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ANY OTHER BUSINESS

Fair treatment of seafarers detained on suspicion of committing maritime crimes

Submitted by Georgia, Ukraine and the International Transport Workers' Federation

SUMMARY

Executive summary: This document draws the attention of the Legal Committee to the serious problem of involvement of seafarers in criminal activities at sea and of the violation of seafarers' rights to fair treatment in the event of their detention on suspicion of committing crimes related to maritime trade and transportation

Strategic direction, if applicable: Not applicable

Output: Not applicable

Action to be taken: Paragraph 17

Related documents: None

Introduction

1 Maritime crime is a serious threat to the safety of seafarers, international trade and regional stability. Since over 90% of world trade is carried by sea, the economic effect of maritime crimes can be crippling. At the same time, due to the global nature of shipping, seafarers are recognized as a special category of workers. Given the international nature of the shipping industry and the different jurisdictions within which seafarers may face criminal prosecution, seafarers are in need of special protection when facing criminal prosecution in order to have access to fair trials.

2 Unfortunately, criminalization is one of the most serious threats global seafarers face today. Repeatedly, in different countries seafarers are deprived of fair treatment and justice and are not getting equal treatment defending themselves against charges for committing crimes at sea. In addition, the existence of foreign language and cultural barriers, as well as the diversity of local legal systems, leads to the exacerbation of the seafarers' situation due to insufficient knowledge of criminal procedures in different jurisdictions.

3 As noted by the Marine Transport Workers' Trade Union of Ukraine (MTWTU), the most vulnerable to crimes at sea are young seafarers, who face difficulties with their first employment and lack experience to identify the risk of involvement in illegal activities. In addition, young seafarers often do not possess the necessary knowledge to protect their rights. At the same time, experienced seafarers, who are denied decent employment due to their age, are also at the same risk. Taking into account the above mentioned, the major concerns with respect to seafarers' involvement in illegal activities at sea are as follows: the lack of knowledge for timely risk assessment and the lack of understanding of the consequences and sanctions for committing maritime crimes.

4 It is important to note that, in most cases, junior officers and ratings are not aware of a vessel's involvement in smuggling, transportation of illegal cargo or other criminal activities. Despite this, it is common for law enforcement agencies to detain the whole crew, in some cases for a significant period of time and without strong justification.

5 Regardless of whether seafarers have committed the crime deliberately or against their will, they should be guaranteed the right to fair treatment; be granted access to legal assistance, interpretation services and medical assistance; and be able to contact their relatives and consular officials, irrespective of the place of detention or stage of criminal proceedings, and in both pre-trial detention and penitentiary institutions. The use of force of any kind against seafarers, including for the purpose of obtaining evidence, should be strongly prohibited.

6 Another serious reason for the violation of seafarers' right to fair treatment is a lack of cooperation between Administrations in the field of prevention of maritime crimes and the enforcement of seafarers' rights during pre-trial investigation. Untimely notification to the country of citizenship and the other parties concerned about seafarers detained on suspicion of committing maritime crimes inhibits the provision of timely assistance to the detained seafarers. The GISIS Inter-agency platform for information sharing on migrant smuggling by sea is not updated in a timely manner and does not contain complete information on the detention of vessels during the transportation of irregular migrants.

7 The lack of unified principles, recommendations and guidelines on the fair treatment of seafarers detained on suspicion of committing maritime crimes generates significant challenges to securing seafarers' rights in various jurisdictions and requires special training of consular services, lawyers and trade unions.

8 Criminal proceedings against seafarers should be as expeditious as possible and there should be no unwarranted detentions and arrests. Where possible, seafarers should be given the right to remain on board their ship, instead of being imprisoned, and the safety of the vessel itself must be ensured as well.

9 Considering the above, the most important task is to implement the measures aimed at decreasing seafarers' involvement in maritime crimes and raising awareness of the mechanisms available to help prevent seafarers' engagement in maritime crimes.

10 For this reason, the Ministry of Foreign Affairs of Ukraine and the MTWTU have developed a joint project named "Preventing Seafarers' Involvement in Marine Crimes, Protecting Their Right to Fair Treatment" (the Project). The Project is intended to raise seafarers' awareness on the mechanisms available to help prevent their engagement in maritime crimes and to provide for the development of guidelines for seafarers and Administrations to ensure the protection of seafarers' rights to fair treatment during criminal proceedings; and aims to establish effective cooperation mechanisms at the national and international levels.

11 On 9 October 2018, the constituent meeting of the Project was held in Kyiv, Ukraine, with the participation of representatives from the International Labour Organization (ILO), the International Organization for Migration (IOM), the United Nations Office on Drugs and Crime (UNODC), the delegation of the European Union to Ukraine, Ukrainian Government officials and consular officers and representatives of the embassies of Germany, Greece, Italy, Turkey, the United Kingdom and the United States of America. The Project has received broad support and it was agreed unanimously that the timely implementation of the Project was necessary.

12 The importance of the MTWTU initiatives to improve the level of legal literacy of seafarers and its future work on prevention of seafarers' involvement in illegal activities at sea was also recorded in the resolution of the first Europe-Asia Maritime Summit, held on 9 May 2018 in Odesa, Ukraine, with participation from the ITF Seafarers' Trust, All Japan Seamen's Union, Singapore Maritime Officers' Union, Singapore Organization of Seamen and the International Maritime Employers' Council.

13 The International Transport Workers' Federation (ITF) and the Seafarers Rights International (SRI) have expressed support for the initiative to raise seafarers' awareness on mechanisms that help prevent seafarers from engaging in maritime crimes and to establish effective cooperation mechanisms for the same preventive goals.

Proposal

14 The co-sponsors suggest establishing a joint IMO/ILO/ITF Working Group to develop guidelines and recommendations on prevention of seafarers' involvement in maritime crimes and to ensure seafarers' right to fair treatment in case of their detention on suspicion of committing maritime crimes.

15 The Working Group should develop guidelines for seafarers on risk assessment of being involved in maritime crimes and on seafarers' rights during criminal proceedings. The guidelines should include, but not be limited to, the following:

- .1 recommendations on how to identify a vessel that may be involved in illegal traffic or smuggling;
- .2 description of the measures that can be safely taken if a seafarer is involved in illegal traffic against their will;
- .3 consequences of participation in illegal traffic and smuggling;
- .4 summary of a seafarer's rights as a defendant, plaintiff or witness;
- .5 principles of fair treatment during criminal proceedings;
- .6 information on governmental agencies, international organizations, non-governmental organizations and lawyers able to provide support for the protection of seafarers in different jurisdictions; and
- .7 legislation and procedures for particular countries where seafarers get detained most often.

16 It is expected that the Working Group would develop the following guidelines and proposals:

- .1 guidelines for Administrations on fair treatment of seafarers during criminal proceedings for maritime crimes;
- .2 proposals for the establishment of a mechanism of rapid information exchange between the Administrations regarding seafarers detained on suspicion of committing maritime crimes;
- .3 proposals for improving the functioning of the GISIS Inter-agency platform for information sharing on migrant smuggling by sea; IOM and UNODC should be invited into the discussion; and
- .4 proposals for the IMO model course on fair treatment of seafarers detained on suspicion of committing maritime crimes.

The outcomes of the Working Group should be reported to the Legal Committee.

Action requested of the Committee

17 The Legal Committee is invited to note the information provided, consider the proposal in paragraph 14 and take action, as appropriate.
