



JOINT IMO/ILO AD HOC EXPERT
WORKING GROUP ON FAIR TREATMENT
OF SEAFARERS
1st session
Agenda item 6

IMO/ILO/WGFTS 1/6/1
10 December 2004
ENGLISH ONLY

ASSESSMENT OF THE EXTENT OF THE PROBLEM

Submitted by the International Confederation of Free Trade Unions (ICFTU/ITF)

SUMMARY

Executive summary: This document suggests a possible short and long term approach to the issue and a suggested format for guidelines, which should ideally be adopted at the 2005 Assembly

Action to be taken: Paragraph 11

Related document: LEG 89/16

1 The Seafarers consider there is an urgent need to address this issue as it has profoundly affected the morale of seafarers. We consider that there is a need for short term and long term solutions and, the first target should be an IMO Assembly Resolution, to be adopted at the 2005 Assembly, which would contain guidelines. These could, over time and based on the experience gained, be further elaborated and take the form of a mandatory instrument. The focus should be on accidental (or non-intentional) pollution.

2 The Guidelines should contain a summary of applicable international law, the requirements for the commission of a criminal act in terms of knowledge and intention, it should also distinguish between criminal, civil and administrative sanctions, and provide practical guidance directed to port or coastal States, flag States, shipowners and seafarers.

Summary of applicable international law

3 This should include the international instruments listed in the terms of reference, as well as the safeguards which already exist in international law, and would aim to provide general information for port or coastal States, flag States, shipowners and seafarers alike.

Criminal acts

4 This section should seek to identify the criteria for a criminal act and to distinguish between acts committed with knowledge and intent from accidental pollution and be consistent with the provisions of MARPOL.

For reasons of economy, this document is printed in a limited number. Delegates are kindly asked to bring their copies to meetings and not to request additional copies.

Sanctions

5 This section should distinguish between the various sanctions which could be imposed, in terms of criminal sanctions, civil liability and administrative or professional sanctions. It should also distinguish the applicability of the various sanctions in the case of accidental pollution and be consistent with MARPOL and other applicable instruments, for example STCW 95.

Practical guidance

6 The practical guidance should complement the information provided in the IMO Publication *MARPOL - How to do it*.

Port or coastal States

7 This section should seek to set out how a port or coastal State should respond to an incident involving accidental pollution in regard to the ship's crew. It should reflect the provisions of applicable international instruments and also take into account the IMO Code for the Investigation of Maritime Casualties and Incidents (resolution A.849(20)) as amended by resolution A.884(21).

Flag States

8 This section should include how the flag State should respond to an incident involving accidental pollution in regard to the ship's crew. It should include casualty investigation (including, where appropriate, possible administrative sanctions against any seafarers who failed to adequately perform their professional duties), the provision of diplomatic protection for the crew (irrespective on nationality and in addition to whatever may be provided by the seafarer's State of nationality) and Article 292 of UNCLOS which provides the possibility of an application to the International Tribunal for the Law of the Sea for the prompt release of the vessel and its crew.

Shipowners

9 This section should address the shipowners' responsibilities and the duties which arise under the seafarer's employment agreement. These would include the payment of wages for the duration, repatriation, and legal representation.

Seafarers

10 In addition to the general duties which fall to seafarers with regard to casualty investigation, it would also be helpful if guidance was provided on how seafarers should respond to the possibility of being arrested for an alleged criminal offence. This would include seeking legal representation and a short, easily understandable summary of the rights of a seafarer under applicable international instruments, including human rights provisions.

Action requested of the Joint Working Group

11 The Joint Working Group is invited to consider the suggestions made in this document and to comment as appropriate.