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REPORT OF THE LEGAL COMMITTEE ON THE WORK OF ITS 106TH SESSION

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Establishment of a correspondence group

7.26 The Committee, taking into account the need to further consider several remaining proposals and issues, established a correspondence group on Further measures to prevent the fraudulent registration and fraudulent registries of ships under the coordination of the United States,¹ with the following terms of reference:

Taking into account the comments and decisions made at LEG 106, the correspondence group is instructed to:

- .1 further consider the definitions of "fraudulent registration" and "fraudulent registry", based on those proposed in paragraph 7 of document LEG 106/WP.4;
- .2 consider the remaining proposals and recommendations in paragraph 7, sub-paragraphs 2, 4, 5, 6 and 7 of document LEG 106/7/2;
- .3 consider the questions raised in paragraph 2 of document LEG 106/7/4;
- .4 consider the recommendations in document LEG 106/7/5; and
- .5 submit a report to LEG 107.

Recommended best practices to assist in combating fraudulent registration and fraudulent registries

7.27 The Committee approved LEG.1/Circ.10 on *Recommended best practices to assist in combating fraudulent registration and fraudulent registries of ships*, as set out in annex 2 to this report, and requested the Secretariat to inform the Maritime Safety Committee (MSC) accordingly.

7.28 The Committee also endorsed the recommendation of the Working Group that the Organization should work with the United Nations Security Council to establish an easily searchable database, by IMO number and vessel name, of vessels currently the subject of, or designated pursuant to, United Nations Security Council resolutions.

Audio files: Wednesday, 27 March 2019: a.m. and p.m. and Friday, 29 March 2019: p.m.

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

8.1 The Committee recalled that, at its last session, it had agreed to include a new output entitled "Regulatory scoping exercise and gap analysis of conventions emanating from the Legal Committee with respect to Maritime Autonomous Surface Ships (MASS)" in its 2018-2019 biennial agenda and the provisional agenda for LEG 106, with a target completion year of 2022.

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8.2 The Committee also recalled that LEG 105 had invited concrete proposals and comments on the new output and a plan of action to LEG 106 for consideration, taking into account the outcome of MSC 99 and MSC 100, so that LEG 106 would be able to start its work on the new output.

8.3 The Committee had the following documents for its consideration:

- .1 LEG 106/8 (Secretariat) providing a list of mandatory instruments under the purview of the Legal Committee which may be considered as part of the LEG regulatory scoping exercise for the use of MASS;
- .2 LEG 106/8/1 (Secretariat) reporting on the outcome of MSC 99 and MSC 100 regarding the regulatory scoping exercise of instruments related to maritime safety and security for the use of MASS;
- .3 LEG 106/8/2 (Canada, Denmark, Finland, France, Georgia, Germany, Marshall Islands, Netherlands, Norway, Republic of Korea, United Arab Emirates, United Kingdom and International Group of P & I Clubs) proposing a framework, methodology and work plan for the Legal Committee's regulatory scoping exercise on MASS and highlighting that specific adjustments needed to be made to the MSC framework and methodology to make it better suited to analysing LEG instruments in a timely and effective fashion;
- .4 LEG 106/8/3 (China) suggesting the establishment of an intersessional correspondence group, and proposing that LEG should focus on two levels of autonomy only (manned and unmanned MASS); and
- .5 LEG 106/8/4 (Republic of Korea) proposing modifications to the framework, methodology and procedures developed by MSC to make them better suited to the LEG regulatory scoping exercise on MASS, and discussing the role of the remote operator within the liability regime.

8.4 The Committee noted the information provided in document LEG 106/8/1 and invited the Secretariat to continue updating the Committee on the progress of MSC regarding maritime autonomous surface ships.

8.5 In considering the framework and methodology of the LEG regulatory scoping exercise, there was broad support for the proposals set out in documents LEG 106/8/2, LEG 106/8/3 and LEG 106/8/4. The Committee agreed to use the MSC methodology as the basis with appropriate adjustments to accommodate the specificities of the conventions under the purview of the Legal Committee, so as not to over-complicate its work. The Committee also agreed that the differentiation between the four degrees of autonomy was not as relevant in the context of the LEG regulatory scoping exercise and that, at this point in time, a simplified approach should be used focusing on two levels of autonomy only. There was general consensus that the regulatory scoping exercise of the conventions under the purview of the Legal Committee should follow a common approach together with the other committees of the Organization.

