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Circular letter No.2825
7 November 2007

To: All IMO Member States
United Nations and specialized agencies
Intergovernmental organizations
Non-governmental organizations in consultative status
Liberation movements

All ILO Member States
Non-governmental organizations in consultative or observer status with ILO

Subject: **Request for information on mistreatment of seafarers in the event of a maritime accident**

As a result of concern for the welfare of seafarers who may be detained in a foreign port when a ship is involved in a casualty, in 2006 IMO and ILO adopted "Guidelines on fair treatment of seafarers in the event of a maritime accident." The guidelines were developed by a Joint IMO/ILO *Ad Hoc* Expert Working Group on Fair Treatment of Seafarers in the Event of a Maritime Accident (Joint Group) and were circulated by IMO as Circular letter No.2711, dated 26 June 2006. Member Governments were invited to implement them as from 1 July 2006. A copy of the guidelines is provided in annex 1.

In October 2007, the Legal Committee of IMO agreed with a decision taken earlier by the 298th session of the ILO Governing Body, in March 2007, to reconvene the Joint Group for the purpose of monitoring the implementation of the Guidelines. One aspect of this monitoring process, according to the terms of reference agreed for the Joint Group, is the collection of information on cases of mistreatment of seafarers. A copy of the terms of reference for the Joint Group is provided in annex 2.

The Joint IMO/ILO Secretariat has the honour to request that any information concerning the mistreatment of seafarers in the event of a maritime accident, whether such information relates to cases involving accidents in waters subject to the jurisdiction of your country, or involving seafarers who are citizens or residents of your country, be transmitted to IMO by letter (address: 4 Albert Embankment, London SE1 7SR, United Kingdom) or by fax (+44 (0)207 587 3210), or by e-mail (cyoung@imo.org); or to ILO by letter (address: 4, route des Morillons, CH-1211 Geneva 22, Switzerland) or by fax (+41227997050) or by e-mail (MARIT@ilo.org). All information received will be provided to the Joint Group for its consideration.

Your co-operation in the collection of relevant information is most appreciated.

ANNEX 1

**Resolution LEG.3(91)
adopted on 27 April 2006**

**ADOPTION OF GUIDELINES ON FAIR TREATMENT OF SEAFARERS
IN THE EVENT OF A MARITIME ACCIDENT**

THE LEGAL COMMITTEE OF THE INTERNATIONAL MARITIME ORGANIZATION
AND THE GOVERNING BODY OF THE INTERNATIONAL LABOUR ORGANIZATION,

RECALLING resolution A.987(24) approved by the Assembly of IMO at its twenty-fourth regular session and the ILO Governing Body at its 292nd session, by which the IMO Assembly and the ILO Governing Body, *inter alia*, agreed to the adoption of Guidelines on fair treatment of seafarers in the event of a maritime accident as a matter of priority and authorized the IMO Legal Committee and the ILO Governing Body to promulgate the said guidelines once finalized, by appropriate means;

HAVING considered the Guidelines as prepared by the Joint IMO/ILO *Ad Hoc* Expert Working Group on Fair Treatment of Seafarers in the Event of a Maritime Accident;

REALIZING the need to keep the Guidelines under review;

RECALLING the Vienna Convention on Consular Relations, in particular, Article 36 concerning communication and contact with nationals;

NOTING MSC/MEPC.4/Circ.1 on Retention of original records/documents on board ships dated 26 September 2005;

BEARING IN MIND the importance of the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982, in particular articles 97, 228, 230, 232 and 292, and of the customary international law of the sea;

CONSIDERING that the Guidelines provide a code of best practice;

MINDFUL of the need to monitor the application and implementation of the Guidelines;
and

BEARING IN MIND FURTHER, the adoption of the ILO Maritime Labour Convention on 23 February 2006; hereby,

1. ADOPT the Guidelines on fair treatment of seafarers in the event of a maritime accident set out in the annex to the present resolution;
2. INVITE Member Governments to implement these Guidelines as from 1 July 2006;
3. INVITE ALSO Member Governments and non-governmental organizations in consultative status with IMO and ILO to circulate the Guidelines as widely as possible in order to ensure their widespread promulgation and implementation;

4. INVITE, where appropriate, Member Governments to consider amending their national legislation to give full and complete effect to the Guidelines;
5. INVITE FURTHER Member Governments to take note of the principles contained in these Guidelines when considering fair treatment of seafarers in other circumstances where innocent seafarers might be detained; and
6. AGREE on the need to keep the Guidelines under review.

