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WORLD MARITIME UNIVERSITY
MALMO, SWEDEN

MARINE CASUALTIES INVESTIGATION
A PROPOSAL FOR IMPROVEMENT OF THE ALGERIAN
LEGISLATION AND FRAMEWORK

BY

ZERIZER YOUCEF
ALGERIA

A dissertation submitted to the World Maritime
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requirements for the award of the degree of:

MASTER OF SCIENCE
IN

GENERAL MARITIME ADMINISTRATION

Year of graduation
1992
I certify that all material in this dissertation which is not my own work has been identified and that no material is included for which a degree has been previously conferred upon me.

The content of this dissertation reflect my personal views and are not necessarily endorsed by the university.

Signature

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Introduction

1) Choice of the subject
2) Problem areas
3) Objectives of the study
4) Methodology

1) The choice of the subject

The marine casualty issue is one of the most important subjects which has attracted my attention since the beginning of the eighties. It became a serious concern in 1963, when I was appointed as the officer responsible for the Marine Affair's Bureau, within the Third Coast Guard District. The main duty of this bureau is the enforcement of national maritime laws and regulations.

As an on-scene lawyer and a Coast Guard officer I noted that legal and administrative problems arising during the implementation steps of the existing national set of investigation laws and regulations showed clearly that something was wrong. Despite the measures which took place under the competent authorities at each maritime casualty, it was noted that:

- Rarely was a review of existing safety regulations conducted based on the lessons learned from maritime casualties. Many accidents recurred for the same reasons, especially those concerning fishing vessels.
- Rarely were the guilty persons punished by either the disciplinary or the judicial authorities even on the occasions when some violations could be easily proved. More seriously, some acts could be considered as felonies perpetrated against either other persons or state interests. Furthermore, private and public claims were not always properly settled; in some cases these claims were not raised at all. Recovery of any wreck removal costs
were not sought even though the wreck posed a real public
danger and removal was necessary. This situation is
harmful to all maritime interests, including safety at
sea. To further illustrate the above viewpoints, a list of
some of the accidents which occurred in the maritime area
under national jurisdiction will be highlighted below.

During the beginning of the eighties, a foreign
merchant vessel loaded with much cargo sank just inside
the entrance to Algiers Port, where she became a complete
wreck. At that time the administrative inquiry revealed at
that the master of the vessel was guilty of negligence as
he did not obey the instructions given to him by the
maritime authority concerning the location where he should
go with his vessel and wait to receive the last salvage
attempts.

It can be seen that the wreck of the ship and the
sunken cargo should have been removed because they
presented a real threat to maritime navigation, as well as
to the marine environment; nevertheless, neither was the
master punished nor were the future removal costs secured.

According to the Liverpool Underwriters Association,
the vessel named Rugwardersand with a former West Germany
flag, loaded with cargo of flour, was posted missing on
18th February 1981. The publication specified that the
loss is "unexplained" and it hapnd during the voyage
leghorn/Annaba. Certainly if the lost cargo is already
Algerian, there is a substantial interest on the part of
Algeria to be involved in the marine inquiry related to
the case. However, the question is, does Algeria have an
appropriate marine investigation system which allows for
the possibility of cooperating with foreign parties?
In 1983, a foreign merchant vessel sank in the seaway of Skikda Port. The master declared the loss of a large amount of cargo which could not be confirmed because all the documents of the cargo were lost with the vessel. Also, the master chose a very deep place for the sinking of his ship. All the personal papers of the crew and master were saved. The judicial inquiry, which was held by the Coast Guard, showed clear evidence that the master had willingly sunk this very old vessel and carefully chosen a very deep location where a physical check is practically impossible. Despite the existing penal maritime provision of the maritime code, under which the Coast Guard prosecuted the master of the ship as a perpetrator of maritime felony, only a fine was issued by the competent ordinary tribunal. According to the local authorities' declaration, the judicial decision was not enforced because the master escaped.

In one more recent case a major marine disaster was miraculously avoided on the east coast of Algeria when the tanker Zephyr caught fire and was abandoned by the crew. This happened on the 13th of April 1989 when the tanker was sailing from Bejaia port (Algeria) to its destination port in Italy with 73000 tons of crude oil cargo on board. The report of the master shows that despite his tanker being less then two hours sailing away from the Algerian departure port, he did not report the incident to the Algerian coastal authorities as was his mandatory duty under the environmental protection law. This failure to report caused the Algerian authorities a considerable delay in activating the fire fighting emergency plan. According to the Coast Guard report, the abandoned tanker was detected 9 miles into the territorial sea at 02
o'clock on the morning of 14 April 1989. The first report of a fire was submitted to the master on 13 April 1989 at 4 o'clock p.m. The determination of these facts in the investigation establishes a prima fascia case for violation of the provisions related to the mandatory reporting of incidents on board tankers under the aforesaid law. Such offenses are punishable by a fine of 50,000 to 500,000 Algerian Dinars. However, the file case available does not show any judicial measures applied to enforce such provision. This casualty was potentially so dangerous from the environmental point of view that it can be compared to the Exxon Valdez and Amocco Cadiz, two major maritime environmental disasters which happened in the USA and France respectively causing extensive damage to their marine coastal environments. A similar event along the Algerian coast is predictable because of the density of tanker activities, mainly from and to Bejaia, Skikda and Arzew, specialized oil and gas ports. The concern for this is increased when one cannot see positive administrative preventive measure resulting from the inquiries of near-disasters, such as the Zephyr.

The above mentioned cases are given as examples only of a long statistical list of maritime accidents involving Algerian flag vessels or accidents occurring in the maritime area under Algerian national jurisdiction. Particularly common on this list of casualties are those involving fishing vessels. It can be noted that the only thing which is always common to the events is that the judicial, as well as the technical and administrative inquiries, are not carried out properly. This deficiency can be considered as indicative of a weakness in the existing framework and legislation relating to vessel casualty investigations. In order to improve the national
casualty investigating system, making it supportive of the need to promote safety of life and property at sea, important problem areas are highlighted hereinafter.

2) Problem areas

The maritime code contains many penalties related directly to marine casualties and also has instituted rules to assess possible criminal or disciplinary liabilities for the responsible party in a marine casualty. This will be explained further in the first chapter. The same code has also established an inquiry which is normally conducted by the maritime administrative authority under maritime code provisions. However, the enforcement of either the maritime penal liability, or those provisions related to administrative inquiries, still face many problems. In addition the aforesaid statutory duties are not carried out at all, mainly due to difficulties which can be highlighted as follows:

1) lack of a specific legal procedure governing the judicial aspects of maritime investigations;

2) lack of an appropriate maritime penal body within the coastal tribunals to exercise jurisdiction over what can be called maritime nautical crimes;

3) lack of a legal statute authorizing investigative powers for employees of maritime administrations;

4) existence of an apparent overlapping of maritime functions which can be considered as conflicting duties at the local investigative level;

5) existence of inappropriate maritime bodies (safety
commissions) and confusion related to inquiries stipulated by the maritime code and the ministerial decree; and

6) existence of confusing wording of the marine casualty substantial rule contained in the maritime code.

3) Objectives of the study

The present study seeks to propose some solutions to the above difficulties through the adoption of the following:

1) The creation of maritime penal sections with relevant composition within selected coastal courts.

2) The establishment of a judicial investigating body more adapted and empowered than the existing one, through the recognition of the authority of an investigating judge, navy officer, and merchant marine representatives for some employees within the local maritime administration.

3) The establishment of particular procedural rules to govern the work of the proposed maritime penal section.

4) The introduction of a needed adjustment between the original ordinance of the Coast Guard service and the maritime code provisions concerning national maritime administration organisation policy.

5) The establishment of a new administrative and technical investigating system according to the maritime code and abolition of the unlawful authority of the safety commission related to the casualty investigations.
4) Methodology

To find out the points of weakness of the Algerian marine casualty system, only a deep examination of the French profile can show the problem areas. Even though Algeria has adopted, since 1973, a different maritime organisational model than that which exists in France, many legal provisions contained in the Algerian maritime laws and regulations remain similar to those of the French merchant marine legislation, particularly as regards the disciplinary and penal code provisions. Generally, a common current of thought can be noted in some of the Algerian and the French laws and regulations. Therefore, special attention must be devoted to French laws and regulations which deal with marine casualty investigations. In order to have the clearest possible understanding of the French system all, the legal material which governs their marine casualty investigation process will be examined in detail.

In the same context, the Algerian adoption, in 1973 of a Coast Guard model of maritime organisation, similar to that of the United States maritime structure, suggests that the practices related to marine casualty investigations as carried out in the U.S.A. should also be examined.

The set of laws and regulations governing the Algerian marine casualty investigation system will be examined, looking for appropriate adjustments through the analysis of the practices and procedures related to marine casualty inquiries in the above two countries. The information about the French marine casualty investigation approach will be based on the materials collected from the State
Secretariat of Sea in Paris, as well as personal interviews held with the president of the maritime tribunal and the investigating administrators involved in both judicial, administrative and technical marine casualty inquiries. In addition, other information was collected from the secretary of the Maritime Tribunal within the maritime quarter of Lorient (France) during extended field research.

Particular attention will be given to the administrative maritime casualty investigation approach which is practiced in the USA, for the purpose of the improvement of safety at sea. Consideration of this approach is appropriate because it can be seen that this type of investigation in the USA is one of the most consistent and experienced in the world. Furthermore, it is of interest to examine the efficiency of the U.S. Coast Guard's model of organisation. The main references concerning the U.S.A investigation system will be the US Coast Guard casualty investigation manual, some relevant provisions contained in United States Shipping Codes, the Code of Federal Regulations and personal interviews with the heads of the various legal departments at the U.S. Coast Guard Headquarters in Washington DC, during field research studies.

To find out the points of weakness and to define the problem areas in the Algerian national marine accident inquiry system, and in order to propose an appropriate solution, this study will deal with the marine casualty issue in five chapters. The first one will be devoted to the actual situation in Algeria, in which many questions relate to the local merchant marine functions, maritime administrative organisation and some legal rules and
regulations. Some issues will be raised and some solutions will be proposed dealing with a major problem in the Algerian local maritime administration, that is, the confusion existing at a local level. Such proposed solutions to this key problem can provide a starting point for developing an efficient national maritime organisation to affect the proper enforcement of all the merchant marine statutory functions, including those related to marine casualty investigations. The proposed solutions will be based on a new understanding of the first legal governmental act concerning the new national maritime organisation policy. This was issued in 1973 under the ordinance which has established the Coast Guard national service. Effectively, as will be seen, the proposed new legal interpretation of the aforesaid governmental act, based on the preparatory work material which is certainly available in the concerned ministries, provides for a new and very different Algerian local maritime organisation. This can be seen as the only legal and legitimate organisation and the only way for Algeria to avoid the dissipation of national human and material resources while increasing the efficiency of its framework, and ensuring legitimacy of governmental actions at sea.

In the second chapter, I will try to describe the actual situation in France with a particular emphasis on the merchant marine disciplinary and penal code and the 26th November 1926 and the 24th August 1963 decrees related to the maritime penal courts and marine casualty legal investigations. This chapter will be the main basis for the proposed solution to further improvement of the Algerian marine casualty judicial investigation. It should be noted that in this chapter small details have been carefully considered because, from my experience at the
enforcement level, in many cases the very small details lead to very large legal problems which often have a significant impact at various levels in this process.

In the third chapter, I will present the U.S. approach to marine casualty investigations, the legislation and practices which serve as the main guidelines for a proposal to establish a new national regulation with respect to administrative casualty investigations. As the existing system lacks legal authority, such an approach is needed. The last two chapters will be devoted to comments and proposals. The comments will concern the maritime code, and some ministerial decree provisions which may have a direct or an indirect relation to marine casualty or accidents.

The proposals will be based on the relevant practices and legislation adopted in the different countries including the USA and France. These two countries are taken as examples for Algeria because the former has the same maritime organisation (the Coast Guard), while the maritime legislation in the latter was the main reference for Algerian legislators.
CHAPTER 1

MARITIME CASUALTY, LEGISLATION AND FRAMEWORK
ACTUAL SITUATION IN ALGERIA

1 THE MARITIME ADMINISTRATION IN ALGERIA

1.1 Background and Introduction

Marine casualty investigation is one of the most important functions carried out by the maritime administrative organisation. It is clear that a maritime administration which is not well organized can not properly perform its maritime functions. In this chapter, the maritime administration in Algeria will be carefully considered. It is noticeable that many difficulties related to the performance of marine functions are due to structural confusions. In order to come up with the clearest understanding of the above mentioned issue concerning the Algerian maritime organisation, a historical over view will be given hereinafter.

During the colonial period, the maritime legislation and the maritime structure in Algeria were the same as those of the colonizer. Algeria was at that time considered to be a part of French territory, consequently any new legislation or organization automatically included Algeria. For this reason it can be seen that all the maritime laws and regulations, such as among others the Disciplinary and Penal Code (1926), the 26th November 1956 Decree reestablishing the Maritime Tribunals, the 19th March 1926 Decree related to marine accident investigation, were also applied in Algeria.
A Marine Affairs Directorate was established in Algiers and was subdivided, according to the 12th January 1948 Decree, issued by the Public Works and Transport Ministry as follows:

- Oran Maritime Quarter under its jurisdiction: the Oran, Benisaf, Mostaghanem, Arzew and Nemours sub-quarter, Mers-Elkebir, and Bouzedjar maritime stations.

- Algiers Maritime Quarter under its jurisdiction: the Dellys, Algiers, Cherchel and Tenes sub-quarters and Sidi Ferrudj and Tipaza Maritime Stations.

- Skikda Maritime Quarter under its jurisdiction: the Skikda, Collo, Jijel and Bejaia sub-quarters and Stora Maritime Station.

- Annaba Maritime Quarter under its jurisdiction: El Kala and Annaba sub-quarters, and Herbillion (Toukouch) Maritime Station.

As a result of the reestablishment of the Maritime Penal Tribunals (The Maritime Commercial Tribunals) in France, the system was incorporated in Algeria also. The 26th November 1956 Decree created in Algeria three Penal Maritime Tribunals which were located in the cities of Oran, Algiers and Annaba. Their jurisdiction, composition and special governing rules were the same as those which were enforced in France, where they still valid.

