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FAIR TREATMENT OF SEAFARERS IN THE EVENT OF A MARITIME ACCIDENT

Submitted by the International Transport Workers' Federation (ITF) and the
International Federation of Shipmasters' Associations (IFSMA)

SUMMARY

Executive summary: This document presents the findings of a survey conducted by Seafarers' Rights International (SRI) concerning respect for the rights of seafarers facing criminal prosecution. The findings strongly suggest that the rights of seafarers as enshrined in the *Guidelines on the fair treatment of seafarers in the event of a maritime accident*, adopted by IMO, may often be subject to violation and that there is widespread concern among seafarers.

Strategic direction: 1

High-level action: 1.1.2

Planned output: 1.1.2.6

Action to be taken: Paragraph 29

Related documents: LEG 99/14; LEG 97/6, LEG 97/6/1, LEG 97/INF.3; LEG 95/5; resolution A.1056(27)/Rev.1; resolution LEG.3(91); Circular letters Nos.2711 and 2825

1 During the period February 2011 to February 2012, SRI conducted a survey of seafarers, covering their experiences of facing criminal charges, and their perceptions of the risks and consequences of facing such charges.

Methodology

2 The survey was conducted in eight languages (Chinese, English, Japanese, Portuguese, Russian, Spanish, Tagalog and Turkish); 3,480 valid questionnaires were returned from 18 countries, namely Belgium, Brazil, Canada, China, France, Germany, India, Indonesia, Japan, Malaysia, Norway, the Philippines, the Russian Federation, Spain, Turkey, Ukraine, the United Kingdom and the United States of America.

3 In order to achieve a random and representative survey, the responses to the questionnaire were weighted using the same country proportions of seafarers as contained in the BIMCO/ISF Manpower 2005 Update. The preliminary weights of the survey sample were

then adjusted through a process of post-stratification to incorporate new observations as contained in the BIMCO/ISF Manpower 2010 Update.

4 As a demographically weighted sample, the survey results can be treated as a random and representative sample of seafarers from the whole world.

5 Only the findings of most concern are mentioned in this paper. The full SRI report, containing the findings, their qualifications, and a legal commentary, is available from SRI.

Main findings of the survey

Incidence of criminal prosecutions

6 Of the seafarers who participated in the survey, 8.27 per cent had faced criminal charges; 3.94 per cent had been witnesses in criminal prosecutions; and 32.77 per cent knew of colleagues who had faced criminal charges.

7 Of the seafarers who had faced criminal charges, and who gave their ranks during the incident, 23.33 per cent (the highest proportion) had faced criminal charges when serving as masters; 1.59 per cent (the lowest proportion) were oilers when they faced criminal charges.

8 From these statistics, it can be calculated that the odds ratio of a seafarer facing criminal charges is 18.87 times higher if the seafarer is a master than if he is an oiler.

9 Of the seafarers who had faced criminal charges, and who answered the question on the outcome of the criminal charge, 67.03 per cent had the charges dropped; 32.97 per cent were convicted of the actual charge or a lesser charge.

10 In multi-level probit models, it is found that being in the rank of master is one of the most important determinants of the probability of facing criminal charges and of being convicted.

Fair criminal process

11 Results from answers provided by seafarers who had faced criminal charges and who answered the questions on searches, indicated that 44.28 per cent of vessels and 63.75 per cent of cabins were searched without warrants; 43.55 per cent of seafarers were bodily searched, that is, 29.24 per cent of all seafarers who participated in the survey and had faced criminal charges.

12 Of the seafarers who had faced criminal charges, and who answered the question on legal representation, 90.21 per cent did not have legal representation; 9.79 per cent did have legal representation.

13 In a multi-level probit model taking into account nationalities of seafarers and vessel types, having legal representation is shown to be one of the most important determinants of the probability of not being convicted of a charge.

14 Of the seafarers who had faced criminal charges, and who needed interpretation services, 91.20 per cent were not provided with interpretation services while 8.80 per cent were provided with interpretation services.

15 Of the seafarers who had faced criminal charges, and who answered the question on legal rights explained, 11.40 per cent did have their legal rights explained to them while 88.60 per cent did not, which means that 61.73 per cent of all seafarers who had faced criminal charges who did not have their legal rights explained to them.

Perceptions of the seafarers

Fair treatment as an accused

16 Of the seafarers who had faced criminal charges, and who answered the question on fair treatment, 18.75 per cent considered that they did receive fair treatment, while 81.25 per cent considered that they had not which means that 61.01 per cent of all seafarers who had faced criminal charges.

17 Some seafarers explained why they considered that they did not receive fair treatment. Seafarers said, for example: "They didn't tell us anything about our rights and they treated us like criminals directly." "Accused with no explanation." "They threw me and yelled at me." "I have saved the lives of my entire crew and there wasn't any casualty neither leaking. But I was treated like an enemy of the nation", "accused with no explanation. Personal belongings, private letters, etc., carried off ship by lawyers."

Intimidated or threatened as an accused

18 Of the seafarers who had faced criminal charges, and who answered the question on intimidation or threats, 20.00 per cent did not feel intimidated or threatened; 80.00 per cent felt they were intimidated or threatened, which means that 57.76 per cent of all seafarers who had faced criminal charges felt they were intimidated or threatened.

