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WORK PROGRAMME

Proposal for a new output to modify the definition of "key workers" and relevant amendments in the FAL Convention

Submitted by Bangladesh, France, Indonesia, Philippines, Republic of Korea, ICS, IFSMA, IMHA, InterManager, ITF and OCIMF

SUMMARY

Executive summary: This document proposes a new output to review the provisions of the "key worker" in the FAL Convention, in particular revising the definition of the "key worker", introducing new provisions, such as appropriate exemptions from movement restrictions, timely access to medical care, and prioritization in national vaccination programmes during public health crises, such as a pandemic.

Strategic direction, if applicable: 6

Output: Not applicable

Action to be taken: Paragraph 13

Related documents: FAL 46/4/1; FAL 46/WP.1/Rev.1; resolutions A.1149(32), A.1160(32); MSC.473(ES.2) and MSC.490(103)

Background

1 The FAL Committee, at its forty-sixth session, considered document FAL 46/4/1 (Republic of Korea) proposing modifications to the draft amendments to the annex to the Convention approved by FAL 45, under agenda item 4 (Review and update of the annex to the FAL Convention). The document contained proposals to include appropriate provisions in the FAL Convention concerning the designation of the "key workers" to facilitate maritime traffic and protect human rights during any public health crises, such as a pandemic.

2 Noting that these proposals had not been circulated three months prior to the session, in accordance with article VII(2)(a) of the FAL Convention, the proposal could not be supported in the set of amendments to be adopted at the session.

3 Following consideration, the Committee agreed that the matter should be undertaken as a new output and invited interested Member States and international organizations to submit proposals for a new output.

IMO objectives

4 This is consistent with paragraph 34 of resolution A.1149(32) (*Revised Strategic Plan for the Organization for the Six-Year Period 2018 to 2023*) under strategic direction 6, "Address the human element", which reads:

"34 In its role as the global regulator of shipping, IMO will build on work already completed to address the human element and will take the human element into account in the review, development, and implementation of new and existing requirements. This includes the provision of machinery for cooperation among governments on practices concerning the human element in the maritime sector... [To address human element related issues, the Organization will develop or amend provisions, including but not limited to training, certification and watchkeeping, including consideration of new technologies; human-centred design; safe manning; drills and exercises; fatigue management; operational safety, security, and environmental protection; and fair treatment of seafarers, taking into account the important role of gender equality.]"

Compelling need

5 This proposal addresses a compelling need to ensure the global supply chain through the wider scheme of the definition of the "key worker" and the development of new provisions, such as appropriate exemption measures to lift movement restrictions, to be provided with timely medical care, and to be prioritized in national vaccination programmes to anyone designated as a key worker during the pandemic across the world.

Analysis of the issue

6 MSC 104 in 2021 had agreed to limit the definition to seafarers only and agreed not to include the term "other marine personnel", owing to the lack of a clear definition for this term and the required documentation for these personnel, on the basis that Member States could determine their own key workers. On the contrary, a port worker or a seafarer newly introduced into Standard 6.22 of the FAL Convention adopted in 2022 can be designated as a key worker during a public health emergency of international concern.

7 However, other essential maritime traffic employees also need to work during such pandemic situations. These are public, private or welfare service providers for ships and seafarers. It is a necessary definition of the "key worker" to encompass all essential maritime traffic employees in section 1 (A. Definitions) of the FAL Convention.

8 Moreover, the current Standard 6.22 in the FAL Convention does not provide any concrete and effective measures associated with what such status could mean to a key worker, such as exemptions from national travel or movement restrictions. Prompt access to medical care, and prioritization in national vaccination programmes should be considered alongside.

Analysis of implications

9 The Checklist for identifying administrative requirements, set out in annex 1, has been completed on this basis.

Benefits

10 This new output is proposed to assist Member States in facilitating the complete functionality of global supply chains during a public health emergency of international concern.