It should be noted that the maritime organization cited above gave a major role to what was termed the administrator of the maritime district who, is at the same
time a navy officer, a maritime judge and merchant marine employee. For this reason the aforesaid legislation and framework was very effective. During the colonial period, the functions of the Algerian maritime structure were carried out by the above mentioned Marine Administrator's Body. These employees at that time were acting under the name of Administrateur de l' Inscription Maritime the same as in France, eventhough the title has now been changed. In both Algeria and France, this governmental body was instituted at the same time by virtue of the 28th December 1926 Decree.

According to the provisions of the aforesaid decree, the following can be highlighted:

- It was decided to create a new maritime administrator's body in France and Algeria, while other French colonies were not involved.
- These administrators are officers of the French Navy.
- Their duties are, among others, to carry out merchant marine functions in the Algerian ports.
- Appointment, promotion, disciplinary matters, sanctions, retirement and nearly all acts concerning the above employees are issued and endorsed by both the Merchant Marine and Navy ministers.

Their ranks and hierarchy were as follows:

- Vice Admiral............. General de Division
- Rear admiral.............. General de Brigade
- Captain...................... ........ Colonel
- Commander.............. Lieutenant Colonel
- lieutenant commander......chef de bataillion
- Lieutenant.........................capitaine

Before the establishment of a separate marine affairs agency from the administration which was in charge of the French Navy, only one maritime body was in charge of carrying out both civilian and military administrative tasks. The need for a reorganization of the aforesaid maritime structure was explained in the preparatory work which was submitted in order to institute a new maritime structure. The 28th December 1926 letter submitted for the attention of the President of France states among others: "the necessity to institute a separate governmental body to carry out the functions of the maritime administration concerning the French civilian seafarers is felt necessary for economical and psychological reasons. On the one hand the maritime administrator's function in order to be properly ensured requires a specialization of the concerned officers in economic and social fields; on the other hand, their mission, which consists of the protection of the interests of the workers requires permanent contact with them as well as a deep understanding of the maritime milieu".

Also it can be seen, according to the preparatory work provisions expressly mentioned, that the establishment of such a separate governmental employee's board is not a new creation of a new body with new functions, it is only a division into two parts of the existing "commissariat" administrative body of the French Navy.

The above mentioned administrator's body was the most important active part of the Algerian Maritime
Administration during the colonial period.

After Algeria's independence in 1962, the same legislation and maritime structures were maintained, except for matters contrary to national sovereignty. The Algerian Government decided, at that time, to promulgate all the necessary laws and regulations and to set up the necessary framework for the whole country, with 1975 as a deadline.

1.2 Creation of the Coast Guard National Service

1.2.1 Preparatory Work

The National Service of the Coast Guard was created by virtue of Ordinance No. 73-12 on 3rd April 1973. This regulation has the value of law because at that time Algeria was ruled by a revolutionary council. In order to have a good understanding of the new maritime organization and its policy, it is very useful, from the legal point of view, to have a deep look at the preparatory work of the above mentioned ordinance. It very clearly stated that the existing maritime organization was totally deficient. The Algerian coast had no proper surveillance due to:

- fragmentation of human and material resources, and
- an inactive situation which caused a dramatic increase of unlawful acts in the maritime area under national jurisdiction. This situation had attracted the attention of the Algerian authorities at a very high level and became a very important concern for them. Also it was stated, in the preparatory work material, that the different working sessions which were held had come up with two alternatives hereinafter explained.
First, creation of a new service, only to ensure intervention at sea. This service will concentrate on the different boats and navigating personnel belonging to the existing maritime structures, without any abolition of them.

Second, creation of a Coast Guard body which will be exclusively responsible for the means of intervention at sea of the existing administrations, the navigating personnel, with all the necessary authorities related to the collection of information, interventions, the maritime procedure after the intervention and any other litigation procedure will also be transferred at the same time. This variant will be associated with a total abolition of the following maritime structures:

- The maritime district (Inscription Maritime),
- Maritime security (Gendarmerie Maritime), and
- Custom (Maritime Customs).

According to the preparatory work of the authorized team, the final conclusion states the following: "The objectives defined by the Algerian government are how to ensure a good survey of the national coasts, in order to prevent and blame any offences against either navigation, safety of vessels or any breach of custom's laws and regulations, and so on ..."

To meet this purpose, the authorized team concluded that a maritime structure is supposed to exist with the legal capability of intervention in the collection of information, as well as at the intervention and enforcement stages. It will be unreasonable to specialize the aforesaid maritime structure only to assure intervention
at sea; in such a case, the efficiency of this maritime structure is not certain because it will depend on the collecting of information and the enforcement process which are beyond it. Finally, the above mentioned team concluded that there is a need to create a real Coast Guard structure. It can be noted that the authorized team has used the word "REAL", certainly to highlight that the prospective Coast Guard, structure should be similar to those which exist in many countries, such as the U.S. Coast Guard, which was expressly mentioned as an example. This means that the other variant, which consisted of the creation of a new maritime structure to be used by the existing maritime authorities when needed, was rejected. As a result of the above mentioned conclusions, a regulation was promulgated by Ordinance No: 73-12 on 3rd April 1973 establishing the new maritime structure, called the National Service of the Coast Guard "N.S.C.G.".

1.2.2 Provisions of the Coast Guard Ordinance

The regulation establishing the Coast Guard service in Algeria was promulgated by an ordinance, which constitutes a law, because at the time the legislative authority was a revolutionary council, which authorized its president to make laws by ordinance and presidential decree, while the other members of the government were regulated by ministerial decisions. The aforesaid ordinance No. 73-12 of 3rd April 1973 has established a new maritime organization in Algeria with a new policy which can be summarized hereinafter as follows:

1) The new maritime structure is termed, by virtue of the first article, the Coast Guard National Service.
2) It is placed within the navy under the authority of the
Minister of Defence.
3) As can be observed in the aforesaid, ordinance the National Service of the Coast Guard was created according to a joint proposal submitted by three main governmental authorities which are, namely, the Defence, the Transportation and the Finance ministers.

4) The main duties of the N.S.C.G were limited to the following:
a) to enforce laws and regulations related to maritime navigation, fishing and customs;
b) to ensure the territorial sea police and the protection of the maritime public domain;
c) to ensure the policy of buoying and sub-marine cables;
d) to participate in search and rescue at sea, a duty which was better defined in the 1987 decree. Nowadays the Coast Guard has responsibility for conducting search and rescue operations; and

e) to contribute to combatting oil pollution, by preventing and blame measures. All the aforesaid duties are listed in Article 4 of the Coast Guard regulations.

To have a good understanding of the real intention of the Algerian legislature about the type of maritime structural model intended to be created, it is very important to consider the idea behind the provisions of Articles 8 and 9 of the aforesaid ordinance. Effectively it clearly specified that the functions which are carried out by employees of the N.S.C.G in the field of maritime navigation and fishing, are under the authority of the Ministry of Transportation, while the maritime customs functions, which are carried out by the same Coast Guard
employees, are under the authority of the finance ministry. The same provisions also stipulate that the relationship between the N.S.C.G. and other military authorities is defined by a decree of the Minister of Defence.

By virtue of article 2 subsection 2 and article 3 of the aforesaid ordinance, the territorial jurisdiction of the National Coast Guard Service is the territorial sea, the natural maritime public domain and the frontiers at sea. In the first mentioned territory there is no other national structure which shares the responsibility for maritime control with the Coast Guard; however, in the frontiers at sea, the Coast Guard service has to participate in its survey with the customs, national security and Police Directorate. Concerning Coast Guard territorial jurisdiction, it is very important to highlight the difference between the Arabic and French provisions of the ordinance. Effectively, according to the Arabic version ports are included within the Coast Guard competence area while the French one does not include them.

The Coast Guard National Service has not only been given authority to enforce all the maritime laws and regulation in the limit of its functions in the aforesaid territory. This service also has the duty of assisting any national authority which may ask for Coast Guard assistance. This obligation is derived from the provisions of article 4 of the Coast Guard regulations which state clearly that, except for the Ministry of Transport and the Ministry of Finance, other ministries can have Coast Guard cooperation and assistance when requested. Algerian legislation excludes the above mentioned two ministries from the benefit of Coast Guard assistance for the reason
that the Coast Guard personnel is the permanent delegated authority which represents at the local level among others, the Ministries of Transportation and Finance. This delegation of authority is not directly expressed, but it is the obvious conclusion which comes up from the all the provisions of the ordinance as promulgated by the Algerian legislative authority, combined with the contents of the preparatory work.

The obvious conclusion above cited becomes clear when the Algerian legislature by virtue of articles 14, 15 and 16 of the Coast Guard Ordinance decides that all the resources which were owned by the maritime administrative district (Inscription Maritime), as well as those which belong to the Maritime Customs and Communication Service, including patrol boats, radio communications, buildings and their seafarer personnel are by law transferred to the N.S.C.G. Such a decision, from the legal point of view, is an official appointment of the N.S.C.G. as a legal representative of the Ministry of Transportation and the Ministry of Finance at the local level. This appointment is certainly necessary to avoid the point of weakness of the previous type of maritime organization which consisted of the fragmentation of maritime human and material resources, which could not be avoid without the creation of a Coast Guard service able to ensure a rational use of the resources and to provide an effective enforcement of the maritime laws and regulation.

Finally, N.S.C.G. personnel have been empowered to exercise the legal policing responsibilities according to the existing rules governing police functions in the maritime, customs and penal fields, by virtue of article 11 of the ordinance concerning the creation of the Coast
Guard service. These functions above cited were also stipulated to a certain extent mainly by all the laws and regulations which were enacted after the Coast Guard Ordinance.

1.3 Maritime Administration According to the Maritime Code

The maritime code, as promulgated in 1977, has not contributed to clarifying the type of Algerian maritime organization as intended when the Coast Guard model was adopted. The separation between the regulatory authority functions, reserved for the minister in charge of the merchant marine, and the enforcement duties which normally should be devoted exclusively to the Coast Guard service have not been made clear. Effectively, it can be noted that only four years after the establishment of the Coast Guard model of maritime organisation, the maritime code set up the bases for a second maritime organisation which can be considered as a duplication. This has caused some organizational confusion and has negatively affected the enforcement of the maritime functions including the marine casualty investigations. The aforesaid bases of a second maritime organisation as decided by the maritime code can be summarized as follows:

1.3.1 Territorial organization

The national coast is divided into maritime districts, principal maritime stations and ordinary maritime stations. The number of the administrative units, their headquarters and their territorial boundaries are defined by decree of the minister in charge of the merchant
marine. (see articles 5 and 6 of the maritime code)

1.3.2 Administrative functions and authorities

- The Maritime Administration is placed under the authority of the minister in charge of the merchant marine. The maritime administration functions, at a local level are carried out by the local maritime administrations.

- The organization and the functions of the local maritime administrations are defined by a decree of the minister in charge of the merchant marine.

- Overseas the maritime administration functions are under the authority of the Algerian Consulates. (see articles 1, 2 and 3 of the maritime code)

1.4 Actual Maritime Administration Organization

1.4.1 At the Local Level

According to the common decree issued on April 3rd 1991 by the ministers of transportation, of local administrative units and of the economy, it can be seen that the local maritime administration in Algeria is organized within the Directorate of Transportation of the Wilaya (Administrative zone) as follows: The Directorate of Transportation includes:

- a service for land transport,
- a service for weather forecasting and civil aviation, and
- a bureau of resource management.
In the maritime wilayat "administrative province" located in a coastal zone, the Directorate of Transportation, there is a fourth office for port and maritime transportsations matters, in addition to the three offices cited above and common to all directorates of transportation in Algeria, organized as follows:

- bureau of Navigation and Maritime Inspections,
- bureau of Port Activities, and
- bureau of Seafarers and Maritime Work.

The functions of the Office for Maritime Transportation and Ports were defined in Article 6 of the April 3rd 1991 ministerial decree which has listed the following duties:

- registration of ships less than 100 tons,
- delivery of navigation permits,
- performance of administrative operations related to the acquisition of vessels,
- sea garbage management,
- control safety of navigation, vessel inspections, periodical survey and delivery of certificates,
- search and rescue operations at sea,
- exploitation of ports and participation in the establishment of the developmental plan for port installations,
- registration of seafarers and issue of seafarer books, and
- collection of statistical data related to maritime activities and ports.

According to Algerian administrative policy it can be observed that the authority who is empowered by law to undertake administrative acts at the local level is the wali (local governor), who is the representative of the
Algerian state and the delegated person of the government authority; and under certain conditions, the mayor at the municipality level. In Algeria, the wali has the most responsibility for the enforcement of governmental orders and instructions. Consequently, he is the coordinator and the controller of mainly all the governmental administrative structures in charge of different activities at the local level. In the maritime field, the wali used to delegate his authority on maritime administration to the Director of Transport and rarely to the Chief of the Maritime Administration Office.

1.4.2 At the Central Level

According to the national administrative organization policy, the maritime administration's functions are under the authority of the Ministry of Transportation; however, some of them have been transferred, in recent years, to other ministries depending on new governmental aims and objectives. Nowadays, the functions relating to fishing and protection of the marine environment are not under the Ministry of Transportation. The body which is in charge of maritime activities is the Merchant Marine Directorate within the aforesaid ministry. It is composed of the following subdirectorates:

1.2.4.1 The Sub-directorate of Maritime Transport

This maritime structure has the duty to:

- elaborate and propose rules for maritime transport,
- study and propose modernization plans with regard to maintenance, equipment and national fleet development,
- participate in international meetings regarding maritime affairs,
- supervise the maritime traffic and fleet
- supervise the maritime transport economy, and
- develop international maritime relations.

1.2.4.2 Sub-directorate of Maritime Navigation

This department has the duty to:

- elaborate and prepare the necessary elements relating to regulations of the maritime traffic systems according to national and international legislation,
- define standards of safety of navigation,
- define rules applicable to the seafaring profession,
- study and propose the professional status of seafarers, and
- study and propose developmental programmes.

The aforesaid two sub-directorates within the Merchant Marine Directorate are subdivided into three offices, namely: Fleet and Traffic Economic Analysis, International Relations under the authority of the maritime transport sub-directorate; and the Maritime Navigation Seafarers' and Maritime Safety office under the authority of the Maritime Navigation Sub-Directorate.

1.2.4.3 The Ports Directorate

The Ports Directorate is divided into two sub-directorates:
- The Port Exploitation Sub-directorate and
- The Port Equipment Sub-directorate.

They are competent to elaborate and propose all element and guidelines of orientation and to determine the objectives of the national policy related to ports and harbors.

