

A Federation of Maritime Professionals

www.nautilusfederation.org



Fair treatment of seafarers in the event of a maritime accident



Director's foreword

Dear colleagues

Scarcely a week goes by without news of another ship being detained somewhere in the world following an incident or an accident at sea or in port. And when the authorities investigate these cases, it is often the seafarers — both officers and ratings — who are in the firing line, whether or not they are at fault.

In an international industry where many companies hide behind brass plate operations or flags of convenience, seafarers can be tempting targets for the authorities seeking to find someone to blame.

In the face of growing criminalisation of the maritime profession, the Nautilus Federation has developed a Joint Assistance and Support Network (JASON), which was launched in January 2017.

The Federation unions have pledged to provide reciprocal assistance and support to the other unions and their members, if a member requires help following a maritime incident in the assisting union's port, territory or territorial waters; or while onboard a ship registered in the country in which the assisting union is situated.

In particular, JASON is aimed at ensuring that the IMO/ILO Guidelines on the Fair Treatment of Seafarers in the event of a Maritime Accident, and other internationally recognised legal standards, are observed.

The objective of the Guidelines is to ensure that seafarers are treated fairly following a maritime accident and during any investigation, interview or detention by public authorities, and that this detention is for no longer than necessary.

However, the Guidelines, although helpful and a step in the right direction, are not sufficient



in themselves to ensure that seafarers are not victimised. There needs to be, in addition, dedicated support for the seafarer in ensuring due process: this is what JASON is intended to deliver.

In this document, which has been produced by the Federation members (which are listed in Annex 1) we explain what you can expect in terms of support and assistance if you are unfortunate enough to be involved in a maritime incident.

Mark Dickinson

Director of the Nautilus Federation

Introduction to the Fair Treatment Guidelines

What are the Fair Treatment Guidelines?

The **IMO/ILO Guidelines on Fair Treatment of Seafarers in the Event of a Maritime Accident** are a list of rights and responsibilities drawn up by a specialist working group appointed by two United Nations agencies — the International Maritime Organisation (IMO) and the International Labour Organisation (ILO).

When did the Guidelines take effect?

Governments were urged to implement them with effect from 1 July 2006.

What are they meant to do?

The Guidelines give advice on steps to be taken by all those persons or organisations who may be involved following an incident: the port or coastal state, the flag state, the individual seafarers' states, the shipowner and the seafarers themselves. The emphasis is on co-operation and communication between those involved and on 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.

How do they protect seafarers?

The Guidelines recognise seafarers as a special category of worker deserving special protection because of the global nature of the shipping industry and the different jurisdictions that seafarers enter in the course of their work. They aim to ensure that seafarers are treated fairly following a maritime accident, and during any investigation and detention by public authorities. They stress that detention should be for no longer than necessary and emphasise seafarers' rights to humane treatment at all times.

The Guidelines state that seafarers are entitled to protection against coercion and intimidation from any



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source during or after any investigation into a maritime accident. They also point out that such an investigation should not prejudice the seafarer in terms of repatriation, lodgings, subsistence, payment of wages and other benefits and medical care — all of which should be provided at no cost to the seafarer by the shipowner, the detaining state or other appropriate state.

Do they cover all seafarers?

The Guidelines define a seafarer as 'any person who is employed or engaged or works in any capacity onboard a ship'. However, they do not apply to warships or naval auxiliaries.

What sort of incidents do they cover?

A 'maritime accident' includes 'any unforeseen occurrence or physical event connected to the navigation, operations, manoeuvring or handling of ships, or the machinery, equipment, material, or cargo on board such ships which may result in the detention of seafarers'. The guidelines apply to investigations into maritime accidents, with the term 'detention' applied to any restriction on the movement of seafarers by public authorities, imposed as a result of a maritime accident — including preventing them leaving the territory of a state other than the seafarer's country of nationality or residence.

Your rights and responsibilities



What should I do after an accident or incident?

You are advised to contact a union of the Nautilus Federation as soon as possible, and before making any statements to any authorities. If the accident happened in a port or territorial waters of a country in which a Federation union is situated, or your vessel is flagged in a such a country, you can contact that union directly: there is a list of the Nautilus Federation unions and their contact details in Annex 1.

