

The IMO Legal Affairs Committee held its 108th Session (LEG 108) remotely (using the Kudo platform) from 26 through 30 July 2021. Mr Volker Schofisch (GERMANY) chaired the meeting for a last time, having declared himself unavailable for re-election. He was assisted at the meeting by his Vice-Chair, Mrs Gillian Grant (CANADA), who subsequently was promoted to Chair for 2022 and who in turn, will be supported by Mr Ivane Abashidze (GEORGIA) as Vice-Chair.

Credentials were presented by 95 Member States for the meeting supported by a number of Associate Members and representatives from UN specialized agencies and other entities. In addition, Intergovernmental organisations and Non-governmental organisations were also present.

One working group (WG) and one drafting group (DG) were formed and chaired as follows:

WG1 MASS Scoping Exercise, Mrs G Grant (Canada): and,

DG1 Fraudulent Registration/Registries of Ships and Unified Interpretation on the Test for breaking Owner's right to Limited Liability, Ms C Tzalavra (Greece).

ADDRESS BY THE SECRETARY GENERAL. The Secretary-General, Mr Kitack Lim, welcomed delegates to the 108th session of the Legal Committee. He expressed sympathy for those countries affected by the recent floods in Europe and China, and the heatwave which caused wildfires in Europe and North America whilst noting that IMO continues its efforts to combat climate change.

Having congratulated Liberia on its national day, he went on to talk about his main priority, that of the well-being of more than 1.8 million seafarers working on board seagoing ships every day to deliver goods to populations around the world. Indeed, IMO's commitment is reflected in this year's World Maritime Theme: "Seafarers: at the core of shipping's future". He viewed seafarers as the silent heroes and collateral victims of the COVID-19 pandemic given that travel restrictions have left hundreds of thousands of them stranded on ships or unable to join ships.

Abandonment of seafarers is a growing problem and he regarded the huge spike in cases this year as being a major cause for concern particularly as many of the cases remain unresolved.

Given the Committee's agreement to develop a set of guidelines for port State authorities to deal with seafarer abandonment cases, he felt confident that these would provide a solid basis for the introduction of a unified procedure to speed up the process of repatriation and to improve port operations. Moreover, at its previous session, a new output was added under the work programme on "Fair treatment of seafarers detained on suspicion of committing maritime crimes".

The Secretary-General emphasized that IMO, in concert with UN sister organisations and industry partners, continues to urge Member States to recognize seafarers as "key" workers, and to prioritise their vaccination, thereby facilitating their safe movement across borders. He thanked the 60 Member States and two Associate Members who have already awarded such status to seafarers but implored more Member States to follow suit.

Another important topic to be addressed by the Committee is that of unlawful practices associated with the fraudulent registration and fraudulent registries of ships, which threaten the operation of legitimate registries and pose a serious risk to the whole industry. Indeed, fraudulent registration is a threat to the entire IMO regulatory system. Having developed a resolution on this issue that was adopted at the 31st session of the Assembly, it is expected that a further draft Assembly resolution will be finalised at this session; it will encourage Member States and all relevant stakeholders to promote actions for the prevention and suppression of fraudulent registration and fraudulent

registries and other fraudulent acts in the maritime sector. In this regard, he was encouraged by the number of States that have reported information regarding their registries via the new GISIS module and urged other Member States to follow suit.

Due to time constraints, no progress was made on Maritime Autonomous Surface Ships (MASS), thus the aim at this session will be to finalise the regulatory scoping exercise of conventions emanating from the Legal Committee for the use of MASS.

Turning to the ratification and implementation of the 2010 HNS Convention, he felt encouraged at the progress made by many Member States towards ratifying the HNS Convention but hoped that others would also consider ratification, thus bringing into force this important treaty in order to effectively handle incidents involving hazardous and noxious substances.

Concluding, the Secretary-General gave his best wishes to all delegates for a productive session.

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.

It was recalled that at its previous sessions, the Committee had expressed its strong commitment to preserving the rights of seafarers in cases of abandonment and noted that providing accurate information to the joint IMO/ILO joint database is not only the responsibility of the flag State, but also that of the port State and other parties involved. Following on from that, the Committee considered document LEG 108/4(a) by the ILO and IMO Secretariats reporting on the abandonment database featuring all cases reported after 1 January 2004 that were recorded and that in 2019, the total number of reported cases was 40, of which 20 cases had so far been resolved.

