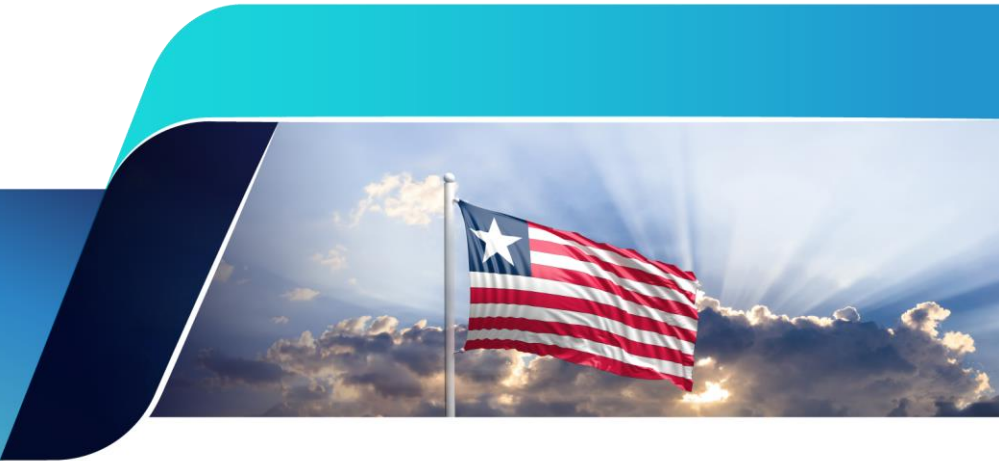


IMO LEG 111

Meeting Summary

May 13, 2024



The 111th session of the IMO Legal Committee (LEG 111) was held 22-26 April 2024 at the IMO headquarters in London, supplemented by hybrid (remote) participation.

LISCR participated in the following groups in addition to the plenary:

Groups	Agenda item
WG 1	Working Group on Fair Treatment of Seafarers Detained on Suspicion of Committing Maritime Crimes
WG 2	Working Group on Liability and Compensation

Opening

Several delegations called for the immediate release of a containership and its international crew seized by the authorities in international waters off the Strait of Hormuz on 13 April 2024.

In addition, a large number of delegations expressed concerns over continuing threats to the safety and welfare of seafarers, freedom of navigation, the marine environment, the safety of sea lines of communication, and the stability of global supply chains, resulting from Houthi attacks on commercial ships in the Red Sea and the Gulf of Aden.

2010 HNS Protocol

The International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (the HNS Convention) establishes the principle that the ‘polluter pays’ by ensuring that the shipping and HNS industries provide compensation for those who have suffered loss or damage.

LEG 111 noted that the 2010 HNS Protocol needed only four more ratifications with the required contributing cargo, thus the Convention was significantly closer to its entry into force.

Fair treatment of seafarers

Abandonment of seafarers

ILO and IMO Secretariats provided a report on the IMO/ILO joint database of abandonment of seafarers for the period 1 January to 31 December 2023.

Liberia provided updates on the case concerning vessels flying the Liberian flag and requested clarification on the status definition.

There was a proposal of establishing a new task force, comprising interested ILO/IMO Member States, as well as shipowners' and seafarers' representatives, to review and update (or redevelop) the joint ILO/IMO abandonment database (including all procedural, policy and technical aspects) for consideration at a future meeting of the Joint ILO/IMO Tripartite Working Group to identify and address seafarers' issues and the human element (JTWG).

Delegations at LEG 111 expressed concerns over the recent increase in abandonment cases.

LEG 111, among others:

- agreed that reporting was critical to resolving cases on the database and that both flag States and port States play an important role in verifying financial security for abandoned seafarers;
- encouraged Member States to report incidents of abandonment to the database when they occurred in their ports, on vessels flying their flag, or involving seafarers who are their nationals;
- promoted to Member States and stakeholders the *Guidelines on how to deal with seafarer abandonment cases*; and
- agreed to establish a new Task Force to review and update (or redevelop) the joint ILO/IMO abandonment database and defining the terms resolved, disputed, unresolved, inactive, and any other additional status that is considered important.

