

# COMITE INTERNATIONAL MARITIME

## FAIR TREATMENT OF SEAFARERS

### SUMMARY OF RESPONSES OF CMI MEMBERS TO THE QUESTIONNAIRE ( 20 June 2005)

Prepared by David Hebden  
CMI © 2006

**Caution:** The Summary brings together the replies of CMI member organisations to the above questionnaire; it is not to be used as an authoritative guide to the relevant Law and Practice in any particular State. If you need specific advice for a particular problem you should always consult a duly qualified Lawyer knowledgeable in maritime law and practicing in the Country concerned. David Hebden (davidhebden@btinternet.com)

**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?**

Argentina	The Coast Guard. (Prefectura Naval Argentina)
Australia	Australia has a federal system of government under which responsibilities are shared between the Federal and State governments. In respect of <b>maritime safety</b> , ships on overseas voyages (which are the ships relevant to this questionnaire) are the responsibility of the Federal Government, specifically the Australian Maritime Safety Authority (AMSA) for general safety administration and the Australian Transport Safety Bureau (ATSB) for casualty investigation. In respect of <b>marine pollution</b> , the State/Territory governments have responsibility within ports and the territorial sea, while the Federal Government has responsibility beyond the territorial sea. For marine pollution prevention (i.e. application and enforcement of MARPOL 73/78), the relevant agencies are:

	<table border="0"> <tr> <td>Federal</td> <td>AMSA</td> </tr> <tr> <td>Queensland</td> <td>Maritime Safety Queensland</td> </tr> <tr> <td>New South Wales</td> <td>New South Wales Maritime</td> </tr> <tr> <td>Victoria</td> <td>Environment Protection Agency</td> </tr> <tr> <td>Tasmania</td> <td>Department of Primary Industries, Water and Environment</td> </tr> <tr> <td>South Australia</td> <td>Department for Environment and Heritage</td> </tr> <tr> <td>Western Australia</td> <td>Department for Planning and Infrastructure</td> </tr> <tr> <td>Northern Territory</td> <td>Department of Infrastructure, Planning and Environment</td> </tr> </table> <p>For marine pollution control (i.e. responding to incidents), the relevant agencies are:</p> <table border="0"> <tr> <td>Federal</td> <td>AMSA</td> </tr> <tr> <td>Queensland</td> <td>Maritime Safety Queensland</td> </tr> </table> <table border="0"> <tr> <td>New South Wales</td> <td>New South Wales Maritime</td> </tr> <tr> <td>Victoria</td> <td>Marine Safety Victoria</td> </tr> <tr> <td>Tasmania</td> <td>Department of Primary Industries, Water and Environment</td> </tr> <tr> <td>South Australia</td> <td>Department of Transport and Urban Planning</td> </tr> <tr> <td>Western Australia</td> <td>Department for Planning and Infrastructure</td> </tr> <tr> <td>Northern Territory</td> <td>Department of Infrastructure, Planning and Environment</td> </tr> </table>	Federal	AMSA	Queensland	Maritime Safety Queensland	New South Wales	New South Wales Maritime	Victoria	Environment Protection Agency	Tasmania	Department of Primary Industries, Water and Environment	South Australia	Department for Environment and Heritage	Western Australia	Department for Planning and Infrastructure	Northern Territory	Department of Infrastructure, Planning and Environment	Federal	AMSA	Queensland	Maritime Safety Queensland	New South Wales	New South Wales Maritime	Victoria	Marine Safety Victoria	Tasmania	Department of Primary Industries, Water and Environment	South Australia	Department of Transport and Urban Planning	Western Australia	Department for Planning and Infrastructure	Northern Territory	Department of Infrastructure, Planning and Environment
Federal	AMSA																																
Queensland	Maritime Safety Queensland																																
New South Wales	New South Wales Maritime																																
Victoria	Environment Protection Agency																																
Tasmania	Department of Primary Industries, Water and Environment																																
South Australia	Department for Environment and Heritage																																
Western Australia	Department for Planning and Infrastructure																																
Northern Territory	Department of Infrastructure, Planning and Environment																																
Federal	AMSA																																
Queensland	Maritime Safety Queensland																																
New South Wales	New South Wales Maritime																																
Victoria	Marine Safety Victoria																																
Tasmania	Department of Primary Industries, Water and Environment																																
South Australia	Department of Transport and Urban Planning																																
Western Australia	Department for Planning and Infrastructure																																
Northern Territory	Department of Infrastructure, Planning and Environment																																
Bulgaria	<p>According to the Commercial Shipping Code (C S C) (published in the State gazette, 55 of 14.07. 1970, recently amended in State gazette 55 of 25.06. 2004 ) the authorized body responsible to the control of maritime safety and marine pollution prevention is the Executive Agency “Marine Administration” at the Minister of transport and communications. This Agency is a legal entity on budget and own resources, a secondary authorizing officer with budget credits. The headquarter of the Executive Agency “Marine Administration” is Sofia and this authorized body has territorial sections in Burgas, Varna, Russe and Lom.</p> <p>The Executive Agency “Marine Administration” exercise :</p> <ol style="list-style-type: none"> <li>1. A State control on Bulgarian flag vessels, related to observance of legally established administrative, technical and social requirements;</li> <li>2. A State control in the ports on the foreign-flag vessels from the moment of their entry until their departure from Bulgarian ports. This State control consists of international safety standards observance, prevention of pollution and occupational safety and health on board of vessels, entering to Bulgarian ports. In a period of a calendar year the Executive Agency “Marine Administration” accomplishes a number of examinations, covered minimum of 25 percent of vessels, entering to Bulgarian ports;</li> </ol>																																

	<p>3. A state control on the safety shipping in maritime territories and Bulgarian length of Danube river. The Minister of transport and communications determines by ordinances the legal requirements related to the safety of various types of vessels, their construction and shipping equipment.</p> <p>Part II of Commercial Shipping Code (CSC) consists of special legal requirements dedicated on shipping safety. According to art.72 of CSC there is no possible to put into service a vessel without an authorized statement of Executive Agency "Marine administration" that this vessel is build, get ready and it's crew has the qualification needed according to the safety of shipping requirements. The ship-owner has to cooperate with the official authorities and to enterprise the measures needed concerning the vessels and it's crew safety, the prevention of marine pollution from vessels and the keeping and restoration of fish resources. The ships and other vessels, shipping in the internal waters, territorial sea and adjacent waters of Republic of Bulgaria, must to have equipment of radio-communication methods approved by Executive Agency "Marine administration". This approval has to be done in accordance with the requirements of registration, equipment, installations of radio-communication established by Telecommunications. According to art.73 of CSC the Executive Agency "Marine administration" accomplishes vessels and ship-owners examinations related to safety of shipping requirements and prevention of marine pollution requirements. As a result of these examinations the Executive Agency "Marine administration" issues authorizations. The examinations above mentioned could be accomplished by other organizations authorized by Executive Agency "Marine administration" and approved by the Minister of transport and communications issues an ordinance related to the conditions and procedure of examinations. The determination of Bulgarian vessels class, the technical control on their construction and exploitation have to be accomplished by Bulgarian legal entities, named classification organization, or by foreign organizations receiving governmental approval by Executive Agency "Marine administration" and Minister of transport and communications. After the examinations of vessels overall state, accomplished by Executive Agency "Marine administration" or other authorised organisations. The Executive Agency "Marine administration" issues a special safety certificates, in the case that the requirements have been observed.</p>
Brazil	Maritime Authority has responsibility for administering, enforcing maritime safety, marine pollution prevention and control in waters under of Brazilian State. According to Brazilian law, the Maritime Authority is represented by the Director of Coasts and Ports (Diretor de Portos e Costas).
Canada	The Canadian Department of Transport has principal responsibility for administering and enforcing maritime safety in Canada. With respect to marine pollution prevention and control in Canadian waters, responsibility is held principally by the Canadian Department of Transport, the Canadian Department of Fisheries and Oceans and the Canadian Department of the Environment. The principal statutes governing the role of federal regulators in maritime safety and pollution prevention and control are the <i>Canada Shipping Act</i> (which will be replaced by the <i>Canada Shipping Act 2001</i> , not yet in force), the <i>Fisheries Act</i> , the <i>Canadian Environmental Protection Act</i> , 1999, and the <i>Migratory Birds Convention Act</i> . The latter two statutes may shortly be amended by a bill currently before Parliament (Bill C-15), which would expand the jurisdiction and powers of the Canadian Department of the Environment.
Chile	The Maritime Authority, through the General Direction of the Marine Territory and Merchant Shipping (Dirección General del Territorio Marítimo y de Marina Mercante).
China	According to the provisions of article 3 of Maritime Traffic Safety Law of the People's Republic of China (MTSL) and article 2 of Regulations of the

	<p>People's Republic of China on the Investigation and Handling of Maritime Traffic Accidents (RIHMTA), the harbor superintendence agencies of the People's Republic of China have responsibility for administering and enforcing maritime safety and marine pollution prevention and control in the waters under the jurisdiction of China.</p> <p>According to article 48 of MTSL and article 3, section 2 of RIHMTA, if the accidents happen within the waters of fishing harbors, the state fisheries administration and fishing harbor superintendence agencies shall have responsibility for administering and enforcing maritime safety and marine pollution prevention and control.</p> <p>According to article 49 of MTSL and article 3, section 2 of RIHMTA, the internal administration of offshore military jurisdictional areas and military vessels and installations, the administration of surface and underwater operations carried out for military purposes, and the inspection and registration of public security vessels, the provision of their personnel and the issuing of their port entry and departure visas shall be separately prescribed by the relevant competent departments of the state in accordance with this law.</p>
Croatia	<p>Maritime Safety and Marine Environment Protection Directorate of the Ministry of the Sea, Tourism, Transport and Development is responsible for enforcing maritime safety and prevention of marine environment pollution from ships.</p>
Denmark	<p>In Denmark, maritime safety and marine pollution prevention and control are generally governed by two acts of parliament, i.e. the Safety at Sea Act of 1998 is amended (referred to as the "SSA") and in the Maritime Environment Act of 1993 as amended (referred to as the "MEA").</p> <p>The SSA is contains general rules on the construction, equipment and operation of vessels, but it first of all constitute a statutory framework which authorises the Ministry of Economic and Business Affairs to establish more detailed rules on maritime safety, including rules concerning construction equipment and operation of vessels and rules concerning navigation. It may be mentioned that e.g. the SOLAS Convention, the MARPOL Convention (as far as vessel requirements are concerned) and the COLREG Convention have been given effect in Denmark by way of regulations issued under the provisions of the SSA.</p> <p>The MEA contains general rules on marine pollution prevention and control, but-just as the SSA-it first of all constitutes a statutory framework which authorises the Ministry of the Environment to establish more detailed rules on marine pollution prevention and control. It may be mentioned that the MARPOL Convention (apart from vessel requirements) has been given effect by way of the MCA.</p> <p>The MEA is administered by both the Ministry of the Environment, which is mainly responsible for issuing statutory instruments to provide more detailed sets of rules concerning marine pollution prevention and control and to ensure compliance with international conventions and agreements and the Ministry of Defence, which is mainly responsible for enforcing the rules in MCA by way of marine environment surveillance, including vessel inspections, and marine pollution control, including intervention against polluting vessels. The Ministry of the Environment has delegated a number of its powers under the MEA to different agencies, including the Environmental Protection Agency and the Maritime Authority. The Ministry of Defence has delegated most of its authority and the MCA to the Chief of Defence, which in turn has delegated its authority to the Admiralty. It is also noteworthy that the police have been given direct authority under the MEA to inspect vessels and intervene against polluting vessels.</p> <p>Both the SSA and MEA make the violation of certain provisions under the acts subject to criminal liability, and both shipowners, masters, officers</p>

	<p>and crew members may incur criminal liability.</p> <p>Crimes are generally investigated by the police, prosecuted by the prosecution service and tried by the courts.</p> <p>However, in the case of violation of rules established under the provisions of the SSA concerning certain log books related to the prevention of pollution or in the case of violation of the prohibition of discharge of oil from vessels under the MCA, the Maritime Authority and the Admiralty respectively are - if the violation is deemed not to involve other punishment than the fine - authorised to issue a fixed-penalty notice which will dispense with the need for a trial if it is accepted by the offender.</p>
Dominican Republic	The Dominican Republic Navy (Marina de Guerra de la Republic Dominicana) MDG = DR Navy, as per the provisions of local law 3003 and 1951. The head of the Dominican Navy is the Chief of Staff (Jefe de Estado Mayor MDG) and the ones are dealing immediately with such occurrences are the Harbourmasters = Port Commanders(Comandantes de Puerto), under the direction of the Director of Port Commanders/Harbourmasters (Director General de Comandancias de Puerto).
Finland	Ministry of Environment, Finnish Maritime Administration (FMA), Coast Guard, Police and Customs.
France	<p>Different ministers are implicated : each one is jealous of his prerogatives :</p> <ul style="list-style-type: none"> <li>- Justice (for law, rules and sentences),</li> <li>- Army (national marine) for traffic controls and reports of breaches of the law</li> <li>- Finances (through customs)</li> <li>- Transports : the use of the personnel of Army to control ships (CROSS) and for investigations.</li> </ul> <p>The maritime Prefect (Préfet maritime) represents all these services in sea.</p>
Germany	The German Ministry of transport, building and housing has got the responsibility for administering and enforcing maritime safety and marine pollution prevention and control in the German waters. The maritime administration is part of this ministry.
Hong Kong	Hong Kong Marine Department (MD) is responsible for administering and enforcing maritime safety and marine pollution prevention and control in waters of Hong Kong by establishing local legislation to give effect to various international Conventions on safety and pollution prevention. Enforcement is via flag State and port State control.
Italy	The responsibility for administering and enforcing maritime safety and marine pollution under Italian jurisdiction rests on the Port Authority competent for the relevant area, who may avail itself of the Criminal Police and of the N.A.S. (Nucleus Anti Sophistication) of the Carabinieri.
Japan	The Ministry of Land, Infrastructure and Transport is the responsible body for implementation of the IMO Conventions, including promulgation of national laws and regulations. The Japan Coast Guard is the administrative entity responsible for enforcement of the maritime laws and regulations at sea.
Korea	Safety Management Bureau and Korea Coast Guard, two divisions of Ministry of Maritime Affairs & Fisheries)(140-2 Gye-Dong, Jongno-Gu,

	Seoul, 110-793, Korea, Tel 82-2-3674-6114 Fax 82-2-3674-6044) assume the responsibility.
Nigeria	The Maritime Safety Administration of Nigeria which is the National Maritime authority (NMA).
Norway	The Norwegian Coastal Administration is responsible for the governmental preparedness against acute pollution.
Slovenia	The responsibility is on Ministry for transportation and connections (for the maritime safety) and the Ministry for environment (for the marine pollution prevention). The Direction for maritime transport, which is under Ministry for transportation and connections is controlling the condition of the vessels to prevent marine pollution incidents.
South Africa	The South African Safety Maritime Authority ["SAMSA"] is responsible for administering and enforcing maritime safety and marine pollution prevention and control legislation in South Africa. SAMSA is a statutory body to which has been delegated the rights, duties and obligations of the Marine division of the South African Department of Transport.
Sweden	The Swedish Maritime Administration is responsible for administrative issues regarding maritime safety and oil pollution at sea. The Swedish Coast Guard supervises that the rules are followed and is also in charge of oil pollution clean up measures at sea.
UK	<p><b>1.1 The Maritime and Coastguard Agency (MCA)</b></p> <p><i>1.1.1 Administering Maritime Safety and Marine Pollution Prevention and Control</i></p> <p>The Maritime &amp; Coastguard Agency (MCA) is responsible for implementing the UK Government's maritime safety policy. The MCA is an executive agency (created in 1998 by the merger of the Coastguard Agency and the Marine Safety Agency) of the Department for Transport. The current Chief Executive is Mr. Stephen Bligh. Key functions of the MCA are:</p> <ul style="list-style-type: none"> <li>• Developing, promoting and enforcing high standards of marine safety</li> <li>• Minimising loss of life amongst seafarers and coastal users</li> <li>• Minimising pollution from ships of the sea and coastline.<sup>1</sup></li> </ul> <p>The powers of the MCA derive mainly from the Coastguard Act 1925, the Merchant Shipping Act 1995 (MSA 95) and the Merchant Shipping and Maritime Security Act 1997 (MSMSA 97) and associated secondary legislation.</p> <p>The directorate of Operations within the MCA consists of 6 parts (Enforcement, Survey, Inspection including Port State Control, Her Majesty's Coastguard; Search and Rescue, Incident Prevention and Counter Pollution). The Counter Pollution section responds to pollution incidents assessing incoming reports and taking appropriate action to mitigate the effect on the UK environment.<sup>2</sup></p>

<sup>1</sup> Memorandum of Understanding between the Health and Safety Executive, the Maritime and Coastguard Agency and the Marine Accident Investigation Branch for health and safety enforcement activities etc at the water margin and offshore.

<sup>2</sup> [www.mcga.gov.uk](http://www.mcga.gov.uk)

### *1.1.2 Enforcement of Maritime Safety and Pollution Prevention and Control*

As mentioned above, 'Enforcement' is one of the six branches of the MCA. The Enforcement branch of the MCA investigates breaches of Merchant Shipping Legislation and prosecutes offenders (for example for pollution, safety and manning, breaches of the COLREGS, forged certificates) where appropriate.<sup>3</sup> It should be recognised that only 'significant breach' of the law will lead to an Enforcement Unit investigation (which may result in an Official Caution or, as in approximately 15% of cases, a prosecution).<sup>4</sup>

## **1.2 The Environment Agency (EA)**

### *1.2.1 Administering Maritime Safety and Marine Pollution Prevention and Control*

The Environment Agency (EA), established pursuant to the 1995 Environment Act as a non-departmental public body is sponsored largely by the Department for Environment, Food & Rural Affairs (DEFRA) and the National Assembly for Wales (NAW). The Secretary of State for Environment, Food and Rural Affairs has the lead sponsorship responsibility for the Agency as a whole.<sup>5</sup> The EA aims to protect and enhance the environment and, in so doing, to make a contribution towards the objective of achieving sustainable development.<sup>6</sup> In working towards this aim the EA has many functions, only some of which are related to maritime safety and marine pollution. These functions include:

- Integrated Pollution Prevention and Control
- Integrated Pollution Control, radioactive substances regulation
- Waste Management
- Water Quality
- Land Quality
- Water Resources
- Flood Defence
- Navigation
- Conservation
- Recreation
- Fisheries

---

<sup>3</sup> *Ibid.*

<sup>4</sup> For further details of a 'significant breach' see para 2.1.3 below.

<sup>5</sup> [www.defra.gov.uk](http://www.defra.gov.uk).

<sup>6</sup> *Ibid.*

<sup>7</sup> See [www.environment-agency.gov.uk](http://www.environment-agency.gov.uk).

<sup>8</sup> Prosecution of Offences Act 1985 s.3(2)(a).

<sup>9</sup> Prosecution of Offences Act 1985 s.6(2).

<sup>10</sup> Clause 1.1.

	<p>Within the areas for which it has responsibility, the EA not only informs and educates but also regulates. As part of its regulatory role, the EA grants various authorisations (licences, permits etc), gives advice, inspects and monitors licence holders.</p> <p><i>1.2.2 Enforcement of Maritime Safety and Pollution Prevention and Control</i></p> <p>The Environment Agency is responsible for enforcing environmental legislation in England and Wales, and it has published an Enforcement and Prosecution Policy (“the Policy”). The offences with which the EA is concerned may overlap with those investigated by the MCA, and in this connection the Policy provides that: “<i>where the Agency and another enforcement body both have the power to prosecute, the Agency will liaise with that other body, to ensure effective co-ordination, to avoid inconsistencies, and to ensure that any proceedings instituted are for the most appropriate offence.</i>” With respect to incidents at sea, the EA’s website highlights the fact that operational discharges from vessels are the responsibility of the MCA. Although the EA has a joint regulatory role for spillage of oil, the lead is normally taken by the MCA.<sup>7</sup></p> <p><b>1.3 Role of the Crown Prosecution Service (“the CPS”) and relationship with other prosecuting authorities</b></p> <p>The Crown Prosecution Service (CPS) has a duty to take over proceedings instituted by or on behalf of the Police.<sup>8</sup> However, the CPS also has a discretion to take over proceedings in any other case.<sup>9</sup> In particular areas such as maritime safety and marine pollution, however, it is recognised that certain other prosecuting authorities have special expertise or statutory power and are therefore able to bring prosecutions directly. In such cases the CPS will not usually become involved; indeed sometimes it may be appropriate for proceedings originally brought by the CPS to be delegated to a different prosecuting authority. The CPS may on occasion have to take over the conduct of proceedings which would otherwise be pursued by another body, but only in exceptional circumstances would this be against the wishes of the other prosecuting authority.</p> <p>With respect to enforcement of the criminal law, various prosecuting authorities (including the CPS, the MCA and the EA) co-ordinate their respective roles pursuant to arrangements contained in the <i>Convention Between Prosecuting Authorities To Provide Arrangements For Ensuring Effective Co-ordination Of Decision Making And Handling In Related Cases Which Are The Responsibility Of Different Authorities</i> (“the Convention”). This Convention, drawn up in 1998, is of course a purely domestic rather than international agreement.</p> <p>The object of the Convention is to address the difficulties and uncertainties which may arise where two or more prosecuting authorities propose to proceed against an individual or company for related offences, and where decisions are made and announced at different times.<sup>10</sup> The term “related” refers to a situation where two or more prosecuting authorities plan to prosecute the same individual or company for offences which may lead to associated court proceedings. The Convention provides a structure to ensure a co-ordinated approach to the decision-making process. The Convention focuses on the need for effective lines of communication; prescribes issues to be discussed by contracting prosecuting authorities (for example, the possibility of a prosecution being jointly conducted); and provides for the appointment of a liaison officer from each prosecuting authority.</p>
Uruguay	In maritime safety and marine pollution matters, the Maritime Authority is the Coast Guard ( Prefectura Nacional Naval P.N.N
USA	The United States Coast Guard is the primary enforcer of these laws. However, depending on factual circumstances there can be overlapping jurisdiction with other federal agencies including the Federal Bureau of Investigation (FBI), Department of Justice and Environment Protection



	Agency (EPA). Some states exercise concurrent enforcement and control with the Coast Guard within the waters of the individual 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?**

Argentina	<p>In all cases an administrative proceeding is started.          In case of a maritime accident/damage it may have intervention the Administrative Court of Navegation which decides about the liability of the seafarers.          In case of a maritime accident/damage also may have intervention the federal Court for eventual criminal offense (i.e., damages, homicide).          In cases of incidents for contamination, in the stage of the administrative proceedings, the Courts are notified of the facts.</p>
Australia	<p>In respect of casualty investigation, no investigation is mandatory. Depending on the severity of the incident any one or combination of investigations may take place. The ATSB may undertake a 'no fault' type safety investigation. This does not preclude a parallel investigation by AMSA or a State marine or environmental agency investigating with a view to prosecuting for a breach of the law.          In respect of marine pollution incidents, the only obligation regarding investigation that exists is the general obligation imposed by Article 4 of MARPOL 73/78.</p>
Bulgaria	<p>According to art.79 of CSC Executive Agency "Marine administration": investigates each accident occurred in marine territories and in internal waters of Republic of Bulgaria; investigates an accidents occurred with Bulgarian vessels although the place of those accidents; cooperates to foreign official administrations during the investigation of high sea accidents when a Bulgarian vessels have been involved and as a result of this accidents a Bulgarian or foreign citizen death or grievous bodily harm have been caused, or a serious vessels or equipments damages have been caused and their safe exploitation have been hind; investigates the cases of substances throwing out, when these substances have caused a marine or fluvial pollution or floor pollution; investigates the cause of sinking or throwing out of vessel or vessels cargo, consisting substances causing marine or fluvial pollution or pollution of marine floor. In the end of investigation, the Executive Agency "Marine administration" issues an ascertainment act related to accidents causes.</p> <p>The Minister of transport and communications issues an ordinance related to the procedure of accident investigations.</p>
Brazil	<p>The process of accident investigation will be taken in three different spheres: administrative, civil and criminal. It is important to note that all the processes are independent and they are taken without prejudice to one another. The Brazilian Domestic Law (Administrative, Civil and Criminal law) will be applied.</p>
Canada	<p>Maritime accidents, including those resulting in pollution incidents, are investigated by the Transportation Safety Board of Canada ("TSB") pursuant to the <i>Canadian Transportation Accident Investigation and Safety Board Act</i>, which implements Canada's obligations to investigate marine casualties under the United Nations Convention on the Law of the Sea. The particular investigation process is determined by the investigators conducting the investigation and typically depends upon the seriousness of the incident. TSB has the power to conduct a public inquiry if considered appropriate, and TSB's investigators have the power, on reasonable grounds, to enter premises (including a ship), search and seize evidence and interview witnesses. TSB's mandate is to determine causes and contributing factors, but not to assign fault, and the ability of other regulatory authorities to investigate is limited while TSB's investigation is ongoing.</p>

