

KPI Information Update IU-30-2013 **(The outcome of IMO Legal Committee-100th session)**

Draft guidelines on the preservation and collection of evidence following an allegation of a serious crime having taken place on board a ship, or following a report of a missing person from a ship, and on pastoral and medical care of victims were approved by the Legal Committee of the International Maritime Organization (IMO), when it met for its 100th session.

The draft guidelines, which focus on what can practically be carried out on board a ship to preserve and/or collect evidence and protect persons affected by serious crimes, until such time that the relevant law enforcement authorities commence an investigation, will now be submitted to the IMO Assembly 28th session, in November 2013, along with an associated draft resolution, for consideration with a view to adoption.

The primary purpose of the draft guidelines is to assist masters in the preservation of evidence and in the pastoral and medical care of persons affected and, when appropriate, in the collection of evidence, during the period between the report or discovery of a possible serious crime and the time when law enforcement authorities or other professional crime scene investigators take action.

The draft guidelines further state that the master is not a professional crime scene investigator and does not act as a criminal law enforcement official when applying the guidelines. The guidelines should not be construed as establishing a basis of any liability, criminal or otherwise, of the master in preserving and/or handling evidence or related matters.

The draft guidelines include sections covering co-operation and coordination between interested States and parties; the role of the master; missing persons; and pastoral and medical care.

- ✓ Appendix 1: includes suggested formats for Victim Statement; Alleged Perpetrator Statement; and Independent Witness Statement.
- ✓ Appendix 2: includes guidance derived from MSC.1/Circ.1404 (Guidelines to assist in the investigation of the crimes of piracy and armed robbery against ships), including guidelines on recovery and packaging of evidence.

The guidelines establish that the master is not a professional crime scene investigator and does not act in the capacity of a criminal law enforcement official and that the guidance will likely only be applied in limited and exceptional circumstances by masters who may be called upon to collect evidence that may otherwise be lost if no action is taken.

The work to develop the guidelines followed the adoption by the IMO Assembly of a resolution on the subject (A.1058 (27)), which invited States to submit proposals to the Committee.

► **Guidelines on HNS reporting endorsed:**

Guidelines to assist countries in meeting reporting requirements under the 2010 International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious substances by Sea, 2010 (2010 HNS Convention) were endorsed by the Committee.

The guidelines, on HNS reporting to facilitate the submission by States to the Secretary-General of contributing cargo data for the purposes of article 20(4) and (6) of the 2010 HNS Protocol, were developed and adopted at a two day workshop convened jointly by IMO and the International Oil Pollution Compensation Funds (IOPC Funds) Secretariats and held at IMO in October 2012. It was attended by more than 100 participants. The guidelines are expected to help in overcoming one of the main obstacles preventing States from ratifying the Protocol, namely the difficulty of complying with this reporting requirement, particularly in view of the enormous variety of HNS substances that are potentially subject to the reporting requirement. As well as the guidelines, the Committee also approved a model letter to accompany the model form for receivers, a State model reporting form, a receiver model reporting form and an HNS contributing cargo nil declaration form.

► **Piracy work reviewed:**

The Committee received an update on the work of the 11th and 12th sessions of WG2 (which addresses the judicial aspects of piracy) of the Contact Group on Piracy off the Coast of Somalia, held in September 2012 and April 2013. The Committee noted information provided by the United Nations Office on Drugs and Crime (UNODC) on the number of pirates

captured and handed ashore for further investigation. Among the views expressed in relation to the judicial aspects of piracy, it was noted that transparency in identifying problems related to the apprehension of pirates was beneficial to all parties involved in combating piracy or struggling with the consequences of this crime. Delegations noted that Member States and organizations in consultative status with IMO should share their experience in resolving problems related to apprehension of pirates and should provide related information to IMO. They also commented that IMO is the primary forum within the UN system responsible for coordinating efforts of the wider international community in its fight against piracy; and that States had full sovereignty in their territorial waters, consequently measures such as using privately armed guards on board ships should be adopted for combating piracy in places that are not subject to the jurisdiction of any State. The Committee also noted information provided by the United Nations Interregional Crime and Justice Research Institute (UNICRI) on the database on court decisions related to piracy which it has established.

The database can be found [here](#), and by following the [related link](#).

UNICRI also provided the Committee with statistics drawn from its Piracy Analysis, including the average age of pirates; the region and clans they come from; their occupations; when attacks are most likely to occur; the number of pirates participating in individual attacks; the use of mother-ships; the number of casualties occurring in pirate ranks and the number and type of ships boarded.

► **Fair treatment of seafarers - report reviewed:**

The Committee was provided with the findings of a survey, conducted by Seafarers' Rights International (SRI), concerning respect for the rights of seafarers facing criminal prosecution. The survey results were submitted by the observer delegations of the International Transport Workers' Federation (ITF) and the International Federation of Shipmasters' Associations (IFSMA). The findings strongly suggested that the rights of seafarers, as enshrined in the Guidelines on fair treatment of seafarers in the event of a maritime accident, adopted jointly by IMO and the International Labour Organization (ILO), are often subject to violation.

The Committee thanked the co-sponsors for the document and expressed general support for the continuous promotion of the Guidelines. The Committee also agreed that the issue of fair treatment of seafarers in the event of a maritime accident should remain on the agenda of the Legal Committee

and delegations were invited to submit proposals for outputs to improve compliance with the Guidelines to its next session.

► **Liability issues from offshore oil exploration further discussed:**

The Committee noted information from Indonesia on the outcome of the second International Conference on Liability and Compensation Regime for Trans-boundary Oil Damage Resulting from Offshore Exploration and Exploitation Activities, held in Bali in November 2012, as well as a submission containing principles for guidance on model bilateral/regional agreements or arrangements on liability and compensation issues connected with trans-boundary pollution damage from offshore exploration and exploitation activities.

The Committee recalled its previous decision to analyse further the liability and compensation issues connected with trans-boundary pollution damage resulting from offshore oil exploration and exploitation activities, with the aim of developing guidance to assist States interested in pursuing bilateral or regional arrangements, following the Deepwater Horizon incident in 2010 and the 2009 incident on the Montara offshore oil platform, located in the Australian Exclusive Economic Zone, in which a well blew out, leading to a significant oil spill.

The Committee agreed that assistance should be provided to those States which are in need of guidance for bilateral and multilateral agreements. Member States were invited to send examples of relevant legislation and, in particular, examples of existing bilateral and regional agreements to the Secretariat; and the delegation of Indonesia was encouraged to continue with its work to facilitate further progress within the Committee.