The Committee was also informed that from 1 January 2020 to 1 April 2021, a total number of 111 new cases had been reported, with 85 cases in 2020 and 26 cases in the first quarter of 2021. As of 23 July 2021, this spike of 111 new cases leaves 68 of them to be resolved.

Approximately 18 of the cases reported since 1 January 2021 were related to consequences of COVID-19, further exacerbating the crew change situation of seafarers. In the three months leading up to LEG 108, a further 27 cases have been reported bringing this year's total of new cases up to 53, thus alarmingly surpassing the previous year's record of reported abandonment cases.

A document submitted by the ITF, revealed that for the period 1 January to 31 December 2020, 851 seafarers were abandoned on 53 vessels, and that in total, 85 cases of abandonment were reported, involving over 1,300 seafarers.

In the ensuing debate, many views were expressed following which the Committee:

- Encouraged discussion relating to a solution of the repatriation problem of abandoned seafarers;
- Reminded Member States of resolution A.930(22) on *Guidelines in the provision of financial security in the case of abandonment of seafarers* and of the work of the Joint IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation Regarding Claims for Death, Personal Injury and Abandonment of Seafarers;
- Encouraged Member States to report incidents of abandonment to the database when they occur in their ports or on vessels flying their flag;
- Encouraged Member States to further ratify and effectively implement MLC 2006;

- Reminded Member States of the *Recommended framework of protocols for ensuring safe ship crew changes and travel during the coronavirus (COVID-19) pandemic*;
- Reminded Member States of resolution A/75/17 of the UN General Assembly, adopted on 1 December 2020 on International Cooperation to address challenges faced by seafarers as a result of the COVID-19 pandemic to support global supply chains;
- Promoted to Member States the recently published tool-kit, Maritime Human rights Risks and the COVID-19 Crew Change Crisis, a joint initiative of the United Nations Global Compact (UNGC), the Office of the High Commissioner for Human Rights (UN Human Rights), ILO and IMO; and,
- Encouraged Member States to assist with the crew change crisis and noted that the issue, which is of great concern, needs to be dealt with because of the rising number of abandonment cases.

Fair treatment of Seafarers in the event of a maritime accident.

The Committee noted the information set out in document LEG 108/4(b) by ITF on an analysis of the fair treatment of seafarers in the event of a maritime accident, including the development of cooperation on such fair treatment.

Fair treatment of Seafarers detained on suspicion of committing maritime crimes.

There were no documents submitted under this sub-item, however the Secretariat and the ILO representative provided the Committee with an oral update on the formation of the Joint ILO-IMO Working Group in connection with the next sub-item.

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

The Committee recalled including a new output on this matter with a target completion year of 2022. Also, as a matter of urgency, it had agreed to request the Special Tripartite Committee (STC) of MLC, 2006 of ILO, to authorize establishment of an ILO-IMO tripartite working group to identify and address seafarers' issues and the human element. This will need to be endorsed by the ILO Governing Body during its next session.

ILO informed the Committee that at the Fourth Meeting of the STC of MLC, 2006 of ILO in April 2021, a proposal to establish the ILO-IMO tripartite Working Group was made by the IMO Secretariat which was generally positively received. There was firm support for work on the two issues identified in the IMO proposal, namely, fair treatment of seafarers detained on suspicion of committing maritime crimes and guidelines on how to deal with seafarer abandonment cases. A draft resolution will be drawn up between the two Secretariats and once finalised and approved unanimously by the Officers of the STC, it will be communicated to STC members for possible adoption by correspondence by consensus. This will then be included in the STC Chairperson's report and submitted to the 343rd session of the ILO Governing Body for consideration and decision at its next meeting in November 2021.

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

The Committee considered document LEG 108/4(d) by China, Philippines and Indonesia proposing the establishment of a working group to develop guidelines for port State and flag State on how to deal with this matter. In particular, it was noted that the annex to the paper contained a preliminary outline of proposed guidelines for consideration by the working group, if established. A lengthy, in-depth discussion ensued following which the Committee agreed:

- To recommend to the ILO Governing Body, approval of the formation of the joint IMO-ILO working group at its 343rd session; and,
- To invite Member States to submit proposals for a new output regarding the establishment of a Seafarers Emergency Mutual Fund to LEG 109 for consideration.

Establishment of an intersessional Correspondence Group (CG).

