

FAIR TREATMENT OF SEAFARERS /IMO-Legal Committee/4th draft
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other sponsors.

LEGAL COMMITTEE
89th Session
Agenda Item 9

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Fair Treatment of Seafarers

Submitted by IFSMA

Executive Summary: The Committee agreed at its 88th Session (paragraphs 179-193 of the Report) to include a new item on the Committee's agenda to develop guidelines on the fair treatment of seafarers based on the fact that unwarranted detention is a violation of basic human right. This document and its annex contain legal justification, under international law, for the fair treatment of seafarers and proposal for a Code of Principles for the protection of seafarers from any form of detention following a marine accident or maritime incident or arising from commercial dispute involving their ship and/or her cargo.

Action to be taken:

Related documents: United Nations International Covenant on Civil and Political Rights (1976)

Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment (*approved by the United Nations General Assembly resolution 43/173 of 9^{December} 1988*)

Report of the Legal Committee of the Work on its Eighty Eighth Session (LEG 88/13) paragraphs 179-193.

Justification:

1./ Both individuals and States have rights and obligations but unwarranted detention is a violation of human right. The basic human rights are stated in the Universal Declaration of Human Rights and in numerous treaties and conventions approved by many international and regional organisations of the world's community of sovereign states for the benefit of their peoples. Derogation from or suspension or breach of certain obligation by States from human rights treaty or

covenant obligations have serious consequences for seafarers, especially for masters of ships, who may be actors in marine accidents or maritime incidents that cause acute concern to a State's political, legal or administrative structures or to the interest of a local third party in commercial disputes concerning the ship or her cargo. Derogation from human rights obligations are acceptable only if events make them necessary and if they are proportionate to the danger that those events represent.

2./ For seafarers to receive fair treatment in context of marine accident or maritime incidents or commercial dispute involving their ship and/or her cargo within jurisdiction of a coastal State or flag State, the International Covenant on Civil and Political Rights (entered into force 1976 - the Covenant has 147 state parties) appears to be the most relevant. "No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation." (Article 11) The contractual obligation refers to a civil law contract and imprisonment as state sanction is not permitted for having failed that obligation. No derogation from this Article may be made under Article 4 (2) of the Covenant. Article 12 provides that "everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence [and] everyone shall be free to leave any country, including his own."

3./ Seafarers' presence in a coastal State or flag State connected to a marine accident or maritime incident or commercial dispute involving their ship and/or her cargo is lawful, save in very exceptional circumstances. The 'contract' referred to in Article 11 is the seafarer's employment contract with the shipowner to work on the ship connected to the marine accident or maritime incident or commercial dispute relating to the ship and/or her cargo. The 'inability to fulfil [an] obligation' under that contract can only refer to act or omission of the seafarer in relation to his/her contract of employment or service on that ship. 'Imprisonment' in case of seafarers who find themselves in the territory of a State not their own, is analogous to being detained if not permitted to leave that State's territory.

4./ Shipmasters navigate their ships and act, in all matters relating to the ship, cargo and crew under their command, in the course of their employment. IMO resolution A.443(XI), now standing incorporated in Chapter IX of SOLAS, invited governments to ensure that: "(a) The shipmaster is not constrained by the shipowner, charterer or any other person from taking in this respect any decision which, in the professional judgement of the shipmaster, is necessary, and (b) the shipmaster is protected by appropriate provisions...from unjustifiable dismissal or other unjustifiable action by the shipowner, charterer or any other person as a consequence of the proper exercise of his professional judgement." The paramountcy of the shipmaster's professional judgement is recognised again as his/her 'best effort' and reaffirmed in Regulation 10-1, Chapter V - *SAFETY OF*

NAVIGATION, of SOLAS:" The Master shall not be constrained by the shipowner, charterer or any other person from taking any decision which, in the professional judgement of the Master is necessary for safe navigation, in particular in severe weather and heavy seas."