	<p>The Canadian Department of Transport is also likely to be involved in investigation of marine accidents. That Department, as well as the Canadian Department of Fisheries and Oceans and the Canadian Department of the Environment, all have jurisdiction to investigate a marine pollution incident, pursuant to the statutes described under question 1 above.</p> <p>To a lesser degree, provincial regulatory authorities may seek involvement in the investigation of a marine pollution incident where provincial territorial interests are affected.</p>
Chile	<p>An Official Investigation by the Maritime Authority normally carried out by the Maritime Governor in charge of the jurisdictional waters in which the accident and/or marine pollution has occurred, subject to the final supervision of the General Director of the Marine Territory.</p>
China	<p>RIHMTA has made concrete and clear regulations on the process of accident investigation. These regulations can be listed as follows:</p> <p><b>(1) It stipulates the objects of accident investigation.</b>  According to the provisions of article 10 of RIHMTA, the harbor superintendence administration shall be responsible for the investigation of the maritime traffic accidents which happen in the waters of their respective harbor areas. The maritime traffic accidents which happen outside the waters of harbor areas shall be investigated by the harbor superintendence administration of the nearest harbor or that of the vessel's first port of arrival in the People's Republic of China. The harbor superintendence administration bureau of the People's Republic of China may designate a harbor superintendence administration to carry out the investigation, if the bureau deems it necessary. The article also stipulates that when the harbor superintendence administration concerned deems it necessary, he may request relevant departments and social organizations to take part in the investigation of the accidents.</p> <p><b>(2) It stipulates the principle of accident investigation.</b>  According to the provisions of article 11 of RIHMTA, the harbor superintendence administration shall promptly carry out investigation upon receiving accident reports. Investigation shall be carried out in an objective and all-round manner and must not be restricted by the information provided by the parties involved in the accidents.</p> <p><b>(3) It stipulates the method and the content of accident investigation.</b>  According to the provisions of article 11 of RIHMTA, the harbor superintendence administration could forward the process by six different ways, including questioning the persons concerned; demanding written material and testimonial from the persons under investigation; demanding the parties involved to provide logbooks, engine room logs, wheel-bell records, radio operation logs, course records, charts, data of the vessel, functions of the navigation equipment and instruments and other necessary original papers and materials; examining certificates of the vessels, installations and the relevant equipment and certificate of the personnel and verifying seaworthiness of the vessels and technical conditions of the installations before the accident; examining the damage to the vessels, installations and goods and ascertaining casualties of personnel and surveying the scene of the accident and collecting relevant material evidence. During the investigation, the harbor superintendence administration may use recording, photographing and video equipment and may resort to other means of investigation permitted by law. According to the provisions of article 13 of RIHMTA, in order to meet the need of investigation, the harbor superintendence administration has right to order the vessel(s) involved to sail to the spot for investigation or not to leave the said spot.</p> <p><b>(4) It stipulates the obligations of the persons being investigated.</b>  According to the provisions of article 12 and article 13 of RIHMTA, they must subject themselves to the investigation, honestly state the relevant</p>

	<p>circumstances of the accident and provide authentic papers and materials. They also have the obligation to sail the ship to the spot chosen by the harbor superintendence administration or not to leave the said spot.</p> <p><b>(5) It stipulates that the personnel of harbor superintendence administration shall produce their certificates to the persons being investigated in conducting investigations.</b></p> <p><b>(6) It stipulates the right of concerning organizations and personnel toward consulting, making extracts of, duplicating and borrowing the findings concerning maritime traffic accidents papered by the harbor superintendence administration for the purpose of handling cases.</b></p> <p><b>(7) It stipulates the legal liability of the persons being investigated when breaking the rules set by RIHMTA.</b> Article 29 describes the administrative liability and criminal liability of the persons being investigated.</p>
Croatia	<p>Maritime accident and/or marine pollution incident investigation is led by the Maritime Safety and Marine Environment Protection Directorate of the Ministry of the Sea, Tourism, Transport and Development and involves gathering of all relevant information. Criminal investigation is carried out by Ministry of the Interior in cases of accidents with the elements of criminal charges.</p>
Denmark	<p>With regard to maritime accidents, which include pollution accidents in connection with bunkering vessels, the Division for Investigation of Maritime Accidents is required to investigate the accident to obtain information about the factual circumstances of the accident and to explain the cause of the accident.</p> <p>As part of the investigative process, the Division for Investigation of Maritime Accidents is entitled to board vessels on proof of identity without a court order, and both the shipowner, master and chief engineer as well as anyone acting on their behalf are obliged to assist the Division for Investigation of Maritime Accidents in its investigation and to provide any information in this regard.</p> <p>The investigations are generally conducted in accordance with the principles in IMO's Code for the Investigation of Marine Casualties and Incidents, but the Division for Investigation of Maritime Accidents may also request a maritime declaration to be given and heard in court at a special hearing, to which the shipowner, the master, the officers and any crew member may be summoned and will be required to give testimony.</p> <p>With regard to marine pollution, which has not been caused by a maritime accident, the Admiralty is entitled to conduct random inspections of vessels to see if the rules in or issued under the provisions of the MEA are complied with and to conduct investigations of vessels which are actually or in danger of causing pollution.</p> <p>As part of the investigative process, the Admiralty is entitled to board vessels on proof of identity without a court order, and in principle anyone on board is obliged to assist the Admiralty in its investigation since obstruction of the investigation is subject to criminal liability. Furthermore, the Admiralty is entitled to photograph, copy and seized documents or other relevant objects without compensation.</p> <p>The Admiralty's inspections and investigations may not cause undue delay of or expense for the vessel.</p>

	<p>Investigations of Maritime accidents performed by the Division for Investigation of Maritime Accidents is not per se contemplate criminal charges against any ships' personnel involved.</p> <p>The purpose of an investigation is only - if possible - to adopt measures designed to reduce the risk of similar Maritime accidents in the future.</p> <p>Investigations of vessels actually or in danger of causing pollution by the Admiralty does likewise not per se contemplate criminal charges against any ships' personnel involved.</p> <p>The purpose or an investigation is only to prevent and control marine pollution.</p> <p>Random inspections of vessels, on the other hand, are performed to see if the MEA is complied with and - if this is not the case - the offender may be reported to the police unless the Admiralty uses its authority under the MEA to issue a fixed-penalty notice which is subsequently accepted.</p> <p>Investigations of potential violations of the SSA and the MEA, which are subject to criminal liability, are performed by the police either as a result of a report of a suspected crime or because the police itself has formed a suspicion.</p> <p>The result of investigations performed by the Division for Investigation of Maritime Accidents and the Admiralty may be used by the police to bring criminal charges against the master, officers will crew of a ship.</p> <p>Violations of SSA and MEA are punishable by fines, imprisonment for a maximum of 2 years and - in case of violation of SSA - deprivation of the right to serve as a master, navigator or engineer.</p>
Dominican Republic	<p>The Port Commanders/Harbourmasters as well as other staff members of the DR Navy act as a judicial police, when such incidents occur. They would start with the accident investigation, report to the Director of Port Commanders who in turn, will report to the Chief of Staff. Sometimes, when the pollution incident is significant, a commission of several DR Navy officers and the Director of Environment is appointed by DR Navy Chief of Staff to investigate the incident and render a report.</p> <p>The investigations include a full interrogatory to the vessel's master and all the crew members, as well as of all witnesses, verification of the situation/pollution in situ and a preliminary evaluation of the damages, which will be passed on to the legal counsellor of the DR Navy for on forwarding to the corresponding district attorney's (D. A.) Office.</p>
Finland	<p>In order to establish the reason for the accident/incident a <b>Maritime Declaration</b> in Court shall be given by the Master of the Vessel by means of a court hearing in which the Master and the witnesses are heard. The FMA and public prosecution attend the court hearing.</p> <p>In Finland the <b>Accident Investigation Board (AIB)</b> investigates all major accidents regardless of their nature as well as all aviation, maritime and rail accidents and their incidents.</p> <p>The purpose of the investigation of accidents by the AIB is primarily to improve safety and prevent future accidents. The flow of events during the accident, its causes and results as well as the rescue operation are dealt with in the investigation. A report is prepared on the results of the</p>

	<p>investigation. The report also presents the recommendations, which are based on the conclusions of the investigation.</p> <p>In Finland the AIB is located within the Ministry of Justice.</p> <p>Should the maritime declaration and/or the investigation of the AIB indicate that a crime may have been committed a <b>pre-trial investigation</b> according to the Criminal Investigations Act (L 449/1987) will be conducted.</p>
France	<p>It is required :</p> <ul style="list-style-type: none"> <li>➤ an administrative and technical inquiry (« BEA MER »),</li> <li>➤ a nautical or judicial inquiry ; it depends on circumstances.</li> </ul> <p>The maritime Prefect informs the public Prosecutor who after consulting experts orders the ship to go into a french port and the ship will be retained until a financial security is given.</p>
Germany	<p>The “Bundesstelle für Seeunfalluntersuchungen“ will immediately investigate the accident and in case of damage or loss of life the German public prosecutor’s office investigates.</p>
Hong Kong	<p><u>UFor marine accidents:</u></p> <ul style="list-style-type: none"> <li>- In accordance with Section 67(1) of the Shipping and Port Control Ordinance (Cap.313) all vessels in the waters of Hong Kong are required to report any known marine accident to MD as soon as possible and shall furnish in writing the full particulars of the accident within 24 hours.</li> <li>- Under Section 59 of Cap.313, an authorized MD officer will carry out an investigation into the marine accident. He is empowered to stop and board any vessel in waters of Hong Kong, other than a warship, to obtain information / evidence for the purpose of the investigation.</li> </ul> <p><u>For marine pollution incidents:</u></p> <p>If the pollution (vessel or place) can be traced, MD would take oil samples from the suspected source and the polluted water area for laboratory test by the Government Chemist. If the samples were found identical by the Government Chemist, unless the discharge of the oil or mixture containing oil can be defended under Section 47 of Cap.313, MD would initiate legal action against the offender.</p>
Italy	<p>Competent for the administrative investigation are the Ministry of Infrastructures and Transport and, if criminal violations are envisaged, the local Procura della Repubblica, assisted by the Criminal Police. If the accident or marine pollution incident has occurred in international waters and involves an Italian vessel, should a criminal violation be envisaged, the competent Procura della Repubblica is that in whose jurisdiction is situated the Port Authority in whose ship register the vessel in question is registered or that where notice of the criminal violation was first received.</p>
Japan	<p>There are two types of accident investigation: the Japan Coast Guard conducts criminal investigations and the Marine Accident Inquiry Agency conducts investigations including those to determine causes of maritime accidents. The answers to the following questions are based on criminal investigations in Japan.</p>

Korea	Korea Marine Police first investigates the accident for the criminal purpose. Simultaneously or later the Korea Marine Safety Tribunal undertakes investigation for the administrative purpose.
Nigeria	<p>(i) Preliminary Investigation (P.I.) is carried out by the Maritime Safety Department. The P.I Report is forwarded to the Federal Ministry of Transport for a Marine Board of Enquiry to be set up to further investigate the accident.</p> <p>(ii) Federal Ministry of Transport guided by the provisions of Sections 252 (1-8) Cap 221 of Merchant Shipping Act (MSA). Law of the Federation 1990 set up a A Marine Board of Enquiry. A public notice is issued by the Marine Board of Enquiry requesting for memorandum and relevant witnesses to be present at its sitting</p>
Norway	<p>The Norwegian Maritime Directorate will be responsible for initiating maritime inquiries and have the investigation power with regard to maritime accidents. The attached "marine casualty flow" chart shows the existing investigation process.</p> <p>A new investigation authority "the Investigation Commission" will be established in January 2006. It will deal with major accidents. At the same time a new section in the Maritime Code (MC) section II § 472 to 493 will enter into force and regulate maritime investigations. The following answers are based upon the new provisions and procedures, which will come into force from January 2006.</p> <p>According to § 472 a maritime inquiry can be held in case of a maritime accident and/or marine pollution incident involving Norwegian vessels, or foreign vessels if the incident take place in Norway, or outside Norway if the flagstate accepts this or it is in accordance with international law. The new Investigation Commission or the Maritime Directorate will have the investigation power dependent upon the seriousness of the accident/incident.</p>
Slovenia	When the accidents and/or marine pollution incidents occur, the Direction for maritime transport starts the accident investigation on the bases of the standing orders on investigation of the maritime accidents (adopted in 1989).
South Africa	<p>The Merchant Shipping Act No 57 of 1951 provides in chapter six for various accident investigation processes.</p> <p><b>1. Section 264 provides that SAMSA in its discretion may hold a preliminary enquiry:</b></p> <p>1.1 In respect of a South African registered ship whenever:-</p> <p>1.1.1 An allegation of incompetence or misconduct is made against the owner, the Master or any member of the crew; or</p> <p>1.1.2 A ship has been lost, abandoned or stranded, an accident has occurred on board a ship, the ship has been damaged, the ship has caused damage to another ship or there has been loss of life or serious injury to any person on board the ship at any place whatsoever.</p> <p>1.2 In the case of a foreign flag vessel whenever any of the events referred to in sub paragraph 2 above has occurred within the territorial waters of South Africa.</p> <p>1.3 In respect of any ships whenever an allegation of incompetence or misconduct is made against an employer or any person on board the ship while within South African territorial waters:</p> <p>1.4 In respect of a foreign flagged vessel whenever one of the events referred to in sub paragraph 1.1.2 occurs outside of the territorial</p>

A preliminary enquiry merely produces a report which is considered by SAMSA.

In the event that the Minister of Transport deems it necessary and regardless of whether or not a preliminary enquiry has been held a Court of enquiry can be convened to hold a formal investigation into any of the allegations referred to with regard to a preliminary enquiry.

This Court of marine enquiry only has jurisdiction over foreign flagged vessels in the event that the casualty occurs within South African territorial waters or the flagged state requests South Africa to carry out a marine enquiry.

The general practice adopted by SAMSA in respect of casualties is that they conduct a preliminary investigation into a casualty and very rarely proceed with a preliminary enquiry or a marine enquiry. This is partly because SAMSA suffers from both financial and staff constraints.

The Merchant Shipping Act No 57 of 1951 provides in chapter six for various accident investigation processes.

**1. Section 264 provides that SAMSA in its discretion may hold a preliminary enquiry:**

1.1 In respect of a South African registered ship whenever:-

1.1.1 An allegation of incompetence or misconduct is made against the owner, the Master or any member of the crew; or

1.1.2 A ship has been lost, abandoned or stranded, an accident has occurred on board a ship, the ship has been damaged, the ship has caused damage to another ship or there has been loss of life or serious injury to any person on board the ship at any place whatsoever.

1.5 In the case of a foreign flag vessel whenever any of the events referred to in sub paragraph 2 above has occurred within the territorial waters of South Africa.

1.6 In respect of any ships whenever an allegation of incompetence or misconduct is made against an employer or any person on board the ship while within South African territorial waters:

1.7 In respect of a foreign flagged vessel whenever one of the events referred to in sub paragraph 1.1.2 occurs outside of the territorial waters and the ship subsequently arrives in South Africa and an enquiry into the casualty has not been held by any competent port or, in the event of a treaty ship evidence is obtainable in South Africa as to the circumstances in which the ship proceeded to sea or was last heard of.

A preliminary enquiry merely produces a report which is considered by SAMSA.



	<p>In the event that the Minister of Transport deems it necessary and regardless of whether or not a preliminary enquiry has been held a Court of enquiry can be convened to hold a formal investigation into any of the allegations referred to with regard to a preliminary enquiry.</p> <p>This Court of marine enquiry only has jurisdiction over foreign flagged vessels in the event that the casualty occurs within South African territorial waters or the flagged state requests South Africa to carry out a marine enquiry.</p> <p>The general practice adopted by SAMSA in respect of casualties is that they conduct a preliminary investigation into a casualty and very rarely proceed with a preliminary enquiry or a marine enquiry. This is partly because SAMSA suffers from both financial and staff constraints.</p>
Sweden	<p>Maritime accidents are investigated by a maritime inquiry handled by the respective maritime court, which is competent for the incident, <i>inter alia</i>, depending on where the incident occurred. The role of the Swedish Coastguard includes investigating whether a maritime accident or oil pollution has been caused by wilful misconduct or negligence.</p>
UK	<p><b>2.1 MCA</b></p> <p><i>2.1.1 MCA Power to Investigate</i></p> <p>The MCA deals with suspected breaches of merchant shipping legislation and uses its powers of investigation to determine whether prosecution is appropriate.</p> <p><i>2.1.2 Surveyors and Inspectors</i></p> <p>MCA surveyors may be appointed under the MSA 95.<sup>11</sup> These surveyors have powers to inspect ships whilst in UK waters and to detain them if they are unsafe.<sup>12</sup></p> <p>The MSA 95 also provides for the appointment of inspectors with a wider range of powers.<sup>13</sup> These include powers –</p> <ul style="list-style-type: none"> <li>• to enter any premises or board any ship in the UK if the inspector has reason to believe it is necessary</li> <li>• to make examinations and investigations as he considers necessary</li> <li>• to give directions requesting that the premises or ship be left undisturbed as is reasonably necessary</li> <li>• to take measurements and photographs and make readings as he considers necessary</li> <li>• to take samples of articles or substances and if necessary take possession of such article or substance and detain it for as long as necessary, and</li> </ul>

<sup>11</sup> Merchant Shipping Act 1995 s.256.

<sup>12</sup> *Ibid.* s 258.

<sup>13</sup> *Ibid.* s 256.

- to require production of, inspect and take copies of documents.<sup>14</sup>

If a surveyor or inspector finds that a ship fails to meet applicable standards the MCA has power to impose various sanctions including Improvement Notices (which specify a deficiency or deficiencies to be remedied within a specified time),<sup>15</sup> or Prohibition Notices (which may prevent the vessel from sailing).<sup>16</sup>

### 2.1.3 Investigations and “Significant Breaches”

Where there is a “significant breach” of merchant shipping legislation the MCA’s Enforcement Unit will probably commence an investigation which, in turn, may result in a prosecution. The MCA defines a “significant breach” as:

*“A contravention of Merchant Shipping or MARPOL legislation which could cause, or has caused, loss of life, serious injury, significant pollution or damage to property or the environment.”<sup>17</sup>*

<sup>14</sup> *Ibid.* s.259.

<sup>15</sup> *Ibid.* s.261.

<sup>16</sup> *Ibid.* s.262.

<sup>17</sup> See Jeremy Smart (Principal Enforcement Officer, MCA), *The Enforcement of Merchant Shipping Legislation and the Conduct of Criminal Prosecutions within the United Kingdom* (paper given at International Conference on Criminalisation of Masters and Seafarers, 17-18 February 2005).

<sup>18</sup> Available online at: [http://www.cps.gov.uk/victims\\_witnesses/code.html](http://www.cps.gov.uk/victims_witnesses/code.html).

<sup>19</sup> Merchant Shipping Act 1995 s.267.

<sup>20</sup> The Merchant Shipping (Accident Reporting and Investigation) Regulations 1999 (SI 1999 No 2567).

<sup>21</sup> *Ibid.*, s.4.

<sup>22</sup> *Ibid.*, s.6(1).

<sup>23</sup> *Ibid.*, s.6(3).

<sup>24</sup> *Ibid.*, s.6(5).

<sup>25</sup> *Ibid.*, s. 6(6).

<sup>26</sup> *Ibid.*, s.8(1).

<sup>27</sup> *Ibid.*, s.8(3).

<sup>28</sup> *Ibid.*, s.10(1).

<sup>29</sup> *Ibid.*, s.10(2)(a) and (b).

<sup>30</sup> *Ibid.*, s.10(7).

<sup>31</sup> *Ibid.*, s.14(1)-(3).

<sup>32</sup> Incident of 2 May 2004.

<sup>33</sup> Incident of 4 June 2004.

<sup>34</sup> Incident of 1 February 2005.

<sup>35</sup> For further information see the MAIB’s website at: <http://www.maib.dft.gov.uk>.

<sup>36</sup> Merchant Shipping Act 1995 s.268.

<sup>37</sup> The Merchant Shipping (Formal Investigations) Rules 1985 SI 1995/1001, as amended in 1999 and 2000.

Each case is judged on its merits and therefore a 'significant breach' may arise from a major incident that clearly falls within the above definition (e.g. a collision or grounding) or from a failure to comply with the lower level sanctions such as formal cautions.

#### *2.1.4 Investigation and compliance with other, related, legislation*

The MCA must conduct its investigations in accordance with legislation which safeguards the rights of the individual being investigated. These include:

- The Police and Criminal Evidence Act 1984 ('PACE 1984') and its associated codes of practice.
- The Regulation of Investigatory Powers Act 2000 (RIPA). RIPA was enacted to ensure that human rights are duly respected in the exercise of certain investigatory powers (including the interception of communications; the acquisition of communications data; intrusive surveillance; covert surveillance in the course of specific operations; the use of covert human intelligence sources and access to encrypted data).
- The Human Rights Act 1998 which implements the European Convention on Human Rights 1950.
- The Data Protection Act 1998.

#### *2.1.5 The Decision to Prosecute*

In deciding whether or not to prosecute, the MCA must apply a two-stage test established by the CPS:

1. Is there sufficient **evidence** to provide a realistic prospect of conviction? If so -
2. Is it in the **public interest** to prosecute?

The MCA will refer to the Code for Crown Prosecutors which gives detailed guidance on application of the above test.<sup>18</sup>

## **2.2 Marine Accident Investigation Branch (MAIB)**

### *2.2.1 MAIB Investigations*

Under the MSA 95 the Secretary of State may appoint an inspector or inspectors to conduct investigations into maritime accidents involving or occurring on board any ships in UK territorial waters.<sup>19</sup> The MAIB has been appointed to carry out this function. It was set up in 1989 to investigate accidents in order to determine their circumstances and causes and is part of the Railways, Aviation, Logistics, Maritime, and Security Group of the Department for Transport. The current Chief Inspector of Marine Accidents is Mr Stephen Meyer who reports directly to the Secretary of State on the investigation of specific accidents.

Investigations conducted by the MAIB are governed by regulations which define its remit and powers.<sup>20</sup> These regulations do not confer any power of prosecution and provide *inter alia* that:

- The fundamental purpose of an MAIB investigation of an accident is to “*determine its circumstances and the causes with the aim of improving the safety of life at sea and the avoidance of accidents in the future. It is not the purpose to apportion liability, nor, except so far as is necessary to achieve the fundamental purpose, to apportion blame.*”<sup>21</sup>
- Any accident (as defined by the regulations) may be investigated and the Chief Inspector shall decide whether or not this should be carried out.<sup>22</sup>
- Where the Secretary of State orders a formal investigation (see below at para 2.3), any investigation by the MAIB will be discontinued.<sup>23</sup>
- Public notice of the investigation may be given.<sup>24</sup>
- The Secretary of State may require an investigation into the further consequences of an accident to be carried out (for example on salvage or pollution aspects).<sup>25</sup>
- The inspector has a wide discretion as to the manner of conducting the investigation so as to achieve the fundamental purpose.<sup>26</sup>
- All persons required to attend before an inspector shall have their reasonable expenses of attending paid.<sup>27</sup>
- A report of the conclusions reached as a result of the investigation shall be made public (unless the investigation is being undertaken on behalf of a State other than the UK) in the shortest possible time and in the manner the Chief Inspector sees fit.<sup>28</sup> This is qualified by the requirement to serve notice of the report on certain persons/organisations (where their reputation may be adversely affected by the report) and consider their responses (amending the report where necessary).<sup>29</sup> The Secretary of State may also order that the report should not be made public.<sup>30</sup>
- The regulations also prescribe criminal offences, punishable by fines, for failure to report accidents or provide information; for false claims of ability to provide new evidence or information; for failing to preserve evidence as required by the regulations, and for irregular disclosure of information.<sup>31</sup>

### *2.2.2 MAIB Investigation Reports*

When a decision is made to investigate an incident the results of the investigation will generally be made available to the public in an accident investigation report. As it is part of the MAIB’s remit to improve safety for the future, such reports generally conclude with recommendations for measures to be taken to avoid a recurrence. Examples of such reports published after well known major incidents in UK waters in recent years include reports of MAIB investigations into the *Braer* and *Sea Empress* major oil spills in 1993 and 1996 respectively. At the time of writing, three reports have been published by the MAIB in 2005, namely those of investigations into accidents involving the vessels *Star Clipper*,<sup>32</sup> *Attilio Ievoli*<sup>33</sup> and *Waverley*.<sup>34</sup>

