

COUNCIL  
118th session  
Agenda item 8

C 118/8  
30 May 2017  
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## CONSIDERATION OF THE REPORT OF THE LEGAL COMMITTEE

### Note by the Secretary-General

#### SUMMARY

<i>Executive summary:</i>	This document reports on the outcome of the 104th session of the Legal Committee
<i>Strategic direction:</i>	1, 2, 3, 4, 6, 8 and 14
<i>High-level action:</i>	1.1.1, 1.1.2, 1.3.1, 1.3.4, 2.0.1, 2.0.2, 3.4.1, 3.5.1, 4.0.1, 4.0.2, 4.0.5, 6.1.2, 6.2.1, 6.2.2, 6.3.1, 8.0.3 and 14.0.1
<i>Output:</i>	1.1.1.1, 1.1.1.2, 1.1.2.1, 1.3.1.1, 1.3.4.2, 2.0.1.3, 2.0.1.4, 2.0.2.1, 3.4.1.1, 3.5.1.1, 3.5.1.2, 4.0.1.3, 4.0.2.1, 4.0.3.1; 4.0.5.1, 6.2.1.2, 6.2.2.1, 8.0.3.1 and 14.0.1.1
<i>Action to be taken:</i>	Paragraph 36
<i>Related document:</i>	LEG 104/15

#### INTRODUCTION

1 The report of the 104th session of the Legal Committee (LEG 104/15) is submitted to the 118th session of the Council in accordance with the provisions of Article 34(b) of the IMO Convention.

2 The 104th session of the Legal Committee was held from 26 to 28 April 2017. The session was attended by delegations from Member States and Associate Members, by observers from intergovernmental organizations with agreements of cooperation and by observers from non-governmental organizations in consultative status. The Chair was Dr. Kofi Mbiah (Ghana) and the Vice-Chair was Ms. Gillian Grant (Canada).

3 Decisions of the Committee of interest to the Council are summarized in the ensuing paragraphs with reference made to the relevant paragraphs of document LEG 104/15, the report of the session.

## **FACILITATION OF THE ENTRY INTO FORCE AND HARMONIZED INTERPRETATION OF THE 2010 HNS PROTOCOL**

4 The Committee considered the report of the HNS Correspondence Group.

5 Following the discussion, the Committee expressed its appreciation to the Correspondence Group and its Coordinator<sup>1</sup> and thanked the delegation of Canada for its submission. In this regard, the Committee agreed:

- .1 to approve the presentation on HNS Incident Scenarios;
- .2 that the draft resolution on the implementation and entry into force of the 2010 HNS Protocol should be an Assembly resolution;
- .3 not to include a reference to the work of the HNS Correspondence Group or to the delegation of authority to issue insurance certificates required under the 1992 Civil Liability Convention and 2010 HNS Convention;
- .4 to include operative paragraph 4 on specific reports by the Committee to the Assembly on the progress made and practical issues encountered;
- .5 to approve the draft programme for a two-day workshop to be held in 2018 in conjunction with the meetings of LEG 105 or the IOPC Funds. Further regional or other meetings would be considered in relation to the thematic priorities for technical cooperation; and
- .6 not to extend the mandate of the HNS Correspondence Group.

6 Furthermore, having considered the report of the Drafting Group established to finalize the Assembly resolution on the implementation and entry into force of the 2010 HNS Convention, the Committee approved the report of the Drafting Group in general; and also approved the draft Assembly resolution on the implementation and entry into force of the 2010 HNS Protocol, as set out in annex 2 to document LEG 104/15, for submission to C 118 and thereafter A 30 for adoption.

7 In conclusion, the Committee encouraged Member States to ratify and bring into force the 2010 HNS Protocol as soon as possible (LEG 104/15, paragraphs 3.8 to 3.12 and annex 2).

## **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**

8 The Committee considered the information on the 2014 amendments to the ILO Maritime Labour Convention, 2006 (MLC, 2006) relating to the provision of financial security for abandonment, personal injury to and death of seafarers, which were adopted by the MLC Special Tripartite Committee. The Committee acknowledged the benefits of the amendments and urged those Member States that had not already done so to consider ratifying the MLC, 2006, at their earliest convenience.

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9 The Committee also noted the information on the IMO/ILO joint database of abandonment of seafarers which it considered to be of utmost importance in solving the urgent cases of abandonment. In this regard, the Committee expressed its strong commitment to preserving the rights of seafarers in cases of abandonment and noted that providing accurate information to the IMO/ILO database is not only the responsibility of the flag State but also that of the port State and other parties that are involved. The Committee also noted that consultations and contacts with the flag State should take place prior to publication on the database.

