

IMO LEGAL AFFAIRS COMMITTEE (LEG 110), 27 – 31 MARCH 2023

The IMO Legal Affairs Committee held its 110th Session (LEG 110) in hybrid format from Monday 27th through Friday 31st March 2023. Mrs Gillian Grant (Canada) chaired the meeting assisted by her Vice-Chair, Mr Ivane Abashidze (Georgia), both of whom were re-elected for 2024. Credentials were presented for the meeting by 98 delegations supported by a number of Associate Members and representatives from UN specialised agencies and other entities. In addition, Intergovernmental and Non-Governmental organisations were also present.

Two working groups (WG) were formed and chaired as follows:

WG 1 Fair treatment of seafarers detained on suspicion of committing maritime crimes, Ms. Ana Marie L. Hernando (Philippines).

WG 2 Liability and compensation, Mr. Ivane Abashidze (Georgia).

WELCOMING ADDRESS BY THE SECRETARY-GENERAL. Mr Kitack Lim, the Secretary-General of IMO welcomed delegates to the 110th session of the IMO Legal Committee, the first in-person meeting of the Committee in four years. He reminded them that following the devastating earthquake in Türkiye and the Syrian Arab Republic and the ensuing tragic consequences, that an Appeal for Funds has been announced and a mechanism to facilitate donations set-up on behalf of the IMO family.

Mr Lim also expressed sympathy to all those countries and persons affected by the continued conflict in the area of the Black Sea and Sea of Azov. Over the past year, he has repeatedly emphasised that shipping, particularly seafarers, cannot be collateral victims in a larger political and military crisis, and hoped that there would soon be an end to the conflict. However, he welcomed the recent extension to the Black Sea Grain Initiative and assured all present that his efforts to free the ships not covered by the Initiative that are still trapped in Ukraine will continue.

As this will be the last time, in which to address this Committee as Secretary-General, he wished to use the opportunity to reiterate his commitment to topics related to seafarers. Indeed, the well-being of nearly two million seafarers working on board seagoing ships every day around the world continued to be his top priority.

Abandonment of seafarers remains a great concern to the Secretary-General and to the IMO Membership and concrete action must continue to be undertaken to protect seafarers, the silent heroes of the shipping industry. In this context, delegates will be invited to consider the outcome of the first meeting of the Joint ILO-IMO Tripartite Working Group to identify and address seafarers' issues and the human element which was held in Geneva last December. As a result, LEG will be invited to adopt a resolution containing revised guidelines on how to deal with seafarer abandonment and in addition, the very serious

matter of seafarers detained on suspicion of committing maritime crimes, the number of which cases are growing, will also be addressed.

Turning to unlawful practices associated with the fraudulent registration and fraudulent registries of ships, the session will continue the discussion on measures to prevent this dangerous phenomenon, together with instances of the fraudulent use of the IMO identification number scheme.

Over the decades, a robust and comprehensive liability and compensation regime which is well-established and effectively implemented has been developed but nevertheless, there is always room for improvement and the meeting will consider three pamphlets that will assist in the implementation and application of the regime, namely the Bunkers Convention, the Civil Liability Convention and the Wreck Removal Convention. Measures to assess the need to amend liability limits will also be looked at and he expressed confidence that a suitable compromise solution can be found.

An important part of the liability and compensation regime is the 2010 HNS Convention which will be further considered on how to facilitate the ratification and implementation of the treaty. In order to assist Governments in this process, a two-day workshop will be held next week [3 & 4 April] to promote the HNS Convention organised by Canada and the IMO and IOPC Funds Secretariat.

The issue of Maritime Autonomous Surface Ships (MASS) is also on the meeting agenda whilst a Joint MSC-LEG-FAL Working Group has been established to coordinate efforts in regulating Autonomous Ships.

Finally, following approval by the Maritime Safety Committee, the Legal Committee will be asked to approve the revised IMO Guidelines on Places of Refuge for Ships in Need of Assistance, following which the Guidelines will be forwarded to the 33rd session of the Assembly with a view to adoption.

