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FAIR TREATMENT OF SEAFARERS

(d) Guidelines for port State and flag State authorities on how to deal with seafarer abandonment cases

Report of the intersessional Correspondence Group

Submitted by Indonesia

SUMMARY

Executive summary: This document contains the report on the work of the intersessional Correspondence Group on Development of Guidelines for Port State and Flag State Authorities on How to Deal with Seafarer Abandonment Cases. The Group developed practical guidelines to address abandonment of seafarer cases for port States, flag States, and States of which seafarers are a national.

Strategic direction, if applicable: 5 and 6

Output: 6.9

Action to be taken: Paragraph 13

Related documents: LEG 107/14/1, LEG 107/14/5, LEG 107/18/2, LEG/107/WP.2; LEG 108/4(d) and LEG 108/WP.10

Introduction

1 As instructed by the Legal Committee, at its 108th session, the Correspondence Group (CG) was established to follow up the decision to develop practical guidelines for port State and flag State authorities on how to deal with seafarer abandonment cases, using the Maritime Labour Convention (MLC), 2006 as the base regulation. The CG was coordinated by Indonesia (Ms. Galuh Rarasanti).

2 Representatives from the following Member States participated in the CG:

ARGENTINA	PALAU
AUSTRALIA	PERU
BAHAMAS	PHILIPPINES
BELGIUM	REPUBLIC OF KOREA
CHINA	SAUDI ARABIA
FRANCE	SINGAPORE
GREECE	THAILAND
INDONESIA	UKRAINE
JAPAN	UNITED ARAB EMIRATES
MARSHALL ISLANDS	UNITED KINGDOM
NORWAY	UNITED STATES

the following United Nations specialized agencies:

INTERNATIONAL LABOUR ORGANIZATION (ILO)
INTERNATIONAL MARITIME ORGANIZATION (IMO)

and the following non-governmental organizations in consultative status:

INTERNATIONAL CHAMBER OF SHIPPING (ICS)
INTERNATIONAL GROUP OF PROTECTION AND INDEMNITY ASSOCIATIONS (P & I CLUBS)
INTERNATIONAL CHRISTIAN MARITIME ASSOCIATION (ICMA)
INTERNATIONAL TRANSPORT WORKERS' FEDERATION (ITF)

3 The CG was instructed to:

- .1 further develop the guidelines, using the proposal in document LEG 108/4(d) (China, Indonesia and Philippines) as the base document;
- .2 if the joint ILO-IMO tripartite Working Group, proposed for establishment by the ILO Governing Body, meets prior to LEG 109, submit a report directly to that Working Group; and
- .3 submit a report to LEG 109.

Working Procedure

4 The discussions were initially scheduled to be held in three rounds, with a virtual meeting at the end of each round to communicate the comments. During the second round of discussion, it was agreed to add one more virtual meeting to the second round to allow a thorough discussion of the section of the draft guidelines on the Procedure. The schedule of discussions was as follows:

<u>First round</u>	Starting date: 10 September - Deadline: 15 October 2021 First virtual discussion: 18 October 2021
Purposes	To introduce the schedule of the CG discussion. Discussion on the format of the document, reference, and the identification of the substance of discussion for each section. Discussion on the preamble of the draft guidelines, its purpose, legal framework, definition, principles and responsibilities.

<u>Second round</u>	Starting date: 25 October - Deadline: 26 November 2021 Second virtual discussion: 3 December 2021 Additional virtual discussion: 17 December 2021
Purposes	Discussion on chapter I: General procedure. Discussion on chapter II: Special circumstances. Discussion on chapter III: Post resolution.
<u>Third round</u>	Starting date: 20 December 2021 - Deadline: 9 January 2022 Third virtual discussion: 10 January 2022
Purposes	Final review of the draft guidelines (only for editorial/typo correction). Discussion on a draft report of the CG for review and comments.