Alternatively, contact Nautilus 24/7, a multilingual service which will take a message and contact a Federation union official who can call you back and provide you with prompt advice and assistance. Go to www.nautilusint.org for the LiveChat online connection to Nautilus 24/7 and the list of freephone numbers from 45 countries. You can also email helpline@nautilus247.org or send an SMS text message to +44 (0)7860 017 119.

Early contact with the Nautilus Federation is essential if you are to gain the necessary support and assistance and to ensure that you are given the best professional and technical advice available.

If you are in a port, territorial waters or vessel which has no Federation union presence/flag connection, then you are advised, in accordance with the Guidelines, to seek assistance from a local union and also inform your own union. Again, Nautilus 24/7 will be able to assist you in this process.

What do the Guidelines say that seafarers should do?

Seafarers should understand that when they make a statement to port, coastal or flag state investigators, their words could be used in a future criminal prosecution. You should therefore ensure that you have access to legal advice before making any statements. Again, JASON can help you with this.

Seafarers have the right to remain silent and the right not to self-incriminate. The Guidelines describe their responsibility to participate as fully as possible in any investigation with port, coastal or flag state investigators, by providing truthful information to the best of their knowledge and belief.

Although the guidelines are not mandatory, the above principle — the right to not self-incriminate — is also enshrined in the mandatory IMO Casualty Investigation Code (International Standards and Recommended Practices for a Safety Investigation into a Marine Casualty or a Marine Incident) and is an important principle in many legal systems.

What other rights do I have under the Guidelines?

You are entitled to access by consular officials from your home state and are allowed to communicate privately with family members, your union, welfare organisations, the shipowner, and legal representatives.

Port states and coastal states

What are the responsibilities of port or coastal states?

The Guidelines say that port or coastal state authorities should conduct any investigations in a ‘fair and expeditious manner’ — cooperating with other parties (such as other relevant countries, shipowners and seafarers). They must take steps to provide organisations who represent seafarers (such as unions) with access to the seafarers.

They should ensure that adequate measures are taken to preserve the human rights of seafarers at all times, and the economic rights of detained seafarers. Seafarers must be treated at all times in a manner which preserves their basic human dignity. They should ensure and verify that adequate provisions are in place to provide for the subsistence of each detained seafarer — including, as appropriate, wages, suitable accommodation, food and medical care.

Ports and coastal states must also provide seafarers, where necessary, with interpretation services, as well as advising them of their right to independent legal advice and ensuring access to this advice. They must also advise seafarers of their right not to incriminate themselves and their right to remain silent. Independent legal advice must be provided for seafarers who have been taken into custody.

Ports and coastal states are also under a duty to inform seafarers of the basis on which any investigation is being conducted (i.e. whether it is in accordance with the IMO Casualty Investigation Code, or pursuant to other national legal procedures).

The Guidelines expressly recognise the widely ratified Vienna Convention on Consular Relations 1963. Under this Convention, your consular official has the right to communicate with you. If you are held in custody or detained you have the right to demand that the authorities inform your consular official of that fact.



Independent legal advice must be provided for seafarers who have been taken into custody

Port and coastal states should use all available means to preserve evidence to minimise the need for seafarers to be detained in their country. Investigators should interview seafarers promptly, but must take account of their physical and mental condition following an accident.

Once seafarers have been interviewed, or if they are otherwise not required for investigation purposes, they should be allowed to rejoin their vessel or be repatriated without undue delay.

Port and coastal states should also consider non-custodial alternatives to pre-trial detention (including detention as witnesses) — particularly for seafarers employed in a regular shipping service to the detaining port or coastal state.

Port and coastal states should also seek to ensure that a process is available for posting a reasonable bond or other financial security to allow for release and repatriation of the detained seafarer pending resolution of any investigatory or judicial process. Any court proceedings should be held as soon as reasonably possible.

They are also instructed to ensure that no discriminatory or retaliatory measures are taken against seafarers because of their participation during investigations.

Flag states

What are the responsibilities of the flag state?