	<p>The MAIB also publishes a “Safety Digest” three times a year, with short reports of lessons learnt from investigations.</p> <p><i>2.2.3 Recent developments</i></p> <p>New regulations have been prepared which are intended to replace those summarised above. During the consultation phase, the MAIB requested comments and suggestions from various parties. Further to the receipt of responses, the MAIB has compiled a document entitled “Analysis of Responses to Public Consultation” dated January 2005. This gives details of the new draft regulations and the nature and substance of comments received (some which have resulted in ‘significant amendments’ and some of which have resulted in ‘minor amendments’).<sup>35</sup> The draft regulations were laid before Parliament on 24 March 2005 and are now due to come into force on 18 April 2005.</p> <p><i>2.2.4 Relationship with other organisations</i></p> <p>As the investigatory powers of the MAIB and MCA often overlap with those of the Health and Safety Executive (HSE), there is a Memorandum of Understanding between the three bodies as to which organisation will take the lead in a particular case.</p> <p><b>2.3 Formal Investigations</b></p> <p>The Secretary of State may cause a formal investigation to be held into any marine accident,<sup>36</sup> and regulations exist to govern the conduct of such investigations.<sup>37</sup> One of the main differences between this type of investigation and MAIB investigations is that a formal investigation may result in sanctions involving the suspension or revocation of an officer’s certificate. An investigation of this kind is not conducted by the MAIB but by a wreck commissioner. The regulations provide for the presentation of a report by the wreck commissioner to the Secretary of State rather than criminal proceedings.</p>
Uruguay	<p>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.</p> <p>If at any time, during those proceedings, it is found that criminal responsibility could arise from the facts, Criminal Courts are going to act.</p> <p>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</p>
USA	<p>Under the assumption that the Coast Guard would be the leading investigative agency the Marine Safety Office or Marine Safety Unit of the port/area involved would be responsible for determining the level of investigation undertaken. Depending on the severity of the environmental impact of the event the Coast Guard investigators can be supplemented by personnel from other agencies such as the National Oceanic and Atmospheric Association (NOAA).</p> <p>When the casualty includes factors such as collision, explosion or loss of life, the National Transportation Safety Board can become involved and will usually perform their own investigations, hold their own hearings and issue reports that are separate and distinct from the Coast Guard.</p> <p>Against that we must reiterate that the individual states (and sometimes local) governments are permitted to perform their own investigations and</p>

	can bring charges separate from the federal proceedings.
--	--

**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?**

Argentina	In case of maritime accidents, when there is an eventual criminal offense (i.e. damage or death) it may be started a criminal proceedings against the persons involved.
Australia	<p>In respect of casualty investigation, the ATSB is specifically precluded from undertaking any investigation in support of civil or criminal investigation. AMSA or State marine or environmental authorities may exercise their jurisdiction, which could lead to the arrest or detention of individuals or the ship.</p> <p>In respect of marine pollution, yes. Criminal sanctions exist for the requirements of MARPOL 73/78. This is mostly based on monetary penalties of varying amounts, although some State legislation provides for imprisonment in certain circumstances. The Federal MARPOL legislation and some State legislation provides for criminal sanctions against any crew-member responsible for a pollution incident. Most State legislation is, however, limited to criminal sanctions against the owner and/or master. 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.</p> <p>If at any time, during those proceedings, it is found that criminal responsibility could arise from the facts, Criminal Courts are going to act.</p> <p>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</p>
Bulgaria	<p>According to art.376 of CSC a captain, a pilot or a crew member, who have caused a ship wreck or average during the execution of his professional obligations, if this action is not considered as a crime, is punished on disqualification in a period from six months to two years and imposed a fine from 200 to 1000 lv. (BGN leva). This is the administrative punishment stipulated in CSC. If the action is considered as a crime, the punishment imposed is in accordance to Penal Code (PC) of Republic of Bulgaria and the procedure is according to Penal Procedure Code (PPC). The action is considered as a crime in the cases when "corpus delicti" in PC is provided, and namely: art.123 of PC - when a death is caused as a result of ignorance or failure to perform correctly some professional obligations or other legally established work, which is a source of high danger, the punishment is to imprison maximum of five years; art.134 of PC – when a grievous bodily harm or medium bodily harm is caused as a result of ignorance or failure to perform correctly some professional obligations or other legally established work, which is a source of high danger, the punishment is to put in prison maximum of three years in the case of grievous bodily harm and to put in prison maximum of two years or probation in the case of bodily harm. Aggravated crimes are also stipulated – in the cases of bodily harm caused to more than one person or when the action is accomplished in a state of intoxication. In art.136 of PC dedicated on occupational safety and health rules a punishment to put in prison maximum of three years or probation or public reprobation is stipulated. If the action is committed by negligence, the punishment is to put in prison one year or probation.</p> <p>The procedure concerning institution, accomplishment, ceasing and cassation of penal procedure is stipulated in Penal Procedure Code (Chapter III) and consists of two phases – prejudicial and judicial procedure.</p> <p>The preliminary proceedings have to be initiated by the procurator. The investigators are the authorities of preliminary proceedings, but the procurator could accomplish some investigation or other proceeding actions. According to Bulgarian legislation the accused has the right to</p>

	defence at the moment of detention.
Brazil	The Brazilian State legal system contemplates criminal charges applied to persons responsible in some very specific cases, as case of negligence, willful misconduct or criminal malice, for example.
Canada	<p>Investigations of maritime accidents and marine pollution incidents may result in charges being laid against a ship's personnel. While these charges are not under the Canadian <i>Criminal Code</i>, they do contemplate fines or imprisonment and could therefore be considered criminal or penal. These offences are predominantly strict liability offences, with a due diligence defence available.</p> <p>For example, in the case of a maritime accident, failure on the part of a master to render assistance after a collision may result in a fine on summary conviction or imprisonment under the <i>Canada Shipping Act</i>. Similarly, this Act makes it an offence for any person or ship to discharge a pollutant. While the typical Canadian practice is that it is the ship that is charged for such an incident, the jurisdiction to charge individual seafarers committing the discharge does exist.</p> <p>The potential for prosecution of seafarers will increase if Bill C-15, amending the <i>Migratory Bird Convention Act</i> and <i>Canadian Environmental Protection Act, 1999</i>, becomes law, as the amendments expressly contemplate prosecution of a master or chief engineer for failing to take reasonable steps to prevent pollution incidents.</p> <p>For</p>
Chile	No.
China	<p>If the acts of the ship's personnel involved have been suspected as a crime, criminal charges should be generated in accordance with concerning laws. However, the maritime administrative organizations can not bring criminal charges against ship's personnel involved directly but transfer the case to Public Security organizations or concerning organizations in accordance with the provisions on the Transfer of Suspectable Criminal Cases by Administrative Organizations for Law Enforcement (TSCCAOLE). Then the organ having the jurisdiction of the case will bring criminal charges against those personnel.</p> <p>The regulations on bringing criminal charges against ship's personnel during the investigative process could be listed as follows: article 47 of MTSL; article 15, article 18, article 29 section 2 of RIHMTA.</p>
Croatia	Maritime accidents resulting with a death or heavy injuries of persons or marine pollution incidents are criminal acts and are as such processed further by competent authorities of the Ministry of Interior. State Attorney's Office shall in such cases detain the personnel involved and/or limit the movement of personnel.
Denmark	<p>Investigations of Maritime accidents performed by the Division for Investigation of Maritime Accidents is not per se contemplate criminal charges against any ships' personnel involved.</p> <p>The purpose of an investigation is only - if possible - to adopt measures designed to reduce the risk of similar Maritime accidents in the future.</p> <p>Investigations of vessels actually or in danger of causing pollution by the Admiralty does likewise not per se contemplate criminal charges against</p>



	<p>any ships' personnel involved.</p> <p>The purpose of an investigation is only to prevent and control marine pollution.</p> <p>Random inspections of vessels, on the other hand, are performed to see if the MEA is complied with and - if this is not the case - the offender may be reported to the police unless the Admiralty uses its authority under the MEA to issue a fixed-penalty notice which is subsequently accepted.</p> <p>Investigations of potential violations of the SSA and the MEA, which are subject to criminal liability, are performed by the police either as a result of a report of a suspected crime or because the police itself has formed a suspicion.</p> <p>The result of investigations performed by the Division for Investigation of Maritime Accidents and the Admiralty may be used by the police to bring criminal charges against the master, officers and crew of a ship.</p> <p>Violations of SSA and MEA are punishable by fines, imprisonment for a maximum of 2 years and - in case of violation of SSA - deprivation of the right to serve as a master, navigator or engineer.</p>
Dominican Republic	<p>Indeed the above mentioned law 3003 and other laws provide for criminal charges against anyone (master and/or crew members) who dump oil, waste or debris into the waterways, ports and/or territorial waters.</p> <p>The DR Navy, acting as judicial police, will send the pertinent file to the corresponding District Attorney's office, indicating the violated statutes and charges for the D.A. to proceed with the prosecution.</p>
Finland	<p>Pre-trial investigation as stated above.</p>
France	<p>Criminal charges can be contemplated against all persons who may be held responsible of a marine accident and/or a marine pollution. The public Prosecutor may ask the investigating Magistrate to initiate investigations against any seafarer (actually the master only and the owner) and this one may be indicted (<i>mis en examen</i>) if charges may be retained against him and he will have to be at the service of the investigating Magistrate.</p> <p>The examining Judge at the request of the public Prosecutor may decide the detention of the seafarer before any judgement to avoid trouble of public order or to avoid the loss of pieces of evidence and/or to avoid him to communicate with the owner but only if the seafarer incurs sentence equal or over 3 years of imprisonment ; the Magistrate will ask the Judge of Liberties to order the detention. However no detention can be ordered without a debate between the public Prosecutor and the seafarer who shall be assisted by a lawyer ; the seafarer will have some delay to prepare his defence if he wishes it.</p> <p>The detention before judgement must be exceptional as any person is presumed innocent in French law.</p> <p>Until now, only the master of the ERIKA has been detained during fifteen days.</p> <p>If the indicted seafarer is left free, the judge to prevent him from leaving France may oblige him to respect some conditions such as to give an address, to check in the police services every week. We say that the person is under judicial control.</p>

Germany	Even though the last such incident occurred many, many years ago, criminal charges against ships' personnel are provided within German law.
Hong Kong	All charges under Cap.313 are criminal charges. In case that contravention of local regulations is detected during the accident and / or marine pollution incident, MD will carry out a separate investigation for prosecution.
Italy	If from the investigation it will emerge a possible criminal violation committed by the Master or by members of the crew notice must be given by the Authority that has carried out the investigation to the competent Criminal Court who will take action in compliance with the provisions of the Code of Criminal Procedure.
Japan	Personnel involved in cases as listed below will be subject to criminal punishment under the provisions of the Penal Code. 1. To obstruct marine traffic by damaging or blocking a waterway or a bridge 2. To endanger the traffic of a vessel by damaging a lighthouse or buoy or by any other means 3. To capsize, sink or destroy a vessel in which a person is present 4. To endanger the traffic of a vessel or to capsize, sink or destroy a vessel through negligence In addition to these cases described above, the crew involved in the discharge of oil from a ship in sea areas may be punished for violation of the provisions of the Law Relating to the Prevention of Marine Pollution and Maritime Disaster, depending on the incident.
Korea	Yes, criminal charge is applicable. First, investigation by marine police is carried out and then the person involved in the accident is indicted by the prosecutor.
Nigeria	The Marine Board of enquiry at the end of the exercise brings out a report recommending what action/charges for the State to execute against any ship personnel involved in the Maritime accident and or it is the duty of the state to initiate criminal charges against erring ships personnel.
Norway	According to new provisions in our Maritime Code No, the investigation authority shall not contemplate civil or criminal charges (MC § 473)
Slovenia	Only the master of the vessel and his substitutes can be charged for the criminal act if the vessel by the infringement of the law causes a serious pollution of the environment and the people lives are put in danger and the environment is seriously damaged. (Slovenian Criminal Act)
South Africa	A Court of marine enquiry may cancel the Certificate of Competency of service of the Master or member of the crew, or suspend it for a stated period or prohibit his or her employment in any stated capacity in a ship for a stated period or impose a fine not exceeding R2 000 (US\$300) upon that person or reprimand that person. This power is restricted to South African flagged ships or ships registered outside of South Africa, but only if they trade solely along the South African coast.  The Marine Pollution Control and Civil Liability Act no.5 of 1981 relating to the protection of the marine environment from pollution by oil and other harmful substances stipulates that contravention of certain of the provisions of that Act constitutes an offence, which offence attracts a fine of up to R200 000 (US\$30 000) or a period of imprisonment up to 5 years, or both the fine and imprisonment.  The most severe of these penalties is reserved for the following offences:

	<ol style="list-style-type: none"> <li>1. Discharge of an oil from a ship, tank or an off-shore platform unless such discharge was for the purposes of securing the safety of the ship, preventing damage to the ship, or of saving life and the discharge of the oil was a necessary and reasonable step to take in the circumstances. Or if the oil in question escaped from the ship as a result of damage to the ship and all reasonable steps were taken to prevent or reduce the escape of the oil, or the oil in question escaped by reason of leakage, and neither the leakage nor the delay in its discovery was due to lack of any reasonable care. The onus of proving any of the exemptions is on the accused.</li> <li>2. Entry or departure from a South African port carrying more than 2000 tons of oil in bulk as cargo and not holding a CCL Certificate.</li> <li>3. Wilfully failing to comply with an order or requirement of SAMSA relating to unloading, transferring or disposing of any harmful substance.</li> <li>4. Wilfully failing to comply with an order of SAMSA relating to harmful substances involved in a salvage operation.</li> </ol> <p>The Marine Pollution (Prevention of Pollution from Ships) Act no. 2 of 1986 which gives effect to Marpol 73 and the 1978 Protocol, incorporates the text of Marpol 73 and 78. The Act provides that any person who contravenes any provision of the Act or the Convention is guilty of an offence.</p> <p>The owner and the Master of a ship that has not complied with the requirements of the Act and the Convention are each guilty of an offence. The Act further provides that no person is guilty of an offence if he or she can show that he or she took all reasonable steps to ensure that the provisions of the Act and the Convention were complied with. If convicted of an offence, the person shall be liable to a fine not exceeding R500 000, or to a period of imprisonment not exceeding 5 years or to the fine and such imprisonment.</p>
Sweden	Crew members may be held liable under Swedish criminal law. The penalty is either a fine or imprisonment depending on whether the maritime accident was caused by wilful misconduct or negligence. Oil pollution in the Exclusive Economical Zone can only be subject to a fine.
UK	<p><b>3.1 Jurisdiction</b></p> <p>The English courts will exercise jurisdiction over offences alleged to have taken place in the UK, including those alleged to have been committed by or on board vessels within UK territorial waters (whatever the flag of the ship or nationality of the accused).<sup>38</sup> They also have jurisdiction in respect of offences committed on board British ships on the high seas (by an individual of any nationality) and in relation to offences committed by a British citizen in a foreign port or harbour.<sup>39</sup> Otherwise they do not have jurisdiction over offences alleged to have been committed outside England and Wales, even if the accused is a British subject.<sup>40</sup></p> <p><b>3.2 Investigation and Prosecution</b></p> <p>The CPS and other prosecuting authorities such as the MCA and EA have powers to investigate breaches of merchant shipping legislation and,</p>

<sup>38</sup> Territorial Waters Jurisdiction Act 1878, s.2.

<sup>39</sup> Blackstones Criminal Practice 2005, para A8.12.

<sup>40</sup> *Harden* [1963] 1QB 8.

	<p>where appropriate, make a decision to prosecute. Where prosecution is deemed appropriate, the proceedings will be conducted in the same way (through the adversarial court system) as non marine offences.</p>
Uruguay	<p>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.</p> <p>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.</p> <p>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.</p>
USA	<p>In the current legal environment following September 11, 2001 the Coast Guard seemed to have abandoned their matrix for a determination on which pollution incidents warranted criminal investigation. Wide discretion is now granted to the Captain of the Port as well as the Department of Justice in conjunction with the Coast Guard's Criminal Investigation Division and other agencies with potential jurisdiction on whether to bring criminal charges. Again as stated in the prior questions, individual states have the ability to bring such charges on their own against ship personnel. Evidence gathered in any casualty investigation can be used by prosecutors in criminal proceedings</p> <p>Perhaps ironically there exist for seamen bearing U.S. licences a noncriminal sanction of licence suspension or revocation which is not available for foreign seamen, thereby making a criminal action against foreign seamen more likely in potentially less egregious situations.</p>

**Question 4: If there is no criminal process, what other investigative process is utilized?**

Argentina	See reply to questions 2 and 3.
Australia	In respect of maritime safety, there are parallel processes under which safety investigations and investigating with a view to prosecution are separate processes. In respect of marine pollution, Australian legislation is based on a criminal process.
Bulgaria	In the cases when the action is not considered as a crime, the determining infringement and the imposing administrative sanctions are according to Administrative Violations and Sanctions Act. The administrative procedures themselves are stipulated in administrative penal regulations in CSC.  A ship-owner, who is responsible in a case when his vessel is shipping in infringement of occupational safety and health requirements, is punished on infliction of a fine or pecuniary sanction from 2000 to 50 000 Bg leva (art.374).  A crew member, who is exercising his professional duties after using alcohol or other narcotic substances, dully approved, is punished on disqualification in a period from six months to one year (art. 375). In the case of repeated offence the punishment is a disqualification in a period from one to two years. A captain who has not exercise fir obligation to declare the transport or has not observe the rules related to transport of dangerous cargos or other cargos when this declaration is mandatory, is punished on imposing of fine from 1000 lv to 5000 lv, if the action is not considered as a crime (art. 377).  The CSC infringements have to be determined with acts issued by inspectors of Executive Agency "Marine administration". There is an obligation to institute an act in the case of written notice to the Executive Agency "Marine administration" issued by the captain and related to infringements of crew members during the shipping. The penal provisions have to be issued by the Executive Director of Executive Agency "Marine administration" (or by authorized official). In the penal provision may be also determined a pecuniary compensation to cover all damages caused. The penal provision could be claimed by the ship-owner in the part consisting of compensation. It is delivered at the moment of it's delivery to the captain.
Brazil	Administrative and civil investigative processes.
Canada	While the investigative processes would be those identified under question 2 above, the prosecution for offences as described under question 3 above would be conducted through the Canadian court system in the same manner as a more conventional criminal prosecution.
Chile	The Official Investigation in charge of the Maritime Authority, as a result of which the Authority may apply fines on the shipowners and/or the ship's personnel involved.
China	In the investigative procedure, the maritime administrative organizations can not bring a criminal charge against the ship's personnel involved but transfer the case to public security organizations and concerning organizations according to the provisions on TSCCAOLE. Then the organ accepting the case has obligations to investigate the case.

Croatia	In both cases mentioned above maritime accident investigation is utilized.
Denmark	N/a
Dominican Republic	Please kindly refer to reply to questions 2 and 3.
Finland	See above.
France	Technical inquiries may be done by « BEA MER » in case of marine accident in the same time as criminal inquiry.
Germany	The investigative process mainly focuses on the accident and/or marine pollution and future prevention.
Hong Kong	Civil claim will be initiated against the offender for the cost incurred as a result of the accident, such as removal of wreckage, damage made to port facilities or clean up cost in case of a pollution incident.
Italy	Normally the initial investigation is carried out by the Port Authority, first through a Summary Enquiry and then through a Formal Enquiry who will be competent to sanction the possible administrative violations. An additional Authority that may be competent is the Prefecture having jurisdiction on the relevant area.
Japan	No procedure is utilized except as referenced in Question 2 above.
Korea	N/A
Nigeria	(i) In cases of Marine Accident the family of the deceased person(s) S.) on the identification of the ships personnel responsible may bring a criminal action on their own. Where the Marine personnel is a foreigner the owner of the vessel will be sued.  (ii) in cases of Marine Pollution: - The state has the right to sue the owners of the ship or their agents.
Norway	The police have an independent right to a carry out a criminal investigation process.
South Africa	As mentioned in response to question 2, the general practice is for SAMSA to carry out a preliminary investigation into any casualty that occurs along the South African Coast. To our knowledge the only enquiries that have taken place in the last 20 years relate to incidents involving loss of life on South African flag ships.
Sweden	See above.

UK	There is the possibility of criminal proceedings (see answers to questions 2 and 3 above) but, as explained in the response to question 2, there is also the possibility of an MAIB public inquiry or of a 'formal investigation' being ordered by the Secretary of State.
Uruguay	As it has been previously informed, administrative proceedings are going to take place following accidents, or marine pollution incidents.
USA	Assuming that question three response answers this question. However, in noncriminal matters the NTSB and/or Coast Guard have administrative responsibilities for performing casualty investigations. State and local authorities can also exercise their concurrent authority to investigate.

**Question 5: Does your State's investigative process permit detention of seafarers and, if so, under what circumstances and with what safeguards?**

Argentina	Only in the case of a criminal proceedings under the circumstances pointed out in N° 3, the Judge may decide the detention, once certain legal conditions were fulfilled.
Australia	<p>Yes. Australia's primary concern is to ensure that a person charged with an offence is present in Court to answer the charges. To achieve this, Australian Courts will set an appropriate bail or bond, or will detain a person in custody if it is considered necessary. In the Australian legal system, seafarers charged with an offence are treated the same as any other person. Court decisions regarding bail, bond or detention are subject to appeal.</p> <p>Federal and some State MARPOL legislation specifically provides for detention of ships for the purposes of investigating pollution incidents, as provided for in UNCLOS. Vessels are normally released promptly on the posting of a bond.</p>
Bulgaria	<p>The CSC consists of special legal regulation of cases related to ships detention and to captain competences. According to art. 74 of CSC the Executive Agency "Marine administration" could detent a ship in the port and in a period of 24 hours to make an investigation of the ship because of safety reasons. In the case that the ship is considered as not able to shipping or to realize the aim of ship-owner, the Executive Agency "Marine administration" has to prohibit the ship's exploitation and to specify the defects needed to be eliminated. The shipping safety rules and the surveillance on the fishing vessels in internal water ways of Republic of Bulgaria are also applicable to the foreign-flag vessels unless an international agreement those Bulgaria is a contracting party, stipulates otherwise.</p> <p>According to art. 89, p.3 of CSC the captain has the right to enterprise all measures needed if a person on board does not observe his legal orders. If a member of personnel on board endangers the vessel's safety or the safety of other persons and properties there in, or this action is considered as a crime according to Penal Code of Bulgaria, the captain has the right to detent the seafarers and other persons in question in isolated detention rooms.</p> <p>According to art. 90 of CSC, when during the shipping a Penal Code crime was perpetrated, the captain have to execute the functions of investigator and have to observe the rules of PPC and the vessels investigation instruction. This instruction is approved by the Chief - Prosecutor and by the Minister of transport and communications of Bulgaria. The captain has the right to detent the suspected person and to surrender him to the authorities in the first Bulgarian harbor. When a crime is committed on board during the stay in Bulgarian harbor, the captain has to surrender the suspected person to the respective authorities.</p> <p>In accordance with the General rules of PPC the investigator could detent the suspected person without a prosecutor's order when the crime is considered as a crime of general nature and the preliminary procedure is mandatory (for ex., when the suspected person was detained during the crime or after the crime commitment). In the detention provision the investigator should motivate the detention and has to advise the procurator no later than 24 hours (art. 202 of PPC). The procurator has to approve immediately or to repeal the detention. If the detention was made because of grievous crime of a general nature, the prosecutor may prolong this time limit to 3 days. In the case that during this period a legal action is not initiated, the investigator has to exempt the detained person.</p> <p>According to art. 206 of PPC the detained person has the rights as follows: to know the reason of detention; to give explanations; to make references, notices or objections and to claim the prosecutor's provisions/the investigators' provisions when they harm his rights and legal</p>



	<p>interests.</p> <p>According to art. 51 of PPC the accused has the rights as follows: to know the reasons and the proofs of his accusal; to give explanations; to present proofs; to take part in the penal procedure; to make references, notices or objections; to have a last plea at the bar; to claim the tribunal acts and acts of investigation authorities; to have a defender and to have a last plea. The defender could participate during the investigation process on demand of the accused.</p>
Brazil	Yes, in some very specific cases of criminal process. For further information, please see reply to question 6 below.
Canada	<p>There is no provision for the detention of seafarers as witnesses other than for purposes of participating in TSB interviews. Provision does exist for detention of seafarers who are charged with offences, although this process has been rarely used, as most pollution prosecutions have been of the vessel itself. The proposed amendments in Bill C-15 would expressly empower arrest of seafarers under the <i>Migratory Birds Convention Act</i> or the <i>Canadian Environmental Protection Act, 1999</i> where there is reasonable belief an offence has been committed.</p> <p>With respect to safeguards, Canada has a Charter of Rights which includes due process rights that would apply to detention of a seafarer charged with an offence. On being arrested a seafarer has the right (a) to be informed promptly of the reasons for arrest (b) to retain counsel without delay and to be informed of that right and (c) to have the validity of the detention determined by way of <i>habeas corpus</i> and be released if the detention is not lawful.</p> <p>In many of the provisions of the <i>Canada Shipping Act</i> involving interference with a foreign ship, particularly for instance involving violations of international conventions or an incident outside Canada's territorial sea, notification of the foreign flag state is contemplated. The proposed amendments to the <i>Canadian Environmental Protection Act, 1999</i> in Bill C-15 similarly provide for notice to a foreign state and require the consent of the Minister of the Environment.</p>
Chile	No.
China	According to Chinese legislation, if the act of ship's personnel has been suspected as a crime, the maritime administrative organizations will transfer the case to the concerning organizations. The personnel involved may be detained if it meets the need of the provisions of Criminal Procedure Law of the People's Republic of China (CPL). The legislation has not made any provisions on whether the maritime administrative organizations could detain the ship's personnel involved during the investigative procedure. The existing legislations only provides that the ships may be detained before the maritime administrative organizations finishing maritime investigation.
Croatia	Detention is permitted in cases of justified doubt in criminal act as provided by the Act on Criminal Proceedings. Modality of the detention is defined by the Court.
Denmark	Although seafarers may be required to assist the Division for Investigation of Maritime Accidents and the Admiralty in their investigations and may be required to give testimony of a special court hearing is mentioned under item 2.1 above, the investigative process headed by the Division for Investigation of Maritime Accidents and the Admiralty do not permit the detention of seafarers, only vessels.

	<p>When investigating a potential crime, the police may, however, arrest and detain seafarer charged with the crime for up until 24 hours, but not for a longer period, unless a court order is obtained.</p> <p>The court may allow the arrest and preliminary detention to be extended for a maximum of three times 24 hours, that detention for a longer period of time can only be ordered if - among other things - the offences punishable by imprisonment for 18 months or more and not if the purpose of detention can be achieved with less radical means (see item 13 below for more details).</p> <p>As indicated under item 3 .3 above, some violations of SSA and MEA may be punished by imprisonment for up until 2 years, e.g. in cases where a master has consumed alcohol to such an extent that the master is no longer capable of carrying out his duties in a fully adequate way. In these cases, detention of a charged offender is therefore a possibility.</p> <p>Persons who are not charged with the crime may not be detained.</p>
Dominican Republic	Yes, they do, under criminal charges for polluting territorial waters.
Finland	According to the Coercive Measures Act (L 450-1987) 3 § the suspect may be detained provided that he (as a main rule) is suspected on probable cause for the offence.
France	Yes, see answers to question 3.
Germany	Yes, the German investigative process allows detention but only in case of risk of escape and severe liability.
Hong Kong	<p>During the investigation process, should there be likelihood that a seafarer suspected to have committed a serious offence (with which imprisonment sentence might be warranted on a first conviction) may leave Hong Kong, assistance from the police may be sought to have the seafarer arrested and brought to court pending further investigation and/or trial.</p> <p>Even when a seafarer is being arrested, police bail ought to be granted unless the offence appears to be of a serious nature and/or the officer in charge reasonably considers that the person ought to be detained (section 52(1) of the Police Force Ordinance Cap.232 refers).</p> <p>In case no police bail is granted, the seafarer is to be brought before a magistrate as soon as practicable, or is any event within 48 hours (section 52(1) of Cap.232 refers).</p> <p>Once the case is brought to court, the seafarer shall be admitted to bail with such conditions which are considered necessary to secure his attending court in future (section 9D of the Criminal Procedure Ordinance Cap.221 refers). Bail might be refused should there be substantial grounds for the court to believe that the seafarer would (a) fail to surrender to custody as the court may appoint; (b) commit an offence while on bail; or (c) interfere with a witness or pervert or obstruct the course of justice (section 9G of Cap.221 refers).</p>
Italy	Detention of seafarers may take place in the same situations in which detention of any person is permitted under the rules of the Code of Criminal Procedure. See response to Question 13. The safeguards are those generally provided by the Code of Criminal Procedure in case an order of detention is issued.

