



# **BIMCO Study of recent cases involving the International Practice of Using Criminal Sanctions towards Seafarers**

**Adopted by the BIMCO Board of Directors in Singapore on 2 March 2006**

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## 1. Introduction

### 1.1. Purpose

The purpose of the preliminary study was to enable BIMCO to evaluate the extent of the criminalisation of seafarers and to determine BIMCO's future role with regard to the protection of seafarers' rights; in particular in respect of criminal sanctions against seafarers and the unfair treatment of seafarers.

### 1.2. Structure

The study focuses on three aspects of this issue;

- the cases involving detainment and prosecution of seafarers.
- the laws and conventions that apply to such cases.
- Industry and government activity initiated on behalf of seafarers.

The main focus of the study is upon detention, imprisonment and/or fines levied on seafarers.

### 1.3. Sources

Several organisations and other parties assisted the BIMCO Secretariat in the compilation of this study. These are listed Annex VII- Acknowledgements.

Furthermore, many articles, presentations and reports that appeared in the shipping and mainstream media were scrutinised. Much of this material was accessed via the Internet, such as newspaper archives, organisations' websites, and other sites.

Whilst appreciative of the fact that not all cases have been identified during the short time in which the study was conducted, it is felt that a sufficient number of cases were found in order to draw conclusions.

This study will be enhanced to include additional related cases as they are identified and as new cases occur, and should, therefore, be considered as living document. BIMCO therefore welcomes the submission of related information from all stakeholders. Such information may be submitted to the BIMCO Secretariat by the following means:

Post: BIMCO Security and International  
Affairs Department  
Bagsværdvej 161  
2880 Bagsværd  
Denmark

Fax: +45 44 36 68 68

Email: [international@bimco.org](mailto:international@bimco.org)

*BIMCO, established in 1905, is the world's largest international shipping association with approximately 2,396 members situated in 123 countries. The 903 owner-members of BIMCO control a fleet of about 550 million deadweight tonnes, thereby representing 65% of the world's merchant fleet. Of the remaining members; 1,380 are shipbrokers and port agents, and 44 are Club members including the majority of those amongst the International Group of P and I Clubs. BIMCO has observer status at the International Maritime Organization (IMO), the World Customs Organization (WCO) and liaison status with the International Organisation for Standardization (ISO).*

## **2. Summary of cases including circumstances and the treatment of the seafarers**

### **2.1. Approach**

As stated in the introduction various sources were approached for information on cases in which seafarers had criminal sanctions taken against them. The cases were summarised as shown in Annex I in a standard format and arranged into two main groups:

- a) Cases where sanctions were taken against the seafarers before any deliberate act or negligence had been admitted or proven in court.
- b) Cases where sanctions were taken against the seafarers after a deliberate act or negligence had been admitted or proven in court.

The division into these two groups is based on a systematic evaluation of each individual case whereby those cases falling in the first category are those where there was no negligent behaviour and/or seafarers were detained as means of security for a future claim or detention of seafarers without any charges being pressed.

The second group are those cases where there clearly was a criminal act which resulted in detainment, imprisonment or fines. This could be situations where the oily water separator (OWS) was bypassed or the oil record book (ORB) was falsified.

In the course of the study a number of cases were identified for which no criminal sanctions had been applied. For the sake of completeness these are listed in Annex II

## 2.2 Findings

### *2.2.1. Summary*

A total of 43 cases were identified of which:

- 8 Cases where sanctions were taken against the seafarers involved before any deliberate act or negligence had been admitted or proven in court please refer to Annex I.
- 29 Cases where sanctions were taken against the seafarers after a deliberate act or negligence had been admitted or proven in court, please refer to Annex I.
- 6 Other cases including two cases where there was no criminal act and no detainment or fines against seafarers, please refer to Annex II

### *2.2.2 – Findings in cases where sanctions were taken against the seafarers involved before any deliberate act or negligence had been admitted or proven in court.*

1996	Egypt	MILLION HOPE
1997	Singapore	ORAPIN GLOBAL
1999	France	ERIKA
2000	Myanmar	ASIAN LIBERTY
2001	China Taipei	AMORGOS
2002	Spain	PRESTIGE
2003	Pakistan	TASMAN SPIRIT
2005	USA	CELINE

8 cases were found taking place during a 9-year period involving 8 Coastal States.

Only 5 cases were identified from 2000 and onwards, furthermore, 3 additional cases from before 2000 were also included in the study, among others the ERIKA case. All 8 cases are characterized by lack of negligent behaviour by the master and even though serious pollution might have been caused it was accidental but, nonetheless, seafarers were punished. Another common characteristic was that many of the cases received a lot of media coverage probably as a result of the severity of the pollution that occurred.

An often overlooked problem is the pressure the crew is under while a criminal investigation is taking place. This situation can best be illustrated by the disturbing outcome of the CELINE case where a Chief Engineer committed suicide after being questioned about the oily-water separator equipment. In some cases the Master and/or Crew were detained as security for a possible future claim.

The cases show that seafarers are sometimes detained as a means of security for possible future claims. This is the case when the vessel no longer has any economical value and it is therefore pointless to arrest the vessel. The MILLION HOPE case in Egypt in 1996 and ASEAN LIBERTY case in Myanmar in 2000 are examples of such detainments of the crew as a mean of security. The claims in connection with civil liability would arise under a number of conventions and regional rules such as the CLC Convention or for example OPA 90. Such instruments are not included in this study as they do not concern criminal liability. However it should be mentioned that a Standard Letter of Guarantee to Port Authorities when a place of refuge is requested as proposed by the International Group of P&I Clubs, could help to prevent the detainment of seafarers in situations where there is clearly no criminal offence as the financial security would then be in place.

2.2.3 - Findings in cases where sanctions were taken against the seafarers after a deliberate act or negligence had been admitted or proven in court.

Graphic overview:

	Pre-2000	2000	2001	2002	2003	2004	2005
Malta			1				
France							(1)
Greece							1
Singapore					1		
USA (25)		1	2	4	5	5	8
Total (29)		1	3	4	6	5	10

The first observation in this group is that it represents the majority of cases identified, 29 in total were recorded. Out of these 29 cases, 25 cases concerned incidents in USA. 18 of the cases involved deliberate acts such as false entries in oil record books, false witness statements to US Authorities and circumvention of oily water separators. The punishment for these offences was often severe including imprisonment of seafarers and corporate fines up to USD 25 Million (*see the EVERGREEN case*). Furthermore as it is seen in the KATHRINA case, “whistle-blowing” is a factor whereby the crew reported the irregularities to the authorities on board the ship against a possible reward.

The French case that appears in brackets involved the mv CHIARA DP. It is listed in brackets as the Master did receive a fine, however, it is unclear whether or not there was an intent to break the law or if negligence was involved.

### **3. Laws and conventions applied to the cases listed in Part 1**

A number of International and National Instruments are applied in connection with criminalisation and the protection of seafarers' rights

#### **3.1 International Instruments**

##### *3.1.1 The MARPOL Convention*

Among other things MARPOL contains rules about under which circumstances an Owner and/or Master can be exempted from liability in connection with pollution caused as a result of damage to the ship or its equipment. The exception only comes into play if all reasonable precautions have been taken after the occurrence of the damage in order to mitigate the damage. This exception does, however, not apply if the damage was caused by intent or recklessly, please see MARPOL's Annex I, Regulation 11(b).

##### *3.1.2 UNCLOS 82*

United Nations Convention on the Law of the Sea (UNCLOS) is the overarching convention for the sea.

According to article 230 only monetary penalties 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, when such violation was committed by foreign vessels in the territorial sea, except in the case of a wilful and serious act of pollution in the territorial sea.

Furthermore, article 73 and 292 contains rules against the unreasonable detention of seafarers and for their release against suitable bond or guarantee. Furthermore, the Convention provides that the human rights of the accused must be observed in all trials relating to alleged violation of maritime pollution laws. Furthermore, in respect of jurisdiction, Article 97 (3) reflects that the legal jurisdiction in matters of collision or any other incident of navigation rests with the flag state. However, according to article 211 (4) Coastal States may, in the territorial sea, adopt laws and regulations for the prevention, reduction and control of marine pollution from foreign vessels. However, such regulations may not hamper the right of innocent passage. Please see Annex III for an extract of the Convention.

##### *3.1.3 International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties - Intervention Convention, 1969*

This convention does not concern the prosecution of Seafarers, it is however felt important to include the convention as it comes in to play in connection with an incident, such as for example a ship in distress.

The Convention affirms the right of a coastal State to take such measures on the high seas (that is more than 200 nautical miles from the coast) as may be necessary to prevent, mitigate or eliminate danger to its coastline from pollution by oil or the threat thereof, following upon a maritime casualty. The 1973 Protocol extended the Convention to cover substances other than oil. It is however, only after due consultations with appropriate interests including, in particular, the flag State or States of the ship or ships involved, the owners of the ships or cargoes in question that the coastal state is empowered to take action. If the Coastal state takes measures beyond those

permitted under the Convention it is liable to pay compensation for any damage caused by such measures.

#### *3.1.4 The Universal Declaration of Human Rights*

The Universal Declaration of Human Rights is not often referred to in court cases, but it contains the fundamental rights which should be observed and could be pointed out to administrations. This could be statements such as that all are equal before the law, everyone is entitled in full equality to a fair and public hearing, no one shall be subjected to arbitrary arrest, detention or exile and finally that no one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law. Please see Annex III for an extract of the Convention.

### 3.2 Regional and National Instruments

#### *3.2.1 Canada*

Migratory Birds Convention (proposed amendments)  
Canadian Environment Protection Act

#### *3.2.2 EU*

According to an ECSA study made in 2003, there are varying sanctions in European states for pollution. Some states punish pollution caused by negligence and the majority of states also punish pollution caused by gross negligence. The sanctions range from fines to 7 year imprisonment. France for example has one of the harshest criminal liability regimes (the Perben Law, please see the section headed France). The Perben Law punishes negligently caused pollution with imprisonment up to 2 years and fines up to Euro 200,000. Intentional breach of safety duties is punished with up to 7 years imprisonment. The Fines can be increased up to the equivalent of the value of the ship or four times the value of the cargo on board.

Almost all States punish MARPOL infringements, here Germany has the most stringent rules whereby MARPOL infringements are punished with up to 10 years imprisonment or fines when committed negligently or with intent. Accidental spills are not penalised in Germany.

Please also see Annex VI for a more thorough run down of the laws in the EU Member States.

