

LEG 106 BRIEF on 23 - 25th March 2019

the 106th session of the Legal Committee to be held at IMO Headquarters, 4 Albert Embankment, London SE1 7SR from Wednesday, 27 March to Friday, 29 March 2019

The Sec Gen opened the meeting by highlighting:

- Sympathy to all those involved in the Indonesian Air Crash
- Sympathy for the act of terrorism in New Zealand and
- The tragedy of the flooding in East Africa and the capsizing of the passenger vessel in Iraq.
 - A minutes silence was held
- World Maritime Day this year, Empowering Women in the Maritime Industry
- Unlawful Practices of use of Nations Flags by third parties as new Agenda Item
- Regulatory Scoping Exercise of MASS
- Fair Treatment and Abandonment of Seafarers is very close to his heart and is an increasing problem. MLC has not helped, but increased the number of cases. Flag States must take responsibility for their Ship Owners under their Flag and that every Flag State should take action against this issue
- Encouraged more Nations to follow Denmark's lead in signing the HNS Convention needing just 8 more Nations to do so.
- The full transcript of the Opening Statement can be found at
 - <http://www.imo.org/en/MediaCentre/SecretaryGeneral/SecretaryGeneralsSpeechesToMeetings/Pages/LEG-106-opening.aspx>

NB The delegation of Peru made a statement on behalf of The Lima Group (Argentina, Canada, Chile, Colombia, Guyana, Panama, Paraguay and Peru) regarding their group's resolve not to recognize the legitimacy of the new presidential term of Mr. Nicolas Maduro, Bolivarian Republic of Venezuela, and representatives of his Government. In their view, the Venezuelan presidential elections, which were held in May 2018, did not meet international standards for free and fair elections. This statement was supported by the delegation of the United States in a separate statement. The Russian Federation, supported by Uruguay and Cuba refuted this statement and stated that this was a group of Nations wishing to undermine a legitimate Government. Venezuela, did not share the views of the Lima Group bringing a highly political view against a Sovereign State supported by International Law and cannot be supported. **The Chair pointed out that these statements would be noted by LEG and that all Nations responding should send their statements to the Secretariat for inclusion in the Report of the Committee.**

1. Adoption of the agenda

- a. Nothing significant to report.
- b. The following Working Groups were set up:
 - i. Regulatory Scoping Study on MASS – Agenda Item 8 – **IFSMA represented my Mr Andrew Higgs and**
 - ii. Measures to prevent unlawful practices associated with the fraudulent registration and fraudulent registries of ships – Agenda Item 7.

