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Fair treatment for seafarers

A Nautilus UK guide



What to do after an accident at sea



Fair treatment — a Nautilus UK guide

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 seafarer who is in the firing line whether at fault or not.

In an international industry where many companies hide behind brassplate operations or flags of convenience, masters and officers in particular can be tempting targets for the authorities seeking to find someone to blame.

In the face of growing criminalisation of the maritime profession, Nautilus UK has been in the forefront of efforts to prevent seafarers from being treated as scapegoats.

The Union played a major role in the development of new international guidelines that are intended to prevent seafarers being singled out after maritime

accidents and to ensure that they receive fair treatment from the authorities.

In this special guide, Nautilus UK explains the guidelines and gives advice on what you should expect if you are unfortunate enough to be involved in an incident. The complete resolution and the guidelines can be viewed on the Union's website.

Don't forget: Nautilus can provide specialist support in such cases — including a worldwide network of lawyers who can provide free and immediate advice to members on employment-related issues (full details are also available on the website).

But — and most important of all — don't forget that you must contact the Union as soon as you can after an accident or an incident. Our ability to protect you, and your defence against any charges or investigations may be seriously damaged if you make statements to the authorities before seeking legal or professional advice.

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General secretary

What are the 'fair treatment' guidelines?

Known as the Guidelines on Fair Treatment of Seafarers in the Event of a Maritime Accident, they were drawn up by a specialist working party appointed by two key United Nations agencies – the International Maritime Organisation and the International Labour Organisation.

When do they take effect?

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

What are they meant to do?

The guidelines are intended to inform all relevant parties – the seafarer, the port or coastal state, the flag state, and the seafarer's home state – of their rights and responsibilities following maritime incidents.

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 they may be brought into contact with.

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 is 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 source during or after any investigation into a maritime accident.

And they also point out that the investigation of a maritime accident 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 an appropriate state.

Are there any 'small print' exclusions?

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

What sort of incidents do they cover?

A 'maritime accident' as defined in the guidelines will include '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'. They apply to investigations into such 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.

What should I do after an accident or incident?

As well as complying with statutory and company requirements to report such incidents, you are advised to contact Nautilus UK as soon as possible.

This is essential if you are to gain the necessary legal protection at an early stage and to ensure that you are given the best professional and technical advice and assistance.

What do the guidelines say that seafarers do?

Seafarers should fully understand that when statements are made to port, coastal or flag state investigators, they could be used in a future criminal prosecution.

Seafarers are therefore advised to ensure that they have arrangements for access to legal advice prior to deciding whether to give statements to port, coastal or flag state investigators.

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

What other protection do I have under the guidelines?

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

What about the port or coastal state authorities?

The guidelines say they 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 seafarers' representative organisations, such as Nautilus, with access to seafarers.

They should ensure that 'adequate measures are taken to preserve human rights of seafarers at all times, and the economic rights of detained seafarers' and that seafarers are treated at all times in a manner which preserves their basic human dignity.

They should ensure/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, ensuring access to independent legal advice,

and advising them 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.

They are also under a duty to inform seafarers of the basis on which any investigation is being conducted (ie., whether it is in accordance with the IMO Code for the Investigation of Marine Casualties and Incidents (resolution A.849(20) as amended by resolution A.884(21) or as subsequently amended), or pursuant to other national legal procedures.

The seafarer's home state must be given consular access to the seafarers.

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 need to take account of their physical and mental condition following an accident.

Once interviewed, or otherwise not required for investigation purposes, seafarers should be allowed to be re-embarked or 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.

What about the flag state?

They are also advised to ensure that any investigations are conducted in a fair and expeditious manner, and 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.

They 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 its 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.

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

What about my home country?

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

They must monitor the physical and mental well-being 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 fulfill 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. Your 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.

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

They are 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 shipowners meant to do?

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', and 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.



A checklist for fair treatment

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 be also safeguards in the national law of the country concerned which should also be asserted.

A. If the vessel is boarded by officials

- (i) Request 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.

- (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 Nautilus UK or a local trade union official before any search is carried out of your person or your belongings.
- (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 Nautilus or a local trade union official.
- (iv) Request the use of a translator before giving a statement or answering any questions if the language spoken by the law enforcement to 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, 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) Declare 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.



MARITIME ACCIDENTS

*Seafarers
- be aware!*

If your vessel is involved in a maritime accident, then be aware that there are international guidelines in place to ensure that you are treated fairly if an investigation is carried out and/or if you are detained by a State following the accident.

These guidelines are the IMO/ILO Guidelines on the Fair Treatment of Seafarers in the event of a Maritime Accident.

The Guidelines require that seafarers should be treated fairly by the port or coastal state, the flag state, the seafarer state and shipowners.

It is important that you understand your rights under these Guidelines so that if you are questioned or detained following a maritime accident, you know what to do and how to protect your interests.

If you are questioned about a maritime accident involving your vessel:

- If you think it is necessary, ask for a lawyer before answering any questions or making any statements to port, coastal or flag State investigators since these could be used against you in future criminal or other legal proceedings
- Contact your company and/or union for advice and assistance
- Make sure you fully understand everything that you are asked

- If there is anything you do not understand:
 - ask the authorities to stop the questioning
 - request the assistance of an interpreter, if necessary

It is important to ensure that you protect your interests first. Therefore, follow the advice you receive from your company, union or lawyer, and importantly, when advised to provide information, be truthful with investigators.

*Protect your interests following a maritime accident
Read the Fair Treatment Guidelines
Know your rights
If in doubt, ask for advice!*