

## Report of IMO LEGAL AFFAIRS COMMITTEE (LEG 108)

Sub-Committee on Implementation of IMO Instruments  
26 to 30 July 2021  
International Maritime Organization (IMO), Virtual

### ITF delegation

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### Fair treatment of Seafarers

#### **Provisions of financial security in case of abandonment of Seafarers, and shipowners' responsibilities in respect of contractual claims for personal injury, or death of Seafarers, in light of progress of amendments to the ILO MLC, 2006.**

The Committee considered document LEG 108/4(a)/1 (ITF) containing an analysis of cases of abandonment reported by ITF to the IMO/ILO joint database of abandonment of seafarers for the period 1 January to 31 December 2020. The Committee was informed that during the period referred to, ITF reported the abandonment of 851 seafarers on 53 vessels, and that in total, 85 cases of abandonment were reported, involving over 1,300 seafarers.

Committee also consider other documents submitted on this issue and agreed that, although the role of ITF is and will be important, flag States had a major role, since there were many seafarers from different nationalities on ships registered in certain flag States. Committee further concluded that this systematic issue needed to be resolved.

However, following the discussion, the Committee agree (to note, remind, encourage and promote):

1. Noted the information provided in documents LEG 108/4(a) and LEG 108/4(a)/1;
2. encouraged discussion relating to a solution to the problem of repatriation of abandoned seafarers;
3. Reminded Member States of the importance of resolution A.930(22) on Guidelines in the provision of financial security in the case of abandonment of seafarers and of the work of the Joint IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation Regarding



Claims for Death, Personal Injury and Abandonment of Seafarers;

4. Highlighted the existence of the IMO/ILO joint database;
5. Encouraged Member States to report incidents of abandonment to the database when they occurred in their ports or on vessels flying their flag;
6. Encouraged Member States to further ratify and effectively implement MLC, 2006;
7. Reminded Member States of the Recommended framework of protocols for ensuring safe ship crew changes and travel during the coronavirus (COVID-19) pandemic (MSC.1/Circ.1636/Rev.1);
8. Reminded Member States of resolution A/75/17 of the United Nations General Assembly, adopted on 1 December 2020 on International cooperation to address challenges faced by seafarers as a result of the COVID-19 pandemic to support global supply chains;
9. Promoted to Member States the recently published toolkit, Maritime Human Rights Risks and the COVID-19 Crew Change Crisis, which is a joint initiative of the United Nations Global Compact (UNGC), the Office of the High Commissioner for Human Rights (UN Human Rights), ILO and IMO; and
10. Encouraged Member States to assist with the crew change crisis and noted that the issue, which was of great concern, needed to be dealt with because of the rising numbers of abandonment cases.

#### **Guidelines for port State and flag State authorities on how to deal with seafarer abandonment cases**

In respect to this item, due to the time constrain, Committee agreed to establish Intersessional Correspondence Group (ISCG) with coordinator from Indonesia

(Ms. G. Rarasanti, [gi.rarasanti@indonesianembassy.org.uk](mailto:gi.rarasanti@indonesianembassy.org.uk)), under the TOR as follow;

- .1 further develop the guidelines, using the proposal in document LEG 108/4(d) (China, Indonesia and Philippines) as the base document;
- .2 if the joint ILO-IMO tripartite Working Group, proposed for establishment by the ILO Governing Body, meets prior to LEG 109, submit a report directly to that Working Group; and
- .3 submit a report to LEG 109.

ITF will participate in ISCG and inform ITF MSC on results.

The Committee recalled that it had requested, as a matter of urgency, the Special Tripartite Committee (STC) of MLC, 2006 of ILO to authorize the establishment of an ILO-IMO tripartite working group to identify and address seafarers' issues and the human element, which would need to be endorsed by the ILO Governing Body during its meeting in November 2021.

#### **Fair treatment of Seafarers in the event of maritime accident**

The Committee noted the information set out in document LEG 108/4(b) (ITF), on an analysis of the fair treatment of seafarers in the event of a maritime accident, including the development of cooperation on fair treatment of seafarers. The text of the statement is as follow and is set out in LEG 108 report.

[ITF Statement concerning Fair treatment of Seafarers](#)



Thank you, Mr. Chairman; I would like to draw the Committee's attention to several incidents of detention of seafarers following maritime accidents.

This Committee developed the Guidelines on fair treatment of seafarers because of concerns about seafarers being detained for prolonged periods following maritime accidents. The Guidelines state that their objective is to ensure that seafarers are treated fairly following a maritime accident, and during any investigation and detention by public authorities, and that detention is for no longer than necessary.

Member States were invited to implement the Guidelines as from 1 July 2006. Today, 15 years later, there continue to be a number of incidents where questions can be raised about whether the seafarers are being treated fairly in full accordance with the principles set out in the Guidelines.

We refer to a few examples.

The grounding of the **Wakashio** in Mauritius was widely reported when it occurred one year ago this month. The Captain and Chief Officer were arrested on 18 August 2020 and have been detained now for almost a year. Both have been denied bail on any circumstances, the primary concern being that they are considered to be flight risks. We understand that they are charged with violating the rules of innocent passage, charges that carry prison sentences. Our attention has also recently been drawn to the tragic incident in 2019 when the MV **Viking Sigyn** collided with a pleasure boat on the River Danube in Budapest, killing 28 people. The captain has been in custody since the accident and is currently under house arrest with a tracking device. We understand that the criminal case is underway and the captain may face a long prison sentence.