In Algeria, there are nine large deep-water ports, three secondary ports and 13 smaller fishing ports and facilities for recreational boating. Nowadays, the fishing ports are administered by the Ministry of Agriculture and Fisheries. All ports in Algeria are state owned and used for commercial traffic, fishing, recreational boating activities and others.

The Ministry of Transport, through the Directorate of Ports and other concerned ministries, ensure that these ports are controlled. (See the governmental decree No 89-165 of the 29th August 1989 concerning the functions of the Ministry of Transport)
Algerian Local Maritime Administration According to the 1991 Ministerial common decree.

Maritime Wilaya

Directorate of Transport

SFPAMT  RMB  WFACAB  SFLT

Seafarers and Maritime Work Bureau

Port Activity Bureau

Navigation and Maritime Inspection Bureau

SFPAMT  Service For Port And Maritime Transportation

RMB  Resource Management Bureau

WFACAB  Weather Forecasting and Civil Aviation Bureau

SFLT  Service For Land Transportation
ALGERIAN MARITIME ADMINISTRATION
ORGANIZATION (Central Level)

M I O M M

MERCHAND MARINE DIRECTORATE

MARITIME TRANSPORT
SUB-DIRECTORATE

FLEET & TRAFFIC
ECONOMIC ANALYSIS
INTERNATIONAL MARITIME RELATIONS

MARITIME NAVIGATION
SUB-DIRECTORATE

MARITIME NAVIGATION
SEAFARERS
BUREAU
MARITIME SAFETY

M I O M M: MINISTER IN CHARGE OF
MERCHAND MARINE
Algerian Maritime Organization
(Proposed Chart)

MIOMM (R A) - Minister In Charge Of Merchant Marine
MD - Maritime District
MS - Maritime Station

--- Functional relationship
--- Line relationship
RA - Regulatory Authority
EA - Enforcement Authority

SM -
2 MARITIME CODE PROVISIONS RELATED TO MARITIME CASUALTIES

2.1 Special Maritime Offenses related to marine casualty

The Algerian legislature, has dealt with maritime crimes, related to marine casualty and accident in section three of the chapter three of maritime code, from article 477 to 487, under the title of criminal acts perpetrated against the safety of maritime navigation. Only the most serious crimes will be dealt with hereinafter.

2.1.1 Negligence which causes a marine casualty

Article 478 of the maritime code stipulates that any master of a ship who, by negligence or willingly, proceeds to sea with an unseaworthy vessel, and then causes either the loss of such a vessel, or serious injury to one person or more, if these consequences were predictable, is punishable by 10 years imprisonment if there is only a loss of a vessel or a serious injury. If the aforesaid act committed by the master of the vessel has caused death to one or more persons the, punishment is 20 years imprisonment.

2.1.2 Grounding, loss or destruction of a vessel

By virtue of article 480 of the maritime code, any person, who with criminal intention runs aground, destroys or looses a vessel by any means, is punishable by 10 to 20 years imprisonment. If one of the acts above cited has caused serious injury or permanent incapacity, the period of the imprisonment is extended to the whole life of the
guilty. The death sentence is pronounced in the case of one fatality or more caused by any of the criminal acts above mentioned.

2 Authorities in Charge of Legal Investigations

As already mentioned, the maritime code lays down a set of special maritime crimes related to marine casualties, stipulated mainly in Chapter 2, Book 1 of the maritime code. The penal principles are also dealt with in the provisions of Articles 294 to 298 of the above mentioned code. To implement these legal provisions the maritime code defined the competent authorities who are listed in Article 529 of the aforesaid code as follows:

- the administrative maritime authority and any agent of the merchant marine,
- the Coast Guard agents to whom an oath was administered,
- The judicial police officers including officers of the National Gendarmerie (Security), and
- the Master of the Ship where the crime has occurred.

It might be necessary to give hereunder some information about the structures to which the security officers belong, invested with the authority to conduct criminal investigation and authorized by law to carry out the legal marine casualty investigations. The Coast Guard service and the maritime structures of the merchant marine have already been dealt with.

2.2.1 The National Security: (Gendarmerie Nationale)
The National Security was established by ordinance No. 62-019, 23rd August 1962, in other words, just after Algeria's national independence. It was reorganized several times to better adapt it to the national evolution. The duties of the National Security are the enforcement of laws and regulations for the maintenance of good order mainly in rural areas; however, it has jurisdiction over all the national territory, in the administrative police as well as in the judicial police. The National Security is under the authority of the Ministry of Defence. Many years ago, particularly when the National Coast Guard Service was created, the National Security was not involved in the enforcement of laws and regulations at sea, even if it had some units termed maritime security (Gendarmerie Maritime).

2.2.2 General Directorate of National Security (GDNS)

This Directorate is under the authority of the Ministry of the Interior. It is similar to the G.N. and the work together in very close cooperation. However, if the G.N. has the rural areas as the first territory of intervention, the GDNS has duties mainly inside towns. Both of them are competent to carry out criminal investigations in the case of a marine casualty, according to the provisions contained in Article 529 of the maritime code as previously mentioned.

2.3 Penal Procedures in the Maritime Code

The maritime code, in articles 530 and 562, refers to the Code of Penal Procedures, in the case of a crime committed on board vessels, either by seafarers or by any
other person. Article 562 of the maritime code makes clear the legal value of reports which are submitted by the authorities listed in Article 529 and defined the judicial authority which is responsible for receiving the reports for prosecution and law suits. It is clearly defined that the competent jurisdiction is the ordinary tribunal. In other words, in Algeria, according to existing legislation, there are no specialized tribunals, and also there is no significant particular procedure for maritime crime related to marine casualties or other offenses which may happen on board a vessel or at sea. However, the maritime code stipulates, in articles 268 to 272, an insignificant special procedure in the case of offences against safety regulations. This special procedure consists of the mandatory complaints of the minister in charge of the merchant marine prior to any prosecution, and the investigating agents have to submit a report to the Ministry of Transport even if they are not under its authority. Offences affected by such a procedure are those mentioned in the maritime code and any other related regulations which deal with safety of navigation. Except for this particular rule, the other rules and principles of penal procedure contained in the Penal Procedure Code are still the only legal basis to any judicial investigation.

2.3.1 The Investigating Officers

All the agents who are listed by Article 529 of the maritime code have the authority to conduct inquiries into crimes committed by seafarers or by any person on board a vessel. Their actions should follow the provisions of the Penal Procedure Code. This code names the members who have the authority to carry out legal police duties by virtue
of article 14 as follows:
1. the judicial police officers,
2. the judicial police agents, and
3. agents and employees to whom a special law gives authority to conduct legal investigation

2.3.2 Functions of the investigating officers

These consist of the collecting of evidence to find out crimes and the persons who have committed them. In other words, they collect any evidence to prove the existence of a crime and have to find out the guilty person or the perpetrator of such an offence. By law these actions are undertaken before any legal action taken by the investigating judge. At the same the investigating officers also have the authority to carry out the so-called the administrative policing which consists of the performance of the appropriate actions to prevent the occurrence of a violation of laws and regulations. There is a difference, therefore between administrative police and judicial police actions which may be undertaken by the investigating officers. The main purpose of the first one is the prevention of any violation of laws or regulations, while the second one has the function of accusing any perpetrator of a crime.

2.3.3 The Judicial Police Officers (JPO).

Article 15 of the Penal Procedure Code names the judicial police officers as follows:

A. the National Security officers (Officer of Gendarmerie National);
B. ranked personnel within the National Security with
at least 3 years service and appointed as Judicial Police Officers by decree issued by the Ministries of Defence and Justice, according to a special agreement;

C. the Police Commissioner and Police Officers from the General Directorate of the National Security (G.D.N.S); and

D. other employees from the same directorate meeting the established criteria and requisites.

2.3.4 Judicial Police Agents (JPA)

Article 19 of the Penal Procedure Code defines the Judicial Police Agent and stipulates that all employees within the National Security (G.N.) and the General Directorate of the National Security (G.D.N S.) not having the authority of Judicial Police Officers (JPO) are automatically Judicial Police Agents.

There is another category of governmental employees who are empowered by virtue of Article 21 of the PFC to carry out some judicial police functions in the particular field to which they are designated. These employees are the engineers, head of services, technical agent within the forest and water administration, and the guard of farmers. They all have the authority to submit violation reports to the attorney and also to collect evidence to accuse perpetrators of crimes against properties under their jurisdiction. The procedure for this special police is normally defined by a special law dealt with, as mentioned, in the Penal Procedure Code itself.

2.3.5 Duties and functions of the J.P.O.
The duties and functions of the Judicial Police Officers are defined by the provisions of Article 12 and 16 of the Penal Procedure Code. Their functions are limited to their area of competence. Beyond their territorial limits, their actions are unlawful. However, in emergency cases under the authority of competent judges, the JPO could act in the whole territory of the competent tribunal or in the whole national territory. The prosecutor must be informed in any case.

When they conduct criminal investigations and receive different complaints within the scope of the tribunal of their jurisdiction, the Judicial Police Officers are always and under all circumstances controlled by the Prosecutor General. The investigating chamber is also responsible for controlling the role of the JPO and prosecutors in the field of the Judicial Police.

The permanent duty of the JPO is to receive complaints and information, and to hold preliminary investigations in order to find out the crimes and the perpetrators, and all evidence about them before starting the inquiry conducted by the investigating judges within the competent tribunal.

The JPO must move to the place where the offence is perpetrated, look for evidence, and seize all the means which were used in the crime. He also has the authority to check any home which belongs to those who have participated in the crime. The JPO is legally able to ask for the assistance of the professionals who have to take oaths in written form before him. The JPO has the power to oblige any person to stay in the place of the crime until the end of all the investigating operations.
2.3.6 The Arrest of the Alleged Violator

The freedom of individuals is very important and should be well protected, but at the same time the rules of society need to be protected as well against any breaches of laws and regulations for the interest of the people. For this reason, a written policy and precise rules were generally embodied in the Algerian Constitution, i.e. the Penal and Penal Procedure Code.

Article 51 of the Algerian Penal Procedure empowers the JPO to arrest one person or more if he is convinced that there is enough evidence to think that it is reasonable to arrest him or them. This period of the arrest should not be more than 48 hours, and the JPO has the duty to take the statements of the arrested persons and state the precise reasons for such an arrest in a written report which should be submitted to the justice authority.

3. THE COMPETENT TRIBUNAL TO JUDGE CASES RELATED TO MARITIME CASUALTIES

Articles 530 to 562 of the maritime code give authority to the ordinary courts under the responsibility of the Ministry of Justice to judge any crime case related to maritime activities in general, including those related to maritime casualties and safety at sea. However, the provisions contained in Article 268 to 272 of the maritime code can be interpreted as a special procedure. This special procedure consists of the mandatory complaints of the minister in charge of the merchant marine, which should be filed in cases of offenses against the safety of maritime navigation prior to any action taken by the
authority of justice. For this reason the following discussion concerns the Algerian judicial organization.

3.1 Principles and Organization

Justice in Algeria is administered by an independent authority which judges the cases raised before it according to the legal provisions.

Chapter 3 of the Algerian Constitution, adopted in 1963, deals with general principles which govern the Algerian judicial authority.

Article 129 of the constitution stipulates that the judicial authority is independent. The duties is to protect society and liberties and also to ensure for everybody the protection of their fundamental rights.

The bases of justice are the principles of legitimacy and equity. In terms of justice all people are equal, and justice is available for everybody to ensure for everybody the has protection of their fundamental rights.

Article 133 of the Constitution stipulates the criminal sanctions are governed by the principles of legitimacy and that punishment is personal, in other words sanctions should be legitimate and personal. Judges have authority to administer judgement. They can be assisted by assessors from the people according to conditions which are defined by law. The judge only obeys the law.
The judicial organization in the penal field in Algeria is based on the following principles:

- Tribunals for felonies,
- Tribunals for offenses and contraventions, and
- Tribunals for minors (young offenders under 18 years).

Concerning the judges in Algeria, there are the following categories:
Investigating judges, referral judges, first degree tribunal judges and second degree tribunal judges.

The penal tribunal must meet the quorum, the presence of the representative of the Prosecutor General and the secretary. It can be noted that the actual judicial organization in Algeria includes neither tribunals for maritime crimes nor the maritime judges, contrary to the organization which existed before Algerian independence.

3.2 The Investigating Judge (I.J)

By virtue of the Penal Procedure Code, the Investigating Judge (I.J) is appointed to the tribunal by a decree of the Ministry of Justice for a period of three years; renewable, he is selected from the judges of the tribunal. The Investigating Judge is personally responsible for the conduct of the preliminary investigation in the penal field. He is empowered by law to conduct investigations and collect evidence. The Investigating Judge can not judge a case which he was involved in as an investigator.

The Investigating Judge starts the investigation upon
the request of the Prosecutor or upon a complaint joint to a request.

The Investigating Judge has a limited power which is defined in the Penal Procedure Code. Finally, he may be dismissed, if there are acceptable reasons stated in a decree issued by the Minister of Justice.

3.3 Prosecution Chamber

As decided by the above cited code, the penal judicial organization in Algeria is based on the existence, in each court of justice, of a Prosecution Chamber which is composed of a president and two advisors. They are appointed for three years by a decree issued by the Minister of Justice. The Prosecutor General is represented in the chamber and the Secretariat is ensured by one of the secretaries in the court of justice.

The duties of the Prosecutor’s Chamber are among others:

- Assure the physical presence of the accused person before the chamber and show him the evidence and deliberate upon in closed session. The accused persons, their advocates, the translators, and the Secretary are not allowed to attend the deliberations.

- Ensure all the complementary investigations which are necessary, the above mentioned chamber can discharge any prisoner after consultation of the Prosecutor General.

- The chamber can investigate any crime related to offenses or contraventions automatically or upon request of the Prosecutor General. It can take an ordinance to stop legal action if there is not
enough evidence or the perpetrator is not known.

- It can decide that the investigations carried out by the investigating judge are illegal, in such case the same judge or another should perform a second inquiry according to the law.

- If the facts constitute only a contravention or misdemeanor the Prosecutor’s Chamber gives the order to refer the case to the competent tribunal and the accused stays in prison. However, if the acts are considered as only a contravention the accused is released.

