ITF SEAFARERS SECTION

CRIMINALISATION TOOLKIT

ITF

THE INTERNATIONAL TRANSPORT WORKERS' FEDERATION (ITF) IS A DEMOCRATIC, AFFILIATE-LED GLOBAL FEDERATION OF 670 TRADE UNIONS IN 147 COUNTRIES, REPRESENTING OVER 18 MILLION WORKING MEN AND WOMEN IN ALL TRANSPORT SECTORS. THE ITF PASSIONATELY CAMPAIGNS FOR TRANSPORT WORKERS' RIGHTS, EQUALITY AND JUSTICE.

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CONTENTS

BRIEFING NOTES ON CRIMINALISATION AND UNFAIR TREATMENT 05

Introduction 05

Background 05

Legal measures to protect the seafarer 06

Cases of criminalisation 06

Fair Treatment Guidelines 09

ITF work within the IMO 09

The work of Seafarers' Rights International 10

Conclusion 12

EXPLANATORY NOTE - IMO/ILO GUIDELINES ON FAIR TREATMENT OF SEAFARERS IN THE EVENT OF A MARITIME ACCIDENT 13

Port or Coastal State responsibilities 13

Flag State responsibilities 16

Seafarer State responsibilities 16

Shipowner Responsibilities 17

Guidelines for Seafarers 17

INFORMATION SHEET ON HOW THE FAIR TREATMENT GUIDELINES HAVE BEEN IMPLEMENTED 19

CONTENTS CONTINUED

LETTER TO NATIONAL SHIPOWNERS 20

LETTER TO NATIONAL GOVERNMENTS 21

INFORMATION SHEET ON MANDATORY PROVISIONS FOR INVESTIGATIONS 22

The Code for International Standards and Recommended Practices for a Safety Investigation into a Marine Casualty or Marine Incident 23

ANNEXES 24

ANNEX 1:
The Code of International Standards and Recommended Practices for a Safety Investigation into a Marine Casualty or Marine Incident

ANNEX 2:
Guidelines on Fair Treatment of Seafarers in the Event of a Maritime Accident

ANNEX 3:
List of cases of Criminalisation

BRIEFING NOTES ON CRIMINALISATION AND UNFAIR TREATMENT

INTRODUCTION

Criminalisation is one of the most serious problems facing seafarers today. When there has been a maritime accident, or a pollution infringement, seafarers have often been detained and denied access to normal rules of fair play and justice with which to defend themselves against criminal charges. In recent years seafarers are also increasingly being detained as suspects of maritime crimes, such as smuggling of illicit cargo, or anchoring illegally whilst awaiting clearance for port entry.

Criminalisation and unfair treatment of seafarers is a worldwide problem and both seafarer unions and shipping companies wish to see action taken. Arising from the continued neglect of seafarers, the International Maritime Organisation (IMO) and International Labour Organisation (ILO) Guidelines on the Fair Treatment of Seafarers in the event of a maritime accident were adopted on 27 April 2006 and came into force on 1st July 2006. Unfortunately, many countries do not follow these Guidelines and the ITF wishes to see them more widely promoted and enforced. An additional concern is that unlike maritime accidents, maritime crimes are not covered by the Fair Treatment guidelines. We see that more of the current cases relate to maritime crimes where seafarers are treated as suspects and have their rights to proper legal proceedings denied.

BACKGROUND

Criminalisation of seafarers has been a problem for many years. Captain Andrzej Lasota's case of **UBC Savannah** is one of many that illustrates the injustice of criminalising seafarers. All crew onboard and the master were arrested when 225 kilograms of cocaine was found in the cargo hold at Altamira port, Mexico in July 2019. After three months in jail, the crew were released, but the captain was held in prison for more than 18 months. He was not given a translator during the court hearings. The Cyprian government, along with the ITF, shipowner and numerous seafarer agencies and shipowner associations, lobbied the Mexican government over Capt Lasota's case. After a different judge heard his case, he was finally released from prison in February 2021.

The arrest of the crew of the cargo ship **Flying** accused of precious wood smuggling in Madagascar in 2018 shows a gross violation of human rights. Spending three years in prison having been given 5 years' detention, the seafarers were then sentenced to 20 years forced labour as well as receiving a fine. The court did not provide details of the conviction, so it makes it difficult for legal representatives to accurately place an appeal. The ITF and the ITF Seafarers' Trust have written to the ILO and IMO asking that they make an intervention to the government of Madagascar.

Common complaints from seafarers include a lack of legal representation and interpretation services. Criminalisation has also meant negative consequences for the industry as for the seafarers involved there has been a reluctance to participate in accident enquires for fear of unfair charges being pursued against them personally.

Under legislation in certain countries seafarers are required to cooperate with accident investigations into maritime accidents. However, the information is privileged and anonymous, so there is no fear of the testimony being passed on and eventually used by prosecutors. The ITF would welcome this as a practical way forward and being adopted for use by all countries. We would always wish to see seafarers provide evidence to investigations for the purposes of improving safety, but without fear of any criminal consequences.

LEGAL MEASURES TO PROTECT THE SEAFARER

The Code for International Standards and Recommended Practices for a Safety Investigation into a Marine Casualty or Marine Incident (contained within SOLAS) sets out certain safeguards that should apply to seafarers when they are required to provide evidence. These are that the evidence should be provided at the earliest opportunity, and that the seafarer should be allowed to return to their ship, or be repatriated, as soon as possible.

In addition, the seafarer needs to be informed of the nature and basis of the marine safety investigation. This means being allowed access to legal advice so that they are aware of:

- any potential risk of incriminating themselves in any subsequent proceedings which might follow an investigation;
- their right not to self-incriminate and to remain silent, and
- any necessary protections that need to be provided to the seafarer to prevent their evidence to the marine safety investigation from being subsequently used against them.

Unlike the Fair Treatment Guidelines, these particular provisions are mandatory. A separate information sheet on The Code for International Standards and Recommended Practices for a Safety Investigation into a Marine Casualty or Marine Incident is provided in this toolkit.

The ILO Maritime Labour Convention 2006 (MLC) also offers protection for seafarers. Guideline B4.4.6 states that seafarers who are detained in a foreign port should be dealt with promptly under due process of law and with appropriate consular protection. Countries that have ratified the MLC are obliged to implement and follow the guidelines.

CASES OF CRIMINALISATION

The ITF have been assisting seafarers in several recent cases, both relating to maritime accidents and maritime crimes, including writing letters to authorities and courts, and lobbying for the release of seafarers. The cases also illustrate a demand for guidelines for the fair treatment of seafarers detained on suspicion of committing maritime crimes and measures to ensure that these will be followed.

In addition to the two cases highlighted earlier, we would like to put the spotlight on some other recent cases that the ITF has been engaged with. In August 2022, the oil tanker **Heroic Idun** was seized by the Equatorial Guinean Navy following a dispute with the Nigerian Navy over whether it could lawfully

load a crude cargo from Nigeria's Akpo storage and onto the vessel. The seizure came at a time of Nigerian authorities being extra watchful of oil theft, which largely takes place from onshore pipelines, not from an export line in a large vessel. The crew were transferred from Equitorial Guinea to Nigeria where they continued to be held until their final release.

15 of the 26 crew had been subjected to lengthy interrogations and not given reasons for their detention while denied access to legal representation. In November 2022, the entire crew were charged with falsely pretending to be victims of a piracy attack and attempting to deal with crude oil without lawful authority. The ITF have been strongly engaged in the case and highlighted the plight of the crew to the Equatorial Guinean authorities and the ILO. In May 2023, the crew and vessel were released by a Nigerian court after the owner and crew made a plea bargain on accepting charges and paying conviction and restitution fees to the government.

In 2021, the captain and three officers of the container ship **MSC Capucine R** were arrested at Iskenderun port, Turkey as suspects in drug trafficking. Turkish law enforcement officers had found 176 kilos of cocaine hidden in a container. 24 of the 25 crew were Ukrainians. The captain and three officers were detained without charge by Turkish authorities for more than seven months. The crew were held in a hotel before finally being released.

The ITF sees this as a case where local officials, keen to look effective against drug trafficking, are targeting seafarers on alleged smuggling charges. The ITF met with the Seafarers' Union of Turkey (TDS) and the lawyer representing the crew, and we also worked with the shipowner. TDS's intervention was crucial in getting the crew out of prison and into a hotel and then eventually home. It was a clear case of injustice in that the crew on board could not have known about the drugs which were sealed in a container before being loaded onto the vessel.

When the **Wakashio** went aground on a coral reef in Mauritius in July 2020, it leaked 1000 tonnes of fuel oil into the ocean, causing the worst ecological disaster the country has seen. The captain and chief officer were charged with endangering safe navigation. They were denied bail and detained for more than 16 months without a trial. Most of the remainder of the crew were put in "house arrest" in a local hotel, on the grounds that they were required as witnesses in a future trial. Two crew were held in hotels until the eventual trial in court just as witnesses.

ITF wrote to the Mauritian court asking it to consider factors that were adding to the stress and fatigue experienced by the crew. Some crew had been onboard longer than 12 months, beyond the legal limit of the MLC. The crew did not have access to the Internet or other means of communicating with their families. Many crew had been denied shore leave since September 2019. The ITF wrote to the President of Mauritius stating its concern about the treatment and lack of appropriate legal proceedings and publicised the case in the media. A court in Mauritius finally released the captain and chief officer in December 2021.

FAIR TREATMENT GUIDELINES

The IMO/ILO Guidelines on the Fair Treatment of Seafarers in the Event of a Maritime Accident were jointly agreed by the IMO and ILO in 2006. The IMO/ILO Guidelines represent the internationally accepted standard for the treatment of seafarers by investigating authorities. Unfortunately, these Guidelines have not been adequately enforced. The full details of the Guidelines are included in this toolkit.

It is therefore vitally important that affiliates lobby national administrations on criminalisation and promote the enforcement of the Guidelines on Fair Treatment. Local unions can help by showing solidarity with seafarers of a different nationality to the country where they find themselves detained. The ITF has also worked with the leading international employers' organisation, the International Chamber of Shipping (ICS), to further the objective of promoting the Guidelines.

In addition, criminalisation and unfair treatment of seafarers detained on suspicion of committing crimes is an issue of human rights. The IMO Legal Committee recognizes that detained seafarers should get legal representation, access to medical care, consular assistance and be treated fairly. Furthermore, seafarers should be considered innocent until proven guilty and should enjoy their human rights irrespective of their nationality and the flag of the vessel. All efforts should be made to improve the welfare of seafarers.