Another Captain facing criminal charges is the Russian captain of the Singapore flagged **X-Press Pearl** who is prohibited from leaving the country Sri Lanka as the investigation into the casualty continues. Lawyers for the shipping company are reported to have said in court that the investigation seems to be one-sided.

Cases have also been reported previously to this Committee where seafarers have been detained for lengthy periods on suspicion of committing maritime crimes, such as the **Captain Gavrylov of the Avant Guard** who was detained for six years, also in Sri Lanka, and then we understand was acquitted of any charges, and the Captain Lasota of the UBC Savannah who was detained in Mexico for almost two years before a court refused to continue with charges against him and then again it was reported that he was eventually acquitted.

Only last week, we have learned of two more cases. One involving the master and officers of the **MSC CAPUCINE R** (Liberia) have been arrested in Turkey after authorities found drugs inside a container. It should be clear that the crew of container vessels have no idea what is inside the containers they transport. We hope they will avoid the fate of the crew of the **Artin 10**, who were arrested in February 2020 and kept in custody in Iran for over a year before being released. Notably, they found that there was no one to repatriate them on release and relied on local charity to survive until the ITF stepped in to assist.

Mr Chair, the Guidelines state that seafarers are recognized 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, they need special protection, especially in relation to contacts with public authorities. We would ask States to recognise the importance of the Guidelines and to ensure that the Guidelines are implemented in practice. This is ever more important when there appear to be



increases in the number of reported shipping casualties or incidents. It should also be stressed that seafarers are spending longer periods at sea due to crew change issues caused by COVID. The fatigue that these seafarers suffer may well be playing an increasing role in the incidence of accidents. Mr Chair, the ITF and SRI will continue to monitor the fair treatment of seafarers following maritime accidents and to report matters of concern to this Committee. Thank you.

#### Fair treatment of Seafarers detained on suspicion of committing maritime crimes

The Committee noted that there were no documents submitted under this sub-item.

However, the IMO and ILO Secretariats provided the Committee with an oral update on the formation of the Joint ILO-IMO tripartite Working Group in connection with sub-item 4(d) of the agenda.

The Committee was informed that, at the Fourth Meeting of the STC of MLC, 2006 of ILO, a proposal to establish the ILO-IMO tripartite Working Group, submitted by the IMO Secretariat, was considered under the agenda item on "Exchange of information related to the implementation of the MLC, 2006".

#### **Proposed definitions of fraudulent registration and fraudulent registry**

There was broad support in the Committee for the definitions of "fraudulent registration" and "fraudulent registry" as developed by the Correspondence Group. The Committee also agreed to delete the words "at the relevant time" which had remained between square brackets in that document.

The Committee supported the proposal to include a definition of "false documents", and to complement the definitions developed by the Correspondence Group; and agreed that this could be further considered intersessionally. The Committee agreed to extend the target completion year of the output to 2022.

#### Establishment of a remote intersessional group

In view of the need to further consider a number of issues and proposals related to the fraudulent registration and fraudulent registries of ships, the Committee established a remote intersessional group under the coordination of the United States ( Mr. Stephen Hubchen, [stephen.k.hubchen@uscg.mil](mailto:stephen.k.hubchen@uscg.mil))

#### **Regulatory scoping exercise (RSE) and gap analysis of Conventions emanating from Legal Committee with respect to Maritime Autonomous Surface Ships (MASS)**

The Committee decided to finalize the LEG RSE at this session and agreed that, with the conclusion of the current output on MASS, any further work of the Legal Committee had to be guided by proposals for new outputs. There was general support for the establishment of a joint FAL/LEG/MSC working group on MASS in the future, to consider cross-cutting issues between the committees and to address any legal implications of the introduction of MASS, including under the United Nations Convention on the Law of the Sea (UNCLOS).

ITF drew the attention of the Committee to the serious effects the introduction of MASS may have on seafarers' careers and lives, which should be studied further, as it could negatively influence young men and women to pursue a career at sea.



### LEG Working Group on MASS

Having considered the report of the LEG Working Group on MASS the Committee approved it in general and, in particular:

- .1 approved the outcome of the RSE and gap analysis of conventions emanating from the Legal Committee with respect to MASS;
- .2 noted that, in general, MASS could be accommodated within the existing regulatory framework of LEG conventions without the need for major adjustments;
- .3 noted that coordination among the committees would be necessary moving forward, in particular regarding terminology and definitions;
- .4 invited Member States to submit proposals for a new output on MASS for those issues identified to be specific to LEG;
- .5 noted that conventions not under the auspices of IMO, such as UNCLOS and MLC, 2006, may need to be considered in IMO's future work on MASS, particularly if IMO developed an instrument regulating MASS operations; and
- .6 endorsed the Group's recommendation that the outcome of the LEG RSE should be circulated through a LEG circular.

### **Piracy**

In recognition of the important legal aspects attached to the issue of piracy, Committee agreed that this item should remain on the agenda of the Legal Committee.

The Committee also amended the title of the agenda item to read "Piracy and armed robbery against ships" in order to align it with the title of the corresponding agenda item of the Maritime Safety Committee.

### **Work programme**

#### New outputs

The Committee agreed on two proposals for new outputs:

- .1 On the development of measures to transparently assess whether there is a need to amend liability limits ; and
- .2 On the development of a Claims Manual for the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001.