

Resolution A.1056(27) Adopted on 30 November 2011

(Agenda item 10)

PROMOTION AS WIDELY AS POSSIBLE OF THE APPLICATION OF
THE 2006 GUIDELINES ON FAIR TREATMENT OF SEAFARERS
IN THE EVENT OF A MARITIME ACCIDENT

ASSEMBLY
27th session
Agenda item 10

A 27/Res.1056/Rev.1
9 March 2012
ENGLISH ONLY

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**PROMOTION AS WIDELY AS POSSIBLE OF THE APPLICATION OF
THE 2006 GUIDELINES ON FAIR TREATMENT OF SEAFARERS
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THE ASSEMBLY OF THE INTERNATIONAL MARITIME ORGANIZATION AND THE GOVERNING BODY OF THE INTERNATIONAL LABOUR OFFICE,

RECALLING resolution A.987(24) adopted by the Assembly of IMO at its twenty-fourth regular session and the ILO Governing Body at its 292nd session, whereby the IMO Assembly and the ILO Governing Body, inter alia, agreed to adopt the *Guidelines on fair treatment of seafarers in the event of a maritime accident* ("the Guidelines") as a matter of priority; authorized the IMO Legal Committee and the ILO Governing Body to promulgate, once finalized, the Guidelines by appropriate means; and requested the IMO Legal Committee and the ILO Governing Body to keep the problem of unfair treatment of seafarers in the event of a maritime accident under review and to assess periodically the scale of the problem,

RECALLING FURTHER resolution LEG.3(91), by which the IMO Legal Committee subsequently adopted, on 27 April 2006, the *Guidelines on fair treatment of seafarers in the event of a maritime accident*, annexed to this resolution, and called on Member Governments to implement those Guidelines as from 1 July 2006,

RECALLING ALSO the adoption of the Guidelines by the ILO Governing Body at its 296th session on 12 June 2006,

CONCERNED that the Guidelines have not yet been circulated as widely as necessary to ensure that they are taken into account and appropriately applied in every case in which a seafarer may be involved in a maritime accident,

NOTING that, in compliance with the request in operative paragraph 6 of resolution A.987(24), the IMO Legal Committee and the ILO Governing Body have, since the adoption of the Guidelines, maintained the subject of fair treatment of seafarers in the event of a maritime accident on their respective agendas to enable the IMO Legal Committee and the ILO Governing Body to monitor developments, and to convene, when necessary, the Joint IMO/ILO Ad Hoc Expert Working Group on Fair Treatment of Seafarers in the Event of a Maritime Accident,

BEING AWARE of a number of incidents that have taken place since the adoption of the Guidelines, in which seafarers on ships that have been involved in maritime accidents have

been detained for prolonged periods, raising questions about whether they have been treated fairly in full accordance with the principles set out in the Guidelines,

ENDORSING the view expressed by the IMO Legal Committee, at its ninety-eighth session, that unfair treatment of seafarers in the event of a maritime accident should not be condoned under any circumstances,

RECOGNIZING that the issue of fair treatment of seafarers is the direct responsibility of port or coastal States, flag States, the State of nationality of the seafarer, shipowners and seafarers,

RECOGNIZING FURTHER that States should conduct investigations into maritime accidents in accordance with the requirements of the Merchant Shipping (Minimum Standards) Convention 1976 (Convention No.147) and, when it enters into force, the Maritime Labour Convention, 2006 (MLC 2006),

RECOGNIZING ALSO that the Guidelines should be implemented alongside the IMO Code of International Standards and Recommended Practices for a Safety Investigation into a Marine Casualty or Marine Accident, adopted by resolution MSC.255(84), parts I and II of which have been made mandatory by way of amendments to SOLAS chapter XI-1, which entered into force on 1 January 2010, pursuant to resolution MSC.257(84),

1. REITERATE THE IMPORTANCE of the *Guidelines on fair treatment of seafarers in the event of a maritime accident* set out in the annex to the present resolution;
2. URGE IMO and ILO Member Governments to implement the Guidelines to the extent possible;
3. INVITE 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 ALSO, 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 steps to ensure, in the context of the Guidelines, the expeditious finalization, in their respective jurisdictions, of all court proceedings involving seafarers in maritime accident cases;
6. INVITE ADDITIONALLY Member Governments to take note of the principles contained in the Guidelines when considering fair treatment of seafarers in other circumstances where seafarers might be detained;
7. REQUEST the IMO Legal Committee and the ILO Governing Body to continue to keep the problem of unfair treatment of seafarers in the event of a maritime accident under review and to assess periodically the scale of the problem;
8. REQUEST FURTHER Member Governments, as a matter of urgency, to bring this resolution to the attention of any Government officials, in particular those involved in the administration of justice, who may be involved in decisions and procedures affecting the treatment of seafarers involved in maritime accidents, as well as shipowners and seafarers and their respective organizations and inform the IMO Legal Committee of the means by which this request has been implemented.

