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Circular Letter No. 4536
18 March 2022

To: All IMO Members
Intergovernmental organizations
Non-governmental organizations in consultative status

Subject: **Communication from the Government of Ukraine**

The Government of Ukraine has sent the attached communication, dated 18 March 2022, with the request that it be circulated by the Organization.



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in the United Kingdom
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Nr. 6124/23-327/2- 120 - URGENT

The Embassy of Ukraine in the United Kingdom of Great Britain and Northern Ireland presents its compliments to the Secretariat of the International Maritime Organisation and has the honour to transmit herewith the information prepared by the Maritime Administration of Ukraine and the Marine Transport Workers' Trade Union of Ukraine with advice and guidance on fair treatment on seafarers in cases of war or the threat of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion.

The Embassy of Ukraine would appreciate if this Note Verbal is urgently circulated among IMO Member States to all IMO Member States, international organizations which have concluded agreements of cooperation with the IMO and non-governmental organizations in consultative status with the IMO.

The Embassy of Ukraine to the United Kingdom of Great Britain and Northern Ireland avails itself of this opportunity to renew to the Secretariat of the International Maritime Organisation the assurances of its highest consideration.

Encl.

London, 18 March 2022



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Annex

Advice and guidance on fair treatment on seafarers in cases of war or the threat of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion

Background

1 Unfortunately, even now in the 21st century, armed conflicts arise in various countries of the world, due to which hundreds of thousands of people are forced to leave their homelands, fearing a real threat to their lives and freedom, the safety of their children and elderly parents. The most recent and horrifying would be the full-scale armed aggression of the Russian Federation against Ukraine that started on 24 February 2022.

2 Armed conflicts and threats of reprisals are often unexpected, but can have long-term negative consequences: famine, economic crisis, lack of decent work and decent future.

3 For seafarers, such unexpected crises can have particularly dire consequences. Seafarers may start their work on a ship at times of no threat of an emergency situation in the country of their permanent residence. Already on the ship, the seafarer may find himself in a situation where repatriation to his or her homeland at the end of contract may be impossible due to an armed conflict or the threat of becoming a victim of persecution, when there is a real danger to his family.

4 With this in mind, it seems essential to establish a legal framework and procedures in order to assist seafarers on ships, who are unable to return to their country of citizenship or country of permanent residence due to armed conflict or the threat of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion.

Seafarers as refugees

5 The 1951 Refugee Convention, Article 11 Refugee Seamen says that in the case of refugees regularly serving as crew members on board a ship flying the flag of a Contracting State, that State shall give sympathetic consideration to their establishment on its territory and the issue of travel documents to them or their temporary admission to its territory particularly with a view to facilitating their establishment in another country.

6 Unfortunately, the provisions of this article do not correspond to the modern realities of merchant shipping, when a great number of commercial ships are registered under a flag that do not have nationality requirements for the shipping companies that use it. In many cases, the registries themselves are not even run from the country of the flag. Under these conditions, it is difficult to believe that the Flag States will fully comply with the provisions of Article 11 and favorably treat the settlement of refugee seafarers on their territories.

7 The reverse situation is also possible, when, due to significant national or religious differences, seafarers may be forced to abandon the right granted by the ship's Flag State, which is more than possible in relation to the so-called 'Flags of Convenience'.

8 It should also be noted that according to Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees "persons compelled to leave their country of origin as a result of international or national armed conflicts are not normally considered refugees under the 1951 Convention or 1967 Protocol. They do, however, have the protection provided for in other international instruments, e.g. the Geneva Conventions of 1949 on the Protection of War Victims and the 1977 Protocol additional to the

Geneva Conventions of 1949 relating to the protection of Victims of International Armed Conflicts.”

9 Seafarers who due to armed conflict in their country of residence may not be able to repatriate at the end of their contracts, will not be able to obtain refugee status under the procedures of the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees.

10 Taking into account the above, it is necessary to determinate the State assigned with primary responsibility for granting refugee status to a seafarer and the procedures for determining the refugee status: what facts a seafarer should provide and to whom in order to obtain a refugee status due to the threat of being persecuted or a status of war refugee.

Seafarers’ employment contracts

11 For seafarers whose maximum contract duration has expired and who were or are supposed to be repatriated – it is recommended to remain on board for as long as it becomes possible and safe to return home.

