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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**

Comments on document LEG 109/4(d)

Submitted by India

SUMMARY

Executive summary: This document provides information on the difficulties faced by seafarers and Member States in the event of seafarer abandonment. This document also proposes to include distinct information about abandoned seafarers in the IMO/ILO joint database of abandonment of seafarers and to develop a mechanism to facilitate the expeditious exchange of information and response from the authorities of the flag State, the nearest port State and the Member State of which the abandoned seafarer is a national.

*Strategic direction,
if applicable:* 5 and 6

Output: SD 6.9; OW 8

Action to be taken: Paragraph 14

Related documents: Resolution A.930(22); LEG 86/15; LEG 104/15; LEG 105/14; LEG 106/4; LEG 107/14/1, LEG 107/18/2 and LEG 108/16/1

Introduction

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 comments on document LEG 109/4(d), which contains the report of the intersessional Correspondence Group.

2 Resolution A.930(22) recognized that in cases where the shipowner fails to meet its obligations, the flag State, and in some cases the State of which the seafarer is a national or the port State, may be called upon to intervene. Also, resolution A.930(22) invited Member Governments and non-governmental organizations with consultative or observer status in IMO or ILO, as appropriate, to record instances of abandoned seafarers and to provide data to IMO or ILO whenever requested.

3 The Legal Committee, at its eighty-sixth session, had approved the establishment of the IMO/ILO joint database of abandonment of seafarers to monitor the problem of abandonment in a more comprehensive way (LEG 86/15) and thereby enable expeditious and effective resolution of incidents of abandonment.

4 The Legal Committee, at its 104th session, had noted that providing accurate information to the IMO/ILO joint database of abandonment of seafarers was not only the responsibility of the flag State, but also that of the port State and other parties involved (LEG 104/15, paragraph 4.16). In the same session, the Legal Committee expressed that the active involvement of Administrations, shipowners and seafarers should ensure that updated and relevant information was being provided on the IMO/ILO joint database of abandonment of seafarers (LEG 104/15, paragraph 4.14).

5 The Legal Committee, at its 107th session, agreed to include a new output under the work programme on the development of guidelines for port State and flag State authorities on how to deal with seafarer abandonment cases on the 2020-2021 and 2022-2023 biennial agendas, with a target completion year of 2022 (LEG 107/18/2).

6 In this regard, it is felt that the lack of adequate or relevant details of seafarers themselves on the IMO/ILO joint database of abandonment of seafarers affects expeditious information sharing and response from the flag State, nearest port State authorities and Member State of which the seafarer is a national, in dealing with seafarer abandonment cases. Also, this affects the effective fulfilment of relevant labour-supplying responsibilities under the Maritime Labour Convention (MLC), 2006, as amended.

Discussion

7 Seafarers play a key role in meeting the needs of international trade and continued supply chain management, even throughout the COVID-19 crisis. Many Member States have designated seafarers as keyworkers. However, despite their indispensable contribution, seafarers are not receiving due care and attention in cases where they are abandoned.

8 The establishment of the IMO/ILO joint database of abandonment of seafarers has assisted in monitoring the abandonment of seafarers. However, additional improvements to the database have been necessary to make the monitoring mechanism of the database more comprehensive. For instance, information related to insurance, or lack thereof, has been now added in the IMO/ILO joint database (LEG 105/14, paragraph 4.20).

9 Despite such active steps, resolving seafarer abandonment cases remains a complex and time-consuming task, and Member States, particularly labour-supplying Member States, continue to face difficulties.

10 India is one of the largest seafarer-supplying nations. Unfortunately, as also expressed by the Legal Committee at its 108th session, seafarers from India were on top of the list of abandoned seafarers (LEG 108/16/1, paragraph 4(a).8.8). The IMO/ILO joint database of abandonment of seafarers has reported a total of 1379 Indian seafarers in 159 seafarer abandonment cases. As per the information available with the Directorate General of Shipping, Government of India (Indian Maritime Administration), although 123 cases involving 1112 seafarers have been resolved, 36 cases involving 267 Indian seafarers continue to be pending. In this regard, the following is the experience of the Indian Maritime Administration:

- .1 Out of these 36 pending cases, 4 cases involving 21 seafarers date back to the years 2006, 2008 and 2009. The Indian Maritime Administration continues to face difficulties to take prompt action on these cases due to lack of information, such as the name of the abandoned seafarer or the number on the Seafarer Identification Document (SID), the number on the Continuous Discharge Certificate (CDC), the number of seafarers, details of manning agent or recruitment and placement service provider, etc. Responses on requests for details on the seafarers are also not received from the flag State. Even where these cases may have been presumably resolved, the lack of information results in them being treated as pending cases.
- .2 Twenty other cases involving 118 seafarers were reported during the last 5 years. In this regard, where the information concerning the name of seafarers, name of recruitment and placement service provider remain unknown, the Indian Maritime Administration has taken up the matter with the concerned flag States for necessary action. However, there were no responses received from these flag States.
- .3 In the remaining 12 cases involving 128 Indian seafarers, necessary action has been taken based on information already available in the database maintained by the Indian Maritime Administration. The cases are actively being pursued for early repatriation of the Indian seafarers and the subsequent settlement of pending payment of wages.

11 Accordingly, India continues to face difficulties in expeditiously identifying the Indian seafarers who have been abandoned on board ships due to the inadequacy of the details of seafarers on the IMO/ILO joint database of abandonment of seafarers. Such a lengthy and delayed process in dealing with seafarer abandonment cases is averse to the protection of seafarers' fundamental rights under the MLC, 2006.

12 In view of the above, it is felt that such delay in sharing information concerning the abandoned seafarers and subsequent difficulties in the implementation of the provisions of the MLC, 2006 need to be effectively addressed.

Proposals

- 13 The Legal Committee is invited to consider the following proposals:
- .1 The IMO/ILO joint database on abandonment of seafarers may be further improved by including the following information:
 - .1 the name of abandoned seafarers;
 - .2 the CDC number or SID number held by the Seafarer under ILO Conventions No.108 or No.185;
 - .3 details of the manning agent or recruitment and placement service provider (if applicable) of the abandoned seafarer; and
 - .4 a provision indicating a response from, or action taken by, the flag State, port State and Member State of which the seafarer is a national.

- .2 Member States may be encouraged to develop a mechanism to get a rapid response in cases of seafarer abandonment from the flag State, nearest port State authorities and Member State of which the seafarer is a national.

Action requested of the Committee

14 The Legal Committee is invited to:

- .1 note the information provided in this document;
- .2 consider the proposals contained in paragraph 13; and
- .3 take any further actions, as appropriate.