Output

11 The co-sponsors propose a new output, "The review on the provisions of a key worker during a public health emergency of international concern in the FAL Convention", in particular revising the definition of the "key worker" and introducing concrete and effective provisions, such as exemptions from movement restrictions, timely access to medical care and prioritization in national vaccination programmes, with two sessions to complete in the Committee's agenda for FAL 48 and FAL 49. The scope of further work could include the following views expressed at FAL 46:

- .1 a clear unified interpretation should be established between the Assembly resolution A.1160(32) on *Comprehensive action to address seafarers' challenges during the COVID-19 pandemic* and the FAL Convention with regard to the designation of seafarers and port workers as key workers and, therefore, a clear definition of key workers should be incorporated in the Convention;
- .2 public/private service providers performing in ports should be considered as key workers and their rights should be clearly identified;
- .3 a harmonized and coordinated approach among Member States, as well as in coordination with ILO, would be required for the well-being of seafarers and to make sure that the supply chains function properly;
- .4 the issue would require an in-depth analysis that would clarify the scope of key workers and their rights and, therefore, it would necessitate more than one session under a new output before concrete amendments to the FAL Convention could be established;
- .5 the amendment proposals in the document should be separated from the current set of amendments to be adopted, and the working group should be tasked to advise the Committee on how the matter should be addressed together with the matters of terminology;
- .6 in developing resolution MSC.473(ES.2) on *Recommended action to facilitate ship crew change, access to medical care and seafarer travel during the COVID-19 pandemic*, MSC 104 had deliberated on the inclusion of other marine personnel within the definition of key workers; however, it had eventually agreed to limit the definition to seafarers only, on the basis that Member States could determine their own key workers and, therefore, the matter should be considered in coordination with other committees and ILO;
- .7 the proposed modification on the designation of key workers and their rights to movement and vaccine priority to Standard 6.22 would better be placed in the recommended practice 6.22, for the flexible application of these provisions; and

- .8 the proposal on "vaccination priority in national vaccination programmes or emergency medical care" should be carefully considered, taking into account that some developing countries had had difficulties in gaining access to vaccinations during the pandemic and that Member States might have different priorities to take into account.

Human element

12 The checklist for considering human element issues by the IMO bodies is set out in annex 2 of this document.

Action requested of the Committee

13 The Committee is invited to take note of the information contained in this document and agree that the proposed output be added to the Committee's agenda for FAL 48 and FAL 49.

ANNEX 1

**CHECKLIST FOR IDENTIFYING ADMINISTRATIVE REQUIREMENTS
(FAL.3/CIRC.217/REV.1, ANNEX 6)**

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 accordance with resolution A.1043(27), as an obligation arising from a mandatory IMO instrument to provide or retain information or data.

Instructions:

- (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?
- (B) If the proposal for the output does not contain such an activity, answer **NR** (Not required).
- (C) For any administrative requirement, full consideration should be given to electronic means of fulfilling the requirement in order to alleviate administrative burdens.

<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, etc.</p>	<p>NR <input checked="" type="checkbox"/></p>	<p>Yes <input type="checkbox"/> Start-up <input type="checkbox"/> Ongoing</p>
<p>Description of administrative requirement(s) and method of fulfilling it: (if the answer is yes)</p>		
<p>2. Record-keeping? Keeping statutory documents up to date, e.g. records of accidents, records of cargo, records of inspections, records of education, etc.</p>	<p>NR <input checked="" type="checkbox"/></p>	<p>Yes <input type="checkbox"/> Start-up <input type="checkbox"/> Ongoing</p>
<p>Description of administrative requirement(s) and method of fulfilling it: (if the answer is yes)</p>		
<p>3. Publication and documentation? Producing documents for third parties, e.g. warning signs, registration displays, publication of results of testing, etc.</p>	<p>NR <input checked="" type="checkbox"/></p>	<p>Yes <input type="checkbox"/> Start-up <input type="checkbox"/> Ongoing</p>
<p>Description of administrative requirement(s) and method of fulfilling it: (if the answer is yes)</p>		
<p>4. Permits or applications? Applying for and maintaining permission to operate, e.g. certificates, classification society costs, etc.</p>	<p>NR <input checked="" type="checkbox"/></p>	<p>Yes <input type="checkbox"/> Start-up <input type="checkbox"/> Ongoing</p>
<p>Description of administrative requirement(s) and method of fulfilling it: (if the answer is yes)</p>		
<p>5. Other identified requirements?</p>	<p>NR <input checked="" type="checkbox"/></p>	<p>Yes <input type="checkbox"/> Start-up <input type="checkbox"/> Ongoing</p>
<p>Description of administrative requirement(s) and method of fulfilling it: (if the answer is yes)</p>		