The Committee also agreed to establish an intersessional CG, under the coordination of Indonesia, to further progress the work on the output on Guidelines for port State and flag State authorities on how to deal with seafarer abandonment cases and to further develop practical guidelines using the proposal in document LEG 108/4(d) as the base document.

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

Review of insurance problems with non-IG insurers.

Document LEG 108/5 (IOPC Funds) provided an update on the problems encountered in some oil pollution incidents involving insurers who are not members of the International Group of Protection and Indemnity Associations (P & I Clubs). The report recommended measures and future tasks to be undertaken as well as a list of incidents involving non-P & I Clubs insurers with a brief description of the problems encountered.

In the discussion that followed, of note was the assertion that the problems with inadequate insurance are real and affect the effective implementation not only of the Civil Liability (CLC) and Fund Conventions, but the entire IMO civil liability regime, preventing victims of pollution damage from obtaining adequate insurance. Also, caution by Member States was urged when considering non-IG insurance providers as the inadequacy of insurance has an impact not only on the victims of oil pollution, but also on abandoned seafarers.

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

Document LEG 108/5/3 (Turkey) provided information regarding the boarding of a Turkish-flagged merchant vessel by a warship in which reference was made to articles 110 and 111 of the United Nations Convention on the Law of the Sea (UNCLOS), article 8bis of the SUA Convention and the UN Security Council resolution 2292 (2016), raising the question of the “consent of a flag State” before a boarding operation on the high seas.

In the ensuing discussion, comments were made that the SUA Convention explicitly excludes warships from its scope, the matter is a political issue and IMO is not the forum for its consideration, also, consent of the flag State should be obtained before boarding a ship on the high seas.

Comments made by Slovenia in document LEG 108/5/3 were duly noted.

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

The Committee recalled that at its last session, it had established a remote intersessional group to work by correspondence under the coordination of the United States.

Report of the Correspondence Group (CG).

The Committee noted that the Group had been able to produce definitions of fraudulent registration and fraudulent registry, but that some parts of the definitions remained in square brackets. It was also noted that the CG had agreed on the text of the draft resolution encouraging the prevention and suppression of such fraud and other fraudulent acts in the maritime sector. The resolution will be that of the Assembly as some of the operative paragraphs touch on matters falling within the purview of other IMO organs.

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

A total of six documents informed the tone of the debate: two by China (LEG 108/6/1 and 6/2); one by the UAE (LEG 108/6/3); two by the Secretariat (LEG 108/6/4 and /INF.5); and, one by the Democratic Republic of the Congo (LEG 108/6/5).

Proposed definitions of fraudulent registration and fraudulent registry.

There was broad support for the definitions as developed by the CG in document LEG 108/6 and agreement to delete the words “at the relevant time”. Support was also given to the proposal including a definition of “false documents” to complement the definitions developed by the CG. The Committee agreed to extend the target completion year of the output to 2022.

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

As already mentioned, there was broad support for the draft Assembly resolution developed by the CG contained in document LEG 108/6 with a few caveats such as moving paragraph 2 to the preamble and to include other minor amendments.

Establishment of a Drafting Group.

The Committee agreed with the proposal of the Chair to establish a Drafting Group (DG), taking into consideration the comments, proposals and decisions made in plenary in order to finalise the text of the draft Assembly resolution.

Report of the Drafting Group.

Having considered the DG report, the Committee approved the draft Assembly resolution on Encouragement of Member States and all relevant stakeholders to promote actions for the prevention and suppression of fraudulent registration and fraudulent registries and other fraudulent acts in the maritime sector, to be submitted to C/ES.34 [the Council in Extraordinary Session] and thereafter A32 for consideration and adoption. The resolution can be seen at Annex 1 to document LEG 108/WP.8.

Establishment of a remote intersessional group.

In view of the need to further consider a number of related issues and proposals, the Committee established a remote intersessional group under the coordination of the United States with appropriate terms of reference to further the work carried out at this session of the Committee.

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

This item had been postponed at the preceding session of LEG as a result of which fifteen reports submitted by volunteering Member States presenting the summary of the results of the regulatory scoping exercise (RSE) of the Legal Committee for each individual instrument that was reviewed, were given due consideration. Several further documents submitted to this session were also considered. The Committee noted the update by the Secretariat on the finalisation of the RSE for the use of MASS by MSC 103 in May 2021 and decisions taken regarding its future work on MASS (LEG 108/7). For its part, FAL 45 held in June 2021 decided to hold an intersessional WG on MASS to complete the RSE of the Convention on Facilitation of International Maritime Traffic (FAL Convention), the outcome of which will be considered by FAL 46 in May 2022.

