

CMI International Working Group on the Fair Treatment of Seafarers – Report

Olivia Murray (Current Chair) – May 2015

1. Current Work - Ongoing project with Seafarers' Rights International

- Work continues on the CMI Executive Council's approved joint project with Seafarers' Rights International (SRI).
- A recap of the project is as follows: -
 - The chair originally met with Deirdre Fitzpatrick of SRI (and with Prof Hilton Staniland who is on the SRI advisory board) to discuss the potential joint project. The project involves drafting and sending a questionnaire to Governments and Maritime Law Associations (MLAs) on behalf of the CMI/SRI with an overall objective of promoting generally the subject of fair treatment for seafarers in the event of a maritime accident.
 - A questionnaire has been sent to Governments (by SRI) and to MLAs (by CMI) dealing with a view to:
 - Updating the information gleaned from the CMI 2005 questionnaire (this was submitted to MLAs and a summary of the results is on the CMI IWG website).
 - Ascertaining the country's position in respect of the (albeit non-binding) Fair Treatment Guidelines and other key legislation/legal instruments (e.g. are they reflected in binding provisions under local law).
 - Seeking input as to why there may be difficulties implementing the Guidelines or fulfilling international obligations on seafarer rights and ascertaining how such compliance can be facilitated.
 - It is hoped that this project may provide a greater understanding of the 'true picture' in the various states as far as the IMO Guidelines on the Fair Treatment of Seafarers is concerned and, consequently, how the industry may encourage and facilitate adherence to those Guidelines in a positive and appropriate manner.

2. Current Work: Paper on Fair Treatment of Seafarers submitted to LEG 102 endorsed and co-sponsored by CMI

- CMI co-sponsored a paper on the Fair Treatment of Seafarers which was introduced at the LEG 102 in April 2015 by SRI and ITF. This paper is attached to this report. The Chair of this IWG intervened briefly at the LEG to endorse the paper.
- This paper responds to the request of the Legal Committee at its 101st session for an analysis of the replies of States to the survey concerning implementation of the Fair Treatment Guidelines. This analysis has involved reviewing a large volume of laws, and the attached short paper seeks a consensus to advance the subject at the next meeting of the Legal Committee.

- You may recall that a key aim of the paper was to ensure that the subject of Fair Treatment of Seafarers was kept on the IMO agenda. It was pleasing to note the significant number of interventions that followed the introduction of the paper – expressing unanimous support for the paper and its proposals. An extract from the IMO’s draft final report of this agenda item is as follows (my underlining to emphasise particular aspects): -

- ***"FAIR TREATMENT OF SEAFARERS IN THE EVENT OF A MARITIME ACCIDENT***
- *4.1 The Committee was reminded that it had considered the outcome of a survey conducted by Seafarers’ Rights International (SRI) at LEG 101, concerning the implementation of the 2006 Guidelines on fair treatment of seafarers in the event of a maritime accident, adopted jointly by IMO and ILO. The Committee recalled its suggestion to further analyze the responses to the survey.*
- *4.2 The representative of the International Transport Workers’ Federation (ITF), on behalf of the co-sponsors (the International Federation of Shipmasters’ Associations (IFSMA), Comité Maritime International (CMI) and InterManager), introduced document LEG 102/4 reporting on the analysis of the replies from Member States to the survey circulated by SRI on behalf of ITF and IFSMA concerning the 2006 Guidelines.*
- *4.3 The representative of SRI provided details of the analysis of the survey and invited the Committee to request the Technical Cooperation Committee (TCC) to consider providing technical assistance to Member States who had requested assistance with the implementation of the Guidelines. Member States already giving effect to the Guidelines were also urged to consider providing copies of their relevant laws together with information and advice if approached by other Member States requesting assistance. The other sponsors of LEG 102/4 expressed views regarding the seriousness and urgency of the issue.*
- *4.4 Several observer delegations expressed their support for the project and, in particular, that the TCC be requested to provide assistance.*
- *4.5 Based on the views expressed, the Committee concluded that:*
 - *this was an important issue for seafarers and should consequently be placed on the work programme of the Legal Committee;*
 - *the Committee should consider guidance on the implementation of the Guidelines, in particular for developing countries;*
 - *technical support and assistance should be provided by TCC in order to facilitate the wide implementation of the Guidelines to improve the conditions for seafarers, taking into account human rights issues;*
 - *work needed to be done towards the progressive removal of legislation targeting seafarers and imposing criminal sanctions on them;*

- *it would be useful for States already giving effect to the Guidelines to provide translated copies of their laws to assist other States with their implementation efforts; and some States informed the Committee that they were ready to share their national legislation giving effect to the Guidelines;*
 - *with regard to the compilation of statistics, it was also relevant to receive feedback from ports;*
 - *States were urged to provide their embassies with the names of persons whom seafarers could contact to report violations of the Guidelines;*
 - *seafarers should be given greater training and awareness of their rights.*
- *4.6 The Committee expressed its thanks and appreciation to SRI and the co-sponsors for their excellent work, underscoring the importance of the subject and its relevance to the progressive development of the shipping industry. Member States who had not yet given effect to the Guidelines were encouraged to do so.*
- *4.7 The Committee also noted with gratitude that the industry was prepared to contribute financially towards this work. The Committee supported the speedy implementation of the Guidelines and, in this regard, would report the outcome of these discussions to the TCC, MEPC, MSC and FAL."*
- The Chair notes that since this meeting the ITF submitted, on 1 May 2015, a document to the Technical Cooperation Committee in relation to its 2016-2017 Work Programme, an executive summary of which is as below:
 - *"This document reports on the discussions of the Legal Committee concerning the 2006 Guidelines on fair treatment of seafarers in the event of a maritime accident adopted jointly by IMO. At LEG 102, the Legal Committee concluded that technical support and assistance should be provided by TCC in order to facilitate the wide implementation of the guidelines to improve the conditions for seafarers, taking into account human rights issues."*
- The Action requested is as follows:
 - *"The Committee is requested to integrate this category of assistance within the Integrated Technical Cooperation Programme."*