- Finally, the Prosecution Chamber is responsible for a survey of the actions undertaken by the JPO in the field of the legal police. It has the authority to suspend or revoke the authority of the legal police officer of any JPO. Such suspension or revocation decision is sent to the authority of the concerned employee. This means that the investigators authorized by the maritime code to carry out legal investigations concerning maritime crimes, including those related to marine casualty, have to act under the control of the above cited chamber.

3.4 The Penal Tribunal

According to Article 34 of the Penal Procedures Code, there is a separate tribunal which is responsible for the judgement of any offences or contraventions. This is the function of only one judge assisted by a secretary. The Department of Public Prosecution is represented by the Prosecutor. The judgement of this tribunal is made after hearing the request of the advocate of the accused and the prosecutor. According to article 562 of the maritime code, this tribunal has authority to assess maritime criminal
ally. which means in the case of marine casualty
giving the criminal responsibility of the master or any
or person.

Criminal Tribunal

According to the Procedure Penal Code provisions, this
of tribunal in Algeria has exclusive jurisdiction to
acts considered a "felony", in other words, the most
serous acts which can be perpetrated against the
ity or against people and their property. The
al tribunal is established within every court of
ce, which consists of a second degree in the judicial
archy.

aforesaid tribunal has no jurisdiction over acts which
considered only as an offence or a contravention. The
itorial jurisdiction of the above cited tribunal
ers the territory of the court justice. It can meet in
part of it upon a decision of the Minister of Justice.
hearings of the criminal tribunal are held every three
ths. The Prosecutor General may ask for other sessions
ecessary.

agenda of the criminal tribunal is decided by its
resident upon the proposals of the Prosecutor General.
composition of the criminal tribunal is defined by the
cedure Penal Code as follows:
- the president (from the court of justice) judges,
- two judges (from the court of justice or from the
 tribunal) assist the president,
- four citizens who have taken an oath act as
 assessors, and
concerned minors.

Article 448 of the aforesaid code defined the composition of the above mentioned tribunal as follows:
- a judge (President),
- two members to whom an oath was administered (as assessors),
- a representative of the department of public prosecutions, and
- a secretary.

The two members who will assist a single judge in the mentioned tribunal are selected by a commission which is constituted in any court of justice. The appointment of the aforesaid commission is decided by a decree issued by the Minister of Justice, for a period of three years. The assessors take an oath before the tribunal prior to the start of their duty as judges.

By virtue of the Penal Procedure Code provisions, to be appointed as a member assisting a single judge in the tribunal of minors, all the following requisites must be met by the members:
- Algerian nationality,
- 30 years old or more, and
- good experience in minors affairs. If any requisite is not met by the member, the composition of the tribunal is considered illegal.

3.7 The Penal Chamber within the Court of Justice

Article 429 of the Penal Procedure Code establishes within the Court of Justice a Penal Chamber which has the authority to receive appeals on the judgement decided in
the field of offences and contraventions by the Penal Tribunal as a first degree of jurisdiction. The Penal Chamber constitutes the second degree of jurisdiction in the aforesaid penal field. It is composed of one judge as president who is assisted by two other judges, and also by a representative of the Department of Public Prosecutors and a secretary.

3.8 The Minors Chamber within the Court of Justice

As stated in the Penal Procedure Code, the Minors Chamber in the Court of Justice is the specialized organ which constitutes a second degree of jurisdiction concerning the cases of minors. The appeals in the judgement issued by the tribunals of minors are submitted to the above mentioned chamber, which is at the same time responsible for deciding on appeals submitted to it concerning the decisions of the investigating judges in cases of minors. The Minor Chamber is composed of the following:

- a president (Judge from the Court of Justice),
- two other members (judges from the Court of Justice),
- a prosecutor and a secretary.
4) COLLISION OF VESSELS AT SEA

The term collision of vessels at sea, as defined by the maritime code also means marine casualty or accident. This is not clearly expressed by the maritime code due to confused wording. The Algerian legislature has dealt with the aforesaid issue in a confusing chapter from article 273 to 298 of the maritime code. This chapter contains four main points which are:
- definition and general rules,
- responsibility of damages,
- actions to compensate damages (civil competence), and
- penal competence.

4.1 Definition and general rules

Definition of a collision according to maritime code provisions is considered a collision of vessels at sea, any collision between vessels at sea, or between vessels and boats of internal waters, wherever the collision occurs.

considered as a collision at sea, according to the provisions of Article 273 of the maritime code, is any crush between seagoing vessels and fixed installations, or with anything which is fixed in any location within the maritime public domain.

Also considered as a collision of vessels at sea is any damage caused by a vessel to another vessel, things or persons on board due to execution or negligence in the navigational operating vessel, or due to failure to respect the rules. The aforesaid event is supposed to be a
collision even if there is no direct collision or crush.

4.2 Compensation for damages

Article 275 of the maritime code includes all damages caused by a collision to one vessel or more, or persons, cargoes or any other properties on board. The maritime public domain is compensated according to the relevant provisions in the maritime code, taking into consideration the rules of limitation of liability of the shipowner.

4.3 Responsibility for Damages

The maritime code in article 277 states that if a collision is caused by the fault of a vessel, compensation for damage is the responsibility of the vessel which made the fault. The vessel is supposed to be responsible for the fault if the damage is caused due to:

- substandard ship’s equipment,
- subnormal seamanship,
- navigational operating vessels,
- failure to observe the rules for prevention of collision at sea, or
- failure to observe the mandatory rules of safety at sea or to fulfill good maritime practice.

4.3.1 Collision caused by common fault

According to article 278 of the maritime code, if the collision is caused by a common fault, the liability is divided between all the vessels involved in the casualty according to the degree of fault of each vessel. If for any reason it is not possible to divide the degree of fault, the liability of the vessels is distributed.
equally.
The liable vessels have common liability in the case of responsibility for compensation for damages due to death or injury of a person. However in the case of other claims to compensate damage to vessels, cargoes, and so on, any vessel has the right to individually compensate for her part of responsibility.

4.3.2 Collision Caused by Force Majeure

By virtue of Article 281 of the maritime code, in the case of a casualty caused by forces majeure or when there is doubt concerning the reason for the casualty, the damages are supported by those who have suffered such damage. The damaged vessel has a strict liability either she was sailing or in fixed positions.

4.3.3 Strict Liability

In principle liability is based upon fault, exceptionally, in few cases, it is not. The concerned party can be supposed liable even if the fault is not proved.

The second subsection of Article 282 of the maritime code states that if there is a crash between a vessel and an immobile installation strict liability can be supposed, except in the case of force majeure case. There is no strict liability in the aforesaid example if such an immobile installation were not properly reported on charts, or there were no proper buoy.

4.3.4 Fault made by a pilot
There are no changes in principles of liability in the case of a marine casualty caused by a pilot. This statement is clearly stipulated by article 283 of the maritime code. The master of the vessel is still responsible while using the services of a pilot. The content of article 177, which considers the pilot as a member of the crew, and places him under the authority of the master, and article 283 of the above mentioned code, are mainly the same.

4.3.5 Liability of vessels parties to the same contract of service

If a collision or a crush occurred between vessels which are governed by a contract of service, such as towage rescue and so on, article 284 of the maritime code stipulates that the liability is settled according to the provisions of the contract which has been passed between the concerned parties. However, according to the Algerian Civil Law, the content of the aforesaid contract should be consistent with the general principles established by Algerian law.

4.3.6 Liability of Navy and Coast Guard vessels

In the maritime zones which are declared dangerous, during military exercises, or during the period when navy and coast guard vessels are in duty, they are not responsible for any damage caused by a collision or a marine casualty. However, commanders of such vessels still have the obligation to assist the damaged vessels. The above mentioned duty is upon all masters of seagoing vessels.
Article 285 of the maritime code stipulates inter alia, that after a collision, if and as far as possible without danger to the vessel itself, crew, and passenger it is the duty of each vessel to render to the other vessel, its crew, and passengers assistance as may be practicable and may be necessary to save such a vessel from any danger created by the collision. At the same time, the master of any vessel involved in a collision has the duty, as may be practicable, to give to the master of the other vessel the name of his own vessel, the port of registration, departure and destination. The master is personally responsible for the violations of the aforesaid duties and the shipowner has no responsibility.

4.4 Action of compensation for damage

4.4.1 National jurisdiction

The claims which result from a marine casualty are settled according to Algerian law in the following cases:
- The marine casualty occurred in Algerian territorial sea.
- The vessels involved in a marine casualty all have the Algerian flag, wherever the casualty occurred.
- The marine casualty occurred in the high seas and the plaintiff has the headquarters of his company in Algeria and he decides to litigate the defender in Algeria.
- The vessel of the defence or any other vessel owned by him is arrested in Algeria, or supposed to be decided by Algerian authorities and a guarantee is given by the defence and the plaintiff selected for Algerian jurisdiction.
- The marine casualty involves, navy, coast guard vessels or any other public vessel, or the marine casualty occurred in Algerian ports, seaways or internal waters.

The maritime code also gives an opportunity to the concerned parties, under certain conditions, to settle claims under the jurisdiction which they may select through common agreement, or ask for arbitration.

4.4.2 Foreign jurisdiction

According to the maritime code the national jurisdiction is not concerned in the following cases:
- The maritime casualty has occurred in the high seas.
- If all the vessels involved in a collision have the same flag wherever the accident has occurred.
- If the concerned party has no headquarter in Algeria, the marine casualty has occurred in the high sea and the plaintiff has selected to litigate the defense under his home jurisdiction, or under the jurisdiction of the location of the company.
- The seizure of the concerned vessel or other vessel belonging to the defence is decided or can be decided under the jurisdiction of a foreign court and the defence has already given a guarantee.
- The marine casualty has occurred in the port, seaways or internal waters of a foreign country.

4.5 Criminal Liability

Chapter 3 of the maritime code has listed special maritime crimes related to marine casualties already
mentioned in this chapter. The maritime code provides principles concerning penal competence.

According to article 214 of the above mentioned code, the penal or disciplinary responsibility of the master or any member of the crew on board may be engaged in the case of a marine casualty. Depending on certain circumstances, the jurisdiction may be for the national authority or for a foreign one.

4.5.1 National criminal jurisdiction

The judicial and administrative authorities of Algeria may have jurisdiction over criminal cases under certain conditions. The national jurisdiction is legally recognized in the following cases:

- If the marine casualty occurs in the internal waters or in the territorial sea and the penal liability of the master or any other crew-member of a foreign vessel may be engaged.

- If certain measures are to be undertaken, for suspension or revocation of a licence or certificate of competence issued by the Algerian authority and the holder of such a certificate or licence is involved in a marine casualty abroad.

- If the accused persons are citizens of Algeria, even concerning masters or crew members.

It is necessary to know that according to subsection two of Article 297 of the maritime code that the Algerian authorities have also the authority to detain a foreign vessel if the circumstances of the collision (marine casualty) justify such a decision.
Article 296 of the maritime code also states that the provisions of the present chapter are applicable to other types of maritime events.

4.5.2 Foreign criminal jurisdiction

In a case of collision, where the criminal or the disciplinary liability of the master of any other crew member may engaged, the authorities who have the jurisdiction over the case are those belonging to the same country as the accused persons. In such conditions, either seizure or detention of the concerned vessel for investigation purposes is legally irrelevant unless such measures were taken by the flag states. These rules are still valid in any other maritime event because the Algerian legislature considers all types of marine accidents as collisions.

4.6 Damage to the vessels, persons and cargoes

In the case of a marine casualty which causes a significant damage to the vessel, persons or cargoes, according to article 604 of the maritime code, the master of the ship has the obligation to report such a casualty to the maritime administrative authority in a period not more than 24 hours after the arrival of vessel. The master is requested to fulfill the instructions of the administrative authority and may not start the unloading operation before the checking of the report by the above mentioned authority.

4.6.1 Authorities entitled to receive the casualty report
According to Article 606 of the maritime code, the authorities entitled to receive the casualty report mentioned in Article 604 are:

- in Algeria, the maritime administrative authority,
- overseas, the Algerian Consulate authority, and
- if there is no Algerian representative in a foreign port, the master has to follow the local laws and regulations.

4.6.2 Investigations into marine casualties

The maritime code stipulates in Article 607 that investigations into the reported marine casualties and the procedure of verification of the reporting process is defined by decree of the minister in charge of the merchant marine. This regulation has not been issued yet.

4.7 Responsibilities of shipowners in case of oil pollution Caused by a marine casualty

The 1967 Torrey Canyon disaster demonstrated how much damage a major oil spill can cause. It also revealed a number of defects in the existing system for providing compensation for those who were affected by such marine casualties.

The aforesaid marine casualty proved then that marine pollution is a serious problem and has become a concern for the International Maritime Organization which was called upon to take action. In 1969, a convention which deals with the civil liability of the ship or cargo owner was adopted. The marine casualties which occurred after the Torry Canyon disaster, such as those concerning the
Amoco Cadiz in France or the Exxon Valdez in the USA gave enough evidence that casualties involving tankers are a real challenge to the whole world.

4.7.1 National legislation

In Algeria, since 1976, legislation has been promulgated as well as a contingency plan to combat oil pollution which is nowadays one of the government's priorities. The main national legislation which deals with oil environmental protection in general is the maritime code of 1976 and Protection of the Environment Act of 1983. The content of national environmental legislation includes shipowner's liabilities, oil pollution certificates, action for compensation of damages, general rules and definitions. (See Article 117 to 149 of the maritime code). It includes also, definition of pollution and the list of pollutants, prohibition of discharge of pollutants for the masters to use the reception facilities in the port to discharge oil residues, and fines to be applied in cases of failure to meet one of the obligations already mentioned. (see Articles 210 to 216 of the maritime code). Chapter Three deals with the marine environmental protection issue relating to law No. 83-03 of 5 February 1983 concerning the protection of the environment. The most important provisions of the above mentioned law are those stipulated by Articles 53 and 54. Accordingly, if a vessel is involved in any incident in the territorial sea and if the cargo on board is considered dangerous or it is crude oil cargo, the shipowner may be ordered to take all the necessary measures to stop the threat to the maritime domain; in the case of an order still without result the government may undertake the necessary measures and the
bill will be paid by the shipowner. However this provision is expressed in general terms and no agency is designated to ensure the implementation of such obligations. The environmental protection law brought to Algeria, for the first time, a new obligation for any ship master of any vessel which has on board dangerous, toxic or pollutant cargoes. According to article 54 of the aforesaid law the master has to report any incident or accident which has occurred on board his vessel if it is sailing near, or into the Algerian territorial sea.