The ensuing discussion focused on the way forward and a decision was made to finalise the LEG RSE at this session with agreement that, on conclusion of the current output on MASS, any further work by the Legal Committee has to be guided by proposals for new outputs. There was general support for the establishment of a joint FAL/LEG/MSC working group on MASS, to consider cross-cutting issues between the committees and to address any legal implications in the introduction of MASS, including under the UN Convention on the Law of the Sea (UNCLOS).

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

Establishment of the LEG Working Group on MASS.

The Committee re-established the LEG Working Group on MASS, and, in the interest of time, referred all other documents submitted under this agenda item, both of LEG 107 and LEG 108, to the WG for consideration. Comprehensive terms of reference were then issued to the WG in order to focus its work.

Report of the LEG Working Group on MASS.

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

- Approved the outcome of the RSE and gap analysis of conventions emanating from the Legal Committee with respect to MASS;
- Noted that, in general, MASS could be accommodated within the existing regulatory framework of LEG conventions without the need for major adjustments;
- Noted that coordination among the committees would be necessary moving forward, in particular regarding terminology and definitions;
- Invited Member States to submit proposals for a new output on MASS for those issues identified to be specific to LEG;
- Noted that conventions not under the auspices of IMO, such as UNCLOS and MLC, 2006, may need to be considered in IMO's future work on MASS, particularly if IMO develops an instrument regulating MASS operations; and,
- Endorsed the Group's recommendation that the outcome of the LEG RSE should be circulated through a LEG circular.

UNIFIED INTERPRETATION ON THE TEST FOR BREAKING THE OWNER'S RIGHT TO LIMIT LIABILITY UNDER THE IMOCONVENTIONS.

The Committee recalled that it had established a remote intersessional group to work by correspondence, with the option of meeting virtually, under the coordination of Georgia, instructing it to report to LEG 108.

Report of the Correspondence Group (CG).

The Committee noted that the Group had drafted the text of a resolution on interpretation of article 4 of the Convention on Limitation of Liability for Maritime Claims, 1976, article V(2) of the International Convention on Civil Liability for Oil Pollution Damage, 1992 and article 9 of the International Convention on Liability and Compensation for Damage in Connection With the Carriage of Hazardous and Noxious Substances by Sea, 2010, as contained in the annex of the CG's report, LEG 108/8.

Commenting on the CG's report the Secretariat argued that the States Parties to the different conventions should be the ones interpreting the test and the wording of the resolution should reflect this agreement among them. Further, while the forum for the adoption could be the Legal Committee or the Assembly, the resolution should be of, and by, the States Parties to the relevant conventions.

A long discussion followed in which many different views were expressed, most with a view to assisting the drafting group in their work.

With regard to the forum for the adoption of the Unified Interpretation on the test, a majority agreed that the Assembly was best suited and also, the wording of the resolutions should clearly reflect that the Unified Interpretation is an agreement of the State Parties to the relevant convention, present in the Assembly.

Establishment of a Drafting Group.

Having considered the above matters, the Committee agreed with the Chair's proposal to establish a virtual Drafting Group and tasked it to finalise the draft Unified Interpretation resolution based on text prepared by the CG for approval.

The Committee approved the report of the DG in general, and in particular, the draft resolutions on:

- Interpretation of article 4 of the Convention on Limitation of Liability for Maritime Claims, 1976, for submission to C/ES.34 and adoption by the States Parties to the Convention on Limitation of Liability for Maritime Claims, 1976, present at A 32;
- Interpretation of article 4 of the Convention on Limitation Of Liability for Maritime Claims, 1976, for submission to C/ES.34 and adoption by the States Parties to the Protocol of 1996 to Amend the Convention on Limitation of Liability for Maritime Claims, 1976, present at A 32; and,
- Interpretation of article 6 of the Protocol of 1992 to Amend the International Convention on Civil Liability for Oil Pollution Damage, 1969, amending article V(2) of the International Convention on Civil Liability for Oil Pollution Damage, 1969, for submission to C/ES.34 and adoption by the States Parties to the Protocol of 1992 to Amend the International Convention on Civil Liability for Oil Pollution Damage, 1969, present at A 32.

