

LEGAL COMMITTEE
102nd session
Agenda item 12

LEG 102/WP.1
16 April 2015
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**DRAFT REPORT OF THE LEGAL COMMITTEE ON THE WORK OF ITS
ONE HUNDRED AND SECOND SESSION**

1. INTRODUCTION

1.1 The Legal Committee held its one hundred and second session at IMO Headquarters from 14 to 16 April 2015, under the chairmanship of Dr. Kofi Mbiah (Ghana).

1.2 The session was attended by delegations from the following Member States:

[to be completed by the Secretariat after the meeting, based on document LEG 102/INF.1]

and from the following Associate Member(s) of IMO:

[to be completed by the Secretariat after the meeting, based on document LEG 102/INF.1]

1.3 The session was also attended by representatives from the following United Nations and specialized agencies:

[to be completed by the Secretariat after the meeting, based on document LEG 102/INF.1]

by observers from the following intergovernmental organizations:

[to be completed by the Secretariat after the meeting, based on document LEG 102/INF.1]

and by observers from the following non-governmental organizations in consultative status:

[to be completed by the Secretariat after the meeting, based on document LEG 102/INF.1]

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:

<http://www.imo.org/MediaCentre/SecretaryGeneral/Secretary-GeneralsSpeechesToMeetings/Pages/LEG-102-opening.aspx>

The Secretary-General also welcomed the entry into force of the Nairobi International Convention on the Removal of Wrecks, 2007, on the day of the opening of the session and was pleased to be presented with the instrument of accession to the Convention by the delegation of Kenya.

Several delegations thanked the Secretary-General for his remarks, in particular, his comments addressing the unsafe transportation of mixed migrants by sea.

The Chairman's remarks

1.5 The Chairman thanked the Secretary-General for his opening address and stated that his comments would be given every consideration in the deliberations of the Committee.

Adoption of the agenda

1.6 The agenda for the session, as adopted by the Committee, is attached in annex 1.

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

Audio file: Tuesday, 14 April 2015:a.m.

2 REPORT OF THE SECRETARY-GENERAL ON CREDENTIALS

2.1 The Committee noted the report of the Secretary-General that the credentials of 82 delegations attending the session were in due and proper form.

Audio file: Tuesday, 14 April 2015: p.m.

3 FACILITATION OF THE ENTRY INTO FORCE AND HARMONIZED IMPLEMENTATION OF THE HNS CONVENTION, 2010

3.1 The Coordinator of the HNS Correspondence Group, Mr. François Marier, Canada, introduced document LEG 102/3, reporting on the work of the HNS Correspondence Group. The Committee was informed that the Correspondence Group had worked to become a forum where States and observer delegations could, by means of the HNS Protocol Blog (<http://hnsprotocol.wordpress.com/>) exchange ideas, best practices and collaborate on solutions to promote the Convention and facilitate its entry into force. The Coordinator thanked Mr. Thomas Liebert and Ms. Victoria Turner from the IOPC Funds for their assistance with the creation and maintenance of the Blog.

3.2 The Committee was informed 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 and pointed to its benefits.

3.3 The Committee was further informed that the sharing and dissemination of information, such as providing examples of national legislation implementing the 2010 HNS Convention, was one of the main purposes of the Correspondence Group. This was particularly useful with regard to the contributing cargo reporting requirements. To date, Canada and Denmark had made their national legislation available on the HNS Blog (refer to the "Documents" tab: <https://hnsprotocol.wordpress.com/key-documents/>) and other States were encouraged to also share their legislation, regulations or relevant orders.

3.4 The Coordinator thanked the delegation of Turkey for providing the status of implementation and ratification efforts of States, which would provide timely and accurate information and contribute to the entry into force of the Convention. States were encouraged to add this information to the chart, available on the HNS Blog, or at the following link: <https://docs.google.com/spreadsheets/d/1Jl5UudY6IfY4eS8OJTrOKPLXDC8RXlu84cEVerUrf74/edit?pli=1#gid=0>.

3.5 The Committee was informed that the Correspondence Group, with the collaboration of the IMO, IOPC Funds and ITOFF Secretariats, had discussed the idea of creating a new publication, "Understanding the HNS Convention" (formerly titled "HNS Made Easy"). Mr. Marier introduced document LEG 102/3/1, providing an overview of the publication, explaining that its purpose was to promote the Convention by focusing on its fundamental public policy intent and objectives, rather than being a guide on how to implement the Convention.

3.6 The Committee was informed that members of the Correspondence Group had highlighted the need for the development of HNS incident scenarios and the coverage provided by the Convention. Examples of such scenarios, which would be separate from the publication, could be provided for use by State officials or industry stakeholders as part of their information packages.

3.7 The Committee was invited to endorse the proposed outline of the "Understanding the HNS Convention" publication and to extend the mandate of the Correspondence Group until the next session of the Committee, with three specific items that could be further developed and reported to the next session, namely the "Understanding the HNS Convention" publication; HNS Scenarios; and a Legal Committee resolution on implementation and entry into force of the 2010 HNS Convention. This resolution would have the main goal of encouraging states to implement the HNS Convention and bring it into force within a reasonable timeframe.

