



IMO

*E*

JOINT IMO/ILO *AD HOC* EXPERT  
WORKING GROUP ON FAIR TREATMENT  
OF SEAFARERS  
2nd session  
Agenda item 3

IMO/ILO/WGFTS 2/3/1  
10 February 2006  
ENGLISH ONLY

**DEVELOPMENT OF GUIDELINES ON THE FAIR TREATMENT OF SEAFARERS  
IN THE EVENT OF A MARITIME ACCIDENT**

**Submitted by the International Shipping Federation (ISF), the International Chamber of  
Shipping (ICS) and the International Confederation of Free Trade Unions (ICFTU)**

**SUMMARY**

***Executive summary:*** The Social Partners believe that the fair treatment of seafarers following a maritime accident is of fundamental importance to everyone in the shipping industry and have, therefore, developed an amended version of the draft guidelines prepared at the first session of the Working Group (IMO/ILO/WGFTS 1/11, annex 4) for discussion

***Action to be taken:*** Paragraph 5

***Related document:*** IMO/ILO/WGFTS 1/11, annex 4

1 ISF, ICS and ICFTU (“the Social Partners”) believe that the fair treatment of seafarers following a maritime accident should be regarded as a fundamental principle for everyone in the maritime community, and that it would assist not only seafarers but also national administrations if some common understanding could be agreed at the international level. The Social Partners are therefore keen to finalize the draft guidelines on fair treatment, which were initiated at the last session, as soon as possible.

2 To this end, the Social Partners have developed an amended version of the draft guidelines and these are attached at annex to this submission.

3 The amendments are intended to enhance the protection afforded to seafarers involved in maritime accidents and to ensure that seafarers are treated fairly during any detention by public authorities, and that any such detention is for no longer than necessary. The main amendments are: the inclusion of an introduction; the inclusion of the definition of “maritime accident” proposed by the Comité Maritime International (CMI) in its paper circulated to the Correspondence Group on 1 August 2005; the inclusion of a definition of “detention”; and the inclusion of various principles from the International Federation of Shipmasters’ Associations (IFSMA) draft guidelines circulated to the Correspondence Group on 23 August 2005.

For reasons of economy, this document is printed in a limited number. Delegates are kindly asked to bring their copies to meetings and not to request additional copies.

4 It should be noted that a joint submission by the United States and ICFTU to the SUA Diplomatic Conference (on comments on the protections afforded to the shipping industry) (LEG/CONF.15/14) stated in paragraph 13:

“One area that is not addressed is the fair treatment of seafarers who may be deemed to be witnesses and required to give testimony in subsequent proceedings. It is to be hoped that principles developed in the ongoing work of the Joint IMO/ILO Ad Hoc Expert Working Group on the Fair Treatment of Seafarers in the Event of a Maritime Accident will serve as useful guidance.”

**Action requested of the Joint Working Group**

5 The Working Group is requested to consider the attached draft guidelines in its discussions.

\*\*\*

## ANNEX

### DRAFT GUIDELINES AS AMENDED BY ISF, ICF AND ICFTU

#### Introduction

It is recommended that the following guidelines on the fair treatment of seafarers should be observed in all instances where seafarers are detained by public authorities, and, in particular, in the event of a maritime accident.

For the purposes of these Guidelines, “maritime accident” is defined as:

*an unforeseen contingency or physical event connected to the navigation, operations, manoeuvring or handling of ships, or the machinery, equipment, material, or cargo on board such ships.*

For the purposes of these Guidelines, “detention” is defined as:

*any restriction on the movement of a seafarer, including preventing them leaving the territory of a State other than the seafarer's country of nationality or residence.*

Seafarers are recognised as a special category of worker and, given the global nature of the shipping industry and the different jurisdictions that they may be brought into contact with, need special protection, especially in relation to contacts with public authorities. The objective of these Guidelines is to ensure that seafarers are treated fairly during any detention by public authorities and that any such detention is for no longer than necessary.

These Guidelines do not seek to interfere with any State’s domestic criminal or civil law processes nor the full enjoyment of the basic rights of seafarers, including those provided by international human rights instruments, and the seafarers right to humane treatment at all times.

#### **Draft guidelines on fair treatment of seafarers in the event of a maritime accident**

##### **Responsibilities of the detaining port or coastal state**

- .1 Ensure that any investigation to determine the cause of a maritime accident is conducted in a fair and expeditious manner;
- .2 Co-operate and communicate with all substantially interested States, shipowners, and seafarers (including seafarers’ representative organisations);
- .3 Ensure that all obligations under international law, especially those pertaining to human rights are fulfilled at all times;
- .4 Ensure that adequate measures are taken to preserve the economic and human rights of seafarers at all times;