Mr Lim ended his address by expressing his best wishes to all delegates for a productive session.

FACILITATION OF THE ENTRY INTO FORCE AND HARMONISED INTERPRETATION OF THE 2010 HNS PROTOCOL.

The Committee recalled that, with the entry into force of the Nairobi Wreck Removal Convention on 14 April 2015, the 2010 HNS Convention is now the remaining gap in the global framework of liability and compensation conventions. The Committee noted, with appreciation, that on 10 January 2022, Estonia deposited an instrument of accession to the Protocol, thereby bringing the number of Contracting States to six, that four of these Contracting States have more than 2 million units of gross tonnage each, and that the Secretariat verified the reported amounts of HNS contributing cargo received in all contracting States in 2021. The Committee also noted that the 2010 HNS Protocol needed

only six more ratifications with the required contributing cargo and thus the Convention is significantly closer to its entry into force.

The Committee further recalled that the progress of adopting national legislation in Belgium and the Kingdom of the Netherlands would allow those 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 is in the final stages of ratifying the 2010 HNS Protocol. It was noted that once the conditions for entry into force of the 2010 HNS Protocol are fulfilled, the Secretary-General of IMO will, in accordance with article 43 of the 2010 HNS Convention, convene the first Assembly of the HNS Fund.

During subsequent discussion, the most important view expressed was that the entry into force of the HNS Protocol is needed more than ever due to the change in transport of HNS substances in the context of climate change and the decarbonisation of the shipping sector. The need for different fuels such as ammonia, ethanol, bio-diesel and other new components that comprise alternative fuels is a paradigm shift that will also demand an appropriate liability and compensation regime.

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. The Committee recalled that, at 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.

The Committee considered document LEG 110/4(a) (ILO and IMO Secretariats), containing a report on the IMO/ILO joint database of abandonment of seafarers for the period 1 January to 23 December 2022 in which all cases reported after 1 January 2004 were recorded and that, in 2021, the total number of reported cases was 95 of which 47 had been resolved so far.

The Committee was also informed that, from 1 January to 23 December 2022, a total number of 109 new cases had been reported, of which only 41 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. Notably, for the third year in a row, the preceding year's record of reported cases of abandonment had, alarmingly, been surpassed again.

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, whilst also stating that repatriation continued to be an issue in abandonment cases, and that seafarers should not remain on board for periods beyond their contract.

Following discussion, the Committee:

- Noted the information provided in documents LEG 110/4(a), LEG 110/4(a)/1 and LEG 110/4(a)/2;
- Encouraged discussion relating to solving the problem of repatriation of abandoned seafarers;
- Reminded Member States to ratify and effectively implement the relevant international instruments and amendments thereto;
- Highlighted the existence of the IMO/ILO joint database;
- Encouraged Member States to report incidents of abandonment to the database when they occur in their ports or on vessels flying their flag;
- 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, also to take appropriate action when financial security is not in place; and,
- 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.

Fair treatment of seafarers in the event of a maritime accident. 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. The Committee was informed that ITF and Seafarers' Rights International (SRI) are 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. The Committee noted the information provided, 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.

Fair treatment of seafarers detained on suspicion of committing maritime crimes. The Committee recalled that, at its 107th session, it had agreed to a 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. The Committee also recalled that Council, C 125, had endorsed the establishment of a standing Joint ILO/IMO Working Group to identify and address seafarers' issues and the human element (JTWG). The first meeting of the JTWG took place from 13 to 15 December 2022, and a second meeting is foreseen in 2024. 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. 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. 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 is 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.

The Committee supported the creation of a working group to address such situations and there was also support for the creation of a database compiling a list of seafarer detention cases alleging maritime crimes.

Establishment of a working group (WG 1). 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 WG 1.

