



IMO LEG 110 Meeting Summary

May 5, 2023

The 110th session of the IMO's Legal Committee (LEG 110) was held 27-31 March 2023 at the IMO headquarters in London, supplemented by hybrid (remote) participation.

Among others, LISCR participated in the following groups in addition to the plenary:

| Group | Agenda item |
|-------|---|
| WG 1 | Fair treatment of seafarers detained on suspicion of committing maritime crimes |

Convention matters

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.

LEG 110 noted the progress of the ratification.

STS operation in high-seas (open waters)

There was a submission expressing concerns over an increase in the frequency of ship-to-ship crude oil transfers in international waters by ships using "dark operations" in order to circumvent sanctions and high insurance costs.

LEG 110 was informed that a fleet of between 300 to 600 tankers was currently operated as a "dark fleet" or "shadow fleet" to circumvent sanctions and high insurance costs.

LEG 110 broadly supported the following recommended measures:

- Flag States are 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 practice safe shipping standards to minimize 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 authorized and notifying the respective flag Administration.

LEG 110 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.

Liability limit

LEG 110 reviewed the report of the correspondence group (CG) and agreed on the principles, among others:

- The methodologies should be rigorous and repeatable but not onerous.
- It is important to consider data not only from insurance companies, but also from coastal States.
- Data is indicative and need not be audited. The source of data should be provided for transparency.
- Changes in monetary value should be assessed by reference to economic indicators like CPI or GDP deflator.

LEG 110 set up the CG for the continued work.

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 Bunker Convention).

LEG 110 approved the claim manual prepared by the CG as a LEG circular.

Proper implementation and application of IMO liability and compensation conventions

Volunteer members developed draft information pamphlets on the IMO liability and compensation conventions. The goal of these pamphlets was to help with a proper understanding of the conventions, particularly with regard to the responsibilities of shipowners, insurers or other financial security providers, flag States, and port States.

LEG 110 finalized pamphlets on the Bunkers Convention, Civil Liability Convention, and Wreck Removal Convention.

LEG 110 set up the CG to work to review the Guidelines for accepting insurance companies, financial security providers and the International Group of Protection and Indemnity Associations.

LEG 110 also instructed the 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".

Judicial Sales of Ships

LEG 110 was made aware that there were instances of ships being sold in judicial sales free and unencumbered to bona fide purchasers paying good money only to have their voyages interrupted and ships arrested later by the vessel's previous creditors.

LEG 110 noted that UNCITRAL adopted the United Nations Convention on the International Effects of Judicial Sales of Ships on 7 December 2022.

There was a proposal that the IMO could be the depositary of the Convention and establish a GISIS module to share information on judicial sales.

LEG 110 noted the information provided and expressed its appreciation to those who worked for the development of the Convention.

Fair treatment of seafarers

Financial security for seafarer abandonment

As of 23 December 2022, there were 713 abandonment incidents listed in the database since it was established in 2004, concerning 9,971 seafarers. Of those incidents, 305 cases were resolved, 151 cases were disputed, and 50 cases were inactive. There were still 207 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.

LEG 110 thanked the ILO and the IMO Secretariat for their efforts. Many Members (20 Member States, 1 Associate Member, 4 NGOs) expressed grave concerns over the drastic increase of the cases in recent years even after the pandemic.

In many cases, a lack of financial security was observed. LEG 110 expected the flag States and port States to work together in accordance with *the Guidelines for port State and flag State authorities on how to deal with seafarer abandonment cases* developed by the ILO-IMO joint tripartite working group. In this regard, LEG 110 agreed to bring the issue to the attention of the sub-committee on Implementation of IMO Instrument.

LEG 110 also looked into the importance of the education of seafarers about their rights, and in particular, advised them that they do not need to stay onboard to obtain outstanding wages.

LEG 110 further agreed on the importance of timely updates of the seafarer abandonment database.

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)). The Guidelines are kept under review by the Legal Committee.

A seafarer NGO informed LEG 110 that they launched a new survey on the national implementation, which was noted by LEG 110.

Fair treatment of seafarers detained on suspicion of committing maritime crimes

A group of Member State and NGO proposed draft guidelines based on the 2006 *Guidelines on fair treatment of seafarers in the event of a maritime accident* (resolution A.1056/Rev.1(27)) to address "Fair treatment of seafarers detained on suspicion of committing maritime crimes". The proposal also suggested additional elements for both port, flag and seafarers States.

LEG 110 was informed of the cases where masters, or sometimes entire crew are detained with or without a criminal court judgment for prolonged periods without any proof of involvement in the crime.