#### *EU Directive on Ship Source Pollution (future legislation)*

The EU Directive on Ship Source pollution seeks to criminalise negligent and intentional behaviour whereby pollution caused in the territorial sea with intent, recklessly or by serious negligence can be punished. Intentional committed offences can be punished with between 2 and 5 years imprisonment, furthermore when the pollution is caused by serious negligence and the offence has caused significant and widespread damage to the water quality or vegetable species and the death or serious injury to persons, the punishment is at least 2 and maximum 5 years imprisonment. If the incident was caused by serious negligence and the offence has caused significant and widespread damage to the water quality or vegetable species the punishment is between 1 and 3 years imprisonment. The individual Member States may subscribe stricter punishments than those found in the Directive, so the punishments found in for example the Perben Law may still apply after the Directive has been implemented in France.

### *The European Union Charter of Fundamental Rights:*

The European Union Charter of Fundamental Rights is equivalent to the Universal Declaration of Human Rights; it contains the basic human rights to be observed within the European Union. The Charter is to some extent more detailed than the Universal Declaration of Human Rights. For Example the right to a fair trial is also written in to this charter as well as the Universal Declaration. In addition to this fundamental right in both instruments, the Charter also states that the public hearing must be held within a reasonable time. This is a fundamental right also for seafarers, and Administrations could be made aware of this in connection with long detentions of Seafarers in the EU, such as the one seen in the Prestige Case.

### *3.2.3 France: Perben\* law*

In March 2004, France introduced the so-called Perben law. Potential fines for discharge of oil or oily residues — even if accidental — now stand at € 1m (\$1.3m), or the value of the vessel, or four times the value of cargo on board.

Masters could get up to 10 years of imprisonment if caught within 20 miles of French territorial sea, as could French masters if caught in French waters. Even unintentional pollution could land masters with seven years inside a French jail. (\*French Transport Minister Dominique Perben).

### *3.2.4 United Kingdom*

Proposals have been made to alleviate the strict liability regime of the **Water Resources Act** – if pollution is caused during efforts to limit pollution. The Act was used to prosecute the Milford Haven Port Authority after the 1996 SEA EMPRESS oil spill

Merchant Shipping Act 1997 Chapter 21 – Any discharge of oil or oily mixture is discharged into the national waters of UK by negligence the polluter can be punished with fines (but not imprisonment).

In relation to the need to establish places of refuge for ships in distress, the UK has established the **SOSREP** system (Secretary of State's Representative). It has been described as advantageous for two primary reasons; Firstly, in such situations there is one government official with wide-reaching command and control powers, and secondly, certain protections are availed to the salvage companies and others that respond to such incidents. With respect to the latter, this would help to reduce the risk of such seafarers being criminalised.

### *3.2.5 United States*

There is a mass of different legislation that could lead to criminal sanctions being taken against seafarers in the US as follows:

The Act to Prevent Pollution from Ships (APPS)

Security for Release of Vessels under the Act to Prevent Pollution from Ships (APPS)

The Clean Water Act

The Rivers and Harbors Act

The False Statements Act

Sarbanes-Oxley Act of 2002 (Obstruction of Justice Section)

Responsible Corporate Officer Doctrine

Perjury/Providing False Information to Government Representatives

Witness Tampering

## Conspiracy

Note: Thorough description of these laws and regulations is available in Annex V.

### 3.3. Conclusions on laws and conventions

As a general observation it is noted that seafarers are only rarely punished on a strict liability basis. Furthermore, the test of liability is often gross negligence or higher, in other words simple negligence is not punished. The punishments range from fines to imprisonment.

According to some of the harshest laws a seafarer may be punished with up to 10 years imprisonment for intentionally caused pollution and up to 7 years imprisonment for negligently caused pollution, please refer to the Perben Law in the section about France. According to the new EU Directive on ship source pollution, an incident caused by serious negligence may be punished with between 1 and 3 years imprisonment. Intent and recklessness is punished with between 3 and 5 years imprisonment.

In the USA negligent and reckless discharge of oil is punishable under the Clean Water Act (please also see Annex V). However, it should also be observed that the USA severely punishes false witness statements, witness tampering and conspiracy. In that connection it can be observed that the vast majority of US cases observed involve falsifying of oil record books, the punishment for such violation is imprisonment.

In almost all jurisdictions the seafarer may have the possibility to be exonerated fully from liability when the pollution has been caused negligently in connection with damage to the ship and the Master and/or Owner has done their utmost to mitigate the damage after the discovery, please see MARPOL Regulation 11(b).

In addition to what is mentioned above it should be noted that a number of Conventions that protect Seafarers rights have been identified. The general principle is; the human rights of the accused must be observed in all trials relating to alleged violation of maritime pollution laws (please see the references on UNCLOS). The fundamental human rights are found in the Universal Declaration of Human Rights, two of the most important statements are that; everyone is entitled in full equality to a fair and public hearing and no one shall be subjected to arbitrary arrest.

#### **4. Industry/government activity initiated on behalf of seafarers**

This part of the study has been divided into 6 sections:

- 4.1 Government and Industry involvement in high-profile incidents
- 4.2 IMO Assembly Resolutions and related documents
- 4.3 IMO/ILO - ad-hoc working group on the fair treatment of seafarers
- 4.4 Comité Maritime International (CMI)
- 4.5 Center for Seafarers' Rights (CSR)
- 4.6 BIMCO's involvement relating to seafarers

##### **4.1. Government and Industry involvement in high-profile incidents**

The Tasman Spirit and Prestige incident serve well as case studies illustrating how organisations can address specific incidents.

###### *Initiatives in connection with the Tasman Spirit incident*

- IMO – Secretary General visited Karachi and personally appealed to government
- US State Department Colin Powell intervened with Pakistan's President Musharraf.
- European Union political and diplomatic pressure against Pakistan.
- Union of Greek Shipowners: pressure on Greek government (Ministry of Merchant Marine and -Foreign Ministry) to approach government of Pakistan.
- Greek Foreign Ministry and Greek Ambassador Tsikouris: met with Government of Pakistan.
- American Club: Organized several initiatives (i.e.: US State Dept.).
- Maltese Maritime Authority: Paid a visit to the detainees for moral support.

###### *Initiatives in connection with the Prestige incident*

- EU parliamentarian Mr. Dick Sterckx produced the "Mare Report". This report is often referred to in new legislative proposals from the European Union. This was for example the case with the Directive on the civil liability of shipowners which forms part of the third maritime safety package.
- Intertanko/ECSA: The Secretary Generals of these two organisations paid a visit to the Spanish Transport Minister shortly after the incident. The purpose of this meeting was to call for the release of the Master from Spanish prison and to call for a fair treatment.
- BIMCO officials raised concerns regarding the detainment of Capt. Mangouras during meetings with Spanish authorities.

## 4.2 IMO Assembly Resolutions and related documents

### *The IMO Assembly 24th session in November-December 2005*

Resolution A.987(24) “Guidelines on fair treatment of seafarers in the event of a maritime accident”

The resolution requested the Joint IMO/ILO Ad Hoc Expert Working Group to finalize guidelines on fair treatment of seafarers in the event of a maritime accident as a matter of priority. The resolution echoes the serious concern about the need to ensure the protection of the rights of seafarers in view of the growing use of criminal proceedings against them, in particular their prolonged detention, as a result of a maritime accident.

The resolution also urges all States to respect the basic human rights of seafarers involved in maritime accidents; to investigate maritime accidents expeditiously to avoid any unfair treatment of seafarers; and to adopt procedures to allow the prompt repatriation or re-embarkation of seafarers following maritime accidents. It also invites Governments and non-governmental organizations to record instances of unfair treatment of seafarers in the event of maritime accidents and to provide data to IMO or ILO whenever requested.

### *Other Assembly Resolutions*

- A 930(22) Guidelines on provision of financial security in case of abandonment of seafarers  
Adopted on 29 November 2001

- A 931(22) Guidelines on shipowners’ responsibilities in respect of contractual claims for personal injury to or death of seafarers. Adopted on 29 November 2001

### *IMO Council Resolutions*

92nd Session (21 – 25 June 2004) C 92/6/1 International instrument for fair treatment of seafarers.  
Submitted by India

### *IMO Circular Letters*

Circular Letter No. 2636 (03/06/2005) Sixth session of the Joint IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers

### *IMO Maritime Safety Committee (MSC)*

- MSC/Circ.1112 Shore leave and access to ships under the ISPS Code. 07/06/2004

- IMO/ILO/WGLCCS 2/5 - Report on information collected by the IMO and ILO secretariats on the issues of abandonment and financial security for personal injury and death of crew members.  
Submitted by IMO/ILO secretariats

- IMO/ILO/WGLCCS 2/6 - Report by the ISF and ITF on informal discussions with the P&I Clubs.  
Submitted by the ISF and ITF

#### 4.3 IMO/ILO - ad-hoc working group on the fair treatment of seafarers

In April 2004 the Legal Committee of IMO agreed to include in its work programme the development of guidelines on the fair treatment of seafarers.

In agreeing to include this new item in its work programme, the Committee also endorsed a proposal to establish a joint IMO/International Labour Organization (ILO) Working Group on the matter.

This decision followed a proposal that IMO, in co-operation with ILO, consider the development of appropriate guidelines based not only on the principles of UNCLOS but also on the fact that unwarranted detention was a violation of basic human rights.

Subsequently the Joint IMO/ILO Ad Hoc Expert Working Group on Fair Treatment of Seafarers was established to develop guidelines to be followed in the event of a maritime accident.

The guidelines seek to establish a framework of legal certainty and consistent good practice to ensure that, in connection with maritime accidents, seafarers are fairly treated and their rights are not violated.

If the ad-hoc working group succeeds in finalising the guidelines in March, efforts will then be made to promote the use of the guidelines when such incidents occur. The IMO Assembly has agreed to promulgate the guidelines as soon as they are finalised, in lieu of waiting until the next assembly meeting in 2007.

#### 4.4 Comité Maritime International (CMI)

CMI International Working Group on the Fair Treatment of Seafarers

CMI paper for IMO LEG: Focus: Liability and compensation arising out of the admission of a distressed vessel into a place of refuge.

#### 4.5 Center for Seafarers' Rights (CSR)

Urged the UNCLOS meeting of contracting States to stop coastal states from inflicting punitive measures on crews on ships involved in pollution incidents

#### 4.6 BIMCO's involvement relating to seafarers

Involvement on issues surrounding seafarers' rights is not entirely new for BIMCO. Examples of related BIMCO activity include:

1. Involvement in IMO/ILO correspondence group work related to a guidance document on fair treatment of seafarers,
2. The Center for Seafarers' Rights Round Table discussion on seafarer identity documents
3. Talks with US authorities on visa regulations,
4. Raised concerns regarding the detainment of Capt. Mangouras (PRESTIGE) during meetings with Spanish authorities
5. Regularly seeks to avoid increasing burdens on crew during IMO deliberations, and
6. Providing practical advice and guidance for seafarers to avoid security risks (attacks etc.).