* * *

ANNEX

GUIDELINES ON FAIR TREATMENT OF SEAFARERS IN THE EVENT OF A MARITIME ACCIDENT

I Introduction

1 It is recommended that these Guidelines be observed in all instances where seafarers may be detained by public authorities in the event of a maritime accident.

2 Seafarers are recognized as a special category of worker and, given the global nature of the shipping industry and the different jurisdictions that they may be brought into contact with, need special protection, especially in relation to contacts with public authorities. The objective of these Guidelines is to ensure that seafarers are treated fairly following a maritime accident and during any investigation and detention by public authorities and that detention is for no longer than necessary.

3 These Guidelines have been prepared in accordance with resolution A.987(24) on Guidelines on fair treatment of seafarers in the event of a maritime accident adopted on 1 December 2005 by the Assembly of the International Maritime Organization. This resolution is attached at annex to these Guidelines.

4 These Guidelines do not seek to interfere with any State's domestic, criminal, or civil law processes nor the full enjoyment of the basic rights of seafarers, including those provided by international human rights instruments, and the seafarers' right to humane treatment at all times.

5 Seafarers are entitled to protection against coercion and intimidation from any source during or after any investigation into a maritime accident.

6 The investigation of a maritime accident should not prejudice the seafarer in terms of repatriation, lodgings, subsistence, payment of wages and other benefits and medical care. These should be provided at no cost to the seafarer by the shipowner, the detaining State or an appropriate State.

7 These Guidelines do not apply to warships or naval auxiliaries.

II Definitions

8 For the purposes of these Guidelines,

“seafarer” means any person who is employed or engaged or works in any capacity on board a ship;

“shipowner” means the owner of the ship or another organization or person, such as the manager, agent or bareboat charterer, who has assumed the responsibility for the operation of the ship from the owner and who, on assuming such responsibility, has agreed to take over the duties and responsibilities of the shipowner, regardless of whether any other organization or persons fulfil certain of the duties or responsibilities on behalf of the shipowner;

“maritime accident” means any unforeseen occurrence or physical event connected to the navigation, operations, manoeuvring or handling of ships, or the machinery, equipment, material, or cargo on board such ships which may result in the detention of seafarers;

“investigation” means an investigation into a maritime accident;

“detention” means any restriction on the movement of seafarers by public authorities, imposed as a result of a maritime accident, including preventing them leaving the territory of a State other than the seafarer’s country of nationality or residence.

III Guidelines for the port or coastal State

9 The port or coastal State should:

- .1 take steps so that any investigation they conduct to determine the cause of a maritime accident that occurs within their jurisdiction is conducted in a fair and expeditious manner;
- .2 co-operate and communicate with all substantially interested States, shipowners, and seafarers, and take steps to provide seafarers’ representative organizations in the port or coastal State with access to seafarers;
- .3 take steps to ensure that adequate measures are taken to preserve human rights of seafarers at all times, and the economic rights of detained seafarers;
- .4 ensure that seafarers are treated in a manner which preserves their basic human dignity at all times;
- .5 take steps to ensure/verify that adequate provisions are in place to provide for the subsistence of each detained seafarer including, as appropriate, wages, suitable accommodation, food and medical care;
- .6 ensure that due process protections are provided to all seafarers in a non-discriminatory manner;
- .7 ensure that seafarers are, where necessary, provided interpretation services, and are advised of their right to independent legal advice, are provided access to independent legal advice, are advised of their right not to incriminate themselves and their right to remain silent, and, in the case of seafarers who have been taken into custody, ensure that independent legal advice is provided;
- .8 ensure that involved seafarers are informed of the basis on which the investigation is being conducted (i.e., whether it is in accordance with the IMO Code for the Investigation of Marine Casualties and Incidents (resolution A.849(20) as amended by resolution A.884(21) or as subsequently amended), or pursuant to other national legal procedures);

