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FAIR TREATMENT OF SEAFARERS

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

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ITF, P & I Clubs and WISTA

SUMMARY

Executive summary: This document invites the Committee to consider the development of Guidelines on fair treatment of seafarers detained on suspicion of committing maritime crimes. It proposes that the 2006 *Guidelines on fair treatment of seafarers in the event of a maritime accident* (resolution A.1056/Rev.1(27)) can be used as a model for similar guidelines dedicated to the issue concerning "Fair treatment of seafarers detained on suspicion of committing maritime crimes".

*Strategic direction,
if applicable:* 6

Output: 6.8

Action to be taken: Paragraph 8

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 109th session, noted that, in order to progress 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 Joint Tripartite ILO/IMO Working Group.

2 This document recalls the observation in document LEG 106/15/1 that, through IMO Assembly 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 on fair treatment of seafarers in the event of a maritime accident* when considering fair treatment of seafarers in other circumstances where seafarers might be detained.

3 This document further recalls that many delegations highlighted the inadequacy of the existing *Guidelines on 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, to address cases of seafarers detained on suspicion of committing maritime crimes as they were limited to the fair treatment of seafarers in the case of a maritime accident (LEG 107/14).

4 Moreover, documents LEG 106/15/1 and LEG 107/14 pointed out that the Maritime Labour Convention (MLC), 2006 contains provisions of relevance to the issue of fair treatment of seafarers which have a broader remit, particularly Guideline B4.4.6 "Seafarers in a foreign port", which contains measures to be taken for the protection of seafarers in foreign ports.

5 Taking into account the objective of the existing *Guidelines on fair treatment of seafarers in the event of a maritime accident*, to ensure that seafarers are treated fairly during any investigation and detention by public authorities and that detention is for no longer than necessary, the co-sponsors are of the view that said document can be used as a model to develop similar guidelines dedicated to the issue on "Fair treatment of seafarers detained on suspicion of committing maritime crimes". The co-sponsors note that the procedures are equally applicable, and the corresponding responsibilities of all stakeholders are similar. This will also expedite the process of developing a set of guidelines that will specifically address the issue of fair treatment of seafarers detained on suspicion of committing maritime crimes.

Proposal

6 The co-sponsors suggest the development of *Guidelines on fair treatment of seafarers detained on suspicion of committing maritime crimes* using the existing 2006 *Guidelines on fair treatment of seafarers in the event of a maritime accident* (the 2006 Guidelines) as a model. The co-sponsors suggest that the 2006 Guidelines be reviewed and the relevant and applicable provisions from those Guidelines be amended as necessary and included in the proposed *Guidelines on fair treatment of seafarers detained on suspicion of committing maritime crimes*. In addition, the co-sponsors suggest the inclusion of the following additional points in the proposed Guidelines:

I. Title and Introduction

- a provision on the measures to be taken when a seafarer in a foreign port is accused or suspected of committing a crime or detained for any reason whatsoever;

II. Definition

- the definition of maritime crimes;

III. Guidelines for the port or coastal State

- recognizing that prevention of any seafarer involvement in maritime crimes is of fundamental importance, a provision that the port or coastal State should work with shipowners to ensure that all reasonable preventative measures are in place before and during a ship's call at a port to minimize the risk of any unlawful activity (including by third parties) on board or in the immediate vicinity of the ship;

- a provision that the port or coastal State should take steps so that any investigation into a maritime crime allegedly committed by a seafarer within their jurisdiction is conducted promptly under due process of law, in a fair, transparent and expeditious manner with appropriate consular protection;
- a provision for the port or coastal State to grant access by detained seafarers to consular officials of the seafarer State as well as the flag State, with effective cooperation between the consuls and the local and national authorities of the port and coastal States;
- a provision that the port or coastal State should take steps to ensure that seafarers charged with a criminal offence have the right to legal representation of their choice and enjoy the presumption of innocence until proven guilty by a proper legal process;
- a provision that the port or coastal State should take steps to ensure that accused detained seafarers be segregated from convicted persons and be subject to separate treatment appropriate to their status as untried persons;
- a provision that the port or coastal State should take steps to ensure that a gender sensitive perspective is integrated in the conduct of any investigation and in places of detention, and accused detainees are treated with respect and dignity at all times and in accordance with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules);
- a provision that the port or coastal State should ensure that seafarers have access to mental health and well-being counselling during and after their detention; and
- a provision that all reasonable steps are taken to ensure that seafarers are afforded the freedom and means to practise their religion of choice during any detention;

IV. *Guidelines for the flag State*

- a provision that the flag State should coordinate closely with the port or coastal State to facilitate access of consular officials to detained seafarers;
- a provision that the flag State should coordinate with the port or coastal State to ensure that a gender sensitive perspective is integrated in the conduct of any investigation and in places of detention;
- a provision that the flag State should coordinate with the port or coastal State as well as with the seafarer State to take steps to ensure that seafarers have access to mental health and well-being counselling during and after their detention;
- a provision that the flag State should coordinate with the port or coastal State as well as the seafarer State to take steps to ensure that seafarers are afforded the freedom and means to practise their religion of choice during any detention; and

- a provision that if the flag State becomes aware of, or has reasonable grounds to believe that there has or may have been a breach by the port or coastal State of any of the relevant provisions of the United Nations Convention on the Law of the Sea, 1982, consideration may be given as to whether it is appropriate to make an application to the International Tribunal for the Law of the Sea in respect of this breach;

V. *Guidelines for the seafarer State*

- a provision for the seafarer State to coordinate closely with the port or coastal State to guarantee access of detained seafarers to consular officials;
- a provision that the seafarer State should coordinate with the port or coastal State to ensure that a gender sensitive perspective is integrated in the conduct of any investigation and in places of detention, such places must ensure the treatment of detained persons is consistent with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules);
- a provision that the seafarer State should coordinate closely with the port or coastal State as well as with the flag State, to ensure that seafarers have access to mental health and well-being counselling during and after their detention;
- a provision that the seafarer State should coordinate with the port or coastal State to ensure that seafarers are afforded the freedom and means to practise their religion of choice during any detention; and
- a provision that the Guidelines be made part of the pre-departure orientation of all seafarers;

VI. *Guidelines for shipowners*

- recognizing that prevention of any seafarer involvement in maritime crimes is of fundamental importance, a provision that shipowners should ensure that the ISPS Code procedures and Ship Security Plan are up to date, and that any IMO, ILO, industry and P&I Club guidance on areas of concern, such as drug trafficking, are reviewed and such guidance is implemented prior to arrival at and during any port call;
- shipowners should work with port Authorities to ensure that all reasonable preventative measures are in place before and during a ship's call at a port to minimize the risk of any unlawful activity (including by third parties) on board or in the immediate vicinity of the ship;
- a provision that shipowners should immediately, upon any detention of a seafarer, consider and take steps to establish whether the seafarer has any specific needs, for example in relation to their gender, their religious beliefs and any medical requirements, and, with consent of the seafarer, communicate these specific needs to all substantially interested States and take steps to ensure that these needs are met; and
- a provision that shipowners should coordinate closely with the port or coastal State as well as with the flag State to ensure that seafarers have access to mental health and well-being counselling during and after their detention.

7 The co-sponsors suggest the establishment of a working group that will consider the above proposals.

Action requested of the Committee

8 The Legal Committee is invited to note the information provided, consider the proposals in paragraphs 6 and 7, and take action, as appropriate.