## **5. Conclusions**

1. The criminalisation of seafarers is a world-wide problem, not restricted to specific countries or regions.
2. Most laws that are applied are fair, negligent behaviour that results with pollution or fatalities deserve punishment. However, there is an unfortunate pattern of fair laws being applied unfairly with seafarers being detained after an incident either on a presumption of criminal negligence or as financial security. The approach that the accused is assumed to be guilty until proven innocent is also seen to be unfair. Furthermore, the pre-trial detention of seafarers or detention of seafarers as a means of financial security is equally unfair.
3. Whilst there are relatively only a few cases, the issues involved clearly illustrate that there are problems with respect to the unfair treatment of seafarers.
4. The media coverage surrounding the criminalisation of seafarers tends to overstate the extent of the problem whilst failing to differentiate between incidents that involve negligent behaviour and those which do not.
5. The IMO and ILO have recognised that there is a problem and have therefore initiated efforts aimed at the protection of seafarers' rights. BIMCO has contributed to this effort and should continue to do so

**Annex I****Summary of cases including circumstances and the treatment of seafarers**

Cases where sanctions were taken against the seafarers involved before any deliberate act or negligence had been admitted or proven in court

1a

<b>Ship name:</b>		MILLION HOPE	
<b>Place of incident (country)</b>		Egypt	
<b>Date of incident:</b>		June 1996	
<b>Description of incident:</b> The ship struck a reef and sank in Tiran Strait (Egypt). The Master was detained as a mean of security for the government's claim for damages.			
<b>Date of verdict/sentencing</b>		Not yet confirmed but assumed to be March 1998	
<b>Detainment</b>	<b>Number and Rank of detained</b>	<b>Duration of detainment</b>	<b>Hotel or prison</b>
As accused	Not initially – see below		
As witness			
Unknown	Master: initially as security	1 year 8 months	Not yet obtained
Fines levied and/or punishment:	Master subsequently tried and found guilty and fined EGP 500 (USD 90 at today's ROE)		

2a

<b>Ship name:</b>		ORAPIN GLOBAL	
<b>Place of incident (country)</b>		Singapore	
<b>Date of incident:</b>		1997 in collision with Evoikos	
<b>Description of incident:</b> OG lost a small quantity of bunkers from the F.P tank and Evoikos lost 25,000t of cargo oil			
<b>Date of verdict/sentencing</b>		1998	
<b>Detainment</b>	<b>Number and Rank of detained</b>	<b>Duration of detainment</b>	<b>Hotel or prison</b>
As accused	Master	12 months prior to sentencing	First in prison and then under house arrest in Singapore. After about 6 months he was allowed to return home on condition he returned for the court proceedings – which he did.
As witness			
Unknown			
Fines levied and/or punishment:	The Master of the OG was given a 4 months prison sentence which he served and the Evoikos Master was given 8 months. PS The Master of the OG retired immediately.		

3a

<b>Ship name:</b>		ERIKA	
<b>Place of incident (country)</b>		France	
<b>Date of incident:</b>		12 December 1999	
<b>Description of incident:</b> Tanker incident that occurred off the French coast in December 1999. The master of the 24 year old 37,000 DWT Maltese flagged tanker decided to sail close to the coast in order to save the crew when the vessel foundered and subsequently caused heavy oil pollution. The Indian Master was arrested and imprisoned by the French Authorities. French news bureau AFP reports in March 2006 that the Correctional Tribunal of Paris has scheduled a trial in the long-delayed case for the period from 30 October to 27 December 2006. French media add that three officers of the Brest maritime prefecture plus a civilian employed by the Regional Operational Centre for Monitoring and Rescue (CROSS) will be tried on a charge of “voluntarily abstaining from causing measures to be taken to permit fighting a disaster”.			
<b>Date of verdict/sentencing</b>		Not yet obtained.	
<b>Detainment</b>	<b>Number and Rank of detained</b>	<b>Duration of detainment</b>	<b>Hotel or prison</b>
As accused			
As witness			
Unknown	Master	8 Months	Both
Fines levied and/or punishment:	Trial still pending.		

4a

<b>Ship name:</b>		ASEAN LIBERTY	
<b>Place of incident (country)</b>		Myanmar	
<b>Date of incident:</b>		27 December 2000	
<b>Description of incident:</b> Ship sank. The whole crew was detained.			
<b>Date of verdict/sentencing</b>		None.	
<b>Detainment</b>	<b>Number and Rank of detained</b>	<b>Duration of detainment</b>	<b>Hotel or prison</b>
As accused			
As witness			
Unknown	All detained for “security” Master and 5 officers Other crew	3 months Released sporadically	Not yet obtained.
Fines levied and/or punishment:	None. The authorities demanded that the Owners provide financial security in the amount of USD 12.5 million for their losses (pollution clean-up, compensation claims, dredging costs and additional unspecified losses) and give a written undertaking that they would remove the wreck.		

5a

<b>Ship name:</b>		AMORGOS	
<b>Place of incident (country)</b>		China Taipei	
<b>Date of incident:</b>		14 January 2001	
<b>Description of incident:</b> The ship grounded and sank. Wreck removal. The incident is not to be confused with the NISSOS AMORGOS incident off the Venezuelan coast in February 1997.			
<b>Date of verdict/sentencing</b>		None	
<b>Detainment</b>	<b>Number and Rank of detained</b>	<b>Duration of detainment</b>	<b>Hotel or prison</b>
As accused			
As witness			
Unknown	Master & Chief Engineer Second Engineer	7 Months 2 Months	Prison
Fines levied and/or punishment:	None.		

6a

<b>Ship name:</b>		PRESTIGE	
<b>Place of incident (country)</b>		Spain	
<b>Date of incident:</b>		13 November 2002	
<b>Description of incident:</b> After rejecting the ship's request for a place of refuge Spanish authorities ordered her to be towed out to sea and into a heavy storm. She then broke in two resulting with pollution of the coast and the detainment of her Master.			
<b>Date of verdict/sentencing</b>		None.	
<b>Detainment</b>	<b>Number and Rank of detained</b>	<b>Duration of detainment</b>	<b>Hotel or prison</b>
As accused			
As witness			
Unknown	Master	See note below	Both
Fines levied and/or punishment:	None. Master eventually allowed to return to Greece on government guarantee that he will return to Spain if requested to testify.		

7a

<b>Ship name:</b>		TASMAN SPIRIT	
<b>Place of incident (country)</b>		Pakistan	
<b>Date of incident:</b>		August 2003	
<b>Description of incident:</b> The infamous “Karachi 8” – Ship grounded - crew and salvage captain detained			
<b>Date of verdict/sentencing</b>		None – all released without charges.	
<b>Detainment</b>	<b>Number and Rank of detained</b>	<b>Duration of detainment</b>	<b>Hotel or prison</b>
As accused			
As witness			
Unknown	7 crew including 1 salvage ship captain (held as “security”)	9 months	Hotel
Fines levied and/or punishment:	None – crew and salvage captain released in April 2004.		

8a

<b>Ship name:</b>		CELINE	
<b>Place of incident (country)</b>		USA	
<b>Date of incident:</b>		10 June 2005	
<b>Description of incident:</b> US Coast Guard inspectors questioned crew about oily-water separator equipment, calling in the FBI and seizing the hard drive of an on-board computer. The day after the Celine was formally detained on 10 June, the ship's 53-year-old chief engineer committed suicide.			
<b>Date of verdict/sentencing</b>		Not yet obtained.	
<b>Detainment</b>	<b>Number and Rank of detained</b>	<b>Duration of detainment</b>	<b>Hotel or prison</b>
As accused			
As witness			
Unknown	Master – held without charges Crew also detained	Master: At least 6 weeks 2 crew released	Not yet obtained
Fines levied and/or punishment:	Ongoing investigation. Master has not been charged with a crime and it is unclear what the Department of Justice (DoJ) hopes to gain by holding him, according to Michael Chalos. There are no whistleblowers or accounts of actual pollution in this case. The government released two crewmen after questioning and they have been repatriated to Bulgaria and Lithuania. The Celine was allowed to sail 14 June after Enzian posted a \$500,000 bond.		

Annex ICases where sanctions were taken against the seafarers after a deliberate act or negligence had been admitted or proven in court

1b

<b>Ship name:</b>		NEPTUNE DORADO	
<b>Place of incident (country)</b>		USA	
<b>Date of incident:</b>		2000	
<b>Description of incident:</b> oily water separator circumvented and false entries in oil record book. Master was arrested Owner fined.			
<b>Date of verdict/sentencing</b>		Not yet obtained.	
<b>Detainment</b>	<b>Number and Rank of detained</b>	<b>Duration of detainment</b>	<b>Hotel or prison</b>
As accused	Master	N/A	N/A
As witness	N/A	N/A	N/A
Unknown	N/A	N/A	N/A
Fines levied and/or punishment:	Fine unknown		

2b

<b>Ship name:</b>		MARWA	
<b>Place of incident (country)</b>		Malta	
<b>Date of incident:</b>		2001	
<b>Description of incident:</b> Ship arrested for damaging communication cables. The Captain and one seafarer remained in Malta four months at the request of the authorities. The Captain was held responsible, on behalf of the company, and fined.			
<b>Date of verdict/sentencing</b>		Not yet obtained.	
<b>Detainment</b>	<b>Number and Rank of detained</b>	<b>Duration of detainment</b>	<b>Hotel or prison</b>
As accused			
As witness			
Unknown	Master and one seafarer		
Fines levied and/or punishment:	Fine		

3b

<b>Ship name:</b>		SS Trinity	
<b>Place of incident (country)</b>		USA	
<b>Date of incident:</b>		2001	
<b>Description of incident:</b> Bosun on U.S. flag tank ship <i>SS Trinity</i> pled guilty to violation of Refuse Act, a strict liability crime, for discharging rust scale and oily refuse from cargo tank cleaning operation into Mississippi River. (Sabine Transport. Co. (E.D. La.))			
<b>Date of verdict/sentencing</b>			
<b>Detainment</b>	<b>Number and Rank of detained</b>	<b>Duration of detainment</b>	<b>Hotel or prison</b>
As accused	Dobbyn (Bosun) –		
As witness			
Unknown			
Fines levied and/or punishment:	2 years probation (Refuse Act)		

4b

<b><u>7 Ships:</u></b>		EVER GROUP, EVER GIVEN, EVER DAINTY, EVER REFINE, EVER GLEEFUL, EVER LAUREL, and EVER REWARD	
<b>Place of incident (country)</b>		USA	
<b>Date of incident:</b>		2001	
<b>Description of incident:</b>			
<b>Date of verdict/sentencing</b>		Not yet obtained.	
<b>Detainment</b>	<b>Number and Rank of detained</b>	<b>Duration of detainment</b>	<b>Hotel or prison</b>
As accused	N/A	N/A	N/A
As witness	N/A	N/A	N/A
Unknown	N/A	N/A	N/A
Fines levied and/or punishment:	EVERGREEN has agreed to pay \$25m under a guilty plea in the US to settle a case involving the concealment of illegal discharge of untreated waste oil. The plea bargain agreed on Monday 4 April 2005, includes \$10m to environmental funds.		