ITF WORK WITHIN THE IMO

As a result of the work of the ITF, working alongside industry partners, the IMO Legal Committee has made the criminalisation of seafarers' part of its work programme and it now seeks to promote the Guidelines as widely as possible.

The ITF presented the full Fair Treatment Guidelines to the IMO Legal Committee in April 2013. The paper was supported by 31 Member States, as well as the International Chamber of Shipping, the International Federation of Ship Masters Associations (IFSMA) the Nautical Institute, the International Salvage Union, the Cruise Line International Association and the International Christian Maritime Association.

A paper presented to the IMO Legal Committee in 2019 recognises that the Fair Treatment Guidelines has not properly addressed the fair treatment of seafarers detained on suspicion of committing maritime crimes. A joint IMO/ILO Working Group has been proposed to develop guidelines and recommendations on prevention of seafarers' involvement in maritime crimes and to ensure seafarers' right to fair treatment in cases of detention. The Legal Committee has agreed that fair treatment of seafarers detained on suspicion of committing maritime crimes is an issue that needs to be addressed.

The IMO Legal Committee in 2023 supported developing non-mandatory guidelines for the fair treatment of seafarers detained on suspicion of maritime crimes alongside a database of current cases by ship and seafarer. The guidelines would be loosely based around the existing Guidelines on fair treatment of seafarers involved in maritime accidents.

THE WORK OF SEAFARERS' RIGHTS INTERNATIONAL

SRI is a non-profit organisation that conducts strategic research in support of an efficient and fair maritime industry and the decent employment of seafarers. SRI was launched in 2010, and from its early days, the criminalisation of seafarers has been a focus of its work.

In 2012, SRI carried out a hard-hitting survey of 3480 seafarers of 68 different nationalities. 8% of seafarers and 24% of Masters surveyed had faced criminal charges in the course of their professional duties. The most frequent charges related to incidents of pollution, collision and fatal accidents. Seafarers were also asked about their experiences if they had faced criminal charges.

- 91% of seafarers who had faced criminal charges and who needed interpretation services were not provided interpretation
- 90% did not have legal representation
- 88% did not have their legal rights explained to them
- 80% felt intimidated or threatened.
- 46% said that they would be reluctant to cooperate fully and openly with casualty inquiries and accident investigations

Overall 81% of seafarers who faced criminal charges did not consider that they had received fair treatment. And 85% were concerned about criminalisation.

As part of the survey seafarers were asked for suggestions on how to improve their situation when facing criminal charges, and they asked for:

- more information on the risks they are exposed to in relation to criminal charges
- more information on their rights if they are defendants, complainants or witnesses
- legal and financial support when facing criminal charges
- a fair process and fair treatment when facing criminal charges
- a greater network of support from governments, the maritime industry, international organizations and lawyers if they do face criminal charges
- more uniform laws and procedures given the wide range of different crimes to which they are exposed.

SRI has conducted other surveys of seafarers. For example, in 2018, SRI conducted a face to face survey of 5200 seafarers in 10 labour supplying countries concerning their working conditions generally. 82.68% expressed concern about criminalisation in connection with incidents related to their work, such as fatal accidents, marine pollution and drugs found on ships.

ONGOING WORK AT THE INTERNATIONAL MARITIME ORGANIZATION (IMO)

Given the importance of the Guidelines on the Fair Treatment of seafarers in the event of a maritime accident jointly developed by the IMO and the International Labour Organization (ILO), the implementation of the Guidelines by member States is being monitored by the IMO Legal Committee.

In 2013, SRI surveyed the 173 member States of the IMO concerning the Guidelines and based on these results, work is continuing to encourage observation of the Guidelines by States and their implementation into national laws.

In 2017, SRI organised an international conference on the fair treatment of seafarers at the IMO in London. The conference was attended by Ministers, Deputy Ministers, Permanent Secretaries, Director Generals, Ambassadors and other government representatives as well as non-governmental organizations and professional individuals from over 50 States around the world. Over 30 powerful statements endorsed the fair treatment of seafarers.

In addition, SRI co-hosted with the Philippines Department of Labor and Employment a regional conference on the fair treatment of seafarers in Manila on 13 November 2018. Ambassadors and Embassy staff from 32 other Governments attended the conference. The conference concluded with the adoption of the Manila Statement by 11 regional States to: raise further awareness relating to the Guidelines; develop further education, training and human capacity relating to the Guidelines; and extend and develop further cooperation relating to the Guidelines.

KEY MESSAGES

Seafarers have the right to be treated fairly in all legal jurisdictions following a maritime accident. Whilst the Guidelines are voluntary, they seek to balance the rights and obligations of all those stakeholders - port or coastal States; flag States; the seafarers' States; shipowners; and seafarers – to ensure the fair treatment of seafarers.

- Seafarers need to be educated about the risks that they face in relation to investigations and criminal charges following a maritime accident.
- Seafarers need to be provided with basic protections in relation to investigations and criminal charges following a maritime accident.
- The maritime industry should continue its work to raise awareness about the Guidelines amongst all stakeholders and role players.
- States must cooperate at regional and international level in relation to the Guidelines.

Whilst seafarers are at risk of facing criminal charges following a maritime accident, they may also get caught up in allegations of criminal activity in other situations, such as drug smuggling, human trafficking, illegal cargo, bribery and corruption, security issues, or violating custom rules. Work to agree standards of fair treatment in relation to maritime crimes which do not arise out of a maritime accident is therefore a priority.

CONCLUSION

It is essential that National Governments implement the Guidelines on Fair Treatment for Seafarers in the event of a maritime accident. Accidents and pollution at sea can arise as a result of circumstances that are beyond the seafarers' control. When a vessel is involved in smuggling, transportation of illegal cargo or other criminal activities, it is common practice to detain the whole crew, sometimes for a long period of time, without there being justification for this. But if there is a media storm then the ship's crew can be the easiest target when public authorities seek to demonstrate they are taking action. Seafarers have a right to undertake their work without fear of being treated unfairly, or, even worse, placed in detention without recourse to fair justice and representation.

The Guidelines were adopted in 2006 and many countries respect them, but much more needs to be done. If Governments require technical assistance to implement the Guidelines, then the IMO Legal Committee has pledged to provide this. SRI can also provide technical assistance.

It is also important that seafarers are aware of the mandatory provisions contained within the Code for International Standards and Recommended Practices for a Safety Investigation into a Marine Casualty or Marine Incident.

EXPLANATORY NOTE – IMO/ILO GUIDELINES ON FAIR TREATMENT OF SEAFARERS IN THE EVENT OF A MARITIME ACCIDENT

The IMO/ILO Guidelines were drawn up by the Joint IMO/ILO Ad Hoc Expert Working Group on the Fair Treatment of Seafarers and were then adopted by the Legal Committee of the International Maritime Organisation (IMO) on 27th April 2006. In addition, they have also been adopted by the International Labour Organisation (ILO) Governing Body.

The Guidelines seek to recognise seafaring as a special category of workers and state that seafarers need special protection in the event of a maritime accident. The Guidelines place a number of obligations on public authorities as well as shipowners.

PORT OR COASTAL STATE RESPONSIBILITIES

- an investigation into a maritime accident within the jurisdiction of a Flag or Port State should be conducted in a fair and expeditious manner
- co-operate and communicate with all interested parties and take steps to provide seafarers with access to seafarers representative organisations
- ensure the human & economic rights of seafarers are looked after and preserve basic human dignity at all times
- take steps to ensure that sufficient subsistence is in place for seafarers' wages, accommodation, food and medical care

- ensure that legal due process is provided for including, where necessary, interpretation services. Also, for the seafarer to have independent legal advice and be advised of their right not to incriminate themselves and their right to remain silent
- to advise the seafarers of the basis of the investigation, i.e. on the basis of the IMO Code for the Investigation of Marine Casualties and Incidents, or as part of separate national procedures
- to ensure that the relevant Consular officers have access to the seafarers
- to make sure that any detained seafarers have access to family members, welfare organisations, the shipowner, their trade union, legal representatives and the Embassy or Consulate of the flag state and of their home country
- for the proper conduct of interviews after an incident taking into account the physical and mental condition of the seafarers
- to re-embark or repatriate the seafarers as soon as possible after a maritime accident and investigation and ensure proper due process protections are in place if charges are forthcoming
- consider non-custodial alternatives to pre-trial detention, including when as a witness
- promptly conclude investigations and any subsequent court hearing
- ensure compensation to any affected seafarers for any loss arising from detention which has arisen from wrongful, unreasonable or unjustified acts or omissions of the detaining port or coastal state
- in so far as allowed under national law ensure that a reasonable bond can be posted to allow for the release and repatriation of a detained seafarer whilst investigatory or judicial process is followed
- make sure that provisions of international maritime law are followed including exclusive flag state jurisdiction for collisions or other navigational incidents
- take steps to ensure that no discriminatory or retaliatory measures are taken against seafarers due to their participation in investigations

FLAG STATE RESPONSIBILITIES

- an investigation into a maritime accident within the jurisdiction of a Flag or Port State should be conducted in a fair and expeditious manner (also Guidelines for Port States)
- co-operate and communicate with all interested parties and take steps to provide seafarers with access to seafarers representative organisations (also Guidelines for Port States)
- participate directly in any casualty investigation under the IMO Code for the Investigation of Maritime Casualties and Incidents
- ensure that the shipowner honours their obligations to the seafarers involved in a maritime accident or investigation, including wages, subsistence, accommodation and medical care
- ensure that the shipowner cooperates in any flag, costal or port investigation
- assist seafarers in obtaining fair treatment, and assist shipowners in the event of an investigation by a port or coastal state
- if necessary, fund the repatriation of seafarers in the event that the shipowner fails to fulfil their responsibilities in this regard
- take steps to ensure consular officers are permitted access to the seafarers
- take all necessary measures to ensure fair treatment for seafarers on a vessel flying its flag, which may ultimately include using international dispute resolution mechanisms which can secure the prompt release of vessels and crews through a payment of a reasonable bond or financial security
- ensure no discriminatory or retaliatory measures are taken against seafarers due to their participation in investigations (also Guidelines for Port States)

SEAFARER STATE RESPONSIBILITIES

- co-operate and communicate with all interested parties and take steps to provide seafarers with access to seafarers representative organisations (also Guidelines for Port States)
- monitor the physical and mental wellbeing and treatment of seafarers of their nationality throughout the whole process
- if necessary, fund the repatriation of seafarers in the event that the shipowner fails to fulfil their responsibilities in this regard (also Guidelines for Flag States)
- take steps to ensure consular officers are permitted access to the seafarers (also Guidelines for Flag States)
- take steps to provide support and assistance, and fair treatment of seafarers of their nationality at all times during the investigation
- ensure that all relevant funds remitted by shipowners, the detaining state or any other state for detained seafarers, or for the support of those seafarers families, are delivered for the intended purposes
- take steps to ensure that no discriminatory or retaliatory measures are taken against seafarers due to their participation in investigations (also Guidelines for Port States)

SHIPOWNER RESPONSIBILITIES

The shipowners have an overriding duty to protect the interests of their crews, employed or engaged. This includes the seafarers' right to avoid self-incrimination and to receive fair treatment.