Progress of work

5 In accordance with its terms of reference, the CG used the draft guidelines proposed in document LEG 108/4(d) as its starting point. Although some delegates questioned the necessity to have the draft guidelines in the first round of the discussions, the CG has managed to reach agreement and to accommodate the views and comments from different perspectives. The draft guidelines which are attached in the annex to this report resulted from these discussions and are herewith further reported by the CG to the Legal Committee, in accordance with its terms of reference.

Discussion on Preambular section

6 As the base for further discussion, the CG agreed that the purpose of the draft guidelines was to facilitate the development and implementation of practical steps for port State and flag State authorities to expeditiously and effectively resolve abandonment cases where duty holders have failed to do so.

7 The CG agreed to change the title "Legal framework" to "International framework", in order to allow the inclusion of non-legally binding instruments, and identified five international instruments as reference for the measures described in the draft guidelines, as follows:

- .1 Maritime Labour Convention (MLC), 2006, as amended;
- .2 IMO resolution A.930(22) on *Guidelines on provision of financial security in case of abandonment of seafarers*;
- .3 ILO Guidelines for Port State Inspections under the MLC, 2006, as amended;
- .4 ILO Guidelines for Flag State Inspections under the MLC, 2006, as amended;
- .5 Frequently Asked Questions MLC 2006, as amended.

8 Regarding the structure of the draft guidelines, the CG agreed to insert a sub-section on "Application" to identify the parties to whom the draft guidelines would be relevant.

9 The CG agreed to use non-mandatory language as the draft guidelines are non-legally binding in nature, and are assisting in taking practical measures. This decision was also taken on the reasoning that the MLC, 2006, as amended, is the current legally binding international instrument, and also in order to respect the domestic systems of Member States.

Discussion on the Procedure section

10 The CG discussed numerous constructive contributions from the Member States and observer delegations that participated. All of these contributions were given in the spirit of cooperation and in order to promote the speedy resolution of abandonment of seafarer cases and protection of seafarers.

11 In the Procedure section, the CG put in place the step-by-step actions that could be taken to achieve resolution of abandonment of seafarer cases. This concerns the necessary maintenance of seafarers required by the MLC, 2006, the necessity to pay unresolved wages in full, the repatriation of the seafarers who wish to return, coordination with relevant institutions and social partners, and also include measures to be taken during judicial proceedings and emergency situations which may directly or indirectly harm the safety of seafarers. The CG had also discussed the section on Post resolution to capture the necessary follow up actions after the resolution of abandonment of seafarer cases.

12 The CG did not only successfully conclude the sub-section on General procedure, but also the sub-sections on Special circumstances, and Post resolution. The finalization of these three sub-sections will allow the thorough and comprehensive resolution of the abandonment of seafarer cases, including to allow for future lessons to be learned.

Action requested of the Committee

13 The Legal Committee is invited to consider this report in general and, in particular, to:

- .1 endorse the draft Guidelines for port State and flag State authorities on how to deal with seafarer abandonment cases (as attached in the annex); and
- .2 take any further actions, as appropriate.

ANNEX

GUIDELINES FOR PORT STATE AND FLAG STATE AUTHORITIES ON HOW TO DEAL WITH SEAFARER ABANDONMENT CASES

1 PURPOSE

These Guidelines facilitate the development and implementation of practical steps for port State and flag State authorities to expeditiously and effectively resolve abandonment cases where duty holders have failed to do so.

2 INTERNATIONAL FRAMEWORK

- .1 Maritime Labour Convention (MLC) 2006, as amended¹;
- .2 IMO resolution A.930(22) on *Guidelines on provision of financial security in case of abandonment of seafarers*;
- .3 ILO Guidelines for Port State Inspections under the MLC, 2006, as amended;
- .4 ILO Guidelines for Flag State Inspections under the MLC, 2006, as amended;
- .5 Frequently Asked Questions MLC 2006, as amended².

