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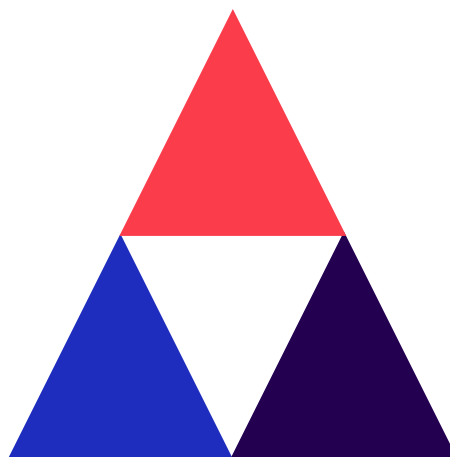


INTERNATIONAL  
MARITIME  
ORGANIZATION

► TWGSHE.3/2024/5

# ► Guidelines on fair treatment of seafarers detained in connection with alleged crimes

Third meeting of the Joint ILO-IMO Tripartite Working Group  
to identify and address seafarers' issues and the human element  
(Geneva, 26–28 November 2024)





## ► Background

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The International Labour Organization (ILO) and the International Maritime Organization (IMO) have a long history of collaboration. At its 343rd Session (November 2021), the Governing Body of the ILO approved the establishment of a Joint ILO-IMO Tripartite Working Group (JTWG) to identify and address seafarers' issues and the human element, with a composition of eight Government representatives nominated by the IMO, and eight Shipowner and eight Seafarer representatives nominated by the Employers' and the Workers' groups of the Governing Body of the ILO, respectively. At its 127th Session (July 2022), the IMO Council endorsed the establishment of the JTWG, including its methods of work and terms of reference.

At its 107th Session (November–December 2020), the IMO Legal Committee agreed to develop guidelines on the fair treatment of seafarers detained on suspicion of committing maritime crimes. At its 110th Session (March 2023), it decided to use the Guidelines on fair treatment of seafarers in the event of a maritime accident, adopted in 2006, as a model, established a working group to start the work on the draft guidelines and subsequently agreed to set up an intersessional correspondence group to advance the work.

At its 111th Session (April 2024), the Legal Committee agreed to further develop the draft guidelines by referring them to another working group, which met during that session. Having considered the report of the working group, the Legal Committee approved the revised text of the draft Guidelines on fair treatment of seafarers detained on suspicion of committing crimes and agreed to refer these draft Guidelines to the JTWG as a base document for refinement.

At its 351st Session (June 2024), the Governing Body of the ILO decided that the third meeting of the JTWG would be held from 26 to 28 November 2024 in Geneva and that the purpose of the meeting would be to discuss and adopt Guidelines on the fair treatment of seafarers detained on suspicion of committing crimes.

The present Guidelines are intended to be a reference tool for principles that can be reflected in the design and implementation of policies, strategies, programmes, legislation, administrative measures and social dialogue mechanisms on the fair treatment of seafarers detained on suspicion of committing crimes, and that can be adapted to different national systems and circumstances.

Nothing set out in these Guidelines should be understood as lowering the protection afforded by existing ILO or IMO instruments. The present Guidelines are not legally binding. They are not subject to ratification or supervisory mechanisms established under the ILO Constitution.

The Guidelines are based on, and to be read in line with, the principles, rights and obligations set out in the Maritime Labour Convention, 2006, as amended (MLC, 2006). The most relevant provisions of the MLC, 2006, and other international instruments relating to the fair treatment of seafarers detained on suspicion of committing crimes are set out in the appendix to the present Guidelines.

All ILO Members are encouraged to ratify and effectively implement the MLC, 2006.

It is recalled that the ILO Declaration on Fundamental Principles and Rights at Work (1998), as amended in 2022, affirms that all ILO Members, even if they have not ratified the fundamental ILO Conventions, have an obligation, arising from the very fact of membership in the Organization, to respect, to promote and to realize, in good faith and in accordance with the ILO Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely: freedom of association and the effective recognition of the right to collective bargaining; the elimination

of all forms of forced or compulsory labour; the effective abolition of child labour; the elimination of discrimination in respect of employment and occupation; and a safe and healthy working environment.

Strong systems for the inspection of seafarers' labour conditions play a crucial role in ensuring full compliance with relevant national laws and regulations and in ensuring access by seafarers to appropriate and effective remedy and complaints mechanisms.

All States are encouraged to consult representative organizations of shipowners and seafarers when implementing the present Guidelines.

## I. Introduction

1. It is recommended that these Guidelines should be applied where seafarers may be investigated or detained in a jurisdiction other than that of the seafarers' nationality on suspicion of committing or having committed crimes during the course of their employment on board a ship.<sup>1</sup>
2. These Guidelines are intended to ensure appropriate legal process for seafarers who are detained on suspicion of committing or having committed a crime. The Guidelines acknowledge that jurisdiction is a fundamental consideration in all cases, and it is recognized that the guidance provided to the various parties may have to be adapted depending on where the alleged crime occurs. These Guidelines are not intended to establish rights greater than those under the laws of the detaining State or international law.
3. These Guidelines are not intended to interfere with any State's law enforcement or prejudice the application of its domestic criminal or civil law, procedures, or its rights and obligations under international law; nor are they intended to establish any legal rights, obligations or causes of action, or restrict any rights seafarers are entitled to enjoy under applicable international human rights instruments or the domestic laws of the port, coastal or flag State, or the State of which the seafarer is a national.
4. The Guidelines are intended to reinforce existing human rights, including the principle of presumption of innocence until proven guilty by a proper legal process; and ensure that no seafarer is subject to arbitrary detention; no seafarer is deprived of their liberty, except on such grounds and in accordance with such procedures as established by law; and that no seafarer, in particular the Master, is detained on suspicion of committing an alleged crime solely because of their status on board the ship.
5. Seafarers are recognized as a special category of worker and many countries have designated them as key workers in accordance with the adoption of a joint statement by the International Labour Organization (ILO), the International Maritime Organization (IMO), the United Nations Conference on Trade and Development (UNCTAD) and the World Health Organization (WHO). Given the global nature of the shipping industry and the different jurisdictions with which seafarers may be brought into contact, they need special protection, especially in relation to contacts with public authorities. The objective of these Guidelines is to ensure that seafarers detained on suspicion of committing a crime are treated fairly during any investigation and detention by public authorities, and that detention is for no longer than necessary.
6. Seafarers suspected of committing, or of having committed, a crime are entitled to protection against coercion and intimidation from any source during or after any investigation.
7. The investigation of an alleged crime should not prejudice any applicable rights of the seafarer in terms of lodgings, subsistence, payment of wages and other benefits and medical care. Nor should it prejudice their entitlement to repatriation, as established under the Maritime Labour Convention, 2006, as amended (MLC, 2006), and the IMO Convention on the Facilitation of International Maritime Traffic, 1965 (FAL Convention), recognizing that during any such investigation the ability of a seafarer to leave the jurisdiction of the port or coastal State is subject to the laws of that State.