In addition, the shipowner also has a number of the same duties as the Port and Flag State as follows:

- take steps to ensure that no discriminatory or retaliatory measures are taken against seafarers due to their participation in investigations (also Guidelines for Port States)
- co-operate and communicate with all interested parties and take steps to provide seafarers with access to seafarers' representative organisations (also Guidelines for Port States)
- take action to expedite the Investigation
- encourage seafarers to cooperate with the Investigation, but taking into account their rights
- preserve evidence and minimize the need for the continued presence of the seafarer
- fulfil obligations in relation to repatriation, or take steps to re-embark seafarers
- take steps to ensure that sufficient subsistence is in place for seafarers' wages, accommodation, food and medical care (also Guidelines for Port States)

GUIDELINES FOR SEAFARERS

Seafarers need to fully understand that when statements are made to a port, coastal or flag state investigation these may potentially be used in a criminal investigation.

The seafarers may need to receive legal advice prior to such statements, to have access to interpretation services and to be aware of their right not to self-incriminate.

Seafarers should participate in an Investigation, having regard to their right not to self-incriminate, and provide truthful information.

INFORMATION SHEET ON HOW THE FAIR TREATMENT GUIDELINES HAVE BEEN IMPLEMENTED

National administrations have taken different approaches when seeking to implement the Guidelines on Fair Treatment for seafarers, some better than others. This is partly because of the overlap with the Code for the Investigation of Marine Casualties and Incidents, (the Code).

Certain national administrations have decided to pass the Guidelines into law alongside the Code, thereby making the Guidelines applicable only when there is an investigation into marine casualties or incidents conducted under the Code.

Other states have not actually passed new legislation on the Guidelines as they have advised that their existing laws provide adequate protection for the seafarers' human and legal rights, as specified in the Fair Treatment Guidelines. These states have often ensured that the legal principles contained in the Guidelines apply not only in the event of investigations under the Code, but in other criminal investigations and proceedings where seafarers might be involved.

There have also been differences not only in the scope of the application of the Guidelines, but also in how many of the legal principles are adopted. Many of the states who have adopted the Guidelines alongside the Code have simply repeated the text of the Guidelines, but those whose laws already adequately cover the Guidelines have not generally repeated them.

There are also differences in the legal instruments adopted. For example, those national administrations who have adopted the Guidelines in tandem with the Code have often used secondary legislation. The consequence of this is that sometimes secondary legislation can be in the form of recommendations rather than mandatory. For those states that have coverage of the contents of the Guidelines already these are mainly in national laws which are in the form of primary legislation and are therefore mandatory.

Often the differences outlined above are not just as a result of what legislation already exists. It can also depend on the different legal systems and traditions that apply in countries, which will then obviously impact on the implementation and enforcement of legislation.

Following the IMO Legal Committee meeting in 2013, and the SRI study the same year, template letters have been prepared that can be sent to National Shipowners and National Governments on enforcing the IMO/ILO Guidelines on the Fair Treatment of Seafarers in the Event of a Maritime Accident. These letters are annexed with the toolkit.

LETTER TO NATIONAL SHIPOWNERS

I am writing regarding the persistent problem of unfair treatment of seafarers by authorities following a casualty, incident or accident. This impacts upon the whole industry and it may be helpful if together we make a joint approach to our Government on this matter.

The International Transport Workers Federation is seeking to enforce the International Maritime Organisation (IMO) and International Labour Organisation (ILO) Guidelines on the Fair Treatment of Seafarers in the event of a maritime accident. The major employers' groupings, including the International Maritime Employers Committee, are joining us in calling for National Governments to address this problem.

As you are aware, criminalisation in the event of a maritime accident or maritime crime continues to be a major problem for seafarers. For example, in the case of the Heroic Idun the crew were detained for more than eight months in Equatorial Guinea on oil smuggling charges from Nigeria's Akbo's field. The ITF highlighted the plight of the crew to the Equatorial Guinean authorities and the ILO, and the crew and vessel were only released by a Nigerian court after the owner and crew entered a plea bargain. More recently we have also witnessed the cases of the X-Press Pearl and Stolt Groenland.

The above mentioned IMO/ILO Guidelines on the Fair Treatment of Seafarers in the Event of a Maritime Accident were jointly agreed by the IMO and ILO in 2006. Unfortunately, these Guidelines have not been adequately enforced.

A comprehensive survey conducted by the legal research centre, Seafarers' Rights International (SRI), found that almost one ship master in four had faced criminal charges. Of those seafarers who faced criminal charges more than 90% felt they did not receive fair treatment. More details can be found on the SRI website (http://seafarersrights.org/).

Criminalisation has also meant negative consequences for the industry as some seafarers have been reluctant to participate in accident enquires for fear of unfair charges being pursued against them personally.

If you are in agreement, we can have a meeting to discuss this in a little more detail, with a view to making a joint appeal to our Government for the full implementation and adherence to these Fair Treatment Guidelines.

I look forward to hearing from you in due course.

LETTER TO NATIONAL GOVERNMENTS

I am writing to bring to your urgent attention the growing problem of seafarers facing criminal charges in unacceptable circumstances.

The International Transport Workers Federation is seeking to enforce the International Maritime Organisation (IMO) and International Labour Organisation (ILO) Guidelines on the Fair Treatment of Seafarers in the event of a maritime accident.

I am writing to you specifically because:

- Criminalisation could impact upon our national seafarers when working abroad
- It is essential that the authorities in this country are briefed to ensure that the rights of foreign national seafarers are upheld if an accident or pollution incident should occur on our coastline
- We have a responsibility to all seafarers, including non-nationals, serving on board our flag state ships wherever they are in the world

Criminalisation in the event of a maritime accident continues to be a problem for seafarers. For example, when there has been a maritime accident in a country's jurisdiction, or a pollution infringement, seafarers have often been denied the opportunity to return home to help build their defence case in the wake of charges. Seafarers detained for maritime crimes are also on the increase. A notable case is that of the Heroic Idun where the crew were detained for more than eight months in Equatorial Guinea on oil smuggling charges before being released by the court following a plea bargain.

A comprehensive survey conducted by the legal research centre, Seafarers' Rights International, found that almost one ship master in four had not received fair treatment at some stage in their career. Common complaints were a lack of legal representation and interpretation services. Criminalisation has also meant negative consequences for the wider shipping industry as there has been reluctance from some seafarers to participate in accident enquires for fear of unfair charges being pursued against them personally.

The major employers' groupings, including the International Maritime Employers Committee, are joining us in calling for National Governments to address this problem. The above mentioned IMO/ILO Guidelines on the Fair Treatment of Seafarers in the Event of a Maritime Accident were jointly agreed by the IMO and ILO in 2006. Unfortunately, these Guidelines have not been adequately enforced.

I would be most obliged if you would agree to an early meeting so that we can discuss this growing problem in more detail. In addition to the issues raised above we would wish to see the Government support the industry's efforts to combat this problem in international forums.

Many thanks in advance for your cooperation.

INFORMATION SHEET ON MANDATORY PROVISIONS FOR INVESTIGATIONS

THE CODE FOR INTERNATIONAL STANDARDS AND RECOMMENDED PRACTICES FOR A SAFETY INVESTIGATION INTO A MARINE CASUALTY OR MARINE INCIDENT

The SOLAS Convention contains a Code on International Standards and Recommended Practices for a Safety Investigation into a Marine Casualty or Marine Accident.

This Code entered into force in January 2010. Affiliates should therefore be aware of this important Code as it provides protection for seafarers in the event that they are caught up in a maritime casualty or other incident.

Under the Code some standards are recommended practices, but there are a number of mandatory provisions, including the section on Obtaining Evidence from Seafarers. The relevant provisions are contained in chapter 12.

The full Code is attached but the key passages are in Chapter 12 and are as follows:

12.1 Where a marine safety investigation requires a seafarer to provide evidence this shall be taken at the earliest opportunity. The seafarer should be allowed to return to his/her ship, or be repatriated at the earliest possible opportunity. The seafarers' human rights shall be upheld at all times.

12.2 All seafarers from whom evidence is required shall be informed of the nature and basis of the marine safety investigation. Also a seafarer from whom evidence is sought shall be informed, and allowed access to legal advice, regarding:

01. **Any potential risk that they might incriminate themselves in any proceedings subsequent to the marine safety investigation**
02. **Any right not to self-incriminate or to remain silent**
03. **Any protections afforded to the seafarer to prevent the evidence being used against them if they provide the evidence to the marine safety investigation**

These provisions are not as comprehensive as the IMO/ILO Fair Treatment Guidelines but they still offer valuable protections and, most importantly, they are mandatory.