- .9 ensure that the obligations of the Vienna Convention on Consular Relations, including those relating to access, are promptly fulfilled and that the State(s) of the nationality of all seafarers concerned are notified of the status of such seafarers as required, and also allow access to the seafarers by consular officers of the flag State;
- .10 ensure that all seafarers detained are provided with the means to communicate privately with all of the following parties:
 - family members;
 - welfare organizations;
 - the shipowner;
 - trade unions;
 - the Embassy or Consulate of the flag State and of their country of residence or nationality; and
 - legal representatives;
- .11 use all available means to preserve evidence to minimize the continuing need for the physical presence of any seafarer;
- .12 ensure decisions taken pursuant to the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL 73/78) are consistent with the provisions of Annex 1 (Regulations for the prevention of pollution by oil), Regulation 11;
- .13 promptly conduct interviews with seafarers, when done for a coastal State investigation following a maritime accident, taking into account their physical and mental condition resulting from the accident;
- .14 take steps to ensure that seafarers, once interviewed or otherwise not required for a coastal State investigation following a maritime accident, are permitted to be re-embarked or repatriated without undue delay;
- .15 consider non-custodial alternatives to pre-trial detention (including detention as witnesses), particularly where it is evident that the seafarer concerned is employed in a regular shipping service to the detaining port or coastal State;
- .16 promptly conclude its investigation and, if necessary, charge seafarers suspected of criminal actions and ensure that due process protections are provided to all seafarers subsequent to any such charge;
- .17 have in place procedures so that any damage, harm or loss incurred by the detained seafarer or by the shipowner, in relation to the detention of that particular seafarer, attributable to the wrongful, unreasonable or unjustified acts or omissions of the detaining port or coastal State are promptly and fully compensated;

- .18 insofar as national laws allow, ensure that a process is available for posting a reasonable bond or other financial security to allow for release and repatriation of the detained seafarer pending resolution of any investigatory or judicial process;
- .19 take steps to ensure that any court hearing, when seafarers are detained, takes place as expeditiously as possible;
- .20 take steps to ensure decisions taken are consistent with generally applicable provisions of the law of the sea;
- .21 take steps to respect the generally accepted provisions of international maritime law regarding the principle of exclusive flag State jurisdiction in matters of collision or other incidents of navigation; and
- .22 take steps to ensure that no discriminatory or retaliatory measures are taken against seafarers because of their participation during investigations.

IV Guidelines for the flag State

10 The flag State should:

- .1 take steps to ensure that any investigation to determine the cause of a maritime accident is conducted in a fair and expeditious manner;
- .2 co-operate and communicate with all substantially interested States, shipowners, and seafarers, and take steps to provide seafarers' representative organizations with access to seafarers;
- .3 where appropriate, participate directly, under the IMO Code for the Investigation of Maritime Casualties and Incidents (IMO Assembly resolution A.849(20) as amended by resolution A.884(21) and as may be subsequently amended), in any casualty investigation;
- .4 assist in ensuring that shipowners honour obligations to seafarers involved in a maritime accident or any investigation;
- .5 ensure/verify that adequate provisions are in place to provide for the subsistence of each detained seafarer, including, as appropriate, wages, suitable accommodation, food and medical care;
- .6 ensure that shipowners honour obligations to co-operate in any flag, coastal or port State investigation following a maritime accident;
- .7 assist seafarers to secure fair treatment, and assist shipowners in the event of an investigation by a port or coastal State;
- .8 fund the repatriation of seafarers, where necessary, following the aftermath of a maritime accident in instances where shipowners fail to fulfil their responsibility to repatriate;

- .9 assist, as provided for in national law, in the issuance and service of process and the return to a port or coastal State of seafarers subject to its jurisdiction who are needed solely as witnesses in any proceeding following a maritime accident;
- .10 take steps to ensure that its consular officers are permitted access to the involved seafarers, irrespective of their nationality;
- .11 take all necessary measures to ensure the fair treatment of seafarers who were employed or engaged on a vessel flying its flag. This may ultimately include utilizing international dispute resolution mechanisms, which can secure the prompt release of vessels and crews upon the posting of a reasonable bond or financial security; and
- .12 take steps to ensure that no discriminatory or retaliatory measures are taken against seafarers because of their participation during investigations.