8.6 The Committee considered the list of instruments for the purposes of the regulatory scoping exercise, as set out in the annex to document LEG 106/8, and concluded that the exercise should not only focus on the most recent versions of the conventions, but that it should also include the older versions (e.g. LLMC 1976). The Committee did not include the United Nations Convention on the Law of the Sea (UNCLOS) or MLC, 2006 in the LEG regulatory scoping exercise for the time being, but agreed that this decision might have to be revisited in the future.

8.7 The Committee supported the usage of the web platform developed by MSC. In addition, a number of delegations suggested the establishment of an intersessional correspondence group. In this regard, the Committee decided that the working group should be tasked to consider whether an intersessional correspondence group on MASS should be established and, if so, develop draft terms of reference for the correspondence group.

8.8 In considering document LEG 106/8/4, the Committee noted that the role of the remote operator within the liability regime would have to be considered by the Legal Committee at some stage. However, it was agreed that this discussion was not within the scope of the regulatory scoping exercise.

8.9 The Committee noted, inter alia, the following general comments: MASS should not compromise safety, security and environmental protection and should be discussed in a comprehensive manner; and considering the drastic effect the introduction of MASS might have on seafarers, their concerns needed to be taken into consideration.

8.10 The delegation of Liberia informed the Committee that, since the drafting of document LEG 106/8/1, Liberia had committed to reviewing the International Convention on Tonnage Measurement of Ships, 1969 and the International Convention on Load Lines, 1966.

Establishment of the LEG Working Group on MASS

8.11 The Committee established the LEG Working Group on MASS and instructed it, taking into account documents LEG 106/8, LEG 106/8/1, LEG 106/8/2, LEG 106/8/3 and LEG 106/8/4, and any comments and decisions made in plenary, to:

- .1 finalize the list of LEG instruments to be included in the LEG regulatory scoping exercise;
- .2 finalize the framework, methodology, plan of work and procedures for the LEG regulatory scoping exercise;
- .3 consider and recommend if an intersessional correspondence group on maritime autonomous surface ships should be established and, if so, develop draft terms of reference for the correspondence group;
- .4 if time permitted, test the methodology on selected articles of LEG conventions; and
- .5 submit a written report to plenary by Friday, 29 March 2019.

Report of the Working Group

8.12 In considering the report of the LEG Working Group on MASS (LEG 106/WP.5), the Committee noted the concern from one delegation, which reiterated the importance of looking at the possible impact MASS would have on seafarers and port operations. The Committee concurred that these were important and relevant considerations, and that issues related to the human element would be considered by MSC and the Sub-Committee on Human Element, Training and Watchkeeping (HTW), if tasked to do so.

8.13 The Committee also noted a statement by the International Federation of Shipmasters' Associations (IFSMA) referring to certain high level legal issues, which would need to be considered by the Organization as a whole, in particular concerning the notions of "seaworthiness" of a ship or "good seamanship", as required by article 94 of UNCLOS and

Rule 9 of the Convention on the International Regulations for Preventing Collisions at Sea, 1972 (COLREGs). As requested by IFSMA, the full statement is attached to this report as annex 7.

8.14 The Committee further noted a statement by one delegation that the regulatory scoping exercise should address some of the serious issues emerging in connection with the introduction of MASS regarding jurisdiction over and liability of the remote operator, the companies that employed them, as well as the providers of sensors or software based on artificial intelligence which would be involved in the operation of MASS.

8.15 Having considered the report of the LEG Working Group on MASS (LEG 106/WP.5), the Committee approved it in general and agreed to:

- .1 approve the framework for the LEG regulatory scoping exercise, including the plan of work and procedures as set out in annex 3 to this report;
- .2 invite Member States and observer organizations willing to volunteer to lead or support the initial review of specific instruments to inform the Secretariat no later than 30 April 2019; and
- .3 request the Secretariat to assist with certain tasks during the LEG regulatory scoping exercise, such as pre-populating the information, assigning relevant permissions to users and dealing with any other administrative issues, as appropriate.

Audio files: Wednesday, 27 March 2019: p.m. and Friday, 29 March 2019: p.m.

9 PIRACY

9.1 The Committee recalled that, at its 105th session, it had invited the Secretariat to continue reporting on piracy-related developments which had occurred since its last session, including relevant developments at ILO.