Japan	<p>Seafarers would be detained based on general criminal procedures, as no special procedures exist to detain seafarers. No person shall be apprehended except upon a warrant issued by a competent judicial officer which specifies the offense with which the person is charged, unless he is apprehended while the offense is being committed. The suspect may be arrested where there exists any reasonable cause to suspect an offense has been committed. No person shall be arrested or detained without being at once informed of the charges against him or without the immediate privilege of counsel; nor shall he be detained without adequate cause; and upon demand of any person such cause must be immediately shown in open court in his presence and the presence of his counsel. The accused or the suspect may appoint a counsel at any time. The accused or the suspect in custody may, without any official being present, have an interview with, and deliver to/receive documents or articles from his/her counsel or a person who is going to be his/her counsel, upon the request of the person entitled to appoint a counsel. (See also the answer to question 13.)</p>
Korea	<p>Yes, seafarers can be detained by the marine police and prosecutor up to maximum 20days until he is officially indicted. The detention is only allowed by the permission (habeas corpus) from the judge with an emergency exception.</p>
Nigeria	<p>There are some circumstances where the police can detain seafarers under "Holding Charge" e.g. illegal lifting of oil, illegal carrying of arms etc. They have to be charged or arraigned before a court within 48 hours. In which case, they will have access to their legal representatives.</p>
Norway	<p>Yes, according Criminal Procedure Act § 171 any person who with justified cause is suspected of one or more acts punishable to statute with imprisonment for a term exceeding 6 months, may be arrested when e.g.: there is reason to fear that he will evade prosecution or the execution of a sentence or other precautions, there is an immediate risk that he will interfere with any evidence in the case, e.g. by removing clues or influencing witnesses or accomplices, etc.</p> <p>According to the Criminal Procedure Act § 181, the prosecution authority may forgo an arrest or release a person on condition that he promises to present himself to the police at specified times or promises not to leave a specific place. The same applies when the suspect consents to other conditions such as handing over his passport, etc.</p>
Slovenia	<p>In the case of criminal act the detention of seafarers is permitted and they enjoy all the rights of the detainee established by the provisions of the Slovenian process criminal act.</p>
South Africa	<p>Any person charged with a criminal offence may be arrested.</p> <p>Safeguards are set out in Section 35 of the Constitution which enshrines, amongst other things, the following rights:</p> <ol style="list-style-type: none"> <li>1. To remain silent;</li> <li>2. To be informed promptly of the right to remain silent and of the consequences of not remaining silent;</li> <li>3. Not to be compelled to make any confession or admission that can be used in evidence against the person;</li> <li>4. To be brought before a Court as soon as reasonably possible but not later than 48 hours of the arrest or the end of the first Court day after the expiry of the 48 hours;</li> <li>5. To be charged at the first Court appearance after being arrested or to be informed of the reason for the continued detention or to be</li> </ol>

	<p>6. To be released from detention if the interest of justice permit.</p> <p>Every accused person has the right to a fair trial which includes the rights to:</p> <ol style="list-style-type: none"> <li>1. Be informed of the charge with sufficient detail to answer it;</li> <li>2. Have adequate time and facilities to prepare a defence;</li> <li>3. A public trial before an ordinary Court;</li> <li>4. Have the trial begin and conclude without unreasonable delay;</li> <li>5. Be present when being tried;</li> <li>6. To chose and to be represented by a legal practitioner;</li> <li>7. Have a legal practitioner assigned to the person by the state and at the state's expense;</li> <li>8. Be presumed innocent, to remain silent and not testify during the proceedings;</li> <li>9. To lead and challenge evidence;</li> <li>10. Not be compelled to give self incriminating evidence;</li> <li>11. Be tried in a language that the accused person understands or, if that is not practical, to have the proceedings interpreted in that language.</li> </ol> <p>People detained have the same rights along with the rights to communicate with and be visited by their spousal partner, next of kin, chosen religious counsellor and chosen medical practitioner.</p>
Sweden	<p>Where oil pollution in Swedish territorial waters is considered to have been caused by wilful misconduct a crew member may be sentenced to prison. During the investigation a crew member may also be taken into custody.</p>
UK	<p>The UK's investigative process does permit the detention of seafarers (by way of arrest and subsequent detention). This may only be carried out, however, in certain circumstances and in accordance with strict safeguards as follows:</p> <p><b>5.1 Arrest</b></p> <p>Under English law, arrest is considered to be the "beginning of imprisonment" and must therefore be clearly justified by an express rule of law.<sup>41</sup> If the arrest is not based on the proper exercise of a specific legal power it is unlawful and will constitute the tort of false imprisonment.</p> <p>In some cases an arrest is lawful only if a court order has first been obtained to authorise the arrest. This order, known as an arrest warrant, may be issued by a magistrates' court or the Crown Court. Applications are normally made to a magistrates' court, which may issue a warrant only where the alleged offence is classified as 'triable on indictment',<sup>42</sup> or punishable with imprisonment, or where the address of the accused cannot</p>

<sup>41</sup> *Christie v Leachinsky* [1947] AC 573, 600.

<sup>42</sup> A trial on indictment takes place in the Crown Court before a judge and (if the accused pleads not guilty) a jury.

be sufficiently established for service of a summons. In certain other particular circumstances warrants may be issued by the Crown Court, e.g. where an indictment has been signed but the person charged with the offence has not been committed for trial.<sup>43</sup>

In certain cases the police may make an arrest without a warrant. However this power is limited to cases where they have reasonable cause for believing that the accused has committed, is committing, or is about to commit, and an 'arrestable offence'.

Arrestable offences are normally of a serious character and generally do not include most offences involving breach of merchant shipping legislation. However, in exceptional cases, e.g. where a maritime accident gives rise to possible charges of manslaughter, an arrest without warrant is possible.

In other cases an arrest warrant may be obtained in relation to potential merchant shipping offences which are punishable by imprisonment if the facts are sufficiently serious. An example is the offence under the MSA 95 of conduct endangering ships, structures or individuals.<sup>44</sup> This consists of any deliberate act or omission, any neglect or breach of duty, or any act or omission whilst under the influence of drink or any drug, which causes or is likely to cause the loss or serious damage to a ship or its machinery, or the death of or serious injury to any person.<sup>45</sup> This offence is not, incidentally, established by proof of conduct causing or likely to cause pollution, but where pollution results from a casualty involving serious damage to a ship, that damage may justify prosecution (and possibly arrest) for such an offence.

An arrest must be carried out in a particular way in order to be lawful – for example an individual must be informed of the facts and grounds of arrest.

### **5.2 Detention and treatment of suspects (PACE Codes of Conduct)**

The Police and Criminal Evidence Act 1984 (PACE), and accompanying codes of conduct, provide safeguards to protect detained suspects. The leading principle is that all persons in custody must be dealt with expeditiously and released as soon as the need for detention has ceased to apply.<sup>46</sup>

PACE provides that only an arrested person may be kept in police custody and that such detention must comply with safeguards set out in the Act.<sup>47</sup> A person who voluntarily attends at a police station to assist in an investigation is entitled to leave at will unless he is arrested. The safeguards prescribed by the Act and the Codes include the following requirements:

---

<sup>43</sup> Supreme Court Act 1981.

<sup>44</sup> Merchant Shipping Act 1995 s.58.

<sup>45</sup> *Ibid.*, s.58(2)-(3).

<sup>46</sup> Police and Criminal Evidence Act 1984, Code C, para 1.1.

<sup>47</sup> Police and Criminal Evidence Act 1984 s.34(1). The safeguards are set out in Part IV of the Act.

<sup>48</sup> *DPP v L* [1999] Crim. LR 752.

<sup>49</sup> Police and Criminal Evidence Act 1984, Code C.

<sup>50</sup> Contrary to the Merchant Shipping Act 1995 s.52.

<sup>51</sup> Contrary to the Merchant Shipping Act 1995 s.58.

- A custody officer (at least the rank of sergeant) is responsible for detention conditions. The custody officer cannot be a police officer who has been involved in the matter under investigation. A custody officer is entitled to assume that the arrest of a person was lawful.<sup>48</sup>
- A custody record must be opened in respect of the person arrested. This may later be examined by the arrested person or legal representative.
- The custody officer must inform the arrested person of his rights to have someone informed of his arrest, to consult privately with a solicitor, and to consult the appropriate Codes of Practice. He must also inform the arrested person that independent free legal advice is freely available.
- The arrested person must be given a written notice of his rights (including a right to a copy of the custody record) as well as a caution that he is not obliged to say anything but that what he says may be taken down and given in evidence.
- All interviews (by police and other prosecuting authorities such as the MCA) must be carried out in accordance with the PACE and Code C, otherwise the evidence obtained may be inadmissible.
- Code C provides safeguards *inter alia* with respect to detention and interrogation including: conditions of detention, care and treatment of detained persons, interpreters and reviews of detention.
- A custody officer must decide as soon as practicable after the suspect arrives at the police station whether he has sufficient evidence to charge the suspect with the offence for which he is arrested.
- Unless an extension of time for detention has been authorised (for example in the case of a serious arrestable offence such as murder or rape) a suspect may not be held in detention without charge for more than 24 hours. If, after 24 hours he has not been charged he must be released either with or without bail. He cannot then be rearrested without warrant for the same offence in the absence of new evidence.

### **5.3 Citizens of independent Commonwealth countries or foreign nationals**

Additional protection is given to citizens of independent Commonwealth countries or foreign nationals.<sup>49</sup> Such individuals have the right to communicate at any time with the appropriate High Commission, Embassy or Consulate. They must be informed of this as soon as practicable, and of the right, upon request, to have their High Commission, Embassy or Consulate told of their whereabouts and grounds for their detention. If this latter request is made it must be acted upon as soon as practicable. Consular officers are also able to visit their nationals in police detention to talk to them and, if necessary, arrange for legal advice. These visits are to take place outside the hearing of a police officer. Additionally, a record will be made when a detainee is informed of the above rights and of any communications with a High Commission, Embassy or Consulate.

### **5.4 The Human Rights Act 1998**

	<p>The Human Rights Act gives effect in UK domestic law to the European Convention on Human Rights. All action taken with respect to a suspect must therefore comply with the rights enshrined in the Convention.</p> <p><b>5.5 Case studies</b></p> <p>There have been various examples in recent years of seafarers who have been prosecuted under English criminal law and who have been subject to the criminal law procedures outlined above:</p> <ul style="list-style-type: none"> <li>• <i>Vessel: Dutch Aquamarine:</i> On 9 October 2003 the Dutch flagged chemical tanker, <i>Dutch Aquamarine</i> ( 4671 gt) collided with the 1009 gt vessel <i>Ash</i>, running into the stern of the smaller vessel. The damage sustained by the <i>Ash</i> was such that she sank quickly, bow first, resulting in the death of the Master of the <i>Ash</i>. The Second Officer of the <i>Dutch Aquamarine</i> was the officer on watch at the time of the collision, and the MCA's Director of Operations stated that his standard of watch keeping "fell so far below the level required that this collision was inevitable." Although the Second Officer pleaded guilty to a breach of the MSA 95 (endangering his vessel) but was also found guilty of manslaughter and sentenced to 12 months imprisonment.</li> <li>• <i>Defendant: Adam Cowell:</i> The defendant was found to have forged certificates as an Efficient Deck Hand, and for Proficiency in Survival Craft and Rescue Craft, and as a result to have sailed in a position for which he was not qualified. He pleaded guilty to two offences of making false instruments and one offence of obtaining pecuniary gain under the Forgery and Counterfeiting Act 1981. He also pleaded guilty to five specimen charges of sailing in a position for which he was unqualified,<sup>50</sup> with another nineteen of the same offences being taken into consideration. The defendant was sentenced on 14 October 2004 The Court considered a custodial sentence but, in light of the defendant's previous good character and guilty plea, restricted the penalty to one of community service, imposing the maximum community service order (240 hours) without any reduction for mitigating circumstances.</li> <li>• <i>Defendant: Neville George Young.</i> At a court hearing on 9 June 2003, Young was convicted on 4 charges of possessing and using forged qualifications and sailing as a senior officer on a British Ship without holding a valid Certificate of Competence. He was sentenced to 9 months imprisonment and fined £500 for sailing as an unqualified Officer. His Honour Judge Brown said: "<i>Forgery is a very serious offence and this act could have put other sea-fares' lives at risk. Only a custodial sentence is justified</i>". Having noted the mitigating facts, however, Judge Brown suspended the sentences for 2 years and ordered that they run concurrently.</li> <li>• <i>Defendant: Jerzy Pawluk, Chief Officer of MV Roustel.</i> On 27 January 2000 the defendant was convicted of conduct endangering ships, structures or individuals.<sup>51</sup> He had admitted to drinking on watch, and leaving the bridge to go to bed. The watchkeeping alarm was disabled and the ship was set on a landward course. The defendant was sentenced to 12 months imprisonment.</li> </ul>
Uruguay	1. As it has been previously informed, administrative proceedings are going to take place following accidents, or marine pollution incidents.
USA	Both federal and state law permit the detention of those individuals who would be considered "material witnesses" or "persons of interest" through the issuance of a subpoena ordering their sworn testimony and/or grand jury appearances. As these individuals are not being criminally charged

	<p>at the time, the usual constitutional safeguards are not triggered. In many instances instances separate criminal counsel is appointed for the crew members by the owners or the court may appoint a lawyer at public expense to protect their interests. Often court-appointed lawyers are not well versed in maritime matters. There have been occasions where the crew members have been required to stay within the good jurisdiction for months while awaiting the various court proceedings. Some crew members have been held in jail, others have been kept in hotels at the owners expense and others have been left to provide their own places to stay. In one recent case the news media reported that detained crewmen are sleeping on the floor of a church.</p>
--	--



**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?**

Argentina	If it is the case of an administrative proceeding the permission to leave of the seafarer is not stopped and only may happen whether there is a criminal proceedings in the circumstances pointed out in N° 3.
Australia	In most cases yes, subject to compliance with any bail or bond imposed by the Court.
Bulgaria	The analysis of PPC provisions leads to conclude that the accused could leave the country during the investigations/trial process, when that could not hinder to discover the objective evidence. The conclusion above mentioned is “per argumentum” (lat.) from art. 87, p.2 of PPC. According to this provision the accused could not be interrogated by delegation or by video-conference, unless the cases when the accused is abroad and that could not hinder to discover the objective evidence. Concerning the participation of the accused in the court session (the second phase of trial process), according to art. 268, p.3 of PPC the action could be tried in the absence of accused if: the accused was not find in the address mentioned or the address was changed and the respective authorities were not dully advised; his residence in the country is not known and after dully wanted it was not find; the accused is abroad, his residence is not known or he could not be subpoenaed because of other regions, or he was subpoenaed in regular way, but he was absent without good reasons.
Brazil	In the penal sphere the answer is positive (after the seafarers’ depositions to police authorities), unless there are specific circumstances to the contrary, such as when the wrongdoer is caught <i>in flagrante delicto</i> or in case of preventive detention in order to protect the collection of evidence by the police or public prosecutors.  Concerning civil sphere seafarers are prevented from leaving the country only if it is necessary to carry out an anticipated discovery with a view to preserving evidence in respect of a casualty/incident. But in normal circumstances this is achieved (by means of collection of relevant documents, deposition of seafarers, etc., in preventive judicial proceedings) in just a few days.  Finally, with regard to administrative sphere, seafarers must remain in the Brazilian territory as long as necessary for the Maritime Authority (through local Port Captaincies) to complete their inquiries on the accident. Again, normally, this is achieved also in a few days.
Canada	There is no provision for a seafarer to be compelled to remain in Canada pending a hearing or trial if his or her role is solely as witness. However, if a seafarer is charged with contravention of Canadian law, then the Court will typically fix the terms of the individual’s release pending trial, often involving the posting of bail, and it is doubtful the seafarer would be permitted to leave Canada unless the Court is satisfied the seafarer will return to Canada for the trial.
Chile	As soon as the accident occurs, the Maritime Authority will start the Investigation and seafarers will be required to declare before the Maritime Prosecutor in charge. After their declaration, they will be permitted to leave out State.
China	<b>(1) About seafarers’ being required to be present for an investigation</b> According to the provisions of article 29 of RIHMTA, if the seafarers refuse to be investigated or unjustifiably obstructed and interfered with the investigation by the harbor superintendence administration, the harbor superintendence administration could take administrative penalties on the persons concerned. If their acts have constituted a crime, the judicial organizations shall investigate their criminal responsibility according to law.

	<p>Furthermore, according to the provisions of article 5 and article 22 of Temporary Regulations on Investigation Process of Severe Accidents (TRIPSA), any part or person should not illegally interfere with the process of investigation. Any part or person should not interrupt and interfere with the regular work of the accidents investigating group.</p> <p>From the above provisions, it can be reasonably estimated that the seafarers are not allowed to leave china if the acts could interfere with the subsequent investigative process or other processes.</p> <p><b>(2) About seafarers' being asked to be present for a trial</b></p> <p>If the seafarers' acts have been suspected as crimes, then they are not allowed to leave China from register to the court being held.</p>
Croatia	Seafarers are permitted to leave the country.
Denmark	<p>Even if they seafarer is required to be present for an investigation, trial or other hearing, the seafarer cannot be prevented from leaving Denmark, unless the requirements for detention had been met, in which case the authorities may choose to deprive the seafarer of his passport.</p> <p>Moreover if they seafarer has been summoned to a court hearing as a witness and fails to appear, the court may order the police to take the seafarer into custody and escort him to the court hearing.</p>
Dominican Republic	They will not be permitted to leave during the preliminary interrogatories/investigation, but once the same is completed, if they* ( <i>Corr. The Authorities</i> ) consider that they* ( <i>Corr. there</i> ) are no indication of their involvement in the incident, they are allowed to leave the country. If others are found to be involved, criminal charges will be placed against them, and those* ( <i>Corr. they</i> ) can only be permitted to leave the country against presentation of a bail bond.
Finland	According to the Coercive Measures Act (L 450/1987) 3 § subsection 4) the suspect may not be able to leave the country if it is probable that he would try to escape the pre-trial investigation, the trial or the enforcement of punishment by leaving the country.
France	The seafarer required to be present for any investigation trial and other hearing may be permitted to leave the state. Its depends on the judge and on the criminal charges against him.
Germany	They usually are allowed to leave Germany depending on the risk of escape.
Hong Kong	With reference to the answer to Question 5 above, depending on seriousness of the offence(s), strength of evidence against the seafarer and/or bail terms/conditions ordered, a seafarer might be permitted to leave Hong Kong should the court satisfy that he will return to Hong Kong and surrender to custody as the court may appoint.
Italy	The general rule under the new Code of Criminal Procedure is that the persons against whom a criminal (as opposed to an administrative) investigation is carried out may leave the country. If the public prosecutor in charge of the proceedings considers that there is a danger of escape he may ask the Judge in charge of the Preliminary Enquiry to take action in order to prevent the person in question to leave the country (e.g. seizure of the passport or I.D.). These rules apply also to seafarers.
Japan	Unless being detained or arrested, the crew involved in an accident may leave our State. If the accused is out on bail, he may leave our State. But bail may not be granted in such cases where there is reasonable ground to suspect the accused may destroy evidence.

Korea	It is usual manner that the accused is not allowed to go out Korea before his trial if he is indicted in the criminal proceeding (When he is indicted without imprisonment he may leave Korea with the permission of the judge). However, in civil proceeding or administrative proceeding he can leave Korea and return to Korea in order to take part in the subsequent proceeding. In this case, a ship's agent submits to the appropriate office a kind of confirmation letter for the foreign seafarers to return to Korea.
Nigeria	In most cases the state will not permit Seafarers to leave until after the Preliminary Inquiry (PI) and the Marine Board of Investigation is concluded.
Norway	Yes, normally.
Slovenia	If there're present the reasons for the protective custody, the seafarers can not leave the state.
South Africa	<p>No legislation specifically governs this issue. In the normal course however, foreign accused persons would not be entitled to leave South African pending a trial. Procuring their attendance at the trial after they have left the country would be impossible in many circumstances and impractical in most of the other circumstances. Where a seafarer is not an accused person, they are permitted to leave South Africa. In practise, SAMSA's preliminary investigations take place immediately and often before the salvage operation itself is concluded (where applicable).</p> <p>Where a casualty has taken place, P&amp;I Clubs' local representatives are generally cooperative with SAMSA and the Clubs' persuade the shipowners to allow their employees to remain pending the preliminary investigation.</p> <p>In the absence of cooperation by the owners and their P&amp;I Club, SAMSA are only entitled to detain a person by way of an arrest where a charge is brought against them.</p>
Sweden	A decision in this respect will have to be made on a case by case basis. Important considerations may include the likelihood of a crew member returning, or, for example, the gravity of the case.
UK	<p>Seafarers will be permitted to leave the UK unless they are refused bail or are granted bail subject to conditions which restrict them to staying within the UK.</p> <p>Under the Bail Act 1976 ("BA 76"), there is a rebuttable presumption in favour of granting bail.<sup>52</sup> This applies only before a person has been convicted of an offence; thereafter there is no <i>right</i> to bail.</p> <p>The court will consider various factors in deciding whether or not to grant bail. These depend on whether the alleged offence, if proved, will be punishable by imprisonment. For imprisonable offences grounds for refusing bail include the existence of substantial grounds to believe that a defendant would (if released) fail to surrender to custody. In such cases bail may be granted subject to conditions to ensure that the defendant surrenders to custody and makes himself available for enquiries to be made. These conditions may involve provision of one or more sureties;</p>

<sup>52</sup> Bail Act 1976 s. 4(1).

	<p>security; reporting, curfew or residence restrictions.</p> <p>These grounds for refusing bail, or for granting bail only on conditions, do not apply to offences not punishable by imprisonment. In relation to such offences bail can be refused only on very limited grounds, e.g. that custody is considered necessary for the defendant's own protection, or that there has been a previous failure to comply with bail conditions.</p> <p>If a defendant charged with an imprisonable offence is a foreign national, and the question arises whether bail should be granted only on condition that he remains in the UK, it will be relevant whether he is a national of another EU member state. EC law provides for a European Arrest Warrant, recognised throughout the Community as binding on member states, to facilitate the surrender of defendants from one EU state to another. The availability of this process is a factor which in some cases may persuade the court to permit the defendant to return to his home country pending trial.</p>
Uruguay	<p>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.</p>
USA	<p>The general answer to this question would be "No" when applicable to non-U.S. seamen. By the nature of their nationality and occupation government authorities consider them to be "flight risks". There have been occasions where the prosecutors have allowed vessel personnel to be repatriated against a promise by the owners to return them at the necessary time. This is usually accompanied by a demand for a substantial cash deposit or bond guaranteeing the return of the subpoenaed crew members.</p> <p>In this regard, there is a procedure available for the release of crew that crew members that have been designated as "material witnesses" to return to their vessels and/or country of origin which involves either the crew member or his employer, or both, posting material witness bonds (secured or unsecured, as may be ordered by the court) in amounts determined by the court. Generally, as one of the conditions of the bond, the crewmen and his employer promised that the crewmen that crew member will be returned to the jurisdiction if his or her appearances required by either the authorities or the court.</p>

**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?**

Argentina	Yes, it is possible.
Australia	See Question 5.
Bulgaria	According to art. 146, p. 1 of PPC one of bails is a safe pledge. The safe pledge is stipulated with the other three bails – common bail, house arrest and detention. The safe pledge could be pecuniary or in government securities (art. 150, p. 1). When the safe pledge is determined, the authorities have also to consider the property status of the accused. The safe pledge could be done by the accused but also by another person. The term to present this bail or to change it with another one (from common bail to safe pledge), is from 3 days to 15 days. The safe pledge has to be released when the accused is discharged, or the punishment is not to put in prison or the detention is made in the aim to execute the punishment (penalty of crime).
Brazil	Usually, a Term of Commitment has to be sign. Besides this, according to the case, there is a fee (not refundable) to be paid.
Canada	For a seafarer charged with an offence, the availability and amount of bail to be posted to obtain a seafarer's release and compel his or her return for trial would be determined by the Court.
Chile	No.
China	China hasn't made specific regulations on this point.
Croatia	Financial surety is not required. In criminal procedures. However, there is a possibility of detention, retention of personal identification documents, or temporary arrest.
Denmark	Under Danish law, no authority exists to request financial surety in order to ensure that seafarers return for any subsequent hearing.
Dominican Republic	Yes, but only for those who are considered as participants in or liable for the incident/pollution..
Finland	Seafarers may be subject to a conditional imposition of a fine in order to ensure that the seafarer returns for a subsequent hearing. This procedure is however not used often.
France	Usually financial security is asked to authorize the ship to leave the port but not to ensure that seafarers return for any subsequent hearing ; however this is possible according to French law.
Germany	They usually are allowed to leave Germany depending on the risk of escape.