5b

<b>Ship name:</b>		FAIR VOYAGER	
<b>Place of incident (country)</b>		USA	
<b>Date of incident:</b>		March 2002	
<b>Description of incident:</b> Fair Voyager dumped 60 tonnes of sludge and 40 tonnes of oil-contaminated bilge water into the sea over a seven-month period in 2001. Crew members allegedly connected a bypass hose to dump the waste into the sea and the ship's engineer is accused of falsifying the oil record book.			
<b>Date of verdict/sentencing</b>		Not yet obtained.	
<b>Detainment</b>	<b>Number and Rank of detained</b>	<b>Duration of detainment</b>	<b>Hotel or prison</b>
As accused			
As witness			
Unknown	Master and 3 crew members	N/A	N/A
Fines levied and/or punishment:	Shipowner Fair Voyager Maritime and manager Fairdeal Group were fined \$1.05m and ordered to donate \$450,000 the National Fish & Wildlife Foundation.		

6b

<b>Ship name:</b>		Car Carrier M/V Cygnus	
<b>Place of incident (country)</b>		USA	
<b>Date of incident:</b>		2002	
<b>Description of incident:</b> Chief Engineer and 1 <sup>st</sup> Asst. Engineer pled guilty of Bypassing OWS and entering false statements in Oil Record Book after bypass hose was discovered during routine Coast Guard boarding. (Company: Fujitrans Corp. (D.Or.))			
<b>Date of verdict/sentencing</b>			
<b>Detainment</b>	<b>Number and Rank of detained</b>	<b>Duration of detainment</b>	<b>Hotel or prison</b>
As accused	Jung (Chief Engineer) –, deportation	3 mos. confinement	Deportation
	Jeong (1 <sup>st</sup> Asst. Engineer) –, deportation	2 yrs probation	Deportation
As witness	n/a	n/a	n/a
Unknown	n/a	n/a	n/a
Fines levied and/or punishment:	Pyeong Gab Jung – False Statement (18 U.S.C. 1001) Duk Jo Jeong – False Statement (18 U.S.C. 1001)		

7b

<b>Ship name:</b>		M/V Rubin Stella	
<b>Place of incident (country)</b>		USA	
<b>Date of incident:</b>		2002	
<b>Description of incident:</b> Chief Engineer pled guilty to knowingly making false entries in ship's Oil Record Book over approx. 1 year period after directing other crew members to discharge oil and oily waste overboard, bypassing the OWS			
<b>Date of verdict/sentencing</b>			
<b>Detainment</b>	<b>Number and Rank of detained</b>	<b>Duration of detainment</b>	<b>Hotel or prison</b>
As accused	Chief Engineer		
As witness			
Unknown			
Fines levied and/or punishment:	12 mos. + 1 day confinement		

8b

<b>Ship name:</b>		M/V Khana and M/V Sohoh,	
<b>Place of incident (country)</b>		USA	
<b>Date of incident:</b>		2002	
<b>Description of incident:</b> Master and Chief Engineer of <i>M/V Khana</i> and Chief Engineer of <i>M/V Sohoh</i> , foreign flag cargo vessels, involved in falsifying Oil Record Books to hide illegal discharges from oily bilges at sea. Also involved in obstructing justice and witness tampering by telling crew to lie to CG. (Company: Boyang Shipping (D. Alaska))			
<b>Date of verdict/sentencing</b>			
<b>Detainment</b>	<b>Number and Rank of detained</b>	<b>Duration of detainment</b>	<b>Hotel or prison</b>
As accused	Master – False statement, witness tampering, obstructing justice.  Chief Engineer - False statement, witness tampering  Chief Engineer – False statement, witness tampering	n/a	Prison
As witness			
Unknown			
Fines levied and/or punishment:	6-8 months confinement		

9b

<b>Ship name:</b>		ANDREW J BARBERI	
<b>Place of incident (country)</b>		USA	
<b>Date of incident:</b>		15 October 2003	
<b>Description of incident:</b> The Master, who fainted at the helm of the Staten Island ferry "Andrew J. Barberi" on October 15, 2003, because of exhaustion and a combination of prescription drugs he was secretly taking, pleaded guilty to 11 counts of manslaughter.			
<b>Date of verdict/sentencing</b>		Not yet obtained.	
<b>Detainment</b>	<b>Number and Rank of detained</b>	<b>Duration of detainment</b>	<b>Hotel or prison</b>
As accused			
As witness			
Unknown			
Fines levied and/or punishment:	18 months in prison		

10b

<b>Ship name:</b>		ANL INDONESIA	
<b>Place of incident (country)</b>		Singapore	
<b>Date of incident:</b>		2003	
<b>Description of incident:</b> Collision with Singapore naval ship. 4 people died in this casualty.			
<b>Date of verdict/sentencing</b>		Not yet obtained.	
<b>Detainment</b>	<b>Number and Rank of detained</b>	<b>Duration of detainment</b>	<b>Hotel or prison</b>
As accused			
As witness			
Unknown			
Fines levied and/or punishment:	2 crewmembers fined after being found guilty of causing death by navigating negligently. No indications of detainment yet obtained		

11b

<b>Ship name:</b>		M/V Asahi	
<b>Place of incident (country)</b>		USA	
<b>Date of incident:</b>		2003	
<b>Description of incident:</b> Chief Engineer pled guilty to making false statements and obstruction of justice for making false ORB entries			
<b>Date of verdict/sentencing</b>			
<b>Detainment</b>	<b>Number and Rank of detained</b>	<b>Duration of detainment</b>	<b>Hotel or prison</b>
As accused	Chief Engineer		
As witness			
Unknown			
Fines levied and/or punishment:	Chief Engineer – 4 months confinement. False Statement, Obstructing Justice		

12b

<b>Ship name:</b>		Ferry Muskegon Clipper	
<b>Place of incident (country)</b>		USA	
<b>Date of incident:</b>		2003	
<b>Description of incident:</b> Owner convicted of hiring crew to perform renovation en route U.S., and directing them to fill hundreds of plastic garbage bags with asbestos and other renovation debris and discharge them to sea.			
<b>Date of verdict/sentencing</b>			
<b>Detainment</b>	<b>Number and Rank of detained</b>	<b>Duration of detainment</b>	<b>Hotel or prison</b>
As accused	Owner, operator		
As witness			
Unknown			
Fines levied and/or punishment:	24 months confinement (with credit for time served), 3 years supervised release		

13b

<b>Ship name:</b>		M/V Emerald Bulker	
<b>Place of incident (country)</b>		USA	
<b>Date of incident:</b>		2003	
<b>Description of incident:</b> Filipino Chief Engineer pled guilty to knowingly failing to maintain an accurate ORB after bypassing vessel's OWS in violation of the Act to Prevent Pollution from Ships, which implements MARPOL. The Chief Engineer who Sicapero relieved, Perillo, was also charged, but is a fugitive			
<b>Date of verdict/sentencing</b>			
<b>Detainment</b>	<b>Number and Rank of detained</b>	<b>Duration of detainment</b>	<b>Hotel or prison</b>
As accused	Chief Engineer – time served, probation  Chief Engineer - fugitive		
As witness			
Unknown			
Fines levied and/or punishment:	Act to Prevent Pollution from Ships		

14b

<b>Ship name:</b>		M/V Star Eviva	
<b>Place of incident (country)</b>		USA	
<b>Date of incident:</b>		2003	
<b>Description of incident:</b> Master and Chief Engineer charged with negligent discharge of approximately 24,000 gallons of fuel oil during an automated fuel transfer, oil spilled onto deck and into sea about 30 – 50 miles off U.S. coast. The spill killed approximately 100 birds in violation of MBTA, a strict liability crime. The charges state that they also ordered 2 <sup>nd</sup> Engineer to lie to the Coast Guard.			
<b>Date of verdict/sentencing</b>			
<b>Detainment</b>	<b>Number and Rank of detained</b>	<b>Duration of detainment</b>	<b>Hotel or prison</b>
As accused	Master and Chief Engineer		Both Fugitives
As witness			
Unknown			
Fines levied and/or punishment:	Migratory Bird Treaty Act, Clean Water Act, tampering with witnesses, false statements		

15b

<b>Ship name:</b>		KATHRINA	
<b>Place of incident (country)</b>		USA	
<b>Date of incident:</b>		Early September 2004	
<b>Description of incident:</b> 13 Filipino seamen reported their captain and company for alleged criminal behaviour in connection with the vessel's sludge filter. They were all crew on the Maltese-flagged bulker Katerina when it entered Long Beach in early September and was boarded and inspected by the US Coast Guard, who discovered that the vessel's oil sludge filter had been bypassed. The 13 crew members gave full reports to authorities, revealing that they were ordered to dump oil, garbage and raw sewage overboard.			
<b>Date of verdict/sentencing</b>		Not yet obtained.	
<b>Detainment</b>	<b>Number and Rank of detained</b>	<b>Duration of detainment</b>	<b>Hotel or prison</b>
As accused	Captain and Chief Engineer and Second Engineer		
As witness			
Unknown			
Fines levied and/or punishment:	Not yet obtained.		

