places of refuge".

12.7 The following proposed modification to section 4 on International/Regional Cooperation and Coordination for Places of Refuge in the draft revised Guidelines received wide support in the Committee:

"4.3 A right of a foreign ship to enter a port or internal waters of another State in situations of force majeure or distress is not provided for in UNCLOS. This, however, does not preclude the adoption of rules or guidelines as long as they are consistent with UNCLOS."

12.8 Following the discussion, the Committee noted the information contained in document LEG 110/12/1, and approved the draft Assembly resolution on the revision of the Guidelines on places of refuge for ships in need of assistance, including the proposed modifications as approved by the Committee, with a view to adoption by the Assembly at its thirty-third session. The full text of the draft Assembly resolution, as approved, is set out in annex 5.

### **General statements**

12.9 The Committee noted the general statements made by several delegations expressing serious concerns with regard to the recent unannounced and repeated ballistic missiles launched by the Democratic People's Republic of Korea (DPRK) in violation of the United Nations Charter and the United Nations Security Council (UNSC) resolutions. The delegations strongly condemned these launches which posed a clear danger to the peace and security in the region and worldwide, as well as to the safety of navigation and international shipping. The delegation of Japan recalled the decisions taken by C 128 on this matter. Some delegations also called on the DPRK to comply with the UNSC resolutions and to work towards achieving peace and the denuclearization of the Korean peninsula. As requested, the statements of the delegations of Canada, Japan, Sweden, Germany, Ukraine and the United States in this regard are set out in annex 10 to the report.

12.10 The Committee also noted the statement by the delegation of the DPRK in response to the interventions made, which, in their view did not reflect the reality of the Korean peninsula which was technically at war. The delegation stated that its missile launches had never posed any danger to the safety of international shipping and the security of its neighbouring countries and region and that they were justified exercises of the right to self-defence in order to defend the destiny of its country and the life of its people in response to the military threats by the US and others. The delegation explained that the continuous nuclear and military threats by the US and south Korea against the DPRK for 70 years including staging the large-scale joint military exercises "Freedom Shield" and "Ssangryong" even in March led to the escalation of

the military tensions in the Korean peninsula. The delegation added that IMO was not the appropriate forum to discuss political and military issues, as these went beyond its mandate. As requested, the full statement of the delegation is set out in annex 10 to the report."

### **Final report of the UN Panel of Experts regarding the Democratic People's Republic of Korea**

12.11 The Committee considered document LEG 110/12/2 (Secretariat) providing an update on the report of the UN Panel of Experts regarding the Democratic People's Republic of Korea of 1 March 2022, following the announcement of the Secretary-General at C 127 that he would inform the relevant IMO organs of the recommendations of the Panel.

12.12 The Committee noted that the document contained a link to the report, which contained a number of findings and recommendations (in paragraphs 100 to 119 of the report) on various topics, including sectoral and maritime sanctions, including a consolidated list of recommendations to States, ship registries, industry stakeholders and IMO.

12.13 The Committee also noted that three recommendations were directly requesting IMO to take action. Two were made in the context of Vessel identity laundering and AIS manipulation and had been considered by MSC 106, which took decisions on them. The third recommendation was made in the context of Enhanced due diligence and data-sharing, as follows: "The Panel recommends that the IMO Global Integrated Shipping Information System include information to indicate whether a vessel's flag registration is provisional or permanent as well as the effective date range". The recommendation was issued after the diverse investigations showed that "a number of foreign-flagged vessels that conduct sanctionable activities have been recorded as falsely flagged, as having changed flag registries in quick succession, continued to use a country's flag following removal from a registry, or flown a flag without proper authorization, seeking to mask their illicit activity".

12.14 The Committee noted the statement made by the delegation of the DPRK objecting to the consideration of the report of the UN Panel of Experts by IMO and its Member States, and explaining that the UNSC had neither approved the report nor decided about any implementation of its recommendations and that the consideration of the report had been unreasonably proposed by the delegation of the United States at C 127 under its political purpose against the DPRK. The delegation of the DPRK recalled that they had never acknowledged the partial and illegal UNSC "resolution" which seriously infringes upon the right to existence and development of a sovereign State and that there was no international provision stipulating that nuclear tests or satellite and ballistic missile launches constituted a threat to international peace and security. The delegation proposed that the Committee suggest that the Council reconsider paragraph 14(a).2.2 of C 127/D. The full statement of the delegation is set out in annex 10 to the report.

12.15 Several delegations supported the recommendations of the UN Panel of Experts, as well as their implementation by IMO. There was also support for implementing the third recommendation of the UN Panel of Experts that the IMO GISIS include information to indicate whether a ship's flag registration was provisional or permanent, as well as the effective date range, as such an inclusion would assist in determining whether certain ships were improperly taking advantage of provisional registrations to circumvent sanctionable activities commonly known as flag hopping.

12.16 Consequently, the Committee:

- .1 agreed with the recommendation of the UN Panel of Experts that GISIS should include information to indicate whether a ship's flag registration was provisional or permanent, as well as the effective date range; and

- .2 instructed the Secretariat to work with the Department of Information and Technology and S&P Global to display this information in the module on Ship and Company Particulars, and report to LEG 111.

**Audio file:** Tuesday, 28 March 2023

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

### **Technical cooperation activities on maritime legislation for 2022**

13.1 The Committee considered document LEG 110/13/1 (Secretariat) reporting on the technical cooperation activities relating to maritime legislation from January to December 2022. The Committee noted, in particular, that during the period under review, the Legal Affairs Office (LAO) had continued to deliver assistance on the effective implementation of IMO conventions relating to oil pollution and liability and compensation and their incorporation into their domestic legislation and in terms of drafting of maritime legislation to ensure that IMO conventions were correctly and effectively implemented in the national legislation, together with various projects and other divisions of the Secretariat.

13.2 The Committee also noted that the common challenges faced by countries remained regarding the lengthy legal processes to accept and implement the conventions on liability and compensation; a general lack of capacity and understanding of IMO instruments and international maritime issues; a lack of legal and technical experts to effectively implement the conventions; and a lack of structured and sustained training in these countries. The Committee noted that it was recommended that lawyers and drafters be invited to participate in IMO technical cooperation activities provided for maritime administrations, to include training focused on the IMO Member State Audit Scheme (IMSAS).

13.3 The Committee further noted that the fourth global workshop on general principles of drafting national legislation to implement IMO conventions was planned to be held at the IMO Headquarters in October 2023.

13.4 The Committee expressed its appreciation to the Secretariat and noted the information provided in document LEG 110/13/1.

### **Thematic priorities for the Integrated Technical Cooperation Programme for 2024-2025**

13.5 The Committee noted that assistance to Member States in relation to maritime legislation was adequately covered under the existing three thematic priorities approved by LEG 108 and that these thematic priorities could therefore be retained for the next biennium. The Committee approved the thematic priorities as set out in the table in document LEG 110/13/1, for inclusion in the Integrated Technical Cooperation Programme (ITCP) for 2024-2025 at TC 72.

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

13.6 The Committee considered document LEG 110/13 (IMO IMLI) reporting on IMLI's activities for the year 2022 relating, inter alia, to student enrolments and graduates, as well as academic developments and partnerships, cooperative activities undertaken with IMO and other institutions, and also the Institute's outreach activities, including publications, international conferences and events, and United Nations-related matters.

13.7 The Committee noted, that after more than two years of online lectures, the Institute had commenced the academic year 2022-2023 in situ, with a record class of 60 students from 35 States pursuing studies under its different programmes. Moreover, infrastructure improvements at IMLI now allowed a hybrid lecturing environment, enabling the Institute to continue with its numerous training initiatives, thereby increasing IMLI's global outreach, including offering one free seat for each IMO Member State in its specialized courses, thus benefiting many maritime officials from around the world. In addition, in 2022 IMLI continued strengthening its cooperation with important institutions in international maritime law, such as IMO, CMI, ITLOS, ICJ and distinguished educational centres.

13.8 The Committee also noted that the Institute expressed its appreciation for the fellowship funding received from various donors and the contributions received, inter alia, from the ITF Seafarers' Trust, which enabled the Institute to acquire the audiovisual equipment necessary to deliver lectures in hybrid mode in 2022, the complete refurbishment of the Institute's Main Lecture Hall being sponsored by the Government of Malta and the generous contribution of the Republic of Korea through the Voyage Together Trust Fund allowing the Institute to refurbish the students' residential accommodation in the Institute's premises.

13.9 The Committee expressed its heartfelt congratulations to Prof. Norman A. Martínez Gutiérrez on his appointment as Director of IMLI and wished him the best in his work. The Committee extended its appreciation to Malta and all other donors for their assistance to the Institute. The Committee also thanked the Institute and its staff for their efforts in enabling classes in hybrid format.

13.10 With regard to a question on the need for IMLI to include, in its curriculum, the weaknesses identified through the audits of Member States in the framework of the IMO Member State Audit Scheme (IMSAS), the Director of the Legal Affairs and External Relations Division informed the Committee that the Council would review the IMSAS for the next cycle of audits and recommended that the matter should be brought to the attention of the Council.

13.11 The Committee noted document LEG 110/INF.2 (IMO IMLI) providing the list of dissertations and maritime legislation drafting projects for the academic years 2021-2022 and 2022-2023.

13.12 The Committee also noted document LEG 110/INF.3 (IMO IMLI) enclosing the IMO IMLI dissertation written by Mr. Darius Gustav Joseph (Antigua and Barbuda) entitled "An Analysis of the Need for Reform to Ensure the Adequate Ratification and Implementation of IMO Instruments in Antigua and Barbuda" which was awarded the IMO Secretary-General's Prize for Best Dissertation for the academic year 2021-2022.

13.13 The Committee congratulated Mr. Darius Gustav Joseph, who was attending the session as a member of the delegation of Antigua and Barbuda.

**Audio file:** Tuesday, 28 March 2023

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

14.1 The Committee noted the information contained in document LEG 110/14 (Secretariat) on the status of conventions and other treaty instruments emanating from the Legal Committee.



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

- .1 The delegations of Japan, Portugal and Belize informed the Committee that they had deposited instruments of accession to the Cape Town Agreement during the week of LEG 110. The statements of Japan and Portugal are set out in annex 10 to the report. Several delegations extended their congratulations to the above delegations on the occasion of their accession to this critical instrument and urged other delegations to do the same, in order to facilitate the entry into force thereof and strengthen the legal framework for the safety of fishing vessels and protecting the lives of fishers.
- .2 The delegation of Portugal further informed the Committee that it deposited an instrument of accession to the Hong Kong Ship Recycling Convention.
- .3 The delegation of Luxembourg also informed the Committee that following the entry into force for it of the Nairobi Wreck Removal Convention in October 2022, Luxembourg introduced legislation for its implementation in March 2023. The delegation also informed the Committee that it acceded to the Hong Kong Ship Recycling Convention.

14.3 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, 31 March 2023

## **15 WORK PROGRAMME**

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

15.1 The Committee was advised that the Council, at its 127th regular session, had endorsed the Committee's decisions, taken at its previous session, on outputs for the 2022-2023 biennium.

15.2 The Committee noted the information contained in document LEG 110/15 (Secretariat) that in accordance with paragraph 9.1 of the *Application of the Strategic Plan of the Organization* (resolution A.1111(30)), the reports on the status of outputs included in the list of outputs shall be annexed to the report of each session of the sub-committees and committees, and to the biennial report of the Council to the Assembly. Such reports shall identify new outputs accepted for inclusion in the biennial agendas.

15.3 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 annex 1 to document LEG 110/15. In particular, the Committee was invited to consider deleting the square brackets in the "Status of outputs for Year 2" of the present biennium, which is the year 2023.

15.4 Furthermore, the Committee considered the relevant outputs as attached in annex 2 to document LEG 110/15 which only referred to LEG as the parent organ and were proposed for inclusion in the post-biennial agenda of the Committee.

15.5 The Committee agreed on its report on the status of outputs for the current biennium and on the outputs to be included in its post-biennial agenda, attached as annexes 6 and 7 to this report, respectively, for submission to the Council.

#### **Items for inclusion in the agenda for LEG 111**

15.6 The Committee approved the list of substantive items for inclusion in the agenda for LEG 111, as attached as annex 8 to this report.

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

15.7 The Committee was informed that the Council, at its 129th regular session, would consider a regular budget outline for the 2024-2025 biennium, and that the Secretary-General, in preparing his budget outline for the Council's consideration, would take into account the Committee's proposed number of meeting weeks, which would include two meetings of the Committee, with full interpretation services.

15.8 The Committee agreed that two meetings should be adequate for the 2024-2025 biennium and, in view of the present workload, agreed that the next session should be held during five meeting days with eight full sessions of interpretation.

#### ***Revision of the Committee's organization and method of work***

15.9 The Committee recalled that, further to efforts at streamlining work within the Organization, C 127 had invited the Committees to review their methods of work and report to the Council on their experience. Following this invitation, MSC 106 and MEPC 79 concurrently approved amendments to the *Organization and method of work of the Maritime Safety Committee and the Marine Environment Protection Committee and their subsidiary bodies*. The revised document has been issued as MSC-MEPC.1/Circ.5/Rev.4. The amendments adopted relate to the introduction of a five working day period for commenting on the draft reports of the committees, and the non-introduction of documents in plenary unless the Chair decides that it is essential for the proper consideration of the matter concerned.

15.10 The Committee recalled further that more recently, FAL 47 agreed to include procedures for a five-day correspondence period and the non-introduction of documents in plenary unless it is necessary to provide updates and/or clarifications.

15.11 The Committee considered document LEG 110/WP.7 containing the proposed amendments, based on the decisions of MSC 106, MEPC 79 and FAL 47 to:

- .1 introduce a five working day period from the publication of the final draft report for delegations to comment by correspondence, and that such comments should only address editorial matters and statements by delegations, and should not reopen discussion on decisions taken during the session; and
- .2 not to introduce documents in plenary unless the Chair decides that it is essential for the proper consideration of the matter concerned, while also providing the submitter(s) of a document the opportunity to indicate before or at the time of the consideration of a document if they wish to provide additional information or context.

15.12 The Committee approved the proposed amendments to the *Organization and method of work of the Legal Committee* (LEG.1/Circ.9), as set out in annex 9, and requested the Secretariat to issue the revised method of work as LEG.1/Circ.14.

**Audio file:** Friday, 31 March 2023

## **16 ELECTION OF OFFICERS**

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

16.1 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 2024.

**Audio file:** Friday, 31 March 2023

## **17 ANY OTHER BUSINESS**

17.1 The Committee considered document LEG 110/17 (Comité Maritime International and the United Nations Office of Legal Affairs) which provided background to discussion related to the Convention on the Judicial Sale of Ships and highlighted the importance of the ratification of this Convention by States.

17.2 The Committee noted the information provided and expressed its appreciation to the CMI and the United Nations Office of Legal Affairs for their work on the Convention.

17.3 The Chinese delegation encouraged all countries to actively consider becoming parties to the Convention and sincerely invited them to come to Beijing in September 2023 to participate in the signing of the Convention, referred to as the Beijing Convention on the Judicial Sale of Ships.

17.4 The Committee invited all delegations to actively encourage their States and organizations to fully support this Convention by proceeding with its ratification.

17.5 As requested, the statements by the Comité Maritime International under this agenda item is set out in annex 10 to the report.

17.6 The observer delegation of UNCTAD raised the issue of lack of availability of texts of treaties adopted under the auspices of IMO to the public. The Director of Legal Affairs and External Relations advised that this issue was under active consideration by the Council, in its Working Group on Council Reform. The statement of the delegation of UNCTAD is set out in annex 10 to the report.

### **Expressions of appreciation**

17.5 The Committee expressed appreciation for Mr. Frederick J. Kenney, Director of the Legal Affairs and External Relations Division, and Mr. David Baker (P & I Clubs), who would both be retiring following this session of the Committee, for their invaluable contribution to the shipping industry and IMO, and wished them a long and happy retirement.

**Audio file:** Friday, 31 March 2023

## **18      CONSIDERATION OF THE REPORT OF THE COMMITTEE ON ITS 110TH SESSION**

18.1      The draft report (LEG 110/WP.1) was prepared by the Secretariat for consideration and review by the Committee on Friday, 31 March 2023, after which it was re-issued on Thursday, 6 April 2023 as LEG 110/WP.1/Rev.1. Taking into account the updated provisions of the *Organization and method of work of the Legal Committee*, an additional opportunity for comments was given for a further five full working days, until 17 April 2023 at 23.59 (UTC+1).

18.2      After the resolution of comments received as described in document LEG 110/18, the report of the Committee was adopted and the session was closed at 23.59 (UTC+1) on 17 April 2023, pursuant to rule 35 of the Rules of Procedure of the Legal Committee.

**Audio file:**          Friday, 31 March 2023

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## **ANNEX 1**

### **RESOLUTION LEG.6(110) ADOPTED ON 31 MARCH 2023**

#### **GUIDELINES ON HOW TO DEAL WITH SEAFARER ABANDONMENT CASES**

THE LEGAL COMMITTEE OF THE INTERNATIONAL MARITIME ORGANIZATION,

RECALLING Article 33 of the Convention on the International Maritime Organization regarding the functions of the Committee,

RECALLING ALSO resolution A.930(22) of 29 November 2001 on Guidelines for the Provision of Financial Security in the Case of Abandonment of Seafarers,

RECALLING FURTHER the Maritime Labour Convention, 2006, in particular Regulation 2.5 and its associated standards and guidelines,

BEARING IN MIND the Vienna Convention on Consular Relations, 1963, in particular, Article 5 concerning the extension by a State of consular protection and assistance to its nationals and to its vessels and their crews,

BEARING IN MIND ALSO the United Nations Convention on the Law of the Sea, 1982, in particular article 94 which requires the flag State to exercise its effective jurisdiction and control in administrative, technical and social matters over ships flying its flag, and of the customary international law of the sea,

RECOGNIZING, at its 107th session, the need for additional guidelines for flag States, port States and seafarer supply States to address cases of abandonment of seafarers, and appreciating the work of the Correspondence Group, under the coordination of Indonesia, in developing such guidelines,

NOTING WITH SATISFACTION the decision of the ILO Governing Body at its 343rd session, to form the Joint IMO/ILO Tripartite Working Group to Address Seafarers Issues and the Human Element, (JTWG) as endorsed by the IMO Council at its 126th session, and recalling the decision of the Committee at its 109th session to forward the aforementioned guidelines for consideration and adoption by ILO;

HAVING considered the Guidelines as adopted by JTWG at its first session in December 2022,

1 ADOPTS the Guidelines on how to deal with seafarer abandonment cases set out in the annex to the present resolution;

2 INVITES all flag States, port States and seafarer supply States to implement the guidelines in future abandonment cases;

3 ENCOURAGES Member Governments and non-governmental organizations in consultative status with IMO and ILO to circulate the Guidelines as widely as possible in order to ensure their widespread promulgation and implementation;

4 INVITES Member Governments to consider amending their national legislation as appropriate, to give full and complete effect to the Guidelines;

5 AGREES to keep the Guidelines under review.



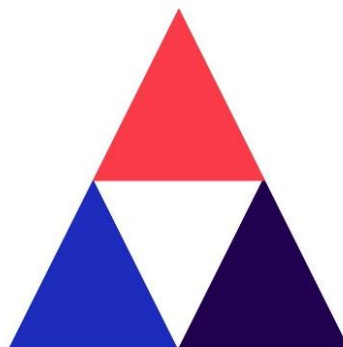
International  
Labour  
Organization



► TWGSHE/2022/7

## ► Guidelines on how to deal with seafarer abandonment cases<sup>\*</sup>

First Meeting of the Joint ILO–IMO Tripartite Working Group to identify and address seafarers' issues and the human element  
(Geneva, 13–15 December 2022)



Sectoral Policies Department  
Geneva, 2022

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<sup>\*</sup> In accordance with established procedures, these guidelines will be submitted to the 347th Session (March 2023) of the Governing Body of the ILO for its consideration.

## ► Introduction

1. The majority of the shipping industry operates without the menace of abandonment. However, the issue is a growing problem, with cases of seafarer abandonment reported to the ILO/IMO Database on reported incidents of abandonment of seafarers, established in 2004, increasing from a range of 12 to 19 cases from 2011 to 2016, to 40 in 2019, 85 in 2020, 95 in 2021, and 119 in 2022. Abandonment has a traumatic impact on the seafarers and families concerned and is a blight on the image of the shipping industry. More determined action is needed by all concerned; flag States, port States, States of which seafarers are nationals or are resident or are otherwise domiciled in their territory, and the States in which relevant recruitment and placement services operate, to resolve expeditiously cases of seafarer abandonment and to prevent future cases arising.
2. The International Maritime Organization (IMO) Legal Committee, at its 107th session (November–December 2020), agreed to develop guidelines for port State and flag State authorities on how to deal with seafarer abandonment cases through an intersessional correspondence group to progress the work. At its 343rd Session (November 2021), the Governing Body of the International Labour Organization (ILO) approved the establishment of a Joint ILO–IMO Tripartite Working Group to identify and address seafarers' issues and the human element (JTWG), with a composition of eight Governments nominated by IMO, and eight Shipowner representatives and eight Seafarer representatives to be appointed by the Workers' and Employers' groups of the Governing Body of the ILO. The 109th session of the Legal Committee (March 2022), endorsed the draft Guidelines developed by the IMO correspondence group for consideration by the JTWG.<sup>1</sup> At its 345th Session (June 2022), the Governing Body of the ILO decided that the first meeting of the Joint Tripartite Working Group would be held from 13 to 15 December 2022 and that the purpose of the first meeting would be to discuss and adopt guidelines for port State and flag State authorities on how to deal with seafarer abandonment cases. The IMO Council, at its 127th session (July 2022), endorsed the establishment of the Joint Tripartite Working Group and the Legal Committee's decisions.
3. The present Guidelines are addressed to all States, and primarily to port States, flag States and States of which seafarers are nationals or are resident or are otherwise domiciled in their territory. They are intended to be a reference tool of principles that can be reflected in the design and implementation of policies, strategies, programmes, legislation, administrative measures and social dialogue mechanisms on the resolution of cases of abandonment of seafarers.
4. The Guidelines draw on: (i) relevant ILO international labour standards, notably the Maritime Labour Convention, 2006, as amended (MLC, 2006), including the relevant amendments adopted by the Special Tripartite Committee of the MLC, 2006, in 2022, and IMO Assembly resolution A.930(22); (ii) relevant IMO international frameworks, agreements and Assembly resolutions; and (iii) relevant trends and developments in regional and national law and practice. They are also consistent with the ILO Guidelines for port State control officers carrying out inspections under the MLC, 2006, as amended, and the ILO Guidelines for flag State inspections under the MLC, 2006, as amended.
5. Nothing set out in these Guidelines should be understood as lowering the protection afforded by existing international labour standards and other standards. The present Guidelines are not legally binding. They are not subject to ratification or supervisory mechanisms established under the ILO's international labour standards. They expand on principles laid down in international labour standards and IMO international frameworks and agreements, all the while recognizing that they can be adapted to different national systems and circumstances.
6. The Guidelines are based on and to be read in line with the full principles, rights and obligations set out in the MLC, 2006. A brief history of the development of the provisions of the MLC, 2006, that have a bearing on the issue of abandonment and the most relevant provisions of the MLC, 2006, concerning abandonment, up to the 2022 amendments, have been included in Annexes I and II. All ILO Members are encouraged to ratify and effectively implement the MLC, 2006.

<sup>1</sup> Report of the Legal Committee on the work of its 109th Session: LEG 109/16/1, para. 4(d).6.



7. All ILO Members, even if they have not ratified the fundamental ILO Conventions, have an obligation, arising from the very fact of membership in the Organization, to respect, to promote and to realize, in good faith and in accordance with the ILO Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely: (a) freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labour; (c) the effective abolition of child labour; (d) the elimination of discrimination in respect of employment and occupation; and (e) a safe and healthy working environment.<sup>2</sup>
8. All States should strengthen systems of inspection of seafarers' labour conditions within their respective framework to ensure full compliance with relevant laws and regulations and access by seafarers to appropriate and effective remedy and complaints mechanisms.
9. All States should engage in social dialogue with representative organizations of shipowners and seafarers. Social dialogue is defined by the ILO to include all types of negotiation, consultation or exchange of information between, or among, representatives of governments, employers and workers on issues of common interest relating to economic and social policy. The main goal of social dialogue, based on the respect of freedom of association and the effective recognition of the right to collective bargaining, is to promote consensus-building and democratic involvement among the main stakeholders in the world of work. As such, it has a key role in the design and implementation of effective policies on how to deal with seafarer abandonment cases.

### Purpose

10. These Guidelines facilitate the development and implementation of practical steps to expeditiously and effectively resolve cases of abandonment of seafarers<sup>3</sup>.

### International framework and resources

11. The international framework and resources consist of:
  - (a) [Maritime Labour Convention, 2006, as amended](#), in particular Article V, paragraph 7;<sup>4</sup>
  - (b) [IMO Convention on the Facilitation of International Maritime Traffic, 1965 \(FAL Convention\)](#);
  - (c) [ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up](#); adopted at the 86th Session of the International Labour Conference (1998) and amended at the 110th Session (2022);
  - (d) [ILO Forced Labour Convention, 1930 \(No. 29\)](#), and the [Protocol of 2014 to the Forced Labour Convention, 1930](#);
  - (e) [IMO resolution A.930\(22\) on Guidelines on provision of financial security in case of abandonment of seafarers](#);<sup>5</sup>
  - (f) [ILO Guidelines for port State control officers carrying out inspections under the MLC, 2006, as amended \(Second revised edition, 2021\)](#);
  - (g) [ILO Guidelines for flag State inspections under the MLC, 2006, as amended \(Second revised edition, 2021\)](#);
  - (h) [Frequently asked questions \(FAQ\), Maritime Labour Convention, 2006 \(MLC, 2006\) as amended](#).<sup>6</sup>

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<sup>2</sup> ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, adopted at the 86th Session of the International Labour Conference (1998) and amended at the 110th Session (2022).

<sup>3</sup> For the purposes of these Guidelines, the term "seafarer" is as defined in Art. II, para. 1(f), of the MLC, 2006.

<sup>4</sup> As well as MLC, 2006, Regulation 2.5 and Standard A2.5, in particular Standard A2.5.1, paras 5–8, and Standard A2.5.2; Art. III; and Standard A1.4, para. 5(c)(vi).

<sup>5</sup> See Annex III.

<sup>6</sup> The MLC FAQ are not legally binding. It must be noted that the answers provided in the FAQ cannot in themselves be cited as authoritative legal opinions. This is because the precise requirements of the Convention are those contained in the national laws or regulations or other measures adopted by each country to implement the MLC, 2006. The answers in the FAQ are intended to provide information in the form of brief explanations referring to the Convention and other reference materials. They are not legal opinions or legal advice as to the meaning of a requirement in the Convention or its application to an individual situation. Such opinions can be provided by the ILO to governments and shipowners' and seafarers'



## Application

12. These Guidelines are addressed to:
- (a) shipowners;
  - (b) those who provide financial security related to shipowner obligations ;
  - (c) all flag States, including those which are responsible for ensuring that shipowners of ships flying their flag comply with the MLC, 2006;
  - (d) all port States, including those which are responsible for ensuring compliance with relevant provisions of the MLC, 2006, on board ships calling at their ports or which are in their territory;
  - (e) all States of which abandoned seafarers are nationals or are resident or are otherwise domiciled in their territory, which should endeavour to facilitate repatriation, including as required by the MLC, 2006;
  - (f) recruitment and placement services responsible for placing seafarers on board ships and the States in which they operate;
  - (g) seafarers, representatives of seafarers' and shipowners' organizations concerned and other stakeholders who are able to contribute to the resolution of seafarer abandonment cases.

## Definition

13. The MLC, 2006 <sup>7</sup> states that "a seafarer shall be deemed to have been abandoned where, in violation of the requirements of this Convention or the terms of the seafarers' employment agreement, the shipowner:
- (a) fails to cover the cost of the seafarer's repatriation; or
  - (b) has left the seafarer without the necessary maintenance and support; or
  - (c) has otherwise unilaterally severed their ties with the seafarer including failure to pay contractual wages for a period of at least two months." <sup>8</sup>

## Principles and responsibilities

14. The shipowner is liable for arranging for and covering the cost of repatriation, outstanding wages and other entitlements due to the seafarers under their seafarer employment agreements or contracts of employment, as well as provision of essential needs, including medical care.
15. The MLC, 2006, requires that flag States ensure that a financial security system meeting the requirements of the Convention is in place for ships flying their flag. Flag States are encouraged to verify, on at least an annual basis, the validity of the required financial security, in particular when notified of the cessation of the financial security as described in MLC, 2006, Standard A2.5.2, paragraph 11. The IMO Assembly resolution A.930(22) recommends that flag States ensure that there is a financial security system in place as described by the operative text of the resolution. Port States are encouraged to pay particular attention to the validity of the financial security when checking the relevant documents during inspections, in accordance with MLC, 2006, Appendix A2-I and the ILO Guidelines for port State control officers carrying out inspections under the MLC, 2006 (Second revised edition, 2021).
16. The States in which the relevant recruitment and placement services operate are reminded of their obligation to regularly verify that the system of protection carried by the recruitment and placement services concerned is still in place.

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organizations, in particular, upon request and on the understanding that only the International Court of Justice is competent to give authoritative interpretations of international labour Conventions. The FAQ is intended to help persons engaged in the study or application of the MLC, 2006.

<sup>7</sup> Standard A2.5.2, para. 2.

<sup>8</sup> The use of the definition from the MLC, 2006, in these Guidelines implies that that definition is recognized and applies regardless of whether the States have ratified the MLC, 2006.

17. In cases where the shipowner does not fulfil the obligations set out in paragraph 14, the following principles and responsibilities should be followed:
- (a) The flag State should take steps to ascertain whether there is valid financial security in place and make the seafarers and/or the seafarers' representative aware of the details of the financial security provider and of their entitlement to directly apply for assistance.
  - (b) When dealing with cases of abandonment of seafarers,<sup>9</sup> the flag State should make arrangements for the maintenance<sup>10</sup> and repatriation<sup>11</sup> of seafarers. In addition, the flag State may request assistance from the port State and from the States of which the seafarers are nationals or are resident or are otherwise domiciled in their territory, when needed, and to assist the abandoned seafarers in any way.
  - (c) When dealing with cases of abandonment of seafarers, the port State should facilitate the resolution of cases by taking, at a minimum, the following actions:
    - (i) facilitate, and not refuse, the expeditious repatriation of seafarers, as well as their replacement on board, utilizing local custodians or guardians as necessary;
    - (ii) facilitate the payment of wages, including from the financial security provider, to the seafarers;
    - (iii) facilitate the provision of necessary maintenance and support, including adequate food, accommodation, drinking water supplies, essential fuel for survival on board the ship and necessary medical care;
    - (iv) immediately inform the flag State of the ship and the States of which the seafarers are nationals or are resident or are otherwise domiciled in their territory, and the States in which the relevant recruitment and placement services operate, about the event, and to cooperate and assist each other in the speedy resolution of the situation;
    - (v) facilitate access to consular services, seafarers' organizations, seafarer welfare organizations and adequate communication to allow seafarers to contact their families;
    - (vi) in cases of assumption or detection of forced or compulsory labour, ensure that all victims of forced or compulsory labour, irrespective of their presence or legal status in the national territory, have access to appropriate and effective remedies, such as compensation; and
    - (vii) ensure that seafarers retain identification documents, including passports and seafarers' identity documents (SIDs).
18. Port States, flag States, States of which the seafarers are nationals or are resident or are otherwise domiciled in their territory, and States in which the relevant recruitment and placement services operate, should cooperate to ensure that seafarers engaged on a ship to replace seafarers who have been abandoned in their territory, or on a ship flying their flag, shall be accorded their rights and entitlements including under the MLC, 2006.<sup>12</sup>

## Procedure

### General procedure

19. Upon discovery of a case of abandonment of seafarers, the port State control officer or other stakeholders should immediately report the case to the competent authority in the port State where the abandonment incident occurred and to the ILO for inclusion in the ILO/IMO Database on reported incidents of abandonment of seafarers. The competent authority in the port State should then carry out an investigation and necessary coordination work with relevant agencies within the port State. The competent authority in the port State should at the same time notify the flag State and the stakeholders concerned, such as the shipowner, States of which

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<sup>9</sup> MLC, 2006, Standard A2.5.2, paras 2 and 5.

<sup>10</sup> MLC, 2006, Standard A2.5.2, para. 5.

<sup>11</sup> MLC, 2006, Standard A2.5.2, para. 10.

<sup>12</sup> As provided in the second sentence of the new para. 9 of Standard A2.5.1, from the 2022 amendment to the Code relating to Regulation 2.5 – Repatriation Standard A2.5.1 – Repatriation.

the seafarers are nationals or are resident or are otherwise domiciled in their territory, the States in which the relevant recruitment and placement services operate, the representatives of seafarers' and shipowners' organizations concerned and relevant seafarer welfare organizations, about the case of abandonment of seafarers through any appropriate channel.