The Presidential Decree promulgated upon by Article 54 has designated the National Coast Guard Service and the port companies as receivers of such a casualty report.

According to Article 72 of the Marine Protection Law, if there is any failure to report the obligation under the provisions of Article 54 already mentioned, the guilty is liable to a fine of between 50,000 and 500,000 Algerian Dinars.

4.7.2 Ship Wrecks, as a consequence of a marine casualty

One of the worst consequences of a marine casualty can be the hazards to navigation created by a wreck especially when it is not reported on charts. In many cases the authorities are obliged to proceed to the removal for a variety of reasons. Particularly, in the case when the removal expenses are higher than the value of the wrecks, many legal issues arise. The Algerian legislature has dealt with maritime wrecks in the maritime code and the customs regulations, nevertheless this maritime
legislation does not cover all wrecks' aspects, only some rules with the aim to secure customs duties on salved property, and to settle some disputes are provided.

The maritime code includes the following issues concerning maritime wrecks: definitions, obligations to report to the maritime authority any discovery of a wreck, the depository authorities, their duties and related legal power. Article 369 of the maritime code defines the conditions under which the minister in charge of the merchant marine may pronounce the forfeiture of property rights, if the owner does not take the necessary measures to at least start the removal of such a wreck.

It can be observe that the provisions of Articles 375 to 380 of the above mentioned code give details concerning the selling procedure of the wreck. However, the same maritime code is silent in the case of the removal cost being higher than the value of the wreck. It would be very useful to introduce other provisions to setting up the duties of the concerned party, particularly the duty to support the cost of refloating a wrecked ship even if this operation is done by government authorities. It can be noted that this duty is already governed by the provisions of the Algerian civil code which contains general principles related to civil responsibility. However, it appears that without an express statement concerning the aforesaid duty of the owner of a wrecked vessel, the confusion which is caused by the wording of the above mentioned provisions of the maritime code, particularly those related to the forfeiture of property rights and the sale of wrecked ships, will continue to negatively affect the management of maritime wreck in Algeria.
5 ADMINISTRATIVE INVESTIGATIONS

5.1 INTRODUCTION

The purpose of the judicial casualty investigation as seen is the determination of whether there is any evidence of violation of law and regulations and the institution of criminal liability, either to apply fines, suspension or revocation proceedings or to refer the case to the competent justice authority. There is also another equally important purpose which is the collecting of information for administrative uses, such as statistical studies or a program review to prevent similar casualties in the future.

The two ministerial decrees on the July 1962 concerning the creation of the safety commission in Algeria are the only regulations which deal with the administrative casualty inquiry. Effectively Article 2 of the two ministerial decrees in subsection 6 has listed among other functions of the aforesaid commissions that under certain conditions they are in charge of holding investigations related to marine events, such as collisions, groundings, fire, sinking and other casualties concerning vessels. It is necessary then to further explain these maritime structures as far as they are concerned with marine casualties.

5.1 The 1962 regulation related to the safety commissions

Two ministerial decrees were issued on 15 July 1982 by the minister in charge of the merchant marine according to
the above mentioned provisions of the marine code. This maritime regulation contains the following aspects.

5.1.1 The Central Safety Commission

Article 1 of the ministerial decree issue on 15 July 1982 states that it has created a Central Safety Commission which is governed by the provisions contained in the mentioned decree with the following duties to be handled:

- safety of maritime navigation,
- safety of Life at Sea, and
- health, habitability and vessel working conditions.

In this field, Article 2 of the aforesaid decree defined again the functions of the Central Safety Commission which are mainly similar to those listed in the maritime code. However, it can be observed that a new function is added by virtue of the ministerial decree. Effectively the last section of Article 2 states:

"The central safety commission is in charge of inquiries related to maritime events such as the collisions, grounding, fire, sinking and other casualties concerning vessels".

The ministerial decree above cited states that the Central Safety Commission is headed by the minister himself or his representative. Its composition is as follows:

- Representative of the Coast-Guard National Service,
- Representative of the Ministry of Transport,
- Representative of the Telecommunication Ministry,
- A Marine Affairs Administrator.
- Maritime Constructions Engineer,
- An inspector of navigation and maritime work, and
- A mechanical inspector.

The secretary’s duty is enforced by the party responsible for the merchant marine.

All the members of the Central Safety Commission are appointed by a decision of the Minister of Transport upon a proposal of their respective organizations. A seafarer’s doctor, a shipowner’s representative, a director of transportation services and a concerned consulate authority should attend the meeting of the Central Safety Commission if necessary which meet only upon presidential invitation.

5.1.2 The local commission of inspection

In application of maritime code provisions related to the local commissions of inspection, contained in Articles 235, 236 and 241, the minister in charge of the merchant marine issued a ministerial decree on 15 July 1982 which established the following:

- The title of the commission becomes local inspection commissions for navigation and maritime work, in the maritime code the title is the local commission of inspection.
- The territorial competency of the commission is the territorial limit of the Wilaya (local government) with its headquarters the transport and fishing directorate and they can meet in any port whenever a ship requires inspection.
- Article 2 of the above mentioned decree redefines the duties of the local commissions of inspection and empowers them to carry out inquiries into
maritime events, such as collisions, grounding, fire and so on. However, such commissions have authority to handle maritime casualties investigation, if the vessels are only equal or inferior to 500 tons.

- The members of the commission are appointed on a decision issued by the minister in charge of the merchant marine upon a proposal from their respective ministries.

- The local commission of inspection is composed of:
  - a transport and fishing director (President),
  - an administrator of marine affairs,
  - a coast-guard representative,
  - an inspector of the Navigation and Maritime Work,
  - a mechanical Inspector,
  - a representative of the communications Ministry,
  - a representative of the local port authority, and
  - a representative of the shipowner.

- The local commission of inspection meets upon the request of its president, the shipowner, the master of the ship and two thirds of the crew of the ship. The reports and any other useful information are submitted through the president of the commission to the Central Safety Commission.

Overseas, Algerian representatives establish a similar commission to carry out any maritime function related to the competence of such commissions held in Algeria.

It is important to note that as a result of the earliest governmental reorganization fishing activities, the management of the fishing vessel and also fishermen were transferred to the Ministry of Agriculture and Sea Fishing. Consequently, the local commission of inspection
under the authority of the Transportation Directorate no longer has authority over fishing vessels. Its previous duty is nowadays carried out by the competent administration in charge of fishing activities.

5.2 Maritime code provisions related to the safety commissions

The maritime code has defined some maritime safety functions and has given the jurisdiction of these functions to the maritime safety commissions which were created by virtue of article 235 of the above mentioned code. Article 236 delegates authority to the minister in charge of the merchant marine to establish the composition and function procedures and states that the central safety commission is placed within the ministry in charge of the merchant marine. It can be observed that the provision of article 235 defines the functions of the aforesaid commissions, in very general terms, to the enforcement of the provisions of the maritime code and the international convention related to the safety of life at sea, the health, habitability and working conditions at sea. However, article 237 limits the functions of the Central Safety Commission only to the following:

- approval of ship building and reconstruction drawings,
- approval of the safety equipment and means of communication, and
- review of the local safety commission's decisions.

It is also stated by virtue of Article 238 of the maritime code that a local maritime commission of inspection is held within each maritime district (circumscription maritime). Such a commission may meet in
any other port where the vessel to be inspected is calling
Article 239 of the maritime code also delegates to the
minister in charge of the merchant marine the authority to
define the composition and functional procedures of the
aforesaid commission.

The duty of the local commission of inspection was limited
according to Article 241 of the maritime code to carrying
out the inspections listed by Articles 229, 230 and 232.
The inspection defined in Article 231 is not under the
jurisdiction of the local commission, which cannot be
considered as a commission. The article in Arabic
which is the official, is very clear. The functions of the
local commissions of inspection are to ensure the
following inspections:
- initial inspection (Article 229),
- periodical inspection (Article 230), and
- departure inspection (Article 232).

The additional inspection, which takes place according
to Article 231 of the maritime code when an accident
occurs or any defect affecting the safety of the vessel,
is not carried out by the local commission of inspection.
(see article 241 of the Maritime Code, Arabic and French
versions).

Finally, the information presented in this first
chapter shows that the present Algerian Maritime
Administration cannot carry out its maritime functions
properly. The reason for this is the structural
duplication and confusion which can be noted. Effectively,
as can be seen at the local level, there are three
maritime organizations to perform the same task. This
organizational weakness has been aggravated by the
confusing wording of the maritime code. To adequately enforce maritime functions, including marine casualty investigations and the different maritime matters either related to civil and penal liabilities, or concerning administrative remedial actions, a revision of both the maritime organization and maritime legislation are very necessary.
CHAPTER 2

ACTUAL SITUATION IN FRANCE

Introduction

For a good understanding of the Algerian marine casualties or accidents approach, it will be of interest to examine French legislation and practices related to this issue. This because the Algerian maritime legislation still contains many legal provisions similar to those which exist in the French merchant marine disciplinary and penal code.

The French legislation related to marine casualties and accidents, before the promulgation of the Decree of 20th January 1981, was rather penal than oriented to the collection of information for program review and statistical studies for the prevention of similar casualties in the future.

It is very clear that the penal approach may be an efficient means of minimizing breaches of safety laws and regulations; but it is not the appropriate method of obtaining factual information to develop and institute the corrective measures and standards of maritime safety.

It appears that the French government came to realize the weakness of its approach when it faced the Amoco Cadiz disaster in January 1981. This was the date as the establishment of an administrative investigation mechanism designed to obtaining information for the improvement of safety standards. This new regulation was issued by decree No 81.63 of 20th January 1981. The two types of
investigation will be concerned in more detail herein after.

1. The Merchant Marine Disciplinary and Penal Code
   Provisions related to Marine Casualties

1.1 Maritime Offenses Related to Marine Casualty
   Offenses Committed by Masters, Officers or Pilots

   According to the mentioned penal law any, ship
   master or watchkeeping officer who is deemed guilty of
   offences against the rules defined by the maritime
   regulations, whether concerned with the lights to be
   turned on at night or signals in foggy weather for a
   manoeuvre to be executed in the case of approaching
   another vessel, is punishable by an imprisonment of a
   period of six days to three months and/or a fine of sixty
   French Francs.

   However, if the mentioned offences or any other negligence
   is perpetrated by either the ship master, the watchkeeping
   officer or the pilot causing the particular ship or
   another ship to collide, ground, crash with an obstacle
   which can be detected or known, or when such offences have
   caused serious damage to the ship or to her cargo, the
   guilty can be punished by six days to three months
   imprisonment and or a fine from 60 to 1500 French Francs.

   When the above mentioned offence causes the total loss of
   the vessel, her total navigability, her cargo, or a
   serious injury or death of one or more persons, the guilty
   is punishable by imprisonment of three months up to two
   years and/or by a fine of 180 to 1500 FF*.
If the person who is in charge of the conduct of a vessel or who is employed as a pilot willingly runs aground, destroys or loses any vessel by any means, it is punishable by the maximum punishment embodied in Articles 434 and 435 of the Penal Code. However, if the guilty is another person other than those already mentioned, the punishment is decided according to the provisions of the aforesaid two articles of the Penal Code.

According to article 83 of the (DPCMM) any ship master who after a collision as far as he can without any danger to his ship, crew and passenger neglects to use all the means which are under his authority to save from the danger created by the collision, other ship, his crew and his passenger. Out of the force majeure situation if such a master leaves the location of the event before making sure that his assistance is no longer necessary for the other ship, her crew and passengers, the master of such a ship is punishable by a fine of 720 to 20,000 FF and/or by imprisonment of one month to two years. However, if the ship is sunk, before any effort to rescue the survivors and one or more persons die as a consequence of non-execution of the above mentioned obligations, the punishment can be doubled.

The above mentioned article also stipulates also that after a collision the master of each involved vessel is required to exchange information about the name, the port of registration, the port of call and the port of departure of every vessel, unless this can cause any danger to the ships themselves, the crew or to the passengers in the case of failure to meet these obligation, the guilty may be punished by a fine of 180 to
1500 FF and/or by imprisonment of six days to three months.

By virtue of Article 84 of the DPCMM, in a case of danger during the voyage, if a master abandons the ship without first consulting the officers and accessing their opinions, such a master can be punished by imprisonment of six days to six months.

The master who, in the case of danger and before leaving the vessel, fails to organize the rescue of the crew, passengers, certificates and log books, mail and highly expensive parts of the cargo, is punishable by imprisonment of one or two years. The same sanction applies to the master who is not the last to abandon the ship in the case of danger.

It is stipulated by Article 85 of the above mentioned code that a fine of 180 to 2,000 FF and an imprisonment of one month to two years is applicable to a master who consciously fails to rescue a person found at sea, even if this person is known to be an enemy, when the rescue operation is possible without any serious danger to the ship, crew and passengers. For further information see Articles 79 to 85 of the DPCMM (Disciplinary and Penal Code of the Merchant Marine Law of 17th December 1926)

1.1.2 Offences Committed by Crew Members of a Vessel

Any crew member, other than the master, watchkeeper officer or pilot is deemed guilty if during his duty time he commits negligence or any other failure to perform his due service obligations and as a result causes to any ship either a collision, grounding, crush with a known or
detectable obstacle, a serious damage to a ship or to its cargo is punishable by six to two months imprisonment and/or a 1,300 to 2,500 FF fine. However, if the consequences are the total loss of her navigability, serious injury or death of one or more persons, the punishment is six to eight months imprisonment and a 60 to 15,000 FF fine. It will be useful to note that due to changes in penal policies the aforesaid figures and punishments may be amended.

1.2 The Maritime Commercial Tribunals (MCT)

In France there have been for some time, two opposite currents of thought concerning the establishment of a separate maritime court. Some currents were against the existence of such maritime courts claiming that maritime crimes should be dealt with before the ordinary penal court, while others strongly supported a policy to maintain such maritime courts. This is certainly the main explanation for the abolition of these institutions and their reestablishment in 1930.