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<sup>1</sup> Guideline B4.4.6, paragraph 2, of the Maritime Labour Convention, 2006, as amended (MLC, 2006). In addition, the words "on board a ship" are intended to give clarity with regard to the place of employment and not necessarily the location of where the alleged crime may have been committed (see paragraph 9 of the report of the working group on fair treatment established at the 111th session of the Legal Committee of the IMO.)

8. The Guidelines should be read in conjunction with the relevant provisions of applicable international human rights instruments including but not limited to:
  - the [Universal Declaration of Human Rights](#);
  - the [International Covenant on Civil and Political Rights \(ICCPR\)](#);
  - the [Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment](#) adopted by the United Nations General Assembly;
  - [resolution 56/18 of the UN Human Rights Council](#);
  - the [United Nations Standard Minimum Rules for the Treatment of Prisoners](#) (the Nelson Mandela Rules); and
  - the [United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders](#) (the Bangkok Rules).
9. When investigating crimes, States should be mindful that seafarers may unknowingly become implicated in criminal activities and thus should exercise due caution to avoid criminalization of seafarers, unless evidence to the contrary exists. In this context, States may take into account relevant IMO resolutions and guidelines<sup>2</sup>.
10. Recognizing that prevention of any seafarer involvement in crimes is of fundamental importance, due consideration should be given to the International Safety Management (ISM) Code, the International Ship and Port Facility Security Code (ISPS Code) procedures, and the guidance provided by IMO, the ILO, social partners and P&I Clubs to help ensure that seafarers are aware of the risks associated with illegal activities.

## II. Definitions

11. For the purposes of these Guidelines:
  - (a) “seafarer” means any person who is employed or engaged or works in any capacity on board a ship;
  - (b) “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;<sup>3</sup>
  - (c) “investigation” means any legal processes undertaken by a competent authority to gather or consider evidence of an alleged crime;

<sup>2</sup> IMO Resolution MSC.255(84) adopted on 16 May 2008 on the IMO Code of International Standards and Recommended Practices for a Safety Investigation into a Marine Casualty or Marine Accident; IMO Resolution A.1056(27) adopted on 30 November 2011 on promotion as widely as possible of the application of the 2006 Guidelines on Fair Treatment of Seafarers in the event of a Maritime Accident; IMO Resolution A.1190(33) adopted on 6 December 2023 on enhancing the framework on the fight against organized crime in the maritime sector; IMO Resolution FAL.9(34) adopted on 30 March 2007 on the revised guidelines for the prevention and suppression of the smuggling of drugs, psychotropic substances and precursor chemicals on ships engaged in international maritime traffic.

<sup>3</sup> If the ship is required to carry a Maritime Labour Certificate, the shipowner is the organization or person named as the shipowner on the ship's Maritime Labour Certificate.

- (d) “detention” means any act by State authorities restricting the movement of a seafarer as part of an investigation into or during the prosecution of an alleged crime;
- (e) “fair treatment” means the right of seafarers to be treated with dignity and respect at all times, safeguarding their fundamental rights and ensuring their well-being.

### III. Guidelines for the port or coastal State

12. Where the alleged crime occurs in the recognized jurisdiction of the port or coastal State, or where the port or coastal State has exercised or accepted jurisdiction, the following guidance would apply.
13. The port or coastal State in which a seafarer is detained <sup>4</sup> should:
  - (a) ensure that the obligations of the [Vienna Convention on Consular Relations](#), including those relating to notification, the right to converse and correspond, and access, are promptly fulfilled; and ensure that the State(s) of the nationality of all seafarers concerned are notified, without delay, of the status of such seafarers as required, and also allow access to the seafarers by consular officers of the flag State and the State of the nationality of the seafarer;
  - (b) ensure that adequate measures are taken to preserve the human rights of seafarers and that they are treated in a manner that preserves their human dignity at all times; and
  - (c) communicate with and inform the flag State, the State of which the seafarer is a national, the shipowner and the seafarers’ representatives, as appropriate, without delay.
14. The port or coastal State should also, in accordance with applicable international law, human rights instruments and its corresponding domestic laws:
  - (a) ensure that no seafarer is subject to arbitrary detention, and that no seafarer is deprived of their liberty, except on such grounds and in accordance with such procedures as established by law; <sup>5</sup>
  - (b) conduct any investigation within its jurisdiction in a fair manner, with respect for due process and expeditiously, and without coercion, intimidation or other forms of abuse of seafarers;
  - (c) ensure that when a seafarer is detained on suspicion of committing a crime that before any charge is made, due consideration is given to the sufficiency of all evidence, and whether there are reasonable and objective grounds to suspect that the seafarer has committed a crime; and due consideration is given to the operational conditions and requirements of the maritime sector;
  - (d) ensure that adequate provisions are in place to provide for the subsistence of each detained seafarer such as suitable accommodation and essential amenities including, inter alia, food, drinking water, clothes and medical care;
  - (e) ensure that seafarers detained on suspicion of committing a crime are:
    - (i) guaranteed due process without any form of discrimination;
    - (ii) provided with the free assistance of adequate and competent interpretation and translation services, where necessary;

<sup>4</sup> Guideline B4.4.6, paragraph 2, of the MLC, 2006.