20. Upon receiving notification of a case of abandonment of seafarers, the flag State authority should compel the shipowner and financial security providers to fulfil their responsibilities by setting an expeditious time frame, taking into account the precarious situation of the seafarers and the well-being of their families.
21. If the shipowner fails to undertake its responsibilities within the expeditious time frame referred to in paragraph 20, the flag State authority should take the lead and coordinate with the relevant stakeholders to resolve the case of abandonment of seafarers.
22. If the shipowner and the flag State fail to undertake their responsibilities, the competent authority in the port State should take the lead and coordinate with all relevant stakeholders to resolve the case of abandonment of seafarers.
23. If the shipowner, the flag State and the port State fail to undertake their responsibilities, the States of which the seafarers are nationals or are resident or are otherwise domiciled in their territory, should take the lead and coordinate with all relevant stakeholders to resolve the case of abandonment of seafarers.
24. At the same time, where there is a document providing evidence of financial security, the entities leading on resolving abandonment cases should provide seafarers with assistance in contacting the financial security provider to access prompt and effective financial assistance. The flag State authority and/or the port State authority and/or the States of which the seafarers are nationals or are resident or are otherwise domiciled in their territory should facilitate the provision of the required assistance by the financial security provider.
25. In cases where there is no financial security or the financial security has ceased, repatriation of the seafarer should be arranged by the flag State, or if they fail to do so, by the port State, or if both flag and port State fail to do so, by the States of which the seafarers are nationals or are resident or are otherwise domiciled in their territory.
26. In cases in which the financial security is not sufficient to cover all of the wages owed to the seafarer (i.e. the seafarer is owed more than four months wages), the flag State, port State, States of which the seafarers are nationals or are resident or are otherwise domiciled in their territory, and States in which the relevant recruitment and placement services operate, having regard to any systems of protection that may be in place,<sup>13</sup> will coordinate with local relevant government agencies and/or stakeholders, such as the representatives of seafarers' and shipowners' organizations concerned and seafarer recruitment and placement services, to resolve the abandonment case together.
27. All States, in their capacity as flag States, port States and States of which the seafarers are nationals or are resident or are otherwise domiciled in their territory, should develop in consultation with seafarers' and shipowners' representatives a national Standard Operating Procedure (SOP). Such a procedure should explicitly define the liabilities and obligations of the competent authority and the roles to be played by the various national stakeholders including the relevant national seafarers' welfare board, shipping agency, representatives of seafarers' and shipowners' organizations concerned, seafarer welfare organizations, seafarer recruitment and placement services and other stakeholders involved, referring to the international framework as necessary (set out in paragraph 11).
28. A case is considered resolved if, and only if, the ILO has received clear advice from the Member State or organization having originally provided the information that: (i) all seafarers who have expressed the desire to be repatriated has been successfully repatriated; and (ii) the totality of all outstanding remuneration and contractual entitlements has been paid and duly received by all seafarers.
29. Should judicial proceedings be required to resolve an abandonment case, the flag State and port State will continue to coordinate with other relevant agencies to offer humanitarian assistance and provide support for the repatriation of seafarers. However, for the health and safety and well-being of the abandoned seafarers, the

<sup>13</sup> MLC Standard A1.4 para. 5(c)(vi).



competent authority should cooperate with the relevant institutions to facilitate repatriation while the judicial process continues. Abandoned seafarers should not be prevented from being repatriated during the judicial process.

30. In the event of an emergency in which the health or safety or well-being of the abandoned seafarers is in jeopardy, the competent authority in the port State should coordinate with the stakeholders involved to implement mitigation measures, including but not limited to rescue, investigation, information dissemination, and consideration of the safety of the seafarers.
31. The flag State, the port State, the States of which the seafarers are nationals or are resident or are otherwise domiciled in their territory, or the States in which the relevant recruitment and placement services operate, should assist the abandoned seafarers in any follow-up process to fully resolve their cases.

#### Post-resolution

32. Following the resolution of a case of abandonment of seafarers, the States involved may consider, after consultation with the shipowners' and seafarers' organizations concerned, appropriate further mechanisms to prevent any reoccurrence of such cases by the same shipowner where breaches of applicable law occur, without prejudice to and in accordance with their national applicable law.
33. The flag State, the port State, the States of which the seafarers are nationals or are resident or are otherwise domiciled in their territory, and the States in which the relevant recruitment and placement services operate, involved in the resolution of cases of abandonment of seafarers should carefully analyse, summarize and evaluate the performance of their duties in handling the abandonment, and share pertinent information and knowledge with relevant stakeholders.
34. [The ILO/IMO Database on reported incidents of abandonment of seafarers](#) should be expeditiously updated, particularly when cases are resolved.
35. The resolution of a case in the database is not intended to have any impact or prejudice to the recovery rights as afforded under MLC, 2006, Standard A2.5.1, paragraph 5(a) and (b).

## ► Annex I

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### The MLC, 2006, and the issue of abandonment of seafarers

1. Five years after the adoption in 2001 by the IMO and the ILO of resolution A.930(22) on Guidelines on provision of financial security in case of abandonment of seafarers, the adoption of the Maritime Labour Convention, 2006, (MLC, 2006) was a major step forward in helping to achieve decent work for all seafarers.
2. The MLC, 2006, requires ratifying States to satisfy themselves that the provisions of their laws and regulations respect, in the context of this Convention, the fundamental rights in Article III, and sets out seafarers' employment and social rights in Article IV.
3. The original version of the MLC, 2006, includes Regulation 2.5 – Repatriation – which aims to “ensure that seafarers are able to return home” and requires ships flying the flag of a ratifying State to provide financial security to ensure that seafarers are duly repatriated. While these provisions are relevant to the issue of abandonment, they did not contain sufficient detail with respect to the issue of abandonment.
4. The original version of the MLC, 2006, includes other provisions that are relevant to resolving cases of abandonment. For example, Standard A1.4 – Recruitment and placement – in paragraph 5(c)(vi), provides that a ratifying State “shall, in its laws and regulations or other measures ... ensure that seafarer recruitment and placement services operating in its territory ... establish a system of protection, by way of insurance or an equivalent appropriate measure, to compensate seafarers for monetary loss that they may incur as a result of the failure of a recruitment and placement service or the relevant shipowner under the seafarers' employment agreement to meet its obligations to them”.

### 2014 amendments to the MLC, 2006

5. In 2014, the ILO adopted amendments to the Code implementing Regulation 2.5. They included the addition of a new Standard, A2.5.2, which clearly defines abandonment and requires flag States to ensure the provision of an expeditious and effective financial security system to assist seafarers in the event that they are abandoned. Financial security for repatriation was added to the list of items to be inspected by both flag and port States.

### 2022 amendments to the MLC, 2006

6. In 2022, the Special Tripartite Committee of the MLC, 2006, adopted at its Fourth Session (Part II) another set of amendments, including one to strengthen the existing provisions on abandonment. A new paragraph 9 to Standard A2.5.1 – Repatriation – provides that:

Members shall facilitate the prompt repatriation of seafarers, including when they are deemed abandoned within the meaning of Standard A2.5.2, paragraph 2. Port States, flag States and labour-supplying States shall cooperate to ensure that seafarers engaged on a ship to replace seafarers who have been abandoned in their territory, or on a ship flying their flag, shall be accorded their rights and entitlements under this Convention.
7. The amendments of 2022 are expected to enter into force by 23 December 2024.

## ► Annex II

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### Most relevant provisions of the MLC, 2006, pertaining to abandonment

#### Regulation 2.5 – Repatriation and related Standards Guidelines and Appendices (up until the 2018 amendments)

##### Regulation 2.5 – Repatriation

Purpose: To ensure that seafarers are able to return home

1. Seafarers have a right to be repatriated at no cost to themselves in the circumstances and under the conditions specified in the Code.
2. Each Member shall require ships that fly its flag to provide financial security to ensure that seafarers are duly repatriated in accordance with the Code.

##### Standard A2.5.1 – Repatriation

1. Each Member shall ensure that seafarers on ships that fly its flag are entitled to repatriation in the following circumstances:
  - (a) if the seafarers' employment agreement expires while they are abroad;
  - (b) when the seafarers' employment agreement is terminated:
    - (i) by the shipowner; or
    - (ii) by the seafarer for justified reasons; and also
  - (c) when the seafarers are no longer able to carry out their duties under their employment agreement or cannot be expected to carry them out in the specific circumstances.
2. Each Member shall ensure that there are appropriate provisions in its laws and regulations or other measures or in collective bargaining agreements, prescribing:
  - (a) the circumstances in which seafarers are entitled to repatriation in accordance with paragraph 1(b) and (c) of this Standard;
  - (b) the maximum duration of service periods on board following which a seafarer is entitled to repatriation – such periods to be less than 12 months; and
  - (c) the precise entitlements to be accorded by shipowners for repatriation, including those relating to the destinations of repatriation, the mode of transport, the items of expense to be covered and other arrangements to be made by shipowners.
3. Each Member shall prohibit shipowners from requiring that seafarers make an advance payment towards the cost of repatriation at the beginning of their employment, and also from recovering the cost of repatriation from the seafarers' wages or other entitlements except where the seafarer has been found, in accordance with national laws or regulations or other measures or applicable collective bargaining agreements, to be in serious default of the seafarer's employment obligations.
4. National laws and regulations shall not prejudice any right of the shipowner to recover the cost of repatriation under third-party contractual arrangements.
5. If a shipowner fails to make arrangements for or to meet the cost of repatriation of seafarers who are entitled to be repatriated:
  - (a) the competent authority of the Member whose flag the ship flies shall arrange for repatriation of the seafarers concerned; if it fails to do so, the State from which the seafarers are to be repatriated or the State

- of which they are a national may arrange for their repatriation and recover the cost from the Member whose flag the ship flies;
  - (b) costs incurred in repatriating seafarers shall be recoverable from the shipowner by the Member whose flag the ship flies;
  - (c) the expenses of repatriation shall in no case be a charge upon the seafarers, except as provided for in paragraph 3 of this Standard.
6. Taking into account applicable international instruments, including the International Convention on Arrest of Ships, 1999, a Member which has paid the cost of repatriation pursuant to this Code may detain, or request the detention of, the ships of the shipowner concerned until the reimbursement has been made in accordance with paragraph 5 of this Standard.
  7. Each Member shall facilitate the repatriation of seafarers serving on ships which call at its ports or pass through its territorial or internal waters, as well as their replacement on board.
  8. In particular, a Member shall not refuse the right of repatriation to any seafarer because of the financial circumstances of a shipowner or because of the shipowner's inability or unwillingness to replace a seafarer.
  9. Each Member shall require that ships that fly its flag carry and make available to seafarers a copy of the applicable national provisions regarding repatriation written in an appropriate language.

#### **Standard A2.5.2 – Financial security**

1. In implementation of Regulation 2.5, paragraph 2, this Standard establishes requirements to ensure the provision of an expeditious and effective financial security system to assist seafarers in the event of their abandonment.
2. For the purposes of this Standard, a seafarer shall be deemed to have been abandoned where, in violation of the requirements of this Convention or the terms of the seafarers' employment agreement, the shipowner:
  - (a) fails to cover the cost of the seafarer's repatriation; or
  - (b) has left the seafarer without the necessary maintenance and support; or
  - (c) has otherwise unilaterally severed their ties with the seafarer including failure to pay contractual wages for a period of at least two months.
3. Each Member shall ensure that a financial security system meeting the requirements of this Standard is in place for ships flying its flag. The financial security system may be in the form of a social security scheme or insurance or a national fund or other similar arrangements. Its form shall be determined by the Member after consultation with the shipowners' and seafarers' organizations concerned.
4. The financial security system shall provide direct access, sufficient coverage and expedited financial assistance, in accordance with this Standard, to any abandoned seafarer on a ship flying the flag of the Member.
5. For the purposes of paragraph 2(b) of this Standard, necessary maintenance and support of seafarers shall include: adequate food, accommodation, drinking water supplies, essential fuel for survival on board the ship and necessary medical care.
6. Each Member shall require that ships that fly its flag, and to which paragraph 1 or 2 of Regulation 5.1.3 applies, carry on board a certificate or other documentary evidence of financial security issued by the financial security provider. A copy shall be posted in a conspicuous place on board where it is available to the seafarers. Where more than one financial security provider provides cover, the document provided by each provider shall be carried on board.
7. The certificate or other documentary evidence of financial security shall contain the information required in Appendix A2-I. It shall be in English or accompanied by an English translation.
8. Assistance provided by the financial security system shall be granted promptly upon request made by the seafarer or the seafarer's nominated representative and supported by the necessary justification of entitlement in accordance with paragraph 2 above.



9. Having regard to Regulations 2.2 and 2.5, assistance provided by the financial security system shall be sufficient to cover the following:
  - (a) outstanding wages and other entitlements due from the shipowner to the seafarer under their employment agreement, the relevant collective bargaining agreement or the national law of the flag State, limited to four months of any such outstanding wages and four months of any such outstanding entitlements;
  - (b) all expenses reasonably incurred by the seafarer, including the cost of repatriation referred to in paragraph 10; and
  - (c) the essential needs of the seafarer including such items as: adequate food, clothing where necessary, accommodation, drinking water supplies, essential fuel for survival on board the ship, necessary medical care and any other reasonable costs or charges from the act or omission constituting the abandonment until the seafarer's arrival at home.
10. The cost of repatriation shall cover travel by appropriate and expeditious means, normally by air, and include provision for food and accommodation of the seafarer from the time of leaving the ship until arrival at the seafarer's home, necessary medical care, passage and transport of personal effects and any other reasonable costs or charges arising from the abandonment.
11. The financial security shall not cease before the end of the period of validity of the financial security unless the financial security provider has given prior notification of at least 30 days to the competent authority of the flag State.
12. If the provider of insurance or other financial security has made any payment to any seafarer in accordance with this Standard, such provider shall, up to the amount it has paid and in accordance with the applicable law, acquire by subrogation, assignment or otherwise, the rights which the seafarer would have enjoyed.
13. Nothing in this Standard shall prejudice any right of recourse of the insurer or provider of financial security against third parties.
14. The provisions in this Standard are not intended to be exclusive or to prejudice any other rights, claims or remedies that may also be available to compensate seafarers who are abandoned. National laws and regulations may provide that any amounts payable under this Standard can be offset against amounts received from other sources arising from any rights, claims or remedies that may be the subject of compensation under the present Standard.

#### **Guideline B2.5 – Repatriation**

##### **Guideline B2.5.1 – Entitlement**

1. Seafarers should be entitled to repatriation:
  - (a) in the case covered by Standard A2.5, paragraph 1(a), upon the expiry of the period of notice given in accordance with the provisions of the seafarers' employment agreement;
  - (b) in the cases covered by Standard A2.5, paragraph 1(b) and (c):
    - (i) in the event of illness or injury or other medical condition which requires their repatriation when found medically fit to travel;
    - (ii) in the event of shipwreck;
    - (iii) in the event of the shipowner not being able to continue to fulfil their legal or contractual obligations as an employer of the seafarers by reason of insolvency, sale of ship, change of ship's registration or any other similar reason;
    - (iv) in the event of a ship being bound for a war zone, as defined by national laws or regulations or seafarers' employment agreements, to which the seafarer does not consent to go; and
    - (v) in the event of termination or interruption of employment in accordance with an industrial award or collective agreement, or termination of employment for any other similar reason.



2. In determining the maximum duration of service periods on board following which a seafarer is entitled to repatriation, in accordance with this Code, account should be taken of factors affecting the seafarers' working environment. Each Member should seek, wherever possible, to reduce these periods in the light of technological changes and developments and might be guided by any recommendations made on the matter by the Joint Maritime Commission.
3. The costs to be borne by the shipowner for repatriation under Standard A2.5 should include at least the following:
  - (a) passage to the destination selected for repatriation in accordance with paragraph 6 of this Guideline;
  - (b) accommodation and food from the moment the seafarers leave the ship until they reach the repatriation destination;
  - (c) pay and allowances from the moment the seafarers leave the ship until they reach the repatriation destination, if provided for by national laws or regulations or collective agreements;
  - (d) transportation of 30kg of the seafarers' personal luggage to the repatriation destination; and
  - (e) medical treatment when necessary until the seafarers are medically fit to travel to the repatriation destination.
4. Time spent awaiting repatriation and repatriation travel time should not be deducted from paid leave accrued to the seafarers.
5. Shipowners should be required to continue to cover the costs of repatriation until the seafarers concerned are landed at a destination prescribed pursuant to this Code or are provided with suitable employment on board a ship proceeding to one of those destinations.
6. Each Member should require that shipowners take responsibility for repatriation arrangements by appropriate and expeditious means. The normal mode of transport should be by air. The Member should prescribe the destinations to which seafarers may be repatriated. The destinations should include the countries with which seafarers may be deemed to have a substantial connection including:
  - (a) the place at which the seafarer agreed to enter into the engagement;
  - (b) the place stipulated by collective agreement;
  - (c) the seafarer's country of residence; or
  - (d) such other place as may be mutually agreed at the time of engagement.
7. Seafarers should have the right to choose from among the prescribed destinations the place to which they are to be repatriated.
8. The entitlement to repatriation may lapse if the seafarers concerned do not claim it within a reasonable period of time to be defined by national laws or regulations or collective agreements, except where they are held captive on or off the ship as a result of acts of piracy or armed robbery against ships. The terms *piracy and armed robbery against ships* shall have the same meaning as in Standard A2.1, paragraph 7.

#### Guideline B2.5.2 – Implementation by Members

1. Every possible practical assistance should be given to a seafarer stranded in a foreign port pending repatriation and in the event of delay in the repatriation of the seafarer, the competent authority in the foreign port should ensure that the consular or local representative of the flag State and the seafarer's State of nationality or State of residence, as appropriate, is informed immediately.
2. Each Member should have regard to whether proper provision is made:
  - (a) for the return of seafarers employed on a ship that flies the flag of a foreign country who are put ashore in a foreign port for reasons for which they are not responsible:
    - (i) to the port at which the seafarer concerned was engaged; or
    - (ii) to a port in the seafarer's State of nationality or State of residence, as appropriate; or

- (iii) to another port agreed upon between the seafarer and the master or shipowner, with the approval of the competent authority or under other appropriate safeguards;
  - (b) for medical care and maintenance of seafarers employed on a ship that flies the flag of a foreign country who are put ashore in a foreign port in consequence of sickness or injury incurred in the service of the ship and not due to their own wilful misconduct.
- 3. If, after young seafarers under the age of 18 have served on a ship for at least four months during their first foreign-going voyage, it becomes apparent that they are unsuited to life at sea, they should be given the opportunity of being repatriated at no expense to themselves from the first suitable port of call in which there are consular services of the flag State, or the State of nationality or residence of the young seafarer. Notification of any such repatriation, with the reasons therefor, should be given to the authority which issued the papers enabling the young seafarers concerned to take up seagoing employment.

**Guideline B2.5.3 – Financial security**

- 1. In implementation of paragraph 8 of Standard A2.5.2, if time is needed to check the validity of certain aspects of the request of the seafarer or the seafarer's nominated representative, this should not prevent the seafarer from immediately receiving such part of the assistance requested as is recognized as justified.

**Standard A1.4 – Recruitment and placement**

(...)

- 5. A Member adopting a system referred to in paragraph 2 of this Standard shall, in its laws and regulations or other measures, at a minimum:
  - (...)
  - (c) ensure that seafarer recruitment and placement services operating in its territory:
    - (...)
    - (vi) establish a system of protection, by way of insurance or an equivalent appropriate measure, to compensate seafarers for monetary loss that they may incur as a result of the failure of a recruitment and placement service or the relevant shipowner under the seafarers' employment agreement to meet its obligations to them.
- 6. The competent authority shall closely supervise and control all seafarer recruitment and placement services operating in the territory of the Member concerned. Any licences or certificates or similar authorizations for the operation of private services in the territory are granted or renewed only after verification that the seafarer recruitment and placement service concerned meets the requirements of national laws and regulations.

## Appendix A2-I

### Evidence of financial security under Regulation 2.5, paragraph 2

The certificate or other documentary evidence referred to in Standard A2.5.2, paragraph 7, shall include the following information:

- (a) name of the ship;
- (b) port of registry of the ship;
- (c) call sign of the ship;
- (d) IMO number of the ship;
- (e) name and address of the provider or providers of the financial security;
- (f) contact details of the persons or entity responsible for handling seafarers' requests for relief;
- (g) name of the shipowner ; <sup>1</sup>
- (h) period of validity of the financial security; and
- (i) an attestation from the financial security provider that the financial security meets the requirements of Standard A2.5.2.

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<sup>1</sup>This was amended in 2022 by the MLC, 2006 Special Tripartite Committee as follows: "(g) name of the shipowner, or of the registered owner if different from the shipowner;". The amendment is expected to enter into force on 23 December 2024.

### Appendix A5-I

The working and living conditions of seafarers that must be inspected and approved by the flag State before certifying a ship in accordance with Standard A5.1.3, paragraph 1:

- Minimum age
- Medical certification
- Qualifications of seafarers
- Seafarers' employment agreements
- Use of any licensed or certified or regulated private recruitment and placement service
- Hours of work or rest
- Manning levels for the ship
- Accommodation
- On-board recreational facilities
- Food and catering
- Health and safety and accident prevention
- On-board medical care
- On-board complaint procedures
- Payment of wages
- Financial security for repatriation
- Financial security relating to shipowners' liability.

### Appendix A5-III

General areas that are subject to a detailed inspection by an authorized officer in a port of a Member carrying out a port State inspection pursuant to Standard A5.2.1:

- Minimum age
- Medical certification
- Qualifications of seafarers
- Seafarers' employment agreements
- Use of any licensed or certified or regulated private recruitment and placement service
- Hours of work or rest
- Manning levels for the ship
- Accommodation
- On-board recreational facilities
- Food and catering
- Health and safety and accident prevention
- On-board medical care
- On-board complaint procedures
- Payment of wages
- Financial security for repatriation
- Financial security relating to shipowners' liability.

### ► Annex III

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#### **Resolution A.930(22), Adopted on 29 November 2001**

#### **Guidelines on provision of financial security in case of abandonment of seafarers**

Resolution A.930(22)  
Adopted on 29 November 2001 (Agenda item 10)  
GUIDELINES ON PROVISION OF FINANCIAL SECURITY IN CASE OF  
ABANDONMENT OF SEAFARERS

INTERNATIONAL MARITIME ORGANIZATION



**E**

ASSEMBLY  
22nd session  
Agenda item 10

A 22/Res.930  
17 December 2001  
Original: ENGLISH

#### **Resolution A.930(22)**

*Adopted on 29 November 2001  
(Agenda item 10)*

#### **GUIDELINES ON PROVISION OF FINANCIAL SECURITY IN CASE OF ABANDONMENT OF SEAFARERS**

THE ASSEMBLY OF THE INTERNATIONAL MARITIME ORGANIZATION AND THE GOVERNING BODY OF THE INTERNATIONAL LABOUR OFFICE,

NOTING the importance in the plan of action of the International Maritime Organization (IMO) of the human element, which is central for the promotion of quality shipping, and the core mandate of the International Labour Organization (ILO), which is to promote decent conditions of work,

RECALLING the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up as well as the relevant international labour standards applicable to maritime employment;

RECALLING ALSO the generally accepted principles of international human rights applicable to all workers;

RECALLING FURTHER Article 94 of the United Nations Convention on the Law of the Sea, 1982, which requires the flag State to exercise its effective jurisdiction and control in administrative, technical and social matters over ships flying its flag;

CONSIDERING the provisions of Article 5 of the Vienna Convention on Consular Relations, 1963, in particular the extension by a State of consular protection and assistance to its nationals and to its vessels and their crews;

CONSIDERING FURTHER the International Convention on Maritime Liens and Mortgages, 1993, and the International Convention on Arrest of Ships, 1999;

NOTING the relevant international labour standards applicable to maritime employment, in particular the ILO Repatriation of Seafarers Convention (Revised), 1987 (No. 166);

NOTING FURTHER the Resolution concerning the Protection of Wages and Stranded Seafarers adopted by the Governing Body of the International Labour Office at its 252<sup>nd</sup> session (March 1992);

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Resolution A.930(22)  
Adopted on 29 November 2001 (Agenda item 10)  
A 22/Res.930 GUIDELINES ON PROVISION OF FINANCIAL SECURITY IN CASE OF  
ABANDONMENT OF SEAFARERS

RECOGNIZING that abandonment of seafarers is a serious problem, involving a human and social dimension;

CONSIDERING ALSO that, given the global nature of the shipping industry, seafarers need special protection;

CONCERNED THAT, if shipowners do not have effective financial security, seafarers may not receive due remuneration or be promptly repatriated in cases of abandonment;

NOTING that the Guidelines represent a valuable contribution to the objectives of eliminating the operation of sub-standard ships and enhancing the social protection of seafarers;

RECOGNIZING ALSO that the present resolution does not call for the adoption of additional mechanisms where national legislation already meets or exceeds the provisions of the Guidelines;

AFFIRMING that provision for repatriation, maintenance while abandoned, and payment of remuneration should form part of the seafarer's contractual and/or statutory rights, and are not affected by the failure or inability of the shipowner to perform its obligations;

RECOGNIZING FURTHER that in cases where the shipowner fails to meet its obligations, the flag State may be called upon, and in some cases the State of which the seafarer is a national or the port State may be called upon, to intervene;

CONVINCED that the adoption of guidelines is an appropriate interim measure to ensure provision of financial security in case of abandonment of seafarers;

1 ADOPT the Guidelines on Provision of Financial Security in Case of Abandonment of Seafarers, set out in the annex to the present resolution;

2 REQUEST Member Governments to bring this resolution and Guidelines to the attention of shipowners and seafarers and their respective organizations;

3 URGE Member Governments, when discharging their obligation as flag States:

- .1 to ensure that shipowners comply with the Guidelines;
- .2 to ensure that seafarers employed or engaged on ships flying their flag are protected, in case of abandonment, by a financial security system;
- .3 to have in place, as a contingency, arrangements for the maintenance and repatriation of seafarers employed or engaged on ships flying their flag, in case of abandonment;

4 URGE ALSO Member Governments, where seafarers have been abandoned within their jurisdiction, to inform the flag State of the ship and the States of which the seafarers are nationals about the event, and to cooperate and assist each other in the speedy resolution of the situation;

5 INVITE Member Governments to recognise that, in accordance with the relevant international labour standards, when the shipowner has not fulfilled its international obligations and the financial security system or the flag State fails to repatriate abandoned seafarers, the port State or the States of which the seafarers are nationals may undertake the repatriation without prejudice to the recovery of the costs;

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- 6 RECOMMEND that Member Governments:
- .1 draw the attention of their immigration authorities to the benefits provided to abandoned seafarers covered by a financial security system;
  - .2 consider that the absence of a financial security system should not prejudice the immigration status of abandoned seafarers;
- 7 CALL UPON Member Governments, without prejudice to notification requirements under applicable international instruments, to communicate to the Secretary-General of the IMO or the Director General of the ILO, for the purpose of disseminating the information widely, national focal points responsible for dealing with cases of abandonment and with other issues falling within the scope of the Guidelines;
- 8 INVITE Member Governments and non-governmental organizations with consultative or observer status in the IMO or the ILO, as appropriate, to record instances of abandoned seafarers and to provide data to the IMO or the ILO whenever requested;
- 9 REQUEST the Assembly of the IMO and the Governing Body of the ILO to keep the problem of abandonment under review and to assess periodically the scale of the problem;
- 10 INVITE the IMO Assembly and the ILO Governing Body to consider other appropriate action for longer-term sustainable solutions to address the problems covered by these Guidelines;
- 11 REQUEST the IMO Assembly and the ILO Governing Body to keep the Guidelines under review and to amend them as necessary; and
- 12 INVITE Member Governments to note that these Guidelines will take effect on 1 January 2002.

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## ANNEX

### GUIDELINES ON PROVISION OF FINANCIAL SECURITY IN CASE OF ABANDONMENT OF SEAFARERS

#### 1 INTRODUCTION

1.1 The purpose of the Guidelines is to assist States, when establishing their national requirements, to identify the most crucial issues relating to financial security in case of abandonment of seafarers.

1.2 The Guidelines recommend measures to be implemented by shipowners to ensure the provision of an adequate financial security system for seafarers in case of abandonment. The Guidelines set out the main features and scope of coverage of the financial security system and also contain recommendations for certification of the financial security system.

1.3 These Guidelines also apply to fishing vessels engaged in international voyages.

#### 2 DEFINITIONS

2.1 For the purpose of these Guidelines, unless expressly provided otherwise:

- .1 *Shipowner* means the owner of the ship or any other organization or person, such as the manager, agent or bareboat charterer, who has assumed the responsibility for operation of the ship from the shipowner and who on assuming such responsibilities has agreed to take over all the attendant duties and responsibilities;\*
- .2 *Seafarer* means any person who is employed or engaged in any capacity on board a seagoing ship; and
- .3 *Abandonment* is characterised by the severance of ties between the shipowner and the seafarer. Abandonment occurs when the shipowner fails to fulfil certain fundamental obligations to the seafarer relating to timely repatriation and payment of outstanding remuneration and to provision of the basic necessities of life, *inter alia*, adequate food, accommodation and medical care. Abandonment will have occurred when the master of the ship has been left without any financial means in respect of ship operation;

#### 3 SCOPE OF APPLICATION

3.1 Shipowners are urged to comply with these Guidelines in respect of all seagoing ships.

3.2 These Guidelines do not apply to any warship, naval auxiliary or other ship owned or operated by a State and used, for the time being, only on Government non-commercial service, unless that State decides otherwise.

\* Article 1(c) of the Recruitment and Placement of Seafarers Convention 1996 (No.179) and Regulation IX/1.2 of SOLAS 1974 as amended.

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#### **4 SHIPOWNERS' RESPONSIBILITIES**

- 4.1 Shipowners should arrange a financial security system which complies with these Guidelines.
- 4.2 Shipowners should display on board contact details of the persons or entity responsible for handling claims covered by these Guidelines.

#### **5 SCOPE OF FINANCIAL SECURITY SYSTEMS**

- 5.1 The financial security system should provide for:
- .1 the expenses of the repatriation of the seafarer, which are to be met without costs to the seafarer;
  - .2 the maintenance of the seafarer from the time of abandonment to the time of arrival at the place of repatriation;
  - .3 payment to the seafarer of all outstanding remuneration and contractual entitlements; and
  - .4 payment to the seafarer of other expenses incurred during the period of abandonment arising from the abandonment.
- 5.2 In the event that the shipowner fails to fulfil its responsibilities, the financial security system should provide for repatriation of the seafarer by appropriate and expeditious means, normally by air, and including provision of food and accommodation for the seafarer from leaving the ship until arrival at the place of repatriation, medical care, passage and transport of personal effects and any other reasonable charges.
- 5.3 The maintenance of seafarers while abandoned should include: adequate food, clothing, accommodation, medical care and other basic necessities of life.
- 5.4 Payment to the seafarers of all outstanding remuneration should include accrued wages and other entitlements as provided for in the contract of employment and/or under national law.
- 5.5 In the event that the seafarer incurs any other reasonable expenses during the period of abandonment, the seafarer should be entitled to recover such expenses from the financial security system.

#### **6 FORM OF THE FINANCIAL SECURITY SYSTEM**

- 6.1 The financial security system may be in the form of, *inter alia*, social security schemes, insurance, a national fund, or other forms of financial security;
- 6.2 The financial security system in addition to the provisions of paragraph 5.1 should provide the following:
- .1 a right of direct access by the seafarer to the financial security system;
  - .2 sufficient coverage in respect of the elements of abandonment contained in these Guidelines; and

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- .3 the applicability of the financial security system to all seafarers irrespective of nationality.

#### 7 CERTIFICATES

7.1 Shipowners should ensure that their seagoing ships engaged on international voyages have on board a certificate attesting to the existence of a financial security system in the event of abandonment of seafarers. It should be posted in a prominent position in the seafarers' accommodation.

7.2 Where more than one certificate is required to cover all seafarers on board a ship, all such certificates should be posted.

7.3 As a minimum, the certificate should include:

- .1 name of the ship;
- .2 port of registry of the ship;
- .3 call sign of the ship;
- .4 IMO Number of the ship;
- .5 name of the provider of the financial security;
- .6 place of business of the provider of the financial security;
- .7 name of the shipowner;
- .8 period of validity of the financial security; and
- .9 an attestation that the financial security meets the recommended standards set out in these Guidelines.

7.4 A copy of the certificate should be provided when required to the immigration authorities for the purpose of informing them that the seafarers are provided with a financial security system covering their maintenance, repatriation and payment of outstanding remuneration.

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## **ANNEX 2**

### **BUNKERS CONVENTION PAMPHLET**

#### **The International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunkers Convention)**

#### **Compensation for damage caused by spills of bunker oil**

This is an informational pamphlet developed by the Legal Committee of the International Maritime Organization (IMO) on the Bunkers Convention. It is part of a series of pamphlets aimed at providing information on the responsibilities of shipowners, insurers or other financial security providers, and State Parties (flag States, or other certifying States and port States) regarding IMO's liability and compensation conventions. This pamphlet has no legal standing, but it is intended to provide concise information on the Bunkers Convention.

- **What is the Bunkers Convention?**
  - The Bunkers Convention aims to ensure that adequate, prompt and effective compensation is available for loss or damage caused by spills of bunker oil from ships by:
    - establishing strict liability against the shipowner;
    - ensuring the shipowner has insurance or financial security in place; and
    - providing the right of direct action against that insurer or provider of other financial security.
  - The Bunkers Convention applies to:
    - bunker oil, meaning any hydrocarbon mineral oil used or intended to be used for the propulsion or operation of a ship, including lubricating oil, and any residues of such oil;
    - all seagoing vessels and seaborne craft of any type whatsoever;
    - pollution damage, meaning:
      - loss or damage caused outside the ship by contamination resulting from the escape or discharge of bunker oil from the ship in the territory, including the territorial sea, and in the exclusive economic zones of a State Party or an area beyond and adjacent to the territorial sea of a State Party extending not more than 200 nautical miles from the baselines; and
      - the costs of reasonable preventive measures, wherever taken, to prevent or minimize pollution damage and further loss or damage caused by preventive measures;
    - types of pollution damage that may be covered include property damage, economic loss, costs of preventive measures, and impairment of the environment other than loss of profit from such impairment and that is limited to the costs of reasonable measures of environmental reinstatement undertaken or to be undertaken.
  - The Bunkers Convention does NOT apply to pollution damage arising from a spill of bunker fuel oil used or intended to be used for the propulsion or operation of the ship carrying persistent oil in bulk as cargo and any residues of such oil, if IMO's Civil Liability Convention\* is in force and applicable.

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\* International Convention on Civil Liability for Oil Pollution Damage, 1992.