3.8 The Committee expressed its appreciation to the Correspondence Group and its Coordinator. Among the views expressed were the following:

- there was a need for an internationally coordinated approach towards ratification and implementation of the Convention;
- the reporting requirements would be difficult to implement without coordination between neighbouring States on the administrative burdens and there should be an equal, level playing field;
- the Correspondence Group was a useful forum and should continue its work;

- there was a need to adhere to the *Guidelines on the organization and method of work of the Committee* that no intersessional meetings of members of the correspondence groups should be held without the prior approval of the Committee or the Council.

3.9 Following the discussion, the Committee agreed:

- to note the complexities of the Convention and the need for an internationally coordinated approach for ratification and implementation;
- to extend the mandate of the Correspondence Group until the next session, with due regard to the *Guidelines on the organization and method of work of the Committee* in respect of intersessional meetings, and that the Group should report to LEG 103¹;
- to approve amended Terms of Reference of the Correspondence Group, attached in annex 2 to this report.
- thank the Correspondence Group and its coordinator for its efforts thus far.

3.10 The delegation of Italy introduced document LEG 102/3/2 containing a report of a workshop on the 2010 HNS Convention organized by the Italian government in Rome on 10 October 2014.

3.11 The Committee noted document LEG 102/3/2 and expressed its appreciation to the delegation of Italy for the information provided.

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

Audio file: Tuesday, 14 April 2015:

¹ Coordinator: Mr. François Marier (Canada)
francois.marier@tc.gc.ca
1-613-993-4895

4 FAIR TREATMENT OF SEAFARERS IN THE EVENT OF A MARITIME ACCIDENT

4.1 The Committee was reminded that it had considered the outcome of a survey conducted by Seafarers' Rights International (SRI) at LEG 101, concerning the implementation of the 2006 *Guidelines on fair treatment of seafarers in the event of a maritime accident*, adopted jointly by IMO and ILO. The Committee recalled its suggestion to further analyze the responses to the survey.

4.2 The representative of the International Transport Workers' Federation (ITF), on behalf of the co-sponsors (the International Federation of Shipmasters' Associations (IFSMA), Comité Maritime International (CMI) and InterManager), introduced document LEG 102/4 reporting on the analysis of the replies from Member States to the survey circulated by SRI on behalf of ITF and IFSMA concerning the 2006 Guidelines.

4.3 The representative of SRI provided details of the analysis of the survey and invited the Committee to request the Technical Cooperation Committee (TCC) to consider providing technical assistance to Member States who had requested assistance with the implementation of the Guidelines. Member States already giving effect to the Guidelines were also urged to consider providing copies of their relevant laws together with information and advice if approached by other Member States requesting assistance. The other sponsors of LEG 102/4 expressed views regarding the seriousness and urgency of the issue.

4.4 Several observer delegations expressed their support for the project and, in particular, that the TCC be requested to provide assistance.

4.5 Based on the views expressed, the Committee concluded that:

- this was an important issue for seafarers and should consequently be placed on the work programme of the Legal Committee;
- the Committee should consider guidance on the implementation of the Guidelines, in particular for developing countries;
- technical support and assistance should be provided by TCC in order to facilitate the wide implementation of the Guidelines to improve the conditions for seafarers, taking into account human rights issues;

- work needed to be done towards the progressive removal of legislation targeting seafarers and imposing criminal sanctions on them;
- it would be useful for States already giving effect to the Guidelines to provide translated copies of their laws to assist other States with their implementation efforts; and some States informed the Committee that they were ready to share their national legislation giving effect to the Guidelines;
- with regard to the compilation of statistics, it was also relevant to receive feedback from ports;
- States were urged to provide their embassies with the names of persons whom seafarers could contact to report violations of the Guidelines;
- seafarers should be given greater training and awareness of their rights.

4.6 The Committee expressed its thanks and appreciation to SRI and the co-sponsors for their excellent work, underscoring the importance of the subject and its relevance to the progressive development of the shipping industry. Member States who had not yet given effect to the Guidelines were encouraged to do so.

4.7 The Committee also noted with gratitude that the industry was prepared to contribute financially towards this work. The Committee supported the speedy implementation of the Guidelines and, in this regard, would report the outcome of these discussions to the TCC, MEPC, MSC and FAL.

Audio file: Wednesday, 15 April 2015: a.m.

5 PIRACY

5.1 The Secretariat introduced document LEG 102/5, reporting on the outcome of discussions by members of the Kampala Process at a meeting led by IMO, with the support of EUCAP Nestor and UNODC, held in Addis Ababa from 23 to 26 September 2014.

5.2 The Special Adviser to the Secretary-General on Maritime Security and Facilitation informed the Committee on the current status of the Secretariat's counter-piracy initiatives, including the following:

- although the IMO Project Implementation Unit (PIU) had expired after its successful conclusion, it did not affect the operation of the Code or the Djibouti Code Trust Fund;
- the IMO Secretariat would continue to support the implementation of the Djibouti Code of Conduct and wider maritime security and safety-related projects;
- piracy in the region would continue to be contained as long as merchant ships continued to implement IMO guidance and best management practices;
- the work of the Kampala Process in building up the Somali maritime sector was ongoing although regrettably, there had been little progress since 2010;
- UNODC's capacity-building programmes, supported by IMO, had made significant progress in upgrading legislation and judicial capacity in Somalia and the wider region;
- IMO's main focus with respect to Somalia was to help develop the maritime sector through mainstream capacity-building under the auspices of the Technical Cooperation Committee (TCC), with a view to creating sustainable employment opportunities as an alternative to piracy.
- In relation to the Gulf of Guinea, progress was being made in the region to meet the threat of piracy and to improve maritime law enforcement generally. The number of incidents of piracy and armed robbery against ships reported to the Organization had continued to decrease. The Secretariat is in the process of implementing a strategy for the region, including table-top exercises and assisting to upgrade legal frameworks.