<sup>5</sup> See Article 9(1) of the ICCPR.

- (iii) advised of their right to adequate and competent legal assistance of the seafarers' choosing, for the purpose of enabling them to properly exercise their rights;
- (iv) granted access to adequate and competent legal assistance of the seafarers' choosing;<sup>6</sup>
- (v) advised of their right not to incriminate themselves and of their right to remain silent;
- (vi) advised of their right to adequate consular assistance;
- (vii) provided with access to the seafarers' representatives and the shipowner;
- (f) ensure that seafarers are promptly informed, in detail and in a language that they understand, of the reasons for their detention and of any charge against them;
- (g) ensure that all seafarers detained on suspicion of committing a crime are provided with the means and adequate time to communicate privately and in a confidential manner with their legal representatives;<sup>7</sup>
- (h) ensure that all seafarers detained on suspicion of committing a crime, and in accordance with applicable international law and other international human rights instruments and domestic laws, are provided with opportunities to communicate with:
  - (i) the nearest consular officers of the State of which the seafarer is a national or resident or is otherwise domiciled, and of the flag State;
  - (ii) the seafarer's partner, next of kin and family members;
  - (iii) welfare organizations, including seafarers' welfare organizations;
  - (iv) the shipowner and, where appropriate, the relevant seafarer recruitment and placement service; and
  - (v) seafarers' representatives;
- (i) use all available means to preserve evidence to minimize the continuing need for the physical presence of any seafarer in their jurisdiction;<sup>8</sup>
- (j) promptly conduct witness interviews with all seafarers by the appropriate authority in the presence of legal assistance and interpretation services, as necessary;
- (k) ensure that seafarers, once interviewed or otherwise not required for a port or coastal State investigation, are permitted, without undue delay, to be re-embarked or repatriated at no cost to the seafarer concerned, in accordance with the provisions of the MLC, 2006;<sup>9</sup>
- (l) consider non-custodial alternatives to pretrial detention (including detention as witnesses);
- (m) without undue delay, conclude its investigation and release suspects or bring any warranted charges and, if any criminal charges are brought, ensure that seafarers are informed promptly and in detail, in a language that they understand, of the nature and cause of the criminal charges against them;<sup>10</sup>

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<sup>6</sup> See Article 14(3)(d) of the ICCPR.

<sup>7</sup> See Principle 18 of the Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment.

<sup>8</sup> IMO, resolution A.1091(28), Guidelines on preservation and collection of evidence following an allegation of a serious crime having taken place on board a ship or following a report of a missing person from a ship, and pastoral and medical care of persons affected, A 28/Res.1091 (2013).

<sup>9</sup> Regulation 2.5, Standard A2.5 and Guideline B2.5 of the MLC, 2006.

<sup>10</sup> See Article 14(3)(a) of the ICCPR.

- (n) ensure that a process is in place to allow any detained seafarer to make an application to a competent court to request a review of any detention, insofar as national laws allow;
- (o) make available, insofar as national laws allow, a process for applications for the posting of a reasonable bond or other financial security, to allow for release and repatriation of a seafarer detained on the suspicion of committing a crime, pending resolution of any investigatory or judicial process;
- (p) ensure that any court hearing or trial, when seafarers are detained or charged, is conducted fairly before a competent court and takes place promptly, as provided for in the ICCPR;<sup>11</sup>
- (q) ensure that decisions taken are consistent with generally applicable provisions of the 1982 United Nations Convention on the Law of the Sea (UNCLOS), national laws and international human rights laws;
- (r) ensure that seafarers detained on suspicion of, or charged with, a criminal offence enjoy the presumption of innocence until proven guilty by a proper legal process; have the right to legal assistance of their choosing; are allowed adequate time to prepare a defence to any charges and enjoy all rights afforded to defendants under the applicable national law, including the right to challenge the admissibility of any evidence on such grounds as prescribed by national law;
- (s) ensure that, save in exceptional circumstances, detained seafarers are segregated from convicted persons and are subject to separate treatment appropriate to their status as unconvicted persons;<sup>12</sup>
- (t) ensure that, in the conduct of any investigation and in places of detention, detained seafarers are treated with respect and dignity at all times without any form of discrimination. This includes ensuring that a gender-sensitive approach is integrated in the conduct of any investigation and in places of detention;<sup>13</sup>
- (u) facilitate the provision of, and access to, services to ensure the physical and mental well-being of seafarers during their detention;
- (v) ensure that seafarers are afforded the freedom and means to practise their religion of choice during any detention;
- (w) ensure that the investigation or detention does not prejudice the dietary considerations owing to seafarers' religious or cultural practices; and
- (x) facilitate the visitation of the seafarer's partner, next of kin and family members to the place of detention of the seafarer.

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<sup>11</sup> See Article 9(3) of the ICCPR.

<sup>12</sup> See Article 10(2)(a) of the ICCPR.

<sup>13</sup> See Article 2(1) of the ICCPR and Article 2 of the Universal Declaration of Human Rights.