12 Flag State and Port State Control officers should take a pragmatic [humane] approach with respect to any renewal of seafarers’ employment contracts with 11 months as the maximum length of employment in line with the ILO Maritime Labour Convention, 2006.

Seafarers’ Certificates of Competency and other qualification documents

13 Seafarers should be guaranteed the right to continue their active career at sea in the event when the endorsement to their Certificates of Competence (CoC) expires and cannot be temporarily replaced due to an ongoing military conflict in the country that issued the CoC to the seafarer.

14 The seagoing service entered in the Seafarer's Service Record Book should be considered as the primary evidence of the fulfillment by seafarers of the Regulation I/11 of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1978, as amended.

15 Flag States that have issued an Endorsement to the seafarer in recognition of his or her Certificate of Competence issued by the seafarer's country of citizenship or permanent residence, should take a pragmatic [humane] approach and issue an Endorsement for a new term if the seafarer possesses the required seagoing service, even if he or she does not have a valid CoC.

16 Seafarers who are required to complete periodic training as stipulated by the STCW Code should be given the opportunity to take such training at training centers located in countries that have concluded Memorandum of mutual recognition of seafarers' certificates with the State that issued CoC to the seafarer.

17 Seafarers should be provided with the opportunity to advance their careers and occupy higher positions on board if they meet the requirements for professional competence, even if it is not possible to obtain a new CoC.

18 Flag States should take a pragmatic [humane] approach and, whenever possible, assist the seafarer in obtaining dispensation issued in accordance with the provisions of the Article VIII of the STCW Convention.

Visas

19 Seafarers may face travel restrictions as a result of inability to obtain a visa due to the temporary unavailability of consular services and visa centers in the seafarers' country of citizenship or permanent residence.

20 Taking into account the status of seafarers as key workers, all stakeholders should take the most pragmatic [humane] approach possible in order to simplify visa requirements for seafarers and allow them to travel to ships with a Seafarer's Identity Card.

21 All States should take all possible measures to issue visas to seafarers exclusively in electronic form and as soon as possible.

Repatriation

22 Seafarers may face situations where repatriation to their country of permanent residence is impossible due to a threat to their lives or is limited due to the lack of air connectivity or limited transportation by other modes of transport.

23 It is also especially important to provide refugee seafarers with the minimum conditions necessary for reunification with their family members who, while the seafarer was serving on board the ship, were forced to leave their country of citizenship or country of permanent residence due to armed conflict or the threat of persecution.

24 Shipowners should take a pragmatic [humane] approach and determine a mutually agreed point for repatriation of a seafarer, which should be an airport of a friendly country located close to the borders of the country of the seafarer's permanent residence or country of citizenship, or an airport of a country, where the seafarer can reunite with his family.

Entitlement for repatriation

25 Seafarers may find themselves in a situation where the vessel they work on is bound for a port in a country that is in armed conflict with the seafarer's country of nationality. In such circumstances, any pressure on seafarers to refuse to operate a voyage should be strictly prohibited.

26 Seafarers should also be guaranteed the right to repatriation at the expense of the shipowner.

27 Flag States are invited to consider such cases as cases of directing a ship to a war zone and are invited to make the necessary changes to national legislation defining the rights of a seafarer to repatriation at the expense of the shipowner in accordance with the Maritime Labour Convention, 2006.

Harassment of seafarers due to their nationality or citizenship

28 Any harassment of seafarers due to their nationality or citizenship must be strictly prohibited. Any additional questioning of seafarers by port authorities, which is not related to the observation of international maritime conventions or social and labour protection of seafarers, should be strictly avoided.

29 Seafarers should be guaranteed the privacy of their personal communications with their families, including proper protection of information on their personal mobile phones, laptops or other devices.

30 Any procedural actions of the port authorities, not related to maritime security issues, should be carried out only in the presence of an interpreter, a lawyer, as well as representatives of seafarers' trade unions in the port of call of the vessel.

31 Any proceedings against seafarers should be as expeditious as possible and there should be no unwarranted detentions and arrests. Where possible, seafarers should be given the right to remain on board their ships, instead of being imprisoned, and the safety of the vessel itself must be ensured as well.