

LEGAL COMMITTEE
107th session
Agenda item 14

LEG 107/14
13 December 2019
Original: ENGLISH
Pre-session public release:

WORK PROGRAMME

Proposal to add a new output under the work programme on Fair treatment of seafarers detained on suspicion of committing maritime crimes

Submitted by Georgia, Malaysia, Philippines, Ukraine, International Chamber of Shipping (ICS), International Federation of Shipmasters' Associations (IFsMA), International Association of Independent Tanker Owners (INTERTANKO), International Association of Dry Cargo Shipowners (INTERCARGO), International Ship Managers' Association (InterManager), International Transport Workers' Federation (ITF) and Women's International Shipping and Trading Association Limited (WISTA International)

SUMMARY

Executive summary: This document invites the Committee to add a new output under the work programme on Fair treatment of seafarers detained on suspicion of committing maritime crimes

Strategic direction, if applicable: 5 and 6

Output: Proposal for a new output

Action to be taken: Paragraph 29

Related documents: LEG 106/15, LEG 106/15/1 and LEG 106/16

Introduction and background

1 This document is submitted in accordance with paragraph 4.7 of the *Organization and method of work of the Legal Committee* (LEG.1/Circ.9) on the submission of proposals for new outputs, taking into account resolution A.1111(30) on *Application of the Strategic Plan of the Organization*, and proposes a new output on Fair treatment of seafarers detained on suspicion of committing maritime crimes.

2 The Committee, at its 106th session, considered the need for the development of guidelines to address the fair treatment of seafarers in case of their detention on suspicion of committing maritime crimes (LEG 106/15 and LEG 106/15/1).

3 There was broad support for the proposal in document LEG 106/15 to create a joint IMO/ILO/ITF working group to address the issues raised (LEG 106/16, paragraph 15.2).

4 Many delegations highlighted the inadequacy of the current *Guidelines on Fair Treatment of Seafarers in the Event of a Maritime Accident*, adopted by LEG 91 and the ILO Governing Body in 2006, as they were limited to the fair treatment of seafarers in the case of a maritime accident and did not adequately address the fair treatment of seafarers detained on suspicion of committing maritime crimes.

5 A number of delegations expressed the view that any new guidelines should not overlap with existing international and domestic law.

6 The Committee invited interested parties to submit a proposal for a new output, in accordance with the *Organization and method of work of the Legal Committee* (LEG.1/Circ.9), to LEG 107.

7 The Committee also requested the Secretariat to coordinate with ILO on the potential activation of a joint working group on the fair treatment of seafarers detained on suspicion of committing maritime crimes. Relevant information will be provided by the Secretariat in a separate document for consideration in conjunction with this proposal for a new output.

IMO's objectives

8 The proposal is within the scope of IMO's mission. The Strategic Plan for the Organization for the six-year period 2018 to 2023 (resolution A.1110(30)) sets out that IMO, in all aspects of its work, will take into account the needs and well-being of seafarers.

9 The proposal would contribute to the implementation of IMO's Strategic Directions 5 and 6.

Need

10 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.

11 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 in accordance with fundamental principles of international human rights law.

12 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 when 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.

13 It is important to note that, in some cases, the master and crew are not aware of a vessel's involvement in smuggling, transportation of illegal cargo or other criminal activities, and in most cases, the junior officers and ratings are unaware. 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. In some cases, seafarers suspected of involvement in criminal activity have been held in maximum security prisons without being charged while investigations have been conducted.

Analysis of the issue

14 Regardless of the nature and severity of the suspected criminal activity, seafarers 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, 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.

15 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.

16 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.

17 Another serious concern 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. For example, 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.

18 The co-sponsors of this submission believe that the development and implementation of measures aimed at decreasing seafarers' involvement in maritime crimes and raising awareness of the mechanisms available to help prevent seafarers' engagement in maritime crimes is needed.

Analysis of implications

19 The co-sponsors suggest establishing a joint IMO/ILO Working Group on the fair treatment of seafarers detained on suspicion of committing maritime crimes to:

- .1 ensure seafarers' right to fair treatment in cases of their detention on suspicion of committing maritime crimes; and
- .2 develop guidelines and recommendations on prevention of seafarers' involvement in maritime crimes.

There would be no cost to the maritime industry or administrative requirements arising from this output in itself. New guidelines should not overlap or seek to interfere with existing international and domestic law nor the full enjoyment of the basic rights of seafarers, including those provided by international human rights instruments, and the seafarers' right to humane treatment at all times.

20 However, if this output is approved, it is anticipated that the Committee will need to first consider various options, thus any potential administrative burden cannot be evaluated at this time. Following discussions, the Committee would have to consider how best to address the issues identified. The checklist for identifying administrative requirements, as set out in the annex, has therefore been completed on this basis.

Benefits

21 The unfair treatment of seafarers, whether in the event of a maritime accident or in other circumstances, poses a threat to the future sustainability of merchant shipping, primarily due to the damaging effect to the image of the shipping industry. These cases 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.

22 Given that the current situation has a negative impact on seafarers and their families, as well as on the attractiveness and therefore the sustainability of the shipping industry, it would be in the interest of flag States, port States, labour-supplying States, and shipowners' and seafarers' organizations to address the unfair treatment of seafarers detained on suspicion of committing maritime crimes and to help to prevent seafarers' involvement in maritime crimes.