## IV. Guidelines for the flag State

15. Recalling the flag State's responsibilities derived from the UNCLOS, and the flag State's overriding duty to protect the fundamental rights of seafarers ensuring their fair treatment, the flag State should:
- (a) cooperate with the port or coastal State with the aim of achieving a fair and expeditious investigation into any suspected crime involving a seafarer who is detained in a foreign jurisdiction;
  - (b) cooperate and communicate with all substantially interested States, the shipowner, as appropriate, seafarers and, as appropriate, their representatives, to facilitate access to the seafarers, which may include requesting the port or coastal State to provide such access;
  - (c) ensure that shipowners fulfil contractual and other obligations under the MLC, 2006, and other applicable national law, to seafarers suspected of a crime or during any investigation, including the provision of wages and other contractual entitlements, suitable accommodation and essential amenities including, inter alia, food, drinking water, clothes and medical care;
  - (d) ensure through engagement with the shipowner and/or their agent, or port or coastal State, that adequate provisions are in place to provide for the subsistence of each seafarer detained on board a vessel, such as suitable accommodation and essential amenities including, inter alia, food, drinking water, clothes, fuel and medical care;
  - (e) ensure that wages and entitlements are provided by the shipowner to the detained seafarers and allotments are remitted in accordance with the contractual arrangements;
  - (f) request the port or coastal State through consular engagement, or through other available channels of communication, to ensure that adequate provisions are in place to provide for the subsistence of each detained seafarer, such as suitable accommodation and essential amenities including, inter alia, food, drinking water, clothes and medical care, at no cost to the seafarer;
  - (g) ensure that shipowners fulfil obligations to cooperate in any flag, coastal or port State investigation following suspicion of a crime;
  - (h) assist seafarers in securing fair treatment in the event of an investigation by a port or coastal State by obtaining any available information about the nature and basis of the investigation, and provide adequate and competent interpretation and translation services free of charge during an investigation;
  - (i) assist seafarers in securing fair treatment by providing information on the right to consular access, the right to remain silent and on the right to adequate and competent legal assistance of the seafarer's choosing before and during an investigation;
  - (j) assist the shipowner in the event of an investigation by a port or coastal State by providing information about the shipowner's obligations and rights under the flag State and any relevant international law;
  - (k) fund the repatriation of seafarers, if required, in accordance with the provisions of the MLC, 2006,<sup>14</sup> in instances where shipowners fail to fulfil their responsibility to repatriate;

<sup>14</sup> Standard A2.5.1, paragraph 5, of the MLC, 2006.

- (l) assist, as provided for in any international convention, treaty, national law or procedures that are applicable to the flag State, 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 related to a suspected crime; such steps may include facilitating the provision of a written or virtual statement or attendance by virtual means;
- (m) cooperate closely with the port or coastal State to facilitate access by detained seafarers to consular officers of the State of which the seafarer is a national or resident or otherwise domiciled, as well as the flag State, irrespective of their nationality;
- (n) take reasonable measures to ensure the fair treatment of seafarers who were employed or engaged on a vessel flying its flag at the time of the alleged crime;
- (o) in cases when the vessel is detained, utilize diplomatic channels or international dispute resolution mechanisms that can secure the prompt release of the vessel and its crew upon the posting of a reasonable bond or financial security;
- (p) ensure that no discriminatory or retaliatory measures are taken against seafarers because of their participation during investigations, including as a result of exercising legal rights, for example, the right to remain silent or rights related to freedom of association;
- (q) cooperate with the port or coastal State to:
  - (i) ensure that its consular officers or any agents appointed in an official capacity to act on its behalf for that purpose <sup>15</sup> are permitted immediate access to the detained seafarers and regular visits thereafter; and
  - (ii) facilitate access of consular officers from the flag State and the State of which the seafarer is a national or resident or is otherwise domiciled, to detained seafarers, if the seafarers are detained on board;
- (r) cooperate with the port or coastal State as well as with the State of which the seafarer is a national or resident or is otherwise domiciled, to ensure that seafarers are allowed visitation of their partner, next of kin and family members at the place of their detention;
- (s) cooperate with the port or coastal State to ensure that:
  - (i) in the conduct of any investigation and in places of detention, detained seafarers are treated with respect and dignity at all times without any form of discrimination. This includes ensuring that a gender-sensitive approach is integrated in the conduct of any investigation and in places of detention; <sup>16</sup> and
  - (ii) detained seafarers are segregated from convicted persons and are subject to separate treatment appropriate to their status as unconvicted persons;
- (t) cooperate with the port or coastal State, as well as with the State of which the seafarer is a national or resident or is otherwise domiciled, to ensure that seafarers:
  - (i) have access to essential amenities, as well as services to ensure their physical and mental well-being during and after their detention; and
  - (ii) are afforded the protection of freedom and means to practise their religion of choice during any detention;

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<sup>15</sup> In accordance with the Vienna Convention.

<sup>16</sup> In accordance with the Vienna Convention.

- (u) acknowledge that it remains responsible for the obligations set out above in respect of any alleged crime committed while the ship on which the seafarer was engaged, employed or was working, was registered under its flag regardless of whether it has subsequently ceased to be so registered.

## V. Guidelines for the State of which the seafarer is a national

### 16. The State of which the seafarer is a national should:

- (a) cooperate and communicate with the flag State and all substantially interested States, shipowners and seafarers, and provide seafarers' representatives and welfare organizations including seafarers' welfare organizations with access to seafarers, which may include providing such access in conjunction with consular officer access;
- (b) cooperate and communicate with the port or coastal State, and the flag state, in order to ensure that these Guidelines have been provided to the seafarer in a language they can understand;
- (c) maintain communication with authorities in the port or coastal State and with seafarers directly, to monitor the physical and mental well-being and treatment of national seafarers suspected of a crime, involved in any investigations related to a suspected crime, or otherwise prevented from leaving the port or coastal State by reason of a suspected crime;
- (d) arrange the repatriation of its national seafarers, in accordance with the provisions of the MLC, 2006, in instances where the shipowner and the flag State fail to fulfil their responsibility to repatriate;<sup>17</sup>
- (e) assist, as provided for in any international convention, treaty, national law or procedures, 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 related to a suspected crime, which may include facilitating the provision of a written or virtual statement or attendance by virtual means;
- (f) cooperate closely with the port or coastal State to ensure that its consular officers and those of the flag State or any agents appointed in an official capacity to act on its behalf for that purpose<sup>18</sup> are permitted access to the detained seafarers;
- (g) provide support and assistance to facilitate the fair treatment of their nationals and the expeditious handling of the investigation;
- (h) ensure that all funds remitted for detained seafarers, or for the support of those seafarers' families, are delivered for the intended purposes;
- (i) ensure that no discriminatory or retaliatory measures are taken against seafarers because of their participation during investigations, as a result of exercising their legal rights. This includes, but is not limited to, the right to remain silent or rights related to freedom of association;
- (j) cooperate closely with the port or coastal State to guarantee access of detained seafarers to consular officers;

<sup>17</sup> Standard A2.5.1, paragraph 5, of the MLC, 2006.