9.2 The Committee also recalled that the Secretariat usually reported on relevant decisions taken by the Contact Group on Piracy off the Coast of Somalia (CGPCS), on the status of the Djibouti Code of Conduct, and on piracy-related decisions taken by other IMO bodies, such as MSC.

9.3 The Committee considered document LEG 106/9 (Secretariat) reporting on developments related to piracy which had occurred since the 105th session of the Legal Committee, specifically the considerations by MSC 99 and the progress made by UNODC on the issue of floating armouries; actions taken by MSC to tackle piracy and armed robbery against ships since MSC 98; the status of the Jeddah Amendment to the Djibouti Code of Conduct 2017; the twenty-first plenary session of the CGPCS, which took place in Nairobi from 12 to 13 July 2018; and the status of the amendments to the Code of the MLC, 2006, providing for the protection of seafarers' wages and other entitlements when they were held captive on or off the ship as a result of acts of piracy or armed robbery against ships, and expected to enter into force on 26 December 2020.

9.4 The representative of UNODC provided additional information to the Committee regarding the ongoing work of UNODC on piracy-related issues. The first annual Maritime Law Expert Conference convened by UNODC dealt with a wide range of issues such as floating armouries, terrorism at sea and privately contracted armed security personnel, which were also addressed in the second edition of the UNODC document "Maritime Crime: A Manual for

ANNEX 3

FRAMEWORK FOR THE LEG REGULATORY SCOPING EXERCISE

Aim

1 The aim of the regulatory scoping exercise is to determine how safe, secure and environmentally sound Maritime Autonomous Surface Ships (MASS) operations and the related legal matters might be addressed in IMO instruments.

Objective

2 The objective of the regulatory scoping exercise on MASS conducted by the Legal Committee is to assess the degree to which the existing regulatory framework under its purview may be affected in order to address MASS operations.

Glossary¹

3 For the purpose of the regulatory scoping exercise, "Maritime Autonomous Surface Ship (MASS)" is defined as a ship which, to a varying degree, can operate independent of human interaction.

4 To facilitate the process of the regulatory scoping exercise, the degrees of autonomy are organized as follows:

Degree one: *Ship with automated processes and decision support:* Seafarers are on board to operate and control shipboard systems and functions. Some operations may be automated and at times be unsupervised but with seafarers on board ready to take control.

Degree two: *Remotely controlled ship with seafarers on board:* The ship is controlled and operated from another location. Seafarers are available on board to take control and to operate the shipboard systems and functions.

Degree three: *Remotely controlled ship without seafarers on board:* The ship is controlled and operated from another location. There are no seafarers on board.

Degree four: *Fully autonomous ship:* The operating system of the ship is able to make decisions and determine actions by itself.

5 The above list does not represent a hierarchic order. It should be noted that MASS could be operating at one or more degrees of autonomy for the duration of a single voyage.

Instruments

6 The list of mandatory instruments to be considered as part of the LEG regulatory scoping exercise is set out in appendix 1.

¹ The glossary developed by the Maritime Safety Committee is used to ensure a consistent approach throughout the Organization.

Type and size of ships

7 The application of the regulatory scoping exercise should be restricted to the applicability of the instruments under consideration.

Methodology

8 As a first step, the regulatory scoping exercise will undertake a provision by provision review of each instrument to be considered as part of the LEG regulatory scoping exercise and allocate one of the following answers:

- .A apply to MASS and prevent MASS operations; or
- .B apply to MASS and do not prevent MASS operations and require no actions; or
- .C apply to MASS and do not prevent MASS operations but may need to be amended or clarified, and/or may contain gaps; or
- .D have no application to MASS operations.

9 Appendix 2 provides the template to be used to guide the documentation of results and, if necessary, present the results of the first step of the regulatory scoping exercise.

10 Once the first step is completed, a second step will be conducted to analyse and determine the most appropriate way of addressing MASS operations, taking into account the human element,² by:

- .I developing interpretations; and/or
- .II amending existing instruments; and/or
- .III developing new instruments; or
- .IV none of the above as a result of the analysis.

Plan of work and procedures

11 A plan of work and procedures for the regulatory scoping exercise is provided in appendix 3.

² Refer to resolution A.947(23), *Human element vision, principles and goals for the Organization*.