Many members, including Liberia, supported the development of the guidelines. However, the discussion at LEG 110 found it difficult to develop an international guideline as the criminal prosecution procedures totally fall under the jurisdiction of the domestic law of the State.

Further, one member pointed out that establishing a contact point would conflict against the Vienna Convention

on Consular Relations.

Nevertheless, LEG 110 started the work through the correspondence group.

LEG 111 in 2024 will consider the establishment of a database and the need for designated contact points for the coordination of cases of detention of seafarers.

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

ILO and IMO Secretariats (LEG 110/4(d) and LEG 110/INF.6) presented the report of the outcome of the first meeting of the Joint ILO-IMO Tripartite Working Group (JTWG) held in a hybrid format at ILO in Geneva from 13 to 15 December 2022. The meeting considered and adopted guidelines on how to deal with seafarer abandonment cases.

The guidelines aim to improve coordination among States, 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.

Almost all members that expressed opinions, including Liberia, supported the outcome of the JTWG.

In addition, the following opinions were expressed:

- In many cases, the financial security expires without notice, and therefore, flag States should ensure that sufficient annual financial security is provided and a mechanism to verify it should be established; and
- guidelines could be improved and monitoring of their effectiveness is needed.

Subsequently, LEG 110 adopted resolution LEG.6(110) on *the guidelines on how to deal with seafarer abandonment cases*.

Ship registration

Fraudulent registration and fraudulent registries

The IMO Assembly adopted, in 2019, resolution A.1142(31) on *Measures to prevent the fraudulent registration and fraudulent registries of ships*.

Further, 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*.

WMU study

LEG 110 noted the study undertaken by WMU on

fraudulent registration and fraudulent registries of ships, in particular, the fact that only 31 States, representing 22.75% of the world fleet, had responded to the questionnaire.

LEG 110 also noted that the proliferation of the "dark fleet" could also be linked to the fraudulent registration.

LEG 110 agreed to undertake outreach activities for further participation in the study.

LEG 110 encouraged Member States to provide information on their ship registries in the contact points module in GISIS.

Database for fraudulent registration and registry

LEG 110, while there was support for the idea of a database in principle, several delegations raised concerns regarding the modalities of the database, including whether the existing GISIS module on ships and companies particulars, which already contained information on false flags and ships and companies under UN sanctions, should be modified or if a new stand-alone module should be created. There were also a number of questions regarding who would be responsible for entering and verifying the data and what associated procedures would be in place for accurate reporting and record-keeping.

LEG 110 agreed that the Secretariat should submit a document to the next session of the Committee describing the different options for the proposed database on fraudulent registration and fraudulent registries of ships, together with cost implications.

Wrongful exploitation of the IMO identification number

In the course of the discussion, the following opinions were expressed:

- the fraudulent registration undermined the balance of rights and obligations of the flag and coastal States under UNCLOS;
- there is no convention or treaty on ship registration in force globally; and
- the determination of the actual ultimate beneficial owner should be considered an element of any registration process and that due diligence should thus include reasonable efforts to pierce the corporate veil.

LEG 110 agreed that more information on the abuse of the IMO number scheme, including how widespread the problem was and whether there were loopholes in the system, should be provided.

LEG 110 established the CG to address the matter further in particular:

- 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

- 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.

A regional PSC authority compared the list of false flags available in GISIS (with 106 ships reported as "false flag") with the data in their own database.

To verify certificates and conditions of ships in relation to the IMO and ILO conventions, it was essential that relevant flag States could be contacted.

However, the correctness of the ship registration was not easy to verify and in a number of cases, the information in the database was not in line with the response received from the alleged flag State, when the response was received.

A Member State had been looking into UNCLOS and in particular, to the issue of the so-called "genuine link" between ships and their flag State. This had highlighted *the 1986 UN Convention on Conditions for Registration of Ships*.

As the shipping world has changed significantly since the Convention was drafted, the delegation informed the Committee that they planned to submit a request for a new planned output to review this Convention and to determine what changes were required for it to best reflect global ship registry today, including topics about links between a vessel and the State in which they are registered.

The IMO Secretariat explained that it was procedurally possible for IMO to begin work on the 1986 Convention on Conditions for Registration of Ships, adopted by the UN General Assembly.

Piracy and armed robbery against ships

No document was submitted to this session. However, there were updates from the IMO Secretariat.

Off Somalia

The Secretary-General of the United Nations submitted to the UN Security Council in November 2022 a report on *the situation with respect to piracy and armed robbery at sea off the coast of Somalia (S/2022/819)*.

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 sub

regional organizations in their efforts to combat piracy and armed robbery at sea in the Gulf of Guinea.