2. Agenda item 2 - Report of the Secretary-General on Credentials

- a. LEG 106/2 – Sec – Note by the Secretary General – **Nothing to report**
- 3. **Agenda item 3** – Facilitation of the entry into force and harmonized interpretation of the 2010 Hazardous and Noxious Substances (HNS) Protocol
 - a. LEG 106/3 – Sec – a note by the Secretariat
 - i. **On 28 June 2018, Denmark deposited an instrument of ratification of the Protocol, thereby bringing the number to four Contracting States. Each of the four Contracting States has more than 2 million units of gross tonnage. With the present four Contracting States, the 2010 HNS Protocol needs only eight more States to ratify or accede to it.**
 - b. LEG 106/3/1 – Canada – Domestic implementation of the 2010 HNS Convention
 - c. Leg 106/3/2 – IOPC Funds – Report on administrative preparations for the setting up of the HNS Fund
 - d. **Nothing significant for IFSMA on any of the above Papers**
- 4. **Agenda Item 4** – 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
 - a. LEG 106/4 – ILO and IMO Sec – Report on the IMO/ILO joint database of abandonment of seafarers
 - i. **On 31 December 2018, there were 366 abandonment incidents listed in the database since it was established in 2004, concerning 4,866 seafarers. Of those incidents, 175 cases were resolved, 77 cases were disputed and 52 cases were inactive. There were still 55 unresolved cases. From 2011 to 2016, the number of cases per year ranged from 12 to 19. In 2017 and 2018, the cases reported increased drastically. In 2017, there were 55 cases reported, 14 of which were resolved that year and 8 were resolved in 2018. In 2018, the total number of reported cases was 44 and of these, 15 cases had so far been resolved as of 31 December 2018. Of the cases reported in 2018, 15 involved flag States which had not ratified MLC, 2006, as follows: Bahrain, the Democratic Republic of the Congo, Dominica, Saint Kitts and Nevis, Saint Vincent and the Grenadines, the United Republic of Tanzania and the United Arab Emirates.**
 - ii. **Within the period between 18 January 2017 and 31 December 2018, there were 11 reported cases of abandonment where the Flag State was a Party to MLC, 2006 but had not yet sent the ILO their declaration of acceptance of the 2014 amendments (Belize, the Netherlands in respect of Curaçao, India and Mongolia). Of these 11 cases, the majority (7) are still disputed or unresolved.**
 - b. LEG 106/4/1 – ICS – Comments on the current global abandonment situation and current concerns – **A useful update by ICS**
 - c. LEG 106/4/2 - ITF – Analysis of incidents of abandonment for the period 1 January to 31 December 2018 - **Interesting update information in this paper**
 - d. LEG 106/4/3 – ITF – Implementation of the financial security requirement under MLC, 2006, as amended, for the period 1 January 2018 to 31 December 2018 – **Contains useful information , but is it getting any better!**

- e. LEG 106/4/4 – ILO Sec – Reporting on cases of abandonment to the IMO/ILO joint database of abandonment of seafarers – A useful precis which might be beneficial to precis even further as an article in our Newsletter for members.
 - f. Following introduction of the Paper there was an update on a number of cases from a number of Nations concerned and highlighted in the ITF Reports. Nothing significant to report for IFSMA but the number of cases each year remains disappointing despite the best efforts of the IMO/ILO/ITF/ICS and others. The ICS delivered a very robust statement to plenary highlighting some particular issues they have had with some(not Named) Flag States failing to help resolve some of the cases highlighted which ICS referred to as “tantamount to modern day slave trade” facilitated by the Flag State!
5. **Agenda Item 5** - Fair treatment of seafarers in the event of a maritime accident
- a. LEG 106/5 – ITF –First regional meeting for Asia on the fair treatment of seafarers in the event of a maritime accident – Nothing to report – interest only
6. **Agenda Item 6** – Advice and guidance in connection with the implementation of IMO instruments
- a. LEG 106/6 - Ukraine – Implementation of IMO instruments in the maritime areas adjacent to the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol, Ukraine
 - b. LEG 106/6/1 – Russian Federation – Comments on document LEG 106/6
 - c. Political statements in which IFSMA should not get involved as an NGO. Romania with Presidency of the European Union and on their behalf, condemned the actions of the Russian Federation in the Region. France followed this with their own Statement and both Statements were supported by Sweden, Belgium, Georgia, European Commission and Germany. This was followed by the United States, United Kingdom, Canada with condemnation of Russian Federation.
7. **Agenda Item 7** – Measures to prevent unlawful practices associated with the fraudulent registration and fraudulent registries of ships – Working Group 2
- a. LEG 106/7 – Sec – Report on cases of fraudulent registration and fraudulent registries of ships – Interesting reading, but no action for IFSMA
 - b. LEG 106/7/1 – Sec – Proposed module in GISIS on Registries – No Action for IFSMA
 - c. LEG 106/7/2 – United States – Proposed measures to prevent fraudulent registration of ships and other deceptive shipping practices - No Action for IFSMA although it had wide support.
 - d. LEG 106/7/3 – Ukraine – Unlawful registration of ships in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol, Ukraine - No Action for IFSMA as this is a political issue and deemed as such by the Committee.
 - e. LEG 106/7/4 – United Arab Emirates – Comments on documents LEG 106/7 and LEG 106/7/1 - No Action for IFSMA