Hong Kong	Should the court find it proper to grant bail (whether or not with permission to leave Hong Kong), one or more than one financial sureties might be required to secure the surrender to custody of the seafarer admitted to bail (section 9D(3)(b)(viii) of Cap.221 refers). As for the number of sureties and/or amount of surety involved, it all depends on seriousness of the case, strength of the evidence against the seafarer and/or existence of factors which support the seafarer's claim that he will report to court on the appointed day.
Italy	Under Italian law if the conditions for an order of detention materialize, detention cannot be avoided by providing surety. This would appear to be strange, because it would favour a wealthy person as opposed to a poor.
Japan	Bail money must be paid in the amount determined by the court in accordance with the Code of Criminal Procedure. On ratification of the UNCLOS, the Government of Japan has introduced a bail bond system which is able to release offenders earlier to ensure smoother criminal procedures through provision of bail bonds, etc. The amount of the bail bond is determined by the personnel in charge of enforcement, based on the standard determined by the Minister in charge.  The standard is based on consideration of the type of offense, potential punishment (i.e. fine), extent of offense, frequency of offenses, etc. In addition, a bond or other appropriate financial security in writing is required.
Korea	No such system exists in Korea.
Nigeria	The stage is very reluctant to accept a financial surety and will keep the Seafarer within its territory.
Norway	No surety is required.
Slovenia	This is also a possibility on the base of the provisions of the Slovenian criminal process act. The amount depends on the circumstances.
South Africa	A provision for financial security does not exist in the legislation. In practice, to date, despite several severe casualties the P&I Clubs' local representatives have advised that SAMSA have never requested security or any guarantees to secure the return of foreign nationals
Sweden	No.
UK	A financial surety, or the provision of security by the defendant, is envisaged by the BA 76 as a possible condition of bail.  <b>7.1. Surety</b>  A custody officer, as well as a court, may require a surety. A surety's only obligation is to ensure the accused's attendance at court; the surety is not expected to prevent further offences or interference with witnesses. It is therefore logical that sureties should only be required when there is a risk of absconding. In considering whether a proposed surety is suitable, the BA 76 provides that regard may be had, <i>inter alia</i> to:

	<ul style="list-style-type: none"> <li>• the 'financial resources' of the proposed surety</li> <li>• the 'character' of the proposed surety and whether he has any previous convictions</li> <li>• the 'proximity' of the proposed surety to the person for whom he is to be surety. This is considered the most important factor since it is regarded as reflecting the extent of the surety's ability to control whether the accused will attend at court.<sup>53</sup></li> </ul> <p>In setting the amount of the surety, the court considers the seriousness of the offence and the degree of risk that the accused will abscond. If the surety cannot meet the required sum then (as is quite common) one or more additional sureties must be found. Usually, if the accused fails to answer to his bail, the entire sum in which he stood surety must be forfeited by the surety.</p> <p><b>7.2 Security</b></p> <p>Although a person cannot stand surety for himself he may be required to deposit with the court money or another item of value which will be forfeited if he fails to answer to bail.<sup>54</sup> This security may be given by either the accused or by somebody else on his behalf.</p>
Uruguay	The amount and form of the bail will depend on the financial status of the indicted person, and the importance of the incident.
USA	See the answer to question 6. The amount of the security is discretionary and can be based on the number of potential criminal offenses as well as the maximum fine for each offence. There is a wide diversion between the various Coast Guard districts and the Department of Justice on the amount of security requested. Sometimes the security amount can be negotiated.

---

<sup>53</sup> *Ibid.*, s.8.

<sup>54</sup> *Ibid.*, s.3(2).

**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?**

Argentina	The Coast Guard and other authorities are in charge of subjects of environment.
Australia	In terms of living and working conditions on board a vessel, if there are matters that are clearly hazardous to safety or health, detention powers are available under the Navigation Act 1912 and some issues may be managed under port State control if they are matters that should be covered under a ship's ISM safety management system. There are further requirements for Australian ships concerning the supply of adequate provisions, and the obligation of owner to provide medical attendance in case of injury.  Other serious welfare issues such as physical abuse and non-payment of wages may be addressed under criminal and civil legislation.  In terms of prosecutions of seafarers, generally speaking the criminal legal system in Australia affords certain safeguards.
Bulgaria	The Executive Agency "Marine administration" at the Minister of transport and communications is not authorized to give a legal defence to the seafarers (the crew members) in the cases of detention because of marine accident occurred. The Executive Agency "Marine administration" is a state control authority on the shipping safety. The seafarers defence has to be realized according to the procedure rules of PPC by legal defenders/advocates or other persons, stipulated in PPC. When the actions are not considered as a crime, the defence has to be done according to administrative legislation.
Brazil	Yes. According to the place there will be alongside Brazilian coast an authority who represents the Director of Ports and Coasts (Diretor de Portos e Costas), who will administrate the incidents. However, Federal Police can also be involved and take the responsibility for the protection, rights and welfare of seafarers.
Canada	The Canadian Department of Transport has some measure of legal responsibility with respect to seafarers under the <i>Canada Shipping Act</i> . This Department also has responsibility for port state control inspection pursuant to the Paris and Tokyo Memoranda of Understanding, which powers are in part exercised to protect the safety of seafarers. Human Resources Canada also deals with aspects of seafarer rights and protection through its jurisdiction over labour matters, although this is principally handled through the Department of Transport under a Memorandum of Understanding between the Departments.
Chile	No.
China	The maritime administrative organizations have legal obligations for the protection of rights and welfare of all seafarers, while these obligations are often embodied after the maritime accidents. There is a certain regulation called Regulations on Reporting and Handling Fatal Accidents of Workers and Employees in Enterprises (RRHFAWEE), which stipulates the obligations of the administrative organizations on protecting workers' and employees' rights when fatal accidents happen. Since the regulation is applicable to all the enterprises in china, it can be concluded that the maritime administrative organizations will bear such obligations if the accidents happen:  (1) According to the provisions of article 5, article 6 and article 7 of the above regulations, the maritime administrative organizations should accept the report concerning seafarers' fatal accidents from the person in charge of the enterprise. The organizations should immediately report the



	<p>accidents to the higher authority step by step. Death accidents need to be reported to the maritime administrative organizations of Provinces, Autonomous Regions or Municipality directly under the central government. Heavy death accidents need to be reported to Ministry of Communications under the State Council.</p> <p>(2) The maritime administrative organizations should set up the investigation team to investigate the death accidents and the heavy death accidents. The team has to identify the reason, process, casualties and economic loss of the accidents. It has to give some advice on how to deal with the accidents and some suggestions on precaution measures. It also has the obligation to write the accident investigation report. The maritime administrative organizations have the obligation to handle the advice and suggestions forwarded by the accident investigation team.</p>
Croatia	Clarification needed in order to reply.
Denmark	<p>Neither the Maritime Authority nor any other Danish authority has been given specific responsibility for the protection, rights and welfare of all seafarers.</p> <p>However, it should be mentioned that the Danish Ombudsman is under a general obligation to ensure that Danish authorities comply with the law and do not exceed their authority towards individuals, including seafarers, and that the Maritime Authority is generally responsible for ensuring that SSA is complied with, including rules on a self and healthy work environment for seafarers.</p>
Dominican Republic	The Dominican Republic is signatory to SOLAS, and primarily the DR Navy, but also any other local authority (I.E. District Attorney, Police Department, Dominican Port Authority) is responsible to comply with the same. Incidentally, a new penal code has been recently placed in force and the same provides all detained persons (whether or not seafarers) with a lot of rights (in respect to the previous old Napoleon Penal Code).
France	<p>There is no particular protection for the seafarers. As every citizen in France, the seafarer has the right to be assisted by a lawyer and if he cannot afford the fees, a lawyer will be appointed by the President of local Bar.</p> <p>No maritime Administration or other authority has legal responsibility for the protection, rights and welfare of seafarers.</p>
Germany	Yes the German maritime administration is responsible for the protection, right and welfare of all seafarers due to ILO regulations.
Hong Kong	<p>MD is responsible for administering and enforcing the Merchant Shipping (Seafarers) Ordinance, Cap.478 in Hong Kong and on Hong Kong ships. Under section 96 of Cap.478 the protection is restricted to the normal daily welfare of the seafarers and does not apply to seafarers under detention condition. This section applies to:</p> <ol style="list-style-type: none"> <li>Hong Kong seafarers and non-Hong Kong seafarers working on Hong Kong registered ships;</li> <li>Hong Kong seafarers working on non-Hong Kong registered ships; and</li> <li>non-Hong Kong seafarers working on non-Hong Kong registered ships while these ships are within Hong Kong waters.</li> </ol>
Italy	A distinction must be made between the right of seafarers to payment of wages and other remuneration and their welfare. As regards the former right, besides the protection of the Unions, article 4 of law 4 April 1977, No. 135 on Maritime Agents provides that the agent who hires seafarers for embarkation on vessels of a nationality different from the nationality of the seafarers shall provide to the local Port Authority evidence that the ship owner has supplied an appropriate bank or insurance guarantee for the payment of the wages during the period of employment on board. As

	regards the sea farers welfare, social security is compulsory in respect of all seamen embarked on Italian flag ships, irrespective of nationality. In addition, Article 4 of Law 135/1977 provides that the agent who hires seafarers for embarkation on vessels of a different nationality shall ascertain and attest to the local Port Authority of the port of embarkation that such seafarers have been insured against accidents and illness with the Italian or other social insurance institution for the whole period of employment on board.
Japan	The Ministry of Land, Infrastructure and Transport has the responsibility for the protection of seafarers' labor rights, while other Ministries have responsibility for other relevant rights.
Korea	Ministry of Maritime Affaires and Fisheries and Ministry of Labour.
Nigeria	<p>The Maritime Safety Administration-NMA and the Joint Maritime Labour Industrial Council (JOMALIC) both have the legal responsibility for the protection, rights and welfare of all seafarers.</p> <p>(i)The NMA is empowered under Chapters 9Sections 45-51,Chapter 10 Sections 52-61, Chapter 11 Sections 62-67, Chapter 12 Sections 68-77, Chapters 15 Sections 83-92, Chapter 16 Sections 93-104, Chapter 18 Sections 106 110, Chapter 21 Sections 123-126 the Merchant Shipping Act, cap224 Laws of the Federation of Nigeria 1990</p> <p>(ii) The JOMALIC he is empowered under the Nigerian Maritime Labour Act 2003 in the following sections: -</p> <ol style="list-style-type: none"> <li>a. Part V – Registration of Seafarers and Seafarers employers</li> <li>b. Part IX – Establish of a pall of Dock workers and Seafarers</li> <li>c. Part X – Establishment of a Maritime Labour welfare disengagement Fund</li> <li>d. PartVII Conditions of Service of dock workers and Seafarers</li> <li>e. Part VIII Section 26 – Wages and remuneration.</li> </ol>
Norway	Human rights are part of our Constitutional Law. Norway has also a specific Human Rights Act from 21. May 1999. The aim is to strengthening human rights in Norwegian law. We are also bound by e.g.EU Convention on Human right, and UN Conventions on human rights and of course the Regulations in the Law of the Sea.
Slovenia	In Slovenia doesn` t exist any particular authority that is responsible for the protection, rights and welfare of all seafarers.
South Africa	SAMSA is not given general legal responsibility for the protection of the rights and welfare of all seafarers. Miscellaneous acts provide for inspection of ships by SAMSA, Department of Immigration, Health Authorities and the South African Police Services. These generally relate to safety and health issues and not specifically to the welfare of the seafarer.
Sweden	In case of a crew member being imprisoned, the prison authorities are responsible for the protection, rights and welfare of the crew member.
UK	The UK has ratified 86 ILO UK conventions, a number of which deal specifically with seafarers' rights. Of particular relevance are the following, which

	<p>oblige contracting states to introduce implementing national legislation:</p> <ul style="list-style-type: none"> <li>• Seamen's Articles of Agreement Convention, 1926</li> <li>• Repatriation of Seamen Convention, 1926</li> <li>• Social Security (Seafarers) Convention, 1946</li> <li>• Accommodation of Crews Convention, 1949</li> <li>• Seafarers' Identity Documents Convention, 1958</li> <li>• Accommodation of Crews (Supplementary Provisions) Convention, 1970</li> <li>• Merchant Shipping (Minimum Standards) Convention, 1976</li> <li>• Labour Inspection (Seafarers) Convention, 1996</li> <li>• Seafarers' Hours of Work and the Manning of Ships Convention, 1996</li> <li>• Protocol of 1996 to the Merchant Shipping (Minimum Standards) Convention, 1976</li> </ul> <p><b>8.2 Domestic Legislation</b></p> <p>Domestic legislation largely takes the form of secondary legislation, created pursuant to the Merchant Shipping Act 1995. Please see the attached Appendix for examples of domestic legislation in this area (much of which implements conventions such as those mentioned above).<sup>55</sup></p>
Uruguay	<p>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.</p>
USA	<p>The Coast Guard has the responsibility for the safety, health and security of seafarers. It must be noted, however, that the Coast Guard while being charged with the protection of seamen's rights has a seemingly conflicting duty to investigate, enforce and assist in the prosecution of civil and criminal violations of environmental law. This dual mission has left the Coast Guard in an unenviable position of being protector and enforcer at the same time. The Department of Justice, the crewmen's lawyers and Courts are also charged with responsibility of protecting the rights of seafarers.</p>

<sup>55</sup> See further the ILO website: [http://www.ilo.org/dyn/natlex/natlex\\_browse.home?p\\_lang=en](http://www.ilo.org/dyn/natlex/natlex_browse.home?p_lang=en)

**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?**

Argentina	They may be summoned as witnesses or imputed during the administrative or judicial proceedings.
Australia	If the investigative process involves a violation of MARPOL 73/78, as noted in respect of Question 3 above, Federal MARPOL legislation provides for criminal sanctions against any crew-member responsible for a pollution incident.
Bulgaria	<p>Firstly, here we need to specify the applicable law. According to Section II of CSC dedicated on the applicable law, the reason and the limits of ship-owner responsibility are stipulated by the law of vessel's flag country ("lex banderae" – lat.). According to art. 9 of CSC "ship-owner" is the person who use the ship although he is the real owner or he uses the ship on another legal reason. Bulgarian law is applicable to specify the tort damages caused by vessel in internal sea waters, in territorial sea or in internal water ways of Bulgaria (art. 9, p. 2 of CSC). The compensations of damages caused by vessel's clash in internal sea waters, in territorial sea or in internal water ways are stipulated according to national legislation (art. 14 of CSC).</p> <p>The analysis of provisions above mentioned leads to conclude that the different nationality of crew members is not important to determinate the applicable law. When Bulgarian law is applicable and namely, the cases related to the compensations of tort damages caused, the provisions of Obligations and Contracts Act (OCA) are available. According to art. 45 of OCA everybody is obliged to cover the tort damages caused guilty to another person. The guilt is always presumptive until the contrary is proved. We could indicate more provisions of Bulgarian civil law related to this question, namely: the person imposing a work is responsible for the damages caused during the work or in occasion to (art. 49 of OCA). The objects owner and the objects supervisor are jointly and severally liable for the damages caused by them (art. 50, p. 1 of OCA). In the cases of proximate damages a compensation is always needed. This compensation could be paid in a single or periodic payment. The compensation could be reduced in the case of contributory negligence. According to art. 52 of OCA the compensation for non-material damages have to be determined by the court "ex equo et bono". If the damage is caused by a member of persons, they are jointly and severally liable. The person responsible instead of another one has the right of regress.</p> <p>When the action of seafarers (crew members) is considered as a crime, the P Code is applicable and the procedure is according to PPC provisions. When the action is not considered as a crime the administrative penal provisions of CSC are applicable (see the answer of question 3).</p> <p>The CSC consnists a special regulation on the oil-tanker owner responsibility in the case of oil and oil products pollution caused by the oil-tanker. There is a special administrative penal provisions included in a new chapter 15 of CSC, admitted in 2004. According to art.346 a the oil-tanker owner is responsible for the damages caused in case of oil-tanker accident (see more detailed analysis of this responsibility in the answer of question 10).</p>
Brazil	<p>First, it must be noted that, as a matter of Brazilian law, the circumstance of the crew being of different nationalities is irrelevant.</p> <p>Second, as pointed out in our reply to question no. 6 above, seafarers are required to provide the Brazilian authorities with the</p>

	information/evidence in respect of the ship and their conduct. The time during which they may be prevented from leaving the country while collection of information/evidence is in course is set out in the response to question no. 6 as well.
Canada	The TSB would typically interview the crew members with a view to reaching conclusions as to causes and contributing factors. The crew members are obliged to participate in such interviews. Other regulatory authorities, such as the Department of Transport, Department of Fisheries and Oceans and Department of the Environment, may also expect to interview crew members either as witnesses or accuseds. There have been disagreements, between regulatory authorities and their counsel on the one hand and the defence bar on the other hand, concerning the extent of crew members' obligations to participate in interviews in the context of such investigations.
Chile	There is no different status depending on the nationalities. Any crew member held responsible may be fined by the Maritime Authority irrespective of his nationality.
China	<p>Firstly, the obligations of the crew members won't vary just because the accident involves a foreign-flag vessel with a crew of different nationalities. According to the provisions of law on investigation procedure, the application won't be changeable with the nationality of the vessel and its crew. These regulations can be listed as follows: the provisions of article 2 of MEPL, the provisions of article 2 of MTSL and the provisions of article 3 of RIHMTA.</p> <p>Secondly, the responsibilities of the crew members can be listed as follows:</p> <p>(1) They must subject themselves to the investigation, honestly state the relevant circumstances of the accident and provide authentic papers and materials. We can find these responsibilities from such legislation: the provisions of article 19, section 2 of MEPL, the provisions of article 42 of MTSL and the provisions of article 12, section1 of RIHMTA.</p> <p>(2) They should sail the vessel to the spot for investigation or stay at the said spot without the permission of the organizations. The obligation comes from the provisions of article 13 of RIHMTA.</p>
Croatia	Vessel crew members held responsible shall participate in the offence and criminal procedure
Denmark	As long as it is not in contravention of Denmark's scap International obligations, crew members on foreign flag vessels are expected and legally required to assist the Division of Investigation of Maritime Accidents and the Admiralty in their investigations to the same extent as Danish seafarers.
Dominican Republic	To fully cooperate with the investigation, as per the general provisions of International Maritime law, in case of penal/criminal violations, the law of the coastal country applies to the same, irrespective of the vessels flag and/or the nationalities of her crew members.
Finland	As a suspect or witness in an ordinary pre-trial investigation according to the Criminal Investigations Act (L 449/1987).
France	If a foreign flag vessel with a crew of different nationalities is involved in a maritime accident resulting in serious pollution, the expected role of the vessel crew members is to be at the disposal of the authorities.
Germany	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?

Hong Kong	Under Section 46 of Cap.313, the owner and the master of the vessel will be responsible for the discharge of oil or mixture containing oil into the waters of Hong Kong. Normally, MD would seek indemnity from the vessel's P&I club.
Italy	The crew of a foreign-flag vessel is bound, when the vessel is in Italian territorial waters, to comply with applicable Italian laws. In case of an accident resulting in pollution, the members of the crew of a foreign flag vessel may be required to give evidence on the accident, both in the administrative enquiry conducted by the Port Authority and in the possible subsequent criminal proceedings. This, as previously stated, does not entail their obligation not to leave the country, but may be requested to return in order to give evidence. If certain seafarers are held personally responsible for the pollution they may be condemned to pay fines or even to prison (albeit this has never happened, to our knowledge).
Japan	All co-operation possible with the investigational authority, including submission of all evidence, statements and documents to determine the causes of the accident.
Korea	He will be officially accused of the accident.
Nigeria	The role of the vessel crew members held  (i) The crew members held responsible will give evidence during the Preliminary Inquiry which is carried out by the administration. (ii) They are also enquired to give evidence as key witnesses before the Marine Board of Inquiry
Norway	According to MC § 477 anyone has a duty to give the investigation authority information and to present documents of importance for the investigation process to the investigation authority. Persons do have the right to be represented by a lawyer. Both the master and the shipping company should present the ships books. However, information can <u>not</u> be used as evidence in a later criminal case against the person.
South Africa	The foreign crew of a foreign flagged vessel involved in a serious pollution incident within South African waters will be dealt with in accordance with the responses to the questions set out above. If there is evidence to show that they are guilty of an offence they may be charged and can be arrested. Otherwise SAMSA are not in a position to detain them.
Sweden	As regards responsibility see 5. above. Otherwise, crew members may appear as witnesses in the investigation process
UK	Criminal liability for oil pollution from ships in UK waters depends on whether the incident occurred in internal or territorial waters, and on whether the pollution resulted from damage to the ship or its equipment. Further, under regulations which came into force in September 1996 <sup>56</sup> , the UK's powers to prosecute for pollution offences was extended by the creation of a 'pollution zone' which extends 200 nautical miles from the UK coast. The Secretary of State's Representative (SOSREP) has various intervention powers within this zone and such powers are discussed at 12.2 below.

<sup>56</sup> The Merchant Shipping Regulations, 1996 (Prevention of Pollution, Limits), SI 1996/2128 (as amended)

### **9.1 UK Territorial Waters**

In UK territorial waters the position is governed by regulations which give effect to MARPOL Annex I.<sup>57</sup> This provides that discharges of oil from a ship shall be unlawful unless they comply with the controls and restrictions set out in Annex I,<sup>58</sup> but that there is no liability for pollution resulting from damage to the ship or its equipment, provided the damage is not attributable to personal act or omission of the owner or master committed with intent to cause damage, or recklessly and with knowledge that such damage would probably result.<sup>59</sup>

In the absence of such conduct seafarers are exempt from criminal liability for pollution resulting from damage to a ship or its equipment in a maritime casualty. However this defence will not avail them in the case of spills which are not attributable to such damage, notably escapes of oil resulting from mishandling of equipment during oil transfer operations, or leakages resulting from wear and tear or other defects in the ship's equipment. In such cases prosecutions could be brought on a strict liability basis, but in practice proceedings have not normally been brought if it has been clear that no negligence was involved on the part of the owner or master.

### **9.2 UK Internal Waters**

In the internal waters of the UK the legal framework is different. Here the position is governed by the MSA 95.<sup>60</sup> These provisions owe their origin to legislation which pre-dated MARPOL and originally applied in territorial as well as internal waters, prior to being superseded in territorial waters by the regulations based on MARPOL. There are technical differences between the two regimes but in substance they are similar.

### **9.3 Other grounds for prosecution**

A maritime accident resulting in pollution may give rise to other charges which do not depend on the pollution itself but are founded on conduct endangering the ship or other persons. Such an offence may be established by proof of acts or omissions involving neglect or breach of duty which would not necessarily be sufficient for the purposes of a prosecution under legislation referred to in paras 9.1 and 9.2 above.<sup>61</sup>

### **9.4 EU Draft Directive on Criminal Sanctions for Ship-source Pollution**

There are proposals to change the position outlined in 9.1 and 9.2 above by the EU Draft Directive on Criminal Sanctions for Ship-source Pollution. In its current form the Draft does not distinguish between operational and accidental discharges of oil, and any discharge would be "illegal" if it results from "serious negligence" on the part of the defendant. This test is different from that prescribed by MARPOL in respect of spills resulting from damage to the ship or its equipment. The Draft Directive provides that MARPOL prevails in waters beyond the territorial sea,<sup>62</sup> but otherwise it asserts precedence over MARPOL, notably in territorial waters. The Draft Directive has provoked considerable protest

<sup>57</sup> The Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154 (as amended).

<sup>58</sup> MARPOL Annex I Reg. 9.

<sup>59</sup> *Ibid.*, Reg. 11.

<sup>60</sup> Merchant Shipping Act 1995 ss.131–133.

<sup>61</sup> See the discussion at para 5.1 above of the offence under the Merchant Shipping Act 1995 s.58.

<sup>62</sup> I.e. in Exclusive Economic Zones of EU member states and on the High Seas.