ANNEX 2

**CHECKLIST FOR CONSIDERING HUMAN ELEMENT ISSUES BY IMO BODIES
(FAL.3/CIRC.217/REV.1, ANNEX 5)**

	1 Question	2 Yes/No	3 IMO references	4 Considerations	5 Instructions
	Workload		<i>Other relevant references may be added</i> <i>Strike out references that are not relevant</i>	<i>If answer to question is "yes" identify considerations. If answer is "no" make proper justification</i>	<i>Identify how human element considerations should be addressed in the output</i>
1	Does the "output" affect workload?	No		it will not affect workload both on board and ashore.	
1.1	On board, especially in the already intensive phases of the voyage and port operations to:	No	<i>Revised guidelines for the operational implementation of the International Safety Management (ISM) Code by Companies (MSC-MEPC.7/Circ.8)</i> <i>Guidelines on fatigue (MSC.1/Circ.1598)</i> <i>Principles of minimum safe Manning (resolution A.1047(27))</i> <i>Guidelines for the investigation of accidents where fatigue may have been an issue (MSC/Circ.621)</i>		

	1 Question	2 Yes/No	3 IMO references	4 Considerations	5 Instructions
1.1.1	Operations including navigation, cargo and engineering	No			
1.1.2	Maintenance of the ships structure and its equipment	No			
1.1.3	Onboard administration in support of the ships' management systems	No			
1.1.4	Onboard administration related to regulation involving flag States, classification societies, port State and other bodies such as charterers and port authorities	No			
1.1.5	Increased workload or time pressure on personnel if involved in implementation of changes prior to the implementation date	No			
1.2	Ashore, in a manner that would affect the ships operation to:				
1.2.1	Companies' administration	No			

	1 Question	2 Yes/No	3 IMO references	4 Considerations	5 Instructions
1.2.2	Flag State, port State and classification societies administration such that certification and other processes are compromised or delayed	No			
Decision-making			<i>Other relevant references may be added</i> <i>Strike out references that are not relevant</i>	<i>If answer to question is "yes" identify considerations. If answer is "no" make proper justification</i>	<i>Identify how human element considerations should be addressed in the output</i>
2	Does the "output" impact decision-making on board the ship?	No		The output will improve service provided to ships	
2.1	By confusion with existing requirements and regulations	No			
2.2	By changing responsibilities as laid out in the ISM Code	No			
2.3	By creating complexity in its implementation and/or in the safety management systems	No			

	1 Question	2 Yes/No	3 IMO references	4 Considerations	5 Instructions
2.4	By requiring increased mental effort, such as the need to find, transform and analyse data or result in the need to make judgements based on incomplete information	No			
2.5	By limiting the time available to establish situational awareness, decide, communicate (possibly across time zones) or check	No			
2.6	By increasing reliance on judgement and administrative controls to manage major risks such as oil spills and collisions	No			