The preparatory work of the decree which was promulgated on 29th July 1930 laid down the reasons for the necessary reestablishment of the maritime court in the following:

"It appears necessary in the actual circumstances to reestablish the maritime tribunals according to the multiple requests of the maritime unions and professional organizations of seafarers and officers. Experience has shown that the procedure contained in the disciplinary and penal code of the merchant marine issued on 17th December 1926, and related to the penal matters of the seafarers is an inappropriate manner..."
because this law gave the authority to the ordinary penal tribunals over maritime crimes, then the maritime administration is unable to efficiently ensure good order and discipline on board of a vessel. A fast procedure carried out by "Penal justice" is the only way to reestablish discipline and good order on board ships. This type of justice which is termed Father Justice should be ensured by the maritime commercial tribunals, which are more adapted to a better understanding of maritime crimes and the minds of seafarers". To be more neutral, a new concept was introduced, the provisions of the 1952 Decree which stipulate that the shipowner is represented in the composition of the (MCT) is amended. New regulation which allow to a professional judge to replace the shipowner representative is adopted. This change has avoided the point of weakness of this specialized tribunal. The maritime courts which have to be reestablished, have jurisdiction only over maritime crimes related to good order on board ships and to nautical affairs.

1.3 Institution of the Maritime Tribunals

The decree issued on 29th July 1939 reinstates the maritime tribunals within the maritime quarters in France. This decree incorporates with the following. The maritime tribunals are composed of five members, namely:

1) a President of the tribunal, who is the head of the maritime quarter within the tribunal, is appointed,

2) a Judge from the ordinary court which is in the maritime quarter zone,
3) an inspector of maritime works and navigation or a merchant marine mechanical inspector,

4) a master of seagoing vessel in retirement not more than 60 years old who must served as a master at least for four years and appointed by the marine affairs administrators. The port of his registration is not taken into consideration,

5) a fifth member is appointed as herein after explained.
The appointment of the fifth member depends on the quality or the category of seafarer to which the accused belongs.

In the case that the alleged violator is a seafarer holding a professional certificate, the member of the tribunal will be chosen among the holders of the same certificate and must be the oldest one.

If the accused is not a holder of any certificate and belongs to the deck of the ship, the member of the tribunal will be the oldest bosun. However, if the accused is working in the engine compartment and in general service, the representative will be chosen from seafarer personnel with the oldest age and a rank considered equal to the foreman.

In the case that the alleged violator is not a seafarer at all, the member of the maritime tribunal will be a second inspector of navigation and maritime work.
When in the same crime different categories of seafarer certified and non-certified are involved, the composition of the maritime tribunal should be arranged in a manner so that the number of members cover all the needed representative for every category of the alleged violators. However, in the deliberation and the vote process to make a decision about culpability and the punishment, each representative is associated only when the deliberation concerns the category of persons which he represents.

Finally, an administrative employee of marine affairs is appointed as a secretary of the maritime tribunal.

1.4 Some principles

By virtue of Articles 92 and 93 of the 19th March 1959, the following principles have been set up:

- The maritime courts have no authority to judge and also they have no jurisdiction over any civil claims.
- The guilty sentenced by judgement of the maritime tribunals has to appeal, if there is not adequate application of law or in the case of violations of law committed by the mentioned tribunal.
- The entry of appeals are made by a declaration to the secretary of the maritime tribunal, according to the rules which govern the ordinary offences proceedings. The appeals are registered in an official book.
- The minister in charge of the merchant marine, under certain conditions, has authority to submit to the Minister of Justice, the maritime tribunal judgement, in order to be sent to the competent court of appeal, with the aim of being cancelled if there is any violation of the legal provisions concerning the particular procedures applied before the maritime tribunal or in the case of breaking laws related to the specific maritime offences.

- According to Article 9 of the 5th June 1940 Decree, an officer from the French Navy is appointed by the Maritime Governor (Prefet Maritime) in order to conduct the necessary investigation and also to carry out the public prosecution's role. By virtue of Article 94 of the merchant marine disciplinary and penal code, the regulatory authority was delegated to the French government to set up the particular rules and procedures to be fulfilled before the maritime tribunals.

2 Particular Procedure before the MCT

2.1 The Territorial Jurisdiction

The 26th November 1956 Decree has established a number of maritime tribunals, the particular procedure before them and has set up the territorial jurisdiction of each one. This last subject was dealt with in the provisions of Article 1 to Article 3. Accordingly, the location where the maritime tribunals have been held and their territorial jurisdiction are herein after explained.
Maritime Quarter
(Headquarter of the Maritime Tribunal)                 Territorial Jurisdiction extend to:

Le Havre           Dieppe, FECA
Roven              CAEN, Cherbourg
Sain-Malo          Cancale, DINAN
Brest              Saint-Brieuc/Paimpol/Riguier/
                   Lannion/Morlaix/Camaret/
Lorient            Douarnenez/Audierne/
                   Leguilvinec/Concarneau/Ile de
                   Groix/
Nantes             Auray/Etal/Vannes/
La Rochelle        Les Sables diolones/
                   Marennnes/Orleron/
Bordeaux           Arcachon, Bayonne
Sete               Port-Vendres
Marseille          Martigues, Toulon, Nice

2.2 Submission of the File Case to M.C.T

Under the power given to the President of the Maritime Tribunal by virtue of Article 4 of the aforesaid decree, when a case is referred to him according to 30, 31, 33 and 35 of the disciplinary and penal code, he has the duty to make a written declaration stating that the maritime tribunal is summoned. In the case of one of the offences mentioned in articles 80 to 85 and 87 of the disciplinary and penal code, which are related to maritime accidents, the president of the maritime tribunal asks for the appointment of an officer from the navy to whom the file case is referred for further information. He is entitled
to order a complementary inquiry, the end of such an inquiry if any appointed officer submits his own opinion in a written report with the case file to the president of the maritime tribunal. The mentioned officer is the representative of the public proceedings ministry by virtue of Article 91 of the disciplinary and penal code. If the case is ready, without taking into consideration the conclusions of the navy officer, the president of the maritime tribunal has the authority to summon the mentioned court.

2.3 Meeting Location of the M.C.T

According to Article 12 of the above mentioned decree, the maritime tribunal's meeting takes place within the maritime quarter of marine affairs. However, if for any reason appreciated by the president of the aforesaid tribunal there is no appropriate location near the maritime quarter's office, the meeting may be held in any other place available designated by the president. This location must be reported in the subpoena issued to the concerned parties.

The proceedings of the maritime tribunals are disclosed; even, if the disclosure of such proceedings may threaten the good order, the judgement must be published. The good order during the proceedings, the investigations and the hearing of the maritime tribunal is one of the duties of the president of the above mentioned tribunal.

2.4 Appointment of the Judges

A judge from the ordinary court is by law a member of the maritime tribunal. He is chosen by the president of
the civil court from the panel laid up each year during January by the head of the competent court of appeal.

The other members who have also the quality of magistrate are designated by the president of the maritime tribunal after approval of the authorized marine affairs director. Article 9 of the aforesaid decree defines the conditions under which a judge is legally rejected from the maritime tribunal and any work carried out with participation of such a member is without effect, by law.

The conditions are listed as follows:
- No one can take part as a judge in the maritime tribunals if he introduces a complaint, or testimony during the hearing process of the case.
- If there is a family relationship up to an uncle or niece.
- If he was mate or chief of crew on board a vessel when the violation was perpetrated; however, if the accused is a pilot, the appointment of another from the same station as a judge if needed is legally possible.

2.5 The Hearing Procedure

According to Article 14 of the 26 November 1956, as amended in 1957, when the trial is opened the president of the maritime tribunal puts on the desk a copy of the Merchant Marine Disciplinary and Penal Code, the Penal Procedure Code and a copy of the particular procedure before the maritime tribunal decree. He proceeds to administer oaths to all judges, who must be standing except for the judge of the civil court. The same oath is administered to the naval officer representative of the
public prosecutions department. It is the same for any new
djudge joining the tribunal as a representative of the
accused party. All this details must be reported in the
final sentence.

When the above mentioned details are achieved, the
president introduces the alleged violator who must be
under sufficient guard if he is under temporary arrest.
The accused has the right to be assisted by a solicitor
who has to be recognized by the tribunal or by an
advocate. The name, surname, age, job, address, birth
location have to be introduced by the accused upon the
request of the president. If he refuses, the hearing
process continues. Then the tribunal secretary when asked
by the president of the MCT starts reading the report of
the investigating administrator, the report of the naval
officer who is considered by law the representative of the
public prosecution department and any other information
useful for the judges.

The President reminds the accused and his solicitor or
advocate of the offence which is supposed to be
perpetrated by the alleged violator and also the legal
provisions which allow them to say all that is deemed
necessary for their defence in a respectable manner to
the audience and to the court.

The secretary introduces in a high voice the list of
the witnesses upon the request of either the president of
the tribunal, the officer prosecutor or the accused. When
it is requested, each witness leaves the court room and
stays in a location made available for such a purpose. A
list of all the witnesses is defined. This list has to
contain only those who were summoned at least 24 hours
before the meeting of the tribunal, by the prosecutor, the
president of the tribunal or by the accused upon a simple
declaration to the secretary of the tribunal or to its
president who has the authority to reject any other
witness introduced contrary to the rules above mentioned.
The prosecutor and the accused has the same authority
concerning such a witness; immediately the tribunal
decides whether or not the rejection is accepted. The
president of the tribunal has the authority to conduct the
hearing and the investigation in the manner which is
deemed appropriate to the discovery of the truth, for this
reason he is able, during the hearing to show any written
evidence or issue a subpoena to bring before the court any
person who may need to be heard by the tribunal.

The president of the tribunal also has the authority to
evaluate whether or not other new witnesses may be heard
during the audience when they are not in the aforesaid
list of witnesses if the prosecutor or the guilty apply
for their testimony. The declaration of such a witnesses
considered simple information.

When a witness is not present at the audience, if his
deposition is considered important, it can be read upon
the request of the president of the tribunal who conducts
the interrogation of the accused party and receives the
testimony of witness under oath. However, the oath is not
administered for the witness who was not in the official
list. Prior to the hearing process, the guilty or the
prosecutor has the right to ask for rejection of any
witness or a judge within the maritime tribunal if there
is any legal grounds for non qualification of such a judge
or witness. The prosecutor has the authority to carry out,
during the proceedings by the tribunal, the functions of
the public prosecution department. Then the tribunal is requested to hear his point of view, and the same for the requests of the defence. The prosecutor always has the authority to react and comment on defence evidence and views. However the latter always has the last opportunity to express his appropriate comments. At the end before deciding to close the hearing, the president of the tribunal has to ask the accused if he still has anything else to express.

2.6 Deliberation Process and Sentence of the (MCT)

The president of the tribunal decides to close the hearing the accused party is invited to join the guarded location. The president and the judges go to the deliberation box where they deliberate without the presence of the prosecutor and the secretary of the tribunal. Before the issue of the sentence, all the tribunal members have no right to communicate with anyone.

During the deliberation the judges can examine all the evidence recorded but not including what which was not produced for the defence and for the prosecutor.

The president of the tribunal asks each judge about the culpability of the accused party and also about each act which is supposedly perpetrated by him. Each question is answered by vote; the president of the tribunal gives his opinion the last and the sentence is undertaken by majority vote. If the accused person is declared guilty, the president has to ask the judges about the mitigating circumstances, before the voting process related to the enforcement of the sentence. If there is no majority the opinion which is the more favorable to the accused is
adopted. After determining the punishment the tribunal may give a suspended prison sentence.

All matters concerning acceptance or not of mitigating circumstances, applicability of suspended prison sentence, competency or any kind of incident during the proceedings are settled by a decision based on the majority voting process. The sentence is without effect if it does not refer to the majority mentioned; however, a report from the members is not mandatory.

According to Article 28 of the 26 November 1956 Decree the maritime tribunal has authority to decide on a disciplinary sanction which must be one of those defined in Article 15 of the Merchant Marine Disciplinary and Penal Code. This is possible only if the facts are assessed by the tribunal as a disciplinary fault.

If as a result of discussion and debate, it appears that the maritime tribunal is not legally competent to judge such a case, upon the request of the prosecutor or automatically, the accused is returned to the authority which has initiated the case to refer to the competent authority. When the alleged violator is declared not guilty, the tribunal pronounces his discharge and the accused is released. However, if he is recognized guilty, the sentence is pronounced.

2.7 The Judgement

The above mentioned decree governing the special judicial rule before the maritime tribunals, specifies some details related to the judgement which have a very important value from the legal point of view, because the
judgement is without any effect if the aforesaid details are not applied. Basically the above mentioned details can be summarized as follows:

- the judgement has to state the names and quality of judges;
- name, surname, age, job and address of the guilty;
- the offence for which the guilty is judge by the maritime tribunal;
- the administration of oath to the witnesses;
- the requests of the prosecuting if any;
- the questions asked and their answers;
- the declaration of the majority concerning the mitigating circumstances if any;
- the punishment pronounced with specification whether it was decided by majority or the more favorable opinion was applied to the guilty;
- articles of laws and regulations which were enforced without stating the whole provisions,
- when the suspended prison sentence is decided, the majority vote, the law from which the guilty takes benefit, and the warning which is given to the guilty must be declared publicly;
- the enclosure of the court or the disclosure if it was decided,
- the reading in public of the judgement done by the president of the maritime tribunal, and
- if there is a sentence, the guilty must be informed that by law he has three days to introduce an appeal before the court of appeal for any violation or improper enforcement of law.

Finally, the judgement is issued in four copies; one for any initial use, the second is sent to the local treasury to collect the money in the case of a fine, two other
copies are sent respectively to the minister in charge of
the merchant marine and to the prosecutor general within
the competent court of appeal. All the information
regarding the territorial jurisdiction of the MCT, the
submission of the case before the aforesaid tribunal, the
appointment of the judges and the hearing procedure are
spelled out by decree 26th 1956 related to maritime
tribunals and the particular procedural rules which are
applied before it, as amended on the 4th of June 1957
decree.

3 Legal Maritime Investigating Process

3.1 Introduction

Prior to the promulgation of decree No. 63.691 on the
24th August 1963 concerning the regulation governing the
inquiries into loss of vessels, collisions and other
maritime accidents, the marine casualty investigation was
governed by the regulation set up by the 19th March 1927
decree. The content of these two regulations is mainly the
same except for those provisions related to the authority
entitled to receive the investigation's report concerning
the offences which are listed by Articles 80 to 85 of the
merchant marine disciplinary and penal code. Effectively,
according to the 1927 regulations, the investigation's
report is submitted to the competent prosecutor general
within the ordinary court and in other cases to the
competent administrative authority. (see article 5 of the
1927 Decree). However, because of the reestablishment of
the maritime tribunals, the 1963 regulation appoints them
as a competent authority with jurisdiction to assess the
offences defined by Articles 80 to 85 of the above
mentioned code. It can also be seen that the official
title which refers to the employee in charge of the investigations was "Administrateur de l'inscription maritime" but became "Administrateur des Affaires maritime" under the 1963 regulation, which means the marine affairs administrator.