Following consideration of the Working Group's subsequent report, the Committee approved it in general, and:

- .1 Agreed to the establishment of a correspondence group with the stated terms of reference;
- .2 Agreed to the establishment of a working group at the commencement of LEG 111 to:
 - .1 Finalise the draft guidelines 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; and,
 - .3 Further consider the need of designated contact points for coordination of cases of detention of seafarers, taking into account the UN Convention on Consular Relations, 1963.

Part I – Adoption of Guidelines. The Committee noted that the Governing Body of the ILO, at its 345th session, had decided that the first meeting of the JTWG would be held from 13 to 15 December 2022 and the IMO Council, at its 127th session, had endorsed the establishment of the Joint Group. The first meeting of the JTWG brought together more than 250 representatives and observers from Governments, shipowners' and seafarers' representative organisations. The guidelines on how to deal with seafarer abandonment

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. They also 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.

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. The increase in number of abandonments is a cause of a great concern, thus the guidelines add significant value in resolving abandonment cases and will help to improve the treatment and repatriation of seafarers, therefore Member States and interested parties are encouraged to implement them. 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.

Following discussion, the Committee agreed to note the information provided; adopt a resolution to approve the guidelines on how to deal with seafarer abandonment cases and, to keep the guidelines under review.

Part II – Terms of Reference (ToRs) for the establishment of a Task Force. 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 draft ToRs for the establishment of a Task Force to review the joint ILO/IMO abandonment of seafarers database. This Task Force was proposed at closure of the first meeting of JTWG, supported by the seafarers and the Governments group, also the NGOs, ICS and ITF, who volunteered to provide financial support for such a Force.

Following discussion, the Committee agreed to note the information provided in Part IV of the annex to LEG 110/INF.6; and, 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.

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

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, undermines 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 comprising older ships, including some not inspected recently, having substandard maintenance, unclear ownership and a severe lack of insurance, is currently operated as a "dark fleet" or "shadow fleet" to circumvent sanctions and dodge insurance costs. For instance, among these ships is 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. Tankers in the "dark fleet" pose a real and high risk of incident particularly when

engaged in ship-to-ship transfers, as they disguise the cargoes' destinations or origins, or avoid oversight or regulation by flag or coastal States.

This practice, in many cases, transfers the risk of oil pollution damage to coastal States that are not involved in, or benefiting from, the oil being transferred. Going dark, as well as other methods to obscure a ship's identity or ownership, not only increases the risk of oil spill or collision but can also result in a participating shipowner evading liability under CLC and the Bunkers Convention in the case of other ships, placing also an increased risk on coastal States and the IOPC Funds.

Following further discussion, the Committee broadly supported the recommended measures in paragraph 8 of the document, as follows:

- 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 practise safe shipping standards to minimise the risk of oil pollution;
- 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;
- 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,
- Should port States become aware of any ships "going dark", they should consider subjecting such vessels to enhanced inspections as authorised, and notifying the respective vessel's flag administration as appropriate.

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. 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.

Impact on shipping and seafarers of the situation in the Black Sea and the Sea of Azov. 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 organisations in supporting seafarers and commercial vessels affected by the situation in the Black Sea and the Sea of Azov. LEG decided to add to its agenda, the item on Advice and guidance in connection with the implementation of IMO instruments, concerning the Impact on shipping and seafarers of the situation in the Black Sea and the Sea of Azov.

The Committee noted the outcome of five other IMO bodies with respect to the ongoing military conflict and its effect on international shipping and seafarers, also the outcome of the Black Sea Grain Initiative, allowing for the facilitation of safe navigation whilst exporting grain and related foodstuffs and fertilizers, including ammonia, from designated Ukrainian seaports. The 'Initiative' has recently been extended, for a second time, from 18 March 2023, which during the first two terms of the initiative, some 25 million metric tonnes of grain and foodstuffs were moved to 45 countries.

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. This included 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, proposing actions to be taken.