	1 Question	2 Yes/No	3 IMO references	4 Considerations	5 Instructions
Living and working environment			<p><i>Other relevant references may be added</i></p> <p><i>Strike out references that are not relevant</i></p>	<p><i>If answer to question is "yes" identify considerations. If answer is "no" make proper justification</i></p>	<p><i>Identify how human element considerations should be addressed in the output</i></p>
3	Does the "output" affect the living and working environment?	No	<p><i>Guidelines on the basic elements of a shipboard occupational health and safety programme (MSC-MEPC.2/Circ.3)</i></p> <p><i>Guidelines on fatigue (MSC.1/Circ.1598)</i></p>	The output will not affect the living and working environment.	
3.1	By interfering with existing arrangements for abandonment, fire-fighting and other emergency plans or procedures	No			
3.2	By introducing new materials that could create an explosion, fire, environmental or occupational health risk	No			
3.3	By introducing new high energy sources such as high-voltage, high pressure fluids	No			
3.4	By affecting access or egress and causing lack of ventilation in working spaces	No			

	1 Question	2 Yes/No	3 IMO references	4 Considerations	5 Instructions
3.5	By affecting the habitability of accommodation spaces due to noise, vibration, temperatures, dust and other contaminants	No			
Operation and Maintenance			<p><i>Other relevant references may be added</i></p> <p><i>Strike out references that are not relevant</i></p>	<p><i>If answer to question is "yes" identify considerations. If answer is "no" make proper justification</i></p>	<p><i>Identify how human element considerations should be addressed in the output</i></p>
4	Does the "output" affect the operation and maintenance of the ship, its structure or systems and equipment?	No	<p><i>Revised guidelines for the operational implementation of the International Safety Management (ISM) Code by Companies (MSC-MEPC.7/Circ.8)</i></p> <p><i>Guidelines for bridge equipment and systems, their arrangement and integration (BES) (SN.1/Circ.288)</i></p> <p><i>Principles of minimum safe manning (resolution A.1047(27))</i></p> <p><i>Issues to be considered when introducing new technology on board ships (MSC/Circ.1091)</i></p>	<p>The output is to revise the provisions of FAL Convention on key worker matters, thus improving movement restrictions, timely access to medical care, and prioritization in national vaccination programmes during public health crises, such as a pandemic, without affecting the operation and maintenance of equipment.</p>	

	1 Question	2 Yes/No	3 IMO references	4 Considerations	5 Instructions
			<p><i>Guideline on software quality assurance and human-centred design for e-navigation (MSC.1/Circ.1512)</i></p> <p><i>Guidelines for the standardization of user interface design for navigation equipment (MSC.1/Circ.1609)</i></p>		
4.1	By introducing equipment that the user may find difficult to operate or maintain or may be unreliable	No			
4.2	By introducing new and/or novel technology, or technology that changes the role of the person	No			
4.3	By introducing requirements for new competencies and roles	No			
4.4	By overloading existing infrastructure such as power generation and ventilation systems	No			
4.5	By poor integration with existing systems and controls	No			

	1 Question	2 Yes/No	3 IMO references	4 Considerations	5 Instructions
4.6	By introducing new and unfamiliar operations/procedures	No			
4.7	By introducing new and unfamiliar operating interfaces?	No			
4.8	By introducing risks to the ship during any modifications required prior to the implementation date of the output	No			
Measures to address the human element			<p><i>Other relevant references may be added</i></p> <p><i>Strike out references that are not relevant</i></p>	<p><i>If answer to question is "yes" identify considerations. If answer is "no" make proper justification</i></p>	<p><i>Identify how human element considerations should be addressed in the output</i></p>
5	Does the "output" require changes to:	No	<p><i>Shipboard technical operating and maintenance manuals (MSC.1/Circ.1253)</i></p> <p><i>Revised guidelines for the operational implementation of the International Safety Management (ISM) Code by Companies (MSC-MEPC.7/Circ.8)</i></p>	The output does not require specific training or skills development for mariners.	

	1 Question	2 Yes/No	3 IMO references	4 Considerations	5 Instructions
5.1	Training	No			
5.2	Practical skill development and competences	No			
5.3	Operating, management and/or maintenance procedures	No			
5.4	Information/manuals for operation and maintenance	No			
5.5	Spares outfit	No			
5.6	Occupational safety requirements including guarding and PPE	No			
5.7	Shore support	No			