Industry standard

23 The need to ensure fair treatment of seafarers in view of a growing use of criminal proceedings against them was recognized, in the specific context of maritime accidents, through the establishment of the Joint IMO/ILO Ad Hoc Expert Working Group on the Fair treatment of seafarers in the event of a maritime accident in 2005. This resulted in the adoption of Assembly resolution A.987(24) and the *Guidelines on fair treatment of seafarers in the event of a maritime accident* in 2006. The objective of the Guidelines 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 not to be imposed for longer than necessary. The Guidelines are intended not only for the port or coastal State, but also for the flag State, the State of the nationality of the seafarer, shipowners and seafarers themselves. The provisions of the Guidelines applicable to the port or coastal State seek to ensure that any investigation to determine the cause of a maritime accident is conducted in a fair and expeditious manner, and that the human rights and other legitimate interests of seafarers involved in maritime accidents are fully respected.

24 As of 1 July 2006, IMO and ILO Member States were called upon to implement those Guidelines, and to consider amending their legislation to give them full and complete effect. Whereas the scope of the aforementioned Guidelines is limited to maritime accidents, it is worth noting that, through resolution A.1056(27) of 30 November 2011, the IMO Assembly and the ILO Governing Body invited Member States to take note of the principles contained in the Guidelines when considering fair treatment of seafarers in other circumstances where seafarers might be detained.

25 Moreover, the Maritime Labour Convention (MLC), 2006 contains provisions of relevance to the issue of fair treatment of seafarers, some of which only apply in the event of maritime accidents and some of which are equally applicable in other circumstances.

26 In particular, Regulation 5.1.6 concerns marine casualties and obliges ratifying States to hold an official inquiry into any serious marine casualty leading to injury or loss of life that involves a ship flying its flag (paragraph 1). Furthermore, ratifying States are required to cooperate with each other to facilitate the investigation of such serious marine casualties (paragraph 2). The other relevant provisions of MLC, 2006 have a broader remit. Under Guideline B4.4.6 "Seafarers in a foreign port", measures should be taken for the protection of seafarers in foreign ports to facilitate access to consuls of their State of nationality or State of residence; and effective cooperation between consuls and the local or national authorities (paragraph 1). Seafarers who are detained in a foreign port should be dealt with promptly under due process of law and with appropriate consular protection (paragraph 2). Most notably, whenever a seafarer is detained for any reason in the territory of a Member State, the competent authority should:

- .1 if the seafarer so requests, immediately inform the flag State and the State of nationality of the seafarer;
- .2 promptly inform the seafarer of the right to make such a request; and
- .3 allow consular officers of these States immediate access to the seafarer and regular visits thereafter so long as the seafarer is detained.

The State of nationality of the seafarer should promptly notify the seafarer's next of kin (paragraph 3).

Output

27 The proposed output would be "Fair treatment of seafarers detained on suspicion of committing maritime crimes".

Urgency

28 Three sessions are estimated to be necessary to complete the work. The co-sponsors consider that there is urgency in addressing the issue of fair treatment of seafarers detained on suspicion of committing maritime crimes. Therefore, it is proposed that the output should be placed on the 2020-2021 biennial agenda (and in due course in the 2022-2023 biennium). The proposed date for completion of the output is 2023.

Action requested of the Committee

- 29 The Legal Committee is invited to:
- .1 take note of the information provided in this document; and
 - .2 agree to include a new output on its work programme on Fair treatment of seafarers detained on suspicion of committing maritime crimes.

ANNEX

CHECKLIST FOR IDENTIFYING ADMINISTRATIVE REQUIREMENTS

<p>This checklist should be used when preparing the analysis of implications required in submissions of proposals for inclusion of outputs. For the purpose of this analysis, the term "administrative requirements" is defined in resolution A.1043(27), as an obligation, arising from a mandatory IMO instrument, to provide or retain information or data.</p> <p>Instructions:</p> <p>(A) If the answer to any of the questions below is YES, the Member State proposing an output should provide supporting details on whether the requirements are likely to involve start-up and/or ongoing costs. The Member State should also give a brief description of the requirement and, if possible, provide recommendations for further work (e.g. would it be possible to combine the activity with an existing requirement?).</p> <p>(B) If the proposal for the output does not contain such an activity, answer NR (Not required).</p> <p>(C) For any administrative requirement, full consideration should be given to electronic means of fulfilling the requirement in order to alleviate administrative burdens.</p>		
<p>1. Notification and reporting? Reporting certain events before or after the event has taken place, e.g. notification of voyage, statistical reporting for IMO Members</p>	NR	<input type="checkbox"/> Start-up <input type="checkbox"/> Ongoing
Description of administrative requirement(s) and method of fulfilling it: (if the answer is yes)		
<p>2. Record keeping? Keeping statutory documents up to date, e.g. records of accidents, records of cargo, records of inspections, records of education</p>	NR	<input type="checkbox"/> Start-up <input type="checkbox"/> Ongoing
Description of administrative requirement(s) and method of fulfilling it: (if the answer is yes)		
<p>3. Publication and documentation? Producing documents for third parties, e.g. warning signs, registration displays, publication of results of testing</p>	NR	<input type="checkbox"/> Start-up <input type="checkbox"/> Ongoing
Description of administrative requirement(s) and method of fulfilling it: (if the answer is yes)		
<p>4. Permits or applications? Applying for and maintaining permission to operate, e.g. certificates, classification society costs</p>	NR	<input type="checkbox"/> Start-up <input type="checkbox"/> Ongoing
Description of administrative requirement(s) and method of fulfilling it: (if the answer is yes)		
<p>5. Other identified requirements?</p>	NR	<input type="checkbox"/> Start-up <input type="checkbox"/> Ongoing
Description of administrative requirement(s) and method of fulfilling it: (if the answer is yes)		