ACTION REQUESTED OF THE COMMITTEE:

The Committee is invited to note the information provided above and to incorporate appropriate sections of the Code of Principles for the Protection of Seafarers from any Form of Detention following a Marine Accident or Maritime Incident or arising from Commercial Dispute relating to their Ship and/or her Cargo.

ANNEX

Code of Principles for the Protection of Seafarers under Any form of Detention following a Marine Accident or Maritime Incident or arising from Commercial Dispute relating to their Ship and/or her Cargo

(approved by the International Maritime Organisation Assembly resolution
...(number and date)...)

Scope of the Code of Principles

These principles apply for the protection of seafarers under any form of detention following a marine accident or maritime incident or commercial dispute relating to their ship and/or her cargo.

Use of Terms

For the purposes of the Code of Principles:

- (a) "seafarer" means any seamen, officer or master of the ship connected to a marine accident or maritime incident or commercial dispute relating to that ship and/or her cargo;
- (b) "arrest" means the act of apprehending a seafarer for the alleged commission of an offence or by the action of an authority;
- (c) "detained seafarer" means the seafarer deprived of personal liberty except as a result of conviction for an offence;

- (d) "imprisoned seafarer" means the seafarer deprived of personal liberty as result of conviction for an offence;
- (e) "detention" means the condition of detained seafarer as defined above;
- (f) "imprisonment" means the condition of imprisoned seafarer as defined above;
- (g) the words "a judicial or other authority" means a judicial or other authority under the law whose status and tenure should afford the strongest possible guarantees of competence, impartiality and independence.

Principle 1.

All seafarers under any form of detention or imprisonment or who suffer restriction of freedom of movement shall be treated in a humane manner and with respect for the inherent dignity of the human person.

Principle 2.

Arrest, detention or imprisonment or restriction of freedom of movement shall only be carried out strictly in accordance with provisions of the law and by the competent officials or persons authorised for that purpose.

Principle 3.

There shall be no restriction upon or derogation from any of the human rights of seafarers as individual persons under any form of detention or imprisonment or restriction of freedom of movement recognised or existing in any State pursuant to law, conventions, regulations or custom on the pretext that this Code of Principles does not recognise such rights or that it recognises them to a lesser extent.

Principle 4.

Any form of detention or imprisonment or restriction of freedom of movement and all measures affecting the human rights of seafarers under any form of detention or imprisonment or restriction of movement shall be ordered by, or be subject to the effective control of, a judicial or other authority.

Principle 5.

The authorities which arrest a seafarer, keep him under detention or restrict his/her freedom of movement or investigate the incident shall exercise only the powers granted to them under the law and the exercise of these powers shall be subject to recourse to a judicial or other authority.

Principle 6.

No seafarer shall be detained in the territory of any State beyond seven days from the date of the accident or incident or dispute alleged to have adverse consequences in that State. During that period the competent authorities of that State may take voluntary statement from seafarers relating to the accident or incident and collect from the ship the relevant evidence into the circumstances surrounding it.

Principle 7.

During the period when the seafarer is being prevented by the authorities to leave the country, he or she may only be confined on board his/her ship, provided always it is safe to do so, in appropriate accommodation and living conditions or in a hotel or guest house of comparable standard of amenities and from where the seafarer's freedom of movement is assured.

Principle 8.

The cost of accommodating the seafarer during the period, referred to in principles 6 & 7, shall be borne by the seafarer's employer. The latter's liability shall continue until discharged regardless of the fact and exigencies of immediate and intermediate payment/s by any other State or private party.

Principle 9.

On the expiry of the period, referred to in principles 6,7 & 8, the seafarer shall be repatriated to the country whose passport he or she holds and into the personal care of that country's Head of State, acting as agent of that State, and who will undertake to produce the seafarer at any subsequent legal or administrative proceedings in any country where the presence of the seafarer is required under law in the legal or administrative proceeding relating to the marine accident or maritime incident which

gave rise to the detention or loss of freedom of movement of the seafarer. All cost and expenses connected with the appearance of the seafarer at such proceedings shall be borne by his/her employer.

