

SEAFARER CRIMINALISATION

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Career plan: 1. Become master 2. Get arrested

According to new research, the criminalisation of seafarers is now such a serious problem that junior officers are actually deterred from seeking promotion in case being a higher rank puts them in the line of fire...



Captain Mangouras, charged in connection with the Prestige oil spill Picture: Reuters

More than 85% of seafarers are concerned about the threat of facing criminal charges arising from their work, a worldwide study has found.

And the fear of being scapegoated or unfairly treated means almost half feel reluctant to cooperate with authorities investigating accidents or incidents, the research reveals.

The findings from a questionnaire completed by almost 3,500 seafarers from 18 countries were presented at the landmark 100th session of the International Maritime Organisation's (IMO) legal committee in London.

The 12-month research project was carried out by Seafarers' Rights International (SRI) to highlight seafarers' experiences of facing criminal charges, their perceptions of the risks and the consequences of facing court proceedings.

It found that just over 8% of seafarers had faced criminal charges, almost 4% had been witnesses in criminal prosecutions and almost one-third knew colleagues who had ended up in court.

Worryingly, nine in every 10 seafarers who had faced criminal charges had not had legal representation and more than 90% were not given interpretation services when they were needed.

Fewer than 12% of those who had faced criminal charges had their legal rights explained to them, and fewer than one in five considered that they had received fair treatment.

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Some 80% of the seafarers who had faced criminal charges said they had felt intimidated or threatened. One commented: 'They put guns to our heads — I thought they were going to kill us.'

Feedback gathered in the research underlined concerns about the frequent lack of due process for seafarers accused of crimes following incidents at sea — especially as a result of an increase in the number of regulations covering shipping operations.

'We have become soft targets for countries which just wish to put the blame on us,' one seafarer complained. 'This is the only industry in which a person is fined for criminal prosecution



Jasprit Chawla and Syam Chetan of the Hebel Spirit, following their release from jail in South Korea Picture: Reuters

when in his whole life he has been a totally law-abiding citizen and for something that probably was no mistake of his,' another added.

Just over 46% said they would be reluctant to cooperate fully and openly with casualty inquiries and accident investigators because of concerns they could be implicated in a crime, because they do not trust the authorities, and because they are concerned that cooperation would have a prejudicial effect upon their employment.

The survey also showed the scale of ship searches by the authorities — with more than 65% of seafarers who had faced charges reporting that their cabins had been searched without warrants and almost 4% saying that they had been bodily searched.

Perhaps unsurprisingly, the survey showed that masters experienced the highest rate of criminal charges — accounting for 23.3% of the total, against 1.6% for oilers, the rank least exposed to court proceedings. The report warns that 'otherwise ambitious and well-qualified officers are declining promotion to senior ranks' because of the fear that this would increase their chances of ending up in court.

'There are documented cases of senior officers electing

to terminate their careers because of a brush with the law, or deciding to seek alternative employment that would leave them less vulnerable to criminal prosecution,' it adds.

The most common reasons for being prosecuted were:

- pollution
- collision
- fatal accident
- breaching port rules
- drug abuse
- violating customs rules

One positive finding was that more than two-thirds of the seafarers who had faced charges had them dropped, while just under one-third were convicted of the actual charge or a lesser charge.

The IMO legal committee was presented with suggestions from seafarers on how to improve the situation. The meeting heard that many seafarers want more information, education, training and guidance on the risks they face as a result of exposure to different foreign laws.

Feedback from the seafarers taking part in the survey also emphasised the need for them to be given better advice on their rights if they are defendants, complainants or witnesses.

They also called for good and free legal representation when

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facing criminal charges, fair processes and fair treatment, a greater network of support from all the various stakeholders in the maritime industry if they do face criminal charges, and more uniform laws and procedures given the wide range of different crimes to which they are exposed.

'...at present a seafarer is a world traveller treated by the authorities as a second-class citizen,' one respondent complained. 'No civilian, businessman or tourist would have experienced such treatment without a scandal.'

The IMO meeting — which was attended by 88 member government delegations and 20 non-governmental organisations — agreed that the issue of fair treatment of seafarers in the event of a maritime accident should remain on its agenda and be discussed again in 2014.

Nature of charges faced by seafarers

Seafarers were asked about the nature of charges they had faced. Their answers were grouped into various categories as follows (top 20 charges).

charges	% of seafarer respondents
pollution	9.76
collision	9.75
fatal accident	8.94
breaching port rules	8.13
drug abuse	8.13
violating customs rules	6.87
diesel smuggling	6.50
human trafficking	4.88
illegal entry	4.88
illegal cargo	4.07
drunk on duty	4.07
assault	4.07
drugs smuggling	3.25
theft	3.25
criminal negligence in discharging duty as seafarer	2.44
murder	2.44
injury to shore personnel	1.63
robbery	1.63
false logbook entry	1.63
shipwreck	1.63

Ranks of seafarers charged with criminal offences

ranks	% of seafarer respondents	odds ratio of being charged: masters vs. other ranks
master	23.33	1.00
electrical engineer officer	15.52	1.66
3rd officer	10.35	1.68
chief engineer	10.00	2.74
pumpman	10.00	2.74
2nd officer	9.83	2.79
radio officer	7.69	3.65
ordinary seaman	7.14	3.96
2nd engineer	7.05	4.01
chief steward	6.67	4.26
chief officer	5.99	4.77
bosun	4.85	5.96
3rd engineer	4.78	6.06
able seaman	4.34	6.71
fitter/repairer	3.15	9.36
messroom steward	2.38	12.47
chief cook	1.73	17.25
oiler	1.59	18.87

The delegates were warned that the survey results 'strongly suggest' that the rights of seafarers set out in the IMO/ILO International Guidelines on Fair Treatment of Seafarers in the event of a Maritime Accident are often violated.