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 cooperate 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);

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- .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 I (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 cooperate 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 cooperate 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;

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- .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 cooperate 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 cooperate 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 cooperate 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

INTERNATIONAL MARITIME ORGANIZATION



IMO

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ASSEMBLY
24th session
Agenda item 10

A 24/Res.987
9 February 2006
Original: ENGLISH

Resolution A.987(24)

**Adopted on 1 December 2005
(Agenda item 10)**

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THE ASSEMBLY OF THE INTERNATIONAL MARITIME ORGANIZATION AND THE GOVERNING BODY OF THE INTERNATIONAL LABOUR ORGANIZATION,

BEING AWARE of a number of recent incidents in which seafarers on ships that have been involved in maritime accidents have been detained for prolonged periods,

SERIOUSLY CONCERNED about the need to ensure the fair treatment of seafarers in view of the growing use of criminal proceedings against seafarers after a maritime accident,

AWARE ALSO that seafarers may not be familiar with the law and processes of a port or coastal State and the impact those national laws may have on them,

CONVINCED that seafarers should not be held hostage pending the resolution of a financial dispute,

CONCERNED that, in some cases, the grounds for such detentions have not been clear to the seafarers being detained or to the international maritime community,

CONCERNED ALSO that in some cases the detained seafarers have been subject to conditions in which their basic human rights appear not to have been fully respected,

CONCERNED FURTHER that these cases have an adverse impact on the morale of seafarers, on the attraction and recruitment of young people into the seafaring profession, and on retention of current seafarers in the profession,

RECALLING the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR),

RECALLING ALSO the ILO Declaration on Fundamental Principles and Rights at Work, 1998 and the generally accepted principles of international human rights applicable to all workers,

RECALLING FURTHER the United Nations Convention on the Law of the Sea, 1982, in particular article 292 concerning the prompt release of vessels and crews, and article 230 on monetary penalties and the observance of recognized rights of the accused,

NOTING that MARPOL 73/78 stipulates, in Annex I, Regulation 11 and in Annex II, Regulation 6, that certain discharges are not violations of MARPOL, specifically those resulting from damage to a ship or its equipment, provided that all reasonable precautions have been taken, after the occurrence of the damage or discovery of the discharge, for the purpose of preventing or minimizing the discharge, and except if the owner or the master acted either with intent to cause damage or recklessly and with knowledge that damage would probably result,

NOTING ALSO the relevant international labour standards applicable to repatriation of seafarers, in particular ILO Convention No.166 concerning the Repatriation of Seafarers, (Revised), 1987,

NOTING FURTHER the IMO Code for the Investigation of Maritime Casualties and Incidents (resolution A.849(20) as amended by resolution A.884(21)),

RECOGNIZING the established rights of States to prosecute or extradite in accordance with international law those accused of criminal behaviour,

RECOGNIZING FURTHER that States should conduct investigations into maritime accidents,

RECOGNIZING ALSO that the issue of fair treatment of seafarers is the direct responsibility of port or coastal States, flag States, the State of the nationality of the seafarer, shipowners and seafarers,

CONVINCED that recommendatory guidelines are an appropriate means of establishing a framework of legal certainty and consistent good practice to ensure that, in connection with maritime accidents, seafarers are fairly treated and their rights are not violated,

CONSIDERING that, given the global nature of the shipping industry, seafarers need special protection,

CONVINCED ALSO that the protection of the rights of seafarers through the application of the guidelines referred to above is necessary to avoid the financial, physical and emotional burden which prolonged detention inflicts on seafarers and their families,

BELIEVING that the adoption of guidelines which will facilitate the fair treatment of seafarers in the event of a maritime accident should be developed as a matter of urgency,

HAVING CONSIDERED the recommendations made by the Legal Committee at its ninetieth session, as endorsed by the ILO Governing Body at its 292nd session,

1. URGE all States to respect the basic human rights of seafarers involved in maritime accidents;

2. URGE ALSO all States expeditiously to investigate maritime accidents to avoid any unfair treatment of seafarers;
 3. URGE FURTHER all States to adopt procedures to allow the prompt repatriation or re-embarkation of seafarers following maritime accidents;
 4. INVITE Member Governments and non-governmental organizations in consultative or observer status with IMO or ILO, as appropriate, to record instances of unfair treatment of seafarers in the event of maritime accidents and to provide data to IMO or ILO whenever requested;
 5. AGREE to adopt guidelines as a matter of priority and to that end request the Joint IMO/ILO *Ad Hoc* Expert Working Group on Fair Treatment of Seafarers to finalize its work expeditiously;
 6. AUTHORIZE the IMO Legal Committee and the ILO Governing Body to promulgate, once finalized, the said guidelines by appropriate means and to report to the twenty-fifth regular session of the IMO Assembly and to the 295th session of the ILO Governing Body, accordingly;
 7. REQUEST the IMO Legal Committee and the ILO Governing Body to keep the problem of unfair treatment of seafarers in the event of maritime accidents under review and to assess periodically the scale of the problem;
 8. REQUEST Member Governments to bring this resolution to the attention of shipowners and seafarers and their respective organizations as well as any government officials who may be involved in decisions and procedures affecting the treatment of seafarers involved in maritime accidents.
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