- **How does the Bunkers Convention relate to the LLMC Convention?**
  - The Bunkers Convention establishes strict liability for pollution damage.
  - While the Bunkers Convention does not contain any limits of liability within its provisions, it does not affect any right of shipowners, and the person or persons providing insurance or other financial security, from limiting their liability under any applicable national or international regime, such as the International Convention on Limitation of Liability for Maritime Claims, 1976 (LLMC), as amended.
    - Even if the shipowner is not entitled to limit their liability, insurers or providers of other financial security may still limit their liability to an amount equal to the amount of the insurance or financial security required by the Bunkers Convention.
- **What are the obligations of shipowners?**
  - Shipowners, meaning the registered owner, bareboat charterer, manager and operator of the ship, are strictly liable to pay compensation for pollution damage even if the spill is accidental, subject to certain specific defences from liability.
    - All parties identified above as the shipowner are jointly and severally liable under the Bunkers Convention for pollution damage caused by any bunker oil on board or originating from the ship.
  - The registered owners of ships above 1,000 gross tonnage that are either registered in a State Party or entering or leaving the port of a State Party, or arriving at or leaving an offshore facility in their territorial sea, must:
    - Obtain and maintain insurance or other financial security, such as the guarantee of a bank or similar financial institution to cover their liabilities under the Bunkers Convention;
      - The amount of insurance or financial security required should not exceed the amount of the ship's limit of liability calculated in accordance with the LLMC Convention as amended.
      - If the registered owner is in any doubt about the amount of insurance or financial security required, they should contact the State where they are applying for their Bunkers Convention certificate or their insurer or financial security provider (normally a P & I Club).
    - Obtain a Bunkers Convention certificate from their flag State if the flag State is a State Party to the Bunkers Convention or other State Party if their flag State is not party to the Bunkers Convention, attesting that insurance or other financial security is in place; and
    - Ensure that the Bunkers certificate, which can be in electronic format, is carried onboard the ship at all times.
  - The registered owners of ships of 1,000 GT or less are not required to maintain insurance or financial security but remain strictly liable for pollution damage caused by bunker oil.
  - No party other than the registered owner is required to maintain insurance or other financial security to cover their liability under the Bunkers Convention.
- **What are the obligations of insurers and providers of financial security?**
  - When providing a certificate of insurance, hereinafter referred to as a "blue card", to the registered owner, as evidence that insurance or financial security is in place which covers all liabilities under the Bunkers Convention, the insurer or provider of financial security should:
    - Ensure that the blue card is addressed to the relevant State authorities.
    - Accept the right of direct action against them by claimants that have suffered loss and damage caused by pollution damage.

- Ensure that the insurance policy, or financial security, satisfies the requirements of the Bunkers Convention and covers the registered owner's liabilities under the Bunkers Convention and up to the required financial limit.
  - It is generally accepted that the blue card only needs to be issued in English.
  - If the insurance policy or financial security ceases for reasons other than expiry, or where the policy is amended so that it no longer satisfies the requirements of the Bunkers Convention, the insurance or financial security provider must give three months' notice of termination to the issuing State Party. The insurance policy will cease before the expiry of this three months' notice period if:
    - The certificate issued by the State Party is returned to that State Party, or
    - A new Bunkers Convention certificate is issued within this three-month period.
- **What information is needed on a Bunkers Convention Certificate of Insurance or Other Financial Security issued by a State Party?**
  - The following information must be included in a Bunkers Convention certificate issued by the State Party to the registered owner:
    - Name of ship, distinctive number or letters and port of registry;
    - Name and principal place of business of the registered owner;
    - IMO ship identification number;
    - Type and duration of security;
    - Name and principal place of business of the insurer or other person giving security and, where appropriate, place of business where the insurance or security is established; and
    - Period of validity of the certificate which shall not be longer than the period of validity of the insurance or other security; and Statement that the policy covers liabilities under Article 7 of the Bunkers Convention.
  - To facilitate processing applications, the information identified above should also be included on blue cards issued by insurers or providers of financial security.
- **What are the obligations of State Parties?**
  - Approve insurers or providers of financial security, taking into account the guidelines in [Circular Letter No.3464](#).
  - Ensure that the blue card contains all the information necessary to issue a Convention Certificate of Insurance or Other Financial Security.
  - Issue Bunkers Convention certificates to registered owners based on evidence of insurance or other financial security sufficient to satisfy the requirements of Article 7 of the Bunkers Convention.
  - The certificate shall be issued in the official languages of the issuing State Party but where this language is not English, French or Spanish then the text must include a translation into one of these three languages.
  - Not permit ships over 1,000 GT flying their flag to operate without carrying a valid Bunkers Convention certificate onboard.
- **What are the obligations for Port States who are State Parties?**
  - Require ships over 1,000 GT, under national law, to have on board a State issued Bunkers Convention certificate when entering or leaving a port in their territory or arriving at or leaving an offshore facility in their territorial sea.
  - Accept certificates issued or certified under the authority of another State Party.

- Request consultation with the issuing State, if necessary, if it believes that the insurer or financial security provider named in the Bunkers insurance certificate is not financially capable of meeting the obligations imposed under the Bunkers Convention. It is not necessary for a port State that is a State Party to see the ship's blue card.
- **Other IMO pamphlets and information material on liability and compensation conventions are available at the following links:**
  - Civil Liability Convention Pamphlet: *Insert hyperlink*
  - Wreck Removal Convention Pamphlet: *Insert hyperlink*
  - Bunkers Convention Claims Manual: *Insert hyperlink*
  - Website of the International Oil Pollution Compensation Funds (IOPC Funds): *Insert hyperlink*

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## ANNEX 3

### CIVIL LIABILITY CONVENTION PAMPHLET

#### The International Convention on Civil Liability for Oil Pollution Damage, 1992 (1992 CLC)

#### Compensation for damage caused by spills of persistent oil cargoes

This is an informational pamphlet developed by the Legal Committee of the International Maritime Organization (IMO) on the 1992 CLC. It is part of a series of pamphlets aimed at providing information on the responsibilities of shipowners, insurers or other financial security providers, and State Parties (flag States, or other certifying States and port States) regarding the IMO's liability and compensation conventions. This pamphlet has no legal standing, but it is intended to provide concise information on the 1992 CLC. Readers should seek their own independent legal advice on further questions.

- **What is the 1992 CLC?**

- The Convention aims to ensure that adequate, prompt, and effective compensation is available for pollution damage caused by spills of persistent oil cargoes from ships by:
  - establishing strict liability against the shipowner;
  - ensuring the shipowner has insurance or financial security in place; and
  - providing the right of direct action against that insurer or provider of financial security.
- The Convention applies to:
  - All seagoing vessels and seaborne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo, provided that a ship capable of carrying oil and other cargoes shall be regarded as a ship only when it is actually carrying oil in bulk as cargo and during any voyage following such carriage unless it is proved that it has no residues of such carriage of oil in bulk aboard.
    - The International Oil Pollution Compensation Fund, 1992 (1992 Fund) Administrative Council has published the [Guidance for Member States on the consideration of the definition of 'ship'](#) under the Convention.
  - Persistent hydrocarbon mineral oil, including crude oil, fuel oil, heavy diesel oil and lubricating oil, whether carried on board a ship as cargo or in the bunkers of such a ship.
  - Pollution damage, meaning:
    - Loss or damage caused outside the ship by contamination resulting from the escape or discharge of oil from the ship in the territory, including the territorial sea, and in the exclusive economic zones of a State Party or an area beyond and adjacent to the territorial sea of a State Party extending not more than 200 nautical miles from the baselines; and
    - The costs of reasonable preventive measures, wherever taken, to prevent or minimize pollution damage and further loss or damage caused by preventive measures;

- Types of pollution damage that may be covered include property damage, economic loss, costs of preventive measures, and impairment of the environment other than loss of profit from such impairment and that is limited to the costs of reasonable measures of environmental reinstatement undertaken or to be undertaken.
  - The Convention does **NOT** apply to pollution damage arising from a ship sourced spill of bunker fuel oil, where used or intended to be used for the operation or propulsion of the ship, and any residues of such oil, if IMO's 2001 Bunkers Convention<sup>1</sup> is in force and applicable.
    - The Convention would apply to a spill of persistent bunker fuel oil from a ship that is actually carrying persistent oil as cargo or has residues of such a cargo on board.
- **What are the obligations and entitlements of shipowners?**
  - Shipowners means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship. In the case of a ship owned by a State and operated by a company which is registered as the ship's operator, shipowner means such company Shipowners are strictly liable to pay compensation for pollution damage even if the spill is accidental, subject to certain specific defences from liability.
  - Shipowners of ships carrying more than 2,000 tons of oil in bulk as cargo that are either registered in a State Party or entering or leaving the port of a State Party, or arriving at or leaving an offshore facility in their territorial sea, must:
    - Obtain and maintain insurance or other financial security, such as the guarantee of a bank or similar financial institution to cover their liabilities under the Convention;
      - The amount of insurance or financial security required should not exceed the amount of the ship's limit of liability calculated in accordance with the Convention.
      - If the registered owner is in any doubt about the amount of insurance or financial security required, they should contact the State where they are applying for their Convention certificate or their insurer or financial security provider (normally a P & I Club).
    - Obtain a Convention certificate from their flag State if the flag State is a State Party to the Convention or other State Party if their flag is not party to the Convention, attesting that insurance or other financial security is in place; and
    - Ensure that the Convention certificate, which can be in electronic format, is carried on board the ship at all times.
  - Shipowners of ships carrying 2,000 tons or less of persistent oil as cargo by sea are not required by the Convention to maintain insurance or financial security but remain strictly liable for pollution damage under the Convention.
  - No party other than the shipowner is required to maintain insurance or other financial security to cover their liability under the Convention.
  - Shipowners are entitled to limit their liability for pollution damage in accordance with the financial amounts required by the Convention and which are dependant on the gross tonnage of the ship.<sup>2</sup>

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<sup>1</sup> International Convention on Civil Liability for Bunker Oil Pollution Damage (2001).

<sup>2</sup> If the total cost of compensation for pollution damage that arises from a spill of persistent oil cargo, where carried by sea exceeds the shipowner's limit of liability under the 1992 CLC, then additional compensation may be available from the 1992 IOPC Funds if the 1992 IOPC Fund Convention is in force in the jurisdiction of a State where the pollution damage occurred. Further information on the 1992 IOPC Fund Convention can be found at: [www.iopcfunds.org](http://www.iopcfunds.org)

- **What are the obligations of insurers and providers of financial security?**
  - When providing a certificate of insurance, hereinafter referred to as a "blue card", to the shipowner, as evidence that insurance or financial security is in place which covers all liabilities under the Convention the insurer or provider of financial security should:
    - Ensure that the blue card is addressed to the relevant State authorities;
    - Accept the right of direct action against them by claimants that have suffered loss and damage caused by pollution damage.
    - Ensure that the insurance policy, or financial security, satisfies the requirements of the Convention and covers the registered owner's liabilities under the Convention and up to the required financial limit.
  - It is generally accepted that the blue card only needs to be issued in English.
  - If the insurance policy or financial security ceases for reasons other than expiry, or where the policy is amended so that it no longer satisfies the requirements of the Convention, the insurance or financial security provider must give 3 months' notice of termination to the issuing State Party. The insurance policy will cease before the expiry of this 3 months' notice period if:
    - the certificate issued by the State Party is returned to that State Party; or
    - a new Convention certificate is issued within this three-month period.
- **What information is needed on a CLC Certificate of Insurance or Other Financial Security issued by a State Party?**
  - A Convention certificates issued by the State Party to the registered owner should be in the form attached to the Convention and include the following information:
    - Name of ship and port of registry;
    - Distinctive number or letters;
    - Name and principal place of business of the registered owner;
    - Type and duration of the insurance and other financial security;
    - Name and principal place of business of the insurer or other person giving security and, where appropriate, place of business where the insurance or security is established; and
    - Period of validity of the certificate which shall not be longer than the period of validity of the insurance or other security; and statement that the policy covers liabilities under Article VII of the Convention.
  - To facilitate processing applications, the information identified above should also be included on blue cards issued by insurers or providers of financial security.
- **What are the obligations of State Parties?**
  - Approve insurers or providers of financial security taking into account the guidelines in [Circular Letter No.3464](#).
  - Ensure that the blue card contains all the information necessary to issue a Convention Certificate of Insurance or Other Financial Security.
  - Issue Convention certificates to registered owners based on evidence of insurance or other financial security sufficient to satisfy the requirements of Article VII of the Convention.
  - The certificate shall be issued in the official languages of the issuing State Party but where this language is not English, French or Spanish then the text must include a translation into one of these three languages.
  - Not permit ships carrying more than 2,000 tons of persistent oil as cargo flying their flag to operate without carrying a valid Convention certificate on board.

- **What are the obligations for Port States who are State Parties?**
  - Require ships carrying more than 2,000 tons of persistent oil as cargo wherever they are registered, under national law, to have onboard a State issued Convention certificate when entering or leaving a port in their territory or arriving at or leaving an offshore facility in their territorial sea.
  - Accept certificates issued or certified under the authority of another State Party.
  - Request consultation with the issuing State, if necessary, if it believes that the insurer or financial security provider named in the Convention insurance certificate is not financially capable of meeting the obligations imposed under this Convention. It is not necessary for a port State that is a State Party to see the ship's blue card.
- **Other pamphlets and information material on liability and compensation conventions are available at the following links:**
  - Bunkers Convention Pamphlet: *Insert hyperlink*
  - Wreck Removal Convention Pamphlet: *Insert hyperlink*
  - 1992 IOPC Funds Convention [*pamphlet*][*guidance*]: *Insert hyperlink*

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## **ANNEX 4**

### **WRECK REMOVAL CONVENTION PAMPHLET**

#### **The Nairobi International Convention on the Removal of Wrecks, 2007 (Nairobi Wreck Removal Convention)**

##### **Liability and compensation for wrecks**

This is an informational pamphlet developed by the Legal Committee of the International Maritime Organization (IMO) on the Wreck Removal Convention. It is part of a series of pamphlets aimed at providing information on the responsibilities of shipowners, insurers or other financial security providers, and State Parties (flag States, or other certifying States and port States) regarding IMO's liability and compensation conventions. This pamphlet has no legal standing, but it is intended to provide concise information on the Wreck Removal Convention. Readers should seek their own independent legal advice on further questions.

- **What is the Wreck Removal Convention?**

- The Wreck Removal Convention aims to provide a legal basis for State Parties to remove, or have removed, hazardous wrecks that pose a danger or impediment to navigation, the marine environment, the coastline, property at sea or related interests of one or more States.
  - Removal includes any form of prevention, mitigation or elimination of the potential hazard created by the wreck.
  - Measures taken by the Affected State must be proportionate to the hazard.
- The Wreck Removal Convention also covers any reasonable measures for prevention, mitigation or elimination of hazards created by any object lost at sea from a ship (e.g. lost containers).
- The Wreck Removal Convention makes shipowners financially liable and requires them to take out insurance or provide other financial security to cover the costs of wreck removal. It also provides claimants, including States, with a right of direct action against insurers up to the limit of liability for the ship.
- The Wreck Removal Convention applies to ships which, following a maritime casualty, become a wreck in the Convention area:
  - Ship means all seagoing vessels of any type whatsoever including hydrofoil boats, air-cushion vehicles, submersibles, floating craft and floating platforms, except when such platforms are on location engaged in the exploration, exploitation or production of seabed mineral resources.
  - Maritime casualty means a collision of ships, stranding or other incident of navigation, or other occurrence on board a ship or external to it, resulting in material damage or imminent threat of material damage to a ship or its cargo.
  - Wreck is defined as, following a maritime casualty:
    - A sunken or stranded ship;
    - Any part of a sunken or stranded ship, including any object that is or has been on board such a ship;
    - Any object that is lost at sea from a ship and that is stranded, sunken or adrift at sea; or
    - A ship that is about, or may reasonably be expected, to sink or to strand, where effective measures to assist the ship or any property in danger are not already being taken.

- Convention area means the exclusive economic zone of a State Party, established in accordance with international law or, if a State Party has not established such a zone, an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured.
  - A State Party may extend the application of the Wreck Removal Convention to wrecks located within its territory, including the territorial sea.
- **How does the Wreck Removal Convention relate to LLMC?**
    - The Wreck Removal Convention establishes strict liability for the costs of locating, marking and removing the wreck.
    - While the Wreck Removal Convention does not contain any limits of liability within its provisions, it does not affect any right of shipowners, and the person or persons providing insurance or other financial security, from limiting their liability under any applicable national or international regime, such as the *International Convention on the Limitation for Liability for Maritime Claims, 1976* (LLMC), as amended.
      - However, there may be circumstances where a shipowner can be held strictly liable for liabilities under the Wreck Removal Convention beyond the limit of insurance or financial security that they are required to maintain. This is because even if the shipowner is not entitled to limit their liability, insurers or providers of other financial security may still limit their liability to an amount equal to the amount of the insurance or financial security required by the Wreck Removal Convention.
- **What are the obligations of registered owners?**
    - Registered owners are strictly liable for the costs of locating, marking and removing a wreck, subject to certain specific defences from liability.
      - Registered owner means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship at the time of the maritime casualty or, in the case of a ship owned by a State and operated by a company which in that State is registered as the operator of the ship, "registered owner" shall mean such company.
    - The registered owner of ships of 300 gross tonnage and above that are either registered in a State Party or entering or leaving the port of a State Party, or arriving at or leaving an offshore facility in their territorial sea, must:
      - Obtain and maintain insurance or other financial security, such as the guarantee of a bank or similar financial institution to cover their liabilities under the Wreck Removal Convention:
        - The amount of insurance or financial security required should not, in all cases, exceed the amount of the ship's limit of liability calculated in accordance with LLMC, as amended.
        - If the registered owner is in any doubt about the amount of insurance or financial security required, they should contact the State where they are applying for their Convention certificate or their insurer or financial security provider (normally a P & I Club).
      - Obtain a Convention certificate from their flag State if the flag State is a State Party to the Wreck Removal Convention or other State Party if their flag is not party to the Wreck Removal Convention, attesting that insurance or other financial security is in place; and

- Ensure that the Convention certificate, which can be in electronic format, is carried on board the ship at all times.
  - The registered owners of ships of less than 300 gross tonnage are not required to maintain insurance or financial security or to have a Convention certificate, but remain strictly liable for the costs of locating, marking and removing a wreck based on systems of limitation of liability in national law.
  - No party other than the registered owner is required to maintain insurance or other financial security to cover their liability under the Wreck Removal Convention.
- **What are the obligations of the master and operator of the ship?**
  - The master or the operator of the ship must report to the Affected State without delay when that ship has been involved in a maritime casualty resulting in a wreck.
    - Operator of the ship means the owner of the ship or any other organization or person such as the manager, or the bareboat charterer, who has assumed the responsibility for operation of the ship from the owner of the ship and who, on assuming such responsibility, has agreed to take over all duties and responsibilities established under the International Safety Management Code, as amended.
  - Any such report shall provide the name and the principal place of business of the registered owner and all the relevant information necessary for the Affected State to determine whether the wreck poses a hazard within the meaning of the Convention.
- **What are the obligations of insurers and providers of financial security?**
  - When providing a certificate of insurance, hereinafter referred to as a "blue card", to the registered owner, as evidence that insurance or financial security is in place which covers all liabilities under the Wreck Removal Convention the insurer or provider of financial security should:
    - Ensure that the blue card is addressed to the relevant State authorities;
    - Accept the right of direct action against them by claimants in respect of any claim for costs arising under the Wreck Removal Convention that have suffered loss and damage caused by pollution damage; and
    - Ensure that the insurance policy, or financial security, satisfies the requirements of the Wreck Removal Convention and covers the registered owner's liabilities under the Wreck Removal Convention and up to the required financial limit of insurance or other financial security.
  - It is generally accepted that the blue card only needs to be issued in English.
  - If the insurance policy or financial security ceases for reasons other than expiry, or where the policy is amended so that it no longer satisfies the requirements of the Wreck Removal Convention, the insurance or financial security provider must give three months' notice of termination to the issuing State Party. The insurance policy will cease before the expiry of this three months' notice period if:
    - The certificate issued by the State Party is returned to that State Party, or
    - A new Wreck Removal Convention certificate is issued within this three-month period.

- **What information is needed on a Wreck Removal Convention Certificate of Insurance or Other Financial Security issued by a State Party?**
  - The following information must be included in Convention certificate issued by the State Party to the registered owner:
    - Name of ship, distinctive number or letters and port of registry;
    - Gross tonnage of the ship;
    - Name and principal place of business of the registered owner;
    - IMO ship identification number;
    - Type and duration of security;
    - Name and principal place of business of the insurer or other person giving security and, where appropriate, place of business where the insurance or security is established; and
    - Period of validity of the certificate which shall not be longer than the period of validity of the insurance or other security; and statement that the policy covers liabilities under Article 12 of the Wreck Removal Convention.
  - To facilitate processing applications, the information identified above should also be included on blue cards issued by insurers or providers of financial security.
- **What are the obligations of State Parties?**
  - Accept evidence of insurance or financial security taking into account the guidelines in [Circular Letter No.3464](#).
  - Ensure that the blue card contains all the information necessary to issue a Convention Certificate of Insurance or Other Financial Security.
  - Issue Convention certificates to registered owners based on evidence of insurance or other financial security sufficient to satisfy the requirements of Article 12 of the Wreck Removal Convention.
  - Issue the certificate in the official languages of the issuing State Party but where this language is not English, French or Spanish then the text must include a translation into one of these three languages.
  - Not permit ships of 300 gross tonnage and above flying their flag to operate without carrying a valid Convention certificate on board.
  - Require the master or the operator of a ship flying its flag to report to the Affected State without delay when that ship has been involved in a maritime casualty resulting in a wreck.
  - Take appropriate measures under their national law to ensure that:
    - their registered owners remove a wreck determined to constitute a hazard; and
    - when a wreck has been determined to constitute a hazardous, the registered owner shall provide the competent authority of the Affected State with evidence of insurance or other financial security.
- **What are the roles of a State Party affected by a wreck (the Affected State)?**
  - Affected States determine whether a wreck poses a hazard and play an important role in locating, marking and removing a wreck.
    - **Determining whether the wreck poses a hazard:**
      - Determine if a wreck poses a hazard by applying the criteria set out in the Wreck Removal Convention.
    - **Locating a wreck:**
      - Warn mariners and other States concerned of the nature and location of the wreck.
      - Ensure that all practicable steps are taken to establish the precise location of the wreck.



- **Marking a wreck:**
    - Ensure that all reasonable steps are taken to mark the wreck.
  - **Removing a wreck:**
    - Inform the State of the ship's registry and the registered owner and proceed to consult the State of the ship's registry and other States affected by the wreck regarding measures to be taken.
    - Set a reasonable deadline for the registered owner to remove the wreck and inform the registered owner of the deadline it has set.
    - Tell the registered owner that if it does not remove the wreck within that deadline, the State may remove the wreck at the registered owner's expense.
    - Tell the registered owner that it intends to intervene immediately in circumstances where the hazard becomes particularly severe.
    - If the registered owner does not remove the wreck within the deadline or the registered owner cannot be contacted or in circumstances where immediate action is required, remove the wreck by the most practical and expeditious means available, consistent with considerations of safety and protection of the marine environment.
    - When the wreck removal has commenced, intervene in the removal only to the extent necessary to ensure that the removal proceeds effectively in a manner that is consistent with considerations of safety and protection of the marine environment.
  - Such measures shall not go beyond what is reasonably necessary to remove a wreck which poses a hazard.
- **What are the obligations for Port States who are State Parties?**
    - Require ships of 300 gross tonnage and above, under national law, to have on board a State issued Convention certificate when entering or leaving a port in their territory or arriving at or leaving an offshore facility in their territorial sea.
    - Accept certificates issued or certified under the authority of another State Party.
    - Request consultation with the issuing State, if necessary, if it believes that the insurer or financial security provider named in the Wreck Removal insurance certificate is not financially capable of meeting the obligations imposed under the Wreck Removal Convention. It is not necessary for a port State that is a State Party to see the ship's blue card.
  - **Other IMO pamphlets on liability and compensation conventions are available at the following links:**
    - Bunkers Convention Pamphlet: *Insert hyperlink*
    - Civil Liability Convention Pamphlet: *Insert hyperlink*

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## ANNEX 5

### DRAFT ASSEMBLY RESOLUTION ON GUIDELINES ON PLACES OF REFUGE FOR SHIPS IN NEED OF ASSISTANCE

THE ASSEMBLY,

RECALLING Article 15(j) of the Convention on the International Maritime Organization concerning the functions of the Assembly in relation to regulations and guidelines concerning maritime safety and the prevention and control of marine pollution from ships,

CONSCIOUS OF THE POSSIBILITY that ships at sea may find themselves in need of assistance relating to the safety of life and the protection and preservation of the marine environment, and that an incident involving a ship in need of assistance seeking a place of refuge can happen anywhere at sea,

RECOGNIZING the need to balance both the prerogative of a ship in need of assistance to seek a place of refuge and the prerogative of a coastal State to protect its coastline,

RECALLING that coastal States are not, under international law, under any obligation to grant places of refuge, and that the provision of a common framework to assist coastal States to determine places of refuge for ships in need of assistance and assess and respond effectively to requests for such places of refuge is undertaken in a spirit of cooperation and coordination among relevant parties involved, aiming to enhance maritime safety and the protection of the marine environment,

RECALLING ALSO that the Assembly, at its twenty-third session in 2003, adopted *Guidelines on places of refuge for ships in need of assistance* by resolution A.949(23),

RECALLING FURTHER that resolution A.949(23) requested the Maritime Safety Committee, the Marine Environment Protection Committee and the Legal Committee to keep the Guidelines under review and amend them, as appropriate,

RECOGNIZING that various organizational, operational and technological developments have taken place in a rapidly changing global maritime domain,

RECOGNIZING ALSO that experiences in handling situations of ships in need of assistance have increased around the world and that the experience gained and the resulting operational practice serve to identify improvements and practices,

RECOGNIZING FURTHER the importance of and need for providing guidance for coastal States, the masters and/or salvors as well as others involved with handling ships in need of assistance seeking a place of refuge,

RECOGNIZING THEREFORE that the Guidelines require revision to ensure they continue to serve as an effective instrument, providing a clear framework to deal with ships in need of assistance seeking a place of refuge in a consistent and harmonized manner,

HAVING CONSIDERED the recommendations made by the Maritime Safety Committee at its 106th session, by the Marine Environment Protection Committee at its [...] session, and by the Legal Committee at its [...] session, as developed by the Sub-Committee on Navigation, Communications and Search and Rescue at its ninth session,

- 1 ADOPTS the revised *Guidelines on places of refuge for ships in need of assistance*, the text of which is set out in the annex to the present resolution;
- 2 INVITES Governments to take the revised Guidelines into account, as a matter of priority, when determining and responding to requests for places of refuge from ships in need of assistance;
- 3 REQUESTS the Maritime Safety Committee, the Marine Environment Protection Committee and the Legal Committee to keep the annexed Guidelines under review and amend them, as appropriate; and
- 4 REVOKES resolution A.949(23).

## ANNEX

### **GUIDELINES ON PLACES OF REFUGE FOR SHIPS IN NEED OF ASSISTANCE**

(Note: The structure of the Guidelines is such that each "party" involved has its own section. Hyperlinks are included for quick reference and to make the Guidelines more operational. It is therefore recommended to keep the Guidelines in an electronic format.)

#### **SECTION 1 – GENERAL**

- 1.1 Introduction
- 1.2 Background
- 1.3 Objective
- 1.4 Purpose of the Guidelines
- 1.5 Definitions

Appendix to section 1 – Applicable international conventions

#### **SECTION 2 – ACTION REQUIRED OF MASTERS AND/OR SALVORS AND OTHERS INVOLVED WITH SHIPS IN NEED OF ASSISTANCE SEEKING A PLACE OF REFUGE**

For masters please click [here](#)

- 2.1 The master
- 2.2 The salvor
- 2.3 Requesting a place of refuge – process
- 2.4 Response actions
- 2.5 Other parties involved
  - Flag State
  - Classification society
  - Emergency response service
  - Insurers
  - Port, harbours and terminals
  - The company/operator

Appendix to section 2 – Form A (Formal place of refuge request form)

#### **SECTION 3 – ACTIONS EXPECTED OF COASTAL STATES**

For coastal States please click [here](#)

- 3.1 Competent authority
- 3.2 Plans for accommodating ship(s) in need of assistance seeking a place of refuge
- 3.3 Assessment of places of refuge
- 3.4 Event-specific assessment
- 3.5 Decision-making process for granting a place of refuge

Appendix 1 to section 3 – Places of refuge plans

Appendix 2 to section 3 – Risk analysis factors

## **SECTION 4 – INTERNATIONAL/REGIONAL COOPERATION AND COORDINATION FOR PLACES OF REFUGE**

Appendix to section 4 – International/regional cooperation and coordination for places of refuge

## **SECTION 5 – MEDIA AND INFORMATION MANAGEMENT**

- 5.1 Media and information management
- 5.2 Key principles
- 5.3 Key interest groups
- 5.4 Key actions for persons managing the incident

## **SECTION 6 – LESSONS LEARNED**

- 6.1 National and regional debriefs

## **SECTION 1 – GENERAL**

### **1.1 Introduction**

1.1.1 The issue of places of refuge cannot be subject to a purely theoretical or doctrinal debate. On the contrary, it should be addressed as a practical problem which requires operational decisions involving both relevant authorities and the industry. When a ship finds itself in serious difficulty or in need of assistance without presenting a risk to the safety of life of persons involved, there are two key questions: Should the ship be brought into shelter near the coast or into a port, or should it be taken out to sea?

1.1.2 It would be highly desirable if, taking the *Guidelines on places of refuge for ships in need of assistance* (hereafter referred as the Guidelines) into account, coastal States provided places of refuge for use when confronted with situations involving ships in need of assistance off their coasts and, accordingly, drew up relevant emergency plans, instead of being unprepared to face such situations and, because of that, risking the wrong decision being made by improvising or, in the heat of the moment, acting under pressure from groups representing various interests. The Guidelines seek to address and provide guidance on how to deal with a ship in need of assistance seeking a place of refuge.

### **1.2 Background**

1.2.1 Situations leading to a request for a place of refuge often involve only one State and will be managed by that State, under the rules applicable in its jurisdiction. There may be cases where a situation may develop to involve neighbouring States or States in the vicinity of the incident, or a flag State. Therefore, the Guidelines may also apply, subject to relevant circumstances, to situations where it is possible that more than one State may be involved.

1.2.2 When a ship has suffered an incident, the best way of preventing the risk of further damage or pollution from its progressive deterioration would be to stabilize the situation, allowing for preventive actions such as lightening its cargo and bunkers, and to repair damage. Such operations are best carried out in a place of refuge due to the added protections this offers and the availability of resources. There are circumstances under which it may be desirable to carry out a cargo transfer operation or other operations to prevent or minimize damage or pollution.

1.2.3 In some circumstances, the longer a damaged ship is forced to remain at the mercy of the elements in the open sea, the greater the risk of the ship's condition deteriorating or the sea, weather or environmental situation changing and thereby becoming a greater potential hazard.

1.2.4 While coastal States may be reluctant to accept damaged or disabled ships into their area of responsibility due primarily to the potential for environmental damage, in fact it is rarely possible to deal effectively with a marine casualty in open sea conditions.

1.2.5 Taking a ship in need of assistance to a place of refuge has the advantage of limiting the extent of coastline at risk, but conversely the coastline at the place of refuge may be at greater risk. Consideration should also be given to the possibility of taking the affected ship to a port or terminal where the transfer of cargo or repair work could be done relatively easily. For this reason, the decision on the choice and use of a place of refuge will have to be carefully considered case by case and based on risk assessment.

1.2.6 The use of places of refuge may encounter local opposition and involve difficult decisions. The coastal States should recognize that an evidenced-based comprehensive risk assessment is indispensable for safe and efficient handling and decision-making. Regional cooperation agreements could, depending on circumstances, support the accommodation of a ship in need of assistance seeking a place of refuge.

1.2.7 Coastal States and ports that accommodate a ship that has been granted a place of refuge should receive prompt compensation in respect of liabilities that arise from the accommodation of a damaged ship, as appropriate. To that end, it is important that the relevant international conventions, and, if available, risk-sharing mechanisms, be applied.

1.2.8 At the international level, the conventions listed in the appendix to section 1, as may be updated, constitute, inter alia, the legal context within which coastal States (as well as flag and port States) and ships act in the envisaged circumstances.

1.2.9 Against this background, it is necessary to lay down provisions for accommodating ships in need of assistance and seeking a place of refuge in order to ensure a harmonized and effective implementation of this measure and to make them more operational in supporting States, ships' masters and other parties involved in meeting the objectives.

### **1.3 Objective**

1.3.1 The objective is to provide a uniform, transparent process leading to well-informed, quicker decision-making. This will benefit States, ships' masters, operators and/or salvors or other parties where a ship in need of assistance requests a place of refuge in the interest of the protection of human life, maritime safety, security and the environment.

1.3.2 The process should promote cooperation and constructive engagement within and between State governing bodies, authorities and industry.

1.3.3 Based upon the services required by the master or any other person in charge of the ship (e.g. salvors), a State which may be asked to provide assistance should consider designating a place of refuge. This is particularly important if there is a risk that a ship will sink or ground resulting in environmental damage or a navigational hazard.

1.3.4 The objective is also that national plans for the accommodation of ships in need of assistance and seeking a place of refuge include procedures for international coordination and decision-making and, where possible or appropriate, cooperation in drawing up concerted plans to accommodate such. This may be desirable, or become necessary, for regional areas or sea basins shared with several littoral States.

1.3.5 Granting access to a place of refuge involves a decision which can only be taken on a case-by-case basis with due consideration given to the balance between the advantage for the affected ship, its crew and the environment resulting from bringing the ship into a place of refuge and the risk to the environment resulting from that ship, if it is not granted a place of refuge, being near the coast or if it is taken or ordered away from the coast.

### **1.4 Purpose of the Guidelines**

1.4.1 The purpose of the Guidelines is to provide the basis of an operational framework for coastal States, ships' masters, operators and/or salvors as well as other parties involved to handle and take a decision when a ship is in need of assistance and seeks a place of refuge.