Piracy.

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

the Committee agreed that this item should remain on the agenda of the Legal Committee and that the Secretariat will continue reporting on legal developments related to piracy under the agenda item on Work of other IMO bodies, if appropriate.

WORK OF OTHER IMO BODIES.

Points of particular note on this item:

- In relation to document LEG 107/11, the Committee invited interested Member States and international organisations to submit proposals to LEG 109 on action 12 of the Action Plan to address marine plastic litter from ships (resolution MEPC.310(73)), concerning the most appropriate instrument to address the responsibility and liability for plastic consumer goods lost at sea from ships;
- TC 70 agreed to include a new item on the provisional agenda for TC 71 on “Long-term strategy for the review and reform of IMO’s technical cooperation”;
- MSC 103 approved in principle, the establishment of a standing joint ILO/IMO working group to identify and address seafarers’ issues and the human element;
- MSC 103 adopted resolution MSC.490(103) on *Recommended action to prioritise COVID-19 vaccination of seafarers* and requested the Secretariat to prepare a draft Assembly resolution consolidating issues related to crew change, access to medical care, “key worker” designation and vaccination to further highlight the relevance of these problems, for consideration at MSC 104; and,
- NCSR 8 re-established the Correspondence Group on Revision of the Guidelines on Places of Refuge for Ships in Need of Assistance (resolution A.949(23)) to, inter alia, consider what issues should be brought to the attention of MEPC and the Legal Committee.

TECHNICAL COOPERATION ACTIVITIES RELATED TO MARITIME LEGISLATION.

Following an approach to C 125 by LEG 106 inviting it to initiate a programme to develop certified true copies of consolidated texts of all IMO conventions to assist in their implementation into domestic legislation, the Council:

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

WORK PROGRAMME.

Proposals for new outputs

Two proposals were submitted:

- Development of measures to transparently assess whether there is a need to amend liability limits; and,
- Development of a Claims Manual for the International Convention on Civil Liability for Bunker Oil Pollution Damage.

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

Following an in-depth discussion concerning this proposal by Australia, the Committee agreed that it is an issue which needs to be addressed by the Legal Committee and expressed its general support for the proposed new output. Nevertheless, several reservations were expressed concerning the following issues:

- It will be potentially challenging to collect insurance data from insurers that are not members of the P & I Clubs;
- No methodology has been provided on how to determine currency fluctuations which can vary from year to year;
- Although stated in the proposal that the tacit amendment procedures in relevant conventions will be followed, it is unclear whether the proposal could lead to a regular review of liability limits, which would pose an undue burden on countries that would then have to change domestic legislation on a regular basis; and,
- There were concerns about aspects of the “polluter pays” principle, and the proposal should not intentionally result in tacit amendment of liability limits.

The Committee noted, with appreciation, that Australia would conduct informal intersessional work, taking into account the concerns that were raised and in conclusion agreed to:

- Include a new output on the development of measures to assess the need to amend liability limits in the 2022-2023 biennial agenda of the Legal Committee, with a target completion year of 2023;
- Invite concrete proposals to LEG 109 for consideration on the scope of the new output after detailed consideration of any proposed measures; and,
- Include the item in the provisional agenda for LEG 109.

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

Document LEG 108/13/1(Canada et al) was tabled proposing a new output on the development of a Claims Manual for the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001. Following an in-depth discussion, the Committee expressed its broad support for the inclusion of the new output on the development of such a Claims Manual, with the following comments:

- The existing IOPC Funds manual would be a good starting point for the development of a Claims Manual for the 2001 Bunkers Convention but should take into account the differences between the two liability regimes; and,
- The development of the Claims Manual for the 2001 Bunkers Convention would be very beneficial for claimants and would close the gap between other IMO conventions on liability and compensation.

In conclusion, the Committee agreed to:

- Include a new output under the work programme on the development of a Claims Manual for the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001, on the 2022-2023 biennial agenda, with a target completion year of 2023;
- Invite concrete proposals to LEG 109 on the scope of work on the new output; and,
- Include the item in the provisional agenda for LEG 109.

DATE OF NEXT MEETING.

The next meeting of the Legal Committee, LEG 109, has been tentatively scheduled to take place from 21 through 25 March 2022.

End

Captain Paddy McKnight