- f. LEG 106/7/5 – United Republic of Tanzania – Comments on document LEG 106/7 - No Action for IFSMA
 - g. Many Nations spoke in support of the above Papers and the direction of the Working Group, the majority of which was repetition, and this took up the first 3 hours of the Committee. The Chair summed up that there was broad support for all of the proposals in the Papers and all Documents above should go to the WG for further consideration and with the TOR proposed in LEG 106/J/4. In addition the WG should consider the need for an intersessional Correspondence Group. The Russian Federation immediately intervened at this stage to state that it was inappropriate for LEG 106/7/3 to be referred to the WG. This was agreed by the Committee.
 - h. The Report of the Working Group is included in the Report of the Committee, but nothing significant for IFSMA.
8. **Agenda Item 8** – Regulatory scoping exercise(RSE) and gap analysis of conventions emanating from the Legal Committee with respect to Maritime Autonomous Surface Ships (MASS) – Working Group 1. IFSMA was represented on this WG by Mr Andrew Higgs.
- a. LEG 106/8 – Sec – List of instruments under the purview of the Legal Committee
 - b. LEG 106/8/1 – Sec – Outcomes of MSC 99 and MSC 100 regarding MASS –
 - i. A very useful round up from MSC of where we have got to in MSC on the RSE of MASS
 - c. LEG 106/8/2 – Sec – Canada, Denmark, Finland, France, Georgia, Germany, Marshall Islands, Netherlands, Norway, Republic of Korea, United Arab Emirates, United Kingdom and International Group of Protection and Indemnity Associations - Proposed framework, methodology and work plan for the regulatory scoping exercise – A pragmatic approach by the co-sponsors to replicate the leaders in MSC on this subject.
 - d. LEG 106/8/3 – China – Proposal on the action plan for the regulatory scoping exercise for MASS – This will cause some debate I suspect as they are proposing changing the Definition of MASS, agreed at MSC, for use in the LEG Committee work. This will cause significant confusion if agreed. The Action Plan is also rather burdensome and will be very difficult to achieve for the smaller delegations and NGOs.
 - e. LEG 106/8/4 – Republic of Korea – Considerations on the instruments, framework and methodology for the Legal Committee's regulatory scoping exercise – Some similarities when compared with the Canada and co Paper above and the differences I do not think are as good – will cause some debate.
 - f. Following introduction of all the above Papers, it was agreed that a WG would be established. The Canadian, etal, Paper was widely supported. The Chinese and Republic of Korea did receive some support for some of the points they made, but not all. It was agreed that the Chinese proposal to keep a more generic definition of MASS , 2 categories of manned and unmanned, for the LEG work, but revert to the MSC definitions at the end of the work. It was agreed that because of the approach and spread of the Codes, Convention and Regulations under the purview of LEG the adoption of this simplified Definition would make the LEG work more simple and appropriate. The Chair summed that

there was broad support for the proposals put forward and should follow the MSC Framework but keep it simple with the Chinese approach. An Intersessional Correspondence Group (ICG) will be set up and Mr Andrew Higgs will follow its work on behalf of IFSMA. The TOR of the WG were agreed with an addition that it should develop draft TOR for the ICG. The WG would be Chaired by Canada.

g. Andrew Higgs brief note on the Working Group as follows:

1. The WG under Canada's able chairmanship (Ms Gillian Grant) agreed to:-

- The annexed list of 23+ IMO Legal Instruments under the purview of the LEGAL Committee being effectively unamended,
- To utilise the existing MSC @IMO web platform proforma for the regulatory review by the LEGAL committee, with only very minor consequential amendments
- Member States of IMO to lead on the regulatory review (as with MSC) and volunteers already include Japan (CLC), Germany (Fund), Finland (Salvage) and Canada (HNS). NGOs to provide support, where appropriate; eg CMI is supporting Finland on the Salvage Convention.
- The timetable is now expected to be foreshortened to “**LEG 107**”, in March 2020 (?) for sequential stages 1 & 2, which will require a LEGAL WG report to be completed and published on IMODOCS sometime on or before 31st December 2019 (?).

