POLLUTION AND CRIMINALIZATION OF SEAFARERS
LEARNING FROM THE PAST TO IMPROVE THE FUTURE

GIOVANNI BERLINGIERI
The IWG on Fair Treatment of Seafarers in the Event of a Maritime Incident has a broad mandate including inter alia: the review of relevant rules (such as under UNCLOS and MARPOL) and guidelines relevant to fair treatment issues; the preparation of pertinent submissions to the IMO Legal Committee or other relevant organisations and the monitoring and encouragement of recognition of and adherence to the IMO Guidelines on Fair Treatment of Seafarers in the Event of a Maritime Accident.
Conclusion

A serious maritime accident, especially one involving pollution, is likely to have significant international dimensions, even though these may at first be obscured by a glare of focus on the domestic implications in the coastal state concerned.

If foreign seafarers are thought to have caused or contributed to the incident, their interest in being repatriated may appear a limited weight in the scales against a substantial public interest in the responsible parties being identified and penalised with due severity. However, the international community has made increasingly clear its resolve to ensure that the recognised rights of seafarers are duly respected and that international norms of fair treatment are observed.
The *Prestige*, loaded with 77,000 metric tonnes of fuel oil, developed a list off the coast of La Coruña, Spain in severe weather conditions on 13 November 2002. The master corrected the list and stabilised the vessel. The master and salvors requested the Spanish authorities to grant the vessel refuge in sheltered waters. Both these requests were refused. Instead, the authorities ordered the *Prestige* to proceed into the Atlantic in winter gale-force weather. Some six days after the initial incident, the *Prestige* broke in two and sank, with the loss of the ship and substantial pollution along many hundreds of kilometres of coastline.

The master was immediately handcuffed when he had evacuated the vessel and arrested. He was charged with criminal offences relating to pollution and disobedience of the Spanish administrative authorities. He was transferred to jail where he remained for 83 days being released only upon payment of bail of €3 million under strict conditions, including the obligation to remain in Spain and report to a local police station every morning.
Hebei Spirit
(Daesan port,
South Korea, 2007)

This tanker was struck by a giant crane barge while at anchor off Daesan port in South Korea in 2007. The collision resulted in some 11,000 tonnes of crude oil leaking into the Yellow Sea, the largest oil spill in South Korean history. Despite having been acquitted of all charges relating to the oil spill by the first instance court, the master and chief officer from the tanker were initially refused permission to leave South Korea while an appeal was made against the judgment by the prosecutor and owners of the crane barge. Subsequently, the appeal court found the master and chief officer of the tanker guilty on two charges, one of causing pollution and the other of causing damage to the ship and sentenced the master and chief officer to jail terms of 18 and eight months respectively. Subsequently, on 15 January 2009, South Korea’s Supreme Court released the master and chief officer on bail pending their appeal. In April 2009, the South Korean Supreme Court annulled the Court of Appeal’s decision to arrest the crew members of the Hebei Spirit and they were allowed to leave South Korea.
UNIVERSAL DECLARATION OF HUMAN RIGHTS

adopted by the United Nations General Assembly
10 December 1948

Article 13

(1) Everyone has the right to freedom of movement and residence within the borders of each state.

(2) Everyone has the right to leave any country, including his own, and to return to his country.
(UNCLOS) 1982

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.
IMO-ILO GUIDELINES ON FAIR TREATMENT OF SEAFARERS IN THE EVENT OF A MARITIME ACCIDENT

adopted by the IMO’s Legal Committee in April 2006
and by the ILO Governing Body in June 2006

The Guidelines recommend that they be observed in all instances where seafarers may detained by public authorities in the event of a maritime accident.

The Guidelines state that seafarers are recognized as a special category of worker and that, given the global nature of the shipping industry and the different jurisdictions with which they may be brought into contact, they need special protection, especially in relation to contact with public authorities.
IMO-ILO GUIDELINES

Addresses and object

The Guidelines give advice on steps to be taken by all those who may be involved following an incident: the port or coastal State, flag State, the seafarer’s State, the shipowner and seafarer themselves. The emphasis is on co-operation and communication between those involved in ensuring that no discriminatory or retaliatory measures are taken against seafarers because of their participation in investigations. The Guidelines say that all necessary measures should be taken to ensure the fair treatment of seafarers.