16b

<b>Ship name:</b>		M/V Spring Drake	
<b>Place of incident (country)</b>		USA	
<b>Date of incident:</b>		2004	
<b>Description of incident:</b> Chief Engineer pled guilty to knowingly failing to accurately record discharges in ship's ORB after bypassing the ship's OWS.			
<b>Date of verdict/sentencing</b>			
<b>Detainment</b>	<b>Number and Rank of detained</b>	<b>Duration of detainment</b>	<b>Hotel or prison</b>
As accused	Chief Engineer	30 days	Confinement
As witness			
Unknown			
Fines levied and/or punishment:	Act to Prevent Pollution from Ships		

17b

<b>Ship name:</b>		M/V Hoegh Minerva	
<b>Place of incident (country)</b>		USA	
<b>Date of incident:</b>		2004	
<b>Description of incident:</b> Engineer pled guilty to falsifying the ORB in violation of the Act to Prevent Pollution from Ships, which implements MARPOL, and to obstructing a Coast Guard investigation by removing bypass pipe and painting of fittings prior to the vessel's entry into a U.S. port.			
<b>Date of verdict/sentencing</b>			
<b>Detainment</b>	<b>Number and Rank of detained</b>	<b>Duration of detainment</b>	<b>Hotel or prison</b>
As accused	2 <sup>nd</sup> Engineer –,	30 days	Confinement
As witness			
Unknown			
Fines levied and/or punishment:	2 yrs. supervised release, deportation to Philippines with prohibition against re-entry to U.S. without permission of INS. (Act to Prevent Pollution from Ships, which implements MARPOL)		

18b

<b>Ship name:</b>		M/T Alkyon	
<b>Place of incident (country)</b>		USA	
<b>Date of incident:</b>		2004	
<b>Description of incident:</b> Chief Engineer pled guilty to making false statements over a period of 9 mos. in Oil Record Book to cover up bypassing of OWS. In addition, the investigation showed he made false statements to the Coast Guard during the investigation and had hidden bypass equipment from investigators. On government appeal of sentence, case to trial court for re-sentencing.			
<b>Date of verdict/sentencing</b>			
<b>Detainment</b>	<b>Number and Rank of detained</b>	<b>Duration of detainment</b>	<b>Hotel or prison</b>
As accused	Chief Engineer	n/a	
As witness			
Unknown			
Fines levied and/or punishment:	Time served in pre-trial detainment (False Statement (18 U.S.C. 1001))		

19b

<b>Ship name:</b>		M/T Guadalupe	
<b>Place of incident (country)</b>		USA	
<b>Date of incident:</b>		2004	
<b>Description of incident:</b> Master and Chief Engineer pled guilty to making false entries in the ship's Oil Record Book and presenting the book to Coast Guard boarding officers to cover up the bypassing of the ship's OWS and incinerator. Further, they admitted to hiding the bypass hoses and flanges before coming into port, and to asking other engineers to lie to the Coast Guard.			
<b>Date of verdict/sentencing</b>			
<b>Detainment</b>	<b>Number and Rank of detained</b>	<b>Duration of detainment</b>	<b>Hotel or prison</b>
As accused	Master – Chief Engineer	n/a	n/a
As witness			
Unknown			
Fines levied and/or punishment:	Sentence unknown		

20b

<b>Ship name:</b>		Evening Tide	
<b>Place of incident (country)</b>		USA	
<b>Date of incident:</b>		2005	
<b>Description of incident:</b> Mate operating the U.S. flag towing vessel <i>Evening Tide</i> , which was towing the <i>T/B B-120</i> when it grounded in Buzzard's Bay and spilled 98,000 of oil, pled guilty to one count of violating the Migratory Bird Treaty Act and one count of violating the Clean Water Act due to negligence. Hill was at the helm of the <i>T/V Evening Tide</i> when he left the wheelhouse for an extended period and allowed the boat to drift off course at the beginning of the Buzzards Bay Channel. The tank barge ran aground on rocks outside the channel, causing one of the barge's cargo tanks to rupture.			
<b>Date of verdict/sentencing</b>			
<b>Detainment</b>	<b>Number and Rank of detained</b>	<b>Duration of detainment</b>	<b>Hotel or prison</b>
As accused	Mate		5 mos. confinement
As witness			
Unknown			
Fines levied and/or punishment:	5 mos. confinement and one year supervised release - Migratory Bird Treaty Act and one count of violating the Clean Water Act due to negligence		

21b

<b>Ship name:</b>		M/V Kent Navigator	
<b>Place of incident (country)</b>		USA	
<b>Date of incident:</b>		2005	
<b>Description of incident:</b> Chief Engineers on were removed from the ship after Coast Guard port state inspectors received an anonymous tip that ship was illegally discharging waste oil and bilges at sea. Coast Guard inspected ship when it arrived in port and found oily residue in O/B discharge valve and that OWS was inoperable. The two pled guilty to violation of the Act to Prevent Pollution from Ships, which implements MARPOL, for ordering bypassing of OWS and falsification of ORB.			
<b>Date of verdict/sentencing</b>			
<b>Detainment</b>	<b>Number and Rank of detained</b>	<b>Duration of detainment</b>	<b>Hotel or prison</b>
As accused	2 Chief Engineers		They had been living in temporary residence in Portland for over 6 months while awaiting sentencing
As witness			
Unknown			
Fines levied and/or punishment:	\$3000 fine, 2 years probation (Act to Prevent Pollution from Ships)		

22b

<b>Ship name:</b>		SS Juneau	
<b>Place of incident (country)</b>		USA	
<b>Date of incident:</b>		2005	
<b>Description of incident:</b> The Chairman of Sabine Transportation Co., a U.S. flag ship operator, was convicted of discharging at sea 440 metric tons of grain cargo that had been contaminated with diesel fuel from the U.S.-flag vessel <i>SS Juneau</i> . The false statements related to statements made to the Coast Guard regarding plans to dispose of the grain and post-discharge statements to the Department of Agriculture, the cargo owner, regarding the means of disposal. The conspiracy charge related to a shore-based conspiracy to violate the APPS by the discharge and to cover up the discharge.			
<b>Date of verdict/sentencing</b>			
<b>Detainment</b>	<b>Number and Rank of detained</b>	<b>Duration of detainment</b>	<b>Hotel or prison</b>
As accused	Stickle (Chairman) – 33 months confinement, \$60,000 fine  Michael D. Reeve (President) – pled guilty, sentence unknown  Michael Krider (Port Captain) – pled guilty, sentence unknown  George McKay (Master) – pled guilty, sentence unknown  Phillip Hitchens (Chief Mate) – pled guilty, sentence unknown		
As witness			
Unknown			
Fines levied and/or punishment:	(Act to Prevent Pollution from Ships, Conspiracy, False Statements (18 U.S.C. 1001))		

23b

<b>Ship name:</b>		M/V Friendship	
<b>Place of incident (country)</b>		USA	
<b>Date of incident:</b>		2005	
<b>Description of incident:</b> Chief Engineer and Fitter on the Greek flag cargo ship <i>M/V Friendship</i> pled guilty to making false statements to the Coast Guard and obstructing justice by ordering other crewmembers to make false statements to the Coast Guard. During a routine port state inspection, the Coast Guard had discovered evidence of bypassing of the ship's OWS through use of a bypass hose that was hidden by the crew. The ship's ORB was also falsified to cover up the bypassing.			
<b>Date of verdict/sentencing</b>			
<b>Detainment</b>	<b>Number and Rank of detained</b>	<b>Duration of detainment</b>	<b>Hotel or prison</b>
As accused	Chief Engineer Fitter		
As witness			
Unknown			
Fines levied and/or punishment:	Chief Engineer – 30 days confinement, 3 years probation and Fitter – 30 days confinement, 3 years probation (False Statements, Obstructing Justice)		

24b

<b>Ship name:</b>		MAGELLAN PHEONIX	
<b>Place of incident (country)</b>		USA	
<b>Date of incident:</b>		March 2005	
<b>Description of incident:</b> Two offences committed: Discharging oil waste without using ship's oil water separator and falsifying ship's records – oil record book			
<b>Date of verdict/sentencing</b>		Not yet obtained.	
<b>Detainment</b>	<b>Number and Rank of detained</b>	<b>Duration of detainment</b>	<b>Hotel or prison</b>
As accused			
As witness			
Unknown			
Fines levied and/or punishment:	1 year and 1 day in prison. 3 years probation – 10 million fine to owners		

25b

<b>Ship name:</b>		JANE MAERSK	
<b>Place of incident (country)</b>		USA	
<b>Date of incident:</b>		May 2005	
<b>Description of incident:</b> False entry to oil-record book			
<b>Date of verdict/sentencing</b>		Not yet obtained.	
<b>Detainment</b>	<b>Number and Rank of detained</b>	<b>Duration of detainment</b>	<b>Hotel or prison</b>
As accused			
As witness			
Unknown			
Fines levied and/or punishment:	Engineer was sentenced to 4 months community service and maximum fine was imposed and the Owner was ordered to implement a three-year fleet-wide environmental compliance programme sanctioned by federal officials.		

26b

<b>Ship name:</b>		MSC ELENA	
<b>Place of incident (country)</b>		USA	
<b>Date of incident:</b>		May 2005	
<b>Description of incident:</b> The captain and eight crew of the Panamanian-flagged container vessel MSC Elena were told not to leave the city and observe a nightly curfew until the matter is settled. The US Coast Guard searched the vessel when it arrived in Boston on 17 May and were reported to have discovered evidence that the ship had been pumping bilge waste and oil overboard for six months.			
<b>Date of verdict/sentencing</b>		Not yet obtained.	
<b>Detainment</b>	<b>Number and Rank of detained</b>	<b>Duration of detainment</b>	<b>Hotel or prison</b>
As accused			
As witness	Master and eight crew		
Unknown			
Fines levied and/or punishment:	Not yet obtained.		

27b

<b>Ship name:</b>		SAMINA EXPRESS	
<b>Place of incident (country)</b>		Greece	
<b>Date of incident:</b>		November 2005	
<b>Description of incident:</b> Greek ferry sank after grounding – 80 fatalities			
<b>Date of verdict/sentencing</b>		Not yet obtained.	
<b>Detainment</b>	<b>Number and Rank of detained</b>	<b>Duration of detainment</b>	<b>Hotel or prison</b>
As accused	Master and chief mate		
As witness			
Unknown			
Fines levied and/or punishment:	Capt Yiannakis and his second in command face felony charges including multiple manslaughter charges as well as causing a shipwreck. The Lloyd's List reported on 27 February that Capt. Yiannakis was sentenced to 16 years imprisonment. His second in command was sentenced to 19 years imprisonment.		

28b

<b>Ship name:</b>		SUN NEW	
<b>Place of incident (country)</b>		USA	
<b>Date of incident:</b>		December 2005	
<b>Description of incident:</b> The bulk Carrier called in Camden on December 31 2005, and a few Filipino seafarers lodged a complaint with local authorities alleging, among other things, illegal discharge of oily sludge overboard on the high seas several weeks previously. The Coast Guard investigated, and found primary grounds to hold the chief and second engineers as suspects. Four Filipino crewmembers of the 1985-built, 31,253 dwt Sun New are also under detention in the Philadelphia area as material witnesses, Lloyd's List understands. Coast Guard sources said the owner of the vessel, Seoul-based Sun Ace, was required to post a surety bond in order to get the ship on its way out of Camden harbour, where the investigation was launched. Cdr Kyle McAvoy, chief of the prevention department of the US Coast Guard's Sector Delaware Bay, told Lloyd's List the agency could not comment officially until the investigation was on, a process that could run into weeks. <i>NOTE: Alleged criminal intent.</i>			
<b>Date of verdict/sentencing</b>		Not yet obtained.	
<b>Detainment</b>	<b>Number and Rank of detained</b>	<b>Duration of detainment</b>	<b>Hotel or prison</b>
As accused			
As witness	Chief Eng., Second Eng., & 4 ratings		
Unknown			
Fines levied and/or punishment:	Not yet obtained.		