10 The Committee concluded that IMO and ILO would take up further work to improve the functioning of the database, and that a report on the outcome of these consultations would be submitted to LEG 105 and to the ILO Governing Bodies (LEG 104/15, paragraphs 4.1, and 4.15 to 4.18).

### **FAIR TREATMENT OF SEAFARERS IN THE EVENT OF A MARITIME ACCIDENT**

11 The Committee considered the invitation by the International Transport Workers' Federation (ITF) to the members of the Committee to attend a one-day workshop on Friday, 23 June 2017 on the implementation of the *2006 Guidelines on fair treatment of seafarers in the event of a maritime accident* (the Guidelines).

12 A number of delegations supported the organization of this workshop and expressed their intention to attend it. A view was expressed that the workshop should discuss the fact that the Guidelines would be mainly implemented and interpreted by national courts according to their own judiciary system. Some delegations informed the Committee that they were implementing the Guidelines into their national legislation (LEG 104/15, paragraphs 5.3 to 5.5).

### **ADVICE AND GUIDANCE IN CONNECTION WITH THE IMPLEMENTATION OF IMO INSTRUMENTS**

13 The Committee considered document LEG 104/6/1 on the report of the intersessional Correspondence Group and the draft Assembly resolution on the delegation of authority to issue insurance certificates required under the 1992 CLC and the 2010 HNS Convention annexed thereto.

14 The Committee also considered the report of the Drafting Group, which was formed to finalize the above draft Assembly resolution, and approved the report of the Drafting Group in general, and also approved the draft Assembly resolution on the delegation of authority to issue insurance certificates required under the 1992 CLC and the 2010 HNS Convention, as set out in annex 3 to document LEG 104/15, to be submitted to C 118 and thereafter to A 30 for adoption.

15 The Committee further considered the information provided in document LEG 104/6/2 on the outcome of the forty-first session of the Facilitation Committee, which requested the Legal Committee to provide legal advice on the status of the appendices to the Convention on Facilitation of International Maritime Traffic (FAL Convention).

16 Having considered the different views expressed by delegations on the above FAL request, the Committee encouraged Member States to consult informally, intersessionally, and submit relevant information on the status of the appendices to LEG 105, without the requirement for a formal correspondence group. If the need arises, a working group would be established at LEG 105 to enable a comprehensive and in-depth discussion of the matter.

17 The Committee agreed that it would finalize the legal advice at LEG 105 for submission to FAL 42 (LEG 104/15, paragraphs 6.3, 6.7, 6.8, 6.9, 6.13, 6.14 and annex 3).

## **PIRACY**

18 The Committee considered the information provided in document LEG 104/7 on the recent amendments to the Djibouti Code of Conduct and the views expressed by delegations, in particular that piracy remained a very important subject and that the Organization should continue to focus on piracy and armed robbery at sea.

19 The Committee also considered document LEG 104/7/1 (India) and noted that the issues raised regarding the provision of rescue, relief and rehabilitation to seafarers who have become victims of piracy had already been respectively addressed in operative paragraph 8(l) of Assembly resolution A.1044(27) on Piracy and Armed Robbery against Ships in Waters off the Coast of Somalia, adopted by the Assembly at its twenty-seventh session, and by an ILO working group of the Special Tripartite Committee (STC) established under the MLC, 2006 which would submit its recommendations to the third meeting of the STC in April 2018 (LEG 104/15, paragraphs 7.4 to 7.7).

## **MATTERS ARISING FROM THE 116TH AND 117TH REGULAR SESSIONS OF THE COUNCIL**

20 The Committee considered document LEG 104/8/1 containing a proposal to amend the Committee's Rules of Procedure with a view to limiting the term of office of the Chair and Vice-Chair to five years and also to introduce gender-neutral language in the Rules, in accordance with the decision of the Council taken at its 116th session (C 116/D, paragraph 4.8). The Committee also considered a proposal to harmonize the text of its Rules with the revised harmonized texts of the Rules of Procedure of MEPC and the draft Rules of Procedure of MSC and FAL.

21 In this regard, the Committee adopted the revised Rules of Procedure of the Legal Committee, as set out in annex 8 of document LEG 104/15, with agreed modifications, and requested the Secretariat to effect any consequential editorial changes as may be necessary. In particular, the Committee decided to:

- .1 adopt a revised rule of procedure limiting the term of office for the Chair and Vice-Chair to no more than five years with the possibility of one additional year in exceptional circumstances;
- .2 require the use of gender-neutral language in the Committee's Rules of Procedure;
- .3 set the number of Members required to request the holding of an extraordinary session, in rule 3, at 20, subject to approval by the Council for the holding of an extraordinary session after consideration of the budgetary implications; and
- .4 change the language of rule 34 to determine the percentage required and provide more clarity on the purpose of a quorum to read: "The Chair may declare a meeting open and permit the debate to proceed when at least 25% of the Membership of the Organization are present. The presence of at least 25% of the Membership of the Organization, or other participants, as appropriate, shall be required for any decision to be taken". (LEG 104/15, paragraphs 8.3 to 8.9 and annex 8).