5.3 Member States were urged to complete the questionnaire annexed to MSC-FAL.1/Circ.2 (Questionnaire on information on port and coastal State requirements related to privately contracted armed security personnel (PCASP) on board ships and to submit the information to the Organization at their earliest convenience. Any relevant national legislation, policies and procedures provided are posted by the Secretariat, in the

language received, on IMO's public website (www.imo.org). To date, only 18 Member States and one Associate Member had provided the information requested.

5.4 The Committee thanked the Secretariat for the update and took note of the information provided.

Audio file: Wednesday, 15 April 2015: a.m.

6 MATTERS ARISING FROM THE 112TH AND 113TH REGULAR SESSIONS OF THE COUNCIL

6.1 The Secretariat introduced document LEG 102/6, reporting on the decisions and conclusions of the 112th and 113th regular sessions of the Council.

6.2 The Committee took note of the information of relevance to it, including, that the Council:

- endorsed the Committee's decisions on planned outputs for the 2014-2015 biennium;
- noted the Secretary-General's initial outline to set the Organization's programme of meetings at the same number of weeks as for this biennium (32.6 weeks), and that he would provide data on the number of sessions of interpretation that this would entail, and reconsider the meeting time of the Legal Committee;
- noted the information proposing substantive items for inclusion in the provisional agendas for its 114th regular and twenty-eighth extraordinary sessions, including terms of reference for the Working Group on the development of a new Strategic Plan, as well as the re-establishment of the Correspondence Group on the revision of the *Guidelines on the Application of the Strategic Plan and the High-level Action Plan (GAP)*; and
- noted the information on the final report of the Ad Hoc Steering Group for Reducing Administrative Requirements (SG-RAR).

6.3 With regard to the recommendations on future work to reduce administrative burdens, the Committee took note of the Council's invitation to the committees to consider how to proceed with the outcome of the Steering Group's work during their meetings in 2015, with a view to developing appropriate outputs to be included in the High-level Action Plan for 2016- 2017.

6.4 The Committee was also informed of the requirements considered by the SG-RAR to be related to the work of the Legal Committee and identified as an administrative burden, as contained in the table in annex to LEG 102/6, and the recommendation of the SG-RAR on how to alleviate the burden and the feedback obtained during the public consultation.

6.5 The Committee was further informed that most of the requirements specified in the table, except for numbers 1, 2 and 4, relate to the work of the IMO depositary, which currently does not have a legal mechanism to accept deposits of instruments electronically in such a way that would satisfy its obligations under Part VII of the Vienna Convention on the Law of Treaties, 1969. Even if there was such an option, the establishment of an electronic system to handle its custodial functions would not only be a significant task, but one that would require consultation with the United Nations Treaty Section, which currently also does not operate an electronic system for its deposits.

6.6 The Secretariat invited the Committee to carefully consider the feasibility of each individual recommendation in order to properly assess the implications of changing the requirements.

6.7 In response to the Council's request to include a planned output in the High-level Action Plan for the 2016-2017 biennium, and taking into account the proposal to review administrative burdens outlined above, the Committee agreed on the inclusion of a planned output as follows: "Analysis and consideration of recommendations to reduce administrative burdens in IMO instruments as identified by the SG-RAR," with the proviso that there would be some flexibility with regard to these measures. The target completion year for this task would be 2017.

6.8 The Committee agreed to meet annually during the next biennium (2016-2017) for a duration of three days at each meeting

Audio file: Wednesday, 15 April 2015: a.m.

7 TECHNICAL COOPERATION ACTIVITIES RELATED TO MARITIME LEGISLATION

7.1 The Committee noted document LEG 102/7, reporting on the activities of IMLI for the year 2014, and document LEG 102/INF.2, providing the lists of dissertations and maritime legislation drafting projects undertaken by its students in the 2013-2014 academic year and an interim list of students' dissertations and maritime legislation projects for the LLM Programme for the year 2014-2015.

7.2 The Committee further noted a report on the manual published by IMLI on International Maritime Law, published by Oxford University Press, which adopts an all-encompassing approach to international maritime law covering law of the sea, shipping law, marine environmental law and maritime security law.

7.3 The Secretariat then introduced document LEG 102/7/1, inviting the Committee to consider and agree the thematic priorities for inclusion in the Integrated Technical Cooperation Programme (ITCP) for the 2016-2017 biennium.

7.4 The Committee approved the proposal to insert the wording "With particular emphasis on the results and needs identified by the Voluntary IMO Member States Audit Scheme and in light of the upcoming mandatory audit scheme" in the fifth thematic priority, based on the outcome of the first session of the III Sub-Committee, which comprehensively analysed the difficulties encountered in the implementation of IMO instruments. The Committee further concluded that no further modifications were needed to its thematic priorities for the ITCP 2016-2017.

7.5 The Committee noted document LEG 102/7/2, reporting on IMO's technical cooperation activities with regard to maritime legislation during the year 2014. Additional information was provided by the Secretariat suggesting that the low rate of ratification of liability and compensation conventions in developing countries may perhaps be explained by the fact that many conventions under the cognizance of the Committee did not contain Conference Resolutions supporting technical cooperation activities for those treaties. However, such activities would be a priority in the 2016-2017 ITCP.