3.2 Initiation of the Criminal Prosecution

Article 2 of the 1963 Decree gives authority to the "Marine Affairs Administrator" to proceed to the investigations stipulated by Article 86 of the Merchant Marine Disciplinary and Penal Code.

Judicial marine investigations are automatically open, upon the master's or pilot's report, or upon any complaint or information received by any means. To give more chance to the administration to carry out its duties properly and take appropriate measures, Article 1 of the aforesaid 1963 decree obliges the master or the pilot of any vessel after a collision, grounding or any other accident to report such a casualty to the marine affairs administrator on arrival at the first port. Information is submitted without any delay to the marine affairs directors who have to inform the minister in charge of the merchant marine.

If the information about a marine casualty is reported at the same time to many marine affairs administrators, the director of marine affairs appoints the one who has to carry out the judicial investigation. If the above mentioned administrator does not belong to the same directorate the investigating administrator is appointed by the minister in charge of the merchant marine. In the case of a marine casualty occurring overseas and the competent French authority entitled to handle the inquiry
feels that it is not qualified to carry out such an investigation, a report joint to the conclusion of its preliminary inquiry is submitted to the minister in charge of the merchant marine in order to designate a qualified marine affairs administrator to achieve such an investigation. As is apparent the purpose of the judicial investigation is to determine whether there is any evidence of violation of Articles 80 to 85 of the merchant marine disciplinary and penal code, in other words if there is any contravention or offences listed in the articles above mentioned.

3.3) Technical assistance for the investigating administrator

According to Article 3 of the 1963 decree, the marine affairs administrator head of maritime quarter has authority to delegate his investigating function to one of the marine affairs administrators responsible to him.

As is stipulated by article 4 of the above mentioned decree, in order to properly carry out the investigating function the marine affair administrator in charge of the judicial investigation has to be assisted in France by the following:

- One inspector of navigation and maritime work or by the employee who is in charge of the same function.
- One assistant appointed by the marine affairs director chosen from the merchant marine officers, holders of foreign going certificate, pilots, engineers and other qualified technicians.

overseas, by virtue of the same aforesaid article, the marine affair administrator is assisted by an officer of
the French warship in the area if any. If there is no one, he may be assisted by one or more persons with an appropriate background, preferably holding French nationality.

According to Article 5 of the mentioned decree, the investigating administrator has authority to proceed to any collection of evidence and confrontation, which may bring out the truth. He has to address a written report containing facts about the collection of evidence and confrontation made. He summons for such purpose any officer or member of the crew of the vessel concerned and also any other person who may give useful testimony. The statements of the involved parties are taken with the presence of their own adviser. The received depositions are certified by the investigating administrator through endorsement of each page of the report. The witness is invited to sign his deposition after reading it. The translator, if any, is also required to sign the deposition. If the witness refuses to endorse the report, it has to be mentioned in the report.

3.4 Criminal investigations procedure

The investigating administrator has authority to request one or more marine affairs administrators beyond his jurisdiction to hear or hold an interrogation and gathering of evidence which he thinks necessary. These acts are supposedly undertaken on behalf of him and are in the end submitted to him. At the end of the inquiry the investigating administrator issues a written report which must contain all the facts and their discussion. This report must be undersigned by him and endorsed by his assessors who have the right to add their own personal
view. The report must assess the situation and come up with a result.

As mentioned in Article 6 of the aforesaid decree, the report and all the evidence of the case must be notified to any person who may be accused either penal or disciplined and also to their advisers. This notification must have the right to take copies of reports and record evidence without taking out the file of the case. The persons who have been notified have four days to present their observations and can request a complementary inquiry on written grounds. It is up to the investigating administrator to appreciate such a request. His answer must be supported and in written form, if this complementary investigation could be requested by the aforesaid persons.

3.5 The decisions of the investigating administrator

By virtue of article 10 of the decree cited above, when the investigation’s operations are achieved, the marine affair’s administrator has to evaluate the facts and evidence and has to decide whether there is violation of the Merchant Marine Disciplinary and Penal Code or not.

If according to his assessment there is neither offence nor disciplinary fault, and there is no charge against the accused, he declares that there is a nonsuit.

If he feels when assessing the facts that there is only a fault, and he is legally empowered to settle such cases, he issues a disciplinary punishment against the party responsible for the fault and if such a task is under the authority of the Minister of the Merchant Marine
he submits the case to him.

If in his opinion the case is an offence or a contravention only and a penal punishment has to be decided, he refers the case to the competent tribunal which may be the ordinary one or the maritime tribunal depending on the nature of the case and the application of articles 36, 36 and 33, 37 of the merchant marine disciplinary and penal code.

According to Article 11 of the regulation dealing with the procedure to enforce the penal provisions contained in articles 80 to 85 of the MMMPC and related to marine casualties, the above mentioned decisions concerning the nonsuit and the referral of the case to the competent tribunal are a judicial order. Their nature is defined in Article 36 of the DPCMM. These orders should be notified by the investigating administrator to the accused person and also a copy is submitted to the marine affairs director on the same day as its issuance.

It is very important to mention that by virtue of the aforesaid article of the DPCMM the marine affairs administrator and the prosecuting officer have the same legal power devoted to the investigating judges, especially those authorities issuing warrants for arrest, committal of prisoners, summons to appear (subpoena), etc. These orders may be reviewed by the investigating chamber of the competent court upon appeal introduced by the prosecutor within the ordinary tribunal. This judicial review is made either automatically or according to the marine affair director's request. Under certain condition according to Article 36 of the DPCMM, the marine affairs administrator has authority to detain French and foreign
vessels, if the accused persons are members of the crew. The detained vessel may be released if a security is provided to guarantee the execution of any sentence which may be pronounced by the maritime tribunal.

4 The Technical and Administrative Investigations

4.1 Legal bases and aims

On 20th January 1981, a new regulation was promulgated to establish for the first time in France the so called technical and administrative investigation related to accidents involving vessels. This regulation embodied in decree number 81-63 on the 20th January 1981.

The establishment of such an investigation certainly intend to improve maritime safety, through the determination of the reasons of such accidents concerning the French vessels. However, if the accidents concern foreign vessels, the above mentioned investigation can not be handled unless the accident occurred in the French territorial sea or near it and the French coast might be threatened.

4.2 Investigating commission

The technical and administrative investigation is held by a commission decided by the Minister of the Merchant Marine. According to Article 2 of the above mentioned decree the investigating commission is composed of the following:

- a president chosen among those qualified employees who have been in charge to ensure responsibilities in the field of the safety of life at sea;
- two other members from the general directorate of the merchant marine without any responsibility connected directly or indirectly to the accident, and who will not participate to the judicial investigations, and
- a representative of each foreign state which might be interested, particularly the representative of the flag state of the vessel.

4.3 Participation of a foreign party to the investigations

By virtue of Article 3 of decree No. 81-63 on the 20th January 1981 the representative of interested foreign states, especially the flag state, can participate in the work of the investigating commission. The representative of the foreign state may proceed to interrogate any witness and can have access to other recorded evidence.

4.4 Investigations procedure

In the judicial investigation the procedures are fulfilled by the investigating administrators who have mainly the same powers of the investigating judges within the ordinary courts, the procedures are applied in the case of administrative investigations by a special commission. Effectively, according to the provisions of articles 3 and 6 of the above mentioned decree, the commission proceeds as follows: the commission holds the hearing of the crew, the representatives of any concerned organization and any other persons who may contribute to finding out the reason for such an accident.

The investigating commission may also proceed to establish facts and the president has authority to ask for expert
help from either private or public sectors. The experts are chosen according to the nature of the help or advice needed.

The report of the investigation is signed by the member of the commission. Personal views of the members of the organization may be attached to the report.

4.5 Submission of the investigation reports

By virtue of Article 5 of the above mentioned decree, the president of the investigating commission has to submit the report of investigation within a period of one month. This report is not definitive, it states only the first establishing circumstances surrounding the accident. After the final approbation of the report, it is sent to the concerned persons and organizations for collecting their views. They also have one month to present them.

All the parties involved in the accident and those who have had access to the investigation report have an obligation to enclose the information obtained about the investigations.

It is also important to note that according to Article 6 of the aforesaid decree the investigation report and all the other recorded evidence must be submitted to the marine affairs administrator in charge of the judicial investigation held, according to Article 86 of the MMDFC, and the report may be also submitted to the competent judges who have to settle the marine accident case.

Upon a decision of the Minister of Transport, the report
of investigation can be sent to foreign states and other concerned parties. The same minister may also decide to publish the report in the official gazette of the Republic of France.

5 The Marine Affairs Administrators and Governors

5.1 Statute of the marine affairs administrators

According to decree number 77-32 on 4th January 1977 concerning particular statute of the marine affairs administrator body, these employees constitute a naval officer body. They ensure the conduct of the directorate of the general services of marine affairs administration under the authority of the minister in charge of the merchant marine. These officers may be appointed by virtue of the third subsection of Article 1 of the aforesaid decree in different position within the merchant marine ministry and in other institutions under its authority. They are the representatives of the French navy and they have the duty to ensure the supply needed by the navy according to regulations issued by both the minister in charge of the army and the minister in charge of the merchant marine. The marine affairs administrator participates in the general organization of defence and maritime transport defence.

Due to certain reasons related to the functions of the marine affairs administrators the percentage of female employee is limited to only 15 percent of the total appointment.

The marine affairs administrator's military hierarchy
consists of three categories which are: officers, senior officers and generals. The different ranks in these categories are among others, lieutenant, lieutenant commander, commander, captain, rear admiral and vice-admiral. These ranks are the same as those of the ordinary ranks of the army.

5.2 Appointment of the marine affairs administrators

The marine affairs administrator is recruited from the graduates from the national school of administration, some categories of the exterior central services of the merchant marine and also from certain categories of French navy personnel with specific ranks and the graduates from the high studies of the merchant marine and master of shipping vessels. The appointment of the aforesaid candidate as marine affairs administrator, is subjected to two years study at marine affairs school. By virtue of Article 5 of the above mentioned decree the appointment is decided by the end of the first year.

5.3 The Maritime Governors

By virtue of decree number 78.272 of the 9 March 1978, the navy commander of a maritime region is the depository of the French State authority. He is also the direct representative of the prime minister as well as any other minister. The aforesaid navy commander is a Maritime Governor who is empowered to issue maritime regulations and to contribute within its territorial jurisdiction to law enforcement functions.
CHAPTER 3

ACTUAL SITUATION IN THE U.S.A

1 INTRODUCTION

The French and United States' legislation and practices related to marine casualty investigations are without any doubt useful in reaching the most possible appropriate recommendations and proposals for further improvement of Algerian marine casualty system. Effectively on one hand, the French legislation was mainly the most important source of the Algerian maritime code. On the other hand the examination of the US legislation could be very educative and helpful to find out the role of the different parties involved in the marine casualty investigations process, especially the role of the US Coast-Guard since Algeria has created the same maritime structure in 1973 following the United states' model, which normally has to play a major role in the marine safety enforcement. After having dealt with the French actual marine casualty rules and regulations the United states' legislations and practices applicable to marine casualties will be examined in the present chapter.

2 MARINE CASUALTY LÉGISLATION IN THE U.S.A.

2.1 Definition of Marine Casualty

The main legal references related to marine casualties in the U.S.A. are the United States Code Title 46, Shipping and the Code of Federal Regulation (46 CFR). The definition of marine casualty and the other different
issues which are dealt with below will be based mainly on these legislative references.

According to the provisions of 46 CFR, the term marine casualty or accident means any casualty or accident involving any vessel other than a public vessel, if such casualty or accident occurs upon the navigable waters of the U.S.A., its territories, or involving a U.S. vessel which is not public.

A marine casualty or accident includes, any accidental grounding, any occurrence involving a vessel which results in damage by or to the vessel, its apparel, gear, cargo or any injury or loss of life of any person. It includes also among other things, collision, stranding, grounding, foundering, heavy weather damage, fire, explosions, failure of gear and equipment and any other damage which might affect or impair the seaworthiness of the vessel. The term marine casualty or accident also includes occurrences of loss of life or injury to any person while diving from a vessel and using underwater breathing apparatus. To facilitate the performance of the duties of the different parties involved in a marine casualty in addition to the clear definition of the terms, marine casualty and marine accident, the term serious marine incident is also clearly defined by section 4.03.2 of the 46 CFR, this term includes the following:

- One or more deaths;
- An injury to a crew member, passenger or other person who requires professional medical treatment beyond first aid, and in the case of a person employed on board a vessel in commercial service, which renders the individual unfit to perform routine vessel duties;
- Damage to property in excess of US$100,000;
- Active or constructive total loss of any vessel subject to inspection under USC provisions;
- Actual or constructive total loss of any self-propelled vessel of 100 gross tons or more even if not subjected to inspection.
- A discharge of oil of 10,000 gallons or more into the navigable waters of the U.S.A. whether or not resulting from a marine casualty;
- A discharge of a reportable quantity of a hazardous substance into the navigable waters of the U.S.A., or a release of a reportable quantity of hazardous substance into the environment of the United States, whether or not resulting from a marine casualty.

2.2 Objective of the Marine Casualty Investigation in the U.S.A.

The United States legislature, when dealing with the marine casualty issue in the USC, empowering the regulatory authority to prescribe regulations for the immediate investigation of a marine casualty, has dearly defined the objectives of such a marine investigation as follows:

- To decide as closely as possible, the cause of the casualty including the cause of any death;
- To decide whether an act of misconduct, incompetence, negligence, unskillfulness, or willful violation of law committed by any individual, licensed, certified, or documented under relevant law has contributed to the cause of the casualty or to a death involved in the casualty, so that
- appropriate remedial action under U.S. law may be taken such as suspension or revocation of such certificates;
- To decide whether an act of misconduct, incompetence, negligence, unskillfulness, or willful violation of law committed by any person, including an officer, employee, or a member of the Coast Guard contributed to the cause of the casualty, or to a death involved in the casualty;
- To find out whether there is evidence that an act subjecting the offender to a civil penalty under the law of the USA has been committed, so that appropriate action may be undertaken to collect the penalty;
- To find out whether there is evidence that a criminal act under the laws of the USA has been committed, so that the matter may be referred to the appropriate authorities for prosecution;
- Finally, to decide whether there is a need for new laws or regulations or an amendment or a repeal of existing laws or regulations, to prevent the recurrence of the casualty.