Flag states are advised to ensure that any investigations are conducted in a fair and expeditious manner, to cooperate and communicate with other relevant states, shipowners, and seafarers, and take steps to provide seafarers' representative organisations with access to seafarers.

They should also ensure that shipowners honour obligations to seafarers involved in a maritime accident or any investigation, and that adequate provisions are in place to provide for the subsistence of detained seafarers — including, as appropriate, wages, suitable accommodation, food and medical care.

They should assist seafarers to secure fair treatment, and assist shipowners in port or coastal state investigations, as well as ensuring that owners meet their obligations to cooperate in such investigations.

Flag states should also fund the repatriation of seafarers in cases where shipowners fail to meet their repatriation

responsibilities following a maritime accident. However, it should be noted that ships registered with states that have ratified the Maritime Labour Convention, 2006 (MLC) are required to carry financial security to cover the costs of repatriation and associated expenses, such as food, accommodation and necessary medical care. The financial security certificate must be displayed in a conspicuous place onboard, and contain the contact details of the provider, so that seafarers can make direct contact and demand repatriation if the shipowner fails in this duty.

Flag states must assist, as provided for in national law, in ensuring that seafarers return to a port or coastal state if they are needed solely as witnesses in any proceeding following a maritime accident.

They must take steps to ensure that consular officers are permitted access to the involved seafarers, irrespective of their nationality, and take all necessary measures to ensure the fair treatment of seafarers who were employed or engaged on a vessel flying their country's flag. The Guidelines state that this may ultimately include utilising international dispute resolution mechanisms, which can secure the prompt release of vessels and crews upon the posting of a reasonable bond or financial security.

Such a procedure is provided under Article 292 of the United Nations Convention on the Law of the Sea 1982 (UNCLOS), which can be used where both the flag state and the detaining state are signatories to UNCLOS, and the detaining state has not released the vessel or the crew following the posting of a reasonable bond or other financial security. In such a case an application may be made by the flag state (or on its behalf), for the prompt release of the vessel or crew, and the detaining state must comply if the appropriate order is granted (subject to the posting of a bond or other financial security).

Flag states should also take steps to ensure that no discriminatory or retaliatory measures are taken against seafarers because of their participation during investigations.



Your home country and the shipowner

What are the responsibilities of a seafarer's home country?

The seafarer's state should cooperate and communicate with other relevant parties, and take steps to provide seafarers' representative organisations with access to seafarers.

The home country's authorities must monitor the physical and mental wellbeing and treatment of seafarers of their nationality involved in a maritime accident, including any associated investigations.

They should fund the repatriation of their national seafarers in cases where shipowners and the flag state fail to fulfil their repatriation responsibilities, and assist the return to a port or coastal state of seafarers needed solely as witnesses in any proceeding following a maritime accident. The home country should take steps to ensure that its consular officers are permitted access to the involved seafarers, and take steps to provide support and assistance to facilitate the fair treatment of its seafarers and the expeditious handling of the investigation.

The home country should also take steps to ensure that all funds remitted by shipowners, the detaining state, or any other state, for the benefit of the detained seafarers, or for support of those seafarers' families, are delivered for the intended purposes.

It is also urged to take steps to ensure that no discriminatory or retaliatory measures are taken against seafarers because of their participation during investigations.

What are the responsibilities of the shipowner?

The Guidelines emphasise that shipowners have an overriding duty to protect the rights of the seafarers they



employ or engage — including the right to avoid self-incrimination — and to take steps to ensure their fair treatment.

They must 'take all available measures to ensure that no discriminatory or retaliatory measures are taken against seafarers because of their participation during investigations and take steps to ensure that such conduct by other entities is not tolerated', as well as cooperating and communicating with other relevant parties.

They must take steps to provide seafarers' representative organisations with access to seafarers. Owners should expedite the efforts of a port, coastal, or flag state investigation, and encourage seafarers and others under their employment to cooperate with any investigation, whilst taking account of their rights.

They should 'use all reasonable means to preserve evidence' to minimise the continuing need for the physical presence of any seafarer and discharge their obligations for the repatriation or re-embarkation of seafarers.