1.4.2 Such a framework could involve establishing an authority in a State, depending on the internal structure of that State, which has relevant expertise and the necessary powers to take independent decisions as regards the accommodation of a ship in a place of refuge – hereinafter referred to as a competent authority (CA).

1.4.3 This also includes guidance for such a CA on how and what should be done to efficiently deal with a ship in need of assistance requesting a place of refuge. Guidance should also be provided for the masters to assist them in clearly identifying any services or facilities they require in a place of refuge situation. Therefore, the Guidelines should also include guidance for masters on what is expected of them, including suggested procedures and information flows to be used.

1.4.4 However, cases of a ship in need of assistance seeking a place of refuge also routinely involve other parties such as the flag State,<sup>1</sup> the salvor, the classification society and the insurer. The Guidelines also include guidance for such parties.

1.4.5 The Guidelines address situations where only one CA is involved, as well as when more than one jurisdiction is or may become involved. Hence, it is recommended throughout the Guidelines that coastal States, subject to relevant circumstances, consider establishing regional cooperation and coordination mechanisms in order to develop common frameworks for assessing ships that need assistance and are seeking a place of refuge, including, where appropriate, putting concerted actions and plans into practice.

1.4.6 In any given situation, Member Governments, shipmasters, companies,<sup>2</sup> salvors and any other parties involved, should respond effectively and in such a way that efforts are complementary, ensuring that if one CA is not in a position to manage the situation or grant a request for a place of refuge, another CA should be informed and prepared to take over the decision-making for that request.

1.4.7 Where a ship is in need of assistance and is requesting a place of refuge, but safety of life is not involved, the Guidelines should be followed. The Guidelines do not address the issue of operations for the rescue of persons at sea.

1.4.8 If, however, in an evolving situation, the persons on board find themselves in distress, the rules applicable to rescue operations under the International Convention on Maritime Search and Rescue, 1979 (SAR Convention), the International Aeronautical and Maritime Search and Rescue (IAMSAR) Manual and documents arising therefrom have priority over the Guidelines (and procedures arising therefrom).

1.4.9 Even where a situation does not entail a rescue operation, as defined in the SAR Convention, the safety of persons has to be constantly borne in mind in the application of the Guidelines.

1.4.10 In any case, the competent maritime assistance service (MAS)/maritime rescue coordination centre (MRCC) should be informed about any situation which may develop into an SAR incident. Resolution A.950(23) recommends that coastal States establish a MAS. This service could "be discharged by an existing organization, preferably an MRCC", but resolution A.950(23) also recognizes that "the establishment of a MAS should not necessarily entail the setting up of a new organization", thereby giving consideration to coastal States' internal arrangements.

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<sup>1</sup> Flag State duties are detailed in article 94 of UNCLOS.

<sup>2</sup> As defined in the ISM Code, part A, paragraph 1.1.2.

1.4.11 The Guidelines do not address the issue of liability and compensation for damage resulting from a decision to grant or deny a ship a place of refuge.

## **1.5 Definitions**

1.5.1 *Ship in need of assistance* means a ship in a situation, apart from one requiring rescue of persons on board, that could give rise to loss of the ship or to an environmental or navigational hazard.

1.5.2 *Parties involved* means, for the purposes of the Guidelines, those mentioned in section 2, paragraphs 1 (master), 2 (salvor) and 5 (other – flag State, classification society, insurers, port, harbours and terminals, company/operator) and section 3 (coastal States) involved in resolving a situation when a ship in need of assistance seeks a place of refuge.

1.5.3 *Place of refuge* means a place where a ship in need of assistance can take action to enable it to stabilize its condition and reduce the risks to navigation, and to protect human life and the environment.

1.5.4 *MAS* means a maritime assistance service, as described in resolution A.950(23), responsible for receiving reports in the event of incidents and serving as the point of contact between the shipmaster and the authorities of the coastal State in the event of an incident.

1.5.5 *MRCC* means a maritime rescue coordination centre as described in the SAR Convention.<sup>3</sup>

1.5.6 *Competent authority (CA)* means an authority in a State, depending on the internal structure of that State, having the required expertise and the power to take independent decisions as regards the accommodation of a ship in a place of refuge.

1.5.7 *Emergency response service (ERS)* means the service provided by an entity, including many classification societies, able to perform technical assessments on damage stability and residual strength, etc. and provide the results of their assessment to the ship's crew, salvors or the CA.

## **Appendix to section 1**

### **APPLICABLE INTERNATIONAL CONVENTIONS**

At the international level, the following conventions and protocols are in force and constitute, inter alia, the legal context within which coastal States, flag States and ships act in the envisaged circumstances:<sup>4</sup>

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<sup>3</sup> The SAR Convention uses the term "rescue coordination centre" (RCC). Not all States may have established a maritime rescue coordination centre (MRCC) or a maritime assistance service (MAS), and it is important that the master address either depending on the internal arrangements in the coastal State in question. They may therefore be used interchangeably throughout this document.

<sup>4</sup> It is noted that there is at present no international requirement for a State to provide a place of refuge for ships in need of assistance.

- United Nations Convention on the Law of the Sea (UNCLOS), in particular, part V, and article 221<sup>5</sup> thereof
- International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969 (Intervention Convention 1969)
- Protocol Relating to Intervention on the High Seas in Cases of Pollution by Substances Other than Oil, 1973 (1973 Intervention Protocol)
- International Convention for the Safety of Life at Sea, 1974 (SOLAS Convention) in particular chapter V thereof
- International Convention on Salvage, 1989<sup>6</sup>
- International Convention on Oil Pollution Preparedness, Response and Cooperation, 1990 (OPRC Convention)
- Protocol on Preparedness, Response and Cooperation to Pollution Incidents by Hazardous and Noxious Substances, 2000 (OPRC-HNS Protocol)
- International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78)
- Protocol of 1997 to amend the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (1997 MARPOL Protocol)
- International Convention on Maritime Search and Rescue, 1979 (SAR Convention)
- Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972 (London Convention 1972)
- 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972 (London Protocol)
- Convention Relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material, 1971 (Maritime Carriage of Nuclear Substances)

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<sup>5</sup> "1. Nothing in this Part shall prejudice the right of States, pursuant to international law, both customary and conventional, to take and enforce measures beyond the territorial sea proportionate to the actual or threatened damage to protect their coastline or related interests, including fishing, from pollution or threat of pollution following upon a maritime casualty or acts relating to such a casualty, which may reasonably be expected to result in major harmful consequences. 2. For the purposes of this article, "maritime casualty" means a collision of vessels, stranding or other incident of navigation, or other occurrence on board a vessel or external to it resulting in material damage or imminent threat of material damage to a vessel or cargo".

<sup>6</sup> Parties to the International Convention on Salvage, 1989 (Salvage 1989) are obliged under article 11 of the Convention when considering a request for a place of refuge to take into account the need for cooperation between salvors, other interested parties and public authorities to ensure the efficient and successful performance of salvage operations. Article 11 of the Salvage Convention states, "A State Party shall, whenever regulating or deciding upon matters relating to salvage operations such as admittance to ports of vessels in distress or the provision of facilities to salvors, take into account the need for co-operation between salvors, other interested parties and public authorities in order to ensure the efficient and successful performance of salvage operations for the purpose of saving life or property in danger as well as preventing damage to the environment in general".

- Convention on Limitation of Liability for Maritime Claims, 1976 (1976 LLMC Convention)
- Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976 (1996 LLMC Protocol)
- International Convention on Civil Liability for Oil Pollution Damage, 1969 (1969 Civil Liability Convention)
- Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969 (1992 Civil Liability Protocol)
- International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (1992 Fund Convention)
- Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (Supplementary Fund Protocol)
- International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (2001 Bunkers Convention)
- Nairobi International Convention on the Removal of Wrecks, 2007 (2007 Nairobi Wreck Removal Convention).

## **SECTION 2 – ACTION REQUIRED OF MASTERS AND/OR SALVORS AND OTHERS INVOLVED WITH SHIPS IN NEED OF ASSISTANCE SEEKING A PLACE OF REFUGE**

### **2.1 The master**

2.1.1 In the event of any maritime incident, the ship's master and/or the salvor are responsible for contacting the appropriate MAS, as designated in each State, to report the incident and initiate the necessary follow-up actions. Lists of MAS and MRCCs can be found in the Global Integrated Shipping Information System (GISIS), under the [MAS](#) section of the Contact Points module and the [RCC](#) section of the Global SAR Plan module, respectively.

2.1.2 The master of a ship to which the provisions of the International Safety Management (ISM) Code are applicable should, in accordance with that Code, inform the company of any incident or accident which occurs at sea. As soon as it has been informed of such a situation, the company should contact the competent coastal station and place itself at its disposal as necessary.

2.1.3 The master has the command of the ship and remains in command of the ship even when a salvage operation is under way. The master may decide to relinquish command, after which command is assumed by the salvor.

2.1.4 The master is responsible for:

- .1 informing the CAs (of the nearest coastal State(s)) as well as the flag State,<sup>7</sup> as soon as possible, issuing an incident report with at least the following details:
  - .1 ship's identity;
  - .2 ship's position;
  - .3 port of departure;
  - .4 port of destination;
  - .5 information about the onboard cargo;
  - .6 address from which additional information may be obtained on any oil (fuel, cargo or otherwise) and dangerous cargo on board (i.e. copy of cargo manifest) to the extent known;
  - .7 quantity, location and type of bunkers on board;
  - .8 number of persons on board; and
  - .9 details of the incident;
- .2 cooperating fully with the CAs; and
- .3 communicating all requested or pertinent information to CAs.

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<sup>7</sup> UNCLOS articles 94, 194 and 198 prompt notification procedures to the flag State. UNCLOS articles 92 and 94 further detail that the master is acting on behalf of the flag State to which the ship is registered.

2.1.5 The master is further responsible for (with the assistance of the company and/or the salvor where necessary):

- .1 assessing the situation and identifying the reasons why the ship needs assistance;
- .2 carrying out an analysis of the risks, threats, and hazards identified (to the best of the master's ability or knowledge at the time of the situation) considering, inter alia, the following:
  - .1 fire;
  - .2 explosion;
  - .3 damage to the ship, including mechanical and/or structural failure;
  - .4 collision;
  - .5 pollution;
  - .6 impaired ship stability; and
  - .7 grounding;

The risk analysis factors as presented in appendix 2 to section 3, where applicable, are to be considered during this process;

- .3 estimating the consequences of the incident, if the ship were to:
  - .1 remain in the same position;
  - .2 continue on its voyage;
  - .3 reach a place of refuge; or
  - .4 be taken out to sea;
- .4 identifying the assistance required from the coastal State in order to overcome the inherent danger of the situation (refer to appendix to section 2, part 3 and appendix 2 to section 3, paragraph 3);
- .5 informing the CA if the ship has access to ERS and make relevant contact details, activation status and details of the contracting party available to the CA; and
- .6 undertaking any relevant response actions to minimize the consequences of the casualty.

## **2.2 The salvor<sup>8</sup>**

2.2.1 In a situation where the master has relinquished command, the salvor, in addition to those in paragraph 2.1, is responsible for:

- .1 keeping the CA fully informed about the condition of the ship and the progress of the salvage operation;
- .2 cooperating fully with the CA in ensuring the safety of the ship, of persons, and the protection of the marine environment, by taking all appropriate measures;
- .3 submitting an outline salvage plan showing immediate intentions, and following up with a detailed plan at the appropriate juncture, to the CA for approval before operations commence; and
- .4 initiating direct contact with the ERS (if there is an ERS in place and active for the incident) to provide them with updates on the condition of the ship.

## **2.3 Requesting a place of refuge – process**

2.3.1 When a decision has been taken by the party in charge of the ship to make a formal place of refuge request, without prejudice to the CA's right to take the decision, the following process should be followed.

2.3.2 The formal request should be made in writing via electronic transmission and should include Form A (appendix to section 2). Any other information that the CA might require, for example to ensure compliance with local legislation, such as cargo manifests, stowage plans and the salvor's outline salvage plan, should also be forwarded with Form A.

2.3.3 The formal request for a place of refuge should be transmitted by the master, using the fastest means available, to the CA or MAS, as applicable (see paragraph 2.1.1).

2.3.4 A formal request for a place of refuge may also be made by:

- .1 a ship operator/company designated person ashore/contracted salvor; and
- .2 any other person who is in charge of the ship at the time and is recognized by national law.

2.3.5 Unless in extremis, formal requests should be made to one CA only, through the national point of contact (MAS), and should not be forwarded directly to ports or harbours, unless agreed with the MAS and CA. The CA should always be informed if a third party was involved.

2.3.6 Simultaneous requests to other CAs or MAS should be avoided.

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<sup>8</sup> The duties of the salvor are set out in article 8 of the International Convention on Salvage, 1989, which is incorporated into Lloyd's Open Form, and will apply when no contract is in place. If a contract other than Lloyd's Open Form is in place, responsibilities will be different and will be specific to each casualty.

## **2.4 Response actions**

2.4.1 Subject, where necessary, to the coastal State's prior consent, the ship's master and the shipping company concerned should take any necessary response actions, such as signing a salvage or towage agreement or the provision of any other service for the purpose of dealing with the ship's situation. When granting access, the coastal State may establish additional or different measures to be complied with by the master and/or salvor.

2.4.2 The master, the company and, where applicable, the salvor of the ship should comply with the practical requirements resulting from the coastal State's decision-making process referred to in paragraph 3.5.

## **2.5 Other parties involved**

### **2.5.1 *Flag State***

The flag State, apart from complying with its obligation under international law, should be asked to cooperate with the CA if there is a need for specific information on the ship's certificates and any other relevant documentation (i.e. safety and pollution prevention). The flag State itself or, if requested, the recognized organization or organizations that issue the ship's certificates on its behalf, should provide all relevant information, certification and documentation regarding the ship to the CA. The flag State should also facilitate for any ERS information to be made available. The CA should keep the flag State aware of developments.

### **2.5.2 *Classification society***

When a ship is in need of assistance and seeking a place of refuge, the ship's classification society can contribute to a safe course of action to protect the ship, crew, cargo and the marine environment. A ship's crew and management need rapid precise technical information on the behaviour of the ship after the incident as well as information on the consequences of any proposed remedial actions.

It is strongly recommended that the classification society be involved in the information gathering and risk assessment with respect to preserving the hull strength and stability of the ship and mitigating environmental pollution, and in particular when a formal request for a place of refuge has been made, and to provide any relevant information.

### **2.5.3 *Emergency response service***

- .1 Many shipowners and/or classification societies have set up ERSs. The aim of an ERS is to provide rapid technical assistance<sup>9</sup> to masters/the contracting party and their representatives or other authorities in a casualty situation by, for example, assessing the damage stability and residual longitudinal strength of the ship.
- .2 Where the ship has been enrolled in a shore-based ERS service, the service should be activated as soon as possible to assess the vessel damage condition. The availability of ERS as a resource should be communicated without delay to the CA by the master or operator.

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<sup>9</sup> The International Association of Classification Societies (IACS) recommends that ERSs provide rapid technical assistance to the master and to other authorities. IACS Recommendation N.145 (May 2016): <https://www.iacs.org.uk/Publications/recommendations/141-160>



- .3 The CA should have access to all information that it deems necessary, i.e. ERS reports and/or support information, where provided, cargo manifests, etc. Such information should be made available to the CA by the shipowner, the contracting party or, where authorized by it, the ERS without delay.

#### 2.5.4 ***Insurers***

- .1 Protection and Indemnity ("P & I") Insurance covers a wide range of liabilities including personal injury to crew, passengers and others on board, cargo loss and damage, oil pollution, wreck removal and dock damage. Generally, P & I Clubs also provide a wide range of services to their members on claims, legal issues and loss prevention, and often play a leading role in the management of casualties. Hence, establishing communication with the P & I Club as early as possible during an incident is important as they can be instrumental in obtaining relevant information from the ship operator.
- .2 In an incident, they may be asked to provide financial guarantees which may include guarantees for damages or losses to ports during the accommodation of a ship in need of assistance seeking a place of refuge.
- .3 Hull and machinery ("H & M") insurance covers damage to the ship's hull, machinery and equipment. This is often covered by two or more underwriters. It is sufficient to obtain the contact details of the lead hull insurer, who is authorized to act on behalf of all followers and often plays a leading role during a salvage situation.
- .4 Cargo insurance covers damages to the cargo on board the ship, including cargo contributions to the general average.

#### 2.5.5 ***Ports, harbours and terminals***

- .1 Depending on circumstances and following the risk assessment, a port or harbour or a specific terminal may be identified as a potential place of refuge.
- .2 If a port or harbour is identified as a potential place of refuge for a ship in need of assistance, the following issues, inter alia, will need to be considered:
  - .1 the availability of a suitable berth, designated emergency reception berth, or otherwise, to accommodate the ship;
  - .2 the risk to safety and/or human health, particularly if the port or harbour is in close proximity to populated areas; and
  - .3 technical considerations of the port's operations (e.g. assessment of the potential risk of lengthy disruption, the ship blocking or restricting access through navigation channels, damage to infrastructure).

#### 2.5.6 ***The company/operator***

The company/operator should:

- .1 provide a point of contact for any information required by the CA/MAS if the master is unable to do so (for whatever reason) or to reduce the requests for information to the master, allowing the master to manage the situation on board;

- .2 support the CA/MAS if requested during and post the situation; and
- .3 coordinate the provision of ERS information between the CA and the ERS provider.

## Appendix to section 2

### FORM A – FORMAL PLACE OF REFUGE REQUEST FORM

**Note:** For Places of Refuge requests following SAR action, it is likely that much of the ship/cargo/bunker information will already be held by the MRCC or MAS.

Request for Place of Refuge	
Date:	.....
From	Master: MV/ ..... ..... Salvage PLC
To	Competent authority (or via MAS/MRCC) .....
	For the attention of: Competent authority
Part 1	<b>Appraisal of the situation (refer to paragraph 2.1.5.1)</b> The master should, where necessary with the assistance of the company and/or the salvor, identify the reasons for their ship's need of assistance.
Part 2	<b>Identification of hazards and assessment of associated risks (refer to paragraphs 2.1.5.2 and 2.1.5.3)</b> Having made the appraisal above, the master, where necessary with the assistance of the company and/or the salvor, should estimate the consequences of the potential casualty, in the following hypothetical situations, taking into account both the casualty assessment factors in their possession and also the cargo and bunkers on board: - if the ship remains in the same position; - if the ship continues on its voyage; - if the ship reaches a place of refuge; or - if the ship is taken out to sea.
Part 3	<b>Identification of the required actions (refer to paragraph 2.1.5.4)</b> The master and/or the salvor should identify the assistance they require from the coastal State in order to overcome the inherent danger of the situation. (appendix 2 to section 3, paragraph 3 refers).
Part 4	<b>Supporting documentation</b>
Part 5	<b>Any other coastal States/ports contacted to date</b>
Part 6	<b>Information from the MAS/port contacted</b> (At the end of its assessment process) The recipient CA should inform the requestor of its action.

## **SECTION 3 – ACTIONS EXPECTED OF COASTAL STATES**

When a ship in need of assistance is seeking a place of refuge, a decision has to be taken as regards the accommodation of that ship in a place of refuge. Each coastal State should therefore examine its ability to provide a place of refuge.

This is particularly important in the event of an incident that could give rise to an environmental or navigational hazard or the loss of a ship.

### **3.1 Competent authority**

3.1.1 When a ship in need of assistance is seeking a place of refuge, it is necessary to be able to call on an authority in that coastal State, depending on the internal structure of that State, with the required expertise and power to take independent decisions as regards the accommodation of a ship in a place of refuge.

3.1.2 Therefore, coastal States should designate a CA. The CA should have the required expertise and authority to take independent decisions on their own initiative concerning the accommodation of ships in need of assistance seeking a place of refuge. It is desirable that the CA be permanent in nature.

3.1.3 Coastal States are advised to establish and maintain a MAS and/or, as appropriate, make the necessary arrangements for a joint service with neighbouring States.

3.1.4 Coastal States should make the name and contact details of the competent authorities and MAS and MRCC available to the public in the [Contact Points](#) module and the [Global SAR Plan](#) module of GISIS.

### **3.2 Plans for accommodating ship(s) in need of assistance seeking a place of refuge**

3.2.1 Under international law, a coastal State has the right to require the ship's master or company to take appropriate action within a prescribed time limit with a view to mitigating a risk or danger. In cases of failure or urgency, the coastal State can exercise its authority in taking responsive action appropriate to the threat.

3.2.2 It is therefore important that coastal States establish plans with clear procedures to address these issues, even if no established damage and/or pollution has occurred.

3.2.3 It is recommended that coastal States establish plans and procedures consistent with the Guidelines for the accommodation of ship(s) in order to respond to risks presented by ships in need of assistance seeking a place of refuge in the waters under their jurisdiction. The CA should participate in drawing up and carrying out those plans.

3.2.4 The plans should describe precisely the decision-making chain with regard to alerting and dealing with the situation in question. The authorities concerned and their specific role/competence should be clearly described, as should the means of communication between the parties involved. The applicable procedures should ensure that an appropriate decision can be taken quickly on the basis of specific maritime expertise and best possible information available to the CA.

3.2.5 When drawing up the plans, coastal States should gather the information on potential places of refuge to allow the CA to identify clearly and quickly the most suitable place for accommodating a ship in need of assistance seeking a place of refuge. It can be a sheltered area, a port or any other suitable place; it may be any appropriate place, depending on the situation, along the entire coast of a State.

3.2.6 Information about potential places should include a description of certain characteristics of the sites as well as any equipment and installations available to accommodate a ship in need of assistance.

3.2.7 The coastal State should also include procedures or agreements for international/regional coordination and decision-making, in line with the Guidelines for the handling of requests for assistance and authorizing, where appropriate, the use of a suitable place of refuge. They may therefore include availability of information on plans for other neighbouring States and all parties involved in a response operation.

3.2.8 Appendix 1 to section 3 contains a non-exclusive list of what such plans may include.

### **3.3 Assessment of places of refuge**

The CA, and where necessary, in consultation with the port authorities and, as appropriate, terminal operators, should, for each request for a place of refuge, make an objective analysis of the advantages and disadvantages of allowing a ship in need of assistance to proceed to a place of refuge under their jurisdiction or via the waters for which they are responsible, taking into consideration the risk analysis factors listed in appendix 2 to section 3.

### **3.4 Event-specific assessment**

#### ***Expert analysis/inspection***

3.4.1 The analysis or inspection should include a comparison between the risks involved if the ship remains at sea and the risks that it would pose to the place of refuge and its environment. Such comparison should cover each of the following points:

- .1 safeguarding of human life at sea;
- .2 safety of persons at the place of refuge and its industrial and urban environment (risk of fire or explosion, toxic risk, etc.);
- .3 risk of pollution (particularly in designated areas of environmental sensitivity);
- .4 if the place of refuge is a port, risk of disruption to the port's operation (channels, docks, equipment, terminals, other installations);
- .5 if the place of refuge is an anchorage, accessibility for lightering operation should be considered and the tidal situation must be monitored at all times;
- .6 evaluation of the consequences if a request for place of refuge is refused, including the possible effect on neighbouring States; and
- .7 due regard should be given, when drawing the analysis, to the preservation of the hull, machinery and cargo of the ship in need of assistance, as well as possible risks to navigation.

### ***Analysis factors***

3.4.2 The event-specific analysis should include the following analysis factors:

- .1 seaworthiness of the ship concerned, in particular buoyancy, stability, availability of means of propulsion and power generation, and docking ability;
- .2 nature and condition of cargo, stores, bunkers, in particular hazardous goods;
- .3 distance and estimated transit time to a place of refuge;
- .4 whether the master (or representative of the master, e.g. chief mate) is still on board;
- .5 the number of other crew and/or salvors and other persons on board and an assessment of human factors, including fatigue;
- .6 the legal authority of the country concerned to require action of the ship in need of assistance;
- .7 agreement by the master and company of the ship to the proposals of the coastal State/salvor to proceed or be brought to a place of refuge;
- .8 provision on financial security, if required;
- .9 commercial salvage contracts already concluded by the master or company of the ship;
- .10 information on the intention of the master and/or salvor;
- .11 designation of a representative of the company at the coastal State concerned;
- .12 risk analysis factors identified in the formal place of refuge request form (appendix to section 2); and
- .13 any measures already taken.

### ***Expert inspection***

3.4.3 Where it is deemed safe to do so and where time permits, an assessment team designated by the CA should board the ship requesting a place of refuge, for the purpose of gathering evaluation data to support the decision-making process (cf. risk analysis factors).

3.4.4 A team composed of persons with expertise appropriate to the situation should be established. Where one or more coastal States may be involved with the incident, and where other parties may be potentially involved, then the formation of a multinational or "regional" inspection team should be considered. The coastal State CA receiving the request for a place of refuge will retain responsibility for selecting the appropriate team members and inviting participation from other States/competent authorities. Due care should be exercised to ensure that the formation of a multinational/regional team does not delay the deployment of the inspection team.

### **3.5 Decision-making process for granting a place of refuge**

3.5.1 The CA should decide on the acceptance of a ship in a place of refuge following a prior assessment of the situation carried out on the basis of the plans referred to in 3.2 and any expert assessment as per paragraphs 3.3 and 3.4. The CA should grant a place of refuge to a ship if they consider such an accommodation the best course of action for the purpose of the protection of human life, the environment or the ship or its cargo. When permission to access a place of refuge is requested, there is no obligation for the CA to grant it, but before taking any decision, the necessary risk assessments and/or expert onboard assessments should always be completed, unless deemed unsafe. The CA should weigh all the factors and risks in a balanced manner and give shelter whenever reasonably possible.

3.5.2 The CA may verify whether the ship is covered by insurance or some other effective form of financial security permitting appropriate compensation for costs and damages associated with its accommodation in a place of refuge. Operational response to the incident should not be delayed while verification of insurance cover takes place. The absence of insurance or financial security should not in itself be a reason to refuse to assess the request for a place of refuge as there might be a risk to the marine environment and to decide on the acceptance of the ship in a place of refuge.

3.5.3 The decision by the CA as a representative of a State to grant a place of refuge on their territory should be immediately communicated to all parties involved and should include any practical requirements set as a condition of entry.

3.5.4 While each State should remain independent in making their decision, if a CA is unable to accept a request for a place of refuge, it should immediately communicate to the shipowner/operator the information on the basis of which its decision has been made and including any assessment relating to:

- .1 the safety of persons on board and risks to public safety on shore;
- .2 environmental sensitivities;
- .3 lack of availability of suitable resources at desired place of refuge and concern over structural stability and ability for ship to make successful safe transit to the same;
- .4 prevailing and forecast weather conditions, i.e. lack of sheltered area for proposed works;
- .5 physical limitations and constraints including bathymetry, navigational characteristics;
- .6 escalation of foreseeable consequences, i.e. pollution, fire, toxic and explosion risk; and
- .7 any other applicable reason.

3.5.5 In situations where regional agreements are in place, the same information should be communicated to the other parties involved. Copies of the risk assessment and/or inspection report(s) should also be made available, as appropriate, through such regional agreements.

3.5.6 The action of the coastal State, via its CA, does not prevent the company or its representative from being called upon to take steps, within the framework of international law, that are necessary to avert, lessen or remove a serious and imminent risk to its coastline or related interests, the safety of other ships and their crews and passengers or of persons on shore or to protect the marine environment. That CA may, inter alia:

- .1 restrict the movement of the ship or direct it to follow a specific course. This requirement does not affect the master's responsibility for the safe handling of his ship;
- .2 give official notice to the master of the ship to put an end to the threat to the environment or maritime safety; and
- .3 instruct the master to put in at a place of refuge in the event of imminent peril or cause the ship to be piloted or towed.

In the case of a ship that is towed under a towage or salvage agreement, the measures taken by the CA of a State under paragraphs 3.5.6.1 and 3.5.6.3 may also be addressed to the assistance, salvage and towage companies involved.

#### **Appendix 1 to section 3**

#### **PLACES OF REFUGE PLANS**

The plans referred to in paragraph 3.2 should be prepared after consultation of the parties concerned, where necessary, and contain at least the following items:

- 1 The identity of the authority or authorities responsible for receiving and handling alerts;
- 2 The identity of the CA for assessing the situation and taking a decision on acceptance or refusal of a ship in need of assistance seeking a place of refuge;
- 3 Information on the coastline of the State and all elements facilitating a prior assessment and rapid decision regarding the place of refuge for a ship, including a description of environmental, economic and social factors and natural conditions;
- 4 The assessment procedures for acceptance or refusal of a ship in need of assistance in a place of refuge;
- 5 The resources and installations suitable for assistance, rescue and combating pollution;
- 6 Procedures for international coordination and decision-making, taking into account characteristic regional features (see section 4); and
- 7 The financial guarantee and liability procedures in place for ships accommodated in a place of refuge.

## **Appendix 2 to section 3**

### **RISK ANALYSIS FACTORS**

When conducting the risk analysis as described in paragraphs 2.1.5 and 3.3, the following should be considered:

- 1 Environmental and social factors, such as:
  - Safety of those on board
  - Risk to public safety  
What is the nearest distance to populated areas?
  - Pollution caused by the ship
  - Designated environmental areas  
Are the place of refuge and its approaches located in sensitive areas such as areas of high ecological value which might be affected by possible pollution?  
Is there, on environmental grounds, a better choice of place of refuge close by?
  - Sensitive habitats and species
  - Fisheries  
Are there any offshore and fishing or shellfishing activities in the transit area or in the approaches to the place of refuge or vicinity which can be endangered by the incoming ship in need of assistance?
  - Economic/industrial facilities  
What is the distance to the nearest industrial areas?
  - Amenity resources and tourism areas
  - Facilities available  
Are there any specialist ships and aircraft and other necessary means for carrying out the required operations or for providing necessary assistance?  
Are there transfer facilities, such as pumps, hoses, barges, pontoons?  
Are there reception facilities for harmful and dangerous cargoes?  
Are there repair facilities, such as dockyards, workshops, cranes?
- 2 Natural conditions, such as:
  - Prevailing winds in the area  
Is the place of refuge safely guarded against heavy winds and rough seas?
  - Tides and tidal currents
  - Weather and sea conditions
  - Local meteorological statistics and number of days of inoperability or inaccessibility of the place of refuge



- Bathymetry  
Minimum and maximum water depths in the place of refuge and its approaches?  
The maximum draught of the ship to be admitted?  
Information on the condition of the bottom, i.e. hard, soft, sandy, regarding the possibility to ground a problem ship in the haven or its approaches?
- Seasonal effects including ice
- Navigational characteristics  
In the case of a non-sheltered place of refuge, can salvage and lightering operations be safely conducted?  
Is there sufficient space to manoeuvre the ship, even without propulsion?  
What are the dimensional restrictions of the ship, such as length, width and draught?
- Risk of stranding the ship, which may obstruct channels, approaches or ship navigation
- Description of anchorage and mooring facilities, in the place of refuge?
- Operational conditions, particularly in the case of a port  
Is pilotage compulsory and are pilots available?  
Are tugs available? State their number and bollard pull.  
Are there any restrictions? If so, whether the ship will be allowed in the place of refuge, e.g. escape of poisonous gases, danger of explosion.  
Is a bank guarantee or other financial security needed and if so, acceptable to the coastal State before admission is granted into the place of refuge?

3 Contingency planning, such as:

- Competent MAS
- Roles and responsibilities of authorities and responders  
Fire-fighting capability
- Response equipment needs and availability
- Response techniques  
Is there a possibility of containing any pollution within a compact area?
- International/regional cooperation and coordination (reference to section 4)
- Evacuation facilities

4 Foreseeable consequences of the different scenarios envisaged with regard to safety of persons and pollution, fire, toxic and explosion risks.

## **SECTION 4 – INTERNATIONAL/REGIONAL COOPERATION AND COORDINATION FOR PLACES OF REFUGE**

4.1 Many times, situations leading to a request for a place of refuge involve only one State and will be handled by the same State, under its jurisdiction. There may however be cases where a purely national situation may turn into a situation involving neighbouring Member States or Member States in the vicinity of the incident. As a complement in national place of refuge plans (see section 3.2.7 and appendix 1 to section 3, point 6), procedures for international/regional coordination and decision-making should be included and apply to situations where it is likely that more than one State may become involved.

4.2 The right of a coastal State to take action to protect its coastline from marine pollution is well established in international law.<sup>10</sup> UNCLOS establishes obligations<sup>11</sup> on coastal States to prevent, reduce and control pollution of the marine environment caused by – among other factors – shipping, as well as not to transfer environmental hazards on to other sea areas. In addition, there are provisions<sup>12</sup> for coordination rules for neighbouring States dealing with pollution incidents, including a duty to notify each other and to draw up joint contingency plans for responding to threats to the marine environment, i.e. pollution incidents. A ship in need of assistance seeking a place of refuge may well constitute such a threat leading to or causing pollution.

4.3 A right of a foreign ship to enter a port or internal waters of another State in situations of force majeure or distress is not provided for in UNCLOS. This, however, does not preclude the adoption of rules or guidelines as long as they are consistent with UNCLOS.

4.4 Therefore, where appropriate, States sharing a common area or sea should cooperate with a view to consulting each other regarding necessary action to be taken and pooling their capacities for joint action. Establishing regional cooperation arrangements to this end may lead to quicker response.

4.5 The appendix to section 4 provides an outline for what such international/regional cooperation and coordination may include.

4.6 In any case, any State where the CA of which has been informed, pursuant to the Guidelines or in any other way, of facts which involve or increase the risk to human life or to marine pollution in shipping areas or coastal zones of another State or other States, should take appropriate measures to inform such State(s) thereof, as soon as possible, before a situation requiring a place of refuge arises.

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<sup>10</sup> Relevant provisions include: UNCLOS, articles 194, 195, 198, 199, 211, 221, 225; Salvage Convention, article 9; and Facilitation Convention, article V(2).

<sup>11</sup> Articles 194 and 195 of UNCLOS part XII establish obligations of coastal States to prevent, reduce and control pollution of the marine environment caused by – among other factors – shipping, as well as not to transfer environmental hazards on to other sea areas.