Audio file: Wednesday, 15 April 2015: p.m.

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

8.1 The Committee noted the information contained in documents LEG 102/8 and LEG 102/WP.2, containing information on the status of conventions and other treaty instruments emanating from the Legal Committee.

8.2 Several delegations provided updates on progress with regard to the ratification and implementation of IMO instruments as follows:

- the delegation of Japan informed the Committee that its Government acceded to the 2004 BWM Convention on 10 October 2014 and that approximately 2% of the gross tonnage of the world's merchant shipping was still required to trigger the entry into force of this Convention;
- the delegation of Brunei Darussalam informed the Committee that its Government had made good progress towards the acceptance of the MARPOL Annexes, in particular Annexes III and V, and that it had started the process towards the ratification of MARPOL PROT 1997 and OPRC 1990;
- the delegation of Greece informed the Committee that good progress had been achieved in its internal law regarding the 2012 amendments to LLMC PROT 1996 and that considerable progress had been made towards ratification of Nairobi WRC 2007;
- the delegation of Denmark informed the Committee that further progress had been made towards the ratification of the SUA 2005 Protocols, that its Government had started the process towards ratification of the 2012 Cape Town Agreement, and that it had adopted national legislation for the 2010 HNS Protocol, including regulations for reporting requirements;
- the delegation of Canada informed the Committee that its Parliament had passed the 2010 HNS Protocol and that regulation for reporting requirements would be in place in the next couple of years;
- the delegation of Kenya informed the Committee that its Parliament had given approval to ratify Bunkers 2001, LLMC 1976 and LLMC PROT 1996; and

- the delegation of Ethiopia informed the Committee that its Government was in the process of ratifying LL, SUA and MARPOL;

8.3 The Committee welcomed the most recent ratifications to Nairobi WRC 2007 and noted that further ratifications would alleviate the administrative burdens related to the issuance of certificates to non-Party ships, currently shared amongst the Contracting States.

8.4 The Committee encouraged Member States towards early ratification of those IMO conventions to which they were not yet party. Some delegations encouraged ratification of LLMC PROT 1996 in view of the entry into force, on 8 June 2015, of the 2012 amendments to raise the limits.

8.5 The Committee encouraged delegations to work with their respective Governments towards achieving effective and uniform implementation of relevant IMO conventions and to report any barriers to implementation to the Legal Committee for advice and guidance.

Audio file: Wednesday, 15 April 2015: p.m.

9 WORK PROGRAMME

(a) Report on status of planned outputs for the current biennium (2014-2015)

9.1 The Committee recalled that C 112 had endorsed the Committee's decisions at LEG 101 on planned outputs for the 2014-2015 biennium.

9.2 The Secretariat introduced document LEG 102/9 and reminded the Committee that in accordance with paragraph 9.1 of the *Guidelines on the application of the Strategic Plan and the High-level Action Plan of the Organization* (resolution A.1062(28)), the reports on the status of the planned outputs included in the High-level Action Plan (HLAP) should be prepared and annexed to the report of each session of the sub-committees and committees, and to the biennial report of the Council to the Assembly.

9.3 The Committee was also reminded to observe the Guidelines contained in resolution A.1062(28) when reporting to the Assembly at its future sessions.

9.4 The Committee considered a draft report, prepared by the Secretariat and attached as annex 1 to document LEG 102/9, on the status of planned outputs for the current biennium (2014-2015), including all planned outputs related to the Legal Committee.

9.5 The Committee was invited to consider deleting the square brackets in the "Status of output for Year 2" of the present biennium and to decide on two pending issues. The Committee was also invited to consider deleting the square brackets around the relevant planned outputs attached as annex 2 to document LEG 102/9.

9.6 The Committee expressed the following views:

- planned output 2.0.1.4 in annex 1 relating to the HNS Protocol should be postponed in light of the decision to extend the mandate of the HNS Correspondence Group;
- planned output 1.1.1.2 should be postponed in view of the outcome of the discussion on item 4 on the agenda of the present meeting of the Committee;
- planned output 70 in annex 2 was questioned in light of the adoption of relevant amendments to the ILO Maritime Labour Convention which would most likely come into force in 2017;
- planned output 105 in annex 2 should refer to the joint IMO/ILO *Guidelines on Fair Treatment of Seafarers in the Event of a Maritime Accident* with any consequential actions to be discussed at C 114;
- the continued need for planned output 106 in annex 2 should be discussed with the UNDOALOS Secretariat.

9.7 Subject to paragraph 9.6 above, the Committee agreed its report on the status of planned outputs for the current biennium and on the planned outputs to be included in its post-biennial agenda, attached as annexes 3 and 4 to this report, respectively, for submission to the Council.

(b) Items for inclusion in the agenda for LEG 103

9.8 The Committee approved the list of substantive items for inclusion in the agenda for LEG 103, attached as annex 5 to this report.

Audio file: Wednesday, 15 April 2015: p.m.

10 ELECTION OF OFFICERS

(i) Election of the Chairman

10.1 The Committee [re-]elected, [by acclamation], [XXX] as Chairman for 2016.

(ii) Election of the Vice-Chairman

10.2 The Committee [re-]elected, [by acclamation], [XXX] as Vice-Chairman for 2016.

Audio file: Thursday, 16 April 2015: a.m.