ANNEXES

RESOLUTION MSC.255(84)
(adopted on 16 May 2008)

ADOPTION OF THE CODE OF THE INTERNATIONAL STANDARDS AND RECOMMENDED PRACTICES FOR A SAFETY INVESTIGATION INTO A MARINE CASUALTY OR MARINE INCIDENT (CASUALTY INVESTIGATION CODE)

THE MARITIME SAFETY COMMITTEE,

RECALLING Article 28(b) of the Convention on the International Maritime Organization concerning the function of the Committee,

NOTING with concern that, despite the best endeavours of the Organization, casualties and incidents resulting in loss of life, loss of ships and pollution of the marine environment continue to occur,

NOTING ALSO that the safety of seafarers and passengers and the protection of the marine environment can be enhanced by timely and accurate reports identifying the circumstances and causes of marine casualties and incidents,

NOTING FURTHER the importance of the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982, and of the customary international law of the sea,

NOTING IN ADDITION the responsibilities of flag States under the provisions of the International Convention for the Safety of Life at Sea, 1974 (regulation I/21) (hereinafter referred to as "the Convention"), the International Convention on Load Lines, 1966 (article 23) and the International Convention for the Prevention of Pollution from Ships, 1973 (article 12), to conduct casualty investigations and to supply the Organization with relevant findings,

CONSIDERING the need to ensure that all very serious marine casualties are investigated,

CONSIDERING ALSO the Guidelines on fair treatment of seafarers in the event of a maritime accident (resolution A.987(24)),

ACKNOWLEDGING that the investigation and proper analysis of marine casualties and incidents can lead to greater awareness of casualty causation and result in remedial measures, including better training, for the purpose of enhancing safety of life at sea and protection of the marine environment,

RECOGNIZING the need for a code to provide, as far as national laws allow, a standard approach to marine casualty and incident investigation with the objective of preventing marine casualties and incidents in the future,

RECOGNIZING ALSO the international nature of shipping and the need for co-operation between Governments having a substantial interest in a marine casualty or incident for the purpose of determining the circumstances and causes thereof,

NOTING resolution MSC.257(84) by which it adopted amendments to chapter XI-1 of the Convention to make parts I and II of the Code of the International Standards and

Recommended Practices for a Safety Investigation into a Marine Casualty or Marine Incident mandatory under the Convention,

HAVING CONSIDERED, at its eighty-fourth session, the text of the proposed Casualty Investigation Code,

1. ADOPTS the Code of the International Standards and Recommended Practices for a Safety Investigation into a Marine Casualty or Marine Incident (Casualty Investigation Code), set out in the Annex to the present resolution;

2. INVITES Contracting Governments to the Convention to note that the Code will take effect on [1 January 2010] upon entry into force of the amendments to regulation XI-1/6 of the Convention;

3. REQUESTS the Secretary-General of the Organization to transmit certified copies of the present resolution and the text of the Code contained in the Annex to all Contracting Governments to the Convention;

4. FURTHER REQUESTS the Secretary-General of the Organization to transmit copies of the present resolution and the text of the Code contained in the Annex to all Members of the Organization which are not Contracting Governments to the Convention.

ANNEX

CODE OF THE INTERNATIONAL STANDARDS AND RECOMMENDED PRACTICES FOR A SAFETY INVESTIGATION INTO A MARINE CASUALTY OR MARINE INCIDENT (CASUALTY INVESTIGATION CODE)

Table of Contents

	Page
Foreword	4
Part I – General provisions	6
Chapter 1 – Purpose	6
Chapter 2 – Definitions	7
Chapter 3 – Application of chapters in Part II and III	10
Part II – Mandatory standards	10
Chapter 4 – Marine safety investigation Authority	10
Chapter 5 – Notification	11
Chapter 6 – Requirement to investigate very serious marine casualties	11
Chapter 7 – Flag State's agreement with another substantially interested State to conduct a marine safety investigation	12
Chapter 8 – Powers of an investigation	12
Chapter 9 – Parallel investigations	12
Chapter 10 – Co-operation	13
Chapter 11 – Investigation not to be subject to external direction	13
Chapter 12 – Obtaining evidence from seafarers	13
Chapter 13 – Draft marine safety investigation reports	14
Chapter 14 – Marine safety investigation reports	14
Part III – Recommended practices	16
Chapter 15 – Administrative responsibilities	16
Chapter 16 – Principles of investigation	16
Chapter 17 – Investigation of marine casualties (other than very serious marine casualties) and marine incidents	18
Chapter 18 – Factors that should be taken into account when seeking agreement under chapter 7 of Part II	18
Chapter 19 – Acts of unlawful interference	19
Chapter 20 – Notification to parties involved and commencement of an investigation	19
Chapter 21 – Co-ordinating an investigation	20
Chapter 22 – Collection of evidence	21
Chapter 23 – Confidentiality of information	22
Chapter 24 – Protection for witnesses and involved parties	23
Chapter 25 – Draft and final report	23
Chapter 26 – Re-opening an investigation	24

Foreword

1 This Code incorporates and builds on the best practices in marine casualty and marine incident investigation that were established by the Code for the Investigation of Marine Casualties and Incidents, adopted in November 1997 by the International Maritime Organization (the Organization), by resolution A.849(20). The Code for the Investigation of Marine Casualties and Incidents sought to promote co-operation and a common approach to marine casualty and marine incident investigations between States.

Background

2 The Organization has encouraged co-operation and recognition of mutual interest through a number of resolutions. The first was resolution A.173(ES.IV) (Participation in Official Inquiries into Maritime Casualties) adopted in November 1968. Other resolutions followed including: resolution A.322 (The Conduct of Investigations into Casualties) adopted in November 1975; resolution A.440(XI) (Exchange of Information for Investigations into Marine Casualties) and resolution A.442(XI) (Personnel and Material Resource Needs of Administrations for the Investigation of Casualties and the Contravention of Conventions), both adopted in November 1979; resolution A.637(16) (Co-operation in Maritime Casualty Investigations) adopted in 1989.

3 These individual resolutions were amalgamated and expanded by the Organization with the adoption of the Code for the Investigation of Marine Casualties and Incidents. Resolution A.884(21) (Amendments to the Code for the Investigation of Marine Casualties and Incidents resolution A.849(20)), adopted in November 1999, enhanced the Code by providing guidelines for the investigation of human factors.

4 The International Convention for the Safety of Life at Sea (SOLAS), 1948, included a provision requiring flag State Administrations to conduct investigations into any casualty suffered by a ship of its flag if an investigation may assist in identifying regulatory issues as a contributing factor. This provision was retained in the 1960 and 1974 SOLAS Conventions. It was also included in the International Convention on Load Lines, 1966. Further, flag States are required to inquire into certain marine casualties and marine incidents occurring on the high seas*.

5 The sovereignty of a coastal State extends beyond its land and inland waters to the extent of its territorial sea**. This jurisdiction gives the coastal State an inherent right to investigate marine casualties and marine incidents connected with its territory. Most national Administrations have legal provisions to cover the investigation of a shipping incident within its inland waters and territorial sea, regardless of the flag.

* Reference is made to the United Nations Convention on the Law of the Sea (UNCLOS), article 94(7) or requirements of international and customary laws.

** Reference is made to the United Nations Convention on the Law of the Sea (UNCLOS), article 2 or requirements of international and customary laws.

Treatment of Seafarers

6 Most recently, the International Labour Organization's Maritime Labour Convention, 2006 (which has not yet come into force), provides a provision for the investigation of some serious marine casualties as well as setting out working conditions for seafarers. Recognizing the need for special protection for seafarers during an investigation, the Organization adopted, in December 2005, the "Guidelines on Fair Treatment of Seafarers in the Event of a Maritime Accident" through resolution A.987(24). The Guidelines were promulgated by the IMO and the ILO on 1 July 2006.

Adoption of the Code

7 Since the adoption of the first SOLAS Convention, there have been extensive changes in the structure of the international maritime industry and changes in international law. These changes have potentially increased the number of States with an interest in the process and outcomes of marine safety investigations, in the event of a marine casualty or marine incident, increasing the potential for jurisdictional and other procedural differences between affected States.

8 This Code, while it specifies some mandatory requirements, recognizes the variations in international and national laws in relation to the investigation of marine casualties and marine incidents. The Code is designed to facilitate objective marine safety investigations for the benefit of flag States, coastal States, the Organization and the shipping industry in general.

PART I

GENERAL PROVISIONS

Chapter 1

PURPOSE

1.1 The objective of this Code is to provide a common approach for States to adopt in the conduct of marine safety investigations into marine casualties and marine incidents. Marine safety investigations do not seek to apportion blame or determine liability. Instead a marine safety investigation, as defined in this Code, is an investigation conducted with the objective of preventing marine casualties and marine incidents in the future. The Code envisages that this aim will be achieved through States:

.1 applying consistent methodology and approach, to enable and encourage a broad ranging investigation, where necessary, in the interests of uncovering the causal factors and other safety risks; and

.2 providing reports to the Organization to enable a wide dissemination of information to assist the international marine industry to address safety issues.

1.2 A marine safety investigation should be separate from, and independent of, any other form of investigation. However, it is not the purpose of this Code to preclude any other form of investigation, including investigations for action in civil, criminal and administrative proceedings. Further, it is not the intent of the Code for a State or States conducting a marine safety investigation to refrain from fully reporting on the causal factors of a marine casualty or marine incident because blame or liability, may be inferred from the findings.

1.3 This Code recognizes that under the Organization's instruments, each flag State has a duty to conduct an investigation into any casualty occurring to any of its ships, when it judges that such an investigation may assist in determining what changes in the present regulations may be desirable, or if such a casualty has produced a major deleterious effect upon the environment. The Code also takes into account that a flag State shall* cause an inquiry to be held, by or before a suitably qualified person or persons into certain marine casualties or marine incidents of navigation on the high seas. However, the Code also recognizes that where a marine casualty or marine incident occurs within the territory, including the territorial sea, of a State, that State has a right** to investigate the cause of any such marine casualty or marine incident which might pose a risk to life or to the environment, involve the coastal State's search and rescue authorities, or otherwise affect the coastal State.

* Reference is made to the United Nations Convention on the Law of the Sea (UNCLOS), article 94 or requirements of international and customary laws.

** Reference is made to the United Nations Convention on the Law of the Sea (UNCLOS), article 2 or requirements of international and customary laws.

Chapter 2

DEFINITIONS

When the following terms are used in the mandatory standards and recommended practices for marine safety investigations they have the following meaning.

2.1 An *agent* means any person, natural or legal, engaged on behalf of the owner, charterer or operator of a ship, or the owner of the cargo, in providing shipping services, including managing arrangements for the ship being the subject of a marine safety investigation.

2.2 A *causal factor* means actions, omissions, events or conditions, without which:

.1 the marine casualty or marine incident would not have occurred; or

.2 adverse consequences associated with the marine casualty or marine incident would probably not have occurred or have been as serious;

.3 another action, omission, event or condition, associated with an outcome in .1 or .2, would probably not have occurred.

2.3 A *coastal State* means a State in whose territory, including its territorial sea, a marine casualty or marine incident occurs.

2.4 *Exclusive economic zone* means the exclusive economic zone as defined by article 55 of the United Nations Convention on the Law of the Sea.

2.5 *Flag State* means a State whose flag a ship is entitled to fly.

2.6 *High seas* means the high seas as defined in article 86 of the United Nations Convention on the Law of the Sea.

2.7 *Interested party* means an organization, or individual, who, as determined by the marine safety investigating State(s), has significant interests, rights or legitimate expectations with respect to the outcome of a marine safety investigation.