<sup>12</sup> Articles 198 and 199 of UNCLOS part XII, section 2 – Global and Regional Cooperation lay down coordination rules for neighbouring States dealing with pollution incidents, including a duty to notify each other and to draw up joint contingency plans.

#### **Appendix to section 4**

### **INTERNATIONAL/REGIONAL COOPERATION AND COORDINATION FOR PLACES OF REFUGE**

In circumstances where there are coastal States sharing a common area or sea wanting to jointly address situations requiring provision of places of refuge, the guidance below is given for use and consideration by coastal States which may jointly deal with a request for a place of refuge.

When there is a regional arrangement in place, the principle is that each State involved starts to examine their ability to provide a place of refuge and that, in the interest of resolving the situation, there is direct contact between those CAs involved to decide who is best placed to take the coordinating role. Regional arrangements may cover additional specifics related to granting a place of refuge, such as:

#### **1 Deciding which coastal State's competent authority to be in the lead**

If a place of refuge is requested when no SAR operation has taken place, the deciding factor should be the maritime assistance service (MAS) declared by the State in whose area of jurisdiction the ship is located. If there is no MAS declared, in the first instance the State with jurisdiction over the waters in which the ship is located (e.g. through a declared EEZ) should coordinate the place of refuge request unless and until an agreement has been reached to transfer coordination to another coastal State.

For place of refuge requests arising from an incident commencing outside the jurisdiction of any one coastal State, the search and rescue region (SRR) can be the deciding criterion for determining who should take on the coordination role in the first instance. The State in whose SRR the ship is located will be deemed in charge of the coordination of the event in the first instance,<sup>13</sup> even though there may not be a SAR component to the operation.

The coastal State in whose SRR the vessel is located at the time of the place of refuge request should retain the coordination of the response to that request unless and until an agreement has been reached to transfer coordination to another coastal State in the region which might grant a place of refuge.

Coastal States which are involved by virtue of geography, or because they are home to some of the ship's interests, should endeavour to support the action by cooperating with the coordinating State to gather information; share expertise; provide logistical assets; participate in the risk assessment; and search for potential places of refuge in their territory.

#### **2 Coordinating authority and neighbouring coastal States**

When it has been decided that taking the ship to a place of refuge is the most appropriate course of action, the coordinating coastal State should work with neighbouring States to identify the nearest, most appropriate place of refuge, which may be in another State.

At all times, the principal focus should remain the protection of human life, the environment, the ship and cargo and the reduction of the risk to navigation.

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<sup>13</sup> An SAR coordination and the need to consider granting refuge might coexist, but the two institutions are not to be confused.

### **3 Coordinating and supporting coastal States**

The authority (or authorities) referred to in point 2 above which has assumed coordination will be known as the coordinating coastal State (CCS). Other States supporting the CCS will be known, for the purpose of the Guidelines, as supporting coastal States (SCS).

The CCS will be responsible for:

- .1 ensuring that the CA is in charge of overall coordination of the incident;
- .2 initiating their national place of refuge procedure, in order to identify a potential site on their territory;
- .3 being the main point of contact for liaison with representatives of the parties involved, including the flag State, the shipowner and/or operator, the master, the P & I club, salvors, the classification society and if necessary, the operator of a port of refuge and, where applicable, the terminal operator;
- .4 where necessary, coordinating the response to the place of refuge request with potential SCS, in order to gain their assistance;
- .5 issuing SITREPs and alerting SCS on actions taken to date and proposed plans;
- .6 determining whether a coastal State cooperation group and a secretariat should be set up for the incident;
- .7 organizing evaluation teams: arrange for transportation, constitution of teams, in collaboration with the other States involved;
- .8 undertaking a thorough analysis of the factors listed in the Guidelines in order to decide whether to allow a ship in need of assistance to proceed to a place of refuge within their jurisdiction (see point above);
- .9 communicating the results of that analysis, once complete, to the other authorities concerned and to the master/salvor and company; and
- .10 ensuring that those authorities who may become responsible for the ship once in a place of refuge are:
  - .1 informed as early as possible of that possibility; and
  - .2 involved in the risk assessment process and are given all relevant information.

Following an assessment of all the factors (as in section 3, paragraphs 3.3 to 3.5), ensure that ships are admitted to a place of refuge if they consider such an accommodation the best course of action for the purpose of the protection of human life, the environment or the ship or its cargo; or where appropriate, initiating a dialogue to formalize the transfer of coordination to another State.

The CCS considering a formal place of refuge request should not enter into direct contact with different port authorities or shore-based authorities in another State. Although the Guidelines do not have mandatory status, the reporting requirements should be similar to those in SOLAS

and MARPOL and it is important that all information exchanges go through the competent maritime authorities in the State concerned. This approach is supported by the recommendations made under paragraph 1(d) of resolution A.950(23).

#### **4 Responsibilities of the supporting coastal States**

The States supporting the CCS in handling the place of refuge request procedures include:

- .1 those nearest to the vicinity of the ship in need of assistance; and
- .2 the flag State.

Each SCS should:

- .1 ensure that any relevant incident-related information is passed to the CCS without delay;
- .2 be prepared to examine any requests from the CCS for assistance (logistical, expertise or evaluation);
- .3 be prepared to examine a request for a place of refuge within their jurisdiction by the CCS; and
- .4 be prepared to plan in parallel and proactively assess any possible alternative options should the CCS be unable to grant a place of refuge.

In particular, neighbouring States, including the port of initial destination of the ship, should examine the possibility of granting a place of refuge in their territory – even though the incident, at the time, is taking place outside their area of jurisdiction.

#### **5 Transfer of coordination**

Responsibility for coordinating the incident may be transferred, depending on the evolution of the situation aboard the ship, or depending on agreements reached between the States involved, i.e. the State able to offer a place of refuge. However, for reasons of operational continuity, it may be appropriate for the initial CCS to assume coordination throughout the entire process, with the agreement of the other coastal State(s) concerned.

The transfer of coordination to another coastal State is accomplished with a formal notification, preferably in an electronic format, from the State taking over coordination to the State initially in charge of the event.

Such a formal notification should include, as appropriate, details on:

- the identity of the casualty ship;
- reason for refuge;
- coastal State transferring coordination;
- coastal State accepting coordination;
- dates and times;

- position of coordination transfer;
- place of refuge (if known);
- other coastal State(s);
- transfer completion – coastal State accepting coordination; and
- reason for not granting a place of refuge.

## **6 Decision-making and outcomes**

Decision-making and outcomes should be undertaken and communicated as described in section 3, paragraph 3.5.

## **7 Subsequent request to another CS to grant a place of refuge**

When the risk assessment carried out following an incident concludes that a place of refuge on another State's territory is the only solution in order to preserve the safety of the ship involved and the safety of navigation, and to protect or mitigate the risks to the environment, the CCS that is unable to accept the request for a place of refuge for objective reasons should forward all information relevant to the circumstances on which their decision is based to the State or States to whom the subsequent request is made. That coastal State then becomes the CCS (and the previous CCS becomes the SCS). Forwarding all relevant information should greatly facilitate the risk assessment and decision-making on the subsequent request if a handover has not been already agreed and a passage plan arranged between the CCS and the SCS.

## **8 Passage plan and monitoring**

When a suitable place of refuge has been determined and agreed, the CCS will assume responsibility for agreeing a passage plan with the requesting party and will engage with the SCSs as necessary, but in particular where the casualty may have to pass through or transit in close proximity to another coastal State's jurisdiction.

In order to be prepared to face potential difficulties during the transit to the designated place of refuge, coastal States should consider one or more backup places of refuge en route.

## **SECTION 5 – MEDIA AND INFORMATION MANAGEMENT**

Conscious of the widespread use of social media for spreading information today, it is recommended that States include in their organization capacities (including training) the management of media and requests for information in connection with a ship in need of assistance seeking a place of refuge. The following is a non-exhaustive list of some key guidance points:

### **5.1 Media and information management**

The delivery of accurate, clear, timely and up-to-date information and advice to the public and other key stakeholders is an important aspect of the successful management of any shipping incident. It is recommended that media management be incorporated into national contingency planning and a media management procedure be developed.

### **5.2 Key principles**

- .1 Media activities should not interfere with the management of the incident in any way; in particular, it should not impede the operational activities of the emergency services. Media speculation should not be considered when making the decision to grant a place of refuge.
- .2 All steps should be taken to protect victims from press intrusion.
- .3 Only factual information should be provided. There should be no speculation about causes, future developments or actions.
- .4 Information and advice should not be released by one organization if it covers the area of responsibility of another, unless the information (and its release) has been agreed by the responsible organization.

### **5.3 Key interest groups**

- .1 Press and media.
- .2 General public, including NGOs and civil society.
- .3 Ministers, national and local authorities, international organizations.
- .4 Shipping and insurance industries, ports, harbours, terminal operators.

### **5.4 Key actions for persons managing the incident**

- .1 KNOW who is responsible for activating the media management process/establishment of the media team for the incident (on the understanding that the media team may be required for a longer duration);
- .2 ARRANGE regular briefings between different response cells (e.g. Salvage Control, MRCC, onshore clean-up team);
- .3 IDENTIFY the designated responsible person(s), who will:
  - .1 liaise between the CA and the press;

- .2 take the lead in providing strategic SITREPS; and
- .3 communicate with key interest group contacts when there are significant developments to report; and
- .4 FOLLOW key principles at all times.

## **SECTION 6 – LESSONS LEARNED**

### **6.1 National and regional debriefs**

States may consider holding debrief sessions after each significant incident:

- .1 Debriefs could consider the incident background, response factors, e.g. coordination, communications, risk assessment, decision-making and any other aspects considered relevant. Depending on the nature of the incident, the debrief could either be for all the authorities and stakeholders involved, or smaller subgroups could be convened to focus on particular aspects of the incident.
- .2 Where appropriate, neighbouring or other regional coastal States should be invited to participate. If the debrief identifies issues that might be of wider interest, the outcomes from the debrief process could be shared with the organization for information.
- .3 If it is thought appropriate, lessons learned from an incident could be the subject of a regional or national exercise, or a smaller exercise at a more local level.
- .4 For regional cooperation in relation to section 4, exercises to test national and regional arrangements, either as "live" or as tabletop exercises, should be considered and planned at regular intervals, as appropriate.

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## ANNEX 6

## 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	No work requested	
1. Improve implementation	1.4	Analysis of consolidated audit summary reports	Annual	Assembly	MSC / MEPC / LEG / TCC / III	Council	No work requested	No work requested	MEPC 61/24, paragraph 11.14.1; MSC 88/26, para. 10.8; C 120/D, para. 7.1 and 7.2
1. Improve implementation	1.7	Identify thematic priorities within the area of maritime safety and security, marine environmental protection, facilitation of maritime traffic and maritime legislation	Annual	TCC	MSC / MEPC / FAL / LEG		No work requested	No work requested	
1. Improve implementation	1.31	Measures to prevent unlawful practices associated with the fraudulent registration and fraudulent registries of ships	2024	LEG			Extended	In progress	

Legal Committee (LEG)									
Reference to SD, if applicable	Output number	Description	Target completion year	Parent organ(s)	Associated organ(s)	Coordinating organ	Status of output for Year 1	Status of output for Year 2	References
2. Integrate new and advancing technologies in the regulatory framework	tbc	Measures to address maritime autonomous surface ships (MASS) in the instruments under the purview of the Legal Committee	2025	LEG			In progress	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	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	No work requested	
5. Enhance global facilitation and security of international trade	5.13	IMO's contribution to addressing unsafe mixed migration by sea	2023	MSC / FAL / LEG			Postponed	Completed	FAL 41/17, para. 7.15; MSC 98/23, para. 16.14; FAL 43, para. 10.7; MSC 101/24, para. 19.8; MSC 104/18, para. 9.5; MSC 105/20, section 10; FAL 46/24, para. 11.4; MSC106/19, section 8; resolution MSC.528(106)*

\* MSC 106 adopted resolution MSC.528(106) on *Recommended cooperation to ensure the safety of life at sea, the rescue of persons in distress at sea and the safe disembarkation of survivors*; and extended target completion to 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
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	Completed	
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	Completed	
6. Address the human element	6.8	Fair treatment of seafarers detained on suspicion of committing maritime crimes	2024	LEG			Extended	In progress	
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	Completed	

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	7.1	Unified interpretation of provisions of IMO safety, security, facilitation, environment, and liability and compensation - related conventions	Continuous	MSC / MEPC / LEG / FAL	CCC, III / NCSR / PPR / SDC / SSE		Ongoing	Ongoing	MSC 76/23, para. 20.3; MSC 78/26, para. 22.12
7. Ensure regulatory effectiveness	7.12	Strategies developed to facilitate entry into force and harmonized interpretation of the HNS Protocol	2023	LEG			In progress	Extended	
6. Ensure regulatory effectiveness	7.17	Measures to transparently assess whether there is a need to amend liability limits	2023	LEG			In progress	Extended	
7. Ensure regulatory effectiveness	7.18	Claims Manual for the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001	2023	LEG			In progress	Completed	
7. Ensure regulatory effectiveness	tbc	Guidance for the proper implementation and application of IMO liability and compensation conventions	2024	LEG			In progress	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	Ongoing	

Legal Committee (LEG)									
Reference to SD, if applicable	Output number	Description	Target completion year	Parent organ(s)	Associated organ(s)	Coordinating organ	Status of output for Year 1	Status of output for Year 2	References
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	No work requested	LEG.1/Circ.9
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	No work requested	
OW. Other work	OW 4	Advice and guidance on issues under UNCLOS relevant to the role of the Organization	Annual	LEG			Completed	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	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	Completed	LEG 105/14, para. 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 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	Completed	C 120/D, Para. 17(a).1-17(a).5 LEG 105/14, para. 11.20
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	Completed	C 120/D, para. 17(a).1-17(a).5

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**ANNEX 7**

**POST-BIENNIAL AGENDA**

<b>LEGAL COMMITTEE (LEG)</b>								
<b>PROPOSED POST-BIENNIAL OUTPUTS</b>								
Number	Biennium (when the output was placed on the post-biennial agenda)	Reference to Strategic Direction, if applicable	Description	Parent organ(s)	Associated organs(s)	Coordinating organ(s)	Timescale (sessions)	References
1.31	2020-2021	1	Measures to prevent unlawful practices associated with the fraudulent registration and fraudulent registries of ships	LEG			2	
2.tbc	2022-2023	2	Measures to address maritime autonomous surface ships (MASS) in the instruments under the purview of the Legal Committee	LEG			2	
6.4	2020-2021	6	Consideration of reports on the application of the joint IMO/ILO Guidelines on the fair treatment of seafarers and consequential further actions as necessary	LEG			2	
6.7	2020-2021	6	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	LEG			2	

LEGAL COMMITTEE (LEG)								
PROPOSED POST-BIENNIAL OUTPUTS								
Number	Biennium (when the output was placed on the post-biennial agenda)	Reference to Strategic Direction, if applicable	Description	Parent organ(s)	Associated organs(s)	Coordinating organ(s)	Timescale (sessions)	References
			seafarers, in light of the progress of the amendments to ILO MLC 2006					
6.8	2020-2021	6	Fair treatment of seafarers detained on suspicion of committing maritime crimes	LEG			2	
7.1	2020-2021	7	Unified interpretation of provisions of IMO safety, security, environment and liability and compensation related conventions	MSC, MEPC, LEG	CCC, III, NCSR, PPR, SDC, SSE		Continuous	
7.12	2020-2021	7	Strategies developed to facilitate entry into force and harmonized interpretation of the HNS Protocol	LEG			2	
[7.17]	[2020-2021]	7	Measures to transparently assess whether there is a need to amend liability limits	LEG			2	
7.tbc	2022-2023	7	Guidance for the proper implementation and application of IMO liability and compensation conventions	LEG			2	
OW 4	2020-2021	OW	Advice and guidance on issues under UNCLOS relevant to the role of the Organization	LEG			Annual	



LEGAL COMMITTEE (LEG)								
PROPOSED POST-BIENNIAL OUTPUTS								
Number	Biennium (when the output was placed on the post-biennial agenda)	Reference to Strategic Direction, if applicable	Description	Parent organ(s)	Associated organs(s)	Coordinating organ(s)	Timescale (sessions)	References
OW 5	2020-2021	OW	Provide advice and guidance on issues brought to the Committee in connection with implementation of IMO instruments	LEG			Annual	
OW 7	2020-2021	OW	Provide advice and guidance to support availability of information on comprehensive national legislation and judicial capacity-building	LEG			Annual	

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## **ANNEX 8**

### **SUBSTANTIVE ITEMS FOR INCLUSION IN THE AGENDA FOR THE 111TH SESSION OF THE LEGAL COMMITTEE**

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

Advice and guidance in connection with the implementation of IMO instruments

(a) 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

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 LEG

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 111th session

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## **ANNEX 9**

### **ORGANIZATION AND METHOD OF WORK OF THE LEGAL COMMITTEE**

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## **1 INTRODUCTION**

### **Purpose and application**

1.1 The purpose of this document is to provide a uniform basis for the Legal Committee to conduct its work in an efficient and effective manner and to strengthen the linkage between the Organization's strategy, the work of the Committee and the biennial budget with a view to achieving IMO's objectives and the priorities over a biennium.

1.2 Proper application of this document will also enhance the ability of Committee members to cover the full spectrum of IMO activities relevant to their work and thus provide for their effective participation in the rule-making process of the Organization. It is also expected that the document will enable the Committee to further improve its decision-making functions.

1.3 The document is applicable to the work of the Committee as well as to working groups, drafting groups and correspondence groups. The Chairs of the Committee and of working groups, drafting groups and correspondence groups should make all efforts to ensure strict compliance with the document.

1.4 The document will be kept under review and will be updated as necessary in light of the experience gained in its application, taking into account resolution A.1111(30) on the *Application of the Strategic Plan of the Organization*, as may be amended.

### **Objectives**

1.5 The provisions of this document are aimed at achieving the following objectives:

- .1 to align and strengthen the planning and reporting processes by linking agenda setting and reporting clearly to the Strategic Plan;
- .2 to strengthen the linkage between outputs on the biennial agenda and the resources required to deliver the outputs;
- .3 to facilitate the efforts of the Committee in controlling and monitoring the Organization's work;
- .4 to promote discipline in adherence to the planning procedures and documents;
- .5 to promote objectivity, clarity and realistic time frames in the establishment of biennial agendas by the Committee;
- .6 to ensure maximum possible participation by all Member States and by organizations with observer status in the work of the Committee; and
- .7 to establish responsibilities and promote involvement in the planning and reporting processes.

## **2 DEFINITIONS**

2.1 For the purposes of this document, as appropriate, the following definitions will apply:

- .1 *IMO organs* are the Council and committees of the Organization specified in Article 11 of the IMO Convention, including their subsidiary bodies.
- .2 *Strategic Plan* is the Strategic Plan for the Organization for the six-year period adopted by the Assembly, which contains strategic directions enabling IMO to achieve its mission.
- .3 *Output* is an item to be delivered by one or more IMO organs during the current biennium or accepted for a subsequent biennium.
- .4 *Agenda* is a list of outputs for discussion at a particular meeting.
- .5 *Biennial agenda* is a list of outputs to be delivered by an IMO organ during a biennium.
- .6 *Post-biennial agenda* is a list of outputs accepted by the Council or committees in one biennium that are to be delivered or initiated in the next biennium.

## **3 COORDINATION OF WORK**

3.1 The Committee shall function as a policymaking body and its working, drafting or other groups as purely technical bodies.

3.2 The Committee shall routinely examine its outputs, establish priorities, review the allocation of its meeting weeks and approve its biennial and provisional agendas, taking into account any recommendations made by the Committee's Chair as provided in paragraph 3.3.

3.3 The Committee's Chair shall, at the end of the first year of the biennium, submit to the Committee a plan covering the activities, priorities and meetings of the Committee for the coming biennium, for consideration in the subsequent year.

3.4 The Committee shall regularly review the status of all conventions, protocols and other major instruments under its purview.

3.5 When an issue is transferred to the Committee by another committee of the Organization for specific action, the Committee, before including the subject in question in the biennial agenda, shall decide that the provisions of section 4, as appropriate, are fully satisfied, even if the issue, in accordance with the criteria of the referring committee, satisfies the requirements of the current Strategic Plan for the Organization.

## **4 WORK PLANNING AND DELIVERY PROCESS**

### **Outputs**

4.1 The Committee shall identify, in a timely manner, the outputs to be included in the list of outputs for the next biennium, and the Secretariat should develop its Business Plan, as such identification provides a basis for making an estimate of the budget required for that biennium.



4.2 In the process of constructing the list of outputs for the next biennium, the following should be included:

- .1 continuous and annual outputs within the current list of outputs; and
- .2 outputs that have not been completed.

Outputs from the post-biennial agenda should also be included, subject to resource availability. Any other proposals for new outputs may be included following their assessment in accordance with this document.

4.3 Decisions on the list of outputs for the next biennium shall be guided by the strategic directions in the Strategic Plan and shall take due account of:

- .1 the anticipated workload of the Committee;
- .2 the need to deliver the output;
- .3 the personnel and budgetary resources available; and
- .4 the potential adverse impact that a decision on whether or not to include an output may have on the ability of the Organization to meet its objectives.

4.4 Outputs may be revised during the biennium by the Committee, taking into account the provisions of paragraph 4.3, if subsequently endorsed by the Council.

4.5 The Committee, in determining the acceptance of an output and its inclusion on its biennial or post-biennial agenda, shall at all times be guided by the Strategic Plan, and shall, in particular, take due account of:

- .1 the specific necessity for an output to be started during the current biennium;<sup>1</sup>
- .2 the potential impact that the inclusion of an output on the biennial agenda may have on the timely delivery of outputs during the biennium;
- .3 the potential impact that the inclusion of an output may have on the workload of the Committee;
- .4 the personnel and budgetary resources available;
- .5 the potential adverse impacts on the ability of the Organization to meet its objectives if a decision is made not to accept a proposal for inclusion of an output in the biennial or post-biennial agendas; and
- .6 the potential impact that the inclusion of an output may have on small island developing States (SIDS) and least developed countries (LDCs).

4.6 An overview of the Organization's strategic planning process and its steering and reporting flows are shown in diagrams 1 and 2 contained in annex 1 to resolution A.1111(30) on *Application of the Strategic Plan of the Organization*.

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<sup>1</sup> The normal action will be for outputs, if accepted, to be placed on the post-biennial agenda, and only in exceptional circumstances will outputs be added to the biennial agenda and current list of outputs.

### ***Submission of proposals for new outputs***

4.7 To enable the Committee to carry out a proper assessment of proposals for new outputs, submissions containing such proposals must, at a minimum, contain the information, including demonstration and documentation, as follows:

- .1 **IMO's objectives:** Provide evidence whether and how the proposal:
  - .1 is within the scope of IMO's mission; and
  - .2 contributes to the implementation of the strategic directions established in the Strategic Plan, if applicable. Outputs that are not directly related to the strategic directions can be accepted as "other work".
- .2 **Need:** Demonstrate and document:
  - .1 the need for the proposed output in terms of the risks or hazards which are considered necessary to be addressed;<sup>2</sup> and
  - .2 the evidence to support the perceived need.
- .3 **Analysis of the issue:** Provide an analysis of the proposed measure, including an assessment of its practicability, feasibility and proportionality.
- .4 **Analysis of implications:** Provide an analysis of the implications of the proposal, addressing the cost to the maritime industry as well as the relevant legislative and administrative burdens (including the proposed method(s) of fulfilling any resulting administrative requirement).
- .5 **Benefits:** Provide evidence that the benefits vis-à-vis enhanced maritime safety, maritime security or protection of the marine environment expected to be derived from the inclusion of the new item justify the proposed action.
- .6 **Industry standards:** Provide information on whether adequate industry standards exist or are being developed and the intended relationship between such standards and the proposed output.
- .7 **Output:** Specify the intended output in SMART terms (specific, measurable, achievable, realistic and time-bound) including the scope of application. If work on an output is expected to go beyond one biennium, the expected deliverables for each biennium should be detailed.

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<sup>2</sup> If the proposed output includes the development of a new convention or the amendment of an existing convention then the principles contained in resolutions A.500(XII) and A.998(25) on the demonstration of a "compelling need" should be respected.

- .8      **Urgency:**      Provide, with reference to the current Strategic Plan, evidence of:
- .1      the urgency of the proposed output, including any proposal to include the proposed output on the biennial agenda; and
  - .2      the date that the proposed output should be completed.
- .9      **Action required:** Specify the action required by the IMO organ.

4.8      Member Governments should refrain from submitting to the Committee proposals for outputs under specific agenda items and the Secretariat should not accept such submissions and should advise the submitting Administrations accordingly.

***Preliminary assessment by the Committee's Chair of proposals for outputs***

4.9      In order to facilitate consideration of proposals for outputs by the Committee, the Chair should undertake a preliminary assessment of such proposals. The Chair should, for that purpose, be supported by the Vice-Chair and the Secretariat.

4.10     The outcome of the preliminary assessment should be submitted to the Committee for consideration and approval, and should include the Chair's appraisal of:

- .1      whether the proposal complies with the requirements for the submission of proposals for outputs, as specified in paragraph 4.7;
- .2      whether the proposal complies with the criteria specified in paragraph 4.11;
- .3      whether the demonstrated need of the proposal requires its inclusion in the biennial agenda; and, if so,
- .4      whether the agenda of the Committee can absorb the work associated with the output.

***Assessment of proposals for outputs***

4.11     Before deciding to accept a proposal for a new output, the Committee shall carry out an assessment of the proposal against the following criteria:

- .1      Is the subject addressed by the proposal considered to be within the scope of IMO's mission?
- .2      Does the proposal involve the exercise of functions conferred upon the Committee by or under any international convention or related instrument?
- .3      Has a need for the output been justified and documented?
- .4      Has an analysis been provided that justifies and documents the practicality, feasibility and proportionality of the proposed output?

- .5 Has the analysis of the issue sufficiently addressed the cost to the maritime industry as well as the relevant legislative and administrative burdens?<sup>3</sup>
- .6 Are the benefits that are expected to be derived from the inclusion of the proposed output clearly stated?
- .7 Do adequate industry standards exist or are they being developed?
- .8 Has the proposed output been properly specified in SMART terms (specific, measurable, achievable, realistic, time-bound)?
- .9 If inclusion of the output in the current biennium is proposed, is this action properly justified?
- .10 Would a decision to reject or postpone the commencement of the work in relation to the proposal pose an unreasonable risk to the Organization's overall mission?

4.12 Nothing in this document shall prohibit the Committee from taking immediate action on urgent matters if the risk of not acting will adversely affect the Organization's ability to meet its objectives.

***Decision on acceptance and inclusion of outputs***

4.13 Based on its assessment in accordance with paragraph 4.11, having taken due account of the Chair's appraisal of the proposal in accordance with paragraphs 4.9 and 4.10, the Committee may decide that:

- .1 the proposal is not within the scope of the mission of the Organization and should, therefore, not be accepted for inclusion;
- .2 the need has not been sufficiently demonstrated and therefore the output should not be included;
- .3 for outputs for which extensive work is required, such as the revision of conventions or the preparation of codes, the Chair should be invited, with the support of the Secretariat, to prepare a comprehensive and coherent plan of work in order to inform the Committee of the full impact of the proposed output before it finalizes its decision on the output;
- .4 the urgency of the proposed action did not justify inclusion within the current biennium, and therefore accept the output for inclusion in the next biennium;
- .5 the implications for the present workload of the Organization are unacceptable within the current biennium, and therefore accept the output for inclusion in the next biennium; or
- .6 the demonstrated need for the output is such that it should be included, together with a target date for completion, in the biennial agenda, provided the Committee is satisfied that the implications for the workload and planning are acceptable.

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<sup>3</sup> Refer to the checklist in annex 3, which should be completed by all proponents of outputs and attached to their proposals for consideration by the Committee. The Committee may also use the checklist before adopting new, or amending existing, mandatory instruments, in order to satisfy itself that administrative requirements have been minimized to the greatest extent possible.

<b>Mission</b>	<b>Need to carry out the work</b>	<b>Urgency to deliver the output</b>	<b>Workload/ personnel and budgetary resources</b>	<b>Decision</b>
Within the mission of the Organization	Demonstrated	Justified	Implication of workload and planning are acceptable within the current biennium	Accept output for inclusion within the current biennium
			Implications for the present workload of the Organization are unacceptable within the current biennium	Accept output for inclusion in the next biennium
	Demonstrated	Not Justified	Acceptable to next biennium	Accept output for inclusion in the next biennium
	Not demonstrated	Not Justified	No need to further consider	Output not to be accepted for inclusion
Outside the mission of the Organization	No need to further consider	No need to further consider	No need to further consider	Output not to be accepted for inclusion

4.14 Following a decision by the Committee to include an output in its biennial or post-biennial agenda, it shall decide whether the output contributes to the delivery of a strategic direction. Outputs that are not directly related to the strategic directions can be accepted as "other work".

4.15 Following a decision by the Committee to include an output in its post-biennial agenda, the Committee shall include the output and the timescale for completion in its proposals for the list of outputs of the next biennium.

4.16 In order to maintain a balance between effective control and the need for flexibility in addressing urgent and unexpected challenges within the Organization's mandate, any decision to include a new output in the current list of outputs is subject to endorsement by the Council, prior to the initiation of work on such outputs.

### ***Other principles on outputs***

4.17 The Committee shall report on its decisions on proposals for outputs in its regular reports to the Council, for endorsement and in order to facilitate the monitoring by the Council of the delivery of the current biennial agenda and the planning of future work.

4.18 Proposals for the inclusion of outputs submitted to the Committee by non-governmental organizations shall be co-sponsored by Governments.

4.19 Follow-up action in response to specific requests for action emanating from the Assembly and diplomatic conferences convened by IMO, United Nations conferences and bodies, regional intergovernmental conferences and other international and intergovernmental organizations, etc. shall be evaluated in light of this document.

4.20 Following a decision by the Committee to include in its biennial or post-biennial agenda an output involving the amendment of mandatory instruments, it must, in keeping with the provisions of resolution A.998(25), initiate the assessment of any capacity-building and technical assistance pertaining to that item when work starts on the output, by following the procedure prescribed in annex 1.

### **Management, control and reporting**

4.21 Management and control of the planning of, and reporting on the implementation of, the Strategic Plan are critical elements for measuring the Plan's effectiveness and transparency. Consequently, it is important that proper management and control mechanisms are in place to ensure that:

- .1 biennial agendas and agendas are both clearly linked to the Strategic Plan including the list of outputs;
- .2 the objectives of the Strategic Plan can be met within the resource constraints of the Organization and its membership;
- .3 the Organization's response to changes in the environment within which it operates is consistent with the Strategic Plan; and
- .4 monitoring and reporting are such that progress on biennial agendas is explicitly linked to progress on the delivery of outputs.

4.22 In order to provide a transparent link between the Strategic Plan and the Organization's work, the following principles shall be applied:

- .1 the list of outputs shall – together with the Secretariat's Business Plan – form the basis of the biennial work of the Committee and the budget of the Organization;
- .2 the items contained in the agenda and biennial agenda of the Committee shall all be outputs in the list of outputs or included in the Secretariat's Business Plan;
- .3 the biennial agenda of the Committee shall follow format 1 set out in annex 2;
- .4 for outputs with target completion dates within the current biennium, the biennial agenda (see annex 2 (format 1)) shall specify the year of planned completion and include any tasks that are to be completed on an annual basis;
- .5 for an action that is expected to take more than one biennium to complete, the list of outputs shall specify the planned completion year; the Committee shall review the relevant output at the end of the biennium to assess the progress made and make a recommendation whether to include it in the next list of outputs;

- .6 continuous items are discouraged, but in those cases where they are deemed unavoidable it is still necessary for them to be given a "SMART" definition so that progress during the biennium can be assessed; and
- .7 documents submitted to the Committee shall clearly demonstrate the direct relation between the proposals they contain and the output to be delivered under the relevant agenda item, on the basis of the list of outputs.

4.23 In order to ensure transparent and efficient monitoring and reporting on the status of outputs, all reports shall be prepared in accordance with format 1 set out in annex 2. The Secretariat should also report to the Council on the status of its Business Plan.

4.24 Reports on the status of outputs included in the list of outputs shall constitute or be annexed to the reports of each session of the Committee, and to the biennial report of the Council to the Assembly. Such reports shall identify new outputs accepted for inclusion in the biennial agenda.

4.25 In preparing its own report, the Committee shall incorporate all reports it has received since its previous report on the status of outputs.

4.26 The Committee shall establish and maintain a post-biennial agenda, which shall follow format 2 set out in annex 2. This shall be annexed to the report of each session.

#### **Preparation of the Committee's report**

4.27 After consideration of the draft report of the committee, the Secretariat should prepare the final draft report for publication on IMODOCS. Delegations will have five working days from publication of the final draft report to comment by correspondence. Comments should only address editorial corrections and improvements, including finalizing individual statements, and should not reopen discussion on decisions taken during the session.

4.28 The Chair, supported by the Secretariat, will facilitate resolution of any comments received, as necessary. After the conclusion of the five-day correspondence period, the Secretariat, in consultation with the Chair, will publish a document on IMODOCS containing the comments received, together with an explanation of how they have been addressed. After the above document has been published, the final report will be prepared in due course for publication on IMODOCS.

#### **Responsibilities**

4.29 Member States and the Secretariat shall ensure consistency and discipline in the administrative management of the planning and reporting cycle.

4.30 Accordingly, the Chair, Vice-Chair and Secretary of the Committee have a specific responsibility for the effective management of the planning and reporting cycle and for consistent and rigorous application of this document and the document on *Application of the Strategic Plan of the Organization* (resolution A.1111(30)).

4.31 In order to fulfil the function in paragraph 4.28, well-established cooperation and coordination are expected between the Chair, Vice-Chair and Secretary of the Committee by all available means, including through face-to-face meetings and teleconferences, as deemed necessary.