11 ANY OTHER BUSINESS

(i) Transboundary pollution damage

11.1 The Committee recalled its agreement, at LEG 99, that it wished to further analyse the liability and compensation issues connected with transboundary pollution damage resulting from offshore oil exploration and exploitation activities, with the aim of developing guidance to assist States interested in pursuing bilateral or regional arrangements, without revising Strategic Direction 7.2. This decision was duly noted by C 108.

11.2 The Committee also recalled its recommendation, at its previous session, that Member States, with the assistance of the Secretariat, provide guidance and send to the Secretariat examples of existing bilateral and regional agreements and that it had encouraged Member States and observer delegations to lend their expertise and cooperate intersessionally.

11.3 The Committee further recalled its expression of appreciation, at its previous session, to Indonesia and Denmark for the information that they stood ready to co-chair the Intersessional Consultative Group (ICG) to develop guidance on bilateral and/or regional agreements or arrangements.

11.4 The delegation of Denmark informed the Committee of an informal meeting of the ICG at IMO on Monday, 13 April 2015, co-chaired by Indonesia and Denmark. The aim of the meeting was to facilitate a discussion and further the development of a draft text on guidance for bilateral/regional arrangements or agreement on liability and compensation issues connected with transboundary pollution damage resulting from offshore exploration and exploitation activities.

11.5 Following the oral report by the delegation of Denmark, the observer delegation of the Iberoamerican Institute of Maritime Law (IIDM), introduced document LEG 102/11, containing an historical overview of the various attempts to regulate offshore extraction activities. The observer delegation highlighted the need for a new international convention to be drafted under IMO auspices to address the risks involved in offshore oil exploration and extraction operations which have ventured further into deeper waters and to meet the liability that arises from such activities.

11.6 The Committee was informed that IOGP would not be introducing its paper.

11.7 The Committee had the following comments:

- as LEG 102 /11 was submitted by an observer delegation without a member State sponsor, it was only possible for the Committee to take note of the document;
- there was currently no compelling need to develop an international convention and, as already agreed at its previous sessions, guidance on bilateral or regional agreements should continue to be developed;
- IMO was the appropriate organization to consider this subject however the development of a new treaty would fall outside the current Strategic Plan, in particular Strategic Direction 7.2, which would require amendment before any further action could be taken.

11.8 The Committee concluded that the IIDM document was for information purposes only and that any action on the matter would require Strategic Direction 7.2 to be revisited, but there was no call to do so, as the matter has already been dealt with in depth.

11.9 The Committee encouraged Indonesia and Denmark to continue developing the Guidance on bilateral and regional agreements, taking into account the comments made by the Committee.

11.10 Member States should send examples of existing bilateral and regional agreements to the Secretariat and, to that end, encouraged Member States and observer delegations to continue cooperating with the delegations of Indonesia and Denmark intersessionally to lend

their expertise to developing the elements and legal principles for incorporation into the Guidance on bilateral/regional arrangements or agreements.

11.11 The Committee expressed its appreciation to the delegations of Indonesia and Denmark for their oral report, and thanked IIDM and IOGP for their submissions.

11.12 The Committee noted the information contained in paper LEG 102/11/1 regarding oil spill prevention and response in international waterways and river-sea connections and thanked the sponsor, IIDM, for its submission.

Audio file: Tuesday, 14 April 2015: a.m.

(ii) Proposed draft International Convention on Foreign Judicial Sales of Ships and their Recognition

11.13 The representative of the CMI, introduced document LEG 102/11/2, outlining the rationale and content of a draft International Convention on Foreign Judicial Sales of Ships and their Recognition, approved by the Assembly of the 41st International Conference of the CMI in Hamburg on 17 June 2014. The Committee was invited to take note of the information provided and to consider this item for further consideration at the next session.

11.14 The Committee noted that the purpose of the draft convention was to ensure international uniformity in relation to judicial ship sale procedures and to reinforce the principle that the purchaser of a ship in a judicial sale by a competent court should receive clean title to the ship, free of any pre-existing mortgages, liens or other encumbrances. It was proposed that this would make the judicial sale of ships less disruptive to shipping and that the certainty brought by the draft convention would reduce the purchaser's risks, thereby ensuring a more realistic sale price. The CMI believed that IMO, as the appropriate UN agency with responsibility for the promotion of safe and efficient international shipping practices, was the correct forum to develop an international instrument on the judicial sale of ships.

11.15 The views expressed included the following:

- this item could be included in the work of the Legal Committee, subject to it being co-sponsored by one or more Member States, in accordance with paragraph 4.17 on the *Guidelines on the organization and method of work of the Legal Committee*;

- this item fell outside the mandate of the Organization and, therefore, the Legal Committee was not the appropriate body for considering this subject;
- further work was required to explain the compelling need for a new convention, and why the Legal Committee was the proper forum for taking this work forward;
- this work could be progressed as a joint effort between IMO and other UN agencies.

11.16 The Committee thanked CMI for this document and the useful presentation it provided in the margins of the meeting, and expressed its appreciation for CMI's long standing support and cooperation on the development of various IMO instruments. While the Committee did not in principle oppose the contents of the document, further work was required to demonstrate the compelling need for a new convention and whether the Legal Committee was indeed the proper forum for further action. The Committee invited CMI to submit further and better particulars to its next session and encouraged the Secretariat to liaise with other UN agencies, as appropriate.

