



THE MARITIME LAW ASSOCIATION (MLA) OF THE UNITED STATES COMMITTEE ON REGULATION
OF VESSEL OPERATIONS, SAFETY, SECURITY AND NAVIGATION

SUBCOMMITTEE ON MARITIME AUTONOMOUS SURFACE SHIPS (MASS)

Membership Newsletter

Dear MLA MASS Subcommittee Members,

On behalf of the leadership of our newly formed MLA Subcommittee on Maritime Autonomous Surface Ships (MASS), we write to express our appreciation for your interest and involvement at our recent inaugural meeting on March 3, 2021, during the MLA Spring Meeting. The presentations from that meeting are posted on our subcommittee page on the MLA website.

Our Subcommittee has chosen "MASS" in its name because this is the nomenclature used for autonomous vessels by the International Maritime Organization (IMO), and maritime autonomy is a rapidly evolving area that has the potential to introduce disruptive and transformational technology that impacts every practice area of maritime law, including regulation of vessel operations, safety, security and navigation. For example, vessel autonomy revisits classic legal issues such as: how does autonomy impact the definitions of a vessel, master, crew, or responsible person when a vessel is uncrewed and operating under remote or autonomous control?; how do the collision regulations (COLREGs) apply if there is no master or crew onboard?; how will local regulations such as compulsory pilotage be applied?; and, how will P&I Clubs measure risk and determine coverage? Your collective expertise is needed to assist in navigating these issues, and we welcome MLA members to join this "open" MASS Subcommittee.

Recent IMO Developments

Since our inaugural subcommittee meeting, the IMO has announced recent MASS/autonomous vessel regulatory developments. Specifically, in May 2021 at its 103rd session, IMO's Marine Safety Committee (MSC) completed a two-year MASS regulatory scoping exercise (RSE) to analyze relevant ship safety treaties in order to assess how autonomous ships could be regulated. <https://www.imo.org/en/MediaCentre/PressBriefings/pages/MASSRSE2021.aspx>; See attached Encl. "Finalization of regulatory scoping exercise and gap analysis by MSC 103."

The RSE evaluated whether existing treaty frameworks would be compatible with MASS, required amendment or clarification, or were incompatible, thus requiring new instruments. This was an important first step to evaluating how IMO's existing regulations will keep pace with MASS technology. The RSE identified common themes as well as gaps across several safety treaties related to provisions containing manual operations and bridge alarms; provisions related to

actions by personnel including firefighting, cargo stowage, and maintenance, watchkeeping, search and rescue, e.g., how can one carry out an obligation to render assistance to vessels in distress when no seafarers are aboard, and information required to be on board for safe operation.

The MSC recommended that the best way forward to address MASS in the IMO regulatory framework could, preferably, be in a holistic manner through the development of a goal-based MASS instrument, such as a “MASS Code”, with goals, functional requirements and corresponding regulations addressing the various gaps and themes identified by the RSE. To be clear, the IMO has not determined that a MASS Code will be needed, rather the IMO has asked member states to submit proposals on proposed next steps for MSC 104 in October 2021, and tasked its Legal (LEG) and Facilitation Committee (FAL) to conduct additional scoping exercises for conventions under their purview. As always, MLA leadership will serve as part of the United States delegation to the IMO LEG at its 108th session in order to be on-hand to assist with the development and understanding of these emerging legal issues.

Generally speaking, member states seem to fall into one of two camps: the first being those that believe existing IMO treaties and instruments can be interpreted or amended to accommodate MASS, and the second being those that believe an entire new IMO code for MASS vessels needs to be developed and implemented. Accordingly, the MLA MASS Subcommittee will stay closely attuned to MASS issues, both domestically and internationally, and looks forward to presenting the most recent developments to MLA membership at the upcoming Fall meeting in Boston.

As Chair of the MLA’s newest Subcommittee, and the only U.S. legal committee specifically dedicated to the legal implications of maritime autonomy, I look forward to your engagement in helping shape discussions surrounding the emerging use of autonomy aboard seaborne vessels, vehicles, and systems. As always, please do not hesitate to reach out to us with suggestions or questions - this subcommittee will only be as successful as your input makes it.

Sincerely,

Your MLA MASS
Subcommittee Leadership

Sean Pribyl
Chair
Senior Counsel
Holland & Knight LLP
202.308.7622
sean.pribyl@hklaw.com
www.hklaw.com

CAPT Joe Kramek, USCG(ret.)
Vice Chair
Director, U.S. Government
Relations
World Shipping Council
571.354.0635
jkramek@worldshipping.org
www.worldshipping.org

Allison Skopec
Secretary
Associate Attorney
Winston & Strawn LLP
212.294.6700
askopec@winston.com
winston.com

LEGAL COMMITTEE
108th session
Agenda item 7

LEG 108/7
21 May 2021
Original: ENGLISH
Pre-session public release:

**REGULATORY SCOPING EXERCISE AND GAP ANALYSIS OF CONVENTIONS
EMANATING FROM THE LEGAL COMMITTEE WITH RESPECT TO MARITIME
AUTONOMOUS SURFACE SHIPS (MASS)**

Finalization of regulatory scoping exercise and gap analysis by MSC 103

Note by the Secretariat

SUMMARY

Executive summary: This document reports on the finalization of the regulatory scoping exercise for the use of Maritime Autonomous Surface Ships (MASS) by MSC of conventions under its purview

Strategic direction, if applicable: 2

Output: 2.7 and 2.20

Action to be taken: Paragraph 13

Related documents: MSC 98/23; MSC 99/22; MSC 100/20, MSC 100/20/Add.1; MSC 101/24; MSC 102/5/1; MSC 103/WP.1/Rev.1 and MSC 103/WP.8

Background

1 The Maritime Safety Committee (MSC), at its ninety-eighth session in June 2017, agreed to include in its 2018-2019 biennial agenda a new output on "Regulatory scoping exercise for the use of Maritime Autonomous Surface Ships (MASS)" with a target completion year of 2020.

