

FACILITATION COMMITTEE
38th Session
Agenda item 4

FAL38/4/xx
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**GENERAL REVIEW OF THE CONVENTION, INCLUDING HARMONIZATION WITH
OTHER INTERNATIONAL INSTRUMENTS**

Visa Issues – Comments and Proposed Amendment

Submitted by Liberia, Philippines, CLIA, ICS and ISF

SUMMARY

<i>Executive summary:</i>	This submission comments on the final report of the correspondence group contained in FAL 38/4, in particular the debate concerning the inclusion of 'visa number, if appropriate' in crew and passenger lists and disembarkation cards. The co-sponsors make a new proposal to amend the Convention in a way that might resolve hitherto divided opinion on the 'visa number' issue and harmonise FAL with ILO Convention 185.
<i>Strategic direction:</i>	8
<i>High-level action:</i>	8.0.1, 8.0.2, 8.0.3, 8.0.4
<i>Planned output:</i>	8.0.1.1, 8.0.1.2
<i>Action to be taken:</i>	Paragraph 13
<i>Related documents:</i>	FAL 35/17, FAL 36/17, FAL 37/17, FAL 37-WP.5, FAL 37/4/1, FAL 38/4.

Introduction

1. This document is submitted in accordance with the provisions of the *Guidelines on the Organization and Method of Work of the Facilitation Committee* (FAL.3/Circ.206) and comments on document FAL 38/4.
2. FAL is an important IMO instrument that assists ships and their crews by seeking to reduce reporting formalities and administrative burdens. The co-sponsors support the principles of the FAL Convention and welcome the current review of FAL in order to ensure that it continues to address the present and emerging needs of the international shipping industry and the seafarers it employs.

Background

3. Standard 3.45 of the FAL Convention requires that "Crew members shall not be required to hold a visa for the purpose of shore leave". Ships often visit port States at short notice and shore leave is vital given the special nature of seafarers' employment. Without shore leave, seafarers could be restricted on board ship for several months at a time.

4. However, during debates within the correspondence group on the general revision of the FAL Convention, proposals have been considered to include 'visa number, if appropriate' in the information that a public authority may request from a ship. Specifically, proposals have been made to amend Standard 2.6.1 and Recommended Practices 2.7.3 and 3.6 to include 'visa number, if appropriate' within the information that can be requested in crew lists, passenger lists, and disembarkation cards.

5. The report of the correspondence group (FAL 38/4) notes that opinion has remained divided on this issue of visa numbers. Some Administrations have argued that the inclusion of 'visa number, if appropriate' would not challenge the principle of visa exemption for shore leave but would facilitate the transmission of visa information for crew members who intend to go beyond the geographical limits of shore leave when a visa is required to do so. Others, however, including ICS, have raised serious concerns that such an amendment would have the effect of legitimising the requirement of visas for the purposes of shore leave, contrary to the principle established by Standard 3.45. Reference to crew visas would also be contrary to the spirit of the requirements of ILO Convention 185 (which ISF helped to negotiate in its capacity as the co-ordinator of the Employers' Group during the tripartite Conference which adopted the ILO Convention in 2003).

6. The co-sponsors nevertheless believe that it is possible to reconcile the wish by some Administrations for amendments that refer to visa numbers with others' concerns about undermining the principle of facilitating seafarers' access to shore leave.

7. While it is vital to maintain the principle, established by FAL Standard 3.45, that seafarers should not normally be required to hold visas, it is recognised that (Standard 3.45 notwithstanding) visa requirements for crew are a regrettable reality in some nations due to increasing concerns about security. It is therefore proposed that the FAL Convention be amended to establish that in situations where Contracting Parties do require visas for shore leave, port States should provide adequate provisions for obtaining visas upon arrival. This would also harmonise FAL with the spirit of ILO Convention 185.

ILO Seafarers' Identity Documents Convention (Revised), 2003 (ILO 185)

8. ILO 185 was adopted as part of a package of maritime security measures following the terrorist attacks of 2001. In order to balance the interests of port States, employers and seafarers, the Convention requires seafarers to carry identity documents, but stipulates that port States must facilitate shore leave and transits to and from ships without visas. (Many Parties to FAL that may not have ratified ILO 185 also remain Parties to the Seafarers' Identity Documents Convention, 1958 (No. 108) which similarly prohibits States from requiring seafarers to obtain visas to gain access to shore leave.) However, ILO 185 also acknowledges that some governments may not be in a position to comply with the no visa for shore leave principle, and encourages such governments to make alternative provisions that will facilitate shore leave (see Article 6).

9. The need for specific provisions, in situations where governments require visas for shore leave, to allow seafarers to apply for visas on arrival in port has been recognised as important by members of the correspondence group. For example, it has been noted that the EU Schengen Borders Code and Visa Code allow for seafarers to be issued with a visa on

arrival at the border if they have not been in a position to apply for one in advance. However, shipping companies only have recourse to this arrangement in exceptional circumstances and it does not resolve all the challenges currently faced.

Proposal

10. The co-sponsors therefore invite the Committee to consider the insertion of a new Recommended Practice 3.46 (3.45 *bis*) in order to reconcile divergent opinions on the visa issue whilst also harmonising the FAL Convention with ILO Convention 185.

11. It is proposed that the FAL Convention be amended to establish that, Standard 3.45 notwithstanding, in situations where Contracting Parties do require visas for shore leave, port States should provide adequate provisions for obtaining visas upon arrival. It is therefore proposed to insert a new and additional Recommended Practice 3.46 (3.45 *bis*) to read as follows:

Recommended Practice 3.46

"In circumstances where Contracting Governments may not be in a position to fully implement Standard 3.45, adequate provisions should be in place to allow seafarers to apply for a visa upon arrival in port, or shortly before arrival."

12. If the Committee agreed to include a Recommended Practice similar to that suggested above then the co-sponsors would be willing to agree to the proposed amendments to Standard 2.6.1 and Recommended Practices 2.7.3 and 3.6.

Action requested of the Committee

13. The Committee is invited to consider the proposal to insert a new and additional Recommended Practice 3.46 and decide as appropriate.