Audio file: Wednesday, 15 April 2015: p.m.

(iii) Interpretation of the 1971 Fund Convention and the 1992 Fund Convention in respect of liability for contributions after the Convention has ceased to be in force

11.17 The delegation of the United Kingdom introduced document LEG 102/11/3, inviting the Committee to consider two conflicting interpretations of the 1971 Fund Convention put forward at a meeting of the IOPC Funds governing bodies in October 2014, regarding which States' contributors would be liable for contributions after the Convention ceased to be in force, for an incident that occurred whilst the Convention was in force, with respect to the interpretation of similar provisions contained in the 1992 Fund Convention.

11.18 On the question of interpretation, the Committee was invited to consider whether liability fell to contributors in those States that were members of the 1971 Fund on the date of the incident, or on the date before the Convention ceased to be in force.

11.19 The delegation of the United Kingdom explained the background to the issues raised and requested the Committee to provide a definitive interpretation of the 1992 Fund Convention, taking into account the decisions of the 2014 October meeting of the IOPC Fund,

and the relevant provisions of the 1992 Fund Convention and Vienna Convention on the Law of Treaties, 1969.

11.20 The Director of the 1992 Fund provided background to the 2014 October meeting and the legal interpretations provided at that time.

11.21 The Secretariat provided information regarding the competencies of the Organization and the 1992 Fund Assembly with respect to interpreting the Convention and advised that there was a basis in law to conclude that either body was an appropriate venue for interpretation, but the interpretation itself was a matter for the Contracting States.

11.22 Amongst the views expressed were the following:

- the interpretation of the relevant articles of the 1992 Fund Convention should be extended to other conventions such as the Supplementary Fund Protocol and the HNS Convention;
- following the recent winding up of the 1971 Fund, this was the right time and that the Legal Committee was the correct forum for resolving the conflicting interpretations taking into account the financial implications;
- the interpretation as provided for in paragraphs 19 of LEG 102/11/3 was correct;
- the matter of interpretation was not urgent as the 1971 Fund had been wound up and there was no intention to terminate the 1992 Fund Convention in the foreseeable future;
- the matter of interpretation of the 1992 Fund Convention should rest with Member States to that Convention and the 1992 Fund Assembly was therefore the correct forum;
- although the document raised an important issue, this required further study and deliberation and, as such, the Committee at this time should not offer a definitive interpretation.

11.23 The Committee thanked the delegation of the United Kingdom for the document and concluded that, although there was a desire for clarity of interpretation, a majority felt that the

Member States of the 1992 Fund Convention should interpret the Convention, and that the 1992 Fund Assembly, rather than the Legal Committee, would be a more suitable body for considering the issue. Moreover, there was no need or urgency to provide such an interpretation as the 1971 Fund had been wound up.

Audio file: Tuesday, 14 April 2015: p.m.

(iv) Guidelines on accepting insurance companies

11.24 The Committee was informed that document LEG 102/11/4 had been withdrawn by its sponsor.

Audio file: Tuesday, 14 April 2015:

11 ANY OTHER BUSINESS

(v) Delegating the authority of issuing certificates under the CLC and HNS Convention

11.25 The delegation of France introduced document LEG 102/11/5, inviting the Committee to consider the possibility for States Parties to delegate the issuance of insurance certificates required under the CLC and the 2010 HNS Convention, despite the absence of an explicit provision to this effect in these conventions.

11.26 The Committee thanked the delegation of France for this document and expressed the following views:

- the absence of an explicit framework for delegating insurance certificates in the CLC and the 2010 HNS Convention must be interpreted as prohibiting States Parties from authorizing organizations to issue, on their behalf, the certificates required;
- the absence of specific provisions should not prohibit the delegation of the issuance of insurance certificates as this would allow for a pragmatic and flexible approach; States Parties should be able to delegate the issuance of certificates but responsibility remains with States; and

- a new module in GISIS should be developed to enable Member States to notify the fact of the delegation of authority to issue certificates in a similar format as for other IMO conventions and that the Sub-Committee on Implementation of IMO Instruments (III) could assist in this respect.

11.27 Following the discussion, there was a general agreement that the delegation of authority to issue certificates under the 1992 CLC and 2010 HNS Convention was possible but that there was a need for further deliberation at future sessions of the Committee.

Audio file: Tuesday, 14 April 2015:p.m.

(vi) The necessity for review of the existing legal regime governing the amendment procedure of some international conventions adopted in IMO

11.28 The delegation of the Islamic Republic of Iran introduced document LEG 102/11/6, inviting the Committee to review the existing legal regime governing the amendment procedure contained in some IMO conventions.

11.29 The Committee's attention was drawn to those conventions developed by MSC/MEPC, which provided for a more detailed amendments procedure than those contained in the conventions emanating from the work of the Legal Committee. The delegation clarified that it was aware of the reasons for this differentiation, namely that the amendments procedure in MSC/MEPC conventions provided for tacit acceptance of the technical amendments contained in the annexes to those conventions. However, the delegation felt that this in itself was not a sufficient reason why the amendments procedure should not be aligned across all IMO instruments and suggested that the Secretariat prepare recommendations in the form of guidance to take this work forward.