V Guidelines for the seafarer State

- 11 The seafarer State should:
 - .1 co-operate and communicate with all substantially interested States, shipowners, and seafarers, and take steps to provide seafarers' representative organizations with access to seafarers;
 - .2 monitor the physical and mental well-being and treatment of seafarers of their nationality involved in a maritime accident, including any associated investigations;
 - .3 fund the repatriation of their national seafarers, where necessary, following the aftermath of a maritime accident in instances where shipowners and the flag State fail to fulfil their responsibility to repatriate;
 - .4 assist, as provided for in national law, in the service of process and the return to a port or coastal State of seafarers subject to its jurisdiction who are needed solely as witnesses in any proceeding following a maritime accident;
 - .5 take steps to ensure that its consular officers are permitted access to the involved seafarers;
 - .6 take steps to provide support and assistance, to facilitate the fair treatment of nationals of the seafarer State and the expeditious handling of the investigation;
 - .7 take steps to ensure that all funds remitted by shipowners, the detaining State, or any other State for detained seafarers, or for support of those seafarers' families, are delivered for the intended purposes; and
 - .8 take steps to ensure that no discriminatory or retaliatory measures are taken against seafarers because of their participation during investigations.

VI Guidelines for shipowners

12 With regard to investigations, shipowners have an overriding duty to protect the rights of the seafarers employed or engaged, including the right to avoid self-incrimination and to take steps to ensure their fair treatment, and should:

- .1 take all available measures to ensure that no discriminatory or retaliatory measures are taken against seafarers because of their participation during investigations and take steps to ensure that such conduct by other entities is not tolerated;
- .2 co-operate and communicate with all substantially interested States, other shipowners, as appropriate, and seafarers, and take steps to provide seafarers' representative organizations with access to seafarers;
- .3 take action to expedite the efforts of a port, coastal, or flag State investigation;
- .4 take steps to encourage seafarers and others under their employment, with due regard to any applicable rights, to co-operate with any investigation;
- .5 use all reasonable means to preserve evidence to minimize the continuing need for the physical presence of any seafarer;
- .6 fulfil their obligation in relation to the repatriation of, or take steps to re-embark, the seafarers; and
- .7 ensure/verify that adequate provisions are in place to provide for the subsistence of each seafarer, including, as appropriate, wages, suitable accommodation, food and medical care.

VII Guidelines for seafarers

13 Seafarers should:

- .1 take steps to ensure, if necessary, that they have appropriate interpretation services;
- .2 take steps to ensure that they fully understand their right not to self-incriminate, and that they fully understand that when statements are made to port, coastal or flag State investigators, these may potentially be used in a future criminal prosecution;
- .3 take steps to ensure, if they consider it necessary, that they have arrangements for access to legal advice prior to deciding whether to give statements to port, coastal or flag State investigators; and
- .4 participate in an investigation, to the extent possible, having regard to their right not to self-incriminate, with port, coastal or flag State investigators, by providing truthful information to the best of their knowledge and belief.

ANNEX 2

**TERMS OF REFERENCE FOR THE JOINT IMO/ILO *AD HOC* EXPERT WORKING
GROUP ON FAIR TREATMENT OF SEAFARERS
IN THE EVENT OF A MARITIME ACCIDENT**

- 1 The Joint IMO/ILO *Ad Hoc* Expert Working Group should monitor and evaluate the implementation of the Guidelines on fair treatment of seafarers in the event of a maritime accident.
 - 2 In doing so, the Group should take into account resolution A.987(24) adopted by the Assembly of the International Maritime Organization, as well as IMO and ILO instruments relevant to the implementation of the Guidelines.
 - 3 In undertaking its work, the Group should collect information on cases of mistreatment of seafarers.
 - 4 The Group should make suitable recommendations to the IMO Legal Committee and the Governing Body of ILO in relation to any appropriate action for better implementation and wider acceptance of the Guidelines.
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