2.8 *International Safety Management (ISM) Code* means the International Management Code for the Safe Operation of Ships and for Pollution Prevention as adopted by the Organization by resolution A.741(18), as amended.

2.9 A *marine casualty* means an event, or a sequence of events, that has resulted in any of the following which has occurred directly in connection with the operations of a ship:

.1 the death of, or serious injury to, a person;

.2 the loss of a person from a ship;

.3 the loss, presumed loss or abandonment of a ship;

.4 material damage to a ship;

.5 the stranding or disabling of a ship, or the involvement of a ship in a collision;

.6 material damage to marine infrastructure external to a ship, that could seriously endanger the safety of the ship, another ship or an individual; or

.7 severe damage to the environment, or the potential for severe damage to the environment, brought about by the damage of a ship or ships.

However, a marine casualty does not include a deliberate act or omission, with the intention to cause harm to the safety of a ship, an individual or the environment.

2.10 A *marine incident* means an event, or sequence of events, other than a marine casualty, which has occurred directly in connection with the operations of a ship that endangered, or, if not corrected, would endanger the safety of the ship, its occupants or any other person or the environment.

However, a marine incident does not include a deliberate act or omission, with the intention to cause harm to the safety of a ship, an individual or the environment.

2.11 A *marine safety investigation* means an investigation or inquiry (however referred to by a State), into a marine casualty or marine incident, conducted with the objective of preventing marine casualties and marine incidents in the future. The investigation includes the collection of, and analysis of, evidence, the identification of causal factors and the making of safety recommendations as necessary.

2.12 A *marine safety investigation report* means a report that contains:

.1 a summary outlining the basic facts of the marine casualty or marine incident and stating whether any deaths, injuries or pollution occurred as a result;

.2 the identity of the flag State, owners, operators, the company as identified in the safety management certificate, and the classification society (subject to any national laws concerning privacy);

.3 where relevant the details of the dimensions and engines of any ship involved, together with a description of the crew, work routine and other matters, such as time served on the ship;

.4 a narrative detailing the circumstances of the marine casualty or marine incident;

.5 analysis and comment on the causal factors including any mechanical, human and organizational factors;

.6 a discussion of the marine safety investigation’s findings, including the identification of safety issues, and the marine safety investigation’s conclusions; and

.7 where appropriate, recommendations with a view to preventing future marine casualties and marine incidents.

2.13 *Marine safety investigation Authority* means an Authority in a State, responsible for conducting investigations in accordance with this Code.

2.14 *Marine safety investigating State(s)* means the flag State or, where relevant, the State or States that take the responsibility for the conduct of the marine safety investigation as mutually agreed in accordance with this Code.

2.15 A *marine safety record* means the following types of records collected for a marine safety investigation:

.1 all statements taken for the purpose of a marine safety investigation;

.2 all communications between persons pertaining to the operation of the ship;

.3 all medical or private information regarding persons involved in the marine casualty or marine incident;

.4 all records of the analysis of information or evidential material acquired in the course of a marine safety investigation;

.5 information from the voyage data recorder.

2.16 A *material damage* in relation to a marine casualty means:

.1 damage that:

.1.1 significantly affects the structural integrity, performance or operational characteristics of marine infrastructure or a ship; and

.1.2 requires major repair or replacement of a major component or components; or

.2 destruction of the marine infrastructure or ship.

2.17 A *seafarer* means any person who is employed or engaged or works in any capacity on board a ship.

2.18 A *serious injury* means an injury which is sustained by a person, resulting in incapacitation where the person is unable to function normally for more than 72 hours, commencing within seven days from the date when the injury was suffered.

2.19 A *severe damage to the environment* means damage to the environment which, as evaluated by the State(s) affected, or the flag State, as appropriate, produces a major deleterious effect upon the environment.

2.20 S*ubstantially interested State* means a State:

.1 which is the flag State of a ship involved in a marine casualty or marine incident; or

.2 which is the coastal State involved in a marine casualty or marine incident; or

.3 whose environment was severely or significantly damaged by a marine casualty (including the environment of its waters and territories recognized under international law); or

.4 where the consequences of a marine casualty or marine incident caused, or threatened, serious harm to that State or to artificial islands, installations, or structures over which it is entitled to exercise jurisdiction; or

.5 where, as a result of a marine casualty, nationals of that State lost their lives or received serious injuries; or

.6 that has important information at its disposal that the marine safety investigating State(s) consider useful to the investigation; or

.7 that for some other reason establishes an interest that is considered significant by the marine safety investigating State(s).

2.21 *Territorial sea* means territorial sea as defined by Section 2 of Part II of the United Nations Convention on the Law of the Sea.

2.22 A *very serious marine casualty* means a marine casualty involving the total loss of the ship or a death or severe damage to the environment.

Chapter 3

APPLICATION OF CHAPTERS IN PARTS II AND III

3.1 Part II of this Code contains mandatory standards for marine safety investigations. Some clauses apply only in relation to certain categories of marine casualties and are mandatory only for marine safety investigations into those marine casualties.

3.2 Clauses in Part III of this Code may refer to clauses in this part that apply only to certain marine casualties. The clauses in Part III may recommend that such clauses be applied in marine safety investigations into other marine casualties or marine incidents.

PART II

MANDATORY STANDARDS

Chapter 4

MARINE SAFETY INVESTIGATION AUTHORITY

4.1 The Government of each State shall provide the Organization with detailed contact information of the marine safety investigation Authority(ies) carrying out marine safety investigations within their State.

Chapter 5

NOTIFICATION

5.1 When a marine casualty occurs on the high seas or in an exclusive economic zone, the flag State of a ship, or ships, involved, shall notify other substantially interested States as soon as is reasonably practicable.

5.2 When a marine casualty occurs within the territory, including the territorial sea, of a coastal State, the flag State, and the coastal State, shall notify each other and between them notify other substantially interested States as soon as is reasonably practicable.

5.3 Notification shall not be delayed due to the lack of complete information.

5.4 **Format and content**: The notification shall contain as much of the following information as is readily available:

.1 the name of the ship and its flag State;

.2 the IMO ship identification number;

.3 the nature of the marine casualty;

.4 the location of the marine casualty;

.5 time and date of the marine casualty;

.6 the number of any seriously injured or killed persons;

.7 consequences of the marine casualty to individuals, property and the environment; and

.8 the identification of any other ship involved.

Chapter 6

REQUIREMENT TO INVESTIGATE VERY SERIOUS MARINE CASUALTIES

6.1 A marine safety investigation shall be conducted into every very serious marine casualty.

6.2 Subject to any agreement in accordance with chapter 7, the flag State of a ship involved in a very serious marine casualty is responsible for ensuring that a marine safety investigation is conducted and completed in accordance with this Code.

Chapter 7

FLAG STATE'S AGREEMENT WITH ANOTHER SUBSTANTIALLY INTERESTED STATE TO CONDUCT A MARINE SAFETY INVESTIGATION

7.1 Without limiting the rights of States to conduct their own separate marine safety investigation, where a marine casualty occurs within the territory, including territorial sea, of a State, the flag State(s) involved in the marine casualty and the coastal State shall consult to seek agreement on which State or States will be the marine safety investigating State(s) in accordance with a requirement, or a recommendation acted upon, to investigate under this Code.

7.2 Without limiting the rights of States to conduct their own separate marine safety investigation, if a marine casualty occurs on the high seas or in the exclusive economic zone of a State, and involves more than one flag State, then the States shall consult to seek agreement on which State or States will be the marine safety investigating State(s) in accordance with a requirement, or a recommendation acted upon, to investigate under this Code.

7.3 For a marine casualty referred to in paragraphs 7.1 or 7.2, agreement may be reached by the relevant States with another substantially interested State for that State or States to be the marine safety investigating State(s).

7.4 Prior to reaching an agreement, or if an agreement is not reached, in accordance with paragraphs 7.1, 7.2 or 7.3, then the existing obligations and rights of States under this Code, and under other international laws, to conduct a marine safety investigation, remain with the respective parties to conduct their own investigation.

7.5 By fully participating in a marine safety investigation conducted by another substantially interested State, the flag State shall be considered to fulfil its obligations under this Code, SOLAS regulation I/21 and article 94, section 7 of the United Nations Convention on the Law of the Sea.

Chapter 8

POWERS OF AN INVESTIGATION

8.1 All States shall ensure that their national laws provide investigator(s) carrying out a marine safety investigation with the ability to board a ship, interview the master and crew and any other person involved, and acquire evidential material for the purposes of a marine safety investigation.

Chapter 9

PARALLEL INVESTIGATIONS

9.1 Where the marine safety investigating State(s) is conducting a marine safety investigation under this Code, nothing prejudices the right of another substantially interested State to conduct its own separate marine safety investigation.

9.2 While recognizing that the marine safety investigating State(s) shall be able to fulfil obligations under this Code, the marine safety investigating State(s) and any other substantially interested State conducting a marine safety investigation shall seek to co-ordinate the timing of their investigations, to avoid conflicting demands upon witnesses and access to evidence, where possible.

Chapter 10

CO-OPERATION

10.1 All substantially interested States shall co-operate with the marine safety investigating State(s) to the extent practicable. The marine safety investigating State(s) shall provide for the participation of the substantially interested States to the extent practicable*.

Chapter 11

INVESTIGATION NOT TO BE SUBJECT TO EXTERNAL DIRECTION

11.1 Marine safety investigating State(s) shall ensure that investigator(s) carrying out a marine safety investigation are impartial and objective. The marine safety investigation shall be able to report on the results of a marine safety investigation without direction or interference from any persons or organizations who may be affected by its outcome.

* The reference to “extent practicable” may be taken to mean, as an example, that co-operation or participation is limited because national laws make it impracticable to fully co-operate or participate.

Chapter 12

OBTAINING EVIDENCE FROM SEAFARERS

12.1 Where a marine safety investigation requires a seafarer to provide evidence to it, the evidence shall be taken at the earliest practical opportunity. The seafarer shall be allowed to return to his/her ship, or be repatriated at the earliest possible opportunity. The seafarers human rights shall, at all times, be upheld.

12.2 All seafarers from whom evidence is sought shall be informed of the nature and basis of the marine safety investigation. Further, a seafarer from whom evidence is sought shall be informed, and allowed access to legal advice, regarding:

.1 any potential risk that they may incriminate themselves in any proceedings subsequent to the marine safety investigation;

.2 any right not to self-incriminate or to remain silent;

.3 any protections afforded to the seafarer to prevent the evidence being used against them if they provide the evidence to the marine safety investigation.