29b

<b>Ship name:</b>		CHIARA DP	
<b>Place of incident (country)</b>		France	
<b>Date of incident:</b>		2005	
<b>Description of incident:</b> The vessel was spotted with a 22 km pollution slick in its wake by the crew of a French customs service aircraft. Note: unclear whether or not there was intent.			
<b>Date of verdict/sentencing</b>		Not yet obtained.	
<b>Detainment</b>	<b>Number and Rank of detained</b>	<b>Duration of detainment</b>	<b>Hotel or prison</b>
As accused			
As witness			
Unknown			
Fines levied and/or punishment:	The court fined the master of an Italian chemical carrier € 300,000. Chiara Shipping of Monaco, owner of the 2001-built, 16,000 dwt Chiara DP, was ordered to pay 90% of the fine		

**Annex II - Other cases**

1c

<b>Ship name:</b>		EVERTON	
<b>Place of incident (country)</b>		Oman	
<b>Date of incident:</b>		22 March 2004	
<b>Description of incident:</b> The laden crude oil tanker <i>Everton</i> was abandoned and left ablaze after a collision with a fishing vessel off the coast of Oman. The Maltese-flag single-hull Aframax collided at around 0800 hrs local time 50 nautical miles south of Oman with an unidentified fishing vessel that was merely described by the flag-state authority as “large”. Fire swept across the forward section of the tanker, which was carrying 80,000 tonnes of crude oil from Kharg Island in the Arabian Gulf to Egypt. A quantity of oil spilled on the port side of the vessel after the collision and ignited.			
<b>Date of verdict/sentencing</b>		Not yet obtained.	
<b>Detainment</b>	<b>Number and Rank of detained</b>	<b>Duration of detainment</b>	<b>Hotel or prison</b>
As accused	None		
As witness	None		
Unknown	None		
Fines levied and/or punishment:	None		

2c

<b>Ship name:</b>		ATHOS I	
<b>Place of incident (country)</b>		USA	
<b>Date of incident:</b>		2004	
<b>Description of incident:</b> Ship struck uncharted submerged objects - pollution on Delaware River. No indication of crew detainment or fines.			
<b>Date of verdict/sentencing</b>		None	
<b>Detainment</b>	<b>Number and Rank of detained</b>	<b>Duration of detainment</b>	<b>Hotel or prison</b>
As accused	None		
As witness	None		
Unknown	None		
Fines levied and/or punishment:	None		

3c

<b>Ship name:</b>		BOW MARINER	
<b>Place of incident (country)</b>		USA	
<b>Date of incident:</b>		2004	
<b>Description of incident:</b> The ship exploded and sank severe loss of life and pollution. Being outside territorial waters, the US authorities have not brought charges against the ship/company/crew, however, the investigated the accident and have published their findings at the US Coast Guard website.			
<b>Date of verdict/sentencing</b>		None.	
<b>Detainment</b>	<b>Number and Rank of detained</b>	<b>Duration of detainment</b>	<b>Hotel or prison</b>
As accused			
As witness			
Unknown			
Fines levied and/or punishment:			

4c

<b>Ship name:</b>		KAPITANOS KAMINSKAS	
<b>Place of incident (country)</b>		France	
<b>Date of incident:</b>		October 2004	
<b>Description of incident:</b> The ship was spotted from the air at the head of a 7.5 km slick of discoloured water off the western tip of Brittany in October, 2004.			
<b>Date of verdict/sentencing</b>		Not yet obtained.	
<b>Detainment</b>	<b>Number and Rank of detained</b>	<b>Duration of detainment</b>	<b>Hotel or prison</b>
As accused			
As witness			
Unknown			
Fines levied and/or punishment:	Not yet obtained.		

5c

<b>Ship name:</b>		ENRICO IEVOLI	
<b>Place of incident (country)</b>		France	
<b>Date of incident:</b>		March 2005	
<b>Description of incident:</b> Italian chemical tanker accused of polluting waters off the French coast in 2005. The vessel was seen by a French Navy aircraft 415 n-miles off La Rochelle with a 26km-long oil slick in its wake.			
<b>Date of verdict/sentencing</b>		Not yet obtained.	
<b>Detainment</b>	<b>Number and Rank of detained</b>	<b>Duration of detainment</b>	<b>Hotel or prison</b>
As accused			
As witness			
Unknown			
Fines levied and/or punishment:	Not yet obtained.		

6c

<b>Ship name:</b>		SICHEM PANDORA	
<b>Place of incident (country)</b>		France	
<b>Date of incident:</b>		January 2006	
<b>Description of incident:</b> It is still to be decided by the Maltese authorities whether the Sichem Pandora bears any responsibility for the sinking of the French fishing vessel Klein Familie with the loss of five of its six crew members.			
<b>Date of verdict/sentencing</b>		Not yet obtained.	
<b>Detainment</b>	<b>Number and Rank of detained</b>	<b>Duration of detainment</b>	<b>Hotel or prison</b>
As accused			
As witness			
Unknown			
Fines levied and/or punishment:	Not yet obtained.		

The EVERTON and the ATHOS I were both involved in serious pollution incidents in Oman and USA respectively. No seafarers were detained in either of these cases. These two cases are similar to the cases referred to in the study in which there was a detainment but no criminal behaviour, and they have therefore been included in the study to illustrate that authorities do not always detain crew after pollution accidents even though the incidents were serious.

### Annex III - International Conventions

#### The International Convention for the Prevention of Pollution from Ships, MARPOL's Annex I:

The convention text itself does not directly contain a test of liability, however, Masters can be exonerated from liability under certain circumstances according to MARPOL's Annex I Regulation 11(b)"... the discharge into the sea of oil or oily mixture resulting from damage to a ship or its equipment:

- (i) provided that all reasonable precautions have been taken after the occurrence of the damage or discovery of the discharge for the purpose of preventing or minimising the discharge; and
- (ii) except if the owner or the master acted either with **intent** to cause damage, or **recklessly** and with knowledge that damage would probably result;"

The same exemptions apply to accidental discharge of noxious liquid substances please refer to MARPOL Annex II, regulation 6(b). it should be kept in mind that MARPOL violations may be punishable under national law.

#### United Nations Convention on the Law of the Sea – UNCLOS, 1982

##### *Article 73 - Enforcement of laws and regulations of the coastal State*

1. The coastal State may, in the exercise of its sovereign rights to explore, exploit, conserve and manage the living resources in the exclusive economic zone, take such measures, including boarding, inspection, arrest and judicial proceedings, as may be necessary to ensure compliance with the laws and regulations adopted by it in conformity with this Convention.
2. Arrested vessels and their crews shall be promptly released upon the posting of reasonable bond or other security.
3. Coastal State penalties for violations of fisheries laws and regulations in the exclusive economic zone may not include imprisonment, in the absence of agreements to the contrary by the States concerned, or any other form of corporal punishment.
4. In cases of arrest or detention of foreign vessels the coastal State shall promptly notify the flag State, through appropriate channels, of the action taken and of any penalties subsequently imposed.

##### *Article 97 -Penal jurisdiction in matters of collision or any other incident of navigation*

1. In the event of a collision or any other incident of navigation concerning a ship on the high seas, involving the penal or disciplinary responsibility of the master or of any other person in the service of the ship, no penal or disciplinary proceedings may be instituted against such person except before the judicial or administrative authorities either of the flag State or of the State of which such person is a national.
2. In disciplinary matters, the State which has issued a master's certificate or a certificate of competence or licence shall alone be competent, after due legal process, to pronounce the withdrawal of such certificates, even if the holder is not a national of the State which issued them.
3. No arrest or detention of the ship, even as a measure of investigation, shall be ordered by any authorities other than those of the flag State.
- 4.

##### *Article 194 -Measures to prevent, reduce and control pollution of the marine environment*

1. States shall take, individually or jointly as appropriate, all measures consistent with this Convention that are necessary to prevent, reduce and control pollution of the marine environment from any source, using for this purpose the best practicable means at their disposal and in

accordance with their capabilities, and they shall endeavour to harmonize their policies in this connection.

.....

3. The measures taken pursuant to this Part shall deal with all sources of pollution of the marine environment. These measures shall include, inter alia, those designed to minimize to the fullest possible extent:

.....

(b) pollution from vessels, in particular measures for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea, preventing intentional and unintentional discharges, and regulating the design, construction, equipment, operation and manning of vessels;

4. In taking measures to prevent, reduce or control pollution of the marine environment, States shall refrain from unjustifiable interference with activities carried out by other States in the exercise of their rights and in pursuance of their duties in conformity with this Convention.

#### *Article 211- Pollution from vessels*

.....2. States shall adopt laws and regulations for the prevention, reduction and control of pollution of the marine environment from vessels flying their flag or of their registry. Such laws and regulations shall at least have the same effect as that of generally accepted international rules and standards established through the competent international organization or general diplomatic conference.

3. States which establish particular requirements for the prevention, reduction and control of pollution of the marine environment as a condition for the entry of foreign vessels into their ports or internal waters or for a call at their off-shore terminals shall give due publicity to such requirements and shall communicate them to the competent international organization. Whenever such requirements are established in identical form by two or more coastal States in an endeavour to harmonize policy, the communication shall indicate which States are participating in such cooperative arrangements. Every State shall require the master of a vessel flying its flag or of its registry, when navigating within the territorial sea of a State participating in such cooperative arrangements, to furnish, upon the request of that State, information as to whether it is proceeding to a State of the same region participating in such cooperative arrangements and, if so, to indicate whether it complies with the port entry requirements of that State. This article is without prejudice to the continued exercise by a vessel of its right of innocent passage or to the application of article 25, paragraph 2.

4. *Coastal States may, in the exercise of their sovereignty within their territorial sea, adopt laws and regulations for the prevention, reduction and control of marine pollution from foreign vessels, including vessels exercising the right of innocent passage. Such laws and regulations shall, in accordance with Part II, section 3, not hamper innocent passage of foreign vessels.*

5. Coastal States, for the purpose of enforcement as provided for in section 6, may in respect of their exclusive economic zones adopt laws and regulations for the prevention, reduction and control of pollution from vessels conforming to and giving effect to generally accepted international rules and standards established through the competent international organization or general diplomatic conference.....

#### *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.

*Article 292 - Prompt release of vessels and crews*

1. Where the authorities of a State Party have detained a vessel flying the flag of another State Party and it is alleged that the detaining State has not complied with the provisions of this Convention for the prompt release of the vessel or its crew upon the posting of a reasonable bond or other financial security, the question of release from detention may be submitted to any court or tribunal agreed upon by the parties or, failing such agreement within 10 days from the time of detention, to a court or tribunal accepted by the detaining State under article 287 or to the International Tribunal for the Law of the Sea, unless the parties otherwise agree.