## **5 WORKING ARRANGEMENTS**

### **Working, drafting, correspondence, intersessional working and other groups**

#### ***Working groups***

5.1 The Committee should keep the number of working groups formed during its sessions to a minimum; however, a maximum of three working groups could be established, where necessary, bearing in mind the difficulties small delegations experience in being represented in such groups and the fact that such groups work without interpretation. When a working group has completed its task and has been terminated, another working group should not be convened in its place during the same session.

5.2 Where more than three working groups are needed to deal with different subjects in one session, the Committee should establish a priority order for possible subject items and decide accordingly. Where more than three unrelated topics need to be covered by independent working groups over several sessions, arrangements could be made for groups concerned to meet at alternate sessions of the Committee within the maximum of three groups per session.

5.3 Working groups may start work on the morning of the first day of the meeting on the basis of the draft terms of reference presented by the Chair of the Committee, pending formal discussion of those terms of reference under the relevant agenda item. However, these measures should be an option and be decided at the meeting with caution. It should be encouraged that, whenever possible, terms of reference of working groups should be agreed at the previous sessions of the Committee. Another option would be that the draft terms of reference of working and drafting groups issued at the beginning of the session, in accordance with paragraph 5.18 of this document, also identify items on which the groups could start, if so decided, working on the morning of the first day of the meeting, without prior consideration of the related agenda items in plenary.

5.4 In principle, there should be no splinter group(s) of a working group. However, where the establishment of a splinter group(s) is necessary for the facilitation and efficiency of the work, the working groups should have a unanimous agreement on its establishment and the outcome of the group's(s') work should be considered and agreed by members of the working group and incorporated in the report of the working group. Splinter group(s), if established, should meet outside normal working hours, unless the working group decides otherwise in view of the efficiency of the work.

5.5 When appropriate, working groups should make full use of the five working days of a session, submitting their reports to the next session of the Committee. When working group reports are to be prepared during a session, all efforts should be made to keep such reports as short as possible.

5.6 Permanent working groups should be avoided and, if there ever is a need for such a group, clear justification and appropriate terms of reference should be agreed.

#### ***Drafting groups***

5.7 In addition to working groups, the Committee may form drafting groups. In no case should more than five groups (e.g. three working and two drafting groups) meet simultaneously during a session. If additional drafting groups are needed, they should meet outside normal working hours.



### ***Correspondence groups***

5.8 To facilitate the consideration of an issue, correspondence groups may be established by the Committee and instructed to work on the basis of a consolidated draft text prepared by a "lead country" or the Secretariat, thereby, through consultation between interested delegations by correspondence, decreasing the volume of documents submitted and processed, after the body concerned has agreed to consider the issue and has endorsed terms of reference for the group (see also paragraph 5.18).

5.9 Correspondence groups should utilize modern communications technology, such as the Internet, as much as possible.

5.10 The work of a correspondence group (e.g. the receipt and processing of comments and suggestions) should not pre-empt formal consideration of the relevant issue by the Committee or the positions taken by Member Governments or international organizations participating in the correspondence group.

5.11 In normal circumstances, the Committee should not establish more than three correspondence groups although this number may be increased where the urgency of the matter under consideration so justifies. Subgroups within a correspondence group should not be established. No official meetings of members of correspondence groups should be held without the prior approval of the Committee.

5.12 Participation in correspondence groups is open to all delegations (Governments and organizations) which can provide the necessary expertise on a timely basis or which have a particular interest in the issue under consideration. Any Member Government or international organization can join in the work of the correspondence group subsequent to the establishment of the group and any contribution should be accepted at any stage of the work of the group.

5.13 When establishing a correspondence group, a "lead country", "lead organization" or the Secretariat should be designated to coordinate the work of the group. Responsibilities of group coordinators should include:

- .1 preparation, maintenance and circulation of the list of participants;
- .2 establishment of deadlines for the preparation of draft texts and receipt of comments and proposals thereon;
- .3 preparation and circulation of draft texts and comments thereon;
- .4 preparation and submission to the Secretariat of the report of the correspondence group including any consolidated draft texts (see paragraph 5.17); and
- .5 introduction of the above-mentioned report and consolidated draft texts to the Committee.

5.14 Responsibilities of participants should include:

- .1 active participation in the work of the group;
- .2 compliance with the deadlines established for the submission of comments on draft texts, proposals, etc.; and
- .3 relaying to other group members copies of comments, proposals, etc. submitted to the group coordinator.

5.15 The responsibilities of the Secretariat, in those cases where the Secretariat acts as a group coordinator, should be the same as those listed under paragraph 5.13 above. The Secretariat may also be requested to circulate consolidated draft texts, etc. on behalf of the group coordinator.

5.16 The results of work carried out by correspondence groups should normally take the form of a consolidated draft text reflecting the information received from members of the group. Such texts should be accompanied by a succinct report summarizing the work and indicating which members have provided input to the process. Where it has not been possible to prepare an agreed consolidated draft document, texts or issues on which there was a disagreement should be clearly indicated in the draft document or the report, as appropriate.

5.17 Correspondence groups' reports should be submitted to the first session of the Committee to meet following conclusion of the groups' work in time to meet the deadline established for consideration of substantive documents, in accordance with the provisions of paragraph 6.6. Normally the work of the correspondence groups should not overlap with sessions of the Committee. In case the group has not finalized its work in time to meet such a deadline, a progress report should be made to the Committee.

#### ***Terms of reference of working, drafting and correspondence groups***

5.18 When working, drafting and correspondence groups are formed, draft terms of reference should be prepared following consultations between the Chair of the Committee and the Secretariat for approval by plenary. In the case of working and drafting groups, the aforementioned draft terms of reference should be issued by the Secretariat at the beginning of the session for agreement by plenary before the groups in question start their work. Thereafter, the agreed terms of reference should not be modified or extended without the Committee's prior consent.

#### ***Intersessional working groups***

5.19 Subject to approval by the Council, intersessional meetings of working groups may be convened without interpretation services. Intersessional meetings should only be held if considered to be absolutely essential and after careful consideration of their need by the Committee on a case-by-case basis, taking into account the priority and urgency of the specific matter such meetings will be invited to address. Intersessional meetings of such groups should be held at IMO Headquarters immediately before or after an agreed session of the Committee. Other arrangements may be considered; however, no arrangements should be made with respect to intersessional meetings until such meetings have been approved by the Committee.

## **6 PROCEDURES FOR PREPARATION AND SUBMISSION OF DOCUMENTS**

### **Preparation of documents**

6.1 Documents should be prepared in single spacing and be as concise as possible so as to facilitate their timely processing. In order to enhance the clear understanding of documents, the following should be observed:

- .1 all documents should be preceded by a brief summary prepared in the form, and containing the information indicated in the table below. Documents – especially proposals for the inclusion of an output – should demonstrate, where feasible, the linkages to the Strategic Plan by including, in the summary, references to the related strategic direction(s) and output(s):

SUMMARY	
<i>Executive summary:</i>	This description should be brief, outlining the proposed objective (an amendment, an Assembly resolution, a circular, information only, etc.), and include information on whether a proposal will have any financial implications for the shipping industry or for the IMO budget.
<i>Strategic direction, if applicable:</i>	A reference should be made to one or more relevant strategic directions in the Organization's Strategic Plan or to other work undertaken by the Organization that is within its mission.
<i>Output:</i>	A reference should be made to one or more corresponding outputs in the biennial's Strategic Plan. If there is no corresponding output, an appropriate descriptive text should be included.
<i>Action to be taken:</i>	A reference should be made to the paragraph of the document which states the action to be taken by the Committee.
<i>Related documents:</i>	Other key documents should be listed to the extent they are known to the originator of the document.

- .2 substantive documents should conclude with a summary of the action the relevant body is invited to take; and
- .3 information documents should conclude with a summary of the information contained therein.

6.2 To facilitate their processing, documents should be submitted on a USB flash drive or by email to [info@imo.org](mailto:info@imo.org), preferably in Microsoft Word using Arial font size 11. Hard copies of documents may also be submitted or requested, to facilitate processing of the document, e.g. by attachment of annexes to main texts, and to check that none of the text has been garbled during sending or conversion.

6.3 ~~A D documents made available at IMO 13 weeks or more before a session~~ should not be introduced in the plenary unless the Chair decides that this is essential for the proper consideration of the matter concerned. The submitter(s) of a document may indicate before or at the time the document is considered if they have additional information or context required for the discussions, in order for the Chair to prioritize interventions.

6.4 Reports of the Committee should, in general, contain, under each section only:

- .1 a summary of key documents and listing of other documents submitted by Governments, international organizations and the Secretariat;
- .2 a summary of views expressed during consideration of an item, which may have influenced the decision taken by the reporting body (thus not allowing the reports to turn into summary records, and statements by delegations should be included therein only at their express request during the session); and
- .3 a record of the decisions taken.

6.5 In drafting recommendations, codes or guidelines, cross references may, whenever possible, be made to texts and terminology previously developed by IMO or other organizations. This will avoid unnecessary duplication and will reduce the need for excessively detailed provisions and for subsequent harmonization.

### **Submission of documents**

6.6 To ensure that all documents are available at IMO Headquarters in all three working languages well in time before a session of the Committee or subsidiary body, so as to enable the timely studying of documents and thus promoting the participation of all members in the decision-making process of the Committee, the following provisions should apply:

- .1 as a general rule, documents, other than information documents, should not contain more than 50 pages. In the case of reports from working, drafting or correspondence groups and in other exceptional circumstances, this number of pages may be exceeded, provided that the appropriate deadline for receipt of the document by the Secretariat, as specified in sub-paragraphs .2 and .3 below, is put back by one week for every 20 pages exceeding 50 pages;
- .2 documents containing proposals for inclusion of new outputs should be received by the Secretariat not later than 13 weeks before the opening of any session of the Committee. They should be made available at IMO Headquarters and on the IMO documents website, in the Organization's three working languages, not later than five weeks before the opening of the session;
- .3 documents (including information documents) containing more than six pages of text (bulky documents) should be received by the Secretariat not later than 13 weeks before the opening of any session of the Committee. They should be made available at IMO Headquarters and on the IMO documents website, in the Organization's three working languages, except for information documents (which should not be translated), not later than five weeks before the opening of the session;
- .4 non-bulky documents commenting on those referred to in sub-paragraphs .2 and .3 above, or on items already on the agenda should be received by the Secretariat not later than nine weeks before the opening of any session of the Committee. They should be made available at IMO Headquarters and the IMO documents website, in the Organization's three working languages, not later than five weeks before the opening of the session;
- .5 notwithstanding the provisions of sub-paragraph .4 above, documents commenting on those referred to in sub-paragraphs .2, .3 and .4 above containing four pages or less should be processed if received by the Secretariat not later than seven weeks before the opening of any session of the Committee. These documents should start with a paragraph clearly indicating the document on which comments are made and stating that the document is submitted in accordance with the provisions of paragraph 6.6.5 of this document. They should be made available at IMO Headquarters and the IMO documents website, in the Organization's three working languages, not later than four weeks before the opening of the session; and
- .6 non-bulky information documents should be received by the Secretariat not later than nine weeks before the opening of any session of the Committee. They should not be translated and should be made available at

IMO Headquarters and the IMO documents website not later than five weeks before the opening of the session. No action will be taken on the basis of an information document only, other than to take note of it.

6.7 The Secretariat should make every effort to ensure the timely posting of documents on the IMO documents website. Member Governments and international organizations should also endeavour to submit documents as early as possible and not just on the deadlines of the submission of documents.

6.8 The Secretariat should strictly apply the rules concerning the submission of documents and not accept late submissions from Governments or delegations. Any exemption from these provisions should have the prior authorization of the Chair of the Committee following consultations with the Secretariat.

6.9 In emergency circumstances requiring immediate action by the Committee, a document to that end consisting of no more than four pages should be received by the Secretariat not later than nine weeks before the opening of the session of the body concerned and made available at IMO Headquarters, in the Organization's three working languages, not later than five weeks before the opening of the session. Such a document will be considered by the Legal Committee only if the Committee decides to do so at the opening of its session.

6.10 To save meeting time, information documents and documents requiring no action other than for their content to be noted should not be introduced in the plenary meetings of any IMO organ.

6.11 To reduce the number of pages for meetings, documents other than information documents which contain more than 20 pages should not be translated into all working languages in their entirety. They should include, for translation purposes, a summary of the document not longer than four pages, with the technical content submitted as an annex in the language needed by working groups (e.g. English).<sup>4</sup>

6.12 All concerned should be continuously aware of the financial and environmental impact of the volume of documentation generated by IMO meetings and should limit, to the greatest possible extent, the number of pages of documents submitted to such meetings.

## **7 ADDITIONAL CONSIDERATIONS**

7.1 Submissions to the Committee highlighting problems or shortcomings should, in general and where possible, also suggest appropriate solutions thereto.

7.2 Recognizing the human element as an overarching principle for the Organization's Strategic Plan, the Committee should take the human element into account in the review, development and implementation of new and existing requirements. The Committee will also take into account the needs and well-being of seafarers in all aspects of its work.

7.3 Outputs, for which extensive work is required, should, when appropriate, be placed on the provisional agenda of alternate sessions of the Committee to allow adequate time for preparatory work by delegations.

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<sup>4</sup> The text was inserted with the understanding that this restriction on translation would not limit the translation of a legal text (see paragraph 13.4(a) of document LEG 97/15).

7.4 In respect of subjects requiring research, contributions from other organizations and appropriate entities should be encouraged and taken into account. Exchange of information on technological development should be encouraged.

7.5 In the context of resolution A.911(22) on *Uniform wording for referencing IMO instruments*, the Committee should be guided in its work, as appropriate, by the guidelines annexed thereto.

7.6 Substantial modifications to draft amendments to mandatory instruments being considered by the Committee with a view to adoption should only be accepted for discussion if they have been submitted in writing. However, in exceptional circumstances where the draft amendments under consideration include significant discrepancies or omissions, or where serious difficulties in their application can be foreseen, the Committee may accept to discuss oral proposals aimed at resolving any problems identified.

## **8 OBSERVANCE OF THE DOCUMENT**

This document should be observed strictly. This will assist delegations in preparing adequately for each meeting and enhance their participation in the debate and decision-making process during meetings. It will also prevent delegations from experiencing difficulties when developing national positions on subjects on the agenda of the Legal Committee. Committee members should ensure that their experts attending meetings of working groups, drafting groups or correspondence groups are adequately informed and instructed on any action necessary to give effect to decisions made by the Legal Committee.

## ANNEX 1

### **PROCEDURES FOR THE ASSESSMENT OF IMPLICATIONS OF CAPACITY-BUILDING REQUIREMENTS WHEN DEVELOPING NEW, OR AMENDING EXISTING, MANDATORY INSTRUMENTS**

#### **1 INTRODUCTION**

1.1 Assembly resolution A.998(25) cautions that, unless the Council, the committees and their subsidiary bodies adopt a cradle to grave approach in relation to matters concerning capacity-building, technical cooperation and assistance, the chances of success in the ratification and effective implementation of IMO instruments may be reduced by the level of unpreparedness or lack of capacity that Governments, particularly of small island developing States (SIDS) and the least developed countries (LDCs), experience at the point when implementation of such instruments is urgently required and, therefore, the development of this procedure is in keeping with the provisions of resolution A.998(25).

1.2 Assessment of capacity-building implications for the implementation of new, and/or amendment to existing, instruments is an iterative process that begins at the acceptance of the preliminary proposal and runs in parallel up to the process of its implementation.

1.3 The procedure does not prevent States from taking extra actions in promoting the advancement of the objectives of capacity-building through technical assistance or cooperation.

#### **2 DEFINITIONS**

For the purposes of this procedure, the following definitions apply:

2.1 *Output* is as defined in paragraph 2.1.3 of the document on *Organization and method of work of the Legal Committee*.

2.2 *Capacity-building* means sustainable, social, economic or legal measures undertaken through various means for the purposes of a comprehensive transformation of the performance of an Administration or industry player to implement and therefore comply with new or amended instruments.

2.3 *Technical assistance* is a methodology of providing capacity-building rendered through bilateral and/or multilateral exchange of technical knowledge, resources or expertise to a party who has requested such assistance in order to enhance the technical capability of that party to implement existing, new or amended instruments.

2.4 *Technical cooperation* refers to a methodology of providing capacity-building through a multilateral effort to a group of cooperating countries of a particular region by the provision of training and exchange of expertise, knowledge and information in support of efforts aimed at the promotion of the implementation of existing, new and/or amended instruments.

2.5 *Instruments* refers to IMO conventions and other treaties.

### **3 PURPOSE AND OBJECTIVES**

3.1 The purpose of this procedure is to give effect to resolution A.998(25) aimed at enhancing efforts to promote universal implementation of IMO instruments.

3.2 This procedure is intended to assist in the identification and assessment of capacity-building implications in the following cases:

- .1 when the Committee has accepted a proposal for an output and/or on approval by the Committee of a new instrument;
- .2 during implementation of new instruments or amended instruments; and
- .3 during the scheduling of capacity-building measures or activities.

3.3 These procedures apply to the committees of the Organization and they constitute a specific implementation response to resolution A.998(25).

3.4 The procedures aim at:

- .1 promoting universal ratification and compliance with newly adopted IMO instruments;
- .2 improving the level and quality of implementation of new and/or amended instruments; and
- .3 promoting as far as possible a balanced level of implementation of new instruments.

### **4 PROCEDURE**

4.1 Committees should conduct an assessment of capacity-building implications by following the procedure in the flow chart in appendix 1.

4.2 Assessments of capacity-building implications should be initiated at acceptance of proposals for an output.

#### **Preliminary assessment of capacity-building implications**

4.3 In order to facilitate the assessment of capacity-building implications by the Committee, its Vice-Chair should, in consultation with the Chair and assisted by the Secretariat, undertake a preliminary assessment of capacity-building implications, utilizing the checklist for the assessment of the need for capacity-building contained in appendix 2.

4.4 The outcome of the preliminary assessment should be submitted to the Committee concerned for consideration. This should contain the Vice-Chair's appraisal of:

- .1 whether there are or will be capacity-building implications or need for technical assistance;
- .2 list of possible implications; and
- .3 recommendations on the way forward.



### **Assessment of capacity-building implications**

4.5 Following the preliminary assessment, the Committee should, if necessary, decide to convene the Ad hoc Capacity-Building Needs Analysis Group (ACAG) to be chaired by the Vice-Chair of the Committee. The ACAG should consider the preliminary assessment, taking into account comments and any further submissions thereto and, if appropriate, conduct further assessment and present its report and recommendations to the Committee.

4.6 The ACAG may refer a matter through the Committee for further consideration by another organ.

### **Post-assessment of capacity-building implications for implementation of new measures**

4.7 When new measures have been approved, the Committee may request ACAG to conduct a post-assessment exercise using the criteria and mechanism contained in appendix 3 to identify issues requiring special focus when implementing technical cooperation and assistance activities.

4.8 Prepare a draft circular communicating possible capacity-building implications and recommendations of a course of action for consideration by the Organization, the membership and/or industry.

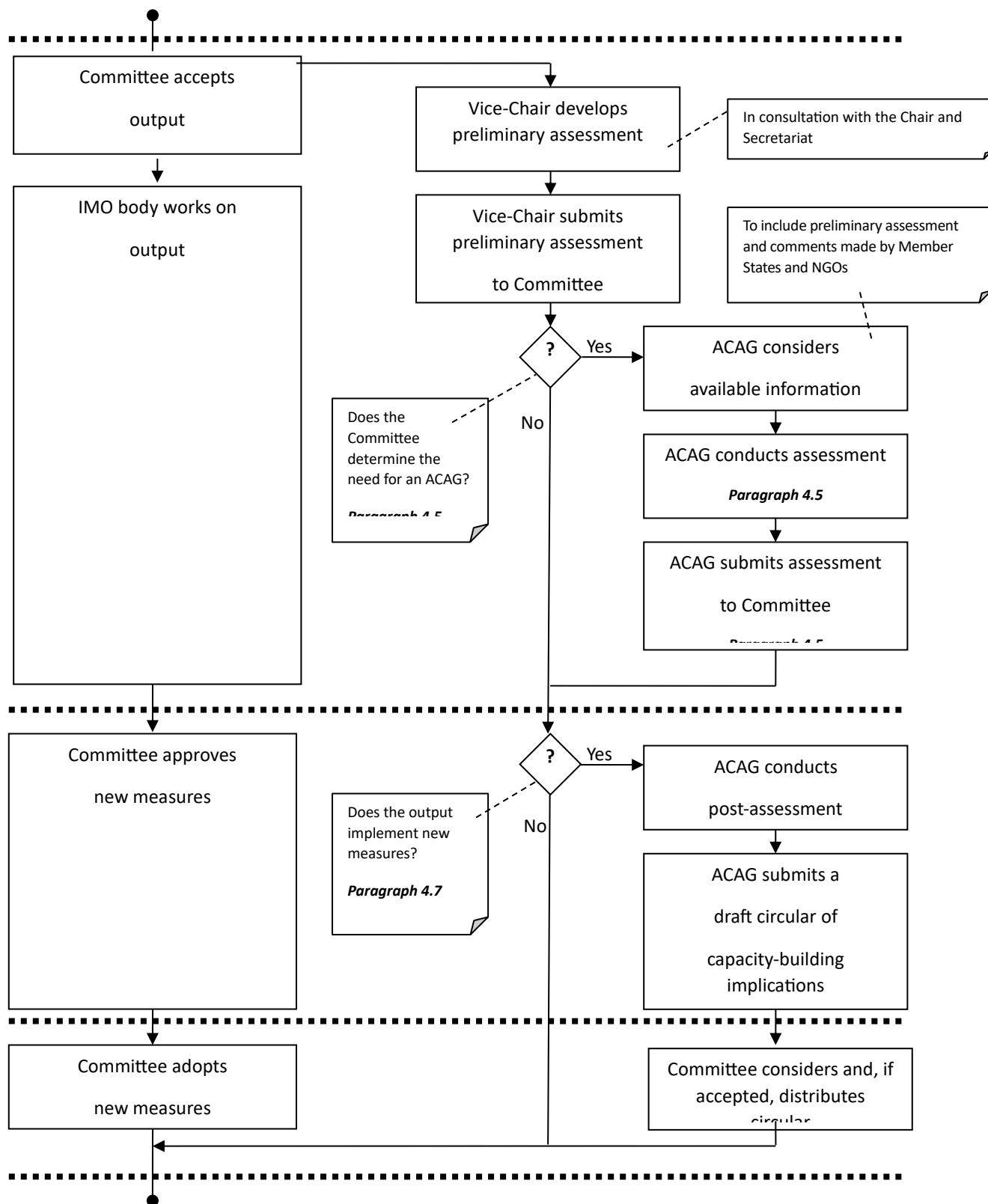
## **5 TERMS OF REFERENCE OF ACAG**

5.1 In conducting assessment of capacity-building, the ACAG should be guided by the following:

- .1 consider the preliminary assessment of capacity-building and technical assistance actions;
- .2 make an assessment and, when new measures have been approved, a post-assessment of the capacity-building actions that may include technical assistance or technical cooperation required by Administrations for the implementation of the instrument;
- .3 in consultation with the industry and non-governmental organizations, make an assessment and, when implementing new measures, a post-assessment of the capacity-building actions that may be required or expected of the shipping industry for the implementation of the instrument; and
- .4 advise the Committee of the implications for capacity-building relating to a new instrument or the proposed amendment to existing instrument, whichever is being considered.

## APPENDIX 1

### IDENTIFICATION OF CAPACITY-BUILDING IMPLICATIONS FLOW CHART



## APPENDIX 2

### CHECKLIST FOR THE IDENTIFICATION OF CAPACITY-BUILDING IMPLICATIONS

#### 1 For Administrations

- ☐ Is new legislation required?
- ☐ Is there a requirement for new equipment and or systems?
  - Does equipment manufacturing capacity exist internationally?
  - Do equipment repair/servicing facilities exist internationally?
  - Is there capacity to develop new systems?
- ☐ Will the implementation require additional financial resources?
- ☐ Is there a need for additional human resources or new skills?
- ☐ Will there be a need to upgrade current infrastructure?
- ☐ Is there enough lead time towards implementation?
- ☐ Will there be a rapid implementation procedure adopted?
- ☐ Is there a substantial modification of existing standards?
- ☐ Will a guide to implementation be needed?

#### 2 For the industry

- ☐ Would the industry require new and/or enhancement of existing systems?
  - Does capacity exist internationally to develop new systems?
- ☐ Is there a need for additional training of seafarers?
  - Do related and validated training courses exist?
  - Are there sufficient simulation training courses available internationally?
- ☐ Will there be a requirement for new equipment?
  - Does manufacturing capacity exist internationally?
- ☐ Is there repair/servicing and/or retrofitting and does maintenance capacity exist internationally?

### APPENDIX 3

#### CHECKLIST OF ISSUES REQUIRING SPECIAL FOCUS WHEN DEVELOPING CAPACITY-BUILDING RELATED TO THE IMPLEMENTATION OF NEW MEASURES

##### Capacity-building Measures Form

**Instrument**

\_\_\_\_\_

**Measure number**

\_\_\_\_\_ of \_\_\_\_\_

**Required for**

- ☐ Administration  
☐ Industry

**Implementation**

- ☐ Prior to adoption  
☐ Once adopted  
☐ Prior to entry into force  
☐ Once ratified  
☐ Phased in

**Description of capacity-building activity needed for the implementation of  
new measures:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



ANNEX 2

**FORMAT 1: BIENNIAL STATUS REPORT**

[Name of organ]									
Reference to strategic direction, if applicable	Output number <sup>a</sup>	Description	Target completion year <sup>b</sup>	Parent organ(s)	Associated organ(s)	Coordinating organ	Status of output for Year 1 <sup>c</sup>	Status of output for Year 2 <sup>c</sup>	References <sup>d</sup>
<b>Notes:</b>									
<b>Notes:</b>									

**Notes:**

- a When individual outputs contain multiple deliverables, the format should report on each individual deliverable.
- b The target completion year should be specified as a year, or indicate that the item is annual or continuous. This should not indicate a number of sessions.
- c The entries under the "Status of output" columns are to be classified as follows:
  - "completed" signifies that the output for the year in question has been duly finalized;
  - "in progress" signifies that work on the output has been progressed, and that finalization is expected in the target completion year;
  - "ongoing" signifies that the outputs relate to work of the respective IMO organs that is a permanent or continuous task;
  - "postponed" signifies that the respective IMO organ has decided to defer the production of relevant outputs to another time (for example, until the receipt of corresponding submissions) and accordingly that the output has been introduced on the post-biennial agenda;
  - "extended" signifies that further work is necessary and that the output will not be finalized as planned; and
  - owing to the nature of annual outputs, the status can either be "completed" or "postponed".
- d References should be made to the relevant part of the organ's report on this item.

**FORMAT 2: POST-BIENNIAL AGENDAS OF COMMITTEES**

[NAME OF COMMITTEE]								
ACCEPTED POST-BIENNIAL OUTPUTS				Parent organ(s)	Associated organ(s)	Coordinating organ	Timescale	Reference
Number	Biennium <sup>e</sup>	Reference to strategic direction, if applicable	Description					

**Notes:**

<sup>e</sup> Biennium when the output was placed on the post-biennial agenda.

ANNEX 3

**CHECKLIST FOR IDENTIFYING ADMINISTRATIVE REQUIREMENTS**

<p>This checklist should be used when preparing the analysis of implications required in submissions of proposals for inclusion of outputs. For the purpose of this analysis, the term "administrative requirement" is defined, in accordance with resolution A.1043(27), as an obligation, arising from a mandatory IMO instrument, to provide or retain information or data.</p>		
<p><b>Instructions:</b></p> <p>(A) If the answer to any of the questions below is <b>YES</b>, the Member State proposing an output should provide supporting details on whether the requirements are likely to involve start-up and/or ongoing costs. The Member State should also make a brief description of the requirement and, if possible, provide recommendations for further work (e.g. would it be possible to combine the activity with an existing requirement).</p> <p>(B) If the proposal for the output does not contain such an activity, answer <b>NR</b> (Not required).</p> <p>(C) For any administrative requirement, full consideration should be given to electronic means of fulfilling the requirement in order to alleviate administrative burdens.</p>		
<p>1. Notification and reporting? Reporting certain events before or after the event has taken place, e.g. notification of voyage, statistical reporting for IMO Members, etc.</p>	NR	<p>Yes</p> <p><input type="checkbox"/> Start-up</p> <p><input type="checkbox"/> Ongoing</p>
<p>Description of administrative requirement(s) and method of fulfilling it: (if the answer is yes)</p>		
<p>2. Record-keeping? Keeping statutory documents up to date, e.g. records of accidents, records of cargo, records of inspections, records of education, etc.</p>	NR	<p>Yes</p> <p><input type="checkbox"/> Start-up</p> <p><input type="checkbox"/> Ongoing</p>
<p>Description of administrative requirement(s) and method of fulfilling it: (if the answer is yes)</p>		
<p>3. Publication and documentation? Producing documents for third parties, e.g. warning signs, registration displays, publication of results of testing, etc.</p>	NR	<p>Yes</p> <p><input type="checkbox"/> Start-up</p> <p><input type="checkbox"/> Ongoing</p>
<p>Description of administrative requirement(s) and method of fulfilling it: (if the answer is yes)</p>		
<p>4. Permits or applications? Applying for and maintaining permission to operate, e.g. certificates, classification society costs, etc.</p>	NR	<p>Yes</p> <p><input type="checkbox"/> Start-up</p> <p><input type="checkbox"/> Ongoing</p>
<p>Description of administrative requirement(s) and method of fulfilling it: (if the answer is yes)</p>		
<p>5. Other identified requirements?</p>	NR	<p>Yes</p> <p><input type="checkbox"/> Start-up</p> <p><input type="checkbox"/> Ongoing</p>
<p>Description of administrative requirement(s) and method of fulfilling it: (if the answer is yes)</p>		

\*\*\*



## **ANNEX 10**

### **STATEMENTS FROM DELEGATIONS**

#### **AGENDA ITEM 4(a)**

##### **Statement by the delegation of Hong Kong**

Thank you Chair, for giving us the floor.

Good morning, good afternoon, and good evening to all distinguished delegates and representatives attending this committee meeting in person or remotely.

Hong Kong, China would like to thank ILO and IMO Secretariats for submitting document LEG 110/4(a) regarding the Report on the IMO/ILO joint database of abandonment of seafarers for the year 2022, also would like thank ITF for submitting the papers LEG 110/4(a)/1 and /2.

As mentioned in paragraph 2 of the document LEG 110/4(a), the accuracy of the abandoned seafarer database is critical. The delegation of Hong Kong, China would like to provide corrected information to the Committee on the alleged abandonment case onboard the Hong Kong registered vessel "OSG BEAUTEC", IMO No.9367215. This case is recorded on page 58 of the annex to the document LEG 110/4(a), with the current status marked as "unresolved". Consequently, discussion paper LEG 110/4(a)/2 submitted by ITF has reflected the case of Hong Kong, China therein.

Chair, the delegation of Hong Kong, China, would like to bring the attention of the Committee to the records given in the website of the ILO Database on reported incidents of abandonment of seafarers, that the case on "OSG BEAUTEC" as updated on 21 February 2022, as in the database, indicating that the status of this case is "resolved" with the last three crews being "repatriated."

Moreover, the delegation of Hong Kong, China would like to reiterate that the case on "OSG BEAUTEC" 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. This view was presented in our Statement attached to the report LEG 109.

This delegation would appreciate the secretariats of IMO and ILO in updating the corrected records promptly and reflect this in the relevant submission to next session of LEG, that is, LEG 111, so as to meet the expectations of all in upholding accuracy of the database.

We would like to request to have this Statement attached to the final report of this session of the LEG committee meeting. We will send this Statement by email to the Secretariat for facilitating this request.

Thank you Chair.

### Statement by the delegation of Panama

Muchas gracias Sra. Presidente,  
Buenos días

La República de Panamá agradece a las Secretarías de la OMI y la OIT por la presentación del informe relacionado a los casos de abandono de la gente de mar.

Hemos tomado nota de la información facilitada en este reporte y de los análisis presentados por la ITF y consideramos oportuno indicar que la República de Panamá se encuentra altamente comprometida con nuestra gente de mar, vigilando y monitoreando de cerca los casos de abandono reportados bajo nuestro pabellón. Por lo que hemos estado reportando de **manera voluntariamente** cada seis meses información actualizada sobre los casos de abandono conforme a su estatus.

Como prueba de nuestro compromiso con nuestra gente de mar, el año pasado, la Dirección General de la Gente de mar, a través del Departamento de Asuntos Laborales Marítimos, trabajó arduamente para lograr recuperar salarios adeudados por los armadores a la gente de mar por un monto total de **USD 5, 315,909.99**, y con su intervención fueron repatriados por los armadores **478 tripulantes**.

Adicional, quisiéramos tomar esta oportunidad para elogiar los esfuerzos que esta realizando la OMI en conjunto con la OIT para abordar y mitigar los casos de abandono de la gente de mar. Sin embargo, quisiéramos compartir con el Comité algunos inconvenientes que hemos detectado durante el proceso de tramitación y actualización de la base de datos, especialmente con la actualización de la información contenida en la misma con miras a mejorar los procedimientos internos de notificación y publicación de los datos:

- .1 durante el año 2022, la notificación a ser realizada al Estado Bandera (como parte interesada) de la inclusión de un buque nuevo en la base de datos restringida se estuvo realizando de manera tardía.
- .2 Se incluyen casos en la base de datos donde el Estado Miembro/Organización informante indicaba haber comunicado a la Bandera, sin embargo no siempre es así.

Es importante mencionar que las situaciones que hemos mencionado en estos dos puntos afectan los tiempos de respuesta y las acciones que puede tomar la bandera, incluyendo la posibilidad de obtener una rápida solución de los casos de abandono; también se afecta las futuras comunicaciones con el Estado Miembro/Organización informante para darle seguimiento al no conocer quién es el encargado de llevar un caso en particular.

- .3 Por otro lado, las actualizaciones remitidas para ser incluidas en la Base de Datos demoran en ser incluidas y se ha dado el caso de que el Estado Miembro/Organización informante se demora o no responden cuando se les pide confirmación de los pagos realizados, y/o se les solicita la actualización del estatus de la Base de Datos.