Chapter 13

DRAFT MARINE SAFETY INVESTIGATION REPORTS

13.1 Subject to paragraphs 13.2 and 13.3, where it is requested, the marine safety investigating State(s) shall send a copy of a draft report to a substantially interested State to allow the substantially interested State to make comment on the draft report.

13.2 Marine safety investigating State(s) are only bound to comply with paragraph 13.1 where the substantially interested State receiving the report guarantees not to circulate, nor cause to circulate, publish or give access to the draft report, or any part thereof, without the express consent of the marine safety investigating State(s) or unless such reports or documents have already been published by the marine safety investigating State(s).

13.3 The marine safety investigating State(s) are not bound to comply with paragraph 13.1 if:

.1 the marine safety investigating State(s) request that the substantially interested State receiving the report to affirm that evidence included in the draft report will not be admitted in civil or criminal proceedings against a person who gave the evidence; and

.2 the substantially interested State refuses to provide such an affirmation.

13.4 The marine safety investigating State(s) shall invite the substantially interested States to submit their comments on the draft report within 30 days or some other mutually agreed period. The marine safety investigating State(s) shall consider the comments before preparing the final report and where the acceptance or rejection of the comments will have direct impact on the interests of the State that submitted them, the marine safety investigating State(s) shall notify the substantially interested State of the manner in which the comments were

addressed. If the marine safety investigating State(s) receives no comments after the 30 days or the mutually agreed period has expired, then it may proceed to finalize the report.

13.5 The marine safety investigating State(s) shall seek to fully verify the accuracy and completeness of the draft report by the most practical means.

Chapter 14

MARINE SAFETY INVESTIGATION REPORTS

14.1 The marine safety investigating State(s) shall submit the final version of a marine safety investigation report to the Organization for every marine safety investigation conducted into a very serious marine casualty.

14.2 Where a marine safety investigation is conducted into a marine casualty or marine incident, other than a very serious marine casualty, and a marine safety investigation report is produced which contains information which may prevent or lessen the seriousness of marine casualties or marine incidents in the future, the final version shall be submitted to the Organization.

14.3 The marine safety investigation report referred in paragraphs 14.1 and 14.2 shall utilize all the information obtained during a marine safety investigation, taking into account its scope, required to ensure that all the relevant safety issues are included and understood so that safety action can be taken as necessary.

14.4 The final marine safety investigation report shall be made available to the public and the shipping industry by the marine safety investigating State(s), or the marine safety investigating State(s) shall undertake to assist the public and the shipping industry with details, necessary to access the report, where it is published by another State or the Organization.

PART III

RECOMMENDED PRACTICES

Chapter 15

ADMINISTRATIVE RESPONSIBILITIES

15.1 States should ensure that marine safety investigating Authorities have available to them sufficient material and financial resources and suitably qualified personnel to enable them to facilitate the State's obligations to undertake marine safety investigations into marine casualties and marine incidents under this Code.

15.2 Any investigator forming part of a marine safety investigation should be appointed on the basis of the skills outlined in resolution A.996(25) for investigators.

15.3 However, paragraph 15.2 does not preclude the appropriate appointment of investigators with necessary specialist skills to form part of a marine safety investigation on a temporary basis,

neither does it preclude the use of consultants to provide expert advice on any aspect of a marine safety investigation.

15.4 Any person who is an investigator, in a marine safety investigation, or assisting a marine safety investigation, should be bound to operate in accordance with this Code.

Chapter 16

PRINCIPLES OF INVESTIGATION

16.1 **Independence**: A marine safety investigation should be unbiased to ensure the free flow of information to it.

16.1.1 In order to achieve the outcome in paragraph 16.1, the investigator(s) carrying out a marine safety investigation should have functional independence from:

.1 the parties involved in the marine casualty or marine incident;

.2 anyone who may make a decision to take administrative or disciplinary action against an individual or organization involved in a marine casualty or marine incident; and

.3 judicial proceedings;

16.1.2 The investigator(s) carrying out a marine safety investigation should be free of interference from the parties in .1, .2 and .3 of paragraph 16.1.1 with respect to:

.1 the gathering of all available information relevant to the marine casualty or marine incident, including voyage data recordings and vessel traffic services recordings;

.2 analysis of evidence and the determination of causal factors;

.3 drawing conclusions relevant to the causal factors;

.4 distributing a draft report for comment and preparation of the final report; and

.5 if appropriate, the making of safety recommendations.

16.2 **Safety focused**: It is not the objective of a marine safety investigation to determine liability, or apportion blame. However, the investigator(s) carrying out a marine safety investigation should not refrain from fully reporting on the causal factors because fault or liability may be inferred from the findings.

16.3 **Co-operation**: Where it is practicable and consistent with the requirements and recommendations of this Code, in particular chapter 10 on Co-operation, the marine safety investigating State(s) should seek to facilitate maximum co-operation between substantially interested States and other persons or organizations conducting an investigation into a marine casualty or marine incident.

16.4 **Priority**: A marine safety investigation should, as far as possible, be afforded the same priority as any other investigation, including investigations by a State for criminal purposes being conducted into the marine casualty or marine incident.

16.4.1 In accordance with paragraph 16.4 investigator(s) carrying out a marine safety investigation should not be prevented from having access to evidence in circumstances where another person or organization is carrying out a separate investigation into a marine casualty or marine incident.

16.4.2 The evidence for which ready access should be provided should include:

.1 survey and other records held by the flag State, the owners, and classification societies;

.2 all recorded data, including voyage data recorders; and

.3 evidence that may be provided by government surveyors, coastguard officers, vessel traffic service operators, pilots or other marine personnel.

16.5 **Scope of a marine safety investigation**: Proper identification of causal factors requires timely and methodical investigation, going far beyond the immediate evidence and looking for underlying conditions, which may be remote from the site of the marine casualty or marine incident, and which may cause other future marine casualties and marine incidents. Marine safety investigations should therefore be seen as a means of identifying not only immediate causal factors but also failures that may be present in the whole chain of responsibility.

Chapter 17

INVESTIGATION OF MARINE CASUALTIES (OTHER THAN VERY SERIOUS CASUALTIES) AND MARINE INCIDENTS

17.1 A marine safety investigation should be conducted into marine casualties (other than very serious marine casualties – which are addressed in chapter 6 of this Code) and marine incidents, by the flag State of a ship involved, if it is considered likely that a marine safety investigation will provide information that can be used to prevent marine casualties and marine incidents in the future.

17.2 Chapter 7 contains the mandatory requirements for determining who the marine safety investigating State(s) are for a marine casualty. Where the occurrence being investigated in accordance with this chapter is a marine incident, chapter 7 should be followed as a recommended practice as if it referred to marine incidents.

Chapter 18

FACTORS THAT SHOULD BE TAKEN INTO ACCOUNT WHEN SEEKING AGREEMENT UNDER CHAPTER 7 OF PART II

18.1 When the flag State(s), a coastal State (if involved) or other substantially interested States are seeking to reach agreement, in accordance with chapter 7 of Part II on which State or State(s) will be the marine safety investigating State(s) under this Code, the following factors should be taken into account:

.1 whether the marine casualty or marine incident occurred in the territory, including territorial sea, of a State;

.2 whether the ship or ships involved in a marine casualty or marine incident occurring on the high seas, or in the exclusive economic zone, subsequently sail into the territorial sea of a State;

.3 the resources and commitment required of the flag State and other substantially interested States;

.4 the potential scope of the marine safety investigation and the ability of the flag State or another substantially interested State to accommodate that scope;

.5 the need of the investigator(s) carrying out a marine safety investigation to access evidence and consideration of the State or States best placed to facilitate that access to evidence;

.6 any perceived or actual adverse effects of the marine casualty or marine incident on other States;

.7 the nationality of the crew, passengers and other persons affected by the marine casualty or marine incident.

Chapter 19

ACTS OF UNLAWFUL INTERFERENCE

19.1 If in the course of a marine safety investigation it becomes known or is suspected that an offence is committed under articles 3, 3*bis*, 3*ter* or 3*quarter* of the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 1988, the marine safety investigation Authority should immediately seek to ensure that the maritime security Authorities of the State(s) concerned are informed.

Chapter 20

NOTIFICATION TO PARTIES INVOLVED AND COMMENCEMENT OF AN INVESTIGATION

20.1 When a marine safety investigation is commenced under this Code, the master, the owner and agent of a ship involved in the marine casualty or marine incident being investigated, should be informed as soon as practicable of:

.1 the marine casualty or marine incident under investigation;

.2 the time and place at which the marine safety investigation will commence;

.3 the name and contact details of the marine safety investigation Authority(ies);

.4 the relevant details of the legislation under which the marine safety investigation is being conducted;

.5 the rights and obligations of the parties subject to the marine safety investigation; and

.6 the rights and obligations of the State or States conducting the marine safety investigation.

20.2 Each State should develop a standard document detailing the information in paragraph 20.1 that can be transmitted electronically to the master, the agent and the owner of the ship.

20.3 Recognizing that any ship involved in a marine casualty or marine incident may continue in service, and that a ship should not be delayed more than is absolutely necessary, the marine safety investigating State(s) conducting the marine safety investigation should start the marine safety investigation as soon as is reasonably practicable, without delaying the ship unnecessarily.

Chapter 21

CO-ORDINATING AN INVESTIGATION

21.1 The recommendations in this chapter should be applied in accordance with the principles in chapters 10 and 11 of this Code.

21.2 The marine safety investigating State(s) should ensure that there is an appropriate framework within the State for:

.1 the designation of investigators to the marine safety investigation including an investigator to lead the marine safety investigation;

.2 the provision of a reasonable level of support to members of the marine safety investigation;

.3 the development of a strategy for the marine safety investigation in liaison with other substantially interested States;

.4 ensuring the methodology followed during the marine safety investigation is consistent with that recommended in resolution A.884(21), as amended;

.5 ensuring the marine safety investigation takes into account any recommendations or instruments published by the Organization or International Labour Organization, relevant to conducting a marine safety investigation; and

.6 ensuring the marine safety investigation takes into account the safety management procedures and the safety policy of the operator of a ship in terms of the ISM Code.

21.3 The marine safety investigating State(s) should allow a substantially interested State to participate in aspects of the marine safety investigation relevant to it, to the extent practicable.