	<p>from a coalition of shipping industry and seafaring bodies. The main objections are firstly that “serious negligence” is a subjective and unsuitable test of liability for oil spills, and secondly that this test is inconsistent with MARPOL.</p>
Uruguay	<p>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.</p>
USA	<p>The expected role of vessel crew members is full cooperation with authorities in their investigation. U.S. constitutional rights include the right against Self-crimination (Fifth Amendment), the right to counsel, the right to have a Court proceeding in their native language and the right to confer with officials from the flag state or their own nation on their legal situation</p> <p>With respect to the Fifth Amendment right against self-incrimination, no seafarer can be forced by the authorities to speak to them or make any statement on the matter where doing so may expose that seafarer to criminal liability. However, if a seafarer chooses to speak to the authorities, anything that he or she may say can and will be used against them. Moreover, if the seafarer lies or makes any other type of false or misleading statement to the authorities or presents a vessel record with false statements or induces others to make false statements, such seafarer can be separately charged with a number of independent criminal charges such as False Statement, Obstruction of Justice, Conspiracy, Interference with a Government Proceeding, etc. All of such charges are felonies and can subject the seafarer to jail time, if convicted.</p>



**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?**

Argentina	This misconduct would arise patrimonial liability, farther on in all cases were started the proceedings pointed out in N° 2.
Australia	No
Bulgaria	<p>The answer of this question consists to a great extent in the answer of Question 9. If the accident mentioned above is considered as a tort, the guilt for the damages caused is presumptive until the contrary is provided. The regulation is according to OCA (see the answer of Question 9).</p> <p>CSC consists a special regulation related to the oil-tanker owner's responsibility for damages caused and the oil and oil-products pollution occurred. According to art. 346b the compensation has to cover the proximate damages until the charges needed to restore the environment and also to cover the prevention measures reducing the damages and remoteness of damages. The oil-tanker owner has the right to reduce his responsibility in any case of accident and namely: until 3 million. Special drawing rights of International Monetary Found (IMF) in BG leva – for the oil-tankers with a tonnage until 5000 gross tones; the sum total of the amount in p. 1 and 420 Special drawing rights for every gross tone over 5000 gross tones, but not more than 59,7 million. Special drawing rights in BG leva – for the oil-tankers with over 5000 gross tones (art. 346 c). The oil-tanker owner has not the right to reduce his responsibility if the damages were guilty caused as a result of his own actions. The oil-tanker owner who is transporting a cargo more than 2000 tones broached oil must have an insurance, bank warranty or another financial equitable charge, covering the respective charge – until 3 million Special drawing rights of IMF in BG leva.</p> <p>Each Bulgarian-flag oil-tanker transporting as a cargo more than 2000 tones of broached oil, must have on board certificate issued by the Executive Agency "Marine administration". The conditions and procedure are stipulated in a special ordinance.</p> <p>A foreign-flag oil-tanker shipping on the flag of State – member of International convention related to civil responsibility for oil-pollution (1992) and transporting a cargo more than 2000 tones broached oil, must have on board a certificate to prove an insurance, bank warranty or another financial equitable charge, covering the responsibility for oil-pollution damages, or a certificate to declare that the oil-tanker is a property of this State. The responsibility for oil-pollution damages according to art. 346 c is until the amount of 3 million Special drawing rights of IMF in BG leva. The certificate must be issued by State authorities of the oil-tanker flag. The Executive Agency "Marine administration" makes a register of certificates issued.</p>
Brazil	<p>No, in pollution cases, even in if the accident is due to negligence (and not to willful misconduct) proceedings in the three aforementioned spheres (civil, penal and administrative) will take place. Liability in civil and administrative spheres is a strict one, i.e., regardless of fault on the part of the wrongdoer, while penal liability in pollution cases is based on fault only.</p> <p>In respect of pollution damage claims it must further be noted that only two international civil liability regimes (limitation conventions) in maritime area in force in Brazil. These are (i) the 1924 International Convention for the Unification of Certain Rules Relating to the Limitation of Liability of Owners of Sea-Going Vessels and (ii) the CLC/69. And, anyway, it is doubtful/controversial whether or not the limitation provisions of these two Conventions apply to environmental damage (i.e., damage to environment itself), as opposed to damage to third parties, such as fishermen, tourist activities, etc.</p>

Canada	<p>The fact that a pollution incident is attributable to negligence rather than wilful misconduct does not necessarily mean that the incident will be treated strictly as a civil matter without penal prosecution. For the most part, the offences to which a vessel and its crew are potentially subject are strict liability offences. While a defence of due diligence is available, such defence may not be applicable if negligence is involved.</p> <p>The responsible regulatory authority, guided by the Canadian Department of Justice, would assess each incident on a case by case basis in deciding whether to lay charges.</p> <p>The fact that a pollution incident is attributable to negligence rather than wilful misconduct does not necessarily mean that the incident will be treated strictly as a civil matter without penal prosecution. For the most part, the offences to which a vessel and its crew are potentially subject are strict liability offences. While a defence of due diligence is available, such defence may not be applicable if negligence is involved.</p> <p>The responsible regulatory authority, guided by the Canadian Department of Justice, would assess each incident on a case by case basis in deciding whether to lay charges.</p>
Chile	Yes.
China	No.
Croatia	Offence procedure is also underrun if there is a violation of maritime legislation.
Denmark	No.
Dominican Republic	No. If there is a pollution, there is an assumption of negligence and/or misconduct in the part of the vessel's master and/or other crew members. The burden of proof to establish the contrary lies upon their shoulders. If the accidental nature of the events can be proven, (no negligence, no wilful misconduct) then it will pursue only pollution compensations.
Finland	No. The Penal Code 48:4 regarding environmental crimes (pollution damage due to <b>negligence</b> ) might be applied. This means that the suspect has actively polluted the environment by discharging substances to the environment or passively polluted the environment by not taking appropriate measures to prevent pollution in some cases. Sanctions under rule 48:4 → fine or imprisonment for a maximum of one year.
France	No.
Germany	Yes
Hong Kong	No.
Italy	Article III.4(a) of the 1992 CLC, ratified by Italy, provides that no claim for compensation for pollution damage may be made against members of the crew unless the damage resulted from their personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result. Since the Convention applies, pursuant to its Article II, to pollution damage caused in the

	territory, including the territorial sea, of a Contracting State, the above provision prevails over any provision of Italian domestic law.
Japan	<p>No. Except for procedures related to pollution damage claims under international instruments (i.e. CLC, FC and LLMC Convention), please refer to Question 11.</p> <p>For your information, where the pollution incidents are caused by tankers due to the negligence of the crew members involved, such members shall not be subject to pollution damage claims under the provisions of section 4, article 3 of the Law on Liability for Oil Pollution Damage, which implements the CLC and FC Convention. Where the incidents are caused by ships other than tankers due to the negligence of the crew members involved, such members may be subject to pollution damage claims, but their civil liability as well as that of the ship owners may be limited pursuant to paragraph 1, Article 3 of the Law on Limitation of Liability for Maritime Claims, which implements the LLMC Convention.</p>
Korea	In addition to the civil liability, the crew is subject to criminal charges even by his negligent action pursuant to Korean Marine Pollution Prevention Act. .
Nigeria	The state will proceed only the pollution damage claims under the International Civil Liability and Compensation system
Norway	According to our environmental law negligent pollution can be punished by criminal sanctions. The answer is therefore No.
South Africa	Yes.
Sweden	Negligence is sufficient to warrant sentencing for illegal oil pollution. See above 3. and 5.
UK	<p><b>10.1. Criminal Liability</b></p> <p>Criminal prosecution for an oil spill resulting from negligence without wilful misconduct will depend on whether the spill resulted from damage to the ship or its equipment. Major oil spills of this kind in the UK, such as the <i>Braer</i> and <i>Sea Empress</i>, did not result in any prosecution of seafarers. However there have been many prosecutions in magistrates' courts (and sometimes the Crown Court) resulting in fines being imposed for relatively small spills resulting from leakages, typically during pumping operations in port. A couple of recent examples are as follows:</p> <p><i>10.1.1 Case Study: MSC Ariane</i></p> <p>On 13 March 2003 the owners of the cargo vessel <i>MSC Ariane</i> were prosecuted at Southampton Magistrates Court after the vessel had been identified by reports and aerial photographs as the source of an oil slick. The incident took place in UK territorial waters and was therefore governed by regulations giving effect to MARPOL Annex I.<sup>63</sup> The magistrates convicted the owners of pollution, but the fine they imposed was reduced on appeal to the Crown Court.<sup>64</sup> Investigations indicated that the pollution probably was probably caused by a metal insert not being</p>

<sup>63</sup> See para 9.1 above.

<sup>64</sup> From £100,000 (plus £4,968 costs) to £30,000 fine. No costs were awarded to Owners, however, for the appeal.

properly installed, as a result of which an inadvertent discharge of oily water occurred beneath the waterline and went unobserved by the bridge. The court stated that: "*sloppy, inadequate working practices on Ariane and from engineers onboard led to a lengthy slick*". Mitigating factors that were taken into consideration included:

- changes to the faulty pipeline since the accident (although not carried out immediately)
- the discharge being light oil not heavy crude
- no risk to health and safety (although the court noted that this "*seemed to be a matter of good fortune rather than action taken by crewmen on Ariane*")

It was also clear that the incident resulted from an act of negligence rather than a deliberate failure to comply with operational discharge controls.

#### *10.1.2 Case Study: Averity*

On 26 September 2001 the coastal tanker *Averity* was involved in an incident at Stanlow Oil Refinery which resulted in her owners being prosecuted for an offence of pollution contrary to the MSA 95.<sup>65</sup> Whilst loading a cargo of Ultra Low Sulphur Diesel (ULSD) a discoloration in the water had been noticed and it transpired that both of the sea valves were open. Although the valves were closed loading was not stopped and, soon after, loading of kerosene commenced. It was later discovered that there was a discrepancy in the figures and that ULSD had entered the enclosed dock. It had, however been prevented from entering the Manchester Ship Canal by a "bubble barrier" across the entrance. The magistrates fined the Owners £10,000 plus £7,173 costs but noted, in mitigation, that Owners had entered an early guilty plea, had no previous convictions, had paid the full clean up costs and had taken measures to avoid a recurrence. The magistrates did, however, state that this was a serious offence that had resulted in a large spillage and had borne in mind the delay in raising the alarm and a breakdown in communication between the crew.

#### **10.2 Civil Liability**

Civil liability for pollution by persistent oil from tankers is governed in the UK by the Civil Liability Convention 1992. In accordance with the Convention, strict liability for such pollution is imposed on the registered owner of the ship,<sup>66</sup> and the servants or agents of the owner are exempt from liability in the absence of wilful or reckless conduct.<sup>67</sup>

Civil liability for pollution by oil from other ships – notably by pollution from ships' bunkers – will be governed in due course by the Bunker Pollution Convention 2001, if and when this enters into force and is implemented by the UK. In the meantime liability of this kind is governed by

<sup>65</sup> This was a spill in internal waters, governed by the Merchant Shipping Act 1995 s.131, as set out in para. 9.2 above.

<sup>66</sup> CLC 92 Art. III.1; Merchant Shipping Act 1995 s.153.

<sup>67</sup> CLC 92 Art. III.4; Merchant Shipping Act 1995 s.156.

<sup>68</sup> Merchant Shipping Act 1995 ss.154 and 156.

<sup>69</sup> The London Convention was implemented in the UK by Merchant Shipping Act 1995 s.185.

<sup>70</sup> The International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS), 1996

	<p>provisions in the MSA 95 which are similar to those applying to spills from tankers, and the servants or agents of the owner are exempt from liability to the same extent.<sup>68</sup> Liability for spills from ships other than tankers may currently be limited under the Convention on Limitation of Liability for Maritime Claims, London, 1976 ("the London Convention")<sup>69</sup></p> <p>It is also worth mentioning that a new instrument<sup>70</sup> dealing with compensation for accidents involving hazardous and noxious substances (HNS) has been drafted. This Convention will make it possible for up to 250 million SDR to be paid out to victims of disasters involving HNS (such as chemicals) but has not, as yet, entered into force.</p>
Uruguay	Yes
USA	<p>Assuming that there is a typographical error in the question and that it refers to question 9, the U.S. is not a signatory to most international civil liability and compensation schemes choosing rather to rely on their own laws such as the Clean Water Act and the Oil Pollution Act of 1990 ("OPA 90"). The Clean Water Act and the OPA, by reference, contain criminal law provisions for any negligent act by the seafarer resulting in pollution. Other U.S.laws (i.e. Refuse Act and Migratory Bird Act) are unilateral, no-fault criminal statutes (not requiring negligence or criminal intent as a pre-requisite for their use) which can result in the Department of Justice bringing charges against seafarers and their employers.</p> <p>In addition, a seafarer who has been deemed to have committed a negligent act resulting in the death of another can be charged under a federal statute commonly known as the "Ships Act", 33 U.S.C. sec. 1115, which is a felony, punishable with imprisonment up to 10 years and a fine of \$250,000. In the event of a pollution incident, the local authorities have a right separate from the federal government to pursue or applicable state criminal statutes relating to pollution resulting from a seafarers negligence, recklessness and/or intentional act.</p>

**Question 11: If the answer to Question 10 is 'No', what other processes or procedures will be undertaken by your State?**

Argentina	
Australia	Prosecution as for wilful misconduct.
Bulgaria	The answer to this question consists in the answers to questions 9 and 10.
Brazil	See answer to question 10
Canada	See the answer to question 10.
Chile	Not applicable.
China	<p><b>(1) Criminal procedure</b> The legal basis for starting a criminal procedure can be listed as follows: the provisions of article 15, article 133 and article 136 of criminal law of the People's Republic of China.</p> <p><b>(2) Administrative punishment procedure</b> While the seafarers' acts have not constituted a crime and should be punished by administrative organizations, the administrative punishment procedure will be started. The legal foundations are as follows: the provisions of article 44 of MTSL and the provisions of article 17 of RIHMTA. When giving administrative punishment to seafarers, the maritime administrative organizations should abide by the provisions of Law of the People's Republic of China on Administrative Penalty (LAP) and provisions of the People's Republic of China on Marine and Maritime Administrative Punishment (MMAP).</p> <p><b>(3) Administrative sanction procedure</b> The administrative sanction procedure will be started if the organizations need to establish sanctions against seafarers. The legal basis is the provisions of article 18 of RIHMTA.</p>
Croatia	As above.
Denmark	Negligent of violation of SSA and MEA may also lead to criminal charges against seafarers.
Dominican Republic	Criminal charges/imprisonment against the liable parties (Master and all pertinent crew members) and fines.
Finland	As stated above.
France	Criminal proceedings may be undertaken even without wilfull misconduct by responsible crew members.

Hong Kong	Regulations 35 and 36 of the Merchant Shipping (Prevention of Oil Pollution) Regulation, Cap.413A, give power to the Director of Marine to inspect, deny entry and detain the ship in question. If any ship fails to comply with any requirement of Cap.413A, the owner and the master of the ship in question are liable to a fine under regulation 37 of Cap.413A.
Italy	Not applicable
Japan	Following such an accident as described in question 10, if all possible measures to prevent the continuing discharge of oil were not taken, the crew may be punished by the Law Relating to the Prevention of Marine Pollution and Maritime Disaster.  No criminal procedure under the Penal Code has been undertaken in the case of accidents which cause marine pollution only. However if due to negligence, the accident harms human lives or safety, it may be subject to criminal punishment.
Korea	N/A
Nigeria	Not applicable
Norway	N/A
South Africa	Not applicable.
Sweden	See above 3. and 5.
UK	In the event of serious pollution there will be a full inquiry by the MAIB. As mentioned earlier, the investigation is not primarily concerned with apportioning fault but with identifying causes with a view to avoiding a recurrence. Nonetheless the conclusions and recommendations of an MAIB report may lead to a decision by prosecuting authorities to institute proceedings.  In the <i>Sea Empress</i> incident the MAIB report identified pilot error as the primary cause of the casualty and identified deficiencies in the systems operated by the Milford Haven Port Authority for training pilots and ensuring that pilots of appropriate experience were assigned to large tankers. This led to a prosecution of the MHPA by the Environment Agency under the Water Resources Act 1991. The MHPA pleaded guilty and was fined £750,000. No proceedings were instituted against the owners, master or crew of the tanker. Concerns were voiced in some quarters, notably by the salvage industry, that the Act represented an unexpected source of potential criminal liability for shipowners and seafarers in circumstances where they would not incur liability under merchant shipping legislation. To date there has been no instance of shipowners or seafarers being prosecuted under the 1991 Act.
Uruguay	N/A
USA	See the answer to question 10. Mere negligence without wilfulness can lead to a successful prosecution under existing U.S. and state environmental criminal laws. Because many of the environmental laws in this country are based on "no-fault" or "strict liability" statutes the prosecutor need not establish the requisite mental state of criminal conduct ("mens rea") in order to proceed with the case.





**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?**

Argentina	The proceedings are the same.
Australia	In terms of pollution incidents occurring within Australia's EEZ, the procedures would be the same.
Bulgaria	According to art. 13 of CSC the flag law ("lex banderae" – lat.) is applicable when the act ions on board occurred in high sea or in neutral territory. Consequently, the applicable law is the foreign-flag law. In general, "lex banderae" is the most utilized provision in many countries to determinate the applicable law in the case of tort in high sea. Bulgarian legislation does not consist a general rule related to the applicable law in the case when the tort had not occurred under Bulgarian jurisdiction but some consequences have occurred in Bulgarian waters. In Bulgarian Civil code draft is provided that if the action is committed in the territory of one country but the harmful result occurred in the territory of another country (in the case outlined, in Bulgarian territory), the applicable law is the law which is more favorable for the injured person.
Brazil	No, the procedures involved will be the same as applied in question nine.
Canada	Under the <i>Canada Shipping Act</i> , the jurisdiction to prosecute exists with respect to a pollution incident anywhere in Canada's exclusive economic zone, not just its territorial sea. If Bill C-15 passes Parliament in its current form, the jurisdiction under the <i>Migratory Birds Convention Act</i> and the <i>Canadian Environmental Protection Act, 1999</i> will be similarly expanded.
Chile	No
China	<p><b>(1) About the investigation procedure</b></p> <p>There is no difference between the procedure of the accidents occurred in the Territorial Seas and the one of the accidents occurred outside the Territorial Seas.</p> <p>If the maritime accidents happen in the Contiguous Zones, Exclusive Economic Zones and Continental Shelves and violate Chinese law, then the Chinese Government may exercise the right of hot pursuit according to the provisions of article 13 of Law of the People's Republic of China on the Territorial Sea and the Contiguous Zone (LTSCZ) and the provisions of article 12, section 2 of Law of the People's Republic of China on the Exclusive Economic Zone and the Continental Shelf (LEEZCS).</p> <p>MTSL and RIHMTA are applicable in the coastal waters of China, which contains the Territorial Seas and all other waters under the jurisdiction of China.</p> <p>MEPL shall apply to the Internal Waters, Territorial Seas and the Contiguous Zones, Exclusive Economic Zones and Continental Shelves of China and all other sea areas under the jurisdiction of China. This law shall also apply to areas beyond the sea areas under the jurisdiction of China that cause pollution to the sea areas under the jurisdiction of china.</p> <p>From the above legislation, we can conclude that if the maritime accident outlined in question 9 occurred outside the territorial seas, the investigation procedure won't be different.</p>

	<p><b>(2) About criminal procedure</b></p> <p>There is almost no difference toward the criminal procedure, neither. Article 16 of CPL stipulates that Provisions of this Law shall apply to foreigners who commit crimes for which criminal responsibility should be investigated. If foreigners with diplomatic privileges and immunities commit crimes for which criminal responsibility should be investigated, those cases shall be resolved through diplomatic channels. So only when the latter situation appears, the criminal procedure is different from the ordinary one.</p>
Denmark	If the accident has occurred outside Danish territorial waters and assuming that the Danish authorities have jurisdiction to investigate the accident, the Division for Investigation of Maritime Accidents is required to carry out its investigation in cooperation with the authorities of the flag state.
Dominican Republic	If the vessel enters into Dominican waters and/or calls <i>*at</i> a local port, the procedures involved would be the same; but if the vessel does not enter into territorial waters neither calls <i>*at</i> our ports, the State most likely would only seek pollution compensation.
Finland	Environmental crimes committed in the economic zone of Finland are governed by the Penal Code 48:10. This rule (L 1067/2004) stipulates that fines may be imposed instead of jail sentences in some cases.
France	The proceedings will not be different.
Germany	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?
Hong Kong	<p>Under Section 46 of Cap.313, the owner and the master of the vessel will be responsible for the discharge of oil or mixture containing oil into the waters of Hong Kong. Normally, MD would seek indemnity from the vessel's P&amp;I club.</p> <p>However, MD does not have the jurisdiction to carry out any on-board investigations/inspections if the maritime accident outlined in question 9 occurred outside the waters of Hong Kong and if the vessel is not in the waters of Hong Kong.</p> <p>MD would provide the relevant information/evidence, available to us, to the flag State of that vessel and request them to carry out an investigation of such a case.</p>
Italy	The CLC 1992 applies also to the exclusive economic zone and, in Italy where the EEZ has not been established, in an area beyond and adjacent to the 12 miles territorial sea extending not more than 200 nautical miles (see Article II(a)(ii) of CLC 1992).
Japan	In principle, the criminal procedures mentioned in Question 11 will not be applied if the case occurred outside of territorial waters. However, in case an accident occurs in the Japanese EEZ, the Law Relating to the Prevention of Marine Pollution and Maritime Disaster, which covers the requirements of the MARPOL Convention, is applied, based on article 3 of the Law on the Exclusive Economic Zone and the Continental Shelf.

	In addition, in cases where the damage occurs in the EEZ and territories including the territorial waters of our State, the Law on Liability for Oil Pollution Damage, which implements the requirements of the CLC and FC Convention, will be applied, and the ship owner will be subject to pollution damage claims wherever the accident occurred.
Korea	In theory, Korean government will not exercise sovereign power over the accident occurred outside the territorial waters. However, it seems that if the result of the oil pollution damages occurs in Korean territory the negligent seafarer will be subject to criminal charge according to the Korean Marine Pollution Prevention Act.
Nigeria	The state will Claim for Compensation under the International Civil Liability and Compensation system
Norway	Reference is made to the answer to question 2. Normally the same procedures will be followed.
South Africa	<p>If damage occurs within South Africa's jurisdiction and the ship and crew involved in that incident subsequently enter South Africa's jurisdiction, the owner and crew members will be treated in accordance with the relevant acts and conventions as set out above. In the event that the ship and / or crew do not enter South African territorial waters and therefore remain outside of South Africa's jurisdiction, the only basis upon which seafarers could be charged is in the event that they subsequently enter a country with which South Africa has concluded an extradition treaty covering offences of this nature.</p> <p>The only exception to the above is in the event of an intervention in terms of the Intervention Convention. The enabling legislation in South Africa has not effected any substantial changes to that Convention.</p>
Sweden	Sweden has jurisdiction in the Exclusive Economical Zone in respect of oil pollution. However, other coercive measures are applicable than those applicable for to pollution in territorial waters. It must be clear that the pollution originated from a specific Vessel and that the pollution has caused or will cause severe damage to Swedish interests. Measures could also be taken if the pollution has caused or will cause considerable damage to the Marine environment. Furthermore, if the Captain withholds vital information, actions may be taken against the vessel, should the circumstances so demand
UK	<p><b>12.1 Jurisdiction of the MAIB</b></p> <p>The jurisdiction of the MAIB is not limited to accidents occurring in the territory of the UK but could include accidents causing pollution within territorial limits. The MAIB may also investigate accidents involving UK ships wherever they occur. The role of the crew in relation to the inquiry might well depend on whether they had evacuated the vessel and been brought ashore in the UK.</p> <p><b>12.2 Jurisdiction of the MCA – Secretary of State's Representative (SOSREP)</b></p> <p>The Secretary of State's Representative (SOSREP) is appointed on behalf of the Secretary of State and may oversee, control, and intervene where necessary, and exercise "ultimate command and control" in connection with salvage operations within UK waters involving vessels or fixed platforms where there is significant risk of pollution. Some of the more significant SOSREP powers, with respect to areas outside territorial waters, are outlined below.</p>

	<p><i>12.2.1 Powers of intervention – Power to Intervene and Issue Directions</i></p> <p>Under the MSA 95<sup>71</sup> the SOSREP may, for purposes of preventing or reducing the risk to safety or of pollution by a hazardous substance, give directions to take action of any kind whatsoever; this includes the destruction of a vessel. This power applies, with respect to safety, in UK territorial waters (up to 12 miles from the UK coast) and, with respect to pollution, in the Pollution Zone (up to 200 miles from UK coast or to the international median line).</p> <p><i>12.2.2 Powers of intervention – Power to establish Temporary Exclusion Zones</i></p> <p>The SOSREP may<sup>72</sup>, for the purpose of preventing significant damage to persons or property, or pollution or reducing such risk, establish a Temporary Exclusion Zone. This can apply to any ship, structure or other thing which must be wrecked, damaged or in distress. The power applies within the UK Pollution Zone (up to 200 miles from the UK coast or to the international median line).</p> <p><i>12.2.3 Case Study: Ever Decent/Norwegian Dream</i></p> <p>In August 1999 the <i>Ever Decent</i> (Panamanian flagged container ship) and the <i>Norwegian Dream</i> (Bahamian registered passenger ship) collided off Margate. The precise location was outside UK territorial limits but within the UK pollution zone and therefore the Dover Maritime Rescue Co-ordination Centre had jurisdiction to co-ordinate. The damage to the <i>Ever Decent</i> was such that it led to a fire which started at the collision point and soon after became out of control. The SOSREP formally intervened under S. 137 of the MSA 95, firstly to require salvage plans to be approved by the MCA; this was due to the risk of significant pollution (the mixed containers on board the <i>Ever Decent</i> contained significant quantities of Hazardous cargo, particularly as the seat of the fire was close to two containers with 32 tonnes of potassium and sodium cyanide). Subsequently the SOSREP intervened in order to establish a Temporary Exclusion Zone around the casualty preventing any non salvage related vessels from entering the area. A Salvage Control Unit (SCU) was also set up comprising of the SOSREP, MCA Pollution and salvage officer, owners/insurers representative, Salvage Manager and Environmental Liaison Officer which monitored and reduced the fire's intensity over some days before an escorted passage plan to Zeebrugge was finally approved. Throughout the operation the <i>Ever Decent</i> maintained a position outside UK territorial waters but still within the UK pollution zone.</p>
Uruguay	No.
USA	The U.S. considers the Exclusive Economic Zone (200 mile limit) is the area coming under U.S. law for the purpose of OPA civil liability. However, in order to invoke the criminal statutes of the United States, with some exceptions relating to violent crimes, the criminal act must have occurred within the territorial maritime boundaries of the United States, or must have resulted in damage within the territorial boundaries, which are 12 miles. It is possible that the individual states would not have jurisdictional powers unless the pollution directly threatened and/or affected their geographic area. Individual states criminal jurisdiction generally extends 3 miles out to sea.

<sup>71</sup> *Ibid.*, Schedule 3A para. 1 (inserted by the Marine Safety Act 2003).

<sup>72</sup> Merchant Shipping Act 1995 s.100A (inserted by the Merchant Shipping and Maritime Security Act 1997).