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## **ANALYSIS AND CONSIDERATION OF RECOMMENDATIONS TO REDUCE ADMINISTRATIVE BURDENS IN IMO INSTRUMENTS AS IDENTIFIED BY THE SG-RAR**

22 The Committee considered document LEG 104/9 containing the draft FAL.2-MEPC.1-MS.C.1-LEG.1 circular on the list of certificates and documents required to be carried on board ships, 2017, and approved the circular as set out in the annex to document LEG 104/9. In this regard, a new circular, including a LEG reference number, will be issued. The Committee concluded that it had completed its work on the analysis and consideration of recommendations to reduce administrative burdens in IMO instruments including those identified by the SG-RAR, and that would be reported to the Council (LEG 104/15, paragraphs 9.7 and 9.8).

## **TECHNICAL COOPERATION ACTIVITIES RELATED TO MARITIME LEGISLATION**

23 The Committee noted that the Legal Affairs Office of the Secretariat was providing training on the legal implementation of IMO conventions, aimed at improving the understanding of the principles of IMO instruments and their legal implications to facilitate the implementation of both technical and civil liability conventions. In this context, the Committee also noted that the Legal Affairs Office was organizing an IMO course on the legal implementation of IMO conventions into the domestic legislation, which would be held at IMO Headquarters from 11 to 15 September 2017, funded by the Technical Cooperation Fund.

24 The Committee further noted that a new two-year programme titled "Joint Master of Philosophy (M.Phil.) in International Maritime Law and Ocean Policy" was being launched by IMLI and WMU, and also that, at the request of the Nippon Foundation, IMLI had launched a global project on "Ocean Governance: Security, Stability, Safety and Sustainability", as a follow up to the address of Dr. Yohei Sasakawa (Chairman of the Nippon Foundation) to IMO and based on the longstanding fruitful collaboration between the Nippon Foundation and the Institute.

25 Furthermore, the Committee considered document LEG 104/10/2 containing the changes proposed by the Secretariat to the current thematic priorities, aimed at harmonizing the delivery of activities in the field of maritime legislation and at providing for a more effective delivery to maximize the impact of the ITCP. In this regard, the Committee agreed to the modifications suggested to its thematic priorities for submission to the sixty-seventh session of the Technical Cooperation Committee (TCC) for inclusion in the ITCP covering the 2018-2019 biennium (LEG 104/15, paragraphs 10.1 to 10.19).

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

26 The Committee noted that, on 21 April 2017, Norway deposited an instrument of ratification of the 2010 HNS Protocol, and that, therefore, there is currently one Contracting State to the Protocol. The Secretary-General welcomed this development and encouraged further ratifications, as envisaged in the resolution on the implementation and entry into force of the 2010 HNS Protocol approved by the Committee with a view to submission to C 118 and thereafter A 30 for adoption.

27 The Committee noted that the list of codes, recommendations, guidelines and other non-mandatory instruments related to the work of the Legal Committee, endorsed at LEG 103, had been migrated to the GISIS module on non-mandatory instruments, and that the FAL Committee, at its forty-first session, authorized the Secretariat to migrate those related to the work of the Facilitation Committee to the same GISIS module on non-mandatory instruments; the migration would take effect in July 2017.

28 The Committee also encouraged delegations to work with their respective Governments towards achieving effective and uniform implementation of IMO conventions and to report any barriers to implementation to LEG for advice and guidance. It was also noted that many ratifications of IMO treaties directly result from successful technical cooperation activities. In this regard, the Committee expressed its appreciation to the Technical Cooperation Programme of the Organization for providing these activities and encouraged further accessions to and ratifications of IMO conventions (LEG 104/15, paragraphs 11.4 and 11.8 to 11.10).

## **WORK PROGRAMME**

### **Report on the status of outputs for the current biennium (2016-2017)**

29 In accordance with the *Guidelines on the application of the Strategic Plan and the High-level Action Plan of the Organization* (resolution A.1099(29)), the Committee considered the draft report on the status of outputs for the current biennium (2016-2017), including all outputs related to the Legal Committee, prepared by the Secretariat and attached as annex 1 to document LEG 104/12. The Committee also considered the relevant outputs as attached in annex 2 to document LEG 104/12 which only referred to LEG as the parent organ and were proposed for inclusion in the post-biennial agenda of the Committee. In this regard, the Committee agreed on its report on the status of outputs for the current biennium and on the outputs to be included in its Post-Biennial Agenda, attached as annexes 4 and 5 to document LEG 104/15, respectively, for submission to the Council (LEG 104/15, paragraphs 12.3 to 12.5 and annexes 4 and 5).