2 MSC 100 approved the framework for the MSC regulatory scoping exercise (RSE) and a plan of work and procedures for the RSE (MSC 100/20/Add.1, annex 2), which envisaged a two-step approach: an initial review of the instruments under the purview of MSC with an agreed methodology and an analysis of the most appropriate way of addressing MASS operations.

3 MSC used the MASS module on GISIS, which was specifically developed for the scoping exercise at the request of MSC, as a web platform to share the initial review and analysis, provide comments, and revise the initial review and the analysis based on the comments received.

4 MSC 101 noted the progress made with the RSE and invited the volunteering Member States to submit the results of the first step to an Intersessional Working Group (ISWG) on MASS, which was held from 2 to 5 September 2019, in order to consider the results of the first step of the RSE and take necessary action with a view to commencing the second step. The ISWG completed step 1 of the RSE for the instruments it was tasked to review. The report of the ISWG is contained in document MSC 102/5/1.

5 The results of the second step, i.e. the analysis of the most appropriate way of addressing MASS operations, were submitted to MSC 102 for final consideration. Due to time constraints resulting from remote meeting arrangements owing to the COVID-19 pandemic, MSC 102 deferred the consideration of this agenda item to MSC 103. MSC 103 finalized the consideration of this agenda item, as detailed in its report (MSC 103/WP.1/Rev.1) and the report of the MASS Working Group under MSC (MSC 103/WP.8). The main conclusions are summarized in the following paragraphs:

Results of the second step and final outcome of the MSC RSE

6 The MASS Working Group established by MSC 103 considered all reports provided by volunteering Member States containing the results of the second step of the RSE for the instruments under the purview of MSC and prepared the final outcome of the MSC RSE, using the annex to document MSC 103/WP.11 as the basis for its work. The MSC RSE outcome document is set out in the annex to the report of the MASS Working Group (MSC 103/WP.8) and was circulated through Circular MSC.1/Circ.1639. It provides the assessment of the degree to which the existing regulatory framework under its purview might be affected in order to address MASS operations. It further provides guidance to MSC and interested parties to identify, select and decide on future work on MASS and, as such, facilitate the preparation of requests for, and consideration and approval of, new outputs. In this context, it contains information for all degrees of autonomy for every instrument expected to be affected by MASS operations under the purview of MSC; the most appropriate way(s) of addressing MASS operations in those instruments, as appropriate; identification of common themes and/or potential gaps that require addressing; identification of potential links between instruments; and identification of priorities for further work, including terminology and the order in which instruments could be addressed.

Immediate further work on MASS

7 Having noted the industry's fast advancement with respect to developing MASS technology and conducting trials, MSC 103 considered a proposal for the inclusion of a standing agenda item on MASS on MSC's agenda. However, the Committee concluded that a focused approach was needed to progress the work on MASS and that a standing agenda item would not be an efficient way to address the complexity of MASS regulatory development, taking into account that MSC had endorsed the Intersessional Working Group's conclusion for the need for justification of any future proposals for changes to the regulatory framework.

8 MSC 103 also considered the establishment of an intersessional MASS working group and the development of corresponding terms of reference to facilitate immediate commencement of future work. Since the current output was limited to the completion of the regulatory scoping exercise for MASS, MSC 103 agreed not to undertake any further work on MASS beyond the scope of the current output until it had approved a new output; and consequently, invited interested Member States to submit proposals for new output(s) on MASS to a future MSC session.

Coordination of work between the Maritime Safety, Legal and Facilitation Committees

9 MSC 103 also considered a proposal to establish a joint LEG/MSC/FAL working group to consider the common potential gaps and themes identified during the RSE undertaken by each committee for the conventions under their purview (MSC 102/5/2 (IFSM) and MSC 102/5/30 (Republic of Korea)). MSC 103 recalled that it had already recognized that future work with respect to main issues and common potential gaps and/or themes should be coordinated between the committees and that such coordination could be realized by establishing a joint working group or through other means, for instance through active liaising between the committees on the common issues.

10 MSC 103 noted the view of some delegations that the work on MASS could be progressed faster by establishing a joint LEG/MSC/FAL working group, given that there was an urgent need to keep pace with fast changing industry and technology developments. Other delegations highlighted the need to keep in mind the legal implications emanating from the United Nations Convention on the Law of the Sea (UNCLOS).

11 While there was wide support for the establishment of a joint LEG/MSC/FAL working group to coordinate MASS-related regulatory work, MSC 103 agreed that it would be premature to do so at this point in time, recognizing that the committees had not yet completed the regulatory scoping exercise for instruments under their purview, and that any future work on MASS undertaken by a joint working group would require the identification of common potential gaps and/or themes as well as priorities for future work from all committees.

12 In this context, MSC 103 recalled that the establishment of a joint working group would require a new output, agreed and approved by all three committees. MSC 103 agreed to take a decision on the establishment of a joint working group after the finalization of the RSE, as the prerequisite for identifying further work for consideration by such a joint group; and to proceed, in the meantime, by actively liaising between the committees on the common issues with the aim to align any future work.

Action requested of the Committee

13 The Legal Committee is invited to note the information provided and take action, as appropriate.
