

LEGAL COMMITTEE
108th session
Agenda item 4(b)

LEG108/4(b)
21 May 2021
Original: ENGLISH
Pre-session public release:

FAIR TREATMENT OF SEAFARERS

(b) Fair treatment of seafarers in the event of a maritime accident

Developing cooperation on fair treatment of seafarers

Submitted by the International Transport Workers' Federation (ITF)

SUMMARY

Executive summary: The Committee has agreed on the need to keep the *Guidelines on the fair treatment of seafarers in the event of a maritime accident* under review. This work is distinct from, yet linked to, the Fair treatment of seafarers detained on suspicion of committing maritime crimes. Both subjects remain priority matters and could be considered together at the joint ILO-IMO tripartite working group once it is established.

Strategic direction, if applicable: Other work

Output: OW 17

Action to be taken: Paragraph 12

Related documents: LEG 95/5; LEG 97/6, LEG 97/6/1, LEG 97/INF.3; LEG 99/14; LEG 100/5/1, LEG 100/14; LEG 101/4/1, LEG 101/12; LEG 102/4, LEG 102/12; LEG 103/5, LEG 103/14; LEG 104/5, LEG 104/15; LEG 105/5, LEG 105/14; LEG 106/5, LEG 106/16; resolution A.1056(27)/Rev.1; resolution LEG.3(91); and Circular Letters Nos.2711, 2825 and 3724

Introduction

1 The *Guidelines on fair treatment of seafarers in the event of a maritime accident* were adopted by the Legal Committee at its ninety-first session on 27 April 2006 (resolution LEG.3(91)). They were also adopted by the ILO Governing Body at its 296th session on 12 June 2006. They entered into force on 1 July 2006 and are subject to voluntary acceptance by Member States. The Guidelines are kept under review by the Legal Committee.

2 The Guidelines should be implemented alongside the Code of the International Standards and Recommended Practices for a Safety Investigation into a Marine Casualty or Marine Incident (Code) which entered into force in 2010 (resolution MSC.255(84) adopted

on 16 May 2008). The mandatory standards in the Code stipulate that: "6.1 A marine safety investigation shall be conducted into every very serious marine casualty". In relation to "Chapter 12. Obtaining Evidence from Seafarers", the mandatory standards also state that: "12.1 ... evidence shall be taken at the earliest practical opportunity" and that: "The seafarers human rights shall, at all times, be upheld".

Casualties and COVID-19

3 It is reported that the human rights of seafarers are being frequently violated during the COVID-19 pandemic. According to the General observation adopted by the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) at its ninety-first session (November to December 2020): "...in addition to the humanitarian concerns linked to the violations of seafarers' rights, there is now a risk that fatigue and other health issues could lead to serious maritime accidents".

4 ITF has published "Beyond the limit: How COVID-19 corner-cutting places too much risk in the international shipping system". This publication states that: "The COVID-19 pandemic has thrown the world into disarray. And the international shipping industry is no exception. Manning levels have been reduced as crew become hard to change and be refreshed; hours of rest are being ignored and replaced with non-paid hours of work and compliance performance; systems crucial for the safe operation of the world's shipping fleet are being disregarded on a daily basis through superficial remote inspections....".

5 Also according to marine insurer Allianz Global Corporate & Specialty Safety and Shipping Review 2020: "Extended periods on board vessels can result in mentally and physical fatigued crew, which is known to be one of the underlying causes of human error, estimated to be a contributing factor in 75% to 96% of marine incidents".

Seafarers' fears

6 Criminalization and unfair treatment following a maritime accident or casualty remains one of the top concerns of seafarers. In a survey of 3,480 seafarers of 68 different nationalities conducted in 2012 by Seafarers' Rights International (SRI), 85% of seafarers were concerned about criminalization and 46.44% stated that they would be reluctant to cooperate fully in a casualty inquiry. In a recent survey of 5,200 seafarers conducted in 10 labour sending States in 2018 by SRI, 82.68% of seafarers stated that they are very strongly or moderately concerned about facing criminal charges in connection with incidents related to their work. The fear is not diminishing.

Scale of the problem

7 The scale of instances of detention of seafarers following a maritime accident or a maritime casualty is unknown.

8 IMO Assembly resolution A.987(24), adopted on 1 December 2005, and IMO Assembly resolution A.1056(27)/Rev.1, adopted on 30 November 2011, both request the IMO Legal Committee and the ILO Governing Body to keep the "problem of unfair treatment of seafarers in the event of a maritime accident under review and to assess periodically the scale of the problem".

Fair treatment of seafarers detained on suspicion of committing maritime crimes

9 Maritime crimes are clearly distinct from maritime accidents. However insofar as both instances may lead to the detention of seafarers, they both raise elements in common regarding the need for the fair treatment of seafarers.

10 The United Nations Office on Drugs and Crime World Drug Report 2020 states that: "The reduction in air and land traffic resulting from COVID-19 restrictions may have already led to an increase in maritime trafficking – with a reduced risk of interception and the ability to smuggle larger quantities than by air or land. The risks to seafarers facing detention on suspicion of committing maritime crimes are increasing."

The Maritime Labour Convention

11 Regulation 5.1.6 of the Maritime Labour Convention (MLC), 2006 deals with marine casualties and states that: "1. Each Member shall hold an official inquiry into any serious marine casualty, leading to injury of loss of life, that involves a ship that flies its flag". But the Convention does not refer to fair treatment in the context of an official inquiry into such a marine casualty. It is therefore proposed that this issue could be considered for further discussion at the proposed joint ILO-IMO tripartite working group once it is established.

Action requested of the Committee

12 The Legal Committee is invited to note the above information and to comment as appropriate.