2. Both (a) manned MASS - levels 1 & 2 and also (b) unmanned MASS (levels 3 & 4) will be addressed, it was decided, on further reflection overnight, by the LEGAL Committee WG RSE; that is, as suggested by CMI, and well supported by the WG (50+ persons present).

3. Although there was no desire for references to UNCLOS (ie so-called umbrella treaty) to be used at this stage, **Article 94**(Duties of the flag State) of **UNCLOS, 1982**, was mentioned by ITF, which refers to the “*seaworthiness of ships*” and “*each ship (being) in charge of a master and officers, who possess appropriate qualifications, in particular, in seamanship...*”

4. This necessarily cross-refers to **RULE 8 of COLREGs** (action to avoid collisions) and “*due regard to the observance of good seamanship”*.

[5. NGOs represented in the WG included CMI, ICS, IFSMA, IGP&I, ITF with Marshall Islands, Japan, the UK and the Scandinavian nation States being particularly active in the WG.]

6. The IT web platform in **GISIS** was demonstrated and presented by the IMO representative, Xavier.....and will be in the following 4 stages, and led by volunteer nation States, cf MSC:-

- *Initial Stage* – (ie currently March/April, and not generally available on IMODOCS)
- *Comments Stage* – (limited to 250 characters per State or NGO) – May/June
- *Review Stage* – (Available on IMODOCS - July/August?)
- *Completion Stage* (by September 2019?) for publication on IMODOCS by 31.12.2019.

7. For example, **COLREGs** is being led by the Marshall Islands London office with 6/7 other IMO nation States participating; including China, Japan, Singapore, USA etc.

8. It will be interesting to note what “assumptions” are made by nation States; such as whether limited to *large Merchant Ships on International Voyages* (ie SOLAS Chapter 1) and/or *All Ships on All Voyages on All Seas with All Seafarers* (ie SOLAS Chapter 5)....

Andrew Michael Higgs

Thursday 28

h. Report of the Working Group. Following the introduction of the Report of the WG, IFSMA intervened with:

Chair, IFSMA took an active part in the “WG 2” and would like to take the opportunity to thank the Chair of the WG, Ms Gillian Grant, for her excellent work and guidance in steering this WG. Chair, you left it to the WG to decide whether the LEGAL Committee should consider both “*manned MASS*” (levels 1 & 2) and “*unmanned MASS*” (levels 3 & 4), and the WG recommended that all 4 levels of autonomy, agreed by MSC, be considered by the LEGAL Committee, as appropriate.

The report of the WG agreed the application of methodology to the NAIROBI WRC 2007 and that certain questions would have to be considered by the Organization as a whole, with MSC taking the coordinating and leading role as highlighted at Para 26.

In light of this there are higher level legal issues under **Article 94 of UNCLOS (Duties of a flag State)** so far as both the “*seaworthiness*” of MASS are concerned (Article 94 (3)(a) including the manning of unmanned MASS, under Article 94 (2)(b), (3)(b) and (4)(b) & (c), also where “*good seamanship*” is required, as is also made clear in **COLREGs Rule 8 (Action to avoid Collision)**. It is unclear to IFSMA how any algorithm can properly address *good seamanship*, where there has to be a sentient human being in the loop of “Command and Control” of a MASS; like any other ship. IFSMA respectfully suggests that these “high level” legal issues might at least be mentioned in the Report of “LEG 106”. That is, in order that the IMO Secretariat might have the opportunity to raise these important public International legal issues with DUALOS in NYC, USA, since these key issues will, in the opinion of IFSMA, concern not only all flag States @IMO, but also:-

- *All Seafarers, on All Voyages, on All Ships, on All Seas....*

That is, not only large Merchant Ships, on International voyages, under **SOLAS Chapter 1**, but also All Ships, on All Voyages, on All Seas under **SOLAS Chapter V (Safety of Navigation)**.