Owners must also ensure/verify that adequate provisions are in place to provide for the subsistence of each seafarer — including, as appropriate, wages, suitable accommodation, food and medical care.

Checklist for fair treatment

Your first steps in times of trouble

If you are involved in a maritime accident, the following general advice might be useful. It is based on general principles, including those laid down in international law. There may also be safeguards in the national law of the country concerned which should also be asserted.

A. If the vessel is boarded by officials

- i** Ask to see proper identification of any law enforcement officer and record full details of the identification.
- ii** Notify owner/operator, flag state, and consular authorities of the incident and any enquiries made.
- iii** Cooperate reasonably with the law enforcement authorities involved without waiving any of your legal rights.
- iv** Request to be informed of your rights under the national law of the boarding state in a language that you can understand.



Picture: Thinkstock

- v** Assert your rights as a citizen of the flag state to be dealt with by the authorities of the flag state.

B. If a search is carried out

- i** Refuse to allow a search of either yourself or your personal belongings unless a valid search warrant is produced.
- ii** If there is no search warrant but the law enforcement officers still insist on the search, clearly state that you do not consent to the search, preferably in front of witnesses.
- iii** Do not use force to prevent a search.
- iv** Request legal representation before any search is carried out of your person or your belongings.
- v** Request contact with your trade union or a local trade union official before any search is carried out of your person or your belongings. Remember to refer to the Nautilus Federation contacts in Annex 1 or contact Nautilus 24/7
- vi** Remain present during any search of your belongings, preferably also with another crew member present, and note any personal items removed or damaged during the search.

C. If an interview is conducted

- i** Request legal representation before agreeing to answer any questions.
- ii** You have the right not to incriminate yourself. Make no admissions without taking legal advice.
- iii** If you decide to speak without a lawyer present, or cannot avoid doing so, then request that there are witnesses present whom you can trust, including your trade union or a local trade union official. Note the assistance available through JASON set out on page 10.

Checklist for fair treatment

- iv** Request the use of a translator before giving a statement or answering any questions if the language spoken by the law enforcement officials is not your own, or if English is being spoken and you are not a native speaker.
- v** Do not rely on promises of immunity made by law enforcement officers in exchange for any statement or for answering any questions. Valid offers of immunity from criminal prosecution can generally not be made by law enforcement officials.
- vi** If the interview is to be conducted outside the ship, refuse to leave unless accompanied by a lawyer and an interpreter (if necessary), and only after your consular authorities have been notified of your whereabouts.
- vii** Do not use force to resist your removal from your ship.
- viii** If intimidated, notify your lawyer and/or consular authorities.

D. If you are detained or arrested

- i** Request to be informed at the time of your arrest/detention of the reason for your arrest and of any charges against you.
- ii** Request legal assistance and confidential communication with counsel.
- iii** Request consular assistance.
- iv** Request the right to an interpreter (approved by consular authorities) and to translation of essential documents.
- v** Assert the right to be brought promptly before a judge to have the lawfulness of your detention reviewed.
- vi** Assert the right to have a trial within a reasonable time and not to be detained pending trial without good reason.

- vii** Assert your right not to be subjected to arbitrary arrest or detention, and not to be deprived of liberty except on such grounds and in accordance with such procedures as are established by law.

What can you expect from the Nautilus Joint Assistance & Support Network (JASON)?

The unions listed in Appendix 1 have joined together under the banner of the Nautilus Federation. This means they have pledged to support each other's members when caught up in marine incidents and accidents, and to ensure that such seafarers are afforded their rights and the necessary protections provided for in the **IMO/ILO Guidelines on Fair Treatment of Seafarers in the Event of a Maritime Accident**. This may include:

- ▣ ensuring that parties involved are aware of the IMO/ILO Fair Treatment Guidelines and that these are observed at all times
- ▣ liaising with you and between you and your own union
- ▣ providing you with legal advice and relevant information
- ▣ providing you with pastoral support, reassurance, visiting/arranging visits by port welfare staff or seafarers' missions
- ▣ helping you to obtain release in cases of detention
- ▣ advising on/engaging expert lawyer(s), interpreters and consular access
- ▣ arranging personal, medical and psychological support
- ▣ responding as necessary to any urgent need for assistance
- ▣ keeping your own union up to date with the situation/developments
- ▣ asserting your human and economic rights
- ▣ ensuring you are treated with dignity and respect by the authorities
- ▣ ensuring the authorities provide you with appropriate subsistence e.g. food and accommodation