2. The application for release may be made only by or on behalf of the flag State of the vessel.

3. The court or tribunal shall deal without delay with the application for release and shall deal only with the question of release, without prejudice to the merits of any case before the appropriate domestic forum against the vessel, its owner or its crew. The authorities of the detaining State remain competent to release the vessel or its crew at any time.

4. Upon the posting of the bond or other financial security determined by the court or tribunal, the authorities of the detaining State shall comply promptly with the decision of the court or tribunal concerning the release of the vessel or its crew.

The Universal Declaration of Human Rights, 1948

*Article 7* - All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

*Article 9* - No one shall be subjected to arbitrary arrest, detention or exile

*Article 10* - Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

*Article 11* – (1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

**Annex IV**

**IMO Resolution A.987(24)**

**Adopted on 1 December 2005**

**GUIDELINES ON FAIR TREATMENT OF SEAFARERS  
IN THE EVENT OF A MARITIME ACCIDENT**

THE ASSEMBLY OF THE INTERNATIONAL MARITIME ORGANIZATION AND THE GOVERNING BODY OF THE INTERNATIONAL LABOUR ORGANIZATION,

BEING AWARE of a number of recent incidents in which seafarers on ships, which have been involved in maritime accidents, have been detained for prolonged periods,

SERIOUSLY CONCERNED with the need to ensure the fair treatment of seafarers in view of the growing use of criminal proceedings against seafarers after a maritime accident,

AWARE FURTHER that seafarers may not be familiar with the law and processes of a port or coastal State and the impact those national laws may have on them,

CONVINCED that seafarers should not be held hostage pending the resolution of a financial dispute,

CONCERNED that, in some cases, the grounds for such detentions have not been clear to the seafarers being detained or to the international maritime community,

ALSO CONCERNED that in some cases the detained seafarers have been subject to conditions in which their basic human rights appear not to have been fully respected,

FURTHER CONCERNED that these cases have an adverse impact on the morale of seafarers, on the attraction and recruitment of young people into the seafaring profession, and on retention of current seafarers in the profession,

RECALLING the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR),

RECALLING ALSO the ILO Declaration on Fundamental Principles and Rights at Work, 1998 and the generally accepted principles of international human rights applicable to all workers,

RECALLING FURTHER the United Nations Convention on the Law of the Sea, 1982, in particular article 292 thereof concerning the prompt release of vessels and crews, and article 230 thereof on monetary penalties and the observance of recognized rights of the accused,

NOTING that MARPOL 73/78 provides, in Annex I, Regulation 11 and in Annex II, Regulation 6, that certain discharges are not violations of MARPOL, specifically those resulting from damage to a ship or its equipment, provided that all reasonable precautions have been taken after the occurrence of the damage or discovery of the discharge for the purpose of preventing or minimizing the discharge; and except if the owner or the master acted either with intent to cause damage, or recklessly and with knowledge that damage would probably result,

NOTING ALSO the relevant international labour standards applicable to repatriation of seafarers, in particular, the ILO Convention on the Repatriation of Seafarers, Revised 1987 (No.166),

NOTING FURTHER the IMO Code for the Investigation of Maritime Casualties and Incidents (resolution A.849(20) as amended by resolution A.884(21)),

RECOGNIZING the established rights of States to prosecute or extradite in accordance with international law those accused of criminal behaviour,

RECOGNIZING FURTHER that States should conduct investigations into maritime accidents,

RECOGNIZING ALSO that the issue of fair treatment of seafarers is the direct responsibility of the port or coastal States, flag States, the State of the nationality of the seafarer, shipowners and seafarers,

CONVINCED that recommendatory guidelines are an appropriate means of establishing a framework of legal certainty and consistent good practice to ensure that, in connection with maritime accidents, seafarers are fairly treated and their rights are not violated,

CONSIDERING that, given the global nature of the shipping industry, seafarers need special protection,

FURTHER CONVINCED that the protection of the rights of seafarers through the application of the guidelines referred to above is necessary to avoid the financial, physical and emotional burden which prolonged detention inflicts on seafarers and their families,

CONSIDERS that the adoption of guidelines, which will facilitate the fair treatment of seafarers in the event of a maritime accident, should be developed as a matter of urgency,

HAVING CONSIDERED the recommendations made by the Legal Committee at its ninetieth session, as endorsed by the ILO Governing Body at its 292<sup>nd</sup> session,

1. URGE all States to respect the basic human rights of seafarers involved in maritime accidents;
2. URGE ALSO all States expeditiously to investigate maritime accidents to avoid any unfair treatment of seafarers;

3. URGE FURTHER all States to adopt procedures to allow the prompt repatriation or re-embarkation of seafarers following maritime accidents;
  4. INVITE Member Governments and non-governmental organizations in consultative or observer status in IMO or ILO, as appropriate, to record instances of unfair treatment of seafarers in the event of maritime accidents and to provide data to IMO or ILO whenever requested;
  5. AGREE to adopt guidelines as a matter of priority and to this end request the Joint IMO/ILO *Ad Hoc* Expert Working Group on Fair Treatment of Seafarers to finalize its work expeditiously;
  6. AUTHORIZE the IMO Legal Committee and the ILO Governing Body to promulgate, once finalized, the said guidelines by appropriate means and to report to the twenty-fifth regular session of the IMO Assembly and to the 295<sup>th</sup> session of the ILO Governing Body, accordingly;
  7. REQUEST the IMO Legal Committee and the ILO Governing Body to keep the problem of unfair treatment of seafarers in the event of maritime accidents under review and to assess periodically the scale of the problem;
  8. REQUEST Member Governments to bring this resolution to the attention of shipowners and seafarers and their respective organizations as well as any Government officials who may be involved in decisions and procedures affecting the treatment of seafarers involved in maritime accidents.
-

**Annex V - US Regulations from the Michael Chalos article:  
Alert To All Ship Owners, Managers, Operators, Officers & Crew (2nd Rev 02/04)**

**A. The Act to Prevent Pollution from Ships (APPS)**

The Act to Prevent Pollution from Ships, 33 U.S.C. §§ 1901-1911, adopts as U.S. law the provisions of the International Convention for the Prevention of Pollution from Ships (“MARPOL”). Various administration regulations have been promulgated by the Coast Guard to enforce the provisions of MARPOL and the APPS. See 33 C.F.R. pts. 151 and 155.

Under 33 U.S.C. § 1908(a), it is a class D felony to knowingly violate the provisions of MARPOL. A class D felony is punishable by up to 10 years imprisonment, and a fine of up to \$250,000 for an individual, and \$500,000 for a corporation, for each violation. 33 U.S.C. § 1809(a); 18 U.S.C. § 3559(a)(4); 18 U.S.C. § 3571 (b)(4); 18 U.S.C. § 3571(c)(3). A vessel violating a provision of MARPOL may be arrested and sold to satisfy any fine or penalty under the Act 33 U.S.C. § 1908(d). There is also a civil fine provision in this regulation that can be invoked in addition to the criminal fines mentioned above, 33 U.S.C. § 1908 (b). Under this section, if it is found that a party has violated the Marpol protocol, a civil fine of \$25,000 for each violation can be assessed. In addition, if it is found that a vessel owner and/or operator/manager has presented a false statement or writing to the authorities, directly or vicariously through the crewmembers on the vessel, such owner and/or operator manager can be fined an additional \$5,000 for each such false entry. Each day that the above-mentioned violations continue constitutes a separate violation for which the fines can be assessed.

The United States Coast Guard has recently been requesting security as provided for under APPS for alleged MARPOL violations in amounts ranging from \$500,000 for each alleged criminal violation and \$250,000 for each alleged civil violation. In some recent prosecutions the Coast guard has demanded, and obtained, security in the amount of \$2.5 million. In many instances, the Coast Guard has demanded that the vessel owner and/or operator provide a corporate surety bond or cash for the security requested, rather than the customary Letter of Undertaking.

**B. Security for Release of Vessels Under the Act to Prevent Pollution from Ships (APPS)**

In addition to the security mentioned above, under 33 U.S.C. § 1908(e), the United States may revoke the U.S. Customs clearance of a vessel and detain it where reasonable cause exists to believe that the ship, its owner, operator or person in charge may be subject to a [criminal] fine or civil penalty for a MARPOL violation under the APPS.

**C. The Clean Water Act**

The Clean Water Act (CWA) 33 U.S.C. § 1251, et seq. prohibits the discharge of any pollutant by any person into navigable waters of the United States, 33 U.S.C. § 1311(a). A “knowing” violation of the Act is a felony. A “negligent” violation is a misdemeanor. The Act also prohibits the discharge of oil or hazardous substances into the navigable waters of the United States, or into the waters of the US “contiguous zone” (200 nautical miles). ..in such quantities as may be deemed to be harmful. 33 U.S.C. § 1321(b)(3). Failure to report a discharge is a felony punishable by imprisonment of up to five years. 33 U.S.C. § 1321 (b)(5). The Clean Water Act also provides that the term “person” includes a “responsible corporate officer.” 33 U.S.C. § 1319 (c)(6), (see, discussion of Responsible Corporate Officer, below at paragraph 6).

**D. The Rivers and Harbors Act**

Under section 407 of the Rivers and Harbors Act of 1899, 33 U.S.C. § 401, et seq., any discharge or refuse of any kind from a vessel into navigable waters of the United States is prohibited. A violation of the Act is a misdemeanor. 33 U.S.C. § 411. The courts have taken a broad view of what constitutes “refuse” under the Act, and the Act has been extended to a discharge of oil or petroleum. Violation of the Act is a strict liability offense, which does not require proof of either intent or negligence. Accordingly, a person can be convicted of a misdemeanor violation under the Act based solely upon proof that the person placed a banned substance into navigable waters of the United States.

**E. The False Statements Act**

Under 18 U.S.C. § 1001, providing a false statement to the U.S. Government is illegal. To sustain a conviction for a violation of the Act, the Government must show: (1) that a statement or concealment was made; (2) the information was false; (3) the information was material; (4) the statement or concealment was made “knowingly and willfully;” and (5) the statement or concealment falls within the executive, legislative or judicial branch jurisdiction.

Falsity through concealment is found to exist where disclosure of the concealed information is required by a statute, government regulation, or form. Also, a false statement about, or concealment of any prohibited discharge satisfies both the Act to Prevent Pollution from Ships or the Clean Water Act, since both impose the duty to report. Likewise, a false entry in a vessel’s oil record book has been the grounds for numerous felony indictments.

