

LEGAL COMMITTEE
102nd session
Agenda item 4

LEG 102/4
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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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