<sup>18</sup> In accordance with the Vienna Convention.

- (k) cooperate with the port or coastal State to ensure that, during the conduct of any investigation and in places of detention, detained seafarers are treated with respect and dignity at all times without any form of discrimination, with an integrated gender-sensitive approach;
- (l) cooperate closely with the port or coastal State as well as with the flag State to ensure that seafarers have access to essential amenities, as well as services to ensure their physical and mental well-being during and after their detention;
- (m) cooperate with the flag State and the port or coastal State to ensure that:
  - (i) seafarers are afforded the freedom and means to practise their religion of choice during any detention; and
  - (ii) detained seafarers are segregated from convicted persons and are subject to separate treatment appropriate to their status as unconvicted persons;
- (n) notify the seafarer's partner, next of kin and family members of the information from the port State or coastal State concerning the detention of the seafarer and the suspected crime, and assist the flag State and the port or coastal State in facilitating visits to the seafarer at the place of detention by the seafarer's partner, next of kin and family members;
- (o) cooperate with the port or coastal State to ensure the provision of valid travel documents for the timely repatriation of seafarers released from detention as appropriate; and
- (p) include these Guidelines in any pre-departure orientation provided to seafarers.

## VI. Guidelines for shipowners

17. Shipowners should, in accordance with their contractual and MLC, 2006, obligations as applied through national laws, regulations and collective agreements:
  - (a) have due regard to their obligations to protect the human rights of seafarers and ensure to the fullest extent possible the fair treatment of seafarers employed or engaged at the time of a suspected crime;
  - (b) encourage seafarers to cooperate with any investigation, with due regard to applicable rights, including the right not to incriminate themselves, the right to remain silent and the right to adequate and competent legal assistance of the seafarer's choosing;
  - (c) ensure that no discriminatory or retaliatory measures are taken against seafarers because of their participation during investigations and ensure that such conduct is not tolerated;
  - (d) cooperate and communicate with the flag State and all substantially interested States, as appropriate, and seafarers, and facilitate access to seafarers by seafarers' representatives;
  - (e) ensure that these Guidelines are made available to the seafarers and included in any pre-departure orientation of seafarers;
  - (f) immediately provide the seafarer's partner, next of kin and family members, and, where relevant, the seafarers' recruitment and placement service, with the information concerning the detention of the seafarer and the suspected crime, and assist the port or coastal State in facilitating visits to the place of detention by the seafarer's partner, next of kin and family members;
  - (g) wherever possible, while being mindful of the need to adhere to applicable data protection and privacy laws, provide all necessary cooperation to enable prompt investigation by the flag State or the port or coastal State;

- (h) use all reasonable means to preserve evidence to minimize the continuing need for the physical presence of any seafarer;<sup>19</sup>
- (i) immediately report to the flag State and, as appropriate, to a port or coastal State, should they become aware of evidence that a crime may have been committed by a seafarer;
- (j) fulfil contractual and other obligations to seafarers involved in the investigation of a suspected crime, including the payment of wages and other contractual entitlements and the provision of suitable accommodation and essential amenities including, inter alia, food, drinking water, clothes and medical care, at no cost to the seafarer;
- (k) ensure that adequate provisions are in place to provide for the subsistence of each detained seafarer, including wages and other contractual entitlements, suitable accommodation and essential amenities including, inter alia, food, drinking water, clothes and medical care, at no cost to the seafarer;
- (l) fulfil their obligations in relation to the repatriation of, or take steps to re-embark, the seafarers as soon as the laws of the flag State or of the port or coastal State, as appropriate, make it possible to do so;
- (m) immediately, upon any detention of a seafarer, establish whether the seafarer has any specific needs, for example, in relation to their gender, their religious beliefs and any medical requirements, and, with the consent of the seafarer, communicate these specific needs to all substantially interested States with the aim of ensuring that these needs are met;
- (n) cooperate closely with the flag State, and the port or coastal State, as appropriate, as well as with the State of which the seafarer is a national, to ensure that seafarers have access to services to ensure their physical and mental well-being, including from seafarer welfare organizations, during and after their detention; and
- (o) cooperate closely with the flag State, and the port or coastal State during their bilateral or international dispute resolution mechanisms for securing the prompt release of seafarers and vessels, which may include the posting of a reasonable bond or financial security, if required,

## VII. Guidelines for seafarers

- 18.** Seafarers are encouraged to be aware of their rights and the information contained in these Guidelines. In this context, seafarers are strongly encouraged to attend any applicable pre-departure orientation provided by the shipowner as defined in these Guidelines.
- 19.** When seafarers are detained, they should be treated with dignity and respect at all times, safeguarding their fundamental rights and ensuring their well-being, and specifically:
  - (a) their human rights should be preserved, and they should be treated in a manner that preserves their human dignity;<sup>20</sup>
  - (b) provisions should be made for their subsistence, suitable accommodation and essential amenities including, inter alia, food, drinking water, clothes and medical care, at no cost to the seafarer;<sup>21</sup>

<sup>19</sup> IMO, A 28/Res.1091 (2013).

<sup>20</sup> See para. 13(b).

<sup>21</sup> See paras 14(d), 15(f) and 17(k).