**Question 13: Regardless whether your State's investigation process utilises the criminal justice system, or any other system, will the relevant vessels crew members be detained? If so:-**

- A. What is the legal reason for the detention?**
- B. What rights will the accused/detained crew member have during the process, and do such rights differ from those available to the citizens of your State?**
- C. Will full reason 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 vessels 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?**

Argentina	
Australia	<ul style="list-style-type: none"> <li>a. Possibly, however in most cases the crew-member would be released subject to bail or bond conditions.</li> <li>b. The right of appeal exists, such rights are available to any person charged with an offence.</li> <li>c. Yes.</li> <li>d. If detained, the period would be until the matter can be brought before the Courts.</li> <li>e. This is a matter for the Court to determine.</li> <li>f. Full access to legal representation.</li> <li>g. Yes.</li> <li>h. Yes.</li> </ul>
Bulgaria	<p><b>A:</b> The legal reasons for the detention of those seafarers are specified in CSC and in PPC, as follows: art. 89, p. 3 of CSC; art. 90 of CSC; art. 202 of PPC (see the analyse in the answer to Question 5, p.5-6)</p> <p><b>B:</b> The rights of detained/accused crew members during the trial process do not differ from the rights of Bulgarian citizens. Their rights are stipulated in PPC. According to art. 206 of PPC the detained person has the rights as follows: to know the reason of detention; to give explanations; to make references, notices or objections and to claim the prosecutor's provisions/the investigators' provisions when they harm his rights and legal interests.</p> <p>According to art. 51 of PPC the accused has the rights as follows: to know the reasons and the proofs of his accusation; to give explanations; to present proofs; to take part in the penal procedure; to make references, notices or objections; to have a last plea at the bar; to claim the tribunal</p>

	<p>acts and acts of investigation authorities; to have a defender and to have a last plea. The defender could participate during the investigation process on demand of the accused.</p> <p><b>C:</b></p> <p><b>D:</b> The captain has the right to detent the suspected person/seafarer and to surrender him to the authorities in the first Bulgarian harbor. When a crime is committed on board during the stay in Bulgarian harbor, the captain has to surrender the suspected person to the respective authorities.</p> <p>In accordance with the General rules of PPC the investigator could detent the suspected person without a prosecutor's order when the crime is considered as a crime of general nature and the preliminary procedure is mandatory (for ex., when the suspected person was detained during the crime or after the crime commitment). In the detention provision the investigator should motivate the detention and has to advise the procurator no later than 24 hours (art. 202 of PPC). The procurator has to approve immediately or to repeal the detention. If the detention was made because of grievous crime of a general nature, the prosecutor may prolong this time limit to 3 days. In the case that during this period a legal action is not initiated, the investigator has to exempt the detained person.</p> <p><b>E:</b> According to art. 89, p.3 of CSC the captain has the right to enterprise all measures needed if a person on board does not observe his legal orders. If a member of personnel on board endangers the vessel's safety or the safety of other persons and properties there in, or this action is considered as a crime according to Penal Code of Bulgaria, the captain has the right to detent the seafarers and other persons in question in isolated detention rooms.</p> <p>The captain has the right to detent the suspected person/seafarer and to surrender him to the authorities in the first Bulgarian harbour. When a crime is committed on board during the stay in Bulgarian harbour, the captain has to surrender the suspected person to the respective authorities.</p> <p><b>F:</b> The access to legal advise and/or defence are regulated in general Bulgarian legislation. According to art. 51 of PPC the accused has the right to have a defender/advocate. The defender may participate during the investigation process, if the accused demanded.</p> <p><b>G:</b> there is a legal regulation related to defence by legal defender and by husband/wife, ascendant or descendent of the accused (art. 67 of PPC). The representatives of employer and crew members could participate in the penal procedure as civil defendants, when a civil action had been proceeded against them (art. 65 of PPC).</p> <p><b>H:</b> Yes, they have the right to not answer questions that may be considered self-incriminating.</p>
Brazil	<p><b>A</b> When a criminal process is taken, detentions may occur according to the situation. Brazillian Criminal Law is based on presumption of innocence and, thus, no one is subject to detention before a final judgment is issued unless caught <i>in flagrante delicto</i> or in other very specific cases (which authorizes the preventive detection).</p>

	<p><b>B</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? The human rights will be assured to the accused/detained person. Basically, the rights are the same of a Brazilian citizen, such as: privilege against self-incrimination, full defense, process under adversarial system, due process of law, etc.</p> <p><b>C</b> Yes, they will.</p> <p><b>D</b> The flagrant detention is supposed to take ten days. But, it may change for a preventive detention. When a preventive detention is applied, it is supposed to take, at maximum and theoretically, eighty one days. The preventive detention is supposed to take thirty days.</p> <p><b>E</b> Either civil or federal police station, according to the case.</p> <p><b>F</b> Basically, the person can indicate a lawyer or a public attorney will be automatically constituted.</p> <p><b>G</b> Not exactly. His lawyer can have this access at anytime, but other people must observe the visitors' regulations (there may be specific time for visitors).</p> <p><b>H</b> Yes, the accused person has the right of not responding self-incriminating questions.</p>
Canada	<p><b>a.</b> Other than the authority of the TSB to detain witnesses for interviews as part of their investigations and the possible jurisdiction of other authorities to act similarly, the legal reason for detention of a crew member would typically be arrest in contemplation of charges being laid against such crew member and the ultimate trial of such charges.</p> <p><b>b.</b> An accused crew member would have the same rights afforded to any other accused, regardless of whether he or she is a Canadian citizen. See the rights described under question 5 above.</p> <p><b>c.</b> Yes.</p> <p><b>d.</b> This depends on the nature of the incident and the charge.</p> <p><b>e.</b> Detention of an accused seafarer may be in a penal institution, unless the Court with the jurisdiction over the prosecution permits release on bail.</p> <p><b>f.</b> They will be afforded the ability to retain counsel and will have the ability to access the legal aid system available in the province of arrest.</p> <p><b>g.</b> Limited and restricted access will be provided. See also the answer to f.</p> <p><b>h.</b> Yes. Section 11 of the Canadian Charter of Rights provides that any person charged with an offence has the right not to be compelled to be a witness in proceedings against that person in respect of the offence. All questions must be answered in interviews by the TSB but</p>



	information obtained in such an interview may not be used in criminal prosecution.
Chile	No, the relevant vessel crew members cannot be detained, but whilst they have not declared in the Investigation, the Maritime Authority will not allow the ship to sail.
China	<p>A: The legal foundations of the detention are: article 8 of LTSCZ, article 12 of LEEZCS, article 14, article 15, article 133 and article 136 of Criminal Law of the People's Republic of China (CL), article 47 of MTSL, article 15, article 18 and article 29, section 2 of RIHMTA, and article 24 of TRIPSA.</p> <p>B: According to the provisions of CPL, the accused/detained crew members have such rights:  (1) Right to life, Right to health and other Rights of Person can not be harmed during the detention period.  (2) Right of defense. It contains Right of Know, Right of self-defense, right of engaging a lawyer, and right of obtaining legal aid.  (3) Right of fair trial. Criminal procedure law of china has set up withdrawal, open trial regulations and other rules to ensure that criminal defendant could get a fair trial.</p> <p>C: Yes.</p> <p>D: It is depended on the time of the investigation needed by the maritime administration organizations of the People's Republic of China.</p> <p>E: According to the provisions of CPL, if the seafarers resist detention, the persons who carry out the detention have the right to take some compulsory means, including the use of weapons.</p> <p>F: According to the provisions of article 32, article 34 and article 39 of CPL, the detained seafarers can exercise the right to defense by himself/herself, entrust one or two persons as his/her defenders. Under certain circumstances, the people's court may designate a lawyer duty-bound to provide legal assistance to defend him/her. The accused may refuse to have his/her defender continue to defend him/her and may entrust his/her defense to another defender during a trial.</p> <p>G: According to the provisions of CPL, except for the situation of obstructing investigation of a crime or having no way to inform, the concerning organizations should inform the seafarers' company and family members of the reason and place of detention within 24 hours. The right of a criminal suspect to entrust defenders in public prosecution accrues on the day when the case is submitted for examination and prosecution. The accused in a private prosecution has the right to entrust defenders at any time.</p> <p>H: According to the provisions of law in china, the seafarers have obligations to honestly answer the questions during the investigation process. Therefore, they can not refuse to answer the questions during this period.  During the criminal procedure, the seafarers have not got Mute according to present law in China. However, article 46 of CPL makes a clear provision on the issue. In the decision of all cases, stress shall be laid on evidence, investigation and study; credence shall not be readily given to oral statements. The accused can not be found guilty and sentenced to a criminal punishment if there is only his/her statement but no evidence; the accused may be found guilty and sentenced to a criminal punishment if evidence is sufficient and reliable, even without his/her statement. Therefore, not answering questions can not be considered self-incriminating. The seafarers can be convicted of a crime only when there are</p>

	enough evidences to prove the results.
Croatia	<p>A Facilitating investigation.</p> <p>B Foreign and domestic citizens have equal rights.</p> <p>C Yes.</p> <p>D For the duration of the first degree proceedings carried out as urgent procedure.</p> <p>E The procedure is carried out at the Harbour-Masters Office at which territory accident occurred.</p> <p>F The same rights are exercised as for domestic citizens plus support of their consulate's personnel and assistance of an authorized court interpreter.</p> <p>G Yes.</p> <p>H Yes.</p>
Denmark	<p>As mentioned under item 5 above, seafarers may under certain circumstances be detained:</p> <p>(a) see item 5 above.</p> <p>(b) A foreign seafarer will have the same rights as Danish citizens as set out in the Administration of Justice Act, including the right not to incriminate himself, the right to a lawyer and the right to write unchecked letters to - among others- -the Danish Ombudsman and the and Minister of Justice.</p> <p>(c) Yes</p> <p>(d) The detention must be renewed at least every four weeks. The detention can under certain circumstances be upheld until the case has been tried and decided by the courts, i.e. potentially several months.</p> <p>(e) The seafarer will be detained in a prison.</p> <p>(f) The seafarer will have full access to legal advice from a lawyer.</p> <p>(g) The seafarer will be allowed visitors.</p> <p>(h) The seafarer will have the right not to answer questions, which may incriminate the who).</p>
Dominican Republic	<p>a. Preventive imprisonment due to investigation. - 48 hours maximum after which an "habeas corpus" is in order.</p> <p>b. The same will have the same rights available to Dominican citizens: right to make at least one telephone call, right to be assisted by a lawyer while being interrogated, etc.</p> <p>c. Reasons are normally provided by the investigators and charges within 48 hours as from time of their detention.</p> <p>d. A maximum of 48 hours without having placed any charges against them. unlimited if charges had been placed (a bail bond would become handy to obtain their liberty under bond *once charges are placed).</p> <p>e. Most likely at the Harbourmasters/Port Commanders office.</p> <p>f. Technically, a D.A. assistant should be available. In practice this does not occur all the time. The personnel is advised to contact their local agents and/or P and I local correspondents in the case of a detention.</p> <p>g. They should.</p> <p>h. Yes.</p>
Finland	<p>a. Mainly since there is a probable cause that the suspected committed the crime, which could lead to imprisonment for two years or one year provided that it is likely that the suspect tries to escape, tamper with evidence or otherwise obstruct justice.</p> <p>b. No.</p>

	<ul style="list-style-type: none"> <li>c. Yes.</li> <li>d. According to the Coercive Measures Act 13 §: At noon on the third day after the day of detention a court hearing shall take place in order for the court to decide whether the suspect shall be declared remanded for trial.</li> <li>e. By the police according to law.</li> <li>f. Full access. The suspect may appoint his own legal counsel. Legal counsel may also be provided to him. The State might in some cases provide the legal counsel free of charge.</li> <li>g. Yes.</li> <li>h. Yes.</li> </ul>
France	<p>The relevant vessel crew members may be detained before judgement (if incurred prison sentence is equal or over 3 years) :</p> <ul style="list-style-type: none"> <li>a. to avoid trouble to public order, to avoid communication with the owner and/or charterer and to avoid loss of piece of evidence before investigation</li> <li>b. they have the same rights as those available to french citizens : crew members will be assisted by a lawyer, the lawyer will visit him in jail. He will refer the investigating Magistrate's orders to the Judge of Liberties and will insure defence in every step of the case in all hearings and investigations.</li> <li>c. Yes</li> <li>d. The detention cannot exceed 4 months if a person has never been condemned before and if the possible prison sentence is not more than 5 years. This delay may be extended to 4 more months by a motivated order of the Judge of Liberties after a debate with the seafarer's lawyer.</li> <li>e. The seafarers involved may be detained in state prison : « House of Arrest ». They are separated from the persons already condemned and they would have an individual cell.</li> <li>f. They will be assisted by a lawyer.</li> <li>g. The lawyer will have immediate access to those detained but not the vessel 's representatives agents and labour organisation representatives. The family's members visits cannot be refused after one month detention except for particular reasons which the Judge will have to explain in his refusal order and this order may be appealed before the President of The Court of Instruction who will judge it within 5 days.</li> <li>h. The seafarers have the right to refuse to answer any question out of the presence of their lawyer and they have the legal right not to answer questions.</li> </ul>
Germany	<ul style="list-style-type: none"> <li>a) Pollution of the waterways, risk of escape.</li> <li>b) They have all the right every German citizen has.</li> <li>c) Yes</li> <li>d) The trial has to start within 6 month after detention. 6 month is the longest time without trial. The period of detention for pollution is 5 years at the longest. From time to time there reviews of a detention order by law.</li> <li>e) As German citizens as well in a prison.</li> <li>f) Every access. They are allowed to contact legal advice around the clock.</li> <li>g) Yes</li> <li>h) Yes</li> </ul>
Hong Kong	<ul style="list-style-type: none"> <li>a) Please refer to the answers to questions 5 to 7 above.</li> </ul>

	<ul style="list-style-type: none"> <li>b) Everyone is equal before the law. A seafarer has the same rights enjoyed by the Hong Kong residents (e.g. right to bail).</li> <li>c) Should one be detained and brought to court, he should have been charged with a copy of the holding charge(s) served to him. Even if no plea is to be taken, the charge(s) would be read and explained to him in court. He would be informed and/or served with copies should there be additional and/or amended charges in due course. The detainee should also be informed of the reasons why the court has refused bail and that he has the right to apply for bail in the High Court.</li> <li>d) There is no fixed period of detention. However, the court will make enquiry as to the reasons and length of the adjournment/detention to ensure no one will be detained longer than necessary.</li> <li>e) Should bail be refused, the seafarers will be handed over to the Correctional Services Department (“CSD”) for detention. However, for the first 3 clear days, the police may apply for the seafarers to be detained in police custody to facilitate procedures like Identity Parade to be conducted.</li> <li>f) Arrangements can be made with CSD/the police for the detainees to contact an/or see their legal representatives to seek advice.</li> <li>g) If in CSD custody, arrangement can be made for the persons mentioned to visit the detainee.</li> <li>h) If in police custody, the detainee has the right to seek advice from his legal representative. If the investigation will not be hindered, he may be allowed to contact and/or make phone calls to other persons like his family members.</li> <li>i) Everyone has the right of silence. The seafarers will be reminded of this right before they are to answer any question which may incriminate them.</li> </ul>
Italy	<p>Detention prior to a final judgment is permitted in case a person is caught in the act of committing a crime. It is compulsory in case the claim is punishable with life imprisonment or imprisonment for more than 5 years, as well as in respect of specific crimes. It is permitted in respect of crimes punishable with imprisonment up to 3 years. There are then a number of other situations, specified in the Code of Criminal Procedure, in which arrest is permissible, in which event notice must be given to the Public Prosecutor, but within 48 hours validation of the arrest by the Court must be requested.</p> <ul style="list-style-type: none"> <li>(a) See comment in the preamble to Question 13.</li> <li>(b) Foreign citizens have the same rights of Italian citizens.</li> <li>(c) Yes. A foreign citizen is entitled to have the reasons translated in his mother language or in a language known by him. Interrogatories are conducted with the aid of an interpreter.</li> <li>(d) The length of the detention is determined by the continuing existence of the reasons for which it was decided.</li> <li>(e) There is no special rule for seafarers. Detention may take place in prison, at the domicile of the person detained, or at a different temporary domicile.</li> <li>(f) Legal assistance may be provided by an advocate appointed by the person incriminated or, failing any such appointment, by a lawyer appointed by the Magistrate.</li> <li>(g) Except in some very limited cases, a person who is detained is entitled to visits of persons of his family and of his lawyer, in accordance with the regulations of the prison where he is detained. Following the express authorization of the Magistrate, the right of visit may be granted also to the agent of the shipowner and labour organisations.</li> <li>(h) Yes. There is a general right not to answer to any question.</li> </ul>
Japan	<p>As referred in Question 5, the crew may be arrested under certain conditions. The answers to each question from a. to h. are shown as follows:</p> <ul style="list-style-type: none"> <li>a. Arrest or detention under The Code of Criminal Procedure</li> </ul>

	<p>b. The accused or the suspect in custody has the same legal rights as a Japanese accused or suspect.</p> <p>c. When the suspect is arrested upon a warrant of arrest, the warrant shall be shown to him. When a judicial police officer has arrested a suspect upon a warrant of arrest or received a suspect who was arrested upon a warrant of arrest, he shall immediately inform the suspect of the essential facts of the crime and of his being entitled to select a defense counsel, then provide him an opportunity for explanation. When the suspect who was arrested has been transferred to a public prosecutor, the public prosecutor shall immediately inform him of the essential facts of crime and of his being entitled to select a defense counsel, then provide him an opportunity for explanation before requesting a judge to detain him.</p> <p>d. Arrest: 3 days Detention: 10 days in principle. However if unavoidable circumstances exist, a judge may extend the period within the 10 days.</p> <p>e. The suspect will be detained at a facility operated by the Japan Coast Guard, etc. If a judge determines further detention is in order, the suspect will be transferred to a detention house operated by the Ministry of Justice, etc.</p> <p>f. The accused or the suspect may appoint a counsel at any time.</p> <p>g. The accused or the suspect in custody may, without any official being present, have an interview with or deliver to/receive documents or articles from his/her counsel or a person who is going to be his/her counsel, upon the request of the person entitled to appoint a counsel. The accused or the suspect may have an interview with, deliver to/receive documents or articles from the vessel's representatives, agents, family members, or labor organization representative. But when there is reasonable ground to suspect the accused or suspect may escape or destroy evidence, a court or judge may, upon request of a public prosecutor or ex-officio, forbid him to interview any other persons other than counsel, examine documents or other things he may deliver to or receive from such persons, forbid him to deliver or receive such items, or seize them.</p> <p>Article 38 of Constitution states, "No person shall be compelled to testify against himself." In addition, Article 198 of Code of Criminal Procedure states, "In the case of questioning, the suspect shall, in advance, be notified that he is not required to make a statement against his will"</p>
Nigeria	<p>a) To enable the Administration to carry out the preliminary Inquiry and forward Report of its investigation to the Federal Ministry of Transport. Consequently a marine Board of Enquiry is set to further interview the crew members as witnesses to the marine accident.</p> <p>b) The arrested crew members may be allowed to stay on board their vessel if the ship is still habitable, and the Ship Agent may also be allowed to sort out their accommodations. The state usually withholds the passport of the crew and allow them to freely move around within the state. They are also allowed access to their lawyers.</p> <p>c) Under Section 387 of the Merchant Shipping Act-Notice of detention of a foreign ship is given to the consular officer for the country to which the ship belongs at or nearest to the port where the ship is for the time being and such notice shall specify the grounds on which the ship has been detained or the proceedings have been taken.</p> <p>d) The detention period depends on the time the Pland the Marine Board of Investigation is concluded</p> <p>e) The Seafarers are not necessary under detention by the state except that they are not allowed to leave the country. They have access to their agents, lawyers etc.</p> <p>f) They have access to their agents, lawyers, family members etc</p> <p>g) They have full access to all persons mentioned here.</p> <p>h) The relevant Seafarers are "cautioned" and put under oath like any other witness.</p>

Norway	<p>A Ref. answer to question 5.</p> <p>B Ref. answer to question 8.</p> <p>C Yes</p> <p>D Several months</p> <p>E In custody or the person will be asked not to leave the country</p> <p>F Will have right to a lawyer</p> <p>G No, normally only lawyer</p> <p>H Yes</p>
South Africa	<p>(a) The crew members will not be detained unless they are accused of an offence as set out above.</p> <p>(b) The rights of any person accused or detained are identical to that enjoyed by South African citizens and are set out above.</p> <p>(c) to (h) Seafarers are not detained and accordingly these questions are not applicable. If they are charged and arrested, then the rights they enjoy are as set out above.</p>
Sweden	<p>a. Usually, crew members are not taken into custody. A sentence to 1 year's imprisonment is a condition for being placed in custody. Reference is also made to item 6 above.</p> <p>b. The rights are the same as for Swedish citizens.</p> <p>c. Yes</p> <p>d. The time in custody is, of course, subject to the time needed for the investigation process. The prosecutor usually has two weeks within which to present his case to the court and during this period the defendant may be required to remain in custody unless the prosecutor decides otherwise.</p> <p>.Sweden has only had one case of detained crew members. They had to remain in custody for 2 ½ weeks but were immediately released after the first court hearing, since it was not considered necessary to keep them in custody any further.</p> <p>e. Usually in police custody.</p> <p>f. They are entitled to be assisted by a public defence lawyer at the cost of the state, but the appointment of a defence lawyer of their own choice and at their own expense is also possible.</p> <p>g. A defence lawyer always has the right to visit his client and usually other visitors too. However, depending upon restrictions imposed because of the investigation as such, family members and others may be denied visiting rights.</p> <p>h. Yes</p>
UK	<p><b>a.</b> There can be no arrest or detention under English law without justification under a specific legal power.<sup>73</sup> There can therefore be no arrest or detention unless there is reasonable cause to believe that an arrestable offence has been committed or an arrest warrant has been obtained. In either case it would be necessary for the circumstances to involve a suspected or alleged offence of a serious nature and punishable by</p>

<sup>73</sup> See para 5.1 above.

imprisonment.

**b.** As explained in 5.2 above, the accused/detained crew member will have rights guaranteed under various statutory provisions such as PACE and associated codes of conduct as well as under legislation such as the Human Rights Act 1998. As explained under 5.3 above, foreign nationals have additional protection under PACE Code C. There are also provisions under PACE Code C which deal with the need to make interpreters available where necessary.

**c.** When a person is arrested he must be informed of the reasons for such arrest. This must be either at the time of arrest or as soon as practicable thereafter. If this information is not given the arrest is unlawful. Although the duty is to give information “at the time of the arrest” this does not have to be fulfilled at the precise moment of arrest. The information may be given during a reasonable period before and after that moment.<sup>74</sup>

**d.** The length of detention after arrest will depend on the circumstances and nature of the offence in question. The governing principle is that persons in custody must be dealt with expeditiously and released as soon as the need for detention has ceased to apply. Initially, the custody officer is authorised to detain an arrested person at a police station for such period as is necessary to enable him to decide what action to take.<sup>75</sup> Generally this period should be a maximum of 6 hours. Unless prolonged detention has been authorised (where there is a “serious arrestable offence” and certain criteria are fulfilled), a suspect may not be held in detention without charge for more than 24 hours. When that period expires, if the suspect has not been charged, he must be released either on bail or without bail.<sup>76</sup>

**e.** Seafarers may be detained at a police station in accordance with the procedures outlined above.

**f.** All detainees must be informed that they may at any time consult and communicate privately with a solicitor, whether in person, in writing or by telephone, and that free independent legal advice is available from the duty solicitor.<sup>77</sup> The exercise of this right may be delayed where “Annex B” applies<sup>78</sup>. Further, where the detainee is a foreign national, consular officers from the country in question may visit the detainee in police detention and, if required, arrange for legal advice. This visit will take place out of the hearing of any police officer.

**g.** A foreign detainee may be visited by a consular officer in private. Additionally, any person arrested and held in custody at a police station or other premises may, on request, have one person known to them (or a person likely to take an interest in their welfare) informed, at public

<sup>74</sup> Blackstone’s Criminal Practice 2005, p.1043.

<sup>75</sup> Police and Criminal Evidence Act 1984 s.37(1).

<sup>76</sup> *Ibid.*, s. 41(1) and (7).

<sup>77</sup> *Ibid.*, Code C, Section 6.

<sup>78</sup> Annex B applies when a person is detained in connection with a “serious arrestable offence”, has not yet been charged, and an officer of superintendent rank or above has reasonable grounds to believe that certain consequences may arise if the right is exercised (for example that exercising the right will interfere with, or physically harm, another person).

<sup>79</sup> Police and Criminal Evidence Act 1984, Annex B, Code C.

<sup>80</sup> Criminal Justice and Public Order Act 1994.

<sup>81</sup> *Blunt v. Park Lane Hotel Limited* [1942] 2 KB 253.

<sup>82</sup> Witnesses Act 1806.

<sup>83</sup> *Boyle v. Wiseman* [1855] 1 Exch 647.