In other words, *All Seafarers....*

Finally Chair, at Para 12 of the Report on the discussion of United Nations Convention on the Law of the Sea (UNCLOS) and the Maritime Labour Convention (MLC), 2006, it states “While agreeing with the conclusion of the Committee, several members of the Group felt strongly that they should not be completely excluded, as **they might have to be considered** in the future to ensure that MASS are comprehensively and effectively regulated.” We would ask that the wording “**they might have to be considered**” be replaced with “**Should be considered**”.

Thank you Chair and IFSMA would wish this Statement to be included in the Report of the Committee!

In reply, the Secretariat briefed that the Secretary General of IMO attended a meeting at the UN in Jan to discuss this issue with DUALOS and that DUALOS had been invited to both LEG 106 and MSC 101. They were unable to attend LEG 106 but would make every effort to be at MSC 101 which would facilitate a dialogue

The IFSMA Statement was totally supported by Cook Isles and UNODC. This was a huge success for IFSMA and my thanks to Mr Andrew Higgs for getting this into the Report of the Committee and raising the awareness of the issue. Despite a few National delegations attempting to have IFSMA points ignored, our points were indeed made and will be attached to the report of the Committee. The very fact that DUALOS have been engaged, validates our comments and we were advised to raise this at MSC 101.

During the Tea Break I was approached by the Senior Legal Affairs Officer and Chief of the United Nations Policy and Legislation Section in the Division on Technology and Logistics at UNCTAD. She was most impressed with our understanding of the International legal issues and wants to engage with IFSMA on this issue. She will liaise with Andrew Higgs keeping us informed.

9. Agenda Item 9 - Piracy

- a. LEG 106/9 – Sec – activities of the IMO International Maritime Law Institute (IMLI) for the year 2017 - The amendments to the Code of MLC, 2006, provide a definition of piracy and armed robbery against ships and prevent the cancellation or expiry of seafarers' employment agreements during periods of captivity while protecting the wages and other entitlements. On 5 June 2018 the amendments were approved by the 107th session of the International Labour Conference. The amendments were notified to ILO Member States on 26 June 2018, in accordance with Article XV, paragraph 6 of MLC, 2006. The period to express formal disagreement runs until 26 June 2020. The amendments are expected to enter into force on 26 December 2020, in accordance with Article XV, paragraph 7 of MLC, 2006.

10. Agenda Item 10 – Work of other IMO Bodies.

- a. LEG 106/10 – Sec – Note by the Secretariat – of note the following may cause some debate and will need to be watched:
 - i. At its fifth session, the Sub-Committee on Human Element, Training and Watchkeeping (HTW 5) requested the Legal Affairs and External Relations Division to submit legal advice in relation to the definition of "limited waters" in the context of the International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, 1995 (HTW 5/16, paragraph 6.21). The Legal Affairs and External Relations Division will present the pertinent document containing the legal advice at the next session of HTW, which will take place from 29 April to 3 May 2019. FAL 42 considered document FAL 42/16/3 (ICS et al.)
 - ii. On Maritime Corruption impact on global trade, port governance and seafarers; and agreed that corruption had a significant impact on the image of the maritime industry and ports, on the facilitation of maritime traffic and on security of port operations. In this regard, FAL 42 requested the Secretariat, in coordination with the Legal Affairs and External Relations Division, to provide advice to FAL 43 on the possible way forward to address this problem, including alternatives for using GISIS as a reporting mechanism (FAL 42/17, paragraphs 16.17 to 16.23).