3. New York Conference 2016

- The Chair has made contact with her MLA US opposite number (Mr Phillip A. Buhler) to start discussions about a possible modus operandi for the 2016 Conference in New York (per Stuart Hetherington's letter dated 25 August 2014).

LEGAL COMMITTEE
102nd session
Agenda item 4

LEG 102/4
2 March 2015
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FAIR TREATMENT OF SEAFARERS IN THE EVENT OF A MARITIME ACCIDENT

Analysis of the questionnaire on the implementation of the 2006 Guidelines on fair treatment of seafarers in the event of a maritime accident

Submitted by the International Transport Workers' Federation (ITF), the International Federation of Shipmasters' Associations (IFSMA), Comité Maritime International (CMI) and InterManager

SUMMARY

Executive summary: This document reports on the analysis of the replies from Member States to the survey circulated by Seafarers' Rights International on behalf of ITF and IFSMA concerning the 2006 *Guidelines on fair treatment of seafarers in the event of a maritime accident* adopted jointly by IMO and ILO. The Legal Committee is invited to consider the requests of Member States seeking assistance to give effect to the guidelines

Strategic direction: 1

High-level action: 1.1.1

Planned output: 1.1.1.2

Action to be taken: Paragraph 5

Related documents: LEG 101/4/1, LEG 101/12; LEG 100/5/1, LEG 100/14; LEG 99/14; LEG 97/6, LEG 97/6/1, LEG 97/INF.3; LEG 95/5; resolution A 27/Res.1056/Rev.1; resolution LEG.3(91) and Circular Letters Nos.2711 and 2825

1 At the 101st session of the Legal Committee, a representative of ITF introduced document LEG 101/4/1, which had been submitted by the ITF, IFSMA and CMI, reporting on the outcome of a survey commissioned by ITF and IFSMA and conducted by Seafarers' Rights International (SRI) concerning the implementation of the 2006 *Guidelines on fair treatment of seafarers in the event of a maritime accident* (the guidelines). At that time, 39 Member States of IMO, representing 22.5% of its membership, had responded to the survey. In response to the survey, the Legal Committee decided that "it would be helpful if States that had not yet answered the survey would do so or provide information in some other form convenient to them, and if the sponsors of the survey could undertake to further analyse the responses and to report that analysis to the next session of the Committee for its consideration."

2 Following the 101st session of the Legal Committee, six more responses to the survey were received. The ITF, IFSMA, CMI and SRI thank all the Member States who responded to the survey.

3 The total of 45 responses, representing 26% of the Member States of IMO, were then analysed, covering the answers and information contained in the responses to the survey as well as the very large number of implementing laws referred to by Member States in their responses to the survey.

4 From the analysis, the following observations can be made:

- .1 Thirteen Member States (29% of the respondents), representing a wide range of different legal systems, stated that their existing laws already adequately protect the human and other legal rights of seafarers contained in the guidelines and that, therefore, there is no need for the guidelines to be passed into their existing laws. The existing laws in these Member States typically cover a wide range of legal areas, including international law, constitutional law, criminal law, commercial law, labour law, merchant shipping law, marine environmental law, and marine casualty and marine incident investigation law. These existing laws are, in most of these Member States, implemented by many different government ministries and/or independent legal entities within each Member State. Analysis of these existing laws shows that they provide information that would be helpful to other Member States wishing to determine the extent to which their existing laws may already give effect to the guidelines.
- .2 Seventeen Member States (38% of the respondents) have passed the guidelines, either in whole or in part, into their national laws, either explicitly or implicitly. In some of these Member States, the national laws stipulate the mandatory implementation of the guidelines, while in many other Member States it is typically stated that the guidelines "must" or "should" be taken "into account" or "consideration." These national laws take the form of primary laws and/or secondary laws. They cover for most of these Member States only one area of the law specifically defined as marine casualty and marine accident investigation law. Analysis of these national laws shows that they may readily be regarded as providing a range of different model laws that could be adapted without difficulty by other Member States wishing to give effect to the guidelines.
- .3 Fifteen Member States (33% of the respondents) requested assistance in the form of information regarding the meaning of the guidelines and/or model legislation by the IMO for the purpose of giving effect to the guidelines. The requests for assistance made by these Member States can be met by developing guidance for them to consider, informed by the laws of other Member States and taking into account other appropriate considerations.

Action requested of the Legal Committee

5 The Legal Committee is requested to:

- (i) take note of the information provided in this document and to comment as it may deem appropriate;

- (ii) urge Member States already giving effect to the guidelines to consider providing copies of their relevant laws together with information and advice if approached by other Member States requesting assistance for the purpose of giving effect to the guidelines; and
 - (iii) request the Technical Cooperation Committee to consider providing technical assistance to Member States that have requested assistance to give effect to the guidelines taking into account the analysis of the survey.
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