21.3.1 Participation should include allowing representatives of the substantially interested State to:

.1 interview witnesses;

.2 view and examine evidence and make copies of documents;

.3 make submissions in respect of the evidence, comment on and have their views properly reflected in the final report; and

.4 be provided with the draft and final reports relating to the marine safety investigation*.

21.4 To the extent practical, substantially interested States should assist the marine safety investigating State(s) with access to relevant information for the marine safety investigation. To the extent practical, the investigator(s) carrying out a marine safety investigation should also be afforded access to Government surveyors, coastguard officers, ship traffic service operators, pilots and other marine personnel of a substantially interested State.

21.5 The flag State of a ship involved in a marine casualty or marine incident should help to facilitate the availability of the crew to the investigator(s) carrying out the marine safety investigation.

Chapter 22

COLLECTION OF EVIDENCE

22.1 A marine safety investigating State(s) should not unnecessarily detain a ship for the collection of evidence from it or have original documents or equipment removed unless this is essential for the purposes of the marine safety investigation. Investigators should make copies of documents where practicable.

* The reference to ‘extent practical’ may be taken to mean, as an example, that co-operation or participation is limited because national laws make it impractical to fully co-operate or participate.

22.2 Investigator(s) carrying out a marine safety investigation should secure records of interviews and other evidence collected during a marine safety investigation in a manner which prevents access by persons who do not require it for the purpose of the investigation.

22.3 Investigator(s) carrying out the marine safety investigation should make effective use of all recorded data including voyage data recorders if fitted. Voyage data recorders should be made available for downloading by the investigator(s) carrying out a marine safety investigation or an appointed representative.

22.3.1 In the event that the marine safety investigating State(s) do not have adequate facilities to read a voyage data recorder, States with such a capability should offer their services having due regard to the:

.1 available resources;

.2 capabilities of the readout facility;

.3 timeliness of the readout; and

.4 location of the facility.

Chapter 23

CONFIDENTIALITY OF INFORMATION

23.1 States should ensure that investigator(s) carrying out a marine safety investigation only disclose information from a marine safety record where:

.1 it is necessary or desirable to do so for transport safety purposes and any impact on the future availability of safety information to a marine safety investigation is taken into account; or

.2 as otherwise permitted in accordance with this Code*.

23.2 States involved in marine safety investigation under this Code should ensure that any marine safety record in its possession is not disclosed in criminal, civil, disciplinary or administrative proceedings unless:

.1 the appropriate authority for the administration of justice in the State determines that any adverse domestic or international impact that the disclosure of the

* States recognize that there are merits in keeping information from a marine safety record confidential where it needs to be shared with people outside the marine safety investigation for the purpose of conducting the marine safety investigation. An example is where information from a marine safety record needs to be provided to an external expert for their analysis or second opinion. Confidentiality would seek to ensure that sensitive information is not inappropriately disclosed for purposes other than the marine safety investigation, at a time when it has not been determined how the information will assist in determining the contributing factors in a marine casualty or marine incident. Inappropriate disclosure may infer blame or liability on the parties involved in the marine casualty or marine incident.

information might have on any current or future marine safety investigations is outweighed by the public interest in the administration of justice; and[*]

.2 where appropriate in the circumstances, the State which provided the marine safety record to the marine safety investigation authorizes its disclosure.

23.3 Marine safety records should be included in the final report, or its appendices, only when pertinent to the analysis of the marine casualty or marine incident. Parts of the record not pertinent, and not included in the final report, should not be disclosed.

23.4 States need only supply information from a marine safety record to a substantially interested State where doing so will not undermine the integrity and credibility of any marine safety investigation being conducted by the State or States providing the information.

23.4.1 The State supplying the information from a marine safety record may require that the State receiving the information undertake to keep it confidential.

Chapter 24

PROTECTION FOR WITNESSES AND INVOLVED PARTIES

24.1 If a person is required by law to provide evidence that may incriminate them, for the purposes of a marine safety investigation, the evidence should, so far as national laws allow, be prevented from admission into evidence in civil or criminal proceedings against the individual.

24.2 A person from whom evidence is sought should be informed about the nature and basis of the investigation. A person from whom evidence is sought should be informed, and allowed access to legal advice, regarding:

.1 any potential risk that they may incriminate themselves in any proceedings subsequent to the marine safety investigation;

.2 any right not to self-incriminate or to remain silent;

.3 any protections afforded to the person to prevent the evidence being used against them if they provide the evidence to the marine safety investigation.

Chapter 25

DRAFT AND FINAL REPORT

[*] Examples of where it may be appropriate to disclose information from a marine safety record in criminal, civil, disciplinary or administrative proceedings may include:

1 where a person the subject of the proceedings has engaged in conduct with the intention to cause a destructive result; or

2 where a person the subject of the proceedings has been aware of a substantial risk that a destructive result will occur and having regard to the circumstances known to him or her it is unjustifiable to take the risk.

25.1 Marine safety investigation reports from a marine safety investigation should be completed as quickly as practicable.

25.2 Where it is requested, and where practicable, the marine safety investigating State(s) should send a copy of a draft marine safety investigation report for comment to interested parties. However, this recommendation does not apply where there is no guarantee that the interested party will not circulate, nor cause to circulate, publish or give access to the draft marine safety investigation report, or any part thereof, without the express consent of the marine safety investigating State(s).

25.3 The marine safety investigating State(s) should allow the interested party 30 days or some other mutually agreed time to submit their comments on the marine safety investigation report. The marine safety investigating State(s) should consider the comments before preparing the final marine safety investigation report and where the acceptance or rejection of the comments will have direct impact on the interests of the interested party that submitted them, the marine safety investigating State(s) should notify the interested party of the manner in which the comments were addressed. If the marine safety investigating State(s) receives no comments after the 30 days or the mutually agreed period has expired, then it may proceed to finalize the marine safety investigation report*.

25.4 Where it is permitted by the national laws of the State preparing the marine safety investigation report, the draft and final report should be prevented from being admissible in evidence in proceedings related to the marine casualty or marine incident that may lead to disciplinary measures, criminal conviction or the determination of civil liability.

25.5 At any stage during a marine safety investigation interim safety measures may be recommended.

25.6 Where a substantially interested State disagrees with the whole or a part of a final marine safety investigation report, it may submit its own report to the Organization.

Chapter 26

RE-OPENING AN INVESTIGATION

26.1 Marine safety investigating State(s) which have completed a marine safety investigation, should reconsider their findings and consider re-opening the investigation when new evidence is presented which may materially alter the analysis and conclusions reached.

* See chapter 13 where provisions with respect to providing interested parties with reports on request may alternatively be included as a mandatory provision.

26.2 When significant new evidence relating to any marine casualty or marine incident is presented to the marine safety investigating State(s) that have completed a marine safety investigation, the evidence should be fully assessed and referred to other substantially interested States for appropriate input.

***

ANNEX 2

Resolution and guidelines on fair treatment of seafarers
in the event of a maritime accident as prepared by
the Joint IMO/ILO *Ad Hoc* Expert Working Group on Fair Treatment of Seafarers

Resolution LEG.3(91)
adopted on 27 April 2006

ADOPTION OF GUIDELINES ON FAIR TREATMENT OF SEAFARERS IN THE EVENT OF A MARITIME ACCIDENT

THE LEGAL COMMITTEE OF THE INTERNATIONAL MARITIME ORGANIZATION AND THE GOVERNING BODY OF THE INTERNATIONAL LABOUR ORGANIZATION,

RECALLING resolution A.987(24) approved by the Assembly of IMO at its twenty-fourth regular session and the ILO Governing Body at its 292nd session, by which the IMO Assembly and the ILO Governing Body, *inter alia*, agreed to the adoption of Guidelines on fair treatment of seafarers in the event of a maritime accident as a matter of priority and authorized the IMO Legal Committee and the ILO Governing Body to promulgate the said guidelines once finalized, by appropriate means;

HAVING considered the Guidelines as prepared by the Joint IMO/ILO *Ad Hoc* Expert Working Group on Fair Treatment of Seafarers in the Event of a Maritime Accident;

REALIZING the need to keep the Guidelines under review;

RECALLING the Vienna Convention on Consular Relations, in particular, Article 36 concerning communication and contact with nationals;

NOTING MSC/MEPC.4/Circ.1 on Retention of original records/documents on board ships dated 26 September 2005;

BEARING IN MIND the importance of the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982, in particular articles 97, 228, 230, 232 and 292, and of the customary international law of the sea;

CONSIDERING that the Guidelines provide a code of best practice;

MINDFUL of the need to monitor the application and implementation of the Guidelines; and

BEARING IN MIND FURTHER, the adoption of the ILO Maritime Labour Convention on 23 February 2006; hereby,

1. ADOPT the Guidelines on fair treatment of seafarers in the event of a maritime accident set out in the annex to the present resolution;

2. INVITE Member Governments to implement these Guidelines as from 1 July 2006;

3. INVITE ALSO 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, 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 note of the principles contained in these Guidelines when considering fair treatment of seafarers in other circumstances where innocent seafarers might be detained; and

6. AGREE on the need to keep the Guidelines under review.

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;

[※] Not included in this document.