Seafarers detained on suspicion of committing crimes

Guidelines on fair treatment of seafarers detained on suspicion of committing crimes

LEG 111 reviewed the report of the correspondence group (CG) on the Guidelines on fair treatment of seafarers detained on suspicion of committing crimes, established by the 110th session of the Legal Committee.

LEG 111 further developed the guidelines for review by the Joint IMO-ILO Tripartite Working Group scheduled for November 2024. The key points of the guidelines are:

- These guidelines are intended to encourage appropriate legal process for seafarers who are detained on suspicion of having committed a crime. These guidelines acknowledge that appropriate jurisdiction is a fundamental consideration in all cases and it is recognized that the guidance provided to various parties may have to be adapted depending on where the crime occurs. These guidelines are not intended to establish rights greater than those under the laws of the detaining state or international law;
- The guidelines present roles of port or coastal States, flag States, States of which the seafarer is a national, shipowners and seafarers for cooperation and fair treatment of the seafarers under the suspicion;
- Guidelines should be applied where seafarers may be detained in a jurisdiction other than that of the seafarers' nationality, on suspicion of committing crimes during the course of their employment on board a ship. The words "on board a ship" were added to give clarity with regards to the place of employment and not necessarily the location where the alleged crime may have been committed; and
- At this stage, fishers are not included.

Dark fleet operation

LEG 111 also noted the submission on the criminalization of the seafarers who may be involved in dark fleet operations. LEG 111 agreed to address this matter at LEG 112.

The database and contact point

LEG 111 could not conclude this issue and will be considered by LEG 112. It was noted that, among others:

- The purpose and use of the database is not clear; and
- Establishing and maintaining the contact point are difficult as there are so many law enforcement agencies and offices, in addition to the diplomatic contact points, are involved.

Fraudulent registration and fraudulent registries

The IMO Secretariat provided the final report of the Study Group on Fraudulent Registration and Fraudulent Registries of Ships.

LEG 111 reviewed the report of the CG, which includes the questionnaire contained a brief summary of the provisions of Article 91 of the United Nations Convention on the Law of the Sea, pursuant to which each State shall establish the necessary requirements for granting its nationality to ships, for their registration in its territory and for them to be entitled to fly its flag; and Article 94 on the responsibility of the flag State to maintain a register of ships.

At LEG 111, several states expressed concerns over the situation and introduced particular cases they encountered, which also included fraudulent STCW Certificates. Several States, including Liberia, explained the countermeasures undertaken to eradicate fraudulent registration using their registry. Some delegations also suggested enhancement of the port State control. Liberia also points out the need for capacity building, which was supported by several delegates.

Following the discussion, LEG 111 decides on the measures as explained below.

IMO's voluntary guidelines for ship registry and registration

While LEG 111 did not support creation of a new International Convention on ship registration nor resurrect 1986 UN Convention on Conditions for Registration of Ships, there were general supports on creating IMO's guidelines. However, noting such work will require a new output (work programme), LEG 111 tasked CG to develop a justification for the work.

In this regard, LEG 111 noted views expressed that since the United Nations Convention on Conditions for Registration of Ships was adopted in 1986, the business world had progressed and that the requirement of a genuine link between the ship and the flag State or the requirement for the owner to have a residence in the flag State served no practical purpose, also given the advances in banking, insurance and the shipping business in general in the past 40 years. Therefore, the Committee also noted that the guidelines to be developed should take these factors into account, including the comments on the genuine link.

Preventive measures

LEG 111 strongly encouraged Member States to act on their commitments as reflected in Assembly resolution A.1162(32) on *Measures to prevent fraudulent registration and the creation of registries of ships in the Global Integrated Shipping Information System (GISIS)* and, in collaboration with all relevant stakeholders, take the necessary measures, individually and collectively, to promote effective actions for the prevention and suppression of fraudulent registration and fraudulent registries and other fraudulent acts in the maritime sector.

