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FAIR TREATMENT OF SEAFARERS

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

Submitted by International Chamber of Shipping (ICS) and
International Group of Protection and Indemnity Associations (P & I Clubs)

SUMMARY

Executive summary: This document provides comments on document LEG 110/4(c) submitted by Georgia, Philippines, InterManager, ICS, IFSMA, ITF, P & I Clubs and WISTA.

Strategic direction, if applicable: 6

Output: 6.8

Action to be taken: Paragraph 23

Related documents: A/27/Res.1056/Rev.1; LEG 106/15, LEG 106/15/1; LEG 107/14, LEG 107/14/4 and LEG 110/4(c)

Introduction and background

1 This document is submitted in accordance with paragraph 6.6.5 of the *Organization and method of work of the Legal Committee* (LEG.1/Circ.9) and provides comments on document LEG 110/4(c) submitted by Georgia, the Philippines, InterManager, ICS, IFSMA, ITF, P & I Clubs and WISTA.

2 As a co-sponsor of document LEG 110/4(c), ICS and P & I Clubs fully support the proposal to develop dedicated guidelines on the fair treatment of seafarers detained on suspicion of committing maritime crimes, which would be modelled on the 2006 *Guidelines on Fair Treatment of Seafarers in the Event of a Maritime Accident*. However, it will be important to ensure that the proposed guidelines are actually followed in cases where seafarers are detained on suspicion of committing maritime crimes. Ideally, national legislation should be amended to give full and complete effect to the guidelines.

3 Since the previous meeting of the Committee (LEG 109), the co-sponsors of this document have been approached by shipping companies and their legal and insurance representatives seeking assistance in cases where seafarers have been detained on suspicion of committing maritime crimes, despite the authorities providing no evidence of the seafarers'

complicity. Such detentions are often for prolonged periods with the seafarers being held in challenging conditions while separated from their family and loved ones, and this has a severe impact on the seafarers' physical and mental well-being and also impacts the well-being of their families. Basic human rights have been disregarded. Shipowners have waited for many months before approaching the co-sponsors due to concerns that the exposure of such human rights violations could have an adverse effect on the detained seafarers' situation.

4 When attempts have been made to raise the concerns with the relevant authorities, there has often been no response or the co-sponsors have been indirectly informed that the domestic criminal justice process must take its course.

5 ICS and P & I Clubs fully respect domestic criminal justice systems and do not seek to interfere in the judicial process. The co-sponsors fully understand the damage caused to countries by maritime crimes, such as drug smuggling, and the need to suppress and deter this criminal activity, including through the prosecution of offenders using the full force of the criminal law. However, the plight of seafarers who are detained, when it appears from an early stage of investigations that they are not complicit in such criminal activities, needs to be recognized and addressed in the context of their fair treatment.

6 In cases where seafarers have been detained on suspicion of involvement in drug smuggling, the approach taken by the authorities has been tantamount to a reversal of the burden of proof, with the prosecuting authorities treating the seafarers as guilty until proved innocent, even where there is no evidence linking them to the alleged crimes. In a number of these cases the court eventually acquitted the seafarers or found that there was no case to answer, but the legal process in the jurisdictions concerned is often lengthy and slow-moving with proceedings often adjourned making it difficult to present defences to the charges and progress the matter. All the while the seafarers are detained in prison or required to remain in a foreign jurisdiction, isolated and separated from loved ones.

7 Large commercial vessels are frequently targeted by highly organized criminal cartels and gangs. The international shipping industry is committed to combating the smuggling of drugs concealed on board ships and has invested heavily in preventative measures, including equipment, control procedures and crew training. However, given the tenacity and determination of the criminals engaged in smuggling, there will always be cases that the shipowner and the crew cannot control, even with all the measures they put in place to prevent this. More stringent controls and regulations are needed in the loading ports. In accordance with the principle of cooperation in UNCLOS, the responsibility for combating this criminal activity must be shared by all the relevant stakeholders, including the local authorities.

Captain Yu Yihai

8 In this regard, ICS would like to raise awareness of the case of Captain Yu Yihai's prolonged imprisonment without trial in Honduras. Captain Yu is the former master of the **Mount Hikurangi**, a vessel owned and operated by Pacific Basin.

9 In August 2021, the Honduran port authorities in Puerto Cortes discovered bags of cocaine in the vent shaft of one of the **Mount Hikurangi's** cargo holds during discharge operations. The co-sponsors understand that there is no evidence linking Captain Yu, or any of the crew, to this discovery and that Captain Yu is detained because he was the master in charge of the vessel at the relevant time.

10 Following the discovery, the drugs were removed and then destroyed by the authorities. The vessel was allowed to sail with its crew, but Captain Yu was imprisoned in a local jail and has remained in jail in Honduras ever since.

11 This amounts to almost 18 months in prison without bail and without trial. Captain Yu has only recently been formally indicted for a drug-smuggling offence. Nevertheless, Captain Yu's resoluteness in the face of this adversity follows in the tradition of seafarers the world over who put themselves at the forefront of global trade. And yet, Captain Yu's health and well-being are of concern. He has suffered from dengue fever and has had regular bouts of flu. Additionally, the mental strain of being away from his wife and family have taken their toll when there is no end in sight. We must also spare a thought for Captain Yu's wife and family who have been without him for a period now approaching two years.