'The message from seafarers is loud and clear,' said SRI executive director Deirdre Fitzpatrick. 'Seafarers are saying that their rights are theoretical and illusory; they need them to be practical and effective.'

'Since criminal laws are largely tailored to nationals, they are an uneasy fit for foreign and temporary transnational workers,' she pointed out. 'It is clear that seafarers are more exposed to criminal proceedings than many other workers and therefore need special assistance.'

The seafarers' suggestions for what is needed to improve their situation or their perception of their situation, offer a challenge to the maritime industry and to prosecuting authorities generally, if seafaring is to remain a viable option for young people,' Ms Fitzpatrick warned.

It seems that much remains to be done to protect this body of essential workers from unfairness and injustice — but the effort is essential not only for the protection of serving seafarers, but also to improve the image of the profession for new recruits to come.'

'Fair legal processes are being denied'

'For me, one of the most disappointing aspects of this survey is the extent to which so many seafarers are complaining of unfair treatment, intimidation and lack of representation,' says Deirdre Fitzpatrick, head of Seafarers' Rights International (pictured right).

'Almost half those taking part said they would be reluctant to cooperate in casualty inquiries,' she told the Telegraph. 'That is completely undermining what the International Maritime Organisation is trying to do, and you want a process of genuine cooperation with the investigation, seafarers will need to be assured that they will not be incriminated by anything they say.'

Ms Fitzpatrick said the findings underlined the need for fair processes to be applied to seafarers facing criminal charges as a result of incidents. 'It can be very confusing after an accident when so many people are coming onboard and asking questions and you don't know what all the different authorities are and what their mandates are,' she pointed out. 'Your rights as a seafarer will often depend on who you are speaking to.'

The feedback gathered in the research also demonstrated the critical importance of seafarers being informed of their rights and given access to translation and legal support, Ms Fitzpatrick argued. The fact that fewer than one in 10 of those who had been charged had received legal representation was a sure sign of a big problem, she added. 'Representation is really important — and especially in the early stages of the process.'

Although there are arguments that shipowners should, in the first instance, provide legal representation for their seafarers, Ms Fitzpatrick said it cannot always be guaranteed, and that the interests of a P&I club may not always be the same as the interests of the seafarer. 'The focus has to be on the need for a fair process — fair trials and access to translators throughout,' she added.

Why do so many seafarers have such strong fears about criminalisation, when it is only a relatively small proportion that end up



in the courts? 'Perception is a powerful driver,' Ms Fitzpatrick points out, 'and while cases like the Prestige and Hebel Spirit may be somewhat isolated, they are high profile. And even if many seafarers haven't experienced criminalisation personally, they will know of these cases or have heard of the problems that can occur with the authorities or the coast guard in some parts of the world.'

In the face of these concerns, there have been calls for the IMO/ILO guidelines for the fair treatment of seafarers following incidents to be made mandatory. This pressure is understandable, Ms Fitzpatrick notes, but it has to be tempered by the reality that many countries are highly protective of their domestic regulations, and any move to make the guidelines internationally applicable

could result in them being diluted to the point that the protection they presently provide is significantly eroded. The IMO legal committee has agreed to keep the issue on its agenda, and that flag states have been invited to submit ideas for encouraging greater compliance with the fair treatment guidelines. 'It gives interested parties like us the opportunity to keep challenging governments and going forward. We need to keep the profile high and keep the momentum going,' she adds. 'Trying to change the laws and formalise things is such a long-term thing. But making sure the subject is still talked about and that it remains high on the agenda is all part of the battle.'

Get in touch with us immediately after incident, urges Union

Nautilus is backing the findings of the Seafarers' Rights International report and is supporting initiatives to ensure that countries comply with the international guidelines for the fair treatment of seafarers following accidents at sea.

Charles Boyle, director of Nautilus legal services, says the SRI survey findings are in line with research into criminalisation carried out by the Union several years ago. 'It is clear from the results that the problem is not getting any better, and indeed could be getting worse,' he points out.

Mr Boyle said it was worrying to see that 90% of seafarers reported not having legal representation when they faced criminal charges. 'This underlines the importance of the services that Nautilus provides to members, including a worldwide network of lawyers who can support members in a wide range of employment-related problems, including representation at official inquiries,' he points out.

Nautilus has produced a special booklet explaining the international fair treatment guidelines, which aimed to take effect back in 2006, and set out the rights and responsibilities for seafarers, ports or coastal states, flag states and seafarers' home states following maritime incidents.

The guidelines aim to ensure fair treatment for seafarers during any investigation or detention by public authorities, stressing their entitlement to protection from coercion and intimidation and the rights to access by consular officials and to communicate privately with family members, unions, welfare organisations, owners and legal representatives.

Mr Boyle says it is essential that members contact the Union as soon as possible following an incident. 'Our ability to protect you, and your defence against any charges or investigations, may be seriously damaged if you make statements to the authorities before seeking legal or professional advice,' he adds.

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