APPENDIX 1

List of instruments emanating from the Legal Committee

A CONVENTIONS UNDER THE PURVIEW OF THE LEGAL COMMITTEE

- (1) **BUNKERS 2001** – International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001
- (2) **CLC 1969** – International Convention on Civil Liability for Oil Pollution Damage, 1969
- (3) **CLC PROT 1976** – Protocol of 1976 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969
- (4) **CLC PROT 1992** – Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969
- (5) **FUND PROT 1992** – Protocol of 1992 to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971
- (6) **FUND PROT 2003** – Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992
- (7) **NUCLEAR 1971** – Convention relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material, 1971
- (8) **PAL 1974** – Athens Convention relating to the Carriage of Passengers and Their Luggage by Sea, 1974
- (9) **PAL PROT 1976** – Protocol of 1976 to the Athens Convention relating to the Carriage of Passengers and Their Luggage by Sea, 1974
- (10) **PAL PROT 2002** – Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and Their Luggage by Sea, 1974
- (11) **LLMC 1976** – Convention on Limitation of Liability for Maritime Claims, 1976
- (12) **LLMC PROT 1996** – Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976
- (13) **SUA 1988** – Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988
- (14) **SUA PROT 1988** – Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 1988
- (15) **SUA 2005** – Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation
- (16) **SUA PROT 2005** – Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf
- (17) **SALVAGE 1989** – International Convention on Salvage, 1989

(18) **NAIROBI WRC 2007** – Nairobi International Convention on the Removal of Wrecks, 2007

(19) **HNS PROT 2010** – Protocol of 2010 to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996

B CONVENTIONS EMANATING FROM THE LEGAL COMMITTEE, WITH SHARED COGNIZANCE WITH OTHER IMO COMMITTEES

(1) **INTERVENTION 1969** – International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969

(2) **INTERVENTION PROT 1973** – Protocol relating to Intervention on the High Seas in Cases of Pollution by Substances other than Oil, 1973

C JOINT TREATIES WITH IMO AND OTHER UN BODIES, EMANATING FROM THE LEGAL COMMITTEE

(1) International Convention on Maritime Liens and Mortgages, 1993 (joint with UNCTAD)

(2) International Convention on Arrest of Ships, 1999 (joint with UNCTAD)

APPENDIX 2

TEMPLATE FOR THE LEG REGULATORY SCOPING EXERCISE

Instrument: [Name of instrument]

Provision	First step		
	Degree of autonomy	MASS application (.A, .B, .C, .D)	Comments/Remarks (explain analysis conducted in determining "MASS application" and potential gaps)
	Degree one		
	Degree two		
	Degree three		
	Degree four		
	Degree one		
	Degree two		
	Degree three		
	Degree four		

References:

Degrees of autonomy:

- Degree one: Ship with automated processes and decision support
- Degree two: Remotely controlled ship with seafarers on board
- Degree three: Remotely controlled ship without seafarers on board
- Degree four: Fully autonomous ship

MASS application:

- .A apply to MASS and prevent MASS operations; or
- .B apply to MASS and do not prevent MASS operations and require no actions; or
- .C apply to MASS and do not prevent MASS operations but may need to be amended or clarified, and/or may contain gaps; or
- .D have no application to MASS operations.

APPENDIX 3

PLAN OF WORK AND PROCEDURES FOR THE LEGAL COMMITTEE REGULATORY SCOPING EXERCISE

1 General

1.1 This note provides procedures for the Legal Committee (LEG) regulatory scoping exercise on Maritime Autonomous Surface Ships (MASS).

1.2 The regulatory scoping exercise should be conducted taking into account the agreed framework and methodology and any relevant decisions of the Committee.

2 Web platform for the conduct of the regulatory scoping exercise

2.1 The web platform developed for the purposes of the MSC regulatory scoping exercise as part of GISIS will be adopted to facilitate the LEG regulatory scoping exercise.

2.2 The web platform will be connected to the IMO web accounts, providing access only to registered IMO Members.³ All IMO Members will have read-only access to the web platform.

2.3 The web platform should make a clear distinction between the first and the second step of the agreed methodology.

2.4 The information contained in the web platform should be retained for future references until the Committee decides otherwise.

3 First step

3.1 Initial review of IMO instruments

3.1.1 The initial review should be conducted by volunteering Member States, either individually or as a group. In case of a group, only one Member State will be provided with access to upload and edit the information.

3.1.2 The initial review involves only the first step of the agreed methodology.

3.1.3 Only users authorized by the Member State conducting the initial review of a specific instrument will be allowed to upload and edit the information.

3.1.4 If necessary, the Secretariat will assist with the pre-population of the number and titles of rules and regulations on the web platform.