- .4bis Ensure that seafarers are treated in a manner which preserves their basic human dignity at all times;
- .5 Ensure/verify that adequate provisions are in place to provide for the immediate subsistence of each seafarer and his or her family. These should include suitable accommodation, food and medical care;
- .6 Ensure that due process protections are provided to all seafarers in a non-discriminatory manner;
- .7 Ensure seafarers are provided with independent legal advice and, where necessary, interpretation services, and are advised as to any risk of self-incrimination and of any right to remain silent;
- .8 Ensure that involved seafarers are informed of the basis on which the investigation is being conducted (i.e., whether it is in accordance with the IMO Code for the Investigation of Marine Casualties and Incidents (Resolution A.849(20) as amended by Resolution A.884(21)), or pursuant to other national legal procedures);
- .9 Ensure that the obligations of the Vienna Convention on Consular Relations are promptly fulfilled and that the State(s) of the nationality of all seafarers concerned are notified of the status of such seafarers as required;
- .9bis Ensure that all seafarers detained are provided with the means to communicate in confidence with all of the following parties:
  - family members;
  - welfare organisations;
  - the shipowner;
  - trade unions;
  - the Embassy or Consulate of the flag State and of their country of residence or nationality;
  - and
  - legal representatives;
- .10 Use all available means to preserve evidence to minimize the continuing need for the physical presence of any seafarer;
- .11 Ensure decisions taken pursuant to the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL 73/78) are consistent with the provisions of Annex 1 (Regulations for the prevention of pollution by oil), Regulation 11 (exceptions) which provides that requirements for control of operational pollution and therefore sanctions for such pollution will not apply to “the discharge into the sea of oil or oily mixture resulting from damage to a ship or its equipment ... except if the owner or the master acted either with intent to cause damage, or recklessly and with knowledge that damage would probably result”;

- .12 Promptly conduct interviews of seafarers, when done for a coastal State investigation following a maritime accident, taking into account their physical and mental condition resulting from the accident;
- .13 Ensure that seafarers, once interviewed or otherwise not required for a coastal State investigation following a maritime accident, are permitted to be re-embarked or repatriated without undue delay;
- .13*bis* Consider non-custodial alternatives to pre-trial detention (including detention as witnesses), particularly where it is evident that the seafarer concerned is employed in a regular shipping service to the detaining port or coastal State;
- .14 Promptly conclude any investigation and, if necessary, charge seafarers suspected of criminal actions and ensure that due process protections are provided to all seafarers subsequent to any such charge;
- .14*bis* Ensure that any damage, harm or loss incurred by the seafarer or shipowner attributable to the acts or omissions of the detaining port or coastal State are promptly and fully compensated;
- .15 Insofar as national laws allow, ensure that a process is available for posting a reasonable bond or other financial security to allow for release and repatriation of the seafarer pending resolution of any investigatory or judicial process;
- .15*bis* Ensure that any court hearing takes place within a reasonable period of time;
- .16 Ensure decisions taken are consistent with the United Nations Convention on the Law of the Sea, 1982, in particular Article 292 on the prompt release of vessels and seafarers and Article 230 on monetary penalties and the observance of recognized rights of the accused; Article 228 on suspension and restrictions on institution of proceedings; and Article 232 on liability of States arising from enforcement measures.
- .17 Respect the general principle of exclusive flag State jurisdiction in matters of collision or other incidents of navigation as contained in the 1952 Convention on Penal Jurisdiction in Matters of Collisions or Other Incidents of Navigation, and in the United Nations Convention on the Law of the Sea, 1982, in particular Article 97.

### **Responsibilities of the flag State**

- .1 Co-operate with all substantially interested States, shipowners, and seafarers (including their representative organisations) involved in the investigation;
- .2 Where appropriate, participate directly, under the IMO Code for the Investigation of Maritime Casualties and Incidents (IMO Assembly Resolution A.849(20) as amended by Resolution A.884(21)), in any casualty investigation;

- .3 Assist in ensuring that shipowners honour obligations to seafarers involved in a maritime accident or any investigation;
- .4 Ensure that shipowners honour obligations to co-operate in any investigation following a maritime accident;
- .5 Assist seafarers and shipowners in the event of an investigation by a port or coastal State;
- .6 Fund the repatriation of seafarers, where necessary, following the aftermath of a maritime accident in instances where shipowners fail to fulfil their responsibility to repatriate;
- .7 Assist, as provided for in national law, in the service of process and the return to a coastal State of seafarers of their nationality who are needed solely as witnesses in any proceeding following a maritime accident;
- .8 Ensure that consular officers of the Flag State are permitted access to the involved seafarer, irrespective of their nationality; and
- .9 Take all necessary measures to ensure the fair treatment of seafarers who were employed or engaged on a vessel flying their flag. This may include utilizing the provisions in Article 292 of UNCLOS, which provides for the prompt release of vessels and crews upon the posting of a reasonable bond or financial security.

#### **Responsibilities of the seafarer State**

- .1 Co-operate with all substantially interested States, shipowners, and seafarers (including their representative organisations) involved in the investigation;
  - .2 Monitor the physical and mental well-being and treatment of seafarers of their nationality involved in a maritime accident, including any associated investigations;
  - .3 Fund the repatriation of their national seafarers, where necessary, following the aftermath of a maritime accident in instances where shipowners and the flag State fail to fulfil their responsibility to repatriate;
  - .4 Assist, as provided for in national law, in the service of process and the return to a coastal State of seafarers of their nationality who are needed solely as witnesses in any proceeding following a maritime accident, and;
  - .5 Ensure that consular officers of the seafarer's State are permitted access to the involved seafarer.
-