- iii. FAL 42 invited the Legal Committee, at its 106th session, to note the report of FAL 42, in particular, the discussion and decisions of the Committee on the legal status of the appendices to the FAL Convention; the use of electronic certificates; administrative requirements; the maritime single window prototype; the issues of unsafe mixed migration at sea and maritime corruption; and the FAL revised Rules of Procedure, and Organization and method of work

11. **Agenda Item 11** – Technical cooperation activities related to maritime legislation
 - a. LEG 106/11 – Sec – Report on technical cooperation activities on maritime legislation for 2018
 - b. LEG 106/11/1 – Sec – IMO International Maritime Law Institute
 - c. LEG 106/11/2 – Sec – Thematic priorities for the Integrated Technical Cooperation Programme (ITCP) for 2020-2021
 - d. LEG 106/Inf.2 – Sec - IMO International Maritime Law Institute List of dissertations/research projects and maritime legislation drafting projects
 - e. LEG 106/Inf.3 – Sec - IMO International Maritime Law Institute Research work undertaken by the IMO International Maritime Law Institute
 - f. **Nothing significant to report for IFSMA in the above 5 Papers.**
12. **Agenda Item 12** - Review of the status of conventions and other treaty instruments emanating from the Legal Committee
 - a. LEG 106/12 and Add.1 – Sec – As above
 - b. **Nothing significant to report for IFSMA.**
13. **Agenda Item 13** - Work Programme
 - a. LEG 106/13 – Greece, the Marshall Islands, ICS and International Group of Protection and Indemnity Associations – Proposal to add a new output under the work programme on "Unified Interpretation on the test for breaking the owner's right to limit liability under the IMO conventions". **It was agreed overwhelmingly that this should be agreed and become a new output.**
 - b. LEG 106/13/1 – Sec – Report on the status of outputs for the current biennium (2018-2019)
 - c. **Nothing significant to report for IFSMA.**
14. **Agenda Item 14** - Election of Officers.
 - a. The Committee, in accordance with rule 18 of its Rules of Procedure, unanimously re-elected Mr. Volker Schöfisch (Germany) as Chair for 2020 and Ms. Gillian Grant (Canada) as Vice-Chair for 2020.
15. **Agenda Item 15** - Any other business
 - a. LEG 106/15 – Georgia, Ukraine and ITF - Fair treatment of seafarers detained on suspicion of committing maritime crimes – **This Paper should be very strongly supported with an Intervention by IFSMA. The initiative is led by Marine Transport Workers' Trade Union of Ukraine (MTWTU), in the process of joining IFSMA, and ITF.**
 - b. LEG 106/15/1 –ILO Sec - Fair treatment of seafarers detained on suspicion of

committing maritime crimes Comments on document LEG 106/15 – This Paper should be supported as well.

Chair, firstly congratulations to both you and your vice-chair on your re-election. IFSMA thanks the co-sponsors for their Paper LEG 106/15 and also the ILO for their commenting Paper LEG 106/15/1. IFSMA knows only too well the effect of Criminalisation of Seafarers and in particular Criminalisation of the Shipmaster. There are numerous cases of ill-treatment of Seafarers and violation of Seafarers' Rights for fair treatment in the event of detention on suspicion of committing crimes related to Maritime Trade. IFSMA very strongly supports and welcomes the proposal for a Joint IMO/ILO/ITF Working Group to develop the appropriate Guidelines and Recommendations proposed in their Paper and believe this is something much needed by the Industry. Thank you Chair

- c. Following a Statement by ICS concerning the Hijacking of the Commercial Tanker off Malta by rescued migrants refusing to be taken to a Port in Libya on Wed, IFSMA intervened with:

Thank you Chair, IFSMA fully supports the Statement made by ICS and we would like to express our sincere thanks to Maltese Authorities for their very speedy and successful intervention. This is a subject which IFSMA has been making for some time following incidents in the past where Shipmasters have been threatened and indeed I was asked to attend a meeting of the European Union Security and Defence Committee Working Group Meeting where I raised my concerns about the potential of this sort of situation occurring. Thank you Chair