**F. Sarbanes-Oxley Act of 2002 (Obstruction of Justice Section)**

Prosecutors in the United States have recently commenced utilizing the Sarbanes-Oxley Act of 2002, 18 U.S. C. § 1519 (“Destruction, alteration, or falsification of records in Federal investigations and bankruptcy”). This is a powerful new law enforcement tool that exposes a wrongdoer to a prison term of up to 20 years. The threat of charging an engineering officer under this section, rather than 18 U.S.C. § 1001 (the False Records Act) which has a lower potential jail time provision, is generally for the purpose of frightening such individual into confessing that the alleged OWS by-passing was in fact done, and, preferably, with the knowledge and consent of the vessel owner and/or operator.

### **G. Responsible Corporate Officer Doctrine**

Under the “Responsible Corporate Officer Doctrine,” criminal liability for violations of environmental laws can be imposed on corporate managers or officers who were in a position to know about and prevent a violation, even if they did not actually commit the alleged crime. A person can be held liable as a responsible corporate officer based upon the persons’ ability or authority to influence the corporate conduct that constituted the violation. In the past, the United States has used this doctrine to convict high-level officers of corporations, including presidents of corporations, for violations of environmental laws committed by lower-level employees.

Generally, there are three requirements that must be satisfied to impose liability under the doctrine. First, the individual must be in a position of responsibility, which allows the person to influence corporate policies or activities. Second, the person, by reason of his corporation position, could have prevented or corrected actions that constituted the violation. Third, the individual’s actions or omissions must have facilitated the violation.

The Responsible Corporate Officer Doctrine has been applied in the context of violation of environmental laws. There is certainly a potential for individual criminal exposure for violations by corporate officials for violations of which they have knowledge and the authority to prevent. Knowledge of the facts can be inferred in many cases, requiring only that the government establish that the person had the authority and capacity to prevent the violation, and failed to do so.

### **H. Perjury/Providing False Information to Government Representatives**

Criminal laws of the United States provide for severe penalties for providing false information to a government representative, and similarly, providing false testimony under oath to a Grand Jury. Similarly, influencing or attempting to influence the testimony of another, or destruction or alteration of evidence are viewed under United States law as extremely serious, and would result in extremely serious criminal consequences to any individual crewman or others involved in such activities.

### **I. Witness Tampering**

U.S. authorities vigorously investigate and prosecute individuals and corporations suspected of tampering with witnesses in connection with an on-going investigation of pollution and/or illegal discharge incidents. Under 18 USC § 1512, anyone who knowingly uses intimidation or physical force, threatens, or corruptly persuades another person, or attempts to do so, or engages in misleading conduct toward another person with the intent to hinder, delay or prevent the communications to a law enforcement officer or a judge of the United States of information relating to the commission, or the possible commission, of a federal offense, shall be fined or imprisoned up to ten (10) years, or both.

### **J. Conspiracy**

If two or more persons conspire either to commit an offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, pursuant to 18 USC § 371 each shall be fined or imprisoned up to five (5) years or both.

## **Annex VI – European Legislation**

### **A. - ECSA overview of Member States' laws on criminal sanctions for ship-source pollution**

ECSA members were requested to provide the ECSA Secretariat with information on their national legislation in respect of criminal sanctions for ship-source pollution. The summaries below are based on the information submitted.

#### *Belgium*

Dumping of waste is sanctioned with fines and imprisonment up to 2 year for natural persons and fines for legal persons. These sanctions are multiplied by 2 if dumping is done by night. The sanctions apply to all flags if the dumping occurs in the Territorial Sea or EEZ and to Belgian registered ships only if it occurs in the high sea.

Pollution caused by sinking/stranding is sanctioned with fines and imprisonment up to 1 year for the liable shipowner or operator. They apply to all flags.

Operational discharges (i.e. MARPOL infringements) are sanctioned with detention/guaranty, which may be imposed on the liable shipowner, charterer, master or officers. The sanctions apply to all flags if the discharges occur in the Territorial Sea and EEZ and to Belgian flagged vessels only if such discharges occur in the high sea.

The applicable criminal sanctions apply on the basis of a fault liability.

No difference is made according to the type of vessels.

#### *Denmark*

MARPOL infringements (i.e. where there is intent to cause pollution or pollution caused by negligence) are sanctioned with fines or imprisonment up to two years. These sanctions are imposed on any liable natural persons (e.g. a seafarer or a director/an employee in the shipping company) and on legal persons (fines).

The applicable sanctions do not differ according to the sea area where the ship-source pollution occurs but they take into account the relevant UNCLOS provisions (i.e. it is not possible to impose imprisonment for violations committed by foreign flags on the high sea). The relevant sanctions do not differ according to the type of vessel.

In incur criminal liability, both subjective requirements – either ordinary negligence for fines or intent/gross negligence for imprisonment – as well as objective conditions – like causation and proximity – have to be fulfilled. Gross negligence, however, is not defined.

#### *Finland*

A legislation imposing criminal sanctions on ship-source pollution is currently being discussed. This legislation would – reportedly – penalize MARPOL infringements that would occur in the Territorial Sea and EEZ (still not in place). For the time being, only fines have been discussed as a relevant sanction.

The applicable criminal sanctions would be imposed on the master and shipowner on the basis of gross negligence and would not differentiate according to the type of vessels.

*France*

The recently adopted Perben Law imposes severe penal sanctions in case of marine pollution, which is due to both voluntarily and involuntarily discharges.

The applicable sanctions are categorised according to their nature (i.e. voluntarily and involuntarily discharges) and according to their ‘gravity’ (in case of involuntarily discharges), i.e.

- Voluntary discharges are sanctioned with imprisonment up to 10 years and a fine of EUR 1 million. The fine, however, can be increased up to the equivalent of the value of the ship or up to 4 times the value of the cargo onboard.
- Involuntary discharges are sanctioned according to their gravity, i.e.
  - 2 years imprisonment and a fine of € 200.000 in case of carelessness or negligence
  - 5 years imprisonment and a fine of € 500.000 in case of either intentional breach of safety duties/legally determined cautious obligations or irreversible environmental damage. This fine, however, can be increased up to the equivalent of the value of the ship or up to 2 times the value of the cargo onboard
  - 7 years imprisonment and a fine of € 700.000 in case of both intentional breach of safety duties/legally determined cautious obligations and irreversible environmental damage. This fine, however, can be increased up to the equivalent of the value of the ship or up to 3 times the value of the cargo onboard

The applicable sanctions may be imposed on captains as well as on the legal representatives of the company operating the polluting vessel.. They apply to all flags, irrespective of the sea area where the pollution occurs, taking however into account the relevant provisions of UNCLOS.

By determining fines on the basis of the value of the ship or of the value of the cargo onboard, discrimination is made between types of vessels, notably higher sanctions will be imposed on high value-added/cargo vessels with low pollution risks than on low value added/cargo ships with high pollution risks (e.g. Prestige).

*Germany*

MARPOL infringements are sanctioned with fines and imprisonment up to 10 years in the most serious cases. They apply to any perpetrator who pollutes or attempt to pollute on the basis of intent or of negligence (i.e. Captain and the Chief Engineer as well as on a member of the company management or board who gave the instruction to pollute). Accidental discharges are not penalised.

The applicable sanctions do not differ according to sea area where the pollution occurred, taking into account the relevant UNCLOS provisions. They do not differ according to the type of vessel or the value of cargo. However, a criminal court can determine fines taking into account the personal and financial circumstances of the perpetrator, including his assets and other bases.

*Greece*

Fines and imprisonment for at least 3 (intentional pollution) and up to 12 months (damage to persons or property).are imposed on intentional discharge as well as pollution caused by negligence. They are not provided for accidental discharges.

In case of negligence imprisonment applies, unless the liable person contributes in mitigating or averting damage and covers the expenses. Fines are levied against the master, owner, manager or, where appropriate, heads of corporate companies.

Criminal sanctions do not differ according to the sea area where ship-source pollution occurs, taking into account the relevant UNCLOS provisions. However, as no EEZ has been designated by Greece, there is no provision for criminal sanctions for pollution offences in the EEZ.

The applicable sanctions do not differ according to the type of vessels.

*Ireland*

No input received.

*Italy*

Fines and imprisonment up to two years.are imposed on the captain and on the owner or shipowner (insofar the pollution is the consequence of their behaviour) in case of intentional pollution or pollution caused by gross negligence. Sanctions also apply in case of accidental pollution.

The applicable sanctions do not differ according to the sea area where the ship-source pollution occurs or according to the type of vessel.

*Netherlands*

The Dutch legislation dealing with (criminal) sanctions for marine pollution, including ship-source pollution, is currently under revision. It is yet unknown what will be the outcome of this review

*Norway*

Fines and imprisonment up to 15 years in the most serious cases apply in case of intentional pollution or discharges cause by negligence. They are imposed on both natural and legal persons.

The applicable sanctions differ according to the sea area where the pollution occurs, with sanctions only applying to foreign flagged vessels if they are in the territorial sea.

*Portugal*

No input received.

*Spain*

Fines and imprisonment apply to MARPOL infringements and are imposed on the shipowner, owner, captain and/or P&I Club on the basis of gross negligence or intent. Sanctions also apply to accidental discharges.

The sanctions apply to all flags and do not differ according to the sea area where the ship-source pollution occurs. They do not differ according to the type of vessel.

*Sweden*

Fines and imprisonment up to 2 years apply in case of intentional or negligent pollution.

Imprisonment up to 6 years is imposed in case of a severe environmental crime, as defined in the Environment Code. No sanctions are applicable in case of accidental discharges.

Fines may be determined on the basis of the size of the vessel and the seriousness of the pollution.

The relevant sanctions are imposed on shipowner and/or the master. They do not differ according to the sea area where the pollution occurs.

*United Kingdom*

Fines may be imposed on an owner or master for MARPOL infringements only. The basis of liability is intentional pollution. Gross negligence, however, only exists in the context of homicide for certain manslaughter cases and does not – consequently – apply to oil pollution.

Accidental spills are not usually an offence, unless there was a failure to take all reasonable precautions after occurrence of damage/discharge or the owner/master acted with intent to cause damage and recklessly and with the knowledge that damage would probably result).

The applicable sanctions do not differ according to the sea area where the pollution occurs, i.e. territorial sea and pollution control zone (i.e. the UK has not declared an EEZ but has an equivalent pollution control zone), regardless of flag. The sanctions do not differ according to the type of vessels.

B. - The European Union Charter of Fundamental Rights, 2000*Article 47 - Right to an effective remedy and to a fair trial*

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.

*Article 48 - Presumption and right of defence*

1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.
2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.

*Article 49 -Principles of legality and proportionality of criminal offences and penalties*

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than that which was applicable at the time the criminal offence was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.
2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles recognised by the community of nations.
3. The severity of penalties must not be disproportionate to the criminal offence.

**Annex VII - Acknowledgements**

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Chamber of Shipping of America  
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