



FACILITATION COMMITTEE
36th session
Agenda items 8 and 6.1

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SECURING AND FACILITATING INTERNATIONAL TRADE

Facilitating shore leave and access to ships, removing unnecessary restrictions imposed by divergences in the implementation of the ISPS Code

Submitted by the Marshall Islands, Panama, Ukraine and ITF

SUMMARY

Executive summary: This document provides a proposal to adopt a FAL circular on "Facilitating shore leave and access to ships, removing unnecessary restrictions imposed by divergences in the implementation of the ISPS Code"

Strategic direction: 8

High-level action: 8.0.2

Planned output: 8.0.2.1, 8.0.2.2

Action to be taken: Paragraph 9

Related documents: A 26/INF.4; MSC 87/17/2; MSC.1/Circ.1342 and FAL 36/8

Background

1 The twenty-sixth Assembly, while discussing efforts undertaken within the framework of the "Go to sea!" campaign, noted with appreciation the information provided by INTERTANKO and ITF (A 26/INF.4) on the outcome of the Young Seafarer's Focus Group 2009, a three-day workshop organized for young seafarers of different nationalities to express their views on a career at sea and on what attracts young people to the shipping industry. The Assembly agreed to refer document A 26/INF.4 to the MSC and the MEPC for consideration by the Joint MSC/MEPC Working Group on Human Element and requested INTERTANKO and ITF to submit proposals on how to address the issues raised in the aforementioned document.

2 Following the Assembly's decision, INTERTANKO and ITF submitted to MSC 87 document MSC 87/17/2 on Shore leave for seafarers, wherein various instruments regarding shore leave have been analysed, including the Convention on Facilitation on International Maritime Traffic, 1965. Despite numerous provisions aimed to ensure fulfillment of rights of the seafarers the authors of the document concluded that seafarers are consistently denied shore leave.

3 During the subsequent discussion at MSC 87, a number of delegations highlighted the difficulties encountered by seafarers who had been refused shore leave and, bearing in mind IMO's decision to declare 2010 as the Year of the Seafarer, stated that seafarers should be granted shore leave regardless of their nationality. Also, it was noted by the Committee that being denied shore leave was demoralizing to seafarers and put the safety of ships and their crews at risk. Deep concerns were also expressed in that seafarers and

seafarers' welfare and labour organizations continued to face difficulties in connection with shore leave and gaining access to ships due to the manner in which the provisions of SOLAS chapter XI-2 and the ISPS Code have been interpreted and implemented by some Contracting Governments.

4 The MSC 87 adopted MSC.1/Circ.1342 "Reminder in connection with shore leave and access to ships" with the view of the necessity to give full effect to the existing instruments and guidance and to put in place effective measures to monitor that these instruments are implemented adequately.

Discussion

5 While analysing the problem of denying shore leave and complicating the ship-shore communication, it is evident that the prime reason for such denial is due to discrepancies in interpreting the requirements of SOLAS chapter XI-2 and of the ISPS Code. However, as documents A 26/INF.4, MSC 87/17/2 and subsequent discussion at the MSC 87 indicated clearly, the same port facility may offer different treatment to crew members of the same vessel but of different nationalities or at the time when another team is exercising control over measures to allow ship-shore communication.

6 In particular, the outcome of the "Young Seafarer's Focus Group 2009", reflected in document A 26/INF.4, indicates, *inter alia*, the following concerns raised by the young seafarers and recommendations therein:

- Exacerbated issues of discrimination against some nationalities, while implementing the ISPS Code;
- Port State requirements sometimes not practical or reasonable;
- No standard practice – sometimes need passport, sometimes not;
- Port States need to improve training on ISPS Code to ensure awareness of seafarers' rights.

7 The information mentioned proves the fact that shore leave and access to port facilities for seafarers and also ship-to-shore communication require additional measures to eliminate the practice of giving less favourable treatment in respect to some flags and nationalities of individual crew members and to provide further improvements in terms of uniformity of formalities, documentary requirements and procedures related to shore leave.

8 The co-sponsors of this document are of the belief that further steps in implementing the IMO instruments with regard to facilitating shore leave and ship-to-shore communication are required, especially in the area of implementing the ISPS Code. With this in mind, it is proposed to adopt a separate FAL circular on "Facilitating shore leave and access to ships, removing unnecessary restrictions imposed by divergences in the implementation of the ISPS Code" in order to strengthen the enforcement of IMO instruments which give special protection for the rights of seafarers in this area.