The Secretary-General of the United Nations also submitted to the Security Council a report on the *Situation of piracy and armed robbery at sea in the Gulf of Guinea and its underlying causes (S/2022/818)* in November 2022, calling upon the Gulf of Guinea States to effectively translate the provisions of the Yaoundé Code of Conduct.

Safety of shipping in the Black Sea and the Sea of Azov

Impact on shipping and seafarers of the situation in the Black Sea and the Sea of Azov

The IMO Secretariat presented a list of the IMO's activities since LEG 109, including:

- 106th session of the Maritime Safety Committee (MSC 106) urged the UN Secretary-General and IMO Secretary-General to continue to work on humanitarian efforts to evacuate all stranded ships and seafarers in the conflict area, including efforts to expand the Black Sea Grain Initiative to other types of ships and additional ports; and
- MSC 106 adopted resolution MSC.519(106) on *Member States' obligations in connection with search and rescue services under the SOLAS and SAR Conventions in the context of armed conflicts*.

LEG 110 was informed of:

- that the UN General Assembly had adopted resolution A/RES/ES-11/5 entitled "Furtherance of remedy and reparation for aggression against Ukraine", which recognized the need for the establishment of an international mechanism for reparation for damage, loss or injury.
- that the UN General Assembly also recommended the creation of an international register of damage to serve as a record, on damage, loss or injury to all natural and legal persons concerned, as well as the State of Ukraine.
- that the International Telecommunication Union had already started collecting and reporting on damages to telecommunication infrastructure in Ukraine and noted that IMO had been called on to launch a similar project.

Several delegations expressed their gratitude for the extension of the Black Sea Grain Initiative and thanked the IMO Secretary-General, the UN and Türkiye for their efforts in this regard, ensuring that food was delivered to all countries. They also urgently asked all parties to prioritize a diplomatic and peaceful solution and to continue efforts to safely evacuate all ships and seafarers still stranded in the conflict areas and to include other ports in the Black Sea

Grain initiative.

LEG 110:

- expressed grave concern over the negative impact 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 damages. In the IMO context, LEG 110 was of the view that this project could be scoped to include damages on commercial vessels and maritime infrastructure, including ports, port facilities, maritime training institutions and the marine environment; and
- invited the Secretary-General to contact relevant UN organizations and develop options for the assessment, with appropriate costing, and then, given the potential budgetary implications, submit these options to Council 129 for consideration.

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 is presented in LEG.1/Circ.11.

Following the completion of the regulatory scoping exercise (interrelation between existing regulation and the MASS technology), the MSC, FAL and LEG continue their work for developing regulations. A joint working group (JWG) was established to deal with common issues.

LEG 110 agreed:

- to hold a hybrid five-day meeting of the MASS-JWG from 17 to 21 April 2023
- to authorize the MASS-JWG to meet twice in each calendar year until decided otherwise by the three Committees, subject to endorsement by C 129 (July 2023).

The IMO Secretariat advised LEG 110 of the seminar on legal issues, including UNCLOS, which will be held on 17 April 2023.

LEG 110 decided that the following legal issues would remain for the consideration of the Legal Committee, with a view to establishing the working group on MASS at LEG 111:

- liability arising from MASS operations;
- remote operation crew;
- Specific functional requirements for the MASS operation responsibility;

- UNCLOS and the conventions under the purview of the Legal Committee; and
- issues relating to UNCLOS and its potential implications on MASS operations.

LEG 110 forwarded the following to the JWG:

- the role of the master; and
- compliance with "generally accepted international regulations, procedures and practices".

Work of other bodies

UN panel of experts

The IMO Secretariat provided an update on the final report of the UN Panel of Experts. LEG 110:

- 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
- 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.

Guidelines on places of refuge for ships in need of assistance

The IMO Secretariat provided an update on the finalization by NCSR 9 of the revision of the *Guidelines on places of refuge for ships in need of assistance* (resolution A. 949(23)) and the approval thereof by MSC 106 for the Legal Committee's concurrent approval, with a view to adoption by the Assembly at its thirty-third session.

LEG 110, having modified section 4.3 in relation to the foreign ship entry into a port or internal water of another State, approved the work of the NCSR Sub-Committee.

Further information

For further information please contact: imo@lisscr.com

LEG 110 – Summary of Major Decisions

PROVISIONAL LIST OF DRAFT RESOLUTIONS AND CIRCULARS

- Resolution LEG.6(110) on *the Guidelines on how to deal with seafarer abandonment cases*.
- a LEG circular on Bunker Convention Claim Manual
- pamphlets on the Bunkers Convention, Civil Liability Convention, and Wreck Removal Convention
- Guidelines on places of refuge for ships in need of assistance