



IMO LEG 109

Meeting summary

April 20, 2022

The 109th session of the IMO's Legal Committee (LEG 109) was held 21-25 March 2022 online.

CONVENTION MATTERS

Review of the financial security required by the liability conventions

At the beginning of the meeting, a group of Member State proposed to develop guidelines on the impact of the situation in the Black Sea and Sea of Azov on insurance certificates.

LEG 109 set up the working group and finalized a LEG Circular on *Guidance on the impact of the situation in the Black Sea and the Sea of Azov on insurance or other financial security certificates*.

Among others, the circular requests flag or certifying States issuing certificates based on Russian insurers or Russian financial security providers to verify that the coverage meets the criteria outlined in Circular Letter No.3464 on Implementation of the 1992 Civil Liability Convention, the 2001 Bunkers Convention, the 2007 Nairobi WRC and the 2010 HNS Convention.

Port States encountering certificates involving Russian insurers or financial security providers are requested to consult with the issuing or certifying State whose responsibility is to ensure that the insurance or financial security remains adequate, as called for in the IMO liability and compensation conventions.

2010 HNS Protocol

The HNS Convention establishes the principle that the 'polluter pays' by ensuring that the shipping and Hazardous and Noxious Substance (HNS) industries provide compensation for those who have suffered loss or damage resulting from an HNS incident.

The Convention has not yet entered into force, even with the 2010 protocol that aims for facilitating ratification.

LEG 109 noted information, including recent ratification by Estonia. LEG 109 also noted that four more States are very close to ratifying the 2010 protocol.

LEG 109 noted information on the workshop, which would be circulated by a circular letter.

LEG 109 also noted information submitted by Member States on the actual implementation of the Convention, once that enters into force, including electronic data exchange.

Liability limit

The Legal Committee is working on a possible mechanism for reviewing the owner's liability limit, which is, currently undertaken on ad-hoc basis.

The report of the informal group recommended establishing the formal correspondence group (CG).

While some raised questions on establishing the CG at this stage, others considered that the work should be limited to the Convention on Limitation of Liability for Maritime Claims (LLMC). The slight majority supported forming the CG.

LEG 109 concluded to set up the CG with a focus on LLMC and elaborate principles for methodologies. The working group (WG) will be set up at LEG 110 for further discussions.

Bunker convention – claim manual

The Legal Committee is working on developing a claim manual for the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (2001 Bunkers Convention).

A group of members submitted their preliminary work to be finalized by 2023.

- Section 1 briefly describes the purpose of the Claims Manual for the 2001 Bunkers Convention.
- Section 2 contains general information on the 2001 Bunkers Convention and how it works.
- Section 3 provides information on the submission and assessment of claims.
- Section 4 provides more specific information to assist claimants in presenting their claims.

LEG 109 agreed to continue the work by the CG for completion at LEG 110. LEG 109 noted that, while the work is based on the IOPC Fund claim manual, there are substantial differences between the IOPC Fund (CLC) and

the Bunker Convention, as the bunker convention does not have a separate funding mechanism but solely within owners' liability limit.

Non-International group P & I club

IOPC Fund identified these liability insurance problems, including inadequate insurance, lack of insurance and uncooperative insurers. To address these issues, a group of Member States proposed that material should be developed to assist flag States, port State control officers, shipowners and insurers, and revisions could be made to existing IMO guidelines to ensure proper understanding, implementation and application of the IMO liability and compensation conventions.

LEG 109 approved to include this new work starting at LEG 110.

SAFETY OF SHIPPING IN THE BLACK SEA AND THE SEA OF AZOV

Autonomous Republic of Crimea matter

LEG 109 noted the submission by a littoral State for drawing attention to the unauthorized and unlawful issuance of certificates of the right to sail.

This paper was submitted before 24 February 2022, thus situation is completely different today.

LEG 109 noted that there would be further submission to the 127th session of the Council.

Outcome of the 35th Extraordinary session of the IMO Council

LEG 109 reviewed the outcome of C/ES 35 including:

- a provisional and urgent measure of a blue safe maritime corridor to allow the safe evacuation of seafarers and ships from the high-risk and affected areas; and
- to reduce the suffering of seafarers and their families.