11.30 The Committee thanked the delegation for this document. The views expressed included the following:

- there was no doubt that the amendment procedure in IMO conventions varied and that there was no uniformity, therefore the alignment of this procedure should be taken into account for future conventions;

- although it might be worthy in future to align the amendments procedure contained in IMO conventions for the purposes of a more unified regime, this should not be done without due consideration of the aim and scope of the various conventions for which different amendments procedures may be better suited;
- it was for the parties who negotiated the conventions to decide on whether amendments would be required and that the provision of guidelines would therefore not be appropriate;
- many conventions developed by the technical committees do not end up in the Legal Committee and therefore the development of guidance on amendments procedures might be useful;
- bringing the amendments procedure in line with all conventions would require proper justification and taking on this work would be a complicated task;
- any amendments to existing conventions would have to be concluded in accordance with the provisions contained therein and, in this regard, guidelines would not be binding.

The Committee concluded that the majority did not favour the production of guidelines on this subject. It was agreed that each convention had its own unique circumstances and that the issue of amendment was best left to the parties to the conventions, in line with the provisions of the Vienna Convention on the Law of Treaties, 1969.

Audio file: Tuesday, 14 April 2015: a.m.

vii) Outcome of the inter-agency High-level meeting to address unsafe mixed migration by sea

11.31 The Secretariat introduced document LEG 102/INF.3, informing the Committee of the outcome of the inter-agency High-level meeting to address unsafe mixed migration by sea, hosted at IMO Headquarters on 4 and 5 March 2015.

11.32 The representative of the International Organization for Migration (IOM) stated that the primary obligation of the international community was to continue saving lives, in particular by providing more support for migrants through dedicated missions and ensuring proper law

enforcement and promotion of initiatives with IMO to develop a joint database on migrant incidents and on suspected smugglers and vessels.

11.33 The Committee noted that the aim of the High-level meeting was to facilitate dialogue and promote enhanced cooperation and harmonization between United Nations agencies, international organizations, non-governmental organizations, Governments and the shipping industry.

11.34 The views expressed included the following:

- the issue of mixed migration was a global problem and search and rescue systems maintained by the shipping community were not designed for rescuing hundreds of thousands of people drifting on small, unseaworthy boats left in shipping lanes;
- the Legal Committee should review the international legal regime dealing with the complex issue of migration by sea and identify gaps that needed to be addressed;
- the issue should also be referred to MSC, FAL and the Council as a matter of priority;
- the situation of migrants at sea and search and rescue (SAR) services in the Mediterranean region was desperate with urgent action needed and procedural obstacles should not prevent the Legal Committee and IMO from addressing this problem.

11.35 The Committee supported the Organization's further involvement in this issue, in particular, in conducting a review of SAR legislation, including the definition of "distress" and its interpretation to ensure that legal regimes for SAR were able to respond to unusual situations.

11.35 The delegation of Malta², with support of the delegation of Denmark, offered to coordinate an intersessional discussion on the study of the current legal regime and gaps that needed to be addressed in order to remedy the drastic situation concerning migrants at sea.

Audio file: Tuesday, 14 April 2015: p.m.

² Coordinator of the informal intersessional group: Mr. Lino Vassallo: lino.vassallo@gov.mt

ANNEX 1

AGENDA FOR THE ONE HUNDRED AND SECOND SESSION

Opening of the session

- 1 Adoption of the agenda
 - 2 Report of the Secretary-General on credentials
 - 3 Facilitation of the entry into force and harmonized interpretation of the 2010 HNS Protocol
 - 4 Fair treatment of seafarers in the event of a maritime accident
 - 5 Piracy
 - 6 Matters arising from the 112th and 113th regular sessions of the Council
 - 7 Technical cooperation activities related to maritime legislation
 - 8 Review of the status of conventions and other treaty instruments emanating from the Legal Committee
 - 9 Work programme
 - 10 Election of officers
 - 11 Any other business
 - 12 Consideration of the report of the Committee on its 102nd session
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ANNEX 2

HNS CORRESPONDENCE GROUP

Terms of reference

The terms of reference for the HNS Correspondence Group are as follows:

1. to provide a forum for an exchange of views concerning HNS implementation issues and to monitor and inform the implementation process in States;
2. to provide, with a view to encouraging early entry into force of the 2010 HNS Convention at a global level, and for the benefit of both potential States Parties and affected industries seeking a coordinated approach to ratification, accession or acceptance, guidance and assistance on issues regarding the implementation and operation of the Convention such as, but not limited, to:
 - .1 the collection of information on contributing cargo, the development of appropriate reporting and verification systems, and the contribution system in accordance with the Guidelines on reporting of HNS contributing cargo;
 - .2 the acceptability of insurance or other financial security for the purpose of article 12 of the 2010 HNS Convention;
 - .3 assisting the IOPC Fund 1992 with the development of the various documents and decisions required for the first sessions of the HNS Assembly, in accordance with resolution 1 on setting up the HNS Fund agreed at the international conference which adopted the 2010 HNS Protocol;
3. to develop three specific items:
 - "Understanding the HNS Convention" publication;
 - HNS Scenarios; and
 - a draft resolution on implementation and entry into force of the 2010 HNS Convention; and
4. to report to the Legal Committee at its next session.