- (c) they should continue to receive wages, allotments and other contractual entitlements;<sup>22</sup>
- (d) they should be guaranteed due process without any form of discrimination;<sup>23</sup>
- (e) they should be provided, free of charge, with adequate and competent interpretation and translation services, where necessary;<sup>24</sup>
- (f) they should be advised of their right to adequate and competent legal assistance of their choosing;<sup>25</sup>
- (g) they should be granted access to adequate and competent legal assistance of their choosing;<sup>26</sup>
- (h) they should be advised of their right to remain silent and not to incriminate themselves;<sup>27</sup>
- (i) they should be promptly informed, in detail, and in a language which they understand, of the reasons for their detention and of any charge against them;<sup>28</sup>
- (j) they should enjoy the presumption of innocence until proven guilty by a proper legal process;<sup>29</sup>
- (k) they should be protected from any discriminatory or retaliatory measures taken against them because of their participation during investigations including as a result of exercising legal rights, for example, the right to remain silent or rights related to freedom of association;<sup>30</sup>
- (l) they should be provided with the means and adequate time to communicate privately and in a confidential manner with their legal representatives;<sup>31</sup>
- (m) they should be provided with opportunities to communicate with:<sup>32</sup>
  - (i) the nearest consular officers of the State of which they are national or resident or are otherwise domiciled, and of the flag State;
  - (ii) their partner, next of kin and family members;
  - (iii) welfare organizations, including seafarers' welfare organizations;
  - (iv) the shipowner and, where appropriate, the relevant seafarer recruitment and placement service; and
  - (v) seafarers' representatives;
- (n) they should be allowed visitation by their partner, next of kin and family members;<sup>33</sup>

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<sup>22</sup> See paras 15(c) and (e), and 17(j) and (k).

<sup>23</sup> See para. 14(e)(i).

<sup>24</sup> See paras 14(e)(ii) and 15(h).

<sup>25</sup> See paras 14(e)(iii) and 15(i).

<sup>26</sup> See paras 14(e)(iv) and (r), and 17(b).

<sup>27</sup> See paras 14(e)(v), 15(i) and 17(b).

<sup>28</sup> See para. 14(f).

<sup>29</sup> See para. 14(r).

<sup>30</sup> See paras 15(p) and 16(i).

<sup>31</sup> See para. 14(g).

<sup>32</sup> See para. 14(h).

<sup>33</sup> See paras 14(x), 15(r), 16(n) and 17(f).

- (o) consular officers of the State of which they are national or resident or are otherwise domiciled, and of the flag State, should be allowed access to the detained seafarers;<sup>34</sup>
- (p) they should be provided with access to the shipowner and the seafarers' representatives;<sup>35</sup>
- (q) they should be segregated from convicted persons and should be subject to separate treatment appropriate to their status as unconvicted persons, save in exceptional circumstances;<sup>36</sup>
- (r) they should be allowed access to services to ensure their physical and mental well-being, including from seafarers' welfare organizations, during and after their detention;<sup>37</sup>
- (s) they should be afforded the freedom and means to practise their religion of choice during any detention;<sup>38</sup>
- (t) in the conduct of any investigation and in places of detention, they should be treated with dignity and respect at all times without any form of discrimination and with an integrated gender-sensitive approach;<sup>39</sup>
- (u) the investigation or their detention should not prejudice the dietary considerations owing to their religious or cultural practices;<sup>40</sup>
- (v) the State of which the seafarers are national should cooperate with the port or coastal State to ensure the provision of valid travel documents for the timely repatriation of a seafarer released from detention; and<sup>41</sup>
- (w) they should be repatriated or re-embarked, as soon as the laws of the flag State, or of the port or coastal State, as appropriate, make it possible to do so, without undue delay and at no cost to the seafarers, in accordance with the provisions of the MLC, 2006.<sup>42</sup>

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<sup>34</sup> See paras 13(a), and 15(m) and (q).

<sup>35</sup> See paras 14(e)(vii), 15(b), 16(a), (f) and (j), and 17(d).

<sup>36</sup> See paras 14(s), 15(s)(ii) and 16(m)(ii).

<sup>37</sup> See paras 14(u), 15(t)(i), 16(l) and 17(n).

<sup>38</sup> See paras 14(v), 15(t)(ii) and 16(m)(i).

<sup>39</sup> See paras 14(t), 15(s)(i) and 16(k).

<sup>40</sup> See para. 14(w).

<sup>41</sup> See para. 16(o).

<sup>42</sup> See paras 14(k) and 17(l).

## ► Appendix

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### Most relevant provisions of international instruments pertaining to the fair treatment of seafarers detained in connection with alleged crimes

#### Most relevant provisions of the Maritime Labour Convention, 2006, as amended (MLC, 2006)

The MLC, 2006, requires ratifying States to satisfy themselves that the provisions of their laws and regulations respect, in the context of the Convention, the fundamental rights listed in its Article III, and sets out seafarers' employment and social rights in its Article IV.

#### Regulation 2.5 – Repatriation

Purpose: To ensure that seafarers are able to return home

1. Seafarers have a right to be repatriated at no cost to themselves in the circumstances and under the conditions specified in the Code.
2. Each Member shall require ships that fly its flag to provide financial security to ensure that seafarers are duly repatriated in accordance with the Code.

#### Standard A2.5.1 – Repatriation

1. Each Member shall ensure that seafarers on ships that fly its flag are entitled to repatriation in the following circumstances:
  - (a) if the seafarers' employment agreement expires while they are abroad;
  - (b) when the seafarers' employment agreement is terminated:
    - (i) by the shipowner; or
    - (ii) by the seafarer for justified reasons; and also
  - (c) when the seafarers are no longer able to carry out their duties under their employment agreement or cannot be expected to carry them out in the specific circumstances.
2. Each Member shall ensure that there are appropriate provisions in its laws and regulations or other measures or in collective bargaining agreements, prescribing:
  - (a) the circumstances in which seafarers are entitled to repatriation in accordance with paragraph 1(b) and (c) of this Standard;
  - (b) the maximum duration of service periods on board following which a seafarer is entitled to repatriation – such periods to be less than 12 months; and
  - (c) the precise entitlements to be accorded by shipowners for repatriation, including those relating to the destinations of repatriation, the mode of transport, the items of expense to be covered and other arrangements to be made by shipowners.
3. Each Member shall prohibit shipowners from requiring that seafarers make an advance payment towards the cost of repatriation at the beginning of their employment, and also from recovering the cost of repatriation from the seafarers' wages or other entitlements except where the seafarer has been found, in accordance with national laws or regulations or other measures or applicable

collective bargaining agreements, to be in serious default of the seafarer's employment obligations.