The objective of the Guidelines is to ensure that seafarers are treated fairly following a maritime accident and during any investigation and detention by public authorities and that detention is for no longer than necessary.
IMO-ILO GUIDELINES

Recommendations for the port or coastal State

The Guidelines for the port or coastal State provide *inter alia* that:

- any investigation on a maritime accident should be conducted in a fair and expeditious manner
- the human rights of seafarers should be preserved at all times
- the economic rights and human dignity (wages, suitable accommodation, food, medical care) should always be preserved
- interpretation services and independent legal service should be provided with advice to the seafarer of the right not to incriminate themselves
- the seafarer should be informed whether the investigations are conducted under the IMO investigation code on marine casualties (Resolution A.884.21) or under other national procedures
- seafarers should be provided with means to communicate with family members, welfare organizations, the shipowner, trade unions, embassy/consulate, lawyers

establishing the fundamental principles governing the investigation of accidents in the maritime transport sector

Preamble no. 9

(…) (Seafarers) human rights and dignity should be preserved at all times and all safety investigations should be conducted in a fair and expeditious manner. (…)

Article 18

Fair treatment of seafarers

In accordance with their national law, Member States shall take into account the relevant provisions of the IMO guidelines on the fair treatment of seafarers in the event of a maritime accident in the waters under their jurisdiction.
MARITIME LABOUR CONVENTION, 2006

Adopted: 23 February 2006

Entry into force

Art. VIII

(…)

This Convention shall come into force 12 months after the date on which there have been registered ratifications by at least 30 Members with a total share in the world gross tonnage of ships of at least 33 per cent.

Thereafter, this Convention shall come into force for any Members 12 months after the date on which its ratification has been registered.

- Gross tonnage element: achieved 2009
- 30th ratification: 20 August 2012 by the Philippines
- The Convention will come into effect as binding international law on 20 August 2013
MLC 2006

Guideline B4.4.6 – Seafarers in a foreign port

1. For the protection of seafarers in foreign ports, measures should be taken to facilitate:
   (a) access to consuls of their State of nationality or State of residence; and
   (b) effective cooperation between consuls and the local or national authorities.

2. Seafarers who are detained in a foreign port should be dealt with promptly under due process of law and with appropriate consular protection.

3. Whenever a seafarer is detained for any reason in the territory of a Member, the competent authority should, if the seafarer so requests, immediately inform the flag State and the State of nationality of the seafarer. The competent authority should promptly inform the seafarer of the right to make such a request. The State of nationality of the seafarer should promptly notify the seafarer's next of kin. The competent authority should allow consular officers of these States immediate access to the seafarer and regular visits thereafter so long as the seafarer is detained.
12.1 Where a marine safety investigation requires a seafarer to provide evidence to it, the evidence shall be taken at the earliest practical opportunity. The seafarer shall be allowed to return to his/her ship, or be repatriated at the earliest possible opportunity. The seafarers human rights shall, at all times, be upheld.

12.2 All seafarers from whom evidence is sought shall be informed of the nature and basis of the marine safety investigation. Further, a seafarer from whom evidence is sought shall be informed, and allowed access to legal advice, regarding:

1. any potential risk that they may incriminate themselves in any proceedings subsequent to the marine safety investigation;
2. any right not to self-incriminate or to remain silent;
3. any protections afforded to the seafarer to prevent the evidence being used against them if they provide the evidence to the marine safety investigation.
IMO Resolution A.1056(27)
Adopted on 30 November 2011
(Agent item 10)

PROMOTION AS WIDELY AS POSSIBLE OF THE APPLICATION OF THE 2006 GUIDELINES ON FAIR TREATMENT OF SEAFARERS IN THE EVENT OF A MARITIME ACCIDENT

(…) CONCERNED that the Guidelines have not yet been circulated as widely as necessary to ensure that they are taken into account and appropriately applied in every case in which a seafarer may be involved in a maritime accident,

(…) BEING AWARE of a number of incidents that have taken place since the adoption of the Guidelines, in which seafarers on ships that have been involved in maritime accidents have been detained for prolonged periods, raising questions about whether they have been treated fairly in full accordance with the principles set out in the Guidelines,

(…)

3. INVITE Member Governments and non-governmental organizations in consultative status with IMO and ILO to circulate the Guidelines as widely as possible in order to ensure their widespread promulgation and implementation;

(…)

5. INVITE FURTHER Member Governments to take steps to ensure, in the context of the Guidelines, the expeditious finalization, in their respective jurisdictions, of all court proceedings involving seafarers in maritime accident cases;

(…)
Chinese ship in the port of Genoa.
Lieutenant of the Coast Guard, with ship’s officer,
checking whether the ship complies with international standards for ship safety,
marine pollution prevention and for decent working
and living conditions for seafarers.
Chinese ship in the port of Genoa.
Officer in the control room.
Chinese ship in the port of Genoa.
Portrait of a lady seafarer, one of the world's 1-2 percent women seafarers.
She hopes to become one of the even rarer women officers or ship captains one day.
Cook of a Chinese ship in the port of Genoa.
Chinese ship in the port of Genoa.
Portrait of a naval officer.