New agenda item on impact on shipping and seafarers of the situation in the Black Sea and Sea of Azov

Following the proposal by Member States, LEG 109 agreed to add the new agenda item "the impact on shipping and seafarers of the situation in the Black Sea and Sea of Azov", as sub-item of "Advice and guidance in connection with the implementation of IMO instruments", to address this issue and other associated matters.

FAIR TREATMENT OF SEAFARERS

Financial security for seafarer abandonment

On 31 December 2021, there were 604 abandonment incidents listed in the database since it was established in 2004, concerning 8,313 seafarers. Of those incidents, 275 cases were resolved, 138 cases were disputed, and 50 cases were inactive. There were still 141 unresolved cases. From 2011 to 2016, the number of cases per year ranged from 12 to 19. In 2017, 2018 and 2019, the cases reported increased drastically. In 2017, there were 55 cases reported, 14 of which were resolved that year and eight were resolved in 2018. In 2018, the total number of reported cases was 44 and of these, 16 cases had been resolved. In 2019, the total number of reported cases was 40 and of these, 20 cases had so far been resolved.

Although a direct linkage is unclear, since the outbreak of the COVID-19 pandemic, there has been another alarming spike in cases. In 2020, the total number of reported cases was 85 and of these, 43 cases had so far been resolved.

An NGO presented incidents of abandonment for the period 1 January to 31 December 2021. During the period referred to, a total of 95 cases of abandonment were reported involving 1,399 seafarers on 94 different vessels. The number of cases reported has increased by more than 10%.

The NGO also presented cases where no insurance was secured.

Many Member States intervened and verbally updated the information. The IMO secretariat explained that the case would be kept as "unresolved" even the crew had repatriated if the wages were not fully paid.

A Member State explained that, as a port State, it assisted repatriation.

Liberia explained its actions being taken under the responsibility of the ILO MLC 2006 Convention.

LEG 109 conclude:

- to share concerns caused by the pandemic
- to thank IMO/ILO for maintaining the database and IMO for action by the IMO action team.
- to promote ratification of MLC 2006; and
- to invite flag/port State to take more action for checking financial security.

Fair treatment of seafarers in the event of a maritime accident

The *Guidelines on fair treatment of seafarers in the event of a maritime accident* were adopted by the Legal Committee at its ninety-first session on 27 April 2006 (resolution LEG.3(91)). They were also adopted by the ILO Governing Body at its 296th session on 12 June 2006. They entered into force on 1 July 2006 and are subject to

voluntary acceptance by Member States. The Guidelines are kept under review by the Legal Committee.

An NGO pointed out that, despite Resolution LEG.3(91), the treatment of seafarers involved in a maritime accident continued.

At the meeting, the NGO made a passionate intervention about how unfairly seafarers were treated (detention period, forced to plea guilty to end the situation, no bail, no local aid, no legal assistance etc.).

A Member State explained, in relation to the Stolt Groenland case, that they did not discriminate seafarers by nationality.

LEG 109 concluded that this was a matter for the joint ILO-IMO Human Element Working group.

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

The coordinating State presented the report on the work of the CG on Development of Guidelines for Port State and Flag State Authorities on How to Deal with Seafarer Abandonment Cases. The CG developed practical guidelines to address abandonment of seafarer cases for port States, flag States, and States of which seafarers are a national.

The guidelines stipulate an active role of the flag Administration:

- When dealing with seafarer abandonment cases, the flag State should undertake arrangements for the maintenance and repatriation of seafarers. In addition, the flag State may ask assistance from the State of which seafarers are a national and port State, when needed and assist in any way the abandoned seafarers; and
- Should the shipowner fail to undertake its responsibilities within the timeline, the flag State authority will take the lead and coordinate with the relevant parties to resolve the seafarer abandonment case.

Another Member State presented information on the difficulties faced by seafarers and Member States in the event of seafarer abandonment. This document also proposed to include distinct information about abandoned seafarers in the IMO/ILO joint database of abandonment of seafarers and to develop a mechanism to facilitate the expeditious exchange of information and response from the authorities of the flag State, the nearest port State and the Member State of which the abandoned seafarer is a national.

LEG 109 agreed with the output of the CG and the (except for personal information in the database). LEG 109 agreed to forward the proposals to the joint IMO-ILO

working group on human element.

Fair treatment of seafarers detained on suspicion of committing maritime crimes

There was no submission under this agenda item. LEG 109 invited members to put forward a concrete proposal at LEG 110.