3.1.5 Upon completion of the initial review, the web platform will be locked for editing.

3.2 Commenting stage

3.2.1 Once the initial review is completed, IMO Members will be authorized to submit comments through the web platform.

³ Whenever the term "IMO Member" is used in this document, it includes Member Governments, associated Member Governments, intergovernmental organizations with observer status and non-governmental organizations in consultative status.

3.2.2 Comments could be submitted either on specific provisions or as general comments on the instrument under review (e.g. in case of gaps in regulations).

3.2.3 As part of the commenting stage, the web platform should provide an option to indicate whether the IMO Member agrees or disagrees with the initial review. If the option "disagree" is chosen, then an explanatory comment should be provided specifying the alternative MASS application.

3.2.4 Each IMO Member will only be able to submit one comment per provision and degree of autonomy under consideration and one general comment on the instrument under consideration. In order to facilitate the subsequent consideration, comments on specific provisions and general comments on the instrument under consideration will be limited to specific number of characters (to be determined according to IT functionalities).

3.2.5 After an agreed period, the web platform will be locked for comments.

3.3 Consideration of comments and presentation of results

3.3.1 The volunteering Member State(s) that conducted the initial review should consider all comments received and modify the initial review, as appropriate.

3.3.2 In order to facilitate the consideration of comments, the web platform should provide statistics of the number of IMO Members that had agreed or disagreed with the initial review.

3.3.3 The volunteering Member State(s) should also prepare a summary of results addressing in particular the main issues identified during step one in respect to specific degrees of autonomy and the specific gaps identified, if any.

4 Second step

4.1 Analysis of the most appropriate way of addressing MASS operations

4.1.1 The initial analysis should be conducted, preferably, by the volunteering Member State(s) that conducted the initial review.

4.1.2 The initial analysis involves the second step of the agreed methodology.

4.1.3 Only users authorized by the Member State conducting the initial analysis of a specific instrument will be allowed to upload and edit the information related to the second step.

4.1.4 Upon completion of the initial analysis, the web platform will be locked for editing.

4.1.5 The initial analysis should be high level and should not be conducted provision by provision.

4.2 Commenting stage

4.2.1 Once the initial analysis is completed, IMO Members will be authorized to submit comments through the web platform.

4.2.2 As part of the commenting stage, the web platform should provide an option to indicate whether the IMO Member agrees or disagrees with the initial analysis. If the option "disagree" is chosen, then an explanatory comment should be provided, specifying the most appropriate way of addressing MASS operations.

4.2.3 Each IMO Member will only be able to submit one comment per analysis.

4.2.4 After an agreed period, the web platform will be locked for comments.

4.3 Consideration of comments and presentation of results

4.3.1 The volunteering Member State(s) that conducted the initial analysis should consider all comments received and modify the initial analysis, as appropriate.

4.3.2 In order to facilitate the consideration of comments, the web platform should provide statistics of the number of IMO Members that had agreed or disagreed with the initial analysis.

