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FAIR TREATMENT OF SEAFARERS

(c) Fair treatment of seafarers detained on suspicion of committing maritime crimes

Proposals to expedite the development of an ILO/IMO instrument on fair treatment of seafarers detained on suspicion of committing maritime crimes

Submitted by Georgia, Ukraine, International Federation of Shipmaster' Associations (IFSMA), International Ship Managers' Association (InterManager) and International Transport Workers' Federation (ITF)

SUMMARY

Executive summary: This document draws the attention of the Legal Committee to the serious problem of involvement of seafarers in alleged 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. It also invites the Committee to consider, inter alia, expediting the development of new guidelines on the above topic, evaluating cases of detention of seafarers on suspicion of committing maritime crimes with a view to establishing a relevant database, as well as promoting further awareness raising of seafarers' rights to fair treatment in cases of detention.

Strategic direction, if applicable: 6

Output: 6.8

Action to be taken: Paragraph 12

Related documents: A 27/Res.1056/Rev.1; LEG 106/15, LEG 106/15/1; LEG 107/14 and LEG 107/14/4

Introduction and background

1 The Committee, at its 106th session, underlined that unfair treatment of seafarers, whether in the event of a maritime accident or otherwise, poses a threat to the future sustainability of merchant shipping, primarily due to the deleterious effect on the image of the shipping industry. Such incidents have an adverse impact on the morale of seafarers, on the attraction and recruitment of qualified young people into the seafaring profession, and on the ability to retain current seafarers in the profession.

2 Seafarers cannot be prosecuted for doing their professional job. They may not have information about the actual nature of the cargo, especially when transporting containers under customs seals. Despite this, arrests of seafarers on suspicion of illegal shipments, including drug shipments, are on the rise, even when seafarers themselves have reported suspicious cargo or other situations on board their ships to law enforcement agencies. This only serves to deter reporting. In such situations, seafarers are left alone with the problem and afraid to report it under threat of being unfairly charged or being detained for a long time without an opportunity to provide for their families.

3 Seafarers are criminalized even before all the facts are ascertained. Shipmasters are the first to suffer unwarranted detentions by law enforcement agencies solely on the basis of their superior position on the ship, regardless of whether they were on duty at the time the event qualifying as a crime occurred, or whether they had an opportunity to influence the situation.

4 The current mechanisms for the prompt release of seafarers from detention do not allow for fair treatment of seafarers. This results in seafarers continuing to be arrested for long periods, sometimes being used as unspoken hostages in cases against shipowners.

5 Using the media and social media to publicize the situation and call for help is often the only way for seafarers to protect themselves from unfair treatment. This often results in inaccurate or legally incorrect information being disseminated, which can also be used against seafarers themselves. Additionally, the dissemination of such information causes considerable damage to the image of merchant shipping and diminishes the prestige of the profession of seafarers as key workers. Criminal cases often take a significant amount of time. Once published in the early periods after detention, information about the consequences of detaining seafarers is not monitored, making it impossible to assess how unjustified detention affects seafarers and their ability to continue their careers.

6 There is no official database of cases of detention of seafarers on suspicion of committing maritime crimes. Criminal cases require the participation of a significant number of stakeholders and the rapid exchange of information, at least for the speedy release of seafarers from custody.

7 The lack of up-to-date evidence-based information can become one of the main problems in the work of the ILO-IMO Joint Tripartite Working Group on identifying and addressing seafarers' issues and the human element. There is currently no officially collected information on how many seafarers have been detained, what crimes they were suspected of committing, or what the reasons are for the involvement of seafarers in crimes at sea; what damage unjustified detention causes to seafarers, and what are the most typical violations of seafarers' rights during pre-trial proceedings.

8 The experience of the development and implementation of the Guidelines for the Fair Treatment of Seafarers in the Event of a Maritime Accident, adopted by the Committee, at its ninety-first session, and the ILO Governing Body in 2006, may also be useful to the effective work of the ILO-IMO Joint Tripartite Working Group. However, the latest report on the implementation of these Guidelines was conducted by Seafarers' Rights International in 2013 and showed an insignificant level of implementation of these Guidelines by Member States in their national legislation.

9 The Committee, at its 109th session, noted that in order to advance the work on the Committee's output on "Fair treatment of seafarers detained on suspicion of committing maritime crimes", there was an urgent need to receive concrete proposals at LEG 110 for consideration and endorsement by the Committee and, thereafter, for forwarding to and consideration by the ILO-IMO Joint Tripartite Working Group.

Proposals

- 10 The co-sponsors propose to consider the need to:
- .1 develop guidelines for the fair treatment of seafarers detained on suspicion of committing maritime crimes by the end of 2023; and
 - .2 establish a database on the detention of seafarers on suspicion of committing maritime crimes in the form of a new module of the Global Integrated Shipping Information System or in the form of a separate database.
- 11 The co-sponsors invite the Committee, Member States and non-governmental organizations to conduct:
- .1 research of cases of detention of seafarers on suspicion of committing maritime crimes;
 - .2 re-examine the level of implementation by Member States of the Guidelines for the Fair Treatment of Seafarers in the event of a maritime accident; and
 - .3 additional education and information campaigns aimed at raising seafarers' awareness of maritime crimes and fair treatment principles to ensure that seafarers' rights are protected in the event of detention.

Action requested of the Committee

- 12 The Legal Committee is invited to take note of the information provided, to consider the proposals in paragraphs 10 and 11, and to take action, as appropriate.
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