

Montevideo, April 20, 2005

Ms.  
Pascale Sterckx  
Assistant Administrator CMI  
[admin@cmi-imc.org](mailto:admin@cmi-imc.org)

Dear Ms. Sterckx:

Please find enclosed the answer of our Association to the Questionnaire of the CMI IWG Group on the Fair Treatment of Seafarers, that have been forwarded to us.

We would appreciate if you could be able to deliver the above mentioned document to the Members of the Working Group.

Please also convey to the Group Members our apologies for the delay in answering the above referred Questionnaire, but we were not able to face the March 31, 2005 deadline.

Your Sincereley,

CARLOS E. DUBRA  
PRESIDENT

RICARDO CUSTODIO  
SECRETARY

Before answering the points raised in the CMI IWG Working Group Questionnaire, we have to inform you that the following are the rules that cover in Uruguay pollution by oil, pollutants other than oil, garbage, ballast water, air pollution from ships etc.:

- Law 16.688 – Contamination in jurisdictional waters.
- Law 14.885 MARPOL 73/78 – Convention ( all Annexes, except Annex VI).
- Law 16.820 – Ratification of CLC and FUND Conventions and Protocol of 1992.
- Decree No. 100 / 91 – Use of waters, shore lines, and Port regulations/
- Coast Guard (PNN) No. 16.287 UNCLOS
- Law No. 16.521 – OPRC CONVENTION, 1990
- Law No. 17.590 – OPRC – HNS PROTOCOL OF 2000
- Law No. 14.145 – Río de la Plata Treaty (bilateral) agreement between Argentina and Uruguay that contains some rules on contamination matters).

Please also be informed that Uruguay is a I.L.O. member, and has ratified most of the I.L.O. Conventions , including Nos. 9; 22; and 108.

## **+Part I**

1. In maritime safety and marine pollution matters, the Maritime Authority is the Coast Guard ( Prefectura Nacional Naval P.N.N.)
2. After an incident, administrative proceedings are always going to take place. In pollution matters, the Coast Guard is going to act in its own. If an accident takes place in waters under the jurisdiction of our country, the Investigative Court of Maritime Accidents, a technical entity, is going to conduct an investigation of the facts.  
If at any time, during those proceedings, it is found that criminal responsibility could arise from the facts, Criminal Courts are going to act.

Please also be informed that claims in tort can be filed by citizens, corporations or the Government to cover the damages arising from the incidents. Those claims are going to be adjudged by Civil Courts . Please also note that those Courts can impose preliminary injunctions , or the arrest of the vessels involved .

3. In case of deaths or injuries Criminal Courts are called to act, and they are able to indict those that prima facie are found guilty, and put them in prison. Nobody can be put in prison during or following pollution investigative processes because those proceedings are of an administrative nature.

We have to underscore that in the above mentioned administrative pollution processes, fines can be imposed to the Owners/ Operators of the vessels involved, and the ships can be detained, and not allowed to sail from Uruguayan Ports, till bonds or guarantees are established to cover the fines, and the cleanup costs.

We have to point out that the fines that the Maritime Authority can impose for pollution offences vary from 1.000 to 10.000 U.R., plus cleaning costs. The above mentioned value is an artificial value that changes every months. Present value of said unit is slightly over ten American dollars.

4. As it has been previously informed, administrative proceedings are going to take place following accidents, or marine pollution incidents.
5. Seafarers, as any other person, can be detained only after an indictment has been filed, and an order of a Criminal Court has been issued.. When somebody is detained, the Police has twenty four hours to inform a Criminal Court, and the Criminal Court also has twenty four hours to decide whether to indict or not.

If the authorities do not adhere to the outlined procedure, an habeas corpus claim can be filed.

6. Only Criminal Courts can, after an indictment has been filed against such a person, request bail in order to insure that a person is going to be present to give evidence.
7. The amount and form of the bail will depend on the financial status of the indicted person, and the importance of the incident.

8. No, there is no State Maritime administration or authority with legal responsibility for the protection, rights and welfare of all seafarers in general.

Seafarers rights are protected in the same way, and under the same rules, as the rights of any other person, citizen or foreigner.

Labor Administrative Authorities have to protect workers' rights because Uruguay has ratified most of the O.I.T/ I.L.O. Conventions.

## **Part II**

9. There is no expected role of vessel crew members. They may be requested to give evidence in the administrative proceedings, as witnesses and the Captain, or Officers can be requested to show the ship's log or books.

Seafarers nationality is always irrelevant.

10. Yes

11. -N/A

12. No.

13. a- Only as responsible of an offence that under our Penal Code is of a criminal nature.
- b- The right to a fair process; of a legitimate defense. No, the rights do not differ from those available to citizens of our country (Uruguay).
- c- Yes.
- d- The length of detention cannot be advanced because it would depend on various and different circumstances (importance of the incident, and whether it was a consequence of negligence or willful misconduct etc.)
- e- In principle they would be detained at a prison located in the jurisdiction of the place where the incident happened. They would be treated exactly as any other person.
- f- They would have legal advice available at all times. If the defendant can not pay for the services of a lawyer, the Court has to provide an official lawyer to act as counsel.
- g- Yes.
- h- After detention, and before the Criminal Court has ruled , only the defendant's lawyers can be in contact with the detained persons. After the indictment, people in jail has the right to visits, under certain rules.
- i-
14. At this moment, we do not have any further comments, but please do not hesitate to contact us in case of any doubts or questions.