The UN General Assembly adopted a resolution entitled "Furtherance of remedy and reparation for aggression against Ukraine", an instrument for damage, loss or injury, arising from the internationally wrongful acts of the Russian Federation in or against Ukraine, together with the creation of an international register of damage. In this respect, the International Telecommunication Union has already started collecting and reporting on damages to telecommunication infrastructure in Ukraine.

As requested, statements in support of Ukraine by the delegations of United States, Türkiye, Canada, Poland, France, Georgia, Germany, Spain, Cyprus, New Zealand, Kingdom of the Netherlands, Luxemburg, Bahamas and Lithuania, supported by the delegations of Croatia, Finland, Portugal, Belgium, Estonia, Malta, Greece and European Commission, will be attached to the Committee's report.

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 on the grounds that this is a political matter going beyond the mandate of the Committee, as set out in Article 33 of the IMO Convention. According to that delegation, the mandate to examine this matter and to take decision on it has not been given to the Legal Committee by the Assembly or the Council or by any international instrument. Notwithstanding, following an exhaustive discussion on the actions requested of it in paragraph 26 of document LEG 110/5(a)/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 sovereignty of a UN Member State, extending to its territorial waters, and inconsistent with the principal purposes of IMO;
- 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;
- 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 fall 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 has suffered damage or been destroyed as a result of Russia's unlawful invasion, as well as impacts and damages with respect to seafarers.
- In order to move forward with this proposal, invited the Secretary-General to contact relevant UN organisations and develop options for the assessment, with appropriate

costing, and then, given the potential budgetary implications, submit these options to Council 129 for consideration.

- 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; and,
- Decided to keep 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.

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 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. The Committee also recalled that it had established a Study Group to address all issues arising in connection with fraudulent registration and fraudulent registries of ships, also measures to prevent and combat them, and requested the Secretariat to coordinate the study, with participation from WMU, UNCTAD, IMO IMLI and other interested parties. The Committee further recalled that it had invited interested delegations to make proposals on domestic enforcement measures regarding the confiscation of fraudulently registered ships, extended the target completion year of the output to 2024 and encouraged interested delegations to make relevant submissions for consideration of 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. 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. It also noted comments by WMU in plenary regarding the fact that only 31 States, representing 22.75% of the world fleet, had responded to the questionnaire. Concerns were expressed by several delegations on the impacts of fraudulent registration and fraudulent registries of ships on the safety and welfare of seafarers on board such ships, together with taking note of proliferation in “dark fleet” numbers.

Following discussion, the Committee agreed that three additional questions suggested 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?

Following this, 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 Organisation 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. 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, 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 to develop methods for validating the authenticity of ships' certificates. Consequently, the Committee agreed that the Secretariat should consult with S & P Global (the company responsible for the IMO identification number scheme) 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.

The wrongful exploitation of the IMO identification number. The Committee considered document LEG 110/6/3 (Georgia and the United Arab Emirates) providing information regarding instances of fraudulent use by companies in matters related to the IMO identification number scheme. In the ensuing discussion, the Committee noted concerns expressed about the consequences of fraudulent registration on the central role played by the IMO identification number scheme and for its potential to undermine the balance of rights and obligations of flag and coastal States under UNCLOS. The Committee noted the explanation by S & P Global about the IMO identification numbers where they are issued of behalf of IMO, whilst carrying out as much due diligence as they can. S & P 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 but are limited in the information that can be requested.

Based on comments in plenary, the Committee agreed that more information on the abuse of the IMO number scheme, including how widespread the problem is and whether there are loopholes in the system, should be provided. The Committee also determined that this issue should not be added to the work of the Study Group but extended the target completion year of the output to 2025 and encouraged interested delegations to make relevant submissions to the next session.

In conclusion, the Committee also agreed to establish a correspondence group, with instructions to: "Take into consideration document LEG 110/6/3 as well as the comments, proposals and decisions made by the Committee; and,

- .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; and,
- .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.