ANNEX 3

BIENNIAL STATUS REPORT 2014-2015

Legal Committee (LEG)								
Planned output number	Description	Target completion year	Parent organ(s)	Coordinating organ(s)	Associated organ(s)	Status of output for Year 1	Status of output for Year 2	References
1.1.1.1	Cooperate with the United Nations on matters of mutual interest, as well as provide relevant input/guidance	Annual	Assembly	Council	MSC / MEPC / FAL / LEG / TCC	postponed	completed	
1.1.1.2	Consideration of reports on the application of the joint IMO/ILO Guidelines on the fair treatment of seafarers and consequential further actions as necessary	Annual	LEG			postponed	postponed	
1.1.2.1	Cooperate with other international bodies on matters of mutual interest, as well as provide relevant input/guidance	Annual	Assembly	Council	MSC / MEPC / FAL / LEG / TCC	postponed	completed	
1.3.1.1	Advice and guidance on issues under the United Nations Law of the Sea Convention relevant to the role of the Organization	Annual	LEG			postponed	completed	

Planned output number	Description	Target completion year	Parent organ(s)	Coordinating organ(s)	Associated organ(s)	Status of output for Year 1	Status of output for Year 2	References
2.0.1.4	Strategies developed to facilitate entry into force of the HNS Protocol and harmonized interpretation	2015	LEG			In progress	postponed	
2.0.1.5	Provide advice and guidance on issues brought to the Committee in connection with implementation of IMO instruments	Annual	LEG			postponed	completed	
2.0.2.1	Analysis of consolidated audit summary reports	2015	Assembly	Council	MSC / MEPC / LEG / III	no work requested by parent organ	no work requested by parent organ	
3.4.1.1	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 by parent organ	no work requested by parent organ	
3.5.1.1	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 by parent organ	no work requested by parent organ	
3.5.1.2	Input to the ITCP on emerging issues relating to sustainable development and achievement of the MDGs	2015	TCC		MSC / MEPC / FAL / LEG	no work requested by parent organ	no work requested by parent organ	

Planned output number	Description	Target completion year	Parent organ(s)	Coordinating organ(s)	Associated organ(s)	Status of output for Year 1	Status of output for Year 2	References
4.0.1.3	Endorsed proposals for unplanned outputs for the 2014-2015 biennium as accepted by the Committees	Annual	Council		MSC / MEPC / FAL / LEG / TCC	no work requested by parent organ	no work requested by parent organ	
4.0.2.1	Endorsed proposals for the development, maintenance and enhancement of information systems and related guidance (GISIS, websites, etc.)	Continuous	Council		MSC / MEPC / FAL / LEG / TCC	no work requested by parent organ	no work requested by parent organ	
4.0.5.1	Revised Guidelines on the Application of the Strategic Plan and the High-level Action Plan of the Organization ("GAP") and committee guidelines on organization and method of work, as appropriate	2015	Assembly	Council	MSC / MEPC / FAL / LEG / TCC	postponed	postponed	
6.1.2.1	Provide advice and guidance in connection with implementation of SUA 1988/2005	Annual	LEG			Completed		
6.2.1.2	Revised guidance relating to the prevention of piracy and armed robbery to reflect emerging trends and behaviour patterns	Annual	MSC		LEG	no work requested by parent organ	no work requested by parent organ	

Planned output number	Description	Target completion year	Parent organ(s)	Coordinating organ(s)	Associated organ(s)	Status of output for Year 1	Status of output for Year 2	References
6.2.2.1	Provide advice and guidance to support international efforts to ensure effective prosecution of perpetrators (piracy); and to support availability of information on comprehensive national legislation and judicial capacity-building	Annual	LEG			postponed	completed	
8.0.3.1	Requirements for access to, or electronic versions of, certificates and documents, including record books required to be carried on ships	2015	FAL	MSC / MEPC / LEG	III	no work requested by parent organ	no work requested by parent organ	

ANNEX 4
POST-BIENNIAL AGENDA

Legal Committee (LEG)									
ACCEPTED POST-BIENNIAL OUTPUTS									
Number	Biennium (when the output was placed on the post-biennial agenda)	Reference High-level Actions	Description	Parent organ(s)	Coordinating organ(s)	Associated organ(s)	Timescale (sessions)	References	
70	2012-2013	1.3.5	Consider reports on the issue of financial security in case of abandonment of seafarers, and shipowners' responsibilities in respect of contractual claims for personal injury to or death of seafarers, in light of the progress of the amendments to ILO MLC 2006	LEG			2		
105	2014-2015	1.1.1	Consideration of reports on the application of the joint IMO/ILO Guidelines on the fair treatment of seafarers in the event of a maritime accident and consequential further actions as necessary	LEG			2	Annual output	
106	2014-2015	1.3.1	Advice and guidance on issues under UNCLOS relevant to the role of the Organization	LEG			2	Annual output	
107	2014-2015	2.0.1	Strategies developed to facilitate entry into force of the HNS Protocol and harmonized interpretation	LEG			2		
108	2014-2015	2.0.1	Provide advice and guidance on issues brought to the Committee in connection with implementation of IMO instruments	LEG			2	Annual output	
109	2014-2015	6.2.1	Provide advice and guidance to support international efforts to ensure effective prosecution of perpetrators (piracy); and to support availability of information on comprehensive national legislation and judicial capacity-building	LEG			2	Annual output	

ANNEX 5

ITEMS TO BE INCLUDED IN THE AGENDA FOR LEG 103

- Facilitation of the entry into force and harmonized interpretation of the HNS Protocol, 2010
 - 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
 - Piracy
 - Matters arising from the 114th and 115th regular sessions of the Council, the twenty-eighth extraordinary session of the Council and the twenty-ninth regular session of the Assembly
 - 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 103rd session
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