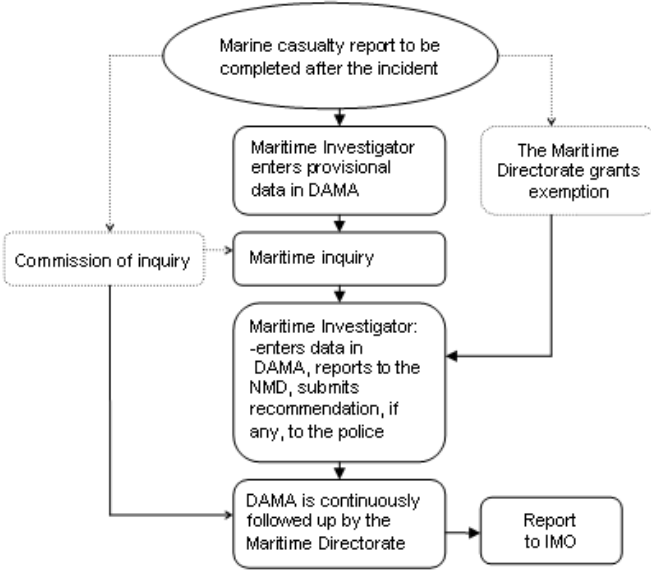
	<p>expense, of their whereabouts as soon as practicable. There are restrictions on this right in certain circumstances (where a serious arrestable offence is concerned) but such restrictions must be applied in accordance with legal safeguards. The detainee may receive visits at the custody officer's discretion; these should be allowed when possible, subject to sufficient personnel being available to supervise a visit, and subject to any possible hindrance to the investigation. Where a friend or relative (or a person with an interest in the detainee's welfare) enquires about their whereabouts, the information must generally be given. Further, where a person does not understand English, the duty officer is responsible for making sure that appropriate arrangements are in place for provision of suitably qualified interpreters.<sup>79</sup></p> <p><b>h. 1. Out of Court silence</b></p> <p>At common law, in addition to the right to silence, no inferences were generally permitted to be drawn from the exercise of the right to silence (whether during investigations or trial). This has been altered by legislation which specifies circumstances in which "adverse inferences" may be drawn from the exercise of the right to silence.<sup>80</sup> An example of such "adverse inferences" include the situation where the accused withholds his defence under interrogation but presents it at trial. It is now accepted that the adverse inference that may be drawn is a general inference of guilt. Inferences before a suspect is charged may not be drawn except "<i>on being questioned under caution by a constable</i>". The caution (which sets out the risks involved in not mentioning facts later to be relied upon) is as follows:- "<i>you do not have to say anything, but it may harm your defence if you do not mention when questioned something which you later rely on in court. Anything you do say may be given in evidence</i>".</p> <p><b>2. Privilege against Self-Incrimination</b></p> <p>No witness is bound to answer questions in court if to do so would, in the opinion of the court, have a tendency to expose him to any criminal charge, penalty or forfeiture (of property) which the court regards as reasonably likely to be brought or sued for.<sup>81</sup> The witness may not claim privilege on the basis that his answer to the question would expose him to civil liability,<sup>82</sup> nor does the right of privilege extend to answers which would expose the witness to criminal liability under foreign law. The witness may claim the privilege only after he has been sworn and been asked a particular question. He cannot refuse to take the oath on the grounds of privilege.<sup>83</sup> There are some exceptions to this rule which require certain individuals, in specific circumstances, to answer questions even where this may incriminate them. In such circumstances the court must balance the public interest in obtaining the information and the "right to silence" to be affected and the merits of preserving such right.</p> <ul style="list-style-type: none"> <li>•</li> </ul>
Uruguay	<p>a. Only as responsible of an offence that under our Penal Code is of a criminal nature.</p> <p>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).</p> <p>c. Yes.</p> <p>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.)</p> <p>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.</p> <p>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.</p> <p>g. Yes.</p> <p>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.</p>



USA	<ul style="list-style-type: none"> <li>a. The seafarer may be charged as a criminal defendant or, as mentioned in prior questions, detained as a material witness and federal or state law.</li> <li>b. The rights of the seafarer should be the same as citizens of the U. S.</li> <li>c. U. S. law requires the furnishing of copies of criminal complaints, indictments information and all other charging documents applicable to anyone charged with a crime. The seafarer is also entitled to copies of any statements made by him to authorities. Any seafarer may be detained as a "material Witness" would be entitled to a copy of the subpoena designating him or her as a material witness. A seafarer not versed in English language or our jurisdiction could find the process too complex to handle. Competent criminal counsel should be able to assist seafarers in such circumstances</li> <li>d. U.S. law requires "a speedy trial" of anyone charged with the crime. However, if there is a voluntary waiver of this law there is no specific time limit applicable. With respect to those seafarers detained as material witnesses, there is no specific time period by which they must be released. In this regard, once a seafarer is designated as a "material witness", his or her counsel needs to negotiate with the prosecutor to either release their client or to conduct a deposition under Rule 15 of the Federal Rules of Criminal Procedure as soon as practicable. If the prosecutor refuses to release a material witness or refuses to conduct a Rule 15 deposition, counsel for the seafarer would normally move the Court for an order to either release the seafarer or have his deposition taken forthwith and then to have the seafarer released. The problem area occurs where detained seafarers are not designated as "material witnesses", but are nevertheless not permitted to leave the country because they have passports and seamen documents have been taken by the authorities. In such instance counsel for the seafarers must negotiate, and at times pressure of the prosecutors for the speedy release of their clients. If all else fails, counsel must move the Court for the release of the seafarer similar to the procedure utilised for material witnesses.</li> <li>e. Frequently the detainees are kept in hotels, sometimes under guard, although this procedure has not been insisted upon recently by U.S. authorities, at the expense of the owners. However, the place of detention can greatly vary depending on what authority is detaining the crew member.</li> <li>f. US law does give the right to legal counsel to all, and council would be provided at no cost to the defendant, if such defendant cannot afford counsel. However, the expertise of counsel can vary. Frequently owners in conjunction with their underwriters correspondents make recommendations for competent counsel to be provided to seafarers who are detained during an investigation.</li> <li>g. Usually legal counsel will be given access to the defendant although not necessarily on an immediate basis (or as quick as the detained individual might desire). As far as the others mentioned in the question, it would be expected and access will be in accordance with the visit of policy of the detention facility in which the crew member is held and some variations exist based on the local conditions where the flight facility is located</li> <li>h. Yes, as provided under the U.S Constitution. However, that right can unwittingly be waived by a defendant and particularly after sufficient warnings have been given to the seafarer regarding them the ability to use anything said in a court of law against the defendant (known as "Miranda" warnings which are based on a Supreme Court decision outlining prosecutorial responsibility versus constitutional rights).</li> </ul>
-----	--

**Question 14: Does your Association have any comments, suggestions or recommendations on this subject?**

Argentina	
Australia	Not at this stage. Comments and suggestions will be sought from interested parties on any proposals canvassed by the working group.
Brazil	No.
Canada	<p>The Canadian Maritime Law Association has previously expressed its position on this issue in the context of the CMI's work on the subject of International Places of Refuge. The Association's position is that seafarers should not face penal liability as a result of pollution incidents, as this may serve to divert attention from the principal objective of minimizing the possibility of a distressed vessel causing an environmental catastrophe, such as by discouraging a vessel's master from seeking refuge in a particular state because of personal criminal responsibility that could be faced there.</p> <p>The Association wishes to repeat this position in the context of the CMI's work on Fair Treatment of Seafarers. In addition to the concerns that arise in the narrow context of places of refuge, the criminalization of seafarers is a serious disincentive to recruiting qualified personnel to this important profession. The draft resolution <i>Guidelines on the fair treatment of seafarers in the event of a maritime accident</i>, recently developed by the Joint IMO/ILO ad Hoc Expert Working Group on the Fair Treatment of Seafarers in the Event of a Maritime Accident, set out the appropriate principles and approach to the issue.</p> <p>The Association has also expressed its opposition to the proposed adoption of Bill C-15, in the context of Parliament's consideration of that Bill. The amendments contemplated by Bill C-15 would only increase the exposure of seafarers to prosecution. Among the Association's concerns are compliance with Canada's international obligations, Canada having recently become a state party to the United Nations Convention on the Law of the Sea. This Convention provides that monetary penalties only are to be applied in the event of a pollution incident outside the territorial sea, unless there is a wilful and <b>serious</b> act, and provides for prompt release and security, of which provisions the Association is concerned Canada may be in breach if it proceeds to adopt Bill C-15.</p>
Chile	No further comments.
Croatia	We have no additional comments or suggestions.
Dominican Republic	No..
France	<p>The french law (july 5<sup>th</sup> 1983 modified in 2004) is extremely severe for any breach to MARPOL Convention :</p> <ul style="list-style-type: none"> <li>- In case of pollution in territorial waters the punishment may be up to 10 years imprisonment with a fine up to 1.000.000 euros for all Masters (foreign or french).</li> <li>- In case of MARPOL CONVENTION breach in « Z.E.E. » only french Captains may be punished of prison but foreign Masters can only be punished of fines, usually paid by the owner.</li> </ul>

	<p>However, until now Masters have never been sentenced to firm imprisonment but only were given suspended sentences. The amount of the fine has never been higher than 600.000 €</p> <p>The Master of ERIKA has been detained during 15 days before judgment for pollution in the « Z.E.E ». This was in contradiction with French law and Montegobay Convention.</p>
Hong Kong	<p><b>Note:</b></p> <p>The relevant sections of the Hong Kong Laws mentioned in the answers above are available in the Bilingual Laws Information System of the Government of the Hong Kong Special Administrative Region of the People's Republic of China at <a href="http://www.legislation.gov.hk/index.htm">http://www.legislation.gov.hk/index.htm</a>.</p>
Italy	No.
Norway	<p style="text-align: center;"><b>MARINE CASUALTY FLOW-CHART</b></p>  <pre> graph TD     A([Marine casualty report to be completed after the incident]) --&gt; B[Maritime Investigator enters provisional data in DAMA]     A -.-&gt; C[The Maritime Directorate grants exemption]     B --&gt; D[Maritime inquiry]     E[Commission of inquiry] -.-&gt; D     C --&gt; F[Maritime Investigator: -enters data in DAMA, reports to the NMD, submits recommendation, if any, to the police]     D --&gt; F     F --&gt; G[DAMA is continuously followed up by the Maritime Directorate]     G --&gt; H[Report to IMO]   </pre>
South Africa	<p>Your covering letter suggests that seafarers in certain countries are detained under the pretext that are being charged or detained for administrative reasons. In theory, the former could occur in South Africa as seafarers can only be detained in South Africa if they are charged with a crime and arrested. The MLA is however confident that this situation would not arise in South Africa. The South African Judiciary is independent, seafarers' rights, as with citizens' rights are protected by the constitution and those constitutional rights have consistently been upheld against government departments.</p>

	<p>The P&amp;I Clubs' correspondents in South Africa have advised that in the last 20 years, SAMSA have threatened to arrest ships' Masters involved in pollution incidents but to their knowledge, have never carried out that threat. This is on the basis that SAMSA will accept security from P&amp;I Clubs that are members of the International Group for admission of guilt fines in respect of pollution incidents or as security for cleanup costs. Generally the Club pays the fine following submissions by the owner's and/or Club's lawyers to SAMSA.</p> <p>The Master of one vessel was arrested after he deliberately ran his vessel aground near the port of Richards Bay. She was sinking at the time and the Court accepted that he did this in order to save the lives of his crew. To our knowledge, this is the only Master who has been arrested in the last 20 years.</p> <p>This is despite the fact that on average South Africa experiences three or four significant maritime casualties every year. Most of these result in pollution of one form or another. Fortunately, none of the recent casualties have involved oil tankers. Recently a ro-ro / container vessel was abandoned by her crew after a fire broke out. She subsequently ran aground near the mouth of an estuary and lagoon system which has been declared a world heritage site. She was carrying numerous containers of hazardous chemicals and was considered a significant threat to the ecosystem. None of her crew members were arrested or detained and SAMSA merely conducted a preliminary investigation into the cause of the fire and subsequent grounding.</p> <p>The real test as to whether or not South Africa has joined the general global march towards criminalizing the seafarer will take place if there is a significant oil tanker incident resulting in substantial pollution. The writer's view, which has not been canvassed with the membership of the MLA, is that South Africa's approach to seafarers will remain as set out above.</p>
Sweden	
UK	<p>On a number of occasions members of this association have co-operated with professional colleagues in other jurisdictions in efforts to resolve problems resulting from major maritime accidents, including the detention of seafarers involved.</p> <p>It is beyond the scope of this paper to comment on the facts of individual cases outside the UK, or on the laws which were applied. Mention here is made only of certain common features which may be discerned from these and other cases, and which may be considered relevant in reviewing the subject from an international perspective.</p> <ol style="list-style-type: none"> <li>1. <u>Media reporting</u> of maritime casualties, and especially serious oil spills, has often given rise to reasonable concerns of serious prejudice to the legitimate interests of seafarers and others detained and/or prosecuted after such events. It is for consideration whether measures can be taken to make courts and legislators more aware of this fact, and to promote the adoption of safeguards to protect the rights of the individual.</li> </ol> <p>Experience has shown that the causes of serious maritime accidents identified after thorough investigation by appropriate experts are frequently very different from those initially assumed by journalists, politicians and other lay observers. For example –</p> <ul style="list-style-type: none"> <li>• In one major oil pollution incident wide publicity was given to statements by high-level politicians that the ship was an example of</li> </ul>

- In the last decade at least two major oil spills have occurred as a result of vessels grounding in channels where dredging operations had fallen behind schedule, and where there are concerns that the information supplied to the ship about the state of the channel was incorrect or misleading. In both cases the relevant evidence came to light only after initial hostile media reactions and lengthy detentions of the ship masters involved.
- In at least two other major oil spills since 1990 pilot error has been identified by official investigations as the main or a significant cause of the incident.

An additional cause of prejudice lies in the fact that the reporting of oil spills, including graphic images of oiled birds and similar effects on wildlife, has a well-known capacity to arouse public outrage out of proportion to any culpability on the part of those assumed to be responsible.

2. In some countries courts and legislators have recognised the possible effect of prejudicial reporting on lay tribunals such as juries, but have been slow to acknowledge any effect on prosecutors or professional judges. Nonetheless, in most parts of the world law officers have some degree of public accountability, and justice may not be seen to be done if the rights of the individual depend on courts making discretionary decisions which are plainly contrary to strong public sentiments. Difficulties may be reduced in relation, for example, to bail applications if discretionary powers are kept to a minimum and release is governed by mandatory rules in all but clearly defined cases.
3. In a number of cases maritime authorities in coastal states have faced allegations that they were wholly or partially responsible for pollution by reason of factors such as the state of a port or its approaches, the training of pilots, or their handling of an initial incident. Cases of this kind have also tended to be notable for relatively severe action against the master or crew. There may be some cause for concern that prosecution of seafarers is more vigorous if shore-side authorities are on the defensive, and that it is therefore desirable for prosecuting authorities to be as independent as possible from other coastal state authorities who may be involved in the incident.
4. In at least two oil spill cases since 2000 seafarers have been detained for periods of several months, notwithstanding that some of those detained were engineers who could not reasonably be held responsible for alleged navigational faults, and it has been plain that their detention was designed to put pressure on the shipowners or their insurers to provide substantial security for extravagant civil claims. In one of these cases domestic legislation was said to support detention of foreign crew pending provision of security. It may be worth emphasising that detention for such reasons is wholly unacceptable to the international community.
5. Finally, as the CMI Working Group will appreciate, UNCLOS includes some highly relevant provisions in this area including, notably, Article 230. For ease of reference this provides:

*Article 230*

*Monetary penalties and the observance of recognized rights of the accused*

1. *Monetary penalties only may be imposed with respect to violations of national laws and regulations or applicable international rules and standards for the prevention, reduction and control of pollution of the marine environment, committed by foreign vessels beyond the territorial sea.*
2. *Monetary penalties only may be imposed with respect to violations of national laws and regulations or applicable international rules and standards for the prevention, reduction and control of pollution of the marine environment, committed by foreign vessels in the territorial sea, except in the case of a wilful and serious act of pollution in the territorial sea.*
3. *In the conduct of proceedings in respect of such violations committed by a foreign vessel which may result in the imposition of penalties, recognized rights of the accused shall be observed.*

There is concern in the BMLA that in some jurisdictions national laws on this subject do not clearly reflect these restrictions or may not always be applied in full conformity with them. This is therefore suggested as an issue which the Working Group may wish to examine.

**Appendix: Domestic Legislation regarding the Protection, Rights and Welfare of Seafarers**

***Conditions of Work***

- **The Merchant Shipping (Hours of Work) (Amendment) Regulations 2004 (No. 1469). S.I. No. 1469 of 2004:** This amends the Merchant Shipping (Hours of Work) Regulations 2002 and extends provisions relating to inspections of ships and rectification of deficiencies to ships not registered in the United Kingdom or other member States of the European Union. Entered into force on 7 July 2004.
- **Merchant Shipping (Hours of Work) Regulations 2002 (S.I. No. 2125 of 2002). S.I. No. 2125 of 2002:** This legislation was made under the Merchant Shipping Act 1995. Requires employers to ensure seafarers have at least the specified minimum hours of rest. Also requires records to be kept of seafarers' daily hours of rest. Prohibits employment on a ship of a person under 16 years of age, and establishes seafarers' entitlement to annual leave. Entered into force on 7 September 2002 (amended by the Merchant Shipping (Hours

- **Merchant Shipping (Hours of Work) Regulations 1995 (No. 157 of 1995):** Gives effect in part to the Merchant Shipping (Minimum Standards) Convention 1976 (International Labour Organisation Convention No. 147) laid before Parliament on 24 April 1978 and ratified by the United Kingdom and in force internationally, which requires that safety standards regarding hours of work be established. These Regulations place general duties on operators, employers and masters of United Kingdom sea-going merchant ships (excluding fishing vessels and pleasure craft) to ensure that masters and seamen do not work more hours than are safe for the ship. Entered into force: 28 February 1995

***Occupational Safety, Health and Welfare***

- **Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997 (No. 1320):** Gives effect to the International Convention on Standards of Training, Certification and Watchkeeping (STWC) for Seafarers, as amended on 7 July 1995. Revokes the Merchant Shipping (Certification and Watchkeeping) Regulations 1982, the Merchant Shipping (Safe Manning Document) Regulations 1992 and the Merchant Shipping (Hours of Work) Regulations 1995. Defines the responsibility of owners and others responsible for the operation of ships in relation to the certification and training of seamen working on their ships, the availability of relevant documentation and the provision of instructions on familiarisation of seamen who are newly-appointed to their ships. Entered into force: 20 June 1997
- **Merchant Shipping (Delegation of Type Approval) Regulations 1996 (S.I. No. 147 of 1996):** Enables certain bodies specified in a Merchant Shipping Notice to give type approval of safety equipment and arrangements for ships under regulations having effect as if made under section 85(1)(a) and (b), and under regulations made under the Merchant Shipping (Prevention of Oil Pollution) Order 1983. Entered into force: 1 March
- **Merchant Shipping (Ships' Doctors) Regulations 1995 (S.I. No. 1803 of 1995):** Replaces Merchant Shipping (Ships' Doctors) Regulations 1981 to implement Council Directive 92/29/EEC of 31 March 1992 (O.J. No. L113, 30.04.92, p. 19). UK ships are required to have a doctor on board if carrying 100 or more persons on an international voyage of more than three days, or on a voyage during which it is more than one and a half days' sailing time from a port with adequate medical equipment. Entered into force 1 August 1995
- **Merchant Shipping and Fishing Vessels (Medical Stores) Regulations 1995 (S.I. No. 1802 of 1995):** Replaces Merchant Shipping (Medical Stores) Regulations 1986 and the Merchant Shipping (Medical Stores)(Fishing Vessels) Regulations 1988. Implements Council Directive 92/29/EEC of 31 March 1992 (O.J. No. L113, 30.04.92 p.19) on the minimum safety and health requirements for improved medical treatment on board vessels, so far as that Directive relates to the carriage of medicines and other medical stores. Entered into force: 1 August 1995
- **Merchant Shipping (Safety Officials and Reporting of Accidents and Dangerous Occurrences) (Amendment) Regulations 1994 (S.I. No. 2014 of 1994):** Omits provisions dealing with the reporting of accidents and dangerous occurrences (now provided in the Merchant Shipping (Accident Reporting and Investigation) Regulations 1994. Entered into force: 26 August 1994
- **Merchant Shipping (Accident Reporting and Investigation) Regulations 1994 (S.I. No. 2013 of 1994):** Replaces the Merchant Shipping (Accident Investigation) Regulations 1989. They include, with amendments, provisions for the reporting and investigation of marine accidents contained in those Regulations and also those in the Merchant Shipping (Safety Officials and Reporting of Accidents and Dangerous Occurrences) Regulations 1982 and the Fishing Vessels (Reporting of Accidents) Regulations 1985. The latter Regulations are revoked; the former are amended separately by the Merchant Shipping (Safety Officials and Reporting of Accidents and Dangerous Occurrences) (Amendment) Regulations 1994 to remove those provisions now covered by these Regulations. Entered into

- **Merchant Shipping (Life-Saving Appliances for Passenger Ships of Classes III to VI(A)) Regulations 1992 (S.I. No. 2359 of 1992):** Harmonizes the requirements for life-saving appliances for passenger ships of Classes III to VI(A) with those for passenger ships of the Classes included in the Merchant Shipping (Life-Saving Appliances) Regulations 1986 while taking into account the restricted service in which these Classes of passenger ships are engaged. Revokes the Merchant Shipping (Life-Saving Appliances) Regulations 1980. Entered into force 31 October 1992
- **Merchant Shipping (Safe Manning Document) Regulations 1992 (S.I. No. 1564 of 1992):** Gives effect to an amendment of the International Convention for the Safety at Sea 1974 (SOLAS) adopted by the Maritime Safety Committee of the International Maritime Organisation at its 57th Session on 11 April 1989. The amendment concerns the provision of an appropriate safe manning document or equivalent to every ship to which chapter I of the Convention applies. Entered into force 28 July 1992
- **Aviation and Maritime Security Act 1990 (Chapter 31):** Gives effect to the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation and to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf.
- **Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1989 (S.I. No. 1798 of 1989):** Section 5 provides for fines and imprisonment for up to two years for contravention of the Regulations and by s.6, a ship shall be liable to be detained in any case where it does not comply with the requirements. Entered into force 19 November 1989
- **Merchant Shipping (Accident Investigation) Regulations 1989 (S.I. No. 1172 of 1989):** Gives effect to section 33 of the Merchant Shipping Act 1988 which relates to the investigations of marine accidents. Entered into force 7 August 1989
- **Merchant Shipping (Safety at Work Regulations) (Non-UK Ships) Regulations 1988 (S.I. No. 2274 of 1988):** Intends to give effect in part to the ILO Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147) in relation to the prevention of accidents for seafarers. The Regulations also concern occupational safety and health in dock work. Entered into force 1 January 1989
- **Merchant Shipping (Hatches and Lifting Plant) Regulations 1988 (S.I. No. 1639 of 1988):** Adopted in relation to the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147). Entered into force: 1 January 1989
- **Merchant Shipping (Entry into Dangerous Spaces) Regulations 1988 (S.I. No. 1638 of 1988):** Adopted in relation to the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147). Entered into force 1 January 1989
- **Merchant Shipping (Guarding of Machinery and Safety of Electrical Equipment) Regulations 1988 (S.I. No. 1636 of 1988):** Adopted in relation to the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 777). Entered into force 1 January 1989
- **Merchant Shipping (Means of Access) Regulations 1988 (S.I. No. 1637 of 1988):** Replaces and re-enacts with amendments, the Merchant Shipping (Means of Access) Regulations 1981, as amended. Adopted in relation to the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147). Entered into force: 1 January 1989
- **Merchant Shipping (Safe Movement on Board Ship) Regulations 1988 (S.I. No. 1641 of 1988):** Adopted in relation to the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147). Entered into force: 1 January 1989
- **Merchant Shipping (Medical Stores) (Fishing Vessels) Regulations 1988 (S.I. No. 1547 of 1988):** Supersedes the Merchant Shipping (Medical Stores) (Fishing Vessels) Regulations 1974.
- **Merchant Shipping (Medical Stores) (Amendment) Regulations 1988 (S.I. No. 1116 of 1988):** Minor amendments to the Merchant Shipping (Medical Stores) Regulations 1986.
- **Safety at Sea Act 1986 (Commencement No. 1) Order 1986 (S.I. No. 1759 (C. 61) of 1986)**
- **Safety at Sea Act 1986 (Chapter 23) :** Promotes the safety of fishing and other vessels at sea and the persons in them. In particular,



	<ul style="list-style-type: none"> <li>• <b>The Merchant Shipping (Life-Saving Appliances) Regulations 1986 (S.I. No. 1066 of 1986):</b> Issued by the Secretary of State for Transport under the Merchant Shipping Act 1979.</li> <li>• <b>The Merchant Shipping (Medical Stores) Regulations 1986 (S.I. No. 144 of 1986):</b> Regulations concerning safety on board ships (except fishing vessels and pleasure craft), providing for an obligation to carry appropriate medical supplies on sea voyages.</li> <li>• <b>Merchant Shipping (Protective Clothing and Equipment) Regulations 1985 (S.I. No. 1664 of 1985)</b></li> <li>• <b>Merchant Shipping (Medical Examination) (Amendment) Regulations 1985 (S.I. No. 512 of 1985):</b> Amends the 1983 Regulations of the same name in regard to the exemption provision, treatment of equivalent certificates and the review procedure.</li> <li>• <b>Merchant Shipping (Cargo Ship Safety Equipment Survey) (Amendment) Regulations 1985 (S.I. No. 211 of 1985):</b> Amends the Merchant Shipping (Cargo Ship Safety Equipment Survey) Regulations 1981 to give effect in part to the Amendments to the International Convention for the Safety of Life at Sea.</li> <li>• <b>Merchant Shipping (Health and Safety: General Duties) Regulations 1984 (S.I. No. 408 of 1984):</b> Gives effect in part to convention 147. Require employer, inter alia, to ensure health and safety on board ship; to make provision for maintenance of vessel and occupation and safe use, handling, storage and transport of articles used and for a safe environment; employees are required to take reasonable care of the health and safety of themselves and of other persons on board ship and cooperate with employer in applying Merchant Shipping Act.</li> <li>• <b>Merchant Shipping (Crew Accommodation) (Fishing Vessels) Regulations 1975 (S.I. No. 2220 of 1975)</b></li> <li>• <b>Merchant Shipping (Medical Stores) Regulations 1974 (S.I. No. 1193 of 1974):</b> Medicines and other medical stores to be carried in ships.</li> </ul> <p><b>Social Security</b></p> <ul style="list-style-type: none"> <li>• <b>Social Security (Contributions) Amendment (No. 2) Regulations 1988 (S.I. No. 674 of 1988):</b> Inter alia, changes method of calculating contributions for seafarers.</li> <li>• <b>Merchant Shipping (Maintenance of Seamen's Dependants) (Amendment) Regulations 1988 (S.I. No. 479 of 1988):</b> Amends the 1972 Regulations of the same name in relation to deductions from wages to cover social security benefits.</li> <li>• <b>Statutory Sick Pay (Mariners, Airmen and Persons Abroad) Regulations 1982 (S.I. No. 1349 of 1982)</b></li> <li>• <b>Social Security (Industrial Injuries) (Mariners' Benefits) Regulations 1975 (S.I. No. 470 of 1975):</b> Modifies and amplifies the general provisions on the subject contained in the social Security Act 1975.</li> </ul>
Uruguay	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.
USA	<p>The promotion of uniformity and the facilitation of justice in maritime law are among the reasons for the existence of the MLA.. The uneven application of law with respect to seafarers involved in environmental incidents continues to be of serious concern to all the interests involved in the association. However, the uneven application of Justice for seafarers can now be observed internationally. Worldwide uniformity (while a lofty goal) on environmental law would promote cleaner seas and well-run ships.</p> <p>We should also draw attention to the seafarer's right to confer with the diplomatic corps of their home country or flag state of the vessel. It was it seems that this right is seldom exercised and that more can be done through diplomatic channels to protect seafarers when they are exposed to</p>

	the onerous penalties which they are increasingly facing worldwide.
--	---

Grateful thanks to Matt Hebden of Microsoft for his assistance and patience.

CMI Summary Final Version Rev 2 24/1/ 2006  
CMI © 2006