4. National laws and regulations shall not prejudice any right of the shipowner to recover the cost of repatriation under third-party contractual arrangements.
5. If a shipowner fails to make arrangements for or to meet the cost of repatriation of seafarers who are entitled to be repatriated:
  - (a) the competent authority of the Member whose flag the ship flies shall arrange for repatriation of the seafarers concerned; if it fails to do so, the State from which the seafarers are to be repatriated or the State of which they are a national may arrange for their repatriation and recover the cost from the Member whose flag the ship flies;
  - (b) costs incurred in repatriating seafarers shall be recoverable from the shipowner by the Member whose flag the ship flies;
  - (c) the expenses of repatriation shall in no case be a charge upon the seafarers, except as provided for in paragraph 3 of this Standard.
6. Taking into account applicable international instruments, including the International Convention on Arrest of Ships, 1999, a Member which has paid the cost of repatriation pursuant to this Code may detain, or request the detention of, the ships of the shipowner concerned until the reimbursement has been made in accordance with paragraph 5 of this Standard.
7. Each Member shall facilitate the repatriation of seafarers serving on ships which call at its ports or pass through its territorial or internal waters, as well as their replacement on board.
8. In particular, a Member shall not refuse the right of repatriation to any seafarer because of the financial circumstances of a shipowner or because of the shipowner's inability or unwillingness to replace a seafarer.
9. Each Member shall require that ships that fly its flag carry and make available to seafarers a copy of the applicable national provisions regarding repatriation written in an appropriate language.

#### Standard A2.5.2 – Financial security

1. In implementation of Regulation 2.5, paragraph 2, this Standard establishes requirements to ensure the provision of an expeditious and effective financial security system to assist seafarers in the event of their abandonment.
2. For the purposes of this Standard, a seafarer shall be deemed to have been abandoned where, in violation of the requirements of this Convention or the terms of the seafarers' employment agreement, the shipowner:
  - (a) fails to cover the cost of the seafarer's repatriation; or
  - (b) has left the seafarer without the necessary maintenance and support; or
  - (c) has otherwise unilaterally severed their ties with the seafarer including failure to pay contractual wages for a period of at least two months.
3. Each Member shall ensure that a financial security system meeting the requirements of this Standard is in place for ships flying its flag. The financial security system may be in the form of a social security scheme or insurance or a national fund or other similar arrangements. Its form shall be determined by the Member after consultation with the shipowners' and seafarers' organizations concerned.

4. The financial security system shall provide direct access, sufficient coverage and expedited financial assistance, in accordance with this Standard, to any abandoned seafarer on a ship flying the flag of the Member.
5. For the purposes of paragraph 2(b) of this Standard, necessary maintenance and support of seafarers shall include: adequate food, accommodation, drinking water supplies, essential fuel for survival on board the ship and necessary medical care.
6. Each Member shall require that ships that fly its flag, and to which paragraph 1 or 2 of Regulation 5.1.3 applies, carry on board a certificate or other documentary evidence of financial security issued by the financial security provider. A copy shall be posted in a conspicuous place on board where it is available to the seafarers. Where more than one financial security provider provides cover, the document provided by each provider shall be carried on board.
7. The certificate or other documentary evidence of financial security shall contain the information required in Appendix A2-I. It shall be in English or accompanied by an English translation.
8. Assistance provided by the financial security system shall be granted promptly upon request made by the seafarer or the seafarer's nominated representative and supported by the necessary justification of entitlement in accordance with paragraph 2 above.
9. Having regard to Regulations 2.2 and 2.5, assistance provided by the financial security system shall be sufficient to cover the following:
  - (a) outstanding wages and other entitlements due from the shipowner to the seafarer under their employment agreement, the relevant collective bargaining agreement or the national law of the flag State, limited to four months of any such outstanding wages and four months of any such outstanding entitlements;
  - (b) all expenses reasonably incurred by the seafarer, including the cost of repatriation referred to in paragraph 10; and
  - (c) the essential needs of the seafarer including such items as: adequate food, clothing where necessary, accommodation, drinking water supplies, essential fuel for survival on board the ship, necessary medical care and any other reasonable costs or charges from the act or omission constituting the abandonment until the seafarer's arrival at home.
10. The cost of repatriation shall cover travel by appropriate and expeditious means, normally by air, and include provision for food and accommodation of the seafarer from the time of leaving the ship until arrival at the seafarer's home, necessary medical care, passage and transport of personal effects and any other reasonable costs or charges arising from the abandonment.
11. The financial security shall not cease before the end of the period of validity of the financial security unless the financial security provider has given prior notification of at least 30 days to the competent authority of the flag State.
12. If the provider of insurance or other financial security has made any payment to any seafarer in accordance with this Standard, such provider shall, up to the amount it has paid and in accordance with the applicable law, acquire by subrogation, assignment or otherwise, the rights which the seafarer would have enjoyed.
13. Nothing in this Standard shall prejudice any right of recourse of the insurer or provider of financial security against third parties.
14. The provisions in this Standard are not intended to be exclusive or to prejudice any other rights, claims or remedies that may also be available to compensate seafarers who are abandoned. National laws and regulations may provide that any amounts payable under this Standard can be

offset against amounts received from other sources arising from any rights, claims or remedies that may be the subject of compensation under the present Standard.