### **Alignment of the outputs of the Committee with the new Strategic Plan of the Organization for 2018-2023, including the proposed outputs of the Committee for the 2018-2019 biennium**

30 The Committee noted the information provided by the Secretariat on the new Strategic Plan (SP), which is expected to be adopted by the Assembly, at its thirtieth session. In this context, and subject to the comments made by delegations, the Committee approved the outputs for the 2018-2019 biennium aligned to the new Strategic Directions agreed by C 117, as set out in annex 6 to document LEG 104/15, for submission to C 118 (LEG 104/15, paragraphs 12.8 to 12.11 and annex 6).

### **Items for inclusion in the agenda for LEG 105**

31 The Committee approved the list of substantive items for inclusion in the agenda for LEG 105, as contained in document LEG 104/15, annex 7. The Committee also noted Malta's invitation to interested parties for informal consultations expected to take place under the leadership of Malta on the future work programme of the Legal Committee (LEG 104/15, paragraphs 12.12, 12.13 and annex 7).

### **Meeting time in the 2018-2019 biennium**

32 The Committee agreed that two meetings should be adequate for the 2018-2019 biennium and, in view of the present workload, agreed that the next session should be held during three meeting days in conjunction with the meetings of the IOPC Funds and the HNS Workshop (LEG 104/15, paragraph 12.14).

## **ELECTION OF OFFICERS**

33 The Committee unanimously elected Mr. Volker Schöfisch (Germany) as Chair and re-elected Ms. Gillian Grant (Canada) as Vice-Chair, for 2018. The Committee and the Secretary-General expressed their heartfelt thanks and appreciation to the outgoing Chair, Dr. Kofi Mbiah of Ghana, for his steadfast and skilful leadership of the Committee between 2011 and 2017, and wished him well in his future endeavours (LEG 104/15, paragraphs 13.2 and 13.3).

## **ANY OTHER BUSINESS**

### **Celebrating 50 years of the Legal Committee**

34 The Committee noted that the year 2017 marks the 50th anniversary of the Legal Committee and recognized the achievements and activities during the past 50 years, which were highlighted in document LEG 104/14 (LEG 104/15, paragraph 14.1).

### **Liability and compensation issues connected with transboundary pollution damage from offshore exploration and exploitation activities**

35 The Committee noted the guidance for bilateral/regional arrangements or agreements on liability and compensation issues connected with transboundary oil pollution damage resulting from offshore exploration and exploitation activities, provided by Indonesia and Denmark, which was attached as an annex to document LEG 104/14/2 and would be made available on the public site of IMODOCS. The Committee encouraged Member States and observer delegations to take the guidance into consideration when negotiating bilateral/regional arrangements or agreements connected with transboundary pollution damage from offshore exploration and exploitation activities (LEG 104/15, paragraphs 14.3 to 14.8).

## **ACTION REQUESTED OF THE COUNCIL**

36 The Council is invited to:

- .1 consider the report of the 104th session of the Legal Committee (LEG 104/15), approve it in general and, in accordance with Article 21(b) of the IMO Convention, transmit it, with any comments and recommendations, to the thirtieth session of the Assembly;
- .2 note the draft Assembly resolution on the implementation and entry into force of the 2010 HNS Protocol and the draft Assembly resolution on the delegation of authority to issue insurance certificates required under the 1992 CLC and the 2010 HNS Convention, attached to document LEG 104/15 as annexes 2 and 3, respectively, which were approved by the Committee for submission to, and adoption by the Assembly, at its thirtieth session;
- .3 note that the Committee has completed its work on the analysis and consideration of recommendations to reduce administrative burdens in IMO instruments including those identified by the SG-RAR, and
- .4 endorse:
  - .1 the Committee's decisions on the status of outputs for the 2016-2017 biennium and on the outputs to be included in its Post-biennial agenda, respectively attached as annexes 4 and 5 to document LEG 104/15;

- .2 the Committee's outputs for the 2018-2019 biennium aligned to the new Strategic Directions agreed by C 117, as set out in annex 6 to document LEG 104/15;
  - .3 the planned agenda for the 105th session of the Committee, as set out in annex 7 to document LEG 104/15; and
  - .4 the Committee's decision that two meetings of three days each should be adequate for the 2018-2019 biennium.
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