~~Para finalizar~~, Sra. Presidente, consideramos necesario evaluar la posibilidad de reglamentar ciertos temas que afectan el contenido de la base de datos, al no encontrarse a la fecha debidamente actualizada, por ejemplo:

- .1 Establecer un tiempo de caducidad de una queja laboral en la base de datos, cuando el Estado miembro/organización informante no presente actualizaciones de manera periódica. En esta situación tenemos casos que inclusive han cambiado de bandera, y que no tenemos información adicional sobre el estatus de la reclamación.

- .3 Aclarar si un buque es considerado EN DISPUTA, cuando los quejosos fueron repatriados, reconocer haber firmado un finiquito laboral pero luego argumentan haber sido obligados, y a la fecha los tripulantes no han instaurado acciones legales en tribunales de justicia.
- .4 ¿Qué sucede con aquellos buques que han sido cancelados antes de la notificación de la inclusión en la base de datos?, ya que de acuerdo a los Artículos 91 y 92 de la CONVEMAR, se pierde jurisdicción sobre dicho buque, por lo que es imposible tener contacto con los propietarios.

Agradecemos a la Secretaría que tome en consideración los puntos que hemos mencionado en nuestra intervención con miras a mejorar los procesos de notificación y actualización de la base de datos con el objetivo principal que la misma se encuentre actualizada y brinde la información correcta a todas las partes involucradas en los procesos de resolución de los casos de abandono de la gente de mar.

Muchas gracias, Sra. Presidente.

#### **Statement by the delegation of Singapore**

Thank you, Madam Chair.

Singapore thanks the ILO and IMO Secretariats for preparing document LEG110/4(a).

Singapore notes that two seafarer abandonment cases involving Singapore-registered vessels – namely STEADY KESTREL and VARADA MARESIAS, were reported as "unresolved" and "disputed", respectively. We would like to provide a brief update on both cases.

For STEADY KESTREL, Singapore would like to notify the Committee that this case has since been resolved, and is currently reflected as "resolved" within the ILO database. We kindly request the ILO and IMO Secretariats to take note of this update.

For VARADA MARESIAS, Singapore would like to update the Committee that the vessel is no longer registered under the Singapore flag. We understand that the crew have been paid four months' wages and were repatriated.

Thank you.

#### **AGENDA ITEM 4(c)**

##### **Statement by the delegation of Argentina**

Sra. Presidente,

El documento 110/4(c) presenta una propuesta de directrices sobre el trato justo de la gente de mar acusada de la comisión de delitos en el Estado de Puerto. Y Lo que se nos presenta es una extrapolación de las Directrices para el trato de la gente de mar en caso de accidente marítimo de 2006. A la vez, el documento J4 presenta un intento de adecuar esas Directrices a las acusaciones por delitos penales.

No creemos que sea posible usarlas como base excepto se introduzcan importantes enmiendas, debido a que las acusaciones de comisión de delitos penales está sujeta a la legislación penal (tanto código penal como procedimiento penal) bajo soberanía del Estado de Puerto.

La delegación argentina podría apoyar una enunciación general con el fin de que las autoridades del Estado de Puerto hagan esfuerzos por un procedimiento expedito pero con sujeción a la legislación nacional. Los derechos de las personas sospechadas o acusadas están garantizados por las normas internas y, que en muchos países tienen rango constitucional y, asimismo, por tratados de derechos humanos aplicables según sea el caso. No pueden ser enmendados por un conjunto de Directrices.

Así, hay tres categorías de observaciones que quisiera formular:

A. La categorías de “delitos marítimos” no existe como tal, a menos que las defina el derecho penal del Estado de Puerto.

B. Hay aspectos que no resultan pertinentes por conllevar una intromisión en la definición de los procesos penales del Estado de Puerto: un conjunto de directrices no puede generar una intromisión en la legislación penal interna. Todas estas propuestas, de las que daré ejemplos, deberían ser fundamentalmente enmendadas.

C. Otras propuestas incurren en el desconocimiento de las funciones de un Cónsul conforme el derecho internacional, en particular la Convención de Viena sobre Relaciones Consulares, por ejemplo atribuyéndose al Estado de pabellón un rol en una supuesta “coordinación” con el Estado de Puerto. De la misma manera, se atribuye al Estado de Puerto, más allá del poder de policía que tiene, la responsabilidad de evitar la comisión de delitos por parte de la gente de mar. Asimismo, refleja un desconocimiento sobre el hecho de que la Convención de las Naciones Unidas sobre el Derecho del Mar no se aplica al territorio del Estado ribereño así como un profundo desconocimiento de la jurisdicción del Tribunal Internacional del Derecho del Mar.

Señora, en definitiva, la Argentina cree que la extrapolación de las directrices de 2006 a un aspecto tan delicado bajo la soberanía del Estado de Puerto como el derecho penal y procesal penal, requeriría un delicado trabajo de enmiendas, y estamos dispuestos a aceptar términos de referencia para un grupo de trabajo siempre que los mismos reconozcan el rol fundamental de la legislación interna del Estado de Puerto.

Gracias.

#### **Statement by the delegation of Ecuador**

"Ecuador agradece a la Presidenta del Grupo de Trabajo, así como a la Secretaría y todos quienes colaboraron en este trabajo.

Ecuador considera muy importante y apoya el proyecto de directrices que se están elaborando y se han presentado en este Comité, entendido que su objetivo es asegurar que las garantías del debido proceso sean respetadas en el caso de que la gente de mar, sean detenidos en un puerto extranjero.

En relación al título de las directrices que mantiene entre corchetes la palabra MARÍTIMOS como calificativo a la palabra DELITOS, y que también está pendiente en el resto del documento; es pertinente tener presente que muchas legislaciones internas no contemplan la tipificación en el derecho penal de los delitos marítimos, sino que el derecho penal se orienta a tipificar la conducta antijurídica en razón del bien que se está protegiendo POR EJEMPLO los delitos contra la vida el bien jurídico es la vida humana; por ello el mantener la terminología de DELITOS MARÍTIMOS causaría problemas de interpretación jurídica en cada uno de los países, lo cual no permitiría la aplicación de estas directrices ya que en el caso particular del Ecuador estos delitos no están tipificados en su legislación penal.

Asimismo, deberíamos tener presente que no resulta necesario, y en realidad podría causar inconvenientes, tener que acordar definiciones del derecho penal como es el caso de "sospecha" y "detención". En este aspecto debo referirme particularmente a la definición de SOSPECHA la cual se menciona "se entenderá un acto o una omisión que constituya un delito punible conforme a la ley." En la legislación ecuatoriana y entiendo en la de muchos Estados, la acción u omisión punible solo la puede determinar un juez por ello es que durante todo el

proceso investigativo y en el auto llamamiento a juicio al SOSPECHOSO se lo trata como el actor u omisor de un presunto hecho tipificado como delito, es decir se aplica el principio jurídico de que el sospechoso es INOCENTE hasta que se demuestra lo contrario, por ello entrar en definiciones que la legislación interna de cada Estado es un poco delicado.

Por otra parte consideramos importante que se haya incluido la posibilidad de considerar alternativas que no supongan la privación de libertad a la detención en la espera de juicio y se resalta entre paréntesis "incluida la detención en calidad de testigo", realmente consideramos importante destacar que la calidad de testigo tiene otro trato que no estaría contemplada en el marco de estas directrices; pero en caso se decida incluir un apartado de esto, posiblemente se deba incluir que se permita la recepción de declaraciones por medios telemáticos acorde a la legislación de cada país; que en el caso particular del Ecuador esto si es permitido y entendería que en muchas legislaciones igualmente lo es.

Un aspecto adicional y de particular preocupación de la delegación de Ecuador es sobre la traducción al español que nuestras autoridades leerán, y deberán aplicar cuando se aprueben; dado que al existir terminología jurídica quisiéramos poder tener un diálogo con el equipo de español a fin de asegurar que esta terminología sea aplicada en el sentido que fue formulado en el idioma de trabajo que es el inglés.

Finalmente deseamos resaltar que Ecuador participará en el grupo por correspondencia que se recomienda."

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

**Madam Chair,**

Unfortunately, one of the most serious threats seafarers still face today is criminalization of their actions. Repeatedly, in different states seafarers are deprived of fair treatment and justice and are not getting equal opportunities to properly defend themselves against charges for committing crimes at sea.

Seafarers are criminalized even before all the facts are ascertained. Shipmasters are the first victims of the unwarranted detentions by law enforcement agencies solely on the basis of their superior position on the ship, regardless of whether they were on duty at the time the event qualifying as a crime occurred, or whether they had an opportunity to influence the situation. The Delegation of Ukraine wants to highlight that Seafarers cannot be prosecuted for doing their professional job.

**Madam Chair,**

The issue of Fair treatment of seafarers has been on the agenda of the IMO Legal Committee for more than 20 years. The Committee, at its 106th session, underlined that unfair treatment of seafarers, whether in the event of a maritime accident or otherwise, poses a threat to the future sustainability of merchant shipping, primarily due to the deleterious effect on the image of the shipping industry.

Given the long history of deliberation on this topic the Delegation of Ukraine emphasizes the need to develop guidelines for the fair treatment of seafarers detained on suspicion of committing maritime crimes by the end of 2023. We have provided an appropriate reasoning in our document LEG 110/4(c)/1.

We welcome the proposals on respective Draft Guidelines, as initially presented by Philippines et al in the document LEG 110/4(c), and further revised by the Chair in paper J4. We also welcome the efforts of the International Transport Workers' Federation to establish the Database of the of cases of detention of seafarers on suspicion of committing maritime crimes. However, we would like to point out that the proposed drafts Guidelines only cover the procedures to follow once seafarers already have been detained. It is imperative to equip seafarers with the necessary procedures and skills to identify in a timely manner the possibility of their involvement in illegal activities, as well as to provide information on how to inform law enforcement about alleged illegal activities on board their ships.

We also propose that the draft Guidelines should be supplemented with practical guidance on how to ensure the prompt release of seafarers from custody.

I thank you, **Madam Chair**, and request this statement is appended to the Committee's report.

#### **AGENDA ITEM 4(d)**

##### **Statement by the delegation of Indonesia**

Thank you Madame Chair

In the spirit of cooperation to protect the rights of seafarers, Indonesia supports the adoption of the Guideline on how to deal with seafarer abandonment cases.

We believe that it is our collective duty to implement the Guideline with outmost good faith. Further, the implementation of the Guideline by all stakeholders will also prove its reliability and effectiveness.

Madame Chair, and distinguished delegates,  
There is no such thing as a perfect document, therefore we are of the view that this guideline needs to be monitored continuously, to ensure the Guideline can truly serve its intended purposes.

After evaluating its implementation, if deemed necessary, a revision for enhancement should be taken into consideration by all.

We also request that our intervention is reflected in the Report.

Thank you Madame Chair

#### **AGENDA ITEM 5**

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

España considera que las operaciones de trasvase de buque a buque presentan un alto riesgo potencial de causar un accidente que genere contaminación, o amenaza de contaminación, y que, como consecuencia, se produzcan graves daños perjudiciales para las costas o intereses de los Estados ribereños conexos.

Además, es evidente que detrás de estas prácticas existen intereses comerciales en el marco de "operaciones oscuras" para eludir las sanciones y los elevados costes de los seguros, por lo que la tipología de buque empleada suele adolecer de las garantías suficientes en materia de seguridad y prevención de la contaminación, lo que aumenta considerablemente el riesgo de estas operaciones.

España se suma por tanto a las preocupaciones manifestadas por los coautores del documento LEG 110/5 a los que agradece que pongan de manifiesto esta cuestión en el marco del comité jurídico.

En relación con las medidas señaladas en el párrafo 8, nos gustaría destacar la importancia de que los estados de abanderamientos garanticen que los petroleros que enarbolan su pabellón solo lleven a cabo operaciones de trasvase de buque a buque en zonas habilitadas para tal fin por los países ribereños.

Desde el punto de vista de los estados rectores de puertos, nuestra experiencia nos demuestra que existe una dificultad evidente a la hora de identificar a buques implicados en estas operaciones, ya que en muchos casos, la práctica de operaciones oscuras lleva aparejada la notificación de datos engañosos respecto a los puertos de escala anteriores, con una clara intención de camuflar la operativa de trasvase en la que el buque ha estado implicado, como así se ha puesto de manifiesto en diversos controles efectuados por la administración marítima española.

Es importante realizar también un llamamiento a aquellas entidades certificadoras del origen de la carga, ya que es habitual en las operaciones de trasvase se efectúen mezclas de productos de distintos orígenes, por lo que conocer la trazabilidad del origen de la carga se hace a veces casi imposible.

Otra cuestión que nos gustaría señalar es la conveniencia de que los estados ribereños colaboren para mejorar el control de estas prácticas y operaciones mediante el establecimiento de acuerdos para la determinación de zonas habilitadas para las operaciones de trasvase de buque a buque, cuando por su proximidad puedan verse afectados por sucesos de contaminación.

Por último, desde España consideramos que esta cuestión debería ponerse en conocimiento de otros órganos de la OMI y en particular de la Asamblea 33, por lo que es nuestra intención colaborar con otras delegaciones interesadas en la presentación de un proyecto de resolución de Asamblea al respecto.

Solicitamos que esta declaración se incluya como anexo en el informe final del comité.

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

Madam Chair,

Ukraine thanks the co-sponsors of document 110/5 and shares their concern regarding the increase in cases of ship-to-ship crude oil transfers in international waters, especially the use of such “dark operations” in order to circumvent sanctions and high insurance costs, as well as concerns over the negative consequences of these dangerous practices for the security of international trade shipping.

As other delegations have rightly pointed out, the issue of ship-to-ship transfer of oil and other dangerous goods has revealed many problematic aspects, faced by coastal states face in cases of the leakage of dangerous substances, in particular when they start searching for those liable for this aftermath of such criminal practice, inter alia: fraudulent registration of ships, concealment of data on the beneficial owner, forged ship safety inspection certificates (specifically given the age of the ships involved in such activities), infringement of regulations concerning the use of AIS etc.

Our concern is the growing number of such cases, especially the use of this practice to circumvent sanctions, introduced in response to the Russia's full-scale invasion of Ukraine, which pose significant safety and environmental risks in the Black Sea and the Mediterranean. First of all, this concerns the examples outlined by Ukraine during the previous MEPC meeting. Unfortunately, these violations continue on a daily basis and it is only a matter of time before an accident occurs, which can lead to both human casualties and pollution of the marine environment.

Taking this into account, the delegation of Ukraine supports the proposals outlined in paragraph 9 regarding measures recommended for the adoption by the Committee.

I thank you, **Madam Chair**, and request that Ukraine's position is reflected in the report and statement is appended to it as well.

### **AGENDA ITEM 5(a)**

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

Madam Chair,

The submitted document LEG 110/5(a)/1 depicts the grim reality that my country has to face since the start of the full-scale Russia's war of aggression in late February 2022.

The deliberate assaults of the armed forces of the Russian Federation on Ukrainian cities, which range from indiscriminate and disproportionate air and cruise missiles' or mortar shellings to terrorist strikes with Iran-made drones, target civilian and critical infrastructure, including coastal infrastructure in the Black Sea and the Sea of Azov.

Major Ukraine's seaports in the Black Sea and the Sea of Azov (Odesa, Kherson, Mykolaiv, Mariupol and Berdiansk etc.), as well as maritime education institutions sustained significant damage. Apart from port facilities, regular attacks are directed at commercial vessels and their crews anchored in ports or off the coast of Ukraine, which are not able to leave the area of hostilities because of the constant Russian threat in the Black Sea. Others, located in temporarily occupied Mariupol and Berdiansk are seized by Russia.

The attacks against seaports of Mykolaiv and Kherson, which the international community encouraged to be included in the scope of the renewed BSGI, are the recurring targets of Russian shellings. Fortunately, the verification of the latest attack on a floating crane Zakhariy under the flag of Türkiye at the seaport of Kherson port on 12 December 2022 (referred to in our document) showed no lethal casualties among its crew. Yet, the recent months were marked by repeated shellings of this location damaging 2 general cargo vessels Tuzla and Ferahnaz under the flag of Vanuatu on 24 January 2023, as well as Kuruoglu-3, a general cargo vessel under the flag of Türkiye on 17 February 2023.

The attacks against commercial vessels, in particular carrying crude oil or other substances, also directly heavily impacted the fragile marine ecosystem, the consequences of which Ukraine and other coastal states will sadly suffer for a time to come.

All these facts have been reviewed by all main Committees of the IMO. And there could be no illusion among the present delegations about the cause of the damages, which are Russia's blatant violations of international law and the all-out invasion it keeps mounting on sovereign and independent Ukraine.



And if there are still those, who hesitate to call the Russian invasion by its name, hiding behind neutral formulations, exclaim about the politicization of IMO's work or reject the fact that such violations do not allow a country to continue being a member of the Organization itself, not to mention its governing Council, I feel pity for you.

Madam Chair,

Russia bears full responsibility for committing aforementioned war crimes and atrocities, and resolute steps should be taken to ensure that justice is restored and those willing to embark on the path of aggression, occupation and annexation receive an appropriate warning.

Last year, on 14 November 2022 UN General Assembly adopted a landmark resolution A/RES/ES-11/5 "Furtherance of remedy and reparation for aggression against Ukraine", which recognized the need for the establishment of an international mechanism for reparation for damage, loss or injury from the internationally wrongful acts of the Russian Federation in or against Ukraine.

The UN General Assembly also recommended the creation of an international register of damage to serve as a record, in documentary form, of evidence and claims information on damage, loss or injury to all natural and legal persons concerned, as well as the State of Ukraine, caused by Russia's internationally wrongful acts, as well as to promote and coordinate evidence-gathering.

This element also formed a part of the recent UNGA resolution A/RES/ES-11/6 "Principles of the Charter of the United Nations underlying a comprehensive, just and lasting peace in Ukraine", adopted on 23 February 2023 by the overwhelming majority of UN Member States. We are grateful to the Dutch Government for its proposal to host the Register of Damage Caused by Russian Aggression to Ukraine in The Hague.

Madam Chair,

The practice of collecting record of the damage caused by Russia is not something the UN specialized agencies will do from scratch. Last year the International Telecommunication Union has started such a project. And the IMO should not be behind the curve. We call the IMO Secretariat to launch an assessment project of the damages caused by the Russian armed invasion of Ukraine on trade shipping, maritime critical infrastructure and education institutions, as well as seafarers, and to cooperate with concerned UN agencies like ILO, UNCTAD and FAO in this regard, with a view of holding Russia liable for the mentioned wrongful acts.

The delegation of Ukraine encourages IMO Member States, especially those, who voted in favour of the mentioned resolutions, to support this and other proposals outlined in para 26 of Ukraine's paper (I would not repeat them here to save us some time) and reflect them as the decisions of this Committee.

I thank you, Madam Chair, and request that statement is appended to Committee's report.

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

Just over one year ago, the Russian Federation launched its brutal and unprovoked full-scale invasion of Ukraine. The United States condemns in the strongest possible terms Russia's war against Ukraine and the humanitarian catastrophe it has created. Russia's actions are a blatant violation of the United Nations Charter and are inconsistent with the purposes of the IMO as set out in Article 1 of the IMO Convention.

We thank the Secretariat for its update on the Black Sea Grain Initiative and efforts to secure safe passage for vessels and seafarers stranded due to Russia's illegal war. This initiative is vital to global food security. We call on Russia to end its threats to weaponize food.

We support all efforts to ensure the safety of seafarers, commercial vessels, and the marine environment in the Black Sea and Sea of Azov. The swiftest and surest way to accomplish all of this is for Russia to end its war against Ukraine immediately, and to withdraw all its forces from Ukrainian territory, including Crimea and extending to its territorial waters. As President Biden said after visiting Kyiv in February, "It's simple. If Russia stopped invading Ukraine, it would end the war. If Ukraine stopped defending itself against Russia, it would be the end of Ukraine." The United States stands with Ukraine and its people and will continue to stand with Ukraine for as long as it takes.

We thank the distinguished delegation of Ukraine for document LEG 110/5a/1 and welcomes the proposals therein. This document highlights some of the grave impacts that the Russia Federation's war on Ukraine has had on seafarers, international shipping, and the marine environment. The United States recalls that the UN General Assembly, in Resolution A/RES/ES-11/5, recognized that Russia must be held to account for any violations of international law in or against Ukraine and that it must bear the legal consequences of its internationally wrongful acts, including making reparation for damages caused by such acts. The UN General Assembly recommended creation of an international register of damages to serve as a record of evidence and claims information on damage, loss or injury arising from the internationally wrongful acts of Russia in or against Ukraine.

The United States notes also that other UN specialized agencies, such as the International Telecommunication Union, have already begun a process of assessing, documenting and reporting on damages resulting from Russia's war on Ukraine. We consider that the IMO could contribute to this international effort by collecting and assembling information on damages to commercial vessels, infrastructure in Ukraine that fall under IMO's remit including ports, port facilities, and maritime training institutions and the marine environment in Ukraine that have suffered damage or been destroyed as a result of Russia's unlawful invasion. This effort should be undertaken in coordination with ongoing efforts based on UN General Assembly resolution A/RES/ES-11/5 to establish an international register of damages with the recognition that the scope of the two projects may not overlap entirely. We acknowledge that this activity by the IMO may have budgetary implications. Therefore, as a possible way forward, this delegation would like to request the Secretariat to consider possible options for collection of this information, including the potential cost implications and report it to the Council at its 129th session for consideration.

We ask that our statement be appended to the final report of this Committee. Thank you, Chair.

#### **Statement by the delegation of Sweden**

Chair,

On behalf of the Member States of the European Union, which are all members of the IMO, Sweden reiterates our unwavering support and solidarity with Ukraine and the Ukrainian people.

We condemn in the strongest possible terms Russia's unprovoked and unjustified military aggression against Ukraine, which grossly violates international law and the UN Charter, and undermines international security and stability.

We demand that Russia immediately cease its military action, withdraw all its troops from the entire territory of Ukraine and fully respect Ukraine's sovereignty and territorial integrity within its internationally recognized borders, extending to its territorial waters. We demand that Russia abides by UN General Assembly resolutions on the aggression against Ukraine.

Russia's ruthless bombing has deliberately targeted civilians and civilian objects in gross violation of international humanitarian law. Thousands of Ukrainian civilians have lost their lives. The impact of Russia's aggression on international shipping in the northern part of the Black Sea, the Sea of Azov and the Kerch strait, on the safety of commercial vessels, on the wellbeing of seafarers and on the implementation and application of IMO instruments, clearly shows that the committee must keep this matter under review.

Sweden takes notes of the proposal from Ukraine to call on the IMO Secretary-General in launching an assessment project of the damaging impact of the Russian invasion. In this context, Sweden recalls the UN General Assembly resolution (A/RES/ES-11/5) that recommends the creation of an international register of damages to serve as a record of evidence and claims information on damage, loss or injury caused by internationally wrongful acts of the Russian Federation in Ukraine.

We believe that IMO could contribute to this work, in liaison with other UN agencies, as appropriate. Therefore, we would suggest that the Committee asks the Secretariat to consider and assess various options and then report on this assessment to the Council together with the possible budgetary implications.

I would like this statement to be included in the report of the Committee.

Thank you.

### **Statement by the delegation of Türkiye**

Madame Chair,

As we entered the second year of the war in Ukraine, there is no end in sight to the fighting or the suffering. The war's global impact is devastating.

It also continues to pose a serious threat to maritime safety and security and marine environment in the Black Sea and Sea of Azov, as well as to the well-being of the seafarers.

We are deeply worried about the attacks on Ukrainian ports which cause loss of human lives and damage on merchant vessels. We would like to see the safe return of all commercial vessels and seafarers stranded in Ukrainian ports as soon as possible.

We once again, thank the IMO Secretary-General and Secretariat for their valuable efforts to address the impacts of the war on shipping and safety of the seafarers, including the safe evacuation of stranded vessels and their crews. Türkiye remains ready to provide any assistance in this regard.

Madame Chair,

Since day one, Türkiye has adopted a principled position in terms of rejecting the war in Ukraine and calling it unacceptable.

We stand with Ukraine in its efforts to protect its sovereignty and territorial integrity.

But, we maintain our view that a diplomatic solution should be the priority.

The Black Sea Grain Initiative still inspires hope for a diplomatic exit. It is the strongest proof that negotiations can work.

Against all odds, the Initiative continues to deliver for all the parties involved. So far, it allowed almost 26 million tons of various grain products carried by more than 800 vessels to reach world markets.

We welcome the second extension of the Black Sea Grain Initiative.

We are fully committed to ensure the continuity of the Initiative.

In the period ahead, Türkiye will remain engaged in all efforts to achieve a comprehensive, just and lasting peace in Ukraine.

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

Canada wishes to thank the Secretariat for their update on their efforts related to the Black Sea Grain Initiative, and thanks Ukraine for their submission. As we have repeatedly stated, Canada condemns in the strongest possible terms Russia's unprovoked, unjustifiable, and egregious attack on Ukraine. This invasion is a violation of the UN Charter, and is an attack on international law, democracy, freedom, and human rights. The invasion severely threatens the safety and security of merchant shipping, the protection of the marine environment, the lives and safety of seafarers, the integrity of global supply lines, and the freedom of navigation. Canada stands in solidarity with Ukraine and calls on Russia to immediately cease its aggression and withdraw from Ukraine's sovereign territory.

In brief, Canada wishes to align itself with the statement by Sweden and the US and fully supports the proposal of the US to have the secretariat develop options for how the information related to damages to the maritime sector and the marine environment caused by the war can be collected, including potential cost implications, for consideration by Council at its 129th session.

I ask that my statement be included in the committee's report.

Thank you chair.

### **Statement by the delegation of Poland**

Thank you, Madam Chair,

Good morning to all.

Poland aligns with what Sweden has said.

In the strongest possible terms, Poland condemns Russia's aggression against Ukraine and the continued violation of international law and the UN charter by Russia.

We firmly support Ukraine and its people, and we demand that Russia immediately cease its aggression and withdraw from the entire territory of Ukraine. We support Ukraine's sovereignty and territorial integrity within its internationally recognized borders, including its territorial waters.

Poland believes an in-depth assessment of Russia's infringements of the IMO conventions and instruments merits support.

Madam Chair, I would like this statement to be reflected in the report.

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

La France apporte son entier soutien à la déclaration qui a été faite par la délégation de la Suède au nom des États membres de l'Union européenne et souhaite que ceci figure au rapport du comité. Cette délégation exprime ici une nouvelle fois sa pleine solidarité avec l'Ukraine et le peuple ukrainien, dont la vie a été affectée par la guerre d'agression de la Russie que nous condamnons avec la plus grande fermeté possible. Cette invasion constitue une violation flagrante du droit international et de la Charte des Nations unies.

Nous remercions la délégation de l'Ukraine pour son document LEG 110/5(a)1 et souhaitons que ce comité y donne suite en prenant en compte les remarques faites par la Suède.

Je souhaite que cette déclaration soit annexée au rapport de notre comité.

#### **Statement by the delegation of Georgia**

Thank you chair,

Georgia wishes to align with the statements made by the delegation of Ukraine, US, Sweden and others.

The Georgian delegation would like to thank Ukraine for document LEG 110/5(a)/1 and the Secretariat for document LEG 110/5(a) providing update regarding the situation in the Northern part of the Black Sea. This delegation also wishes to express gratitude to IMO secretariat for their involvement in the Black Sea Initiative.

This delegation wishes to express our full solidarity with Ukraine and the Ukrainian people. We condemn in the strongest possible terms the unprovoked and unjustified act of aggression of the Russian federation against Ukraine, which grossly violates international law and the UN Charter. We demand that the Russian federation immediately ceases its military actions and withdraws all its troops from the entire territory of Ukraine.

Georgia condemns the actions of the Russian Federation and their devastating impact on shipping and seafarers in the Black Sea and the Sea of Azov. Georgia agrees on the points raised by Ukraine in its document, especially regarding the in-depth assessment of the infringements of the IMO conventions and instruments by the Russian Federation.

Georgia once again reiterates its unwavering support for the independence, sovereignty and territorial integrity of Ukraine within its internationally recognized borders.

I wish to kindly ask the secretariat to annex this statement to the final report of this committee.

Thank you.

#### **Statement by the delegation of Germany**

Thank you, Madam Chair. And good morning to all.

We would like to thank Ukraine for the document provided and the IMO Secretariat for the update and all its efforts.

Once again, Germany expresses its full solidarity with Ukraine and its people - and condemns Russia's war of aggression against Ukraine in the strongest possible terms, which grossly

violates international law and the United Nations Charter, and undermines international security and stability.

We demand that Russia immediately cease its military actions, withdraw all its troops from the entire territory of Ukraine and fully respect Ukraine's territorial integrity, sovereignty and independence within its internationally recognised borders.

Germany fully aligns itself with the statement made by Sweden on behalf of the member states of the European Union – as well as those made by the United States, Canada.

With regards to the proposal from Ukraine, we strongly believe that the IMO can contribute to this work. Therefore, we fully support the proposal by the United States and Sweden and would like the Secretariat to follow up on this and report back to the Council.

Finally, we would like to ask the Secretariat to append this statement to the final report.

Thank you, Madam Chair.

### **Statement by the delegation of Italy**

Madame Chair,

One year after the starting of the conflict, the Italian delegation, once again, condemns in the strongest possible terms the Russian Federation's unprovoked and unjustified military invasion against Ukraine, a sovereign state of Europe, whose people are unjustly paying for the atrocities of a deliberate military attack.

We wish to express our solidarity with the people of Ukraine and we will continue to support them until a just peace is reached, respectful of the United Nations Charter.

Italy, as well, demands that the Russian Federation immediately cease its military actions and fully respect the territorial integrity, sovereignty, and independence of Ukraine within its internationally recognized borders. We support the statements made by the US, Sweden, and other delegations

In particular, Madame Chair, we would like to thank Ukraine for submitting document LEG 110/5(a)/1 which put into clear evidence the devastating impacts on shipping and seafarers in the northern part of the Black Sea, the Sea of Azov and the Kerch Strait, caused by the conflict.

In this regard, Italy - in line with the statement already made by the distinguished delegation of Sweden on behalf of the Member States of the European Union which are members of the IMO – takes note of the proposal of Ukraine under paragraph 26.3 of the document at hand, to call on the IMO Secretary-General in launching an assessment project of the damaging impact of the Russian Federation's armed invasion against Ukraine. As already stated by other delegations before us, we recall, in this regard, the UN General Assembly a resolution that recommends the creation of an international register of damages as a record of evidence and claims information on damage, loss, or injury caused by the Russian Federation's aggression against Ukraine. In this respect, concerning the budgetary implications, we believe this proposal be referred to the IMO Council for further consideration.

We kindly ask this statement be included in the final report of this Committee.

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

España apoya en su totalidad la intervención de la delegación de Suecia en nombre de la Unión Europea, en la que se condena la agresión militar no provocada e injustificada de la Federación de Rusia contra Ucrania.

Aprovechamos esta oportunidad para volver a expresar nuestro compromiso y solidaridad con el pueblo ucraniano ante la agresión de la que está siendo objeto por parte de la Federación de Rusia.

Al igual que otras delegaciones, tomamos nota de la propuesta de Ucrania de solicitar al secretario general de la OMI que ponga en marcha un proyecto de evaluación de las repercusiones perjudiciales de la invasión.

Teniendo en cuenta las recomendaciones formuladas por la Asamblea General de la ONU acerca de la creación de un registro internacional de daños causados por actos ilícitos internacionales de la Federación de Rusia en Ucrania, consideramos que la OMI puede contribuir a dicha labor en colaboración con otros organismos de las Naciones Unidas según proceda.

Por ello, nos sumamos a lo sugerido por otras delegaciones para que el Comité solicite a la Secretaría que considere y evalúe diversas opciones para llevar a cabo esta labor e informe con posterioridad al Consejo sobre esta evaluación, junto con las posibles repercusiones presupuestarias.

Solicitamos que esta intervención se adjunte como anexo al informe final del Comité.

#### **Statement by the delegation of Cyprus**

Thank you Madam Chair,

Allow me first to thank the Secretary-General and all the people involved in ensuring that the Black Sea Grain Initiative remains active, in addition to all those who actively propose the need for the immediate release of stranded vessels and seafarers in the conflict zone.

Cyprus condemns the violation of the territorial integrity and the sovereignty of any Member State of the United Nations, which is in turn, inconsistent with the principles of the Charter of the United Nations. The current situation in Ukraine and in the Black Sea, represents a grave danger to life and serious risk to safety of navigation and the marine environment.

In short, we align with the statement made by SWEDEN, on behalf of the EU Member States on the issue.

We would kindly request that this statement is appended to the report of the Committee.  
Thank you Madam Chair.

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

Thank you, Chair

The United Kingdom wishes to reiterate its unwavering support for Ukraine and continues to condemn Russia's unprovoked and illegal invasion of Ukraine.

To support Ukrainian efforts to secure a just and sustainable peace that respects the UN Charter, the United Kingdom is accelerating its support to Ukraine. We again call upon Russia to immediately halt its illegitimate attacks and unconditionally withdraw its forces from Ukraine.

Alongside our international partners, the United Kingdom will continue to increase the pressure on Russia and hold perpetrators to account for their crimes. Our aim remains clear: we will support Ukraine to succeed. And we will do everything we can to ensure that happens.

The UK thanks Ukraine for their paper and in particular notes the proposal in 26.3. As others have previously stated UNGA resolution ES-11/5. recommends establishing an international register of damage caused by internationally wrongful acts of the Russian Federation in or against Ukraine.

We believe that IMO can contribute to that work in areas that fall under its mandate, which the US have already outlined. This delegation also agrees that the Secretariat should be tasked to produce options for gathering this information, including associated costs, and report to the next Council.

I would ask that this statement is attached to the final report.

Thank you, Chair

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

Thank your Chair,

The delegation of the Netherlands would like to support the intervention made by Sweden. We condemn Russia's aggression against Ukraine in the strongest possible terms. This unprovoked act of aggression is a serious violation of international law and the UN Charter. We have seen the negative impact of this and the consequences on the safety of shipping, welfare of seafarers and global supply chains.