Principle 10.

The seafarer who does not adequately understand or speak the language used by the authorities responsible for restricting his movements in any State is entitled to receive promptly in the language which he/she understands the information relating to the accident or incident or dispute, and to have the assistance, free of charge if necessary, of an interpreter in connection with any legal or investigative proceedings subsequent to restricting his/her of movements.

Principle 11.

The seafarer whose freedom of movement is restricted shall be promptly informed of his right to communicate by appropriate means with a consular post or diplomatic mission of the State of which he/she is a national or which otherwise entitled to receive such communication in accordance with international law or with representative of any competent international organisation or trade union or seamen welfare organisation or employer. No obstacle or delay shall be occasioned or allowed by the authorities in restricting the seafarer's freedom of movement to effect such notification.

Principle 12

The seafarer who is detained, imprisoned or whose freedom of movements are being restricted by the authorities shall be entitled to communicate and consult with his legal counsel or representative of his/her employer or that of a trade union or seamen welfare organisation and shall be allowed adequate time and facilities for consultation with his/her legal counsel and any of the other persons without delay or censorship and in full confidence.

Principle 13.

The detained or imprisoned seafarer or whose freedom of movement is restricted shall have the right to correspond, in particular, with members of his family and shall be given adequate opportunity to communicate with the outside world.

Principle 14.

It shall be prohibited to take advantage of the situation of a detained or imprisoned seafarer or whose freedom of movement is being restricted for the purpose of compelling him/her to incriminate himself, his/her employer or to testify against any other person. No detained or imprisoned seafarer or whose freedom of movement is being restricted shall be subject to violence, threats or methods of interrogation which impair his/her capacity of decision or judgement.

Principle 15.

The duration of any interrogation of a detained or imprisoned seafarer or whose freedom of movement is being restricted and of the intervals between interrogations as well as the identity of the official who conducted the interrogation and any other persons present shall be recorded and certified in such form may be prescribed by law.

Principle 16.

A proper medical examination shall be offered to the detained or imprisoned seafarer or whose freedom of movement is being restricted as promptly as possible after his admission to the place of detention or imprisonment or allotted residence and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.

Principle 17.

The detained or imprisoned seafarer or whose freedom of movement is being restricted shall have the right to be heard before disciplinary action is taken against him/her, and shall be entitled at any time to take proceedings according to domestic law before a judicial or other authority to challenge the lawfulness of his/her detention or restriction being placed upon his/her movement in order to obtain his/her release or lifting of the restriction without delay.

Principle 18.

A detained or imprisoned seafarer or whose freedom of movement is being restricted or his/her counsel or any other person who has knowledge of the case shall have the right to make a request or complaint regarding the seafarer's treatment to the authorities responsible for the admission of the place of detention or allotted residence and to higher authorities and, when necessary, to international or domestic appropriate authorities vested with reviewing or remedial powers. Every request or complaint shall be promptly dealt with and replied to without delay.

Principle 19.

Damage incurred because of acts or omissions by a public official contrary to the rights contained in these principles shall be compensated according to the applicable rules or liability provided by domestic law.

Principle 20.

A detained seafarer or whose freedom of movement is being restricted suspected of or charged with a criminal offence shall be presumed innocent and shall be treated as such until proved guilty according to law in a public trial at which he/she has had all the guarantees necessary for his/her defence. The arrest or detention of such seafarer pending investigation and trial shall be carried out only for the purposes of the administration of justice on the ground and under conditions and proceedings specified by law. The imposition of restriction upon such seafarer which are not strictly required to prevent hindrance to the process of investigation or administration of justice or for the maintenance of security and good order in the place of detention or allotted residence shall be forbidden.

General clause

Nothing in this Code of Principles shall be construed as restricting or derogation from any right defined in the International Covenant on Civil and Political Rights and Regulation 10 - 1 in Chapter V of SOLAS: Master's Discretion for Safe Navigation.