3 APPLICATION

These Guidelines apply to:

- .1 shipowners and those who provide financial security to enable shipowners to meet MLC obligations to seafarers;
- .2 flag States, who are responsible to ensure that shipowners of ships which fly the flag of that State party comply with MLC, 2006;
- .3 port States, who are responsible for ensuring compliance with MLC on ships calling at their ports;
- .4 the State of which seafarers are a national who are abandoned, who should endeavour to facilitate repatriation; and
- .5 other stakeholders who are able to contribute in the process.

¹ MLC, 2006 Regulation 2.5 and Standard A2.5, in particular A2.5.1.5 – 8 and A2.5.2.

² It must be noted that the answers provided in the FAQ cannot in themselves be cited as authoritative legal opinions. This is because the precise requirements of the Convention are those contained in the national laws or regulations or other measures adopted by each country to implement the MLC, 2006. The answers in the FAQ are intended to provide information in the form of brief explanations referring to the Convention and other reference materials. They are not legal opinions or legal advice as to the meaning of a requirement in the Convention or its application to an individual situation. Such opinions can be provided by the ILO to governments and shipowners' and seafarers' organizations, in particular, upon request and on the understanding that only the International Court of Justice is competent to give authoritative interpretations of the international labour Convention. The FAQ is intended to help persons engaged in the study or application of the MLC, 2006.

4 DEFINITION

According to the MLC, 2006, as amended, a seafarer shall be deemed to have been abandoned where, in violation of the requirements of this Convention or the terms of the seafarers, employment agreement, the shipowner:

- .1 fails to cover the cost of the seafarer's repatriation;
- .2 has left the seafarer without the necessary maintenance and support³; or
- .3 has otherwise unilaterally severed their ties with the seafarer including failure to pay contractual wages for a period of at least two months.

5 PRINCIPLES AND RESPONSIBILITIES

- .1 The shipowner is the liable entity for the coverage of the cost of repatriation, outstanding wages, and other entitlements due to the seafarers under their employment contracts and the MLC 2006, as well as provision of essential needs, including medical care.
- .2 In cases where the shipowner does not fulfil the obligations above, the following principles and responsibilities should be followed:
 - .1 The flag State should take steps to ascertain whether there is valid financial security in place and make the seafarers and/or the seafarers' representative aware of the financial security provider's details and their ability to directly apply for assistance.
 - .2 When dealing with seafarer abandonment cases⁴, the flag State should undertake arrangements for the maintenance⁵ and repatriation of seafarers. In addition, the flag State may ask assistance from the State of which seafarers are a national and port State, when needed and assist in any way the abandoned seafarers.
 - .3 The port State shall ensure the safety of the vessels in their ports, including the facilitation of any necessary maintenance⁶ of the vessels and facilitate resolution of seafarer abandonment cases by taking the following actions:
 - .1 to inform, or issue official notification to, parties involved such as shipowners, flag States and the State of which seafarers are a national through appropriate channels, contact information could be provided through the IMO GISIS module and ILO/IMO joint database;

³ MLC, 2006 Standard A2.5.2.2.

⁴ MLC, 2006 Standard A2.5.1.5.

⁵ MLC, 2006 Standard A2.5.2 paragraph 5.

⁶ MLC, 2006 Standard A2.5.2 paragraph 5.

- .2 to facilitate the payment of wages from the financial security provider of the seafarers, the availability of essential needs, medical care access;
- .3 to facilitate, and not refuse, the repatriation of seafarers⁷; and
- .4 to facilitate consular access.

