

**ICS Comments on LEG 99/INF.2**

**Draft guidelines on the collation and preservation of evidence following an allegation of a serious crime having taken place on board a ship or following a report of a missing person from a ship, and pastoral and medical care of victims**

The International Chamber of Shipping (ICS) is supportive of the proposal to improve the reporting of serious crimes at sea, and where appropriate to provide shipowners and the Masters of their vessels with guidance as to the preservation of evidence, and pastoral and medical care of victims. However, ICS believes that the natural home for such guidance is for Flag States to incorporate it into their national regulations, as under UNCLOS (Articles 27 and 94) any criminal acts on board are subject to the criminal jurisdiction of the Flag State. We note that Flag States such as Norway, for example, already have regulations to address incidents where a serious crime is suspected to have taken place on board. It should be made clear that such guidance should always take precedence over that offered in this document.

In this context, ICS is of the opinion that the guidelines included in sections 2-4 (beginning on page 10) of the draft guidance are too detailed. Best Practice for the collection of evidence might be subject to change over time, and is likely to vary according to the legal authority in charge of the investigation. ICS would therefore suggest that the Master should always make securing the scene from interference his priority, and then make immediate contact with the Flag State for guidance as to the preservation of evidence if, for example, the appropriate investigatory authorities cannot access the ship to begin their investigation within reasonable period of time. This should be decided by the Flag State/ appropriate Law Enforcement Authority.

With regard to the detail, the list of crimes provided at the end of the document is particularly problematic, as many of the crimes referred to can only be determined to have taken place by a court of law. For example murder vs. manslaughter or accidental death, or arson vs. an accidental fire. The master is not qualified to make a judgement that any specific crime has occurred. Therefore, it would be more appropriate to include in an earlier part of the document, a definition of a serious crime at sea. This could be as simple as the following sentence: **'any incident, which in the judgement of the master warrants further investigation by an appropriate law enforcement authority'**.

Notwithstanding these general comments, ICS would like to also provide the following detailed comments specific to the document as currently drafted, working from beginning to end:

Page 3 Paragraph 2, Sentence 1

ICS suggests that this sentence should be amended to read as follows:

It should be noted that the master will probably not be a professionally trained crime scene investigator **and that crew and resources to deal with an investigation may be limited depending on vessel type**, and so should not be held liable for any loss, damage or contamination of any evidence **collected** nor for any acts or omissions during this process'

Page 3 Paragraph 3:

Paragraph should be amended as follows:

The main aim for the master should be to secure the scene of the alleged crime in such a manner that would allow a professionally trained crime scene investigator to be able to undertake their work. **It is not the role of the master to collect evidence unless this is advised by the Flag State.** Therefore, if the space is not a public space, then the best option is for that space to be sealed and all persons be prevented from entering it. An example would be where an incident has taken place in a cabin, then the best option would be for the cabin door to be locked, the key secured and notices posted which would inform that no one should enter it. **Only** where an incident has occurred in a space that cannot be secured **for professional crime scene investigators to access within a reasonable time-period, defined by the Flag State**, ~~then~~ **should** the master ~~should~~ attempt to preserve the evidence. In securing evidence, which should include CCTV where appropriate, the master should use the techniques and procedures ~~outlined in annex 3~~ **advised by their Flag State.**

Page 3 Paragraph 4

At the first available opportunity following the report of a serious crime or confirmed missing person report, the master or their representative ashore should make contact with the jurisdictionally responsible ~~Law Enforcement Authority~~ **Flag State Authority** to seek supportive advice and guidance ~~in conjunction with annex 3~~. This supporting process will seek to ensure the integrity of an investigation until such times when Law Enforcement officials can gain access to a ship to progress the investigation.

***The master should not have to decide who the jurisdictionally responsible Law Enforcement Authority is. This should be determined by the vessel's Flag State.***

Page 4, Pastoral and medical care of victims, Paragraph 1

p.4: 'the victim should be reassured that they will be protected from any repercussions of the allegations'

***This sentence is problematic as currently worded, as the master is not in a position to protect the victim from, for example, any legal repercussions***

***from the allegations they have made. Sentence could perhaps be reworded as follows:***

'The victim should be reassured that every effort will be made to protect them from any further harm while they remain on board the vessel.'

Annex 1, pro forma victim statement

**Description of alleged offenders:** The information given by the victim should be in as much detail as possible from what they personally saw, heard or experienced. Use a new sheet for each alleged offender. The alleged offender should be described as accurately as possible. If the name of the alleged offender is not known then the alleged offender should be given a number to distinguish him. **This number should also be used as a reference in the crew statement.**

***This suggestion is problematic. If the alleged offender is unknown, it may be difficult to cross reference statements to conclude if two witnesses are referring to the same person. In addition, the term 'crew statement' is not used anywhere else in this draft document. The term should therefore either be explained somewhere or removed.***

Annex, Section 4 (p.12) Blood A:

~~'Bloodstained items originating from alleged offender.~~

***The investigator will not necessarily know where bloodstained items have originated.***

p.13 first row, second column

'Sample of the blood can be taken by swabbing'

***If this is included, advice should be provided as to how to take a swab, as this may not necessarily be known.***

p.15 first two rows, regarding clothing and footwear

**ICS would question to what extent the master has the authority to confiscate clothing etc. from alleged offenders etc, if they do not want to cooperate with an investigation. The Flag State may need to explicitly give the master this authority. For example in the Norwegian Flag State Guidelines provide the following guidance on search and seizure (unofficial translation)**

§ 6 Search and seizure

The master can perform searches on board the ship if there are reasonable grounds to suspect a criminal act of a serious nature that after the law can result in imprisonment,

and the searching process is considered necessary for the investigation, to conduct an arrest, to search for evidence or to make seizures.

If a person with reasonable grounds is suspected of an act which after the law can result in imprisonment, the master may perform a search of his person if there is reason to assume that the searching process may contribute to the discovery of evidence or things that can be seized ....

Decision-making and execution of searches and seizures must not appear as a disproportionate interference.

Page 15, final row, final column

'If a number of cabins are involved, **if practical**, ensure different staff recover bedding and bag and seal item at a separate location before storage'

***If the ship is not a passenger ship, there may not be the resources to do this.***

p16 fire accelerants, first column

'NOTE Gathering evidence from fire scenes is a highly specialized skill and should be left to experts in that field'

***This is equally applicable to the gathering of all types of evidence, as noted in our general comments.***

p. 18 first row, first column

'Specialist advice MUST be sought before ANY action is taken'

***If this is the case then the rest of this section should be deleted, as the specialist advice should provide direction on what action should be taken.***

Page 21 Annex (section?) 4 List of serious crimes:

***ICS would suggest that this list is inappropriate and should be deleted, as it cannot be definitive, and many of the crimes listed can only be determined to have taken place by a court of law (see examples below). Instead, a definition could be provided in the early part of the document. This could be for example:***

***'Any incident, which in the judgement of the master warrants further investigation by an appropriate law enforcement authority'***

**Alleged** Offence:

Murder – Homicide

Manslaughter **Inappropriate as the difference between these crimes is motivation, which can only be determined by a court. If the list remains, this should be changed to “any death on board”.**

Any offence against children **or injury** to children

Any Arson Again, **this is a crime determined by motivation, which can only be decided by a court of law. If the list remains, this should be altered to read ‘any fire on board a ship at sea that is suspected to be arson, or is life threatening’.**

Rape

Indecent Assault

Grievous Bodily Harm – Wounding

Robbery

Piracy