"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 co-operate 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);

.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 1 (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 co-operate 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 co-operate 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;

.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 co-operate 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 co-operate 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 co-operate 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 3

LIST OF CASES OF CRIMINALISATION

VESSEL NAME	IMO	FLAG	DATE	CRIME ALLEGATION	LOCATION	SEAFARERS	COMMENTS
Heroic Idun (oil tanker)	9858058	MHL	Aug 2022	Crude tanker seized by Equatorial Guinian Navy. Loading crude cargo (oil theft) from Nigeria's Akpo field without authorisation	Vessel escorted to Luba Bay in Equatorial Guinea	Indian (16) and Sri Lankan (8) crew; 1 Polish and 1 Filipino. 15 crew detained on suspicion smuggling oil (ITF letter to EG Embassy)	Indian Embassy written to Equatorial Guinea authorities. No charges brought until November '22. Crew released in May '23 after a plea bargain to Nigerian government.
Robusta (cargo ship)	9824992	MHL	July 2022	241kg 231 g cocaine found onboard	Martas port, Turkey – on route Santos, Brazil to Marmara Ereglisi, Turkey	7 South Korean and 4 Filipino crew under arrest. Officers in prison in Turkey; Other crew in hotel; crew statements taken	1/5: Start criminal trial. 19/7: Pan Ocean crew will be questioned in court. Turkish affiliate TDS assisting
Donald (Gaja) (dry cargo)	9273791	LBR	May 2022	Unauthorized discharge of oily bilge water into the ocean & creating false and incomplete records	San Diego, US Coast Guard	Chief Engineer to stand trial. 5 Filipino crew and Ukrainian captain held in San Diego since May '22 as witnesses in trial.	June '23: Ch.Eng. found guilty of conspiracy to obstruct justice, obstruction of justice, failure to maintain accurate oil record book. ITF & SRI sent letter to US District Court. CE sentenced to 12 months in prison.
Julietta D (bulk carrier)	9590618	MLT	Jan 2022	Collision with oil tanker in high seas	Near North Sea windfarm off Dutch coast	Captain and Chief Officer investigated for allegedly 'causing damage at sea' by abandoning ship too early	Reportedly released, but Dutch news reports police still investigating if criminal offences committed
Seaways Rubymar (Ruby) (tanker)	9232618	COM	Sept 2021	'Anchored illegally' (without licence) in Indonesian waters near Singapore	Cargo Area anchorage off Batu Ampar, Batam, Indonesia	Filipino Master detained ashore; 15 days pre-trial.	Master spent 6 months at Batam base before sentenced to 60 days in jail.
Mount Hikurangi (bulk carrier)	9580039	HKG	Aug 2021	Honduran port authorities found bags of cocaine in vent shaft of cargo hold during discharge operations	Puerto Cortes, Honduras	Captain Yu Yihai imprisoned without trial in Honduras	Captain detained Aug. '21; imprisoned for 2 years without bail or trial; finally released 7/8/23 after request from ITF / ICS intervention ILO and IMO

VESSEL NAME	IMO	FLAG	DATE	CRIME ALLEGATION	LOCATION	SEAFARERS	COMMENTS
Strovolos (tanker)	9178056	BHS	July 2021	Crew allegedly involved in theft of hundreds of thousands of barrels of crude oil from Cambodian energy project	Anchored off Sumatra, Indonesia without authorisation	19 crew detained in Indonesia following intervention by Cambodian Government	Entire crew penalised for vessel anchoring without prior authorisation
MSC Capucine R (container ship)	9210086	LBR	July 2021	176 kg cocaine in 161 packages hidden in container	Iskenderun port, Turkey – trade Mediterranean	Captain and 3 officers arrested; 24 of 25 crew Ukrainian	Captain and officers detained without charge for more than 7 months. Crew held in hotel for several weeks before released
Ocean Trader (tanker)	9056739	COM	July 2021	Container that was being loaded caught fire and exploded	Jebel Ali, UAE	14 Indian crew onboard – owed 7 months' wages. Master held in Dubai by police as part of investigation	Captain and four others convicted of causing incident. Each given one month's suspended sentence and a fine
Natalia (cargo ship) (broken up)	8113592	UNK	July 2021	638 bales containing nearly 20 tons of hashish found among cargo	South of Fuerteventura, Canaries	11 Syrians in custody; investigation by authorities of Canary Islands, Las Palmas	Court found all crew guilty of smuggling; captain sentenced to 6 years in prison; crew given 5 year 2 months sentences
Asso-6 (now Sonson) (cargo ship)	7946875	TOG (CMR)	June 2021	Drugs (hashish) found in ship's compartment	80 nm north of Dakar, Senegal	4 Indian seafarers detained in Rebusse Prison, Dakar by Senegal authorities	9/1/23: Legal case yet to be decided. Charges: criminal conspiracy, international drug trafficking, smuggling in organised contraband, illegal navigation and money laundering
X-Press Pearl (container ship) (dead)	9875343	SGP	May 2021	Ship carrying chemicals caught fire causing environmental disaster	Off coast Sri Lanka	11 crew detained till July; 4 other crew travel ban until December (master, ch. off, 3rd off, elec. off.)	Feb '22: 3 crew had travel bans lifted; only Captain still detained (in hotel in Colombo). Indictment served on Captain and companies, order reserved for 3 Oct. 2023

VESSEL NAME	IMO	FLAG	DATE	CRIME ALLEGATION	LOCATION	SEAFARERS	COMMENTS
Oceana (container ship)	9634684	ATG	Dec 2020	Collision with Xin Qi Sheng 69. Three seafarers killed		Master detained following collision	Master remains in custody
Wakashio (bulk carrier)	9337119	PAN	July 2020	1,000 tonnes fuel oil leaked into ocean when ship went aground on coral reef – ecological disaster	Mauritius	Captain (Indian) and First Officer (Sri Lankan) charged with breach of Innocent Passage and sentenced to 20 months in prison. 2 crew held in Mauritius as witnesses	Captain and Chief officer detained for more than 16 months without trial. They were released 28/12/22
Artin 10 (cargo ship)	8921561	IRN	Feb 2020	Charges drug smuggling (1.5 tonnes morphine)	Near Strait of Hormuz, Iran	5 Indian crew arrested in Iran, released from prison after 403 days with no charges; abandoned with no support for repatriation	ITF helped get seafarers home
Stolt Groenland (Shubh) (tanker)	9414072	CYM	Sept 2019	Cargo tank explosion and fire. 2 seafarers and 15 shore workers injured	Ulsan, Republic of Korea	3 crew (master, chief officer and 3rd officer) unable to depart Republic of Korea since incident happened – over 2 years	Hearing postponed until 21/2/22. ITF / SRI intervention IMO March '22. Captain, charged in August 2022, sentenced to 1 year 6 months in prison, 2 years' probation. CO received 1 year 4 months prison sentence, 2 years' probation. OOW given a fine of 10 million KRW (7,500 USD).
UBC Savannah (bulk carrier)	9220976	CYP	July 2019	227 packages weighing 225 kg found in cargo hold, buried in cargo of ore	Altamira port, Mexico – arriving from Barranquilla, Columbia	All crew, 19 Filipino crew and three Polish crew, including Master, arrested	Crew released shortly after arrest; Captain held in prison for 18 months before released
Viking Sigyn (cruise)	8338295	Swiss	May 2019	Collision with tour boat on river Danube resulting in deaths of 27 people	River Danube	Ukrainian captain on trial for fatal negligence and failing to assist persons in danger	Sept '20: Trial of Captain continued after being postponed due to COVID pandemic. New hearing in '21.

VESSEL NAME	IMO	FLAG	DATE	CRIME ALLEGATION	LOCATION	SEAFARERS	COMMENTS
LR2 Poseidon (tanker – now Poseidon Bay)	9378632	HKG (SGP)	Jan 2019	Explosion & fire killing 2 workers and injuring 11. None of crew or Master present as work carried	Tuzla Shipyard, Turkey	Indian captain held at Istanbul Detention centre as “primary negligent party”	ITF Hong Kong Inspector Jason Lam made representations to Turkish authorities. Master released in October 2019
Flying (cargo ship)	9163051	UNK	Dec 2018	Smuggling rare rosewood timber	Antongil Bay, Madagascar	Crew – Bangladeshi, Chinese and Myanmar – arrested. 5 years’ detention. Legal assistance only requested after imprisoned for 3 years	In Nov 2021, Court found crew found 15 crew guilty; sentenced to 20 years forced labour and a fine of 100 million MGA
Ever Judger (bulk carrier) (total loss)	9632844	PAN	Mar 2018	Vessel damaged pipeline causing oil spill and fire; claimed 5 fishermen’s lives & caused environmental damage	Balikpapan Bay, Indonesia	Captain imprisoned for 10 years	Fleet Management to advise what steps they & P&I Club have taken to secure release of captain. Wages outstanding
Avant Garde (armoury vessel) (broken up)	8107036	LKA	Oct 2015	816 T56 rifles and 84 other firearms & ammunition found onboard (licenced to carry 100 arms); 59 guns no known serial numbers	Port of Galle, Sri Lanka	Ukrainian Captain arrested but not formally charged. Held in Sri Lanka and prevented from leaving	Detained in prison for almost a year. Permitted return home after 5 years after diplomatic appeals
Kim Nirvana			July 2015	Vessel capsized and sank, resulting in deaths of 60 people. Charge ship made too sharp a turn	Outside Port of Ormoc, Philippines	Crew on murder charges	If found guilty, crew may face up to 40 years in prison. Query raised design and certification of ferry. Maritime Industry Authority of Ormoc City asked to send records
Asteris (Melilli) (bulk carrier)	9384796	MHL	March 2015	Charges illegal oil trading / storing crude oil	Passing through Nigerian waters from Benin	9 seafarers arrested, some imprisoned, others onboard at anchorage under armed guard. 4 crew from Ghana, 4 from Benin, 1 from Bangladesh	9 seafarers released and repatriated in Feb 2016

VESSEL NAME	IMO	FLAG	DATE	CRIME ALLEGATION	LOCATION	SEAFARERS	COMMENTS
Amin Darya (dead) (cargo ship)	8630784	UNK	July 2014	Ship arrested on suspicion drug carrier	Mombasa, Kenya	6 Pakistani crew and 1 Iranian Captain in custody	March '23: 7 found guilty of trafficking heroin; sentenced to life imprisonment. Right to appeal to higher court
Sewol (passenger/ro-ro)	9105205	KOR	April 2014	Sinking of ferry, killing more than 300 people	South Korea	Captain and other crew – accused of gross negligence	Captain sentenced to 36 years; other crew up to 30 years in prison. Owner responsible for structural changes & overloading ship
Seaman Guard Ohio (Patrol vessel)	8410691	UNK	2013	Crew and mercenaries on floating armoury arrested for importing arms after accidentally entering Indian waters	Indian waters	25 crew – Ukraine, Estonia, 6 British former soldiers and 10 Indian crew arrested	Crew sentenced to 5 years in prison; imprisoned for 9 months; out on bail but not allowed to leave India. ITF supported appeal against sentence. Crew freed in 2017
Sea Smooth (passenger ship)	9296511	HKG	Oct 2012	Collision with pleasure boat resulting in 39 deaths	Off coast of Lamma Island, Hong Kong	Captain of ferry and crew detained	Captain convicted of 39 counts of manslaughter; sentenced to 36 years in prison. Chief Eng. given 30 years prison. Remaining 13 crew sentences between 5 and 20 years
Hebei Spirit			2007	Oil spill	South Korea	2 Indian seafarers detained in prison for several months	Finally released following campaign by ITF, supported by shipowner and seafarers' home government
Prestige			2002	Oil spill and ship sinking	Off Spanish coast	Harsh imprisonment sentence Master on claim negligence when refusal to follow instructions Spanish authorities	In 2016, Spanish Supreme Court overruled Lower Courts' decision and sentenced 81-year old Master to 2 years in prison

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