If you are approached by a law enforcement authority, remember:

- 1** Contact the Nautilus Federation immediately and before making a statement (if possible).
- 2** Cooperate with the authorities as far as you are able but do not incriminate yourself.
- 3** Be prepared to take time out if necessary.
- 4** At all times seek independent legal or technical advice if you are unsure of the situation.
- 5** Never be afraid to politely ask any official what their powers are and the purpose of the investigation.
- 6** If you find yourself in a situation where it may look as though somebody suspects you of a criminal offence then seek immediate legal advice so that you do not prejudice your position.
- 7** No attempt should ever be made to provide false information to investigating authorities nor should documents onboard a vessel be 'lost' or 'destroyed' as such actions could get you into serious trouble.

Appendices

Appendix 1

The following seafarers' unions have pledged to provide support to you as a member of a seafarers' trade union affiliated to the Nautilus Federation:

ACV-Transcom-Belgium

Rue du Marche aux Herbes 105, 1000 Brussels, Belgium
Tel: +32 2549 0762 www.acv-transcom-acv-online.be

Australian Institute of Marine & Power Engineers (AIMPE)

52 Buckingham Street, Surry Hills, Sydney NSW 2010
Tel: +61 419 243 263 / +61 293 195 569
www.aimpe.asn.au

International Organisation of Masters, Mates and Pilots (IOMMP)

International Headquarters
700 Maritime Boulevard Suite B
Linthicum Heights, Maryland 21090-1953 USA
Tel: +1 410 - 691 8144 www.bridgedeck.org

Marine Engineers Beneficial Association (MEBA) USA

Hall of States Building, 444 N. Capitol Street, NW
Suite 800, Washington DC2001
Tel: +1 202 638 5355 www.mebaunion.org/MEBA

Merchant Navy Officers Guild Hong Kong (MNOGHK)

Room 1401-02 Alliance Building,
130-136 Connaught Road C, Sheung Wan, Hong Kong
Tel: +85 225 458 269 www.mnoghk.org

Nautilus International (Netherlands)

Schorpionstraat 266, 3067 KW Rotterdam
Tel: +31 104 771 188 www.nautilusint.org/nl

Nautilus International (Switzerland)

Gewerkschaftshaus, Rebgasse 1
CH-4005 Basel, Switzerland
Tel: +41 612 622 424 www.nautilusint.org/ch

Nautilus International (UK)

1 & 2 The Shrubberies, George Lane,
South Woodford, London E18 1BD
Tel: + 44 (0)20 8989 1015
www.nautilusint.org/en

New Zealand Merchant Service Guild (NZMSG)

PO Box 11878, Manners Street, Wellington 6142
Tel: +64 438 29 131
www.nzmsg.co.nz

Officers Union of International Seamen (OUIS)

PO Box 418, 4005 Basel, Switzerland
Tel: +44 (0)7803 243168

Seafarers Union of Croatia (SUC)

Fiore Ilo la Guardia 13, 51000 Rijeka, Croatia
Tel: +38 551 325 343 www.sph.hr

Singapore Maritime Officers Union (SMOU)

75 Jellicoe Road #02-01
Wavelink Building, Singapore 208738
Tel: +65 6396 0123 www.smou.org.sg

Singapore Organisation of Seamen (SOS)

52 Chin Swee Road #09-00
Seacare Building, Singapore 169875
Tel: +65 6379 5666 www.sosea.org.sg

Appendix 2

Network of union lawyers and other union contacts:

- 1 Nautilus International Worldwide Lawyers Directory
Go to www.nautilusint.org and type **Worldwide Lawyers Directory** in the search box.
- 2 Seafarers Rights International lawyers network
Go to www.seafarersrights.org/sri-legal-network/ and click on **LAWYERS NETWORK**.

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