12 Captain Yu's ordeal is contrary to the principles in the IMO/ILO Guidelines on the fair treatment of seafarers in the event of a maritime accident (which Member States have been invited to take note in other circumstances where seafarers might be detained), the Maritime Labour Convention, and Human Rights law, for trials to be conducted as expeditiously as possible or for the detained person to be released, and for non-custodial alternatives to pre-trial detention to be considered.

13 Captain Yu's employer and ICS are engaged in seeking both a resolution to his case and, in the interim, that he be released from custody (on bail). The co-sponsors were very disappointed to learn that Captain Yu's application for bail was refused by the sentencing Court in Tegucigalpa in December 2022. This decision is being appealed but the timeline for this is not certain and the outcome is not known at the time of submission of this document.

14 While the co-sponsors recognize that IMO and the Legal Committee have no locus over the matter, ICS and P & I Clubs would again appeal to the Honduran administration for Captain Yu's release on bail in Honduras and for his trial to be conducted as expeditiously as possible.

15 The co-sponsors of this document recognize that there have been too many incidents of this nature in recent years where the master and/or crew have been detained on drug smuggling charges when it appears from an early stage of investigations that they are not complicit in the smuggling. However, concern regarding the fair treatment of seafarers detained on suspicion of committing maritime crimes is not only limited to cases where drugs have been discovered on board.

Heroic Idun

16 To highlight this the co-sponsors would like to raise awareness of the case of the 26 seafarers on board the Marshall Islands flagged vessel **Heroic Idun**.

17 In early August 2022, the time charterers of the vessel ordered the **Heroic Idun** to load a cargo of oil from the Akpo terminal in Nigeria. On 8 August 2022, during the hours of darkness and while the vessel was waiting for the necessary clearance papers after having tendered notice of readiness in line with the voyage orders, the **Heroic Idun** was approached by a vessel that the master was unable to identify with certainty. The master had no reason to believe that the clearances would not be forthcoming and unaware of the true identity of the vessel and suspecting that it may be a pirate vessel, the Master ordered the **Heroic Idun** away from the potential danger. A suspected piracy incident was subsequently reported to the IMB by the flag State.

18 Several days later, on 12 August 2022, while passing through the exclusive economic zone (EEZ) of São Tomé and Príncipe, the vessel was intercepted by an Equatorial Guinea Navy vessel and ordered at gunpoint to proceed to Luba Bay. Fifteen members of the crew were subsequently removed from the vessel, detained in an onshore facility devoid of furniture and subjected to lengthy interrogations of up to 14 hours while being denied access to legal

representation. The crew were not given reasons for their prolonged detention and were exposed to exhausting interrogatory processes affecting their health and well-being. Apart from the mental strain experienced, several crew members also suffered from malaria and typhoid fever during their detention.

19 On 23 September 2022, a large fine was imposed on the owners by the authorities of Equatorial Guinea apparently for the vessel's failure to display the Equatoguinean flag while allegedly within its EEZ. This fine was paid by the owners without admission of fault on 5 October 2022 but the vessel and crew were still not released. No formal charges or arrests were made by the authorities in Equatorial Guinea. On 11 November 2022, the Nigerian authorities were given permission by Equatorial Guinea to board the vessel while in Luba Bay and to move it and the crew to Nigeria, escorted by a navy gunboat and with armed guards on board the vessel.

20 On 7 November 2022, the co-sponsors understand that the owners and the entire crew of 26 seafarers, with no distinction made between the different roles, responsibilities and decision-making authority of the crew members, were charged by the Nigerian authorities with; conspiring to commit a maritime offence as defined under the Suppression of Piracy and Other Maritime Offences Act 2019; falsely pretending to be victims of a piracy attack; and attempting to deal with crude oil in the EEZ without lawful authority.

21 The vessel is currently at anchor off the naval base at Port Harcourt. The trial of the crew was due to commence on 10 January 2023, but this has now been adjourned. The penalty for the charges facing the crew members is life imprisonment and they are understandably anxious and confused by these charges. The co-sponsors are concerned by the apparent lack of proportionality between the actions of the vessel and crew and the serious criminal charges brought by the Nigerian authorities. In addition, the crew has not been afforded the fair treatment which it is rightfully entitled to. Serious questions remain regarding the legality of the interception and detention of the vessel by Equatorial Guinea following which the crew were detained for three months in difficult conditions with limited access to legal representation. Lawyers were not permitted to go on board the vessel. The owners and crew were not given reasons for their detention by Equatorial Guinea or given the opportunity to challenge the forced rendition of the vessel and crew to Nigeria. Although the crew members had some access to legal representation when they attended court on 10 January, the crew remain under armed guard on board the vessel (which remains at anchor) and the lawyers have not been permitted on board the vessel since its arrival in Nigeria. Even the supply of basic provisions and exercise is subject to the approval of the Nigerian Navy. Furthermore, the crew have only limited access to phones, making communication with their families very difficult.

22 As has been well noted previously, the unjust criminalization of seafarers is having a negative impact on the industry as a whole. Ultimately, it will have a negative impact on trade to and from the countries concerned as companies assess the risks of prolonged detention of ship and crew and may choose to avoid trading to such jurisdictions entirely. A number of affected companies have already chosen to withdraw their services.

Action requested of the Committee

23 The Legal Committee is invited to consider the comments in this document and decide as appropriate.