## **Guideline B2.5 – Repatriation**

### **Guideline B2.5.1 – Entitlement**

1. Seafarers should be entitled to repatriation:
  - (a) in the case covered by Standard A2.5, paragraph 1(a), upon the expiry of the period of notice given in accordance with the provisions of the seafarers' employment agreement;
  - (b) in the cases covered by Standard A2.5, paragraph 1(b) and (c):
    - (i) in the event of illness or injury or other medical condition which requires their repatriation when found medically fit to travel;
    - (ii) in the event of shipwreck;
    - (iii) in the event of the shipowner not being able to continue to fulfil their legal or contractual obligations as an employer of the seafarers by reason of insolvency, sale of ship, change of ship's registration or any other similar reason;
    - (iv) in the event of a ship being bound for a war zone, as defined by national laws or regulations or seafarers' employment agreements, to which the seafarer does not consent to go; and
    - (v) in the event of termination or interruption of employment in accordance with an industrial award or collective agreement, or termination of employment for any other similar reason.
2. In determining the maximum duration of service periods on board following which a seafarer is entitled to repatriation, in accordance with this Code, account should be taken of factors affecting the seafarers' working environment. Each Member should seek, wherever possible, to reduce these periods in the light of technological changes and developments and might be guided by any recommendations made on the matter by the Joint Maritime Commission.
3. The costs to be borne by the shipowner for repatriation under Standard A2.5 should include at least the following:
  - (a) passage to the destination selected for repatriation in accordance with paragraph 6 of this Guideline;
  - (b) accommodation and food from the moment the seafarers leave the ship until they reach the repatriation destination;
  - (c) pay and allowances from the moment the seafarers leave the ship until they reach the repatriation destination, if provided for by national laws or regulations or collective agreements;
  - (d) transportation of 30 kg of the seafarers' personal luggage to the repatriation destination; and
  - (e) medical treatment when necessary until the seafarers are medically fit to travel to the repatriation destination.
4. Time spent awaiting repatriation and repatriation travel time should not be deducted from paid leave accrued to the seafarers.

5. Shipowners should be required to continue to cover the costs of repatriation until the seafarers concerned are landed at a destination prescribed pursuant to this Code or are provided with suitable employment on board a ship proceeding to one of those destinations.
6. Each Member should require that shipowners take responsibility for repatriation arrangements by appropriate and expeditious means. The normal mode of transport should be by air. The Member should prescribe the destinations to which seafarers may be repatriated. The destinations should include the countries with which seafarers may be deemed to have a substantial connection including:
  - (a) the place at which the seafarer agreed to enter into the engagement;
  - (b) the place stipulated by collective agreement;
  - (c) the seafarer's country of residence; or
  - (d) such other place as may be mutually agreed at the time of engagement.
7. Seafarers should have the right to choose from among the prescribed destinations the place to which they are to be repatriated.
8. The entitlement to repatriation may lapse if the seafarers concerned do not claim it within a reasonable period of time to be defined by national laws or regulations or collective agreements, except where they are held captive on or off the ship as a result of acts of piracy or armed robbery against ships. The terms *piracy and armed robbery against ships* shall have the same meaning as in Standard A2.1, paragraph 7.

#### Guideline B2.5.2 – Implementation by Members

1. Every possible practical assistance should be given to a seafarer stranded in a foreign port pending repatriation and in the event of delay in the repatriation of the seafarer, the competent authority in the foreign port should ensure that the consular or local representative of the flag State and the seafarer's State of nationality or State of residence, as appropriate, is informed immediately.
2. Each Member should have regard to whether proper provision is made:
  - (a) for the return of seafarers employed on a ship that flies the flag of a foreign country who are put ashore in a foreign port for reasons for which they are not responsible:
    - (i) to the port at which the seafarer concerned was engaged; or
    - (ii) to a port in the seafarer's State of nationality or State of residence, as appropriate; or
    - (iii) to another port agreed upon between the seafarer and the master or shipowner, with the approval of the competent authority or under other appropriate safeguards;
  - (b) for medical care and maintenance of seafarers employed on a ship that flies the flag of a foreign country who are put ashore in a foreign port in consequence of sickness or injury incurred in the service of the ship and not due to their own wilful misconduct.
3. If, after young seafarers under the age of 18 have served on a ship for at least four months during their first foreign-going voyage, it becomes apparent that they are unsuited to life at sea, they should be given the opportunity of being repatriated at no expense to themselves from the first suitable port of call in which there are consular services of the flag State, or the State of nationality or residence of the young seafarer. Notification of any such repatriation, with the reasons therefor, should be given to the authority which issued the papers enabling the young seafarers concerned to take up seagoing employment.

## **Guideline B4.4 – Access to shore-based welfare facilities**

### **Guideline B4.4.6 – Seafarers in a foreign port**

1. For the protection of seafarers in foreign ports, measures should be taken to facilitate:
  - (a) access to consuls of their State of nationality or State of residence; and
  - (b) effective cooperation between consuls and the local or national authorities.
2. Seafarers who are detained in a foreign port should be dealt with promptly under due process of law and with appropriate consular protection.
3. Whenever a seafarer is detained for any reason in the territory of a Member, the competent authority should, if the seafarer so requests, immediately inform the flag State and the State of nationality of the seafarer. The competent authority should promptly inform the seafarer of the right to make such a request. The State of nationality of the seafarer should promptly notify the seafarer's next of kin. The competent authority should allow consular officers of these States immediate access to the seafarer and regular visits thereafter so long as the seafarer is detained.
4. Each Member should take measures, whenever necessary, to ensure the safety of seafarers from aggression and other unlawful acts while ships are in their territorial waters and especially in approaches to ports.
5. Every effort should be made by those responsible in port and on board a ship to facilitate shore leave for seafarers as soon as possible after a ship's arrival in port.

## **Most relevant provisions of the International Covenant on Civil and Political Rights**

### **Article 9**

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. ...

### **Article 10**

2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons.

### **Article 14**

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:
  - (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him; ...

## Most relevant provisions of the Vienna Convention on Consular Relations

### Article 36. Communication and contact with nationals of the sending State

1. With a view to facilitating the exercise of consular functions relating to nationals of the sending State:
  - (a) consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State;
  - (b) if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this subparagraph;
  - (c) consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgement. Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action.
2. The rights referred to in paragraph 1 of this article shall be exercised in conformity with the laws and regulations of the receiving State, subject to the proviso, however, that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under this article are intended.

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