The Committee noted an intervention by the representative of the Paris MoU on the issue of false flags. The Paris MoU has 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 organisation recognised or authorised by the genuine flag State. To verify this, it is essential that relevant flag States can be contacted. In the absence of response from the flag State, it is not always desirable to unduly detain the ship in question. If the information in the GISIS database were to be completely reliable, the ship could perhaps be prevented from leaving pending the response from the flag State. However, the correctness of the ship registration is not

easy to verify and in a number of cases, the information in the database is not in line with the response received from the alleged flag State, when the response is 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 is whether the organisations recognised by false flags could be regarded as false ROs. The Paris MoU remained willing and able to contribute to the work of the Study Group.

MEASURES TO ASSESS THE NEED TO AMEND LIABILITY LIMITS.

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 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.

Noting that further work would be necessary to finalise this output, the Committee decided to refer such matters to a Working Group and having considered the Group's subsequent report, approved it in general, and in particular:

- Endorsed the principles and policy considerations to be taken into account when developing methodologies to transparently assess the need to amend liability limits;
- Noted the progress made on the development of a methodology for the collection and reporting of experience of incidents and damage resulting therefrom;
- Noted the progress made on the development of a methodology for assessing changes in monetary value;
- 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;
- Approved the work plan for the finalisation of the two methodologies with a view to completion in the 2024-2025 biennium;
- Agreed to re-establish the intersessional Correspondence Group on the Development of Methodologies to transparently assess the need to amend liability limits with updated terms of reference; and,
- Endorsed the re-establishment of the Working Group on Liability and Compensation at LEG 111.

CLAIMS MANUAL FOR THE INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR BUNKER OIL POLLUTION DAMAGE, 2001.

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 Finalise 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.

Following discussion, the Committee:

- Approved the finalised text of the Claims Manual for the 2001 Bunkers Convention;
- Decided that the Committee should keep the Claims Manual text under review;
- Agreed that the Claims Manual should be disseminated by way of a Legal Committee circular;
- Approved the text of the LEG circular which will contain the Claims Manual;
- Authorised the Secretariat to make minor editorial and formatting changes to the text of the Claims Manual;
- Instructed the Secretariat to issue an LEG Circular and the Claims Manual on IMODOCS at the earliest convenience;
- 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,
- Noted that work has been completed under this output.

PIRACY AND ARMED ROBBERY AGAINST SHIPS.

No documents were submitted under this agenda item, however, the Director of the Legal Affairs and External Affairs Division provided an oral update as follows:

Piracy and armed robbery at sea off the Coast of Somalia. The work of the Contact Group on Piracy off the Coast of Somalia (CGPCS) has wound down since the non-extension, as of March 2022, of authorisations 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*.

Piracy and armed robbery at sea in the Gulf of Guinea. 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 organisations in their efforts to combat piracy and armed robbery at sea in the Gulf of Guinea, including with respect to mobilising resources following the adoption of the Yaoundé Code of Conduct.

Work of the International Law Commission on piracy. 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.

GUIDANCE FOR THE PROPER IMPLEMENTATION AND APPLICATION OF IMO LIABILITY AND COMPENSATION CONVENTIONS.

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 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. Having noted broad support for the three projects proposed in document LEG 110/10, as listed above, the Committee decided to refer this item to a working group and accordingly passed the work to WG 2 on Liability and Compensation. The committee considered the part of the Working Group report relating to this agenda item, 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,
- .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 Associations (P & I Clubs) in Circular Letter No.3464 under the coordination of Canada, 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".

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

The Committee 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). The Committee considered document LEG 110/11 (Secretariat), containing a report of the first meeting of MASS-JWG (MASS-JWG 1), held from 7 to 9 September 2022, noting with appreciation the work of the Co-Chairs, Mr. Henrik Tunfors and Prof. Gen Goto. 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 to the organisation of 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;
- .3 Noted that the Group had agreed to use a table to identify and collect information on options for interpretations of the common issues in the instruments under the purview of the three Committees;
- .4 Noted that the table's content had not been discussed or agreed upon, and that Member States and international organisations are invited to submit documents to the next MASS-JWG meeting;
- .5 Endorsed the work plan for the Joint MSC-LEG-FAL Working Group on MASS;
- .6 Agreed the proposal to convene two sessions of the Joint MSC-LEG-FAL Working Group on MASS in 2023;
- .7 Agreed the proposal to convene a five-day meeting of MASS-JWG 2 from 17 to 21 April 2023, as concurrently approved by MSC and FAL and endorsement by the Council; and,
- .8 Agreed that the MASS-JWG could meet before all three Committees had considered its report.