LEG 111 agreed to continue to address other preventive measures, such as:

- .1 the utilization or the enhancement of the existing tools developed by IMO, such as port State control, Continuous Synopsis Record, and Long-Range Identification and Tracking System;
- .2 the need to continue to communicate and report to the Organization the cases of fraudulent registration and fraudulent registries of ships and of ships no longer on a flag State registry, for dissemination of this data;
- .3 the development of harmonized procedures including challenges with provisional registration;
- .4 the need to reinforce port State control measures;
- .5 the need to define the element of due diligence for the registration of ships and for their deletion from a registry, as well as the consideration of changes in ownership;
- .6 the need for further research into current registration loopholes that facilitate fraudulent registration;
- .7 the need to collaborate and share information and for Member States to act on their commitments as reflected in Assembly resolution A.1162(32);
- .8 the need to enhance capacity on identifying maritime fraud with respect to human resources and technological skills which may be further considered by the Technical Cooperation Committee;
- .9 the need to carry out awareness campaigns on the impact of fraudulent registration on the shipping industry and the seafarers;
- .10 the need for the information presented in the GISIS to be more easily searchable by port State control regimes;
- .11 that port State control MoUs could develop a common list of flags used by fraudulent actors and enhance inspections for these ships;
- .12 the publication of the Study report on the IMO webpage to draw further attention to the problem of fraudulent registration; and
- .13 improvements to GISIS.

IMO Number

As the work of the CG on Due Diligence and IMO Identification Number Schemes between LEG 110 and LEG 111 did not come up with a concrete proposal, the task was given to the newly re-established CG.

liability limits

There was a proposal to update the liability limit without amending conventions, taking into account inflation, etc.

LEG 111 reviewed the report of the CG, regarding the development of methodologies to transparently assess the need to amend liability limits, and considered the matter further in the working group that was established during the meeting.

Subsequently, LEG 111 approved a LEG Circular on methodologies for the collection and reporting of experience of incidents and damage resulting therefrom and for assessing changes in monetary value.

Piracy

A Member State provided information regarding the recent resurgence of piracy off the coast of Somalia in the Gulf of Aden region, and proposed the renewal of anti-piracy measures off the coast of Somalia to maintain maritime security in the said region for the safety of seafarers and commercial ships and the protection of freedom of navigation. These measures will allow a hot pursuit of a pirate boat into the Somali territorial water.

However, opinions at LEG 111 were divided. After intensive discussion, LEG 111 noted:

- the concerns expressed in the document and in plenary on the increase and resurgence of piracy off the Coast of Somalia and the desire to do something about the matter;
- the procedural hurdles with respect to the Organization taking further action relating to the UN Security Council authorizations granted in S/RES/1846 (2008) and urged Member States to directly refer the matter to the United Nations Security Council for an appropriate action; and
- the need for regional cooperation and to keep this matter under consideration.

Liability insurance

Guidelines for accepting insurance certificates and insurance companies, financial security providers, and protection and indemnity clubs (P & I Clubs)

LEG 111 approved a LEG Circular on *the Guidelines for accepting insurance certificates and insurance companies, financial security providers, and protection and indemnity clubs (P & I Clubs)*.

The guidelines revokes the *Guidelines for accepting insurance companies, financial security providers and the International Group of Protection and Indemnity Associations (P & I Clubs)* contained in the annex to Circular Letter No.3464.

The purpose of these guidelines is to provide guidance to State Parties regarding the "Relevant Conventions" for accepting Insurance Certificates or similar documentation from insurance companies, financial security providers, International Group (IG) P&I Clubs and P&I Clubs outside the IG.

The guidelines also present the criteria and documentation for accepting Insurers and criteria for accepting Insurance Certificates.

Pamphlet on the 2002 Athens Convention

LEG 111 approved the text of the pamphlet on the 2002 Athens Convention.

This is part of a series of pamphlets aimed at providing information on the responsibilities of carriers, insurers or other financial security providers, and States Parties (flag States or other certifying States and Port States) regarding IMO's liability and compensation conventions. This pamphlet has no legal standing, but it is intended to provide concise information on the Athens Convention. Readers should seek their own independent legal advice on further questions.

Maritime Autonomous Surface Ships (MASS)

Liability and compensation matters

There was also a general agreement that victims of maritime casualties should be treated equally, whether the casualty involves a MASS or a conventional ship.