Action requested of the Committee

9 The Committee is invited to consider adopting the proposed draft FAL circular on "Facilitating shore leaves and access to ships, removing unnecessary restrictions imposed by divergences in the implementation of the ISPS Code", set out in the annex, and decide as appropriate.

ANNEX

FACILITATING SHORE LEAVE AND ACCESS TO SHIPS, REMOVING UNNECESSARY RESTRICTIONS IMPOSED BY DIVERGENCES IN THE IMPLEMENTATION OF THE ISPS CODE

1 The Facilitation Committee, at its [thirty-sixth session (6 to 10 September 2010)], was informed on difficulties encountered by seafarers who had been refused shore leave, access to shore-based facilities, and complications related to gaining access to ships by representatives of seafarers' welfare and labour organizations. The problems stem mainly from divergences in the implementation of the IMO instruments adopted to ensure uniform interpretation and execution of SOLAS chapter XI-2 and the ISPS Code.

2 The Committee noted discussions which took place at the twenty-sixth session of the IMO Assembly and at the eighty-seventh session of the MSC with relation to the shore leave of seafarers. The Committee also noted with appreciation the MSC.1/Circ.1342 on Reminder in connection with shore leave and access to ships, adopted by the MSC at its eighty-seventh session which once again draws attention of the Member States to the necessity to give full effect to existing IMO instruments and guidance which regulate implementation of the ISPS Code ensuring that adequate consideration is given to the human element.

3 The Committee agreed, however, that further work is necessary in this area, especially regarding the elimination of the improper practice of providing less favourable treatment with respect to some flags and nationalities of individual crew members, to ensure further improvements in terms of uniformity in formalities, documentary requirements and procedures.

4 The Committee acknowledged that port States, while giving effect to the special measures envisaged to prevent security incidents affecting ships or port facilities and to exercise control over access to their territories, have to recognize that shore leave for seafarers constitutes their right – not a privilege.

5 The Committee encouraged Member States to establish measures and procedures to provide better coordination and cooperation among administrations, border control agencies, ports and terminals to enable full implementation of conventions and other instruments, the IMO and ILO recommendations which define conditions and procedures related to the shore leave for seafarers, and to promote a balanced approach towards ISPS Code-prescribed security measures and the right of seafarers to satisfy their social needs and requirements, especially – the right for access to the shore-based social facilities and shore leave.

6 Towards the establishment of a balanced approach to the ISPS-related issues and the giving of due attention to fulfillment of the rights of seafarers through the social dialogue, the Committee invites Member States to envisage creating effective mechanisms for approval and review of Port Facility Security Plans, especially with regard to ensuring the needs for shore leave and ship-shore communications are addressed, and to establish national procedures for examining complaints including those filed by seafarers' representative organizations, with regard to discrepancies in the implementation of the ISPS Code in relation to the shore leave and ship-shore communications.

7 As provided in Conference resolution 11 of the 2002 SOLAS Conference, Contracting Governments are urged to take the human element need to afford special protection to the rights of seafarers and the critical importance of shore leave into account when implementing the provisions of SOLAS chapter XI-2 and the ISPS Code. The Committee urges Contracting Governments to ensure that adequate training is provided for the ISPS-responsible personnel in ports/terminals to be fully aware of the necessity to provide an adequate protection of seafarers' rights, the great significance of shore leave in relation to the human element and its influence on maritime safety and security while implementing provisions of SOLAS chapter XI-2 and the ISPS Code.

8 States should endeavor to establish standard practices regarding requirements related to the documents which provide public authorities with information about the individual member of the crew seeking shore leave and access to the shore-based facilities in ports, and consider whether seafarers' identity documents serve for better facilitation and unification of requirements related to seafarers' identification in the international maritime trade.

9 Administrations should render particular attention to ensuring unbiased and nondiscriminatory practice in exercising control and allowing access to shore irrespective of vessels' flags and nationalities of individual crew members. Member States, representative organizations of seafarers and shipowners are encouraged to inform FAL, MSC and MEPC Committees of unfair and selective practices toward providing shore leave and access to the shore-based facilities in foreign ports.

10 Member Governments are urged to bring this circular to the attention of all parties concerned.