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

The Committee also noted 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 and the establishment of the 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 the MASS-JWG.

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

.1 It would be beneficial for the Committee to await the reports of MASSJWG from its two sessions in 2023, when deciding whether to convene a working group at its next session;

.2 Concrete output proposals on how to address MASS in the conventions under the purview of the Legal Committee are needed in order to effectively follow up on the outcome of the regulatory scoping exercise of the Committee; and,

.3 The Organisation, as a whole, needs clarity on definitions and concepts relating to MASS, before advancing amendments to its conventions and other legal instruments.

Implications of UNCLOS for MASS. The Committee had for its consideration document LEG 110/11/3 (United Arab Emirates) providing an analysis on selected articles of UNCLOS and their potential implications on MASS. It was agreed that issues with respect to MASS and UNCLOS are complex, but there was agreement that UNCLOS does not prevent the regulation of the operation of MASS. A strong majority of delegations that took the floor felt that UNCLOS provides IMO with the authority to regulate MASS as it is a living document, flexible enough to accommodate new technologies. Moreover, IMO is the competent international organisation for shipping, with an ability to develop rules and regulations related to the safety of navigation, including those for new technologies, consistent with UNCLOS' role as a framework convention.

There was broad support for the suggestions made by the UAE, 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. However, not all delegations agreed with this view stating that the competent body to interpret 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 is a need to consider some legal aspects in light of UNCLOS' provisions, and that the interpretation of UNCLOS pertains to a competent body, which is not IMO. The delegation also stated that it reserved the right to adopt legislation it believes conforms to UNCLOS with regard to MASS in its jurisdictional waters.

Streamlining of the consideration of legal issues relating to MASS operations.

Following discussion, the Committee decided that certain legal issues would remain for consideration by the Legal Committee, with a view to establishing a Working Group on MASS at LEG 111:

- Liability arising from MASS operations discussed in documents LEG 110/11/2 (Secretariat) and LEG 110/11/4 (Russian Federation);
- Implementation of provisions in instruments under the purview of the Legal Committee, as discussed in document LEG 110/11/5 (China); and,
- 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).

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); also LEG 110/11/6 (IFSMA); and,

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

WORK OF OTHER IMO BODIES.

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.

Guidelines on places of refuge for ships in need of assistance. 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 finalisation 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. The Committee considered document LEG 110/12/1 containing 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 Secretariat had made minor editorial changes to the text of the Guidelines providing greater clarity which were accepted. 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.

Concerns were raised by Argentina regarding paragraph 4.3 of the Guidelines referring 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". It was felt that the provision was in conflict with 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". However, 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." Following further 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.

General statements. 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 (UN) Charter and the UN Security Council (UNSC) resolutions. The delegations strongly condemned these launches which pose 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 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 U.S. and others.

Final report of the UN Panel of Experts regarding the Democratic People's Republic of Korea. 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 (DPRK) 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. The Committee noted that three recommendations directly requested 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 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 authorisation, seeking to mask their illicit activity".

The Committee noted the statement made by the delegation of the DPRK objecting to the consideration of the UN Panel of Experts report by IMO and its Member States, 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.

Following this, 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.

IMO International Maritime Law Institute (IMLI). 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. 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 specialised 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.

ANY OTHER BUSINESS.

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. 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.

DATE OF NEXT MEETING.

The next meeting of the IMO Legal Committee, LEG 111 has been tentatively scheduled to take place during the period March/April 2024.

End.

Captain Paddy McKnight.