19 Some seafarers explained why they felt intimidated or threatened. Seafarers said for example: "They put gun to our heads, I thought they were going to kill us." "I was threatened with words." "They tortured us physiologically." "They said that you would be either deported or put in prison, there were language difficulties too." "I didn't know what would happen to me: foreign country, foreign system."

Fair treatment as a witness

20 Of the seafarers who had been witnesses in a prosecution, and who answered the question on fair treatment, 43.42 per cent considered that they had been treated fairly while 56.58 per cent considered that they had not.

Intimidated or threatened as a witness

21 Of the seafarers who had been witnesses in criminal prosecutions, and who answered the question on intimidation or threats, 24.49 per cent considered that they had been intimidated or threatened while 75.51 per cent did not.

Seafarers' concerns about criminal prosecution

22 Of the seafarers who answered the question, 85.04 per cent were concerned about criminal charges being brought. This is 73.65 per cent of all seafarers who participated in the survey.

23 Some seafarers explained their concerns about criminal prosecution. Seafarers said for example: "With the increased amount of criminal charges being brought against seafarers, the chances of seafarers being made a scapegoat to cover up powerful parties involved have increased." "We have become soft targets by countries who just wish to put the blame on us." "We are used as scapegoats by foreign countries to help them appear to be tough on crimes." "Charges are often brought too quickly before a proper and thorough investigation has been completed." "There is a prejudice against seafarers; hence they are treated with a bias after the charges are placed." "This is the only industry in which a person is fined for criminal prosecution, when in his whole life he has been a totally law abiding citizen, and for something that probably was no mistake of his." "There will be more seafarers in prison than any other occupation." "Many events are not caused with any intention of causing harm but happen due to unavoidable circumstances."

Reluctance to cooperate in casualty inquiries and accident investigations

24 Seafarers were asked whether in the current environment of concern about criminal charges, they would feel reluctant to cooperate fully and openly with casualty inquiries and accident investigations. Of the seafarers who answered the question, 46.44 per cent stated that they would be reluctant to cooperate fully and openly with casualty inquiries and accident investigators while 53.56 per cent would not.

25 Some seafarers explained their reluctance to cooperate in casualty inquiries and accident investigations. Seafarers said for example: "The information that I would provide might be used against me." "I would fear incriminating myself." "Anything you say can be used as evidence against you." "No, I was not involved, I was not responsible, if I intervened, I might also be accused and involved through no fault of my own"; and "they try to trick you all the time. No cooperation with them."

Seafarers' views on how to improve their situation

26 Seafarers were asked for their views on how to improve their situation when facing criminal charges.

27 Their answers may be grouped into various categories. Of these categories, the following may be of interest to the Legal Committee. First, seafarers said that they should be provided with more information, knowledge, awareness, education, training and guidance about the wide range of different foreign criminal laws and their rights and privileges when conducting themselves as defendants, complainants or witnesses. Second, seafarers said that legal and financial support from Governments, the maritime industry, international organizations and lawyers is required to get a fair investigation and trial.

28 Seafarers said, for example: "We need to be told clearly what our rights are. It is impossible to know everything. Even lawyers do not know about the areas and they are specialized." "Try to create uniform rules for ships and seafarers or easy to understand rules i.e. info books, leaflets for countries or computer based systems to help seafarers understand their rules." "The pre-departure orientation seminar should be revisited and improved. Seafarers should be informed and made aware of their rights." "Seafarers are not aware about countries' laws. They should learn more before they come to the port." "Many different rules – each different in each country." "When a case is filed against a seaman, he should be allowed to leave the ship to look for legal assistance. However, once he leaves the ship, he won't have money to spend for his case." "What is needed is the help of an upright and helpful lawyer to give the seafarer a fair fight in the case filed against him." "They should be provided with lawyers who will take their case *pro bono* because you no longer have a job and moreover you are fighting a case and surely you won't be able to work

again because you will have been blacklisted." "There should be somebody from governments that should help them because sometimes there is no money anymore." "There should be an organization that provides free legal service to seafarers who are facing criminal charges." "Seafarers should have an international legal counsel for assistance in case of criminal charges." "Legal aid should be provided to seafarer." "Increased involvement of international bodies to provide justice to seafarers." "Greater support from unions/company/government." "A single international legal body with specialist knowledge of the sea able to investigate and judge the national legal incidents." "The court and judge must include a panel of seafarers and the seafarer must only be punished for an act of intent of total negligence." "Human errors should be treated as errors not as criminal charges, as long as there is no intention." "Provide good and competent lawyers and financial assistance to the concerned seafarer." "There must be someone who supports and represents the seafarer but at present the seafarer is a world traveller, treated by the authorities as a second class citizen. No civilian, businessman or tourist would have experienced such treatment without a scandal." "IMO has to intervene, as not all Governments (States) take full responsibility for their seafarers."

Action requested of the Legal Committee

29 The Legal Committee is invited to take note of the information provided in this document and to comment as it may deem appropriate.