While many delegations emphasized that the Regulatory Scoping Exercise (RSE) conducted by the Legal Committee concluded that MASS could be accommodated within existing LEG instruments, some delegations, after reviewing the submissions made during this session, similarly determined that there was no necessity to amend the instruments under the Legal Committee's jurisdiction. However, certain delegations raised a critical point: the current instruments overseen by the Legal Committee lack provisions addressing the liability of shipowners in a broader sense. According to these delegations, addressing this issue is crucial, albeit intricate, necessitating thorough examination to ensure that any actions taken reflect operational realities and uphold the principles of uniformity and equitable treatment of victims. Additionally, since establishing a comprehensive liability regime for MASS falls outside the current scope of LEG's mandate, initiating such work within the Committee would necessitate a proposal for a new output (work programme).

LEG 111 agreed to address this matter further once the Maritime Safety Committee (MSC) finalized the non-mandatory code

Remote Operation Centres (ROCs) and the effective exercise of flag State jurisdiction

A couple of Member States informed LEG 111 of a proposal submitted to the Maritime Safety Committee (MSC) on a proposed mechanism facilitating the management of remote operations in the context of the draft MASS Code.

After an intense discussion, LEG 111 recognized the support for using the ISM Code (Audit and Certification of ship management company) as a potential model for dealing with ROCs, and it was viewed as a practical and pragmatic way forward. No legal roadblocks were specifically identified, however, LEG 111 agreed that further development of the model and its application to ROC would have to take place in MSC.

With respect to concerns raised about appropriate flag State oversight and how to meet obligations under Articles 91 and 94 of UNCLOS, those considerations would have to be taken into account as progress is made with the development of MASS and once actual situations of ROCs in jurisdictions other than that of the flag State arise. Moreover, those situations would necessitate appropriate arrangements between the flag State and the host State of an ROC.

Work of other IMO bodies

The IMO Secretariat provided information on the work of other IMO bodies since the 110th session of the Legal Committee.

Lost containers

In relation to the work of MSC and MEPC on reporting of the lost container, LEG 111 noted that the lost container falls within the definition of a "wreck" in the context of the Nairobi Convention on the Removal of Wrecks, 2007.

Electronic certificates

LEG 111 agreed to inform that the following instruments under its purview could be addressed in future FAL-LEG-MEPC-MS-C joint guidelines on electronic certificates and documents:

- International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (BUNKERS 2001);
- Nairobi International Convention on the Removal of Wrecks, 2007 (NAIROBI WRC 2007);
- Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 (PAL 1974), as amended by its Protocol of 2002 (PAL PROT 2002);
- International Convention on Civil Liability for Oil Pollution Damage, 1969 (CLC 1969), as amended by its Protocol of 1992 (CLC PROT 1992); and
- upon its entry into force, the International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996, as amended by its Protocol of 2010 (HNS PROT 2010).

Status of convention

The Convention on the International Effects of Judicial Sales of Ships, 2022

There was an update with respect to the status of the Convention on the International Effects of Judicial Sales of Ships, 2022 (Beijing Convention on the Judicial Sales of Ships), for which IMO is the Repository under article 11 thereof, including a celebratory event to be held on 19 June 2024 in Malta, co-organized by the Maltese Ministry for Foreign and European Affairs and Trade, UNCITRAL and CMI, during which States would have the opportunity to sign the Convention.

Any other business

Fraudulent recruitment of seafarers

A Member State provided views on prospective further work by the Committee on measures to prevent unlawful or fraudulent practices associated with the recruitment and placement of seafarers on board ships.

LEG 111 referred the issue to the IMO/ILO Joint Tripartite Working Group.

Further information

For further information please contact: imo@lisscr.com

Annex

Provisional list of draft resolutions and circulars

- Methodologies for the Collection and Reporting of Experience of Incidents and Damage Resulting Therefrom and for Assessing Changes in Monetary Value
- Revised Circular Letter No.3464 - Guidelines for Accepting Insurance Certificates and Insurance Companies, Financial Security Providers, and Protection and Indemnity Clubs (P & I Clubs)
- Information Pamphlet on the Athens Convention Relating to the Carriage Of Passengers and their Luggage by Sea, 2002