

CMI International Working Group on the Fair Treatment of Seafarers

QUESTIONNAIRE

PART I (Answers to these Questions are essential)

Question 1:

Who has responsibility for administering and enforcing maritime safety and marine pollution prevention and control in the waters under the jurisdiction of your State?

Question 2:

When maritime accidents and/or marine pollution incidents occur within the waters under the jurisdiction of your State, what process of accident investigation is legally required?

Question 3:

Do your State's maritime accident and/or marine pollution investigative processes contemplate criminal charges against any ships' personnel involved and, if so what action may be involved?

Question 4:

If there is no criminal process, what other investigative process is utilized?

Question 5:

Does your State's investigative process permit detention of seafarers and, if so, under what circumstances and with what safeguards?

Question 6:

If seafarers are required to be present for an investigation, trial or other hearing will they be permitted to leave your State until such investigation, trial or other hearing takes place?

Question 7:

Does your State require a financial surety to ensure that seafarers return for any subsequent hearing and, if so, how is the amount of such a surety determined and what form is required?

Question 8:

Is your State's maritime administration or other authority given legal responsibility for the protection, rights and welfare of all seafarers and, if so, how is this responsibility administered?

PART II (Answers to these Questions would be most helpful)

Question 9:

If a maritime accident resulting in serious pollution occurs in waters under the jurisdiction of your State that involves a foreign-flag vessel with a crew of different nationalities, what is the expected role of vessel crew members held responsible in the subsequent investigative process?

Question 10:

If the accident, as outlined in Question 10, is due to negligence but not wilful misconduct by responsible crew members, will your State proceed only with pollution damage claims under the accepted international civil liability and compensation system?

Question 11:

If the answer to Question 10 is 'No', what other processes or procedures will be undertaken by your State?

Question 12:

If the maritime accident outlined in Question 9 occurred outside your State's Territorial Seas, although damage occurs in areas under your State's jurisdiction, would the procedures involved be different?

Question 13:

Regardless whether your State's investigative process utilizes the criminal justice system or any other system, will the relevant vessel crew members be detained? If so:

- a. What is the legal reason for such detention?
- b. What rights will the accused/detained crew member have during the process, and do such rights differ from those available to citizens of your State?
- c. Will full reasons and/or charges be provided to those detained?
- d. What is the expected length of such detention?
- e. Where and how will the seafarers involved be detained?
- f. What access to legal advice and/or defence will such personnel have available to them?
- g. Will the vessel's representatives, agents, family members, labour organisation representatives, or lawyers be given immediate and full access to those detained?
- h. Will the relevant seafarers have the legal right not to answer questions that may be considered self-incriminating, if so advised?

Question 14:

Does your Association have any other comments, suggestions or recommendations on this subject?

Dear President,

In recent years all sectors of the maritime industry and many governments have become concerned about the criminal action taken against seafarers in the aftermath of maritime accidents, especially those that involve marine pollution. In some cases masters of vessels and other sea-going personnel, have been arrested, imprisoned or otherwise detained, under a variety of 'criminal law' and other proceedings for extensive periods. Often the most basic rights of such persons are not observed and access to legal advice is not provided nor even permitted. Furthermore, such persons are often neither charged nor provided with information why they are being held. In many instances, such seafarers appear to be held as 'material witnesses' or for other 'administrative and technical' reasons. In other instances seafarers may be 'charged' with causing the relevant marine accident and/or with marine pollution. This occurs despite the fact that there is rarely any directly attributable responsibility for such accidents that may result from circumstances quite beyond the operational responsibility or competence of those so charged.

As a result, a number of states, international organisations and professional groups have expressed their concern about this growing phenomenon to the IMO, as well as the ILO. In response a 'Joint IMO/ILO *Ad Hoc* Expert Working Group on the Fair Treatment of Seafarers in the Event of a Maritime Accident' has recently been formed. This Working Group, drawn from China, Egypt, Greece, Nigeria, Panama, Philippines, Turkey and the USA, has been requested to provide recommendations to the IMO Legal Committee and the ILO Governing Body, including draft guidelines on the fair treatment of seafarers in the event of a maritime accident. The Working Group's Terms of Reference require that account should be taken of the relevant international instruments including:

- The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic and Cultural Rights (ICESCR), as well as other international standards, guidelines, practices and procedures relating to the rights of those who may be detained for the purpose of investigation of a crime, a civil offence, or a maritime casualty or incident;
- The United Nations Convention on the Law of the Sea;
- Pertinent IMO and ILO instruments, including MARPOL 73/78 and the ILO Declaration on Fundamental Principles and Rights at Work, 1998; and
- International recognized standards and guidelines on settlement of disputes, including various liability and compensation regime.

The CMI has been requested to assist in this work. In response, the 'CMI International Working Group on the Fair Treatment of Seafarers' (CMI-IWGFTS) has been formed to provide an initial response to this request. This Working Group consists of: Prof. Edgar Gold, QC, Brisbane, Australia, Chair; Michael Chalos, New

York; David Hebden, London; Linda Howlett (ICS), London; Kim Jefferies (Gard P&I), Arendal, Norway; Prof. P.J. Mukherjee, Malmö, Sweden;

This Questionnaire will assist the CMI-IWGFTS in providing input obtained from the expertise available in the membership of the various national maritime law associations. As a result, you are requested to respond as fully as possible to the questions herewith submitted. The Questionnaire is in two parts. Although it would be most helpful if your Association could answer all questions, answers to Part I questions are essential. Your response should reach the CMI Secretariat, Mechelsesteenweg 196, 2018 Antwerpen, Belgium, email: admini@cmi-imc.org, as soon as possible, but no later than 31st March 2005.

Yours sincerely,

Jean-Serge Rohart
President