6 PROCEDURE

I. General procedure

- .1 Upon discovery of a case of seafarer abandonment, the port State control (PSC) or other parties should immediately report the case to the port State authority where the abandonment incident occurred and to ILO for inclusion in the IMO/ILO joint database on abandonment of seafarers. The port State should then carry out investigation and necessary coordination work with relevant agencies within the port State. The port State authority should also notify the parties involved such as shipowners, flag States, State of which seafarers are a national, and any relevant seafarers' representatives and/or organizations about the seafarer abandonment case through any appropriate channel.
- .2 Upon receiving notification of an abandonment of seafarer case, the flag State authority should urge the shipowner or financial security providers to fulfil its responsibilities, in accordance with the MLC, 2006, as soon as practicable by setting a reasonable timeframe taking into account the wellbeing of the seafarers.
- .3 Should the shipowner fail to undertake its responsibilities within the timeline referred to in paragraph 7, the flag State authority will take the lead and coordinate with the relevant parties to resolve the seafarer abandonment case.
- .4 Should the shipowner and the flag State fail to undertake their responsibilities, the port State authority will take the lead and coordinate with all relevant parties to resolve the seafarer abandonment case.
- .5 At the same time, where there is a document providing evidence of financial security under regulation 2.5 of the MLC, 2006, the seafarers should be assisted to contact the financial security provider to access rapid and effective financial assistance. The flag State authority and/or the port State authority should facilitate the provision of the required assistance by the financial security provider.
- .6 In cases when there is no financial security or the financial security has expired or is not sufficient, the flag State, port State and State of nationality of seafarers should arrange for the repatriation of the seafarers and will coordinate with local relevant government agencies and/or parties, such as seafarer and shipowner organizations and seafarer recruitment and placement services to solve the abandonment case together.

⁷ MLC, 2006 Standard A2.5.1 paragraph 7 and 8.

- .7 Some other practical efforts may be undertaken by relevant government agencies and non-government entities, such as seafarers' unions and charity organizations. It is encouraged that necessary maintenance and support of seafarers such as adequate food, accommodation, drinking water supplies, essential fuel for survival on board the ship and necessary medical care, be provided.
- .8 In order to eliminate potential safety hazards, the port States and the flag States should establish a consultation mechanism on resolution of seafarer abandonment cases. The flag State and the port State are encouraged to develop a domestic Standard Operating Procedure (SOP) in accordance with these guidelines. Such a domestic SOP should explicitly define the liabilities and obligations of the flag State authority, the port State authority, and the roles to be played by the rescue departments, the shipping agency, seafarer organizations, shipowner organizations, seafarer recruitment and placement services and other parties involved referring to international conventions, as necessary.
- .9 A case is considered resolved when all seafarers desiring repatriation and all seafarers that must be repatriated in accordance with the MLC, 2006 have been repatriated and when the wages of the crew have been paid in full.

II. Special circumstances

- .10 During resolution of seafarers' abandonment through judicial procedures, the flag State and port State will continue to coordinate with other relevant agencies to offer humanitarian assistance and provide support for the repatriation of seafarers. However, for the safety of the seafarer, the competent authority should cooperate with the relevant institutions to facilitate crew change and manage the ship safely while the judicial process continues. This should include ensuring that no seafarers are required to work on the ship unless and until arrangements are in place to ensure that they will receive their entitlements under the MLC, 2006.
- .11 In case of an emergency in which the health or safety of the seafarers or surrounding environment is in jeopardy, the port State authority should coordinate with the parties involved to implement mitigation measures, including but not limited to the rescue, investigation, information dissemination, and consideration of the safety of the ship, seafarers and the surrounding waters. Port State should coordinate with the flag State and ship agency so they can maintain communication with the shipowner and the financial security provider in fulfilling obligations under Standard A2.5.2. of the MLC, 2006.
- .12 The flag State, port State, and the State of which the seafarer is national should urge the shipowner, the seafarers' recruitment and placement services, and the ship's agent to assist the abandoned seafarers in the follow-up process under Standard A2.5.2., judicial remedy and in providing support to the involved families.

III. Post resolution

- .13 Following the resolution of the seafarer abandonment cases, concerned States may consider appropriate further mechanisms to prevent future re-occurrence of such cases by the same shipowner where breaches of applicable law occur, without prejudice and in accordance with their national applicable law.
 - .14 The flag State and the port State involved in the resolution of seafarer abandonment cases should carefully analyse, summarize and evaluate the performance of their duties in handling the abandonment, and share relevant information and knowledge.
 - .15 The IMO/ILO joint database on abandonment of seafarers should be updated when cases are resolved.
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