



LEGAL COMMITTEE
89th session
Agenda item 9

LEG 89/9/2
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FAIR TREATMENT OF SEAFARERS

International instrument on the fair treatment of seafarers

Submitted by Brazil

SUMMARY

Executive summary: This document comments on documents LEG 88/12 and C 92/6/1, regarding the need to develop guidelines and an international instrument for the fair treatment of seafarers in cases of maritime accidents, including pollution incidents. In this respect, this document draws the attention of the Committee to cases of possible criminalization of seafarers serving on board an abandoned ship that may cause damage to persons, property or to the marine environment, and proposes the consideration of this matter by the joint IMO/ILO Working Group.

Action to be taken: Paragraph 10

Related documents: LEG 88/12, LEG 88/2/3, LEG 88/13, C 92/6/1, C 92/D, resolution A.930(22)

Introduction

1 In recent years some maritime accidents have occurred in which the captain of the ship and other crew members have been charged and detained for long periods of time without trial and/or have been charged and tried according to criminal law.

2 This issue was brought to the attention of the eighty-eighth session of the Legal Committee through the submission of document LEG 88/12, presented by Cyprus, the Philippines, Poland, ICFTU, ICS and other representatives of the shipping industry. After considering the document, the Committee agreed to include a new item in its work programme regarding the development of guidelines on the fair treatment of seafarers following a maritime accident and to establish a joint IMO/ILO Working Group to work on this issue. The Committee has also urged Member States to submit proposals to this session.

3 At the ninety-second session of the Council, India submitted document C 92/6/1, in which it was proposed that the Committee consider the development of an international instrument on the fair treatment of seafarers, with a view to protecting seafarers in the circumstances mentioned above. The Council agreed to request the Legal Committee to consider this proposal in the context of the development of guidelines in this respect.

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The case of seafarers serving on board an abandoned ship

4 The abandonment of a ship occurs without any direct involvement of the seafarers in the facts that may have led to its abandonment.

5 According to the definition contained in paragraph 2.1.3 of the Guidelines on Provision of Financial Security in Case of Abandonment of Seafarers (resolution A.930(22)), abandonment is characterized by the severance of ties between the shipowner and the seafarer. Abandonment occurs when the shipowner fails to fulfil certain fundamental obligations to the seafarer relating to timely repatriation and payment of outstanding remuneration and to the provision of basic necessities of life, *inter alia*, adequate food, accommodation and medical care. Abandonment will have occurred when the master of the ship has been left without any financial means in respect of ship operation.”

6 However, an abandoned ship at anchor which is undermanned or with its equipment or essential systems in an irregular situation due to lack of spare parts for repairs could, as a result of bad weather conditions or sea currents, end up grounding and suffering structural damages or colliding with other ships or property and consequently causing damage to persons, or even loss of life, damage to property and to the marine environment. This situation could, similarly to the maritime pollution accidents that have occurred with sailing ships, lead to the unfair criminalization of the seafarers.

Consideration of this matter in the development of an international instrument

7 The ISM Code states clearly that its objectives are: “... to ensure safety at sea, prevention of human injury or loss of life and avoidance of damage to the environment, in particular to marine environment and to property.” With respect to the responsibilities of the Captain, it provides that: “The Company should clearly define and document the master’s responsibility with regard to:

- .1 implementing the safety and environmental protection policy of the Company;
- .2 Motivating the crew in the observation of that policy;
- .3 issuing appropriate orders and instructions in a clear and simple manner;
- .4 verifying that specified requirements are observed; and
- .5 reviewing the SMS and reporting its deficiencies to the shore-based management.”

8 However, when the conditions to achieve these objectives are not provided, neither the captain nor the crew should be penalised for third-parties non-compliance to the regulations.

9 Recent events suggest that this instrument needs to be strengthened. Thus, the development of an international instrument with appropriate legislation for the fair treatment of seafarers, as well as the development of guidelines to this end, should also include consideration of the situation of seafarers serving on board an abandoned ship.

Action requested of the Legal Committee

10 The Legal Committee is invited to consider the above comments and decide as appropriate. In particular, the Committee is invited to consider the inclusion of the situation of

seafarers serving on board an abandoned ship, in the context of the development of a mandatory international instrument on the fair treatment of seafarers by the joint IMO/ILO Working Group.