FRAUDULENT REGISTRATION AND REGISTRY

The 32nd session of the IMO Assembly adopted resolution A.1162(32) on *Encouragement of Member States and All Relevant Stakeholders to Promote Actions for the Prevention and Suppression of Fraudulent Registration and Fraudulent Registries and Other Fraudulent Acts in the Maritime Sector*.

The correspondence group developed the interim update for further discussion on study, the definition of false documents and active use of the information given in Continuous Synopsis Record (CSR) and Global Integrated Shipping Information System (GISIS).

LEG 109 agreed on the definition of the false document and agreed to establish the study group proposed by the CG to further consider the matter. At the meeting, fraudulent trades were added to the scope of the study. The meeting added:

- effective sanction for fraudulent registration and registry; and
- examples of the case in the questionnaires.

LEG 109 also invited members to contribute to the fund for the study.

LEG 109 encouraged Member States to provide relevant information on CSR in the relevant module of GISIS and to provide information on their ship registries in the Contact Points module in GISIS, using the form set out in the annex to Circular Letter No.4190 on *Communication of information to the Organization on registries of ships for input into the Registries of ships function* in the Contact points module in GISIS, pursuant to resolution A.1142(31) on *Measures to prevent the fraudulent registration and fraudulent registries of ships*.

LEG 109 also invited members to propose enforcement measures for the confiscation of the fraudulently registered ships.

Noting the concerns already raised by some delegations that the automatic identification system (AIS) data were deliberately manipulated and that ships were able to operate transmitting fake data, LEG 109 agreed to inform the Maritime Safety Committee of this issue, as that the committee may wish to investigate how ships without

proper registration were able to obtain the Maritime Mobile Service Identity (MMSI) numbers.

PIRACY AND ARMED ROBBERY AGAINST SHIPS

LEG 109 noted information presented by the IMO Secretariat on development since its last report to LEG 107. Key updates were:

- **Contact Group on Piracy off the Coast of Somalia (CGPCS):** Its key strategic themes for the overall plan of work included: (a) positioning the Contact Group within the maritime security architecture of the Western Indian Ocean; (b) dealing with piracy kingpins through criminal prosecutions; and (c) revisiting the focus of the Contact Group.
- **Maritime Safety Committee (MSC):** It developed an assembly resolution addressing the Gulf of Guinea which was subsequently adopted by the 32nd session of the Assembly.
- **United Nations Security Council:** During the reporting period, the Secretary-General of the United Nations issued two relevant reports on the situation with respect to piracy and armed robbery at sea off the coast of Somalia, including an assessment of national coast guard capabilities.

MARITIME AUTONOMOUS SURFACE SHIP (MASS)

LEG 108 completed the "Regulatory Scoping Exercise" (RSE) for the use of Maritime Autonomous Surface Ships (MASS). The outcome of the work was presented in LEG.1/Circ.11, and the history of discussion under this agenda is explained in section 2 of the annex to [LEG.1/Circ.11](#). LEG 109 concluded that MASS could be accommodated within the existing regulatory framework of LEG conventions without the need for major adjustments. While the introduction of MASS appears to be entirely unproblematic under some conventions under the Legal Committee's purview, others may require additional interpretations or amendments to address the common potential gaps and themes.

To move further, several proposals on new work programme are presented to LEG 109. In general, proposals stressed coordinated work with the Maritime Safety Committee and the Facilitation Committee.

LEG 109 agreed to the proposed new output for the current biennium. LEG 109 also agreed to join the initiatives on the joint working group, which:

- would be a subsidiary body of respective committees; and
- would address only common issues.

UNANNOUNCED MISSILE LAUNCH

Several Member States accused the launch of the missile on 24 March without any navigational warning.

The IMO Secretariat explained the history of the discussion and resolution A.706(17), as amended, on World-Wide Navigational Warning Service as well as MSC/Circ.893, MSC.1/Circ.1225 and MSC.1/Circ.1551 on Navigational Warnings concerning operations endangering the Safety of Navigation.

FURTHER INFORMATION

For further information, please contact: imo@liscr.com

PROVISIONAL LIST OF DRAFT RESOLUTIONS AND CIRCULARS

- DRAFT LEG CIRCULAR on Guidance on the impact of the situation in the Black Sea and the Sea of Azov on insurance or other financial security certificates.