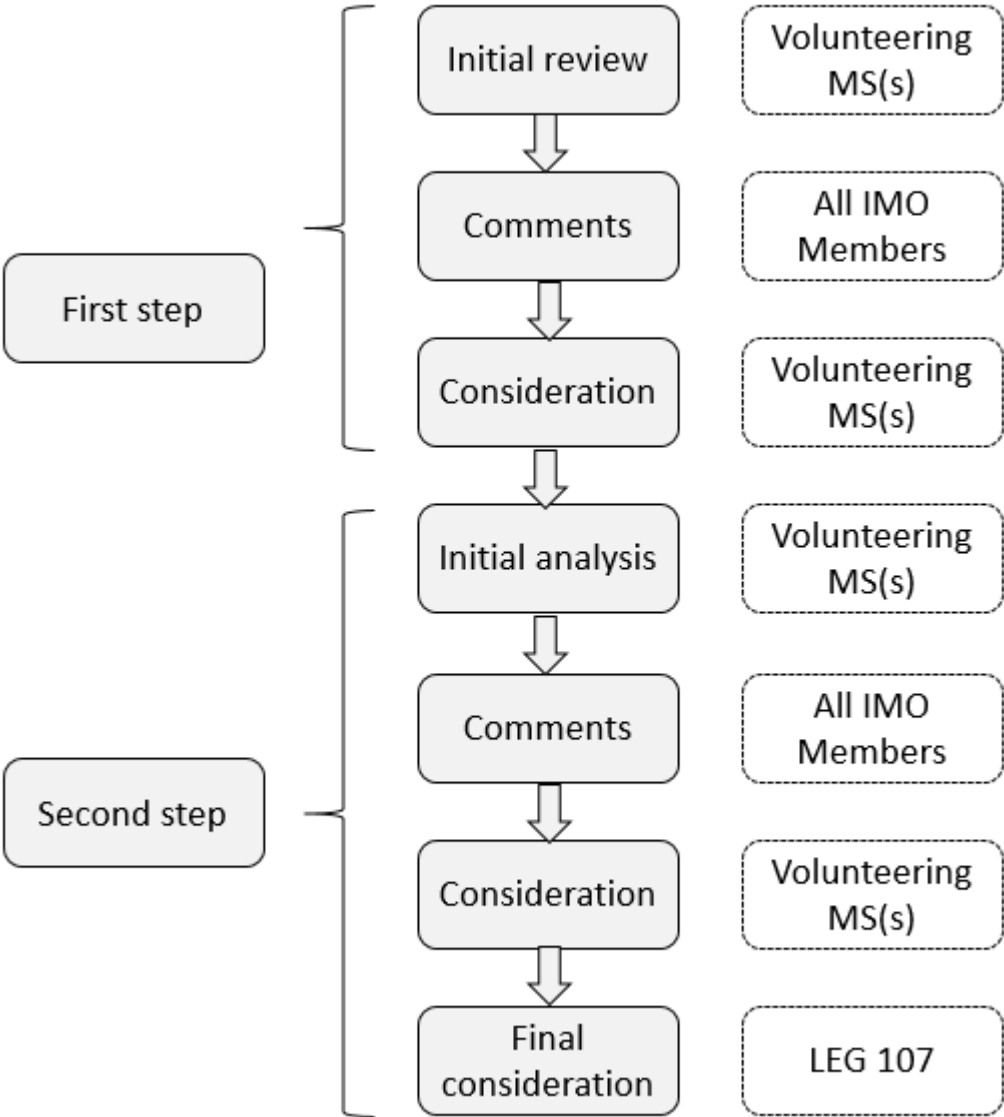
4.3.3 The volunteering Member State(s) should also prepare a summary determining the most appropriate way of addressing MASS operations specific to degrees of autonomy.

4.3.4 The above summary should be submitted by the volunteering Member State(s) for the Committee's consideration.

4.4 Final consideration

4.4.1 The Committee should consider the results of the first and second steps taking into account any relevant information, as appropriate.

Process for the LEG regulatory scoping exercise



TIMELINE FOR THE REGULATORY SCOPING EXERCISE

Action	Deadline	Who?
Upload of the initial review of IMO instruments	May 2019	Volunteering Member State(s)
Commenting stage related to the initial review	June/July 2019 (two months)	All IMO Members
Consideration of comments and finalization of results for the first step	August 2019 (one month)	Volunteering Member State(s)
Analysis of the most appropriate way of addressing MASS operations (second step)	September 2019 (one month)	Volunteering Member State(s)
Commenting stage related to the initial analysis	October 2019 (one month)	All IMO Members
Consideration of comments and presentation of results	November/December 2019 (two months) – deadline for submissions to LEG 107	Volunteering Member State(s)
Final consideration	March 2020	LEG 107

List of instruments and volunteering IMO Members undertaking or supporting the review of instruments

Instrument	Member State preparing the initial review	Supporting/assisting
BUNKERS 2001	China	Republic of Korea
CLC 1969	Japan	
CLC PROT 1976	Japan	
CLC PROT 1992	Japan	
FUND PROT 1992	Germany	Japan
FUND PROT 2003	Germany	Japan
NUCLEAR 1971	Australia	
PAL 1974		
PAL PROT 1976		
PAL PROT 2002		
LLMC 1976	Republic of Korea	United Kingdom
LLMC PROT 1996	Republic of Korea	United Kingdom
SUA 1988	United States	Switzerland
SUA PROT 1988	United States	Switzerland
SUA 2005	United States	Switzerland
SUA PROT 2005	United States	Switzerland
SALVAGE 1989	Finland	CMI
NAIROBI WRC 2007	Sweden	Luxembourg, Netherlands
HNS PROT 2010	Canada	
INTERVENTION 1969		
INTERVENTION PROT 1973		
International Convention on Maritime Liens and Mortgages, 1993		
International Convention on Arrest of Ships, 1999		