We take note of the proposal from Ukraine to call on the IMO Secretary-General in launching an assessment project of the damaging impact of the Russian invasion. We recall the UN General Assembly resolution that recommends the creation of an international register of damages to serve as a record of evidence and claims information on damage, loss or injury caused by internationally wrongful acts of the Russian Federation in Ukraine. We believe that IMO could contribute to this work. Therefore, we support the proposal that the Committee asks the Secretariat to consider and assess various options and then report on this assessment to the next Council.

As we have said before this delegation would like to thank the Secretary-General for its efforts and continuous engagement with the United Nations and relevant parties, to work on humanitarian efforts to evacuate stranded ships and seafarers in the conflict area and for the efforts in relation to the Black Sea Grain initiative.

Thank you chair.

#### **Statement by the delegation of Lithuania**

Madam Chair,

Good morning to everyone.

Lithuania wishes to thank the Secretariat and the delegation of Ukraine for their efforts and for the documents providing the updated information on the situation in the Black Sea.



As our delegation has expressed earlier on many occasions, Lithuania stands united with Ukraine as it is facing large scale military attacks by Russian Federation. Lithuania reiterates its unwavering support to Ukraine and Ukrainian people. Alongside our international partners, Lithuania has condemned in the strongest possible terms the open large-scale unprovoked and unjustified invasion of Ukraine by armed forces of the Russian Federation.

Lithuania demands that Russia ceases the invasion of Ukraine, withdraws from the entire territory of Ukraine, ensures free passage of ships and safety of seafarers in the Black Sea, Sea of Azov and the Kerch Strait.

Therefore, Lithuania aligns itself with the intervention of Sweden made on behalf of the EU. Finally, we kindly request to attach this statement to the final report of the Committee.

Thank you, Madam Chair.

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

Начать хотелось бы с процедурного аспекта. В этой связи следует отметить, что рассматриваемый документ LEG 110/5(a)/1 был опубликован Секретариатом на ИМОДОКС после истечения сроков подачи комментирующих документов. Мы неоднократно обращали внимание Секретариата и делаем это еще раз на необходимость строго соблюдения правил и методов работы Комитета, в противном случае возникает вопрос о необходимости и целесообразности этих правил.

Далее, хотелось бы поблагодарить Секретариат в лице Директора Юридического департамента за предоставление обновленной информации о процессе реализации Черноморской зерновой инициативы. Мы хотели бы еще раз повторить, что наша страна остается приверженной скорейшему выходу всех гражданских судов, которые не подпадают под рамки Черноморской зерновой инициативы и остаются заблокированными в Черноморских портах Украины и возвращению всех членов экипажей домой. Однако, в ситуации, когда эти суда продолжают удерживаться Украиной в своих Черноморских портах в качестве живого щита, это сделать невозможно.

Далее, госпожа Председатель, по всем выдвинутым в наш адрес обвинениям в украинском документе (LEG 110/5(a)/1) мы уже неоднократно выступали и предоставляли развернутые ответы. При этом, к сожалению, вынуждены констатировать, что манипуляции фактами и постановка многих сюжетов с ног на голову продолжается и, более того, усиливается. Мы постоянно видим растущее количество документов и выступлений по сугубо политическим вопросам, которые наша Организация не уполномочена обсуждать и принимать какие-либо решения в этой связи.

Отдельно хотели бы отметить и обратить внимание на вопиющий сюжет с предложением оценки прямых и косвенных последствий российских действий (параграф 26.3 рассматриваемого документа). Не только этот Комитет, но и сама Организация в целом не обладает полномочиями ни принимать подобные политически мотивированные решения, ни даже их рассматривать. Чтобы не быть голословными, напомним, что Статья 33 Конвенции об ИМО уполномочивает Юридический Комитет ИМО заниматься «любыми правовыми вопросами». Данный же вопрос является не правовым, а сугубо политическим, лежащим далеко вне компетенции ИМО. Кроме того, данная задача (действие, которое запрашивается от Комитета) не поручалась Комитету ни Ассамблеей, ни Советом, а также не была возложена на него иным международным документом и признана Организацией ( Это цитата Статьи 33(b) Конвенции об ИМО).

В этой связи госпожа Председатель мы бы хотели четко зафиксировать и отразить в отчете этой сессии, что наш Комитет сам по себе не обладает полномочиями ни инициировать рассмотрение данного вопроса, ни тем более выносить по нему какие-либо суждения.

We would like to start with the procedural aspect. In this regard, it should be noted that the document LEG 110/5(a)/1 under consideration was published by the Secretariat on IMODOCS after the deadline for submission of commenting documents. We have repeatedly drawn the attention of the Secretariat and are doing it again to the need to strictly observe the rules and methods of work of the Committee; otherwise the question arises of the necessity and expediency of these rules.

Further, we would like to thank the Secretariat, represented by the Director of the Legal Department, for providing updated information on the implementation of the Black Sea Grain Initiative. We would like to reiterate that our country remains committed to the speedy departure of all civilian vessels that do not fall under the Black Sea Grain Initiative and remain blocked in the Black Sea ports of Ukraine and the return of all crew members home. However, in a situation where these vessels continue to be held by Ukraine in their Black Sea ports as human shields, this cannot be done.

Further, Madam Chair, on all the accusations against us in the Ukrainian document (LEG 110/5/(a)/1), we have repeatedly spoken and provided detailed answers. At the same time, unfortunately, we are forced to state that the manipulation of facts and the setting of many subjects upside down continue and, moreover, are intensifying. We constantly see a growing number of documents and speeches on purely political issues that our Organization is not authorized to discuss and take any decisions in this regard.

Separately, we would like to note and draw attention to the blatant point with a proposal to assess the direct and indirect consequences of Russian actions (paragraph 26.3 of the document under consideration). Not only this Committee, but the Organization itself as a whole does not have the power to make such politically motivated decisions, or even to consider them. In order not to be unfounded, we recall that Article 33 of the IMO Convention authorizes the IMO Legal Committee to deal with "any legal matters". This issue is not legal, but purely political, lying far beyond the competence of the IMO. In addition, this task (an action that is requested from the Committee) was not assigned to the Committee by either the Assembly or the Council, nor was it assigned to it by or under any other international instrument and accepted by the Organization (This is a quote from Article 33(b) of the IMO Convention).

In this regard, Madam Chair, we would like to clearly record and reflect in the report of this session that our Committee itself does not have the authority to either initiate consideration of this issue, much less make any judgments on it.

## **AGENDA ITEM 11**

### **Statement by the delegation of Argentina**

Gracias señora Presidente,

Mi delegación agradece los documentos y a los presidentes del Grupo de Trabajo y por correspondencia que abordan este tema.

Quisiera hacer referencia a algunos aspectos que entendemos importantes, en particular a la luz de la forma expedita en que algunas delegaciones sugieren abordar la cuestión de los MASS.

El documento 11/2 sugiere que habrá una tripulación fuera del buque y también hace referencia a la cuestión de la responsabilidad. Sobre estos dos aspectos deseamos hacer algunos comentarios:

1. Sobre la responsabilidad o liability:

Creemos que es un aspecto crítico respecto del cual los niveles de autonomía deberían generar matices. El documento 11/2 sugiere que no hay aspectos a ser abordados, pero la Argentina entiende que la responsabilidad es importante, y amerita considerar la posibilidad de una responsabilidad objetiva, o strict liability para los niveles de autonomía total, 3 y 4.

2. El derecho del mar

El segundo tema también creemos es crítico y relacionado con la tripulación, y va más allá de lo indicado en los documentos presentados. Es el rol del derecho del mar, que es el marco de todas las normas de la OMI, y sobre el cual mi delegación ha venido haciendo hincapié.

La cuestión más saliente respecto de la convención del mar es si una nave de los niveles 3 y 4 goza de las libertades previstas en la convención del mar (UNCLOS), en particular la libertad de navegación. La regla de la referencia (rule of reference) de la Convención (UNCLOS), que el documento 11/3 menciona, indica que la OMI, como organización competente, determina los estándares técnicos para la aplicación de la Convención. No compartimos sus conclusiones respecto de las implicancias en el derecho del mar.

Por ejemplo, quisiera precisar que, si bien existe la regla de la referencia, cuando la Convención (UNCLOS) en algún aspecto no prevé una regla de referencia a la OMI, las Partes en la Convención del Mar son las únicas que pueden interpretarlo. El requisito de la tripulación no es un aspecto en que la Convención del Mar haya determinado que puede ser interpretado o determinado por la OMI. Qué buques gozan de libertad de navegación tampoco.

Otro aspecto saliente es cómo estos niveles 3 y 4 cumplen con ciertas obligaciones, incluida la participación en búsqueda y salvamento que está prevista en la Convención del mar y también en convenios de la OMI.

Más allá de que creemos que las interpretaciones ofrecidas en el documento 3 son no son imparciales, quisiera abordar las acciones previstas en su párrafo 25:

1. no temenos objeciones a que se haga un muestreo (overview) comprensivo de las normas de la Convención del mar respecto de MASS, con la observación de que la expresión "implicancias" no puede conllevar una interpretación de la Convención, porque ésta sólo puede ser hecha por sus Partes. Por ello, volvemos a recomendar este tema debería ser abordado por la Reunión de las Partes en la Convención del mar.

(.1 conduct, in consultation with DOALOS, a new comprehensive overview on the implications of UNCLOS for IMO with a view to updating LEG/MISC.8 accordingly in light of the development of the MASS Code;)

2. Creemos que la propuesta del párrafo 2 es prematura así como está presentada, aunque no tendríamos objeciones en que se dijera que las definiciones "should be carefully analyzed" más que "drafted", puesto que ello permite la debida consideración, incluso a la luz del documento que solicita el párrafo 1;

3. Creemos que la sugerencia del párrafo 3 es prematura, atento las implicancias conforme la Convención del Mar aun no están abordadas, y esta sugerencia presume que no las hay.

"The Code is required to conform to generally accepted international regulations,<sup>4</sup> procedures and practices developed by the International Maritime Organization (IMO) as the competent international organization for global shipping and to take any steps which may be necessary to secure their observance."; and)

4. No tenemos objeciones respecto del establecimiento de un WG sobre MASS, aunque entendemos la propuesta para la próxima sesión.

Señora, la conformidad con la Convención (UNCLOS ) debería ser más importante de lo que los Miembros de la OMI parecen inclinados a reconocer, al menos hasta ahora. Y es en este sentido en que deseo reiterar que la Argentina se reserva el derecho de regular el ingreso de MASS a sus aguas jurisdiccionales y está trabajando en legislación al respecto.

Muchas gracias.

## **AGENDA ITEM 12**

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

Thank you, Chair,

On document LEG 110/12/2, Japan would like to thank the Secretariat for providing the update on this important matter. (As XXX just commented, ) Japan expects that the recommendation from the UN Expert Panel being duly implemented[, and therefore supports the suggestion in para 15].

Besides, this Delegation would like to draw serious attention of this LEG Committee to the ballistic missile launches repeated again by North Korea, early this week.

Japan strongly condemns repeated launches of ballistic missiles by North Korea. These missile launches are in violation of the UN Security Council Resolutions and constitute a threat to the peace and security of Japan, the region and the international community.

Furthermore, these repeated missile launches were conducted without any prior notification. This is against the provisions of SOLAS Convention and the associated Assembly Resolution on navigational warnings, and endangers the safety of shipping. Such a reckless act is totally unacceptable, and Japan recalls that the Council 128th Session also made a decision concerning on this matter.

Japan continues to work closely with the IMO and relevant countries to require North Korea to fully implement the relevant UN Security Council Resolutions and comply with relevant IMO Convention and IMO Assembly Resolution.

Finally, I would like to kindly ask the Chair to attach our statement to the final report.

Thank you.

### **Statement by the delegation of Sweden**

Chair,

Sweden thanks the Secretariat for the presentation of this document. Sweden takes note of the concerns expressed by the delegations of the Republic of Korea and Japan.

We are following closely the very worrying developments on the Korean Peninsula. As the UN Security Council has previously declared, the Democratic People's Republic of Korea's nuclear weapons and missile programme constitute a threat to regional and international peace and security and the safety of navigation. The tests of ballistic missiles constitute a breach of several UN Security Council resolutions and further increase tensions in the region.

We would like to commend the work of the UN Panel of Experts, whose oversight of relevant sanctions measures, including incidents of non-compliance, and recommendations to improve implementation of the measures imposed, are valuable contributions to the international community.

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

Thank you.

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

Thank you, Madam Chair,

Good afternoon, distinguished delegates,

**Firstly**, regarding the prior notice of missile launches, it does not reflect the reality of the Korean peninsula which is technically at war.

Furthermore, our missile launches have never posed any danger to the safety of international shipping and the security of our neighbouring countries and region.

The DPR Korea's missile launches are the justified exercises of the right to self-defense in order to defend the destiny of the country and the life of our people in response to the military threats by the United States and others.

It is well known that in 1950 during the Korean War, the United States openly stated that it would drop atomic bombs on the area of the DPR Korea.

Since then, the United States together with south Korea and Japan have been continuing its nuclear and military threats against the DPR Korea by conducting large scale joint military exercises with nuclear strategic strike means over tens of thousands times in and around Korean Peninsula for 70 years.

From the beginning of this year, the DPR Korean people have been struggling to achieve fresh development and progress in its economic construction and improvement of their living standards.

For ensuring the peaceful circumstances for this, the DPR Korea have already warned several times that the U.S. and south Korea should withdraw their plans of the joint aggressive military exercises and stop escalating military tensions on the Korean peninsula.

However, following the threatening declaration of the U.S. Secretary of defence on 31 January, the United States has been conducting several joint military exercises with south Korea against the DPR Korea, including the combined air drills with B-1B, B-52H strategic bombers and other war planes, escalating the military tensions of Korean Peninsula.

In March as well, the United States and south Korea staged the large scale joint military exercises "Freedom Shield" from 13 March for 11 days and, even at this time, they are conducting the "Ssangryong" combined landing drill aimed at "end of regime", "decapitation" and "occupation of Pyongyang" with nuclear powered aircraft carrier "Nimitz" and other several warships from 20 March.

Such military tension by the U.S. and south Korea on the Korean peninsula, could accidentally bring about a war, which will result in the serious impact not only on security of the Korean peninsula and region, but also on safety of international shipping.

In fact, the missile launches are also the measures for ensuring the military balance in the region and preventing the outbreak of a new war on the Korean peninsula by strengthening its national defense capability.

In this context, the DPR Korea takes this opportunity to condemn the United States and south Korea in the strongest possible terms, and urges them to stop their on-going joint aggressive military exercises against the DPR Korea, which are the greatest potential danger to the safety of international shipping in Korean peninsula waters.

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

As you know well, in any international laws including the UN Charter, UN General Assembly resolutions, NPT, Outer Space Treaty, there is no provision which stipulates that nuclear test or satellite and ballistic missile launches constitute a threat to international peace and security.

Furthermore, although the permanent member states of the UN Security Council including the United States, conducted nuclear tests more than 2,000 times, launched over 7,000 satellites and still undertake intercontinental ballistic missile launch tests almost every day, any relevant UN Security Council resolution against those States have never been adopted.

Madam Chair,

From the aforementioned, the DPR Korea totally rejects the previous interventions.

Finally, this delegation reiterates that this forum is not appropriate for discussing such political and military issue which goes beyond the mandate of the IMO.

Thank you, Madam Chair

### **Statement by the delegation of Germany**

Thank you for giving us the floor, Madam Chair.  
And: Good day to all.

Germany strongly condemns the illegal launch by DPRK of intercontinental ballistic missiles over the recent period. The unlawful missile launches continuously violate the relevant United Nations Security Council resolutions and pose a clear danger to the peace and security in the region and worldwide as well as to the safety of shipping in international trade.

Germany calls upon the DPRK to immediately comply with United Nations Security Council resolutions and with the relevant regulations of the SOLAS convention and respective circulars. Furthermore, Germany expresses its full solidarity with the Republic of Korea and Japan and urges the DPRK to cease its aggressive and destabilising actions, to respect international law and to resume dialogue with relevant partners.

In this regard, we align ourselves with the statements made by the Republic of Korea, Japan and others.

Madam Chair, we would like our statement to be attached in the final report of this committee.

Thank you very much!

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

Thank you Chair.

The United States fully aligns with the statement of the distinguished delegations of Japan and the Republic of Korea. We strongly condemn the repeated launches of missiles by the DPRK which are in violation of UN Security Council Resolutions. They are in contravention of IMO General Assembly Resolution A.706 (17) which provides for Member States to give notice of incidents which might affect the safety of navigation, including the launch of missiles, so that navigational warning and maritime safety information may be transmitted to the ships in the sea area concerned.

This unannounced missile launch could have resulted in maritime vessels unwittingly entering into the impact area after the missile was already in flight – a clear demonstration of just how reckless the DPRK's recent behavior has been.

North Korea's unannounced missile launches constitute a threat to the peace and security of the region and to the freedom and safety of navigation. These actions not only pose a threat to our collective security but also present a challenge to the rules-based international order that we have worked so hard for decades to build and maintain.

The United States condemns these wanton acts by the DPRK and commits to continue its work with others to implement the international regime to its fullest extent.

We ask that this statement be appended to the report of this committee.

Thank you, Chair.

**Statement by the delegation of Canada**

Canada fully aligns with the statement of Japan, France and others and strongly condemns the repeated launches of ballistic missiles by the Democratic People's Republic of Korea, which are in violation of the UN Security Council Resolutions. Furthermore, these repeated missile launches were conducted without any prior notification, in violation of the SOLAS Convention and the associated Resolutions. These actions constitute a clear threat to the peace and security of the region and the international community.

We join other delegations in calling on the DPRK to fully implement the relevant UN Security Council Resolutions and comply with relevant IMO Conventions and Resolutions.

Thank you Chair.

**Statement by the delegation of Ukraine**

Madam Chair,

Ukraine would like to align with the statements of the RoK, Japan, Sweden and other delegations in expressing serious concerns regarding the reckless launches of ballistic missiles by the DPRK and the threat that they pose to regional and international peace and security as well as to the safety of international shipping.

These actions are a clear breach of the UNSC resolutions and relevant IMO instruments and decisions. We urge the DPRK to refrain from further provocative and dangerous actions and adhere to the mentioned UNSC decisions.

We appreciate the work done by UN Panel of Experts on this topic and second its recommendations.

I thank you, Madam Chair.

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

Thank you, Madam Chair,

Good morning, distinguished delegates,

Regarding document LEG 110/12/2, the DPR Korea would like to make intervention about the unreasonableness of consideration on the report of Panel of Experts, as mentioned in the document.

Firstly, it is not appropriate to consider the report at the IMO, in terms of the purpose of its distribution in the UN and the outcome of its discussion on the report.

As explained in the document and the report of Panel, two days after the consideration of the report at the Security Council Committee on 23 February 2022, the Security Council circulated it to the members of the Security Council as document S/2022/132 for their consideration on 1st March 2022, before the 9004<sup>th</sup> Security Council meeting on 25 March.

However, as you can see in the report of Security Council Committee S/2022/1001 and the Security Council Resolution S/RES/2627, the Security Council and its Committee have neither approved the Report of Panel nor decided about any implementation of the recommendations as mentioned in the Report.



That means, the Report of the Panel is only the document for information of the Security Council and its members, and therefore, there is no needs and obligations for the IMO and its Member States to consider the Report of Panel and implement its recommendations.

In other words, it is natural that without the relevant decision on the report by UN Security Council, any recommendation in the report of Panel itself has no effect for other UN agencies and Member States.

Meanwhile, the document LEG 110/12/2 explains only about the Panel of Experts and its recommendations in detail, but did not mention the reason why the IMO should consider the recommendations in the report.

And also, it is reminded that in a history of the IMO Council, the Council has never considered any document like the Report of Panel of Experts, rather than UN General Assembly Resolutions and UN Security Council Resolutions as we have already intervened during that discussion at the 127th session of the Council.

Secondly, the consideration of the report of Panel was unreasonably proposed by the United States at the 127th session of the IMO Council, under its political purpose against the DPR Korea, rather than the purpose and function of the IMO stipulated in Article 1 and 2 of the IMO Convention.

The proposal of the United States at the Council meeting is a clear example showing the sinister intention of the United States to use the IMO forum for realization of its hostile policy against the DPR Korea.

In this context, the DPR Korea reiterates that such political intention should not be allowed at the IMO forum, in terms of not only the mandate of the IMO, but also preventing the waste of the human and financial resources on unnecessary and unreasonable matters within IMO.

Thirdly, with regard to implementation of the UN Security Council Resolution against the DPR Korea as mentioned in the document, we have never acknowledged the partial and illegal "resolution" which had been cooked up by the United States by abusing the UN Security Council.

From the aforementioned, the DPR Korea totally objects to the document, and we propose the Committee to suggest the Council to reconsider the paragraph 14(a).2.2 of C 127/D which is related to consideration of report of Panel.

Finally, this delegation would like to take this opportunity to underline the importance of Secretariat's responsibility and role in maintaining fairness, impartiality and objectivity in the IMO.

Thank you, Madam Chair,

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

Thank you Madam Chair,

The United States thanks the Secretariat for this submission. The United States supports the recommendation that the Secretariat work with S&P Global to modify the IMO GISIS module on Ship and Company Particulars to include information on the certificate of registration of a ship, indicating whether such registration is permanent or provisional, along with the relevant dates of expiration.

Such an inclusion in the GISIS module would assist in determining whether certain ships were improperly taking advantage of provisional registrations to circumvent sanctionable activities, commonly known as “flag hopping.”

We ask our statement be appended to the final report of the Committee.

Thank you Chair.

#### **AGENDA ITEM 14**

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

Thank you Chair,

This delegation is pleased to inform you and the distinguished delegates that, on 27th of March, the Government of Japan deposited our instrument of accession to the Cape Town Agreement of 2012 for the Safety of Fishing Vessels, and has now become a contracting party to the Agreement.

Together with the depository, Japan also made a notification to the Secretary-General of IMO that, the number of Japanese fishing vessels of 24m in length or over operating on the high seas is 554.

Japan, as a maritime nation, is fully committed to the safety of fishing vessels, through robust and consistent implementation of this important Agreement, which is essential for sustainability of fishing.

Therefore, this delegation looks forward to smooth and early entry into force of the Agreement, and expects more numbers of parties to be the contracting parties.

We kindly ask you to attach our statement to the final report.

Thank you.

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

Thank you, Madam Chair.

The delegation of Portugal welcomes Japan ratifying the Cape Town Agreement, putting this IMO instrument one step closer to enter into force.

This delegation would like to inform the Committee that as of February this year, Portugal concluded the internal ratification processes of the Cape Town Agreement and the Hong Kong Convention. We had the opportunity to make this announcement during the 8<sup>th</sup> session of the Sub-Committee on Ships Systems and Equipment.

Madam Chair,

This delegation has deposited the original instruments of accession in the margins of this Committee meeting.

Portugal would like to encourage other delegations to ratify both these important IMO instruments.

We kindly request that this intervention be reflected in the report of this Committee meeting.

I thank you.

## **AGENDA ITEM 17**

### **Statement by UNCTAD**

Good morning to everyone and congratulations to the chair and the vice-chair of the Committee on their re-election.

UNCTAD would like to briefly raise an issue regarding the IMO website for consideration by the Committee, more particularly public access to the text of IMO's legal instruments.

It seems that at present the texts of Conventions and of other legal instruments adopted under the auspices of the IMO, for which the Secretary-General is the depositary, are not available to the public on the IMO's website, with one or two exceptions, or to registered public users of IMODOCS and the GISIS module.

We believe that ensuring and facilitating access by members of the public to the text of legal instruments which may affect their rights and obligations is important, also with a view to promoting the effective observance, application and implementation of relevant legal instruments, in accordance with their objectives.

As delegations will be aware, this is also reflected in Art. 102 of the UN Charter which envisages publication of treaties and other international agreements by the United Nations, as well as in some other legal instruments, such as the *Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters* and the corresponding EC REGULATION 1367/2006.

We would therefore like to suggest to the Legal Committee to request the secretariat to please include the text of all IMO legal instruments and amendments on the public website and enable registered public users of IMODOCS to access the *Treaties* section that is already available to Members States and administrations, as well as to IGOs and NGOS.

Thank you.

### **Statement by CMI**

Madam Chair – thank you

Distinguished delegates, you have before you a paper submitted by CMI and the United Nations Office of Legal Affairs which explains the background, the need for, the work undertaken and, the adoption of the Convention on the international effects of judicial sales of ships by the General Assembly of the United Nations.

This committee may recall that after it had decided to pass, on the CMI Beijing Draft Convention on Judicial sales of ships, the CMI took the project to UNCITRAL. After having organised a successful Colloquium in Malta in 2018 attended by a cross section of the entire international maritime community resulting in overwhelming support for the convention, UNCITRAL accepted to work on the CMI draft as per the proposal of the Swiss Government. Work started in earnest in December 2019. Working group V1 under the expert chairmanship of Prof. Beate Czerwenka and the guidance of Mr. Jose Angelo Estrella Faria Principal Legal Officer and Head, Legislative Branch International Trade Law Division, Office of legal affairs United Nations, completed its task and approved a final draft after 6 sessions. This led to its adoption by the General Assembly of the United Nations on the 7th of December 2022.

What this Convention seeks to address are several real life challenges which include the following:

- .1 There have been instances when purchasers of vessels in judicial sales free and unencumbered have had their ships wrongly arrested by the vessel's previous creditors.
- .2 Instances when registrars of the ships sold have been unable to delete the vessel's pre-sale registration.
- .3 Instances when registrars of ships have had difficulties transferring the registered ownership to the new owners when the new owners wish to retain the flag.
- .4 Instances when financiers of vessels purchased free and unencumbered in judicial sales have been unable to obtain the deletion of old mortgages or register their new ones.

It is only by seeking to find solutions to these challenges that ships will obtain the best price in judicial sales which in turn will present the best opportunity and chance for creditors of those vessels to have their debts and claims paid.

It is only when these challenges are eliminated that ships can be sold efficiently with confidence ending very usually, months and months of despair for crew left languishing on such vessels.

All of these situations lead to hardship uncertainty and costly disruption to the chain of international trade and international shipping responsible for the carriage of over 90% of world trade.

These scenarios are not the figment of the imagination of maritime lawyers. There have been numerous cases. Only this year in January 2023 the Maltese Court of Appeal confirmed a first court judgement, declaring the arrest of the vessel Bright Star in Malta by an old creditor of the vessel which had been sold in a judicial sale free and unencumbered in Jamaica, as illegal. This ship had been purchased free and unencumbered by Greek owners for 10 million dollars in a perfectly legitimate and transparent judicial sale in Jamaica. Six months later the vessel was arrested by a previous creditor of the vessel who had himself arrested the ship in Jamaica leading to its judicial sale, and for whom the sum of 3 million dollars later reduced to one million had been reserved for him by the Jamaican court. This arrest in Malta was clearly illegal and clearly intended to put illegitimate pressure on the new bona fide owner, in the hope that he would just pay up.

The vessel was at the time under charter carrying a full cargo of wheat from Kavkas to Venezuela leading to a suspension of the charter and delays in the delivery of the cargo. The owners had to put up security in cash to release the ship and had to go through the motions of commencing a full blown action for the return of the security claiming damages for an illegal arrest. This involved no less than 75 proceedings and took 3 years to be finally decided by the Court of appeal. In the meantime the financiers were hugely concerned with the resurrection of an old mortgagee making such a claim. The expenses in fighting a 3 year battle were substantial not to speak of the time expended by the owners and their club, Steamship Mutual, in managing the claim and fighting the case. This occurrence seriously interfered with the owners right to enjoy his vessel after the purchase of the ship in a judicial sale. It was wrong and unnecessary and it is precisely this situation which this Convention seeks to avoid.

The Convention ladies and gentlemen has 23 articles and its raison d'être is contained in article 6 which states:

***"A judicial sale for which a certificate of judicial sale referred to in article 5 has been issued shall have the effect in every other State party of conferring clean title to the ship on the purchaser."***

Article 4 provides for the service of the notice of judicial sale on a number of parties, and article 5 provides for the provision of a certificate of judicial sale evidencing that the vessel was sold free and unencumbered. Article 7 provides that registrars of ships must delete ships and mortgages if requested to do so on production of the certificate of judicial sale and vessels cannot be rearrested by previous creditors if the owner provides a certificate of judicial sale.

At this juncture I would like to thank this Legal Committee – which in December 2020 agreed that the IMO would create a module on its GISIS platform to receive both the notices of judicial sale and the certificates of judicial sales. This has given many a degree of comfort in knowing that anyone can at the push of a button find out if a vessel is about to be sold in a judicial sale or whether or not a vessel has indeed been sold. The IMO is in fact the Repository under article 11 of the Convention. Thank you, IMO.

The convention will come into force after ratification by 3 member states.

We believe that this convention will provide certainty to ship purchasers and their financiers and instil confidence in the judicial sales market leading to better prices increasing the pot for distributions amongst creditors.

It is a win win situation. The CMI encourages states to ratify the convention after the signing ceremony is held in Beijing later on this year. The CMI would like to extend its offer to assist all state administrations who may wish to know more about the convention and its implementation. In fact we are currently involved in organising or participating in a number of road shows precisely for this purpose. One such symposium organised by the CMI, the Ministry of Foreign Affairs in Malta and UNCITRAL will be held in Malta on April 26<sup>th</sup>. I would like to thank the Director, Mr. Fred Kenney for his much appreciated assistance and co-operation during the past 4 years and for accepting to attend this symposium to explain how the IMO repository system will work.

In conclusion the CMI would like to respectfully invite you distinguished delegates, to seriously consider recommending the ratification of this convention to your governments, a Convention which enhances and strengthens properly held and transparent judicial sales in your jurisdictions, instils confidence in such judicial sales and ensures certainty in international maritime trade.

Thank you.

## **CLOSING REMARKS**

### **Statement from the delegation of Argentina**

The delegation of Argentina expressed the appreciation of its country for years of cooperation with Director Kenney, and highlighted his permanent disposition to dialogue with Member States. It wished Frederick Kenney best wishes in his future endeavours and the hope to meet him in the maritime academic environment.

#### **Statement from the delegation of Canada**

Canada would like to recognize Fred's contributions over the many years that he has led our work. His contributions have helped us advance on real issues that affect real people. But what we will remember the most about Fred is his friendly, warm and approachable nature. He is a good friend and we will miss him dearly. All the best to you Fred in this next chapter and know that you are always welcome to watch a hockey game with us anytime.

#### **Statement from the delegation of France**

A l'instar des nombreuses autres délégations qui ont pris la parole, la délégation de la France souhaite exprimer sa vive reconnaissance à M. Frederick Kenney pour le travail monumental qu'il a accompli au cours de presque dix années au poste de directeur de la division des affaires juridiques et des relations extérieures de l'OMI. Au cours de la période la plus récente, en particulier, l'aboutissement de la procédure d'amendement à la convention de l'OMI s'agissant du Conseil, doit être salué.

Sur une note plus personnelle, ayant été relativement récemment introduite dans le monde de l'OMI, je lui suis particulièrement reconnaissante de son aide toujours bienveillante pour répondre aux questions posée par les services juridiques français sur les dossiers les plus variés.

Au nom de toute l'équipe de la représentation permanente de la France auprès de l'OMI, je lui adresse donc des sincères remerciements, et lui souhaite le meilleur pour les années qui viennent.

#### **Statement from the delegation of Georgia**

Much has been said about you, if I may call you by your first name, dear Fred. First and foremost, I want to thank you as a friend and then as a colleague. You have been a significant supporter of member States, not just by supporting us, but also by advising us in difficult times. Through our relationship and cooperative effort, your personal link to Georgia in the establishment of first ever Georgian coast guard in the early 1990s, was rekindled at IMO. Dear Fred, Georgia will always welcome you as a loyal friend and ally.

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

This means a lot to me. I'll call him Admiral Kenney because that is always what he has been to me. He has always been a mentor to me, and I wouldn't be here right now if it weren't for his interventions throughout my career. As a fellow Red Sox fan, that's a baseball team in Boston, Massachusetts, and I know Admiral Kenney is a big fan as I am, Ted Williams once said "No one has come up with a substitute for hard work." Director Kenney you have personified that quote throughout your life of service. To be succinct, on behalf of the U.S. delegation, well done, Sir. We are proud of you and the example you set for all of us. Thank you.

#### **Statement from P&I Clubs**

Thank you Chair and good afternoon everybody, and thank you for allowing this delegation to say a few words of thanks and appreciation to the Director, Fred, on the occasion of his last Legal Committee meeting and which I will do on behalf of the IG P&I, ICS, IUMI, ITF, CMI, BIMCO, Intertanko & OCIMF.

I'm sure that I'm one of a number of persons in this room who actually knew Fred in his previous life at the US Coast Guard, and Fred you may recall the times that you kindly received a delegation from the IG P&I Clubs at US CG HQs in Washington DC and that would involve discussions with you on the vagaries of Federal and State US oil pollution laws, amongst other matters.

Fred, it was a pleasure to work with you then and it has always been a pleasure to work with you in your role as Director here, and we have seen the dedication and commitment that you have devoted to the Organisation over many years and the significant contribution that you have made to the work of this Committee.

One of the joys of the job that we all do in international organisations such as this is meeting people who make a difference and who have a positive impact. Fred, you most definitely fall into that bracket. We also often say in our industry and in this line of work that the work is so diverse and interesting, and that the people are so genuine, that we never stop learning no matter how long we have been in our jobs, and that is also because of people like you, Fred.

You can be rightly proud of the many achievements of this Committee during your time as Director and which have been in no small part due to yourself and the team that you've led and which are, quite frankly, far too many to read out now.

So, we would like to extend our thanks and appreciation to you, Fred, for the relationships that you have continued to develop with industry during your time as Director and for your willingness to work closely together with us, and indeed with all delegations, for the clear benefit of this Organization and we wish you all the very best for your post IMO life, whatever that may be, albeit we sincerely hope that our paths will cross again in the not too distant future.

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