2.3 Marine Casualty and Reporting

Under the US legislation, the reporting of a marine casualty within five days is a mandatory duty to be accomplished by the owner, charterer, managing operator, agent, master or any individual in charge of the vessel. The failure to report as required by law or related regulation is punishable by a civil penalty of US$1,000. According to section 6101 of the USC, the reporting of a marine casualty is mandatory in the following cases:
- Death of an individual or serious injury to an
individual,
- Material loss of property and material damage affecting the seaworthiness or efficiency of the vessel, and
- Significant harm to the environment.

Under the same provisions, the duty to report a marine casualty is not only a mandatory task for a United States vessel but it applies also to any foreign vessel when involved in a marine casualty within the navigable waters of the United States.

3 SOME PENAL PROVISIONS RELATED TO MARINE CASUALTIES

As already mentioned, one of the objectives of marine casualty investigation is to decide whether there is evidence that a civil penalty or criminal act under the laws of the United States has been committed, therefore it is necessary to deal with some of the penal provisions stipulated by US maritime legislation.

3.1 Penalties for Negligent Operations

According to section 2302 of the United States Code, Title 46 (Shipping), a person is liable to the United States government for a civil penalty of not more than US$1,000, whenever operating a vessel in a negligent manner that endangers the life, limb, or property of a person, however, if such negligence is considered to be gross negligence, then the person commits a class A (misdemeanor). The civil penalty, not more than US$1,000, or a class A misdemeanor are considered applicable to an individual who is operating a vessel, as determined under prescribed standards when he is under the influence of
alcohol, or a dangerous drug.

In case of enforcement of any of the aforesaid penalties, the vessel is also liable in rem unless:
- the vessel is owned by the state or a political subdivision of a state,
- the vessel is operated principally for governmental purposes and identified clearly as a vessel of the state or subdivisions.

3.2 Penal Provisions Related to Marine Casualty Assistance

By virtue of Section 2303 of the USC, any master or individual in charge of a vessel involved in a marine casualty shall render necessary assistance to each individual affected to save him from danger caused by the marine casualty, so far as the master or individual in charge can do so without seriously in endangering his own vessel. A person in charge of the vessel involved in a marine casualty also have the duty to give their names and addresses and identification to the master or individual in charge of any other vessel involved in the casualty. The same information must be also given to any individual injured, and to the owner of any property damaged.

The violation of the above duties or any regulation prescribed under the aforesaid section is liable to a fine of not more than US$1,000 or imprisonment for not more than two (2) years.

3.3 Conspiracy to Destroy a Vessel
This crime is very dangerous, and the US law provides severe punishments and large fine. Effectively, section 2271 of Title 18 of USC 1940, stipulated that whenever, on the high seas, or within the United States, any person who willfully and corruptly conspires, combines and confederates with any other person, to cast away or destroy any vessel, with intent to injure any person that may have underwritten or may thereafter underwrite any policy of insurance thereon or on goods onboard thereof, or with intent to injure any person that has lent or advanced, or may lend or advance, any money on such vessel, that person responsible for such acts may be fined not more than US$10,000 or imprisoned not more than ten years, or both.

According to section 2272 of the aforesaid title, if the above mentioned acts are perpetrated by the owner of the vessel and with the same intent, such an owner may be imprisoned for life or for any term of years.

4 MARINE CASUALTIES INVESTIGATION PROCESS

In order to enforce civil or criminal penalties as a result of a marine casualty investigation, or to take any appropriate remedial measure to promote safety of navigation, there is a real need for principle and rules to govern the investigation process. In the USA, section 6301 of the USC Title 46 has empowered the secretary (1) to prescribe regulations for the investigation of marine casualties. The provisions related to this subject are contained in 46 CFR , Part 4, which will be considered to a certain extent in this chapter, as well as those provisions that relate to enforcement of civil and criminal penalties as promulgated by CFR 33, Part 1(07).
4.1 Investigation of Marine Casualty by the US Coast Guard

Introduction

The United States Coast Guard, which is under the Department of Transportation, except when operating in maritime branch of the Navy, carries out a broad range of responsibilities for the promotion of safety of life and property at sea. For this reason, this service is empowered to conduct investigations according to the rules prescribed by the above mentioned regulation which stipulate that the Commander of the US Coast Guard or the District Commander, as a Chief of a Coast Guard District which is a geographical area with described boundaries, have authority to cause an investigation as may be necessary according to the regulations above mentioned.

The objective of this casualty investigation as it is defined by the section 4.07-1 46 CFR is to determine the appropriate measures for promoting safety and property at sea and is not intended to fix civil or criminal responsibility. The first step of marine casualty investigation is undertaken by the Coast Guard to determine as closely as possible, in addition to all the points related to the objectives of a casualty investigation, whether the accident needs to be further investigated by a Marine Board of Investigation (MBI) or not.

4.2 Preliminary Investigation
4.2.1 Investigating Officer (IO)

An Investigating Officer is an officer or an employee of the Coast Guard designated by the Commandant, district Commander or the Officer In Charge of Marine Inspections, for the purpose of making investigations of marine causalities and accidents or other matters pertaining to the conduct of seamen. An Officer In Charge, Marine Inspection is an investigating officer without further designation.

As already explained, the reporting of marine casualty is a mandatory task, so the investigating officer investigates each marine casualty or accident reported in written form according to subchapter 4.05 of the 46 CRF which gives further details concerning notice of marine casualties.

4.2.2 Powers of Investigating Officer

The Investigating Officer has the power to administer oaths, issue subpoena to witnesses, require persons having knowledge of the subject matter of the investigation to answer questions and require the production of relevant books, papers, documents and other records. The attendance of witnesses or the production of books, paper, documents or any other evidence is compelled by similar process as in the United States district courts. The Investigating Officer has statutory authority for the proceeding, when opening the investigation upon the aforesaid statutory authority, he advises parties in interest concerning their right to be represented by an advocate or counsel to examine and cross-examine witnesses and to call witnesses
on their own behalf.

4.2.3 Transfer of Jurisdiction

When it appears to The District Commander that it is more advantageous to conduct an investigation in a district other than the one where the casualty was first reported, the aforesaid officer has authority to transfer the case to the relevant district together with any information or material relative to the casualty he may have.

In the same context, and in order to facilitate the work of the investigating officer, when witnesses are available in a district other than the district in which the investigation is being made, testimony or statement can be taken from witnesses in the other districts by an investigating officer and promptly transmitted to the investigating officer conducting the investigation.

Witnesses to marine casualties appearing before an investigating officer may be placed under oath and their testimony may be submitted in written form. The witness has to swear before an officer authorized to administer the oaths, and the statement or the report has to be signed.

4.2.4 Submission of the Report of Investigation

At the conclusion of the investigation the Investigating Officer submits to the Commandant of the US Coast Guard via The Officer in Charge, Marine Inspection (OCMI), and the District Commander, a full and complete report of the facts as determined by his investigation.
the opinions and recommendations of the Investigating Officer have to be attached to the report.

Both the Officer in Charge of Marine Inspections (OCMI) and the District Commander forward the report of the Investigating Officer to the Commandant of the Coast Guard with an endorsement stating:

- Approval or otherwise of the findings of the facts, conclusions and recommendations,
- any action taken with respect to the recommendations;
- Whether or not any action has been or will be taken to suspend or revoke licenses or certificates, whether or not violation of laws or regulations relating to vessels have been reported on the relevant form.

4.3 Marine Board of Investigation (MBI)

If it appears that it would tend to promote safety of life and property at sea, the Commandant of the US Coast Guard may designate a Marine Board of Investigation (MBI) to conduct an investigation. In this case the Investigating Officer has to immediately furnish the MBI with all testimonies, statements, reports, documents, papers, a list of witnesses including those whom he has examined, other material which he may have gathered, and a statement of any findings of fact which he may have determined. The investigation of the Investigating Officer ceases and all the aforementioned material becomes a part of the Marine Board of Investigation.

4.3.1 Powers of the Marine Board of Investigations
According to section 4.09.5 of 46 CFR, the powers of the Marine Board of Investigation, as designated by the Commandant of the US Coast Guard, are the same as those which are given to the Investigating Officer and related to the power to administer oaths, summon witnesses, etc.

4.3.2 Sessions of Marine Board of Investigation (MBI)

By virtue of the aforementioned regulation related to The Marine Board of Investigation, reasonable notice of the time and place of the investigation will be given to any concerned person and to any other party with an interest.

All sessions of the MBI for the purpose of obtaining evidence are normally open to the public, however, no person present is allowed to interfere with the proper and orderly functioning of the MBI. Also, when evidence of a classified nature or affecting national security is to be received, the sessions will not be opened to the public.

If in the course of an investigation by a Marine Board of Investigation, it appears there is probable cause for the performant of charges against any licensed or certified personnel, the MBI must inform the District Commander either during the investigation session or immediately before the witnesses disperse. The action of the District Commander against any licence, certification or document, despite its nature which is remedial and not penal (as clearly stated in part 5 of the 46 CFR), however such action are totally independent and apart for any other action which may be ordered by the US Coast Guard Commandant or other authorities, upon the investigation.
report and the recommendations of the MBI which have to be submitted to the aforesaid Commandant, and to the United States Attorney for the respective district.

The US Attorney has to be notified in the district in which the MBI is being conducted of the nature of the casualty under investigation, and the time and place of the investigation.

4.4 Some Common Rules of Investigation for the I.O. and MBI

4.4.1 Testimony by Interrogatories and Depositions

By virtue of Section 4.12-1 of the 46 CFR, the examination of the witnesses is in principle done orally. However for a good reason, and upon application of any party in interest testimony may be taken by deposition by either the investigating officer or Marine Board of Investigation. The aforesaid section authorizes the I.O. or MBI to take initiative to examine witnesses by interrogatories and depositions.

The applications to take depositions to be accepted have to be presented, as mentioned, by any party with an interest, in other words by any person whom the Marine Board of Investigation or the Investigating Officer has found that has a direct interest in the investigation conducted by them. These include an owner, a charterer, or the agent of this owner or charterer of the vessel involved in the marine casualty or accident and also includes all licensed or certified personnel whose conduct is under investigation.
The application to take depositions has to be presented in
writing setting forth the reasons why such a deposition
should be taken, the name and address of the witness, the
matters of concern to which it is expected the witness
will testify, and the time and the place proposed for the
taking of the deposition. The written application to take
a deposition has to be made to an investigating officer or
to the MBI prior to or during the course of the
proceedings.

4.4.2 Duty of the I.O. and MBI when receiving an
application

When the aforesaid application is received, and if it
includes a good reason, the I.O. or MBI makes and serve an
order which will specify the following:
- the name of the witness whose deposition is to be
taken,
- the name and place of the taking of such deposition,
- designation of the officer before whom the witness
is to testify; this officer should be anyone who is
authorized to administer oaths by the laws of the
U.S.A.

4.3.3 Depositions of absent witnesses

If a party desires the deposition of an absent witness,
a list of interrogators has to be presented to the I.O.
or MBI, and a reasonable time has to be allowed for the
other party to submit a list of cross-interrogations, if
either party objects to any question of the adversary
party, the I.O. or MBI has authority to take a decision
and settle the matter in order to reach an agreement of
the parties concerning the list of interrogators and cross

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interrogators (if any), additional questions as may be necessary to clarify the testimony given by the witness could be added by either the investigating officer or the Marine Board of Investigation.

The list of interrogators and cross-interrogators together with a subpoena as referred to in Part 5 of the 46 CFR have to be forwarded to the officer designated to take such a deposition. This officer has to cause the subpoena to be served personally on the witness. After service, both the subpoena endorsed and the deposition duly executed have to be returned to the IO or MBI as soon as practicable. After the receipt of the deposition by the IO or the MBI, they have to present it to the parties for their examination. The admissibility of the deposition or any part thereof and any objection offered by either party thereto is ruled on by the IO or MBI.

5 Enforcement of Civil and Criminal Penalty

As mentioned, one of the objectives of the marine casualty investigation is to decide as closely as possible, whether there is evidence that an act subjecting the offender to a civil penalty so that action may be undertaken to collect the penalty. Another objective is to determine if there is evidence that a criminal act under the laws of the USA has been committed, so that the matter may be referred to the appropriate authorities for prosecution. (See Section 6301 USC 46 Shipping).

It is useful to highlight that the enforcement of civil and criminal penalties, even the violation of law, has a direct or indirect connection to marine casualty, it is an
action which is totally separate and apart from the marine casualty investigation process conducted by the Coast Guard in order to find out the cause of the casualty and to take remedial action. The enforcement of civil and criminal penalties is governed by Subpart 1.07 of the CFR 33 (Navigation and Navigable Waters).

5.1 Reporting and Investigation

The violations of any US law, regulation, or order that is enforced by the Coast Guard can be detected either by any Coast Guard personnel or through the reports of any person to Coast Guard facilities. When the investigating officer's report is submitted, the endorsement of such a report by the District Commander has to state whether or not violations of laws or regulations relating to vessels have been reported. When such apparent violation reports have been received, the matter is investigated or evaluated by the Coast Guard personnel.

All reports of violation conducted by the Coast Guard or received from any other agency which indicate that a violation may have occurred are forwarded to a District Commander for action. This district commander is normally the district commander of the zone in which the violation is believed to have occurred, or the district in which the reporting unit or agency is found. To decide whether there is sufficient evidence to establish a prima facie case or not a review of the report of the violation should be done by the district commander. If there is insufficient evidence, the case is either returned for further investigation or closed. Legally the case is closed in the following situations:

- the investigation has established that a violation
did not occur,
- the violation is unknown, or
- there is likelihood of discovering, few, if any, additional relevant facts.

If it is determined that a prima facie case does exist, a case file is prepared and forwarded to the hearing officer with a recommended action. A record of any prior violation by the same person or entity is forwarded with the case file.

5.2 The Hearing Officer

The hearing officer is a Coast Guard officer or employee who has been delegated the authority to assess civil penalties. He is authorized to administer oaths and issue subpoenas necessary to the conduct of a hearing to the extent provided by law.

The hearing officer has no other responsibility, direct or supervisory, for the investigation of cases referred for the assessment of civil penalties. He decides each case on the basis of the evidence before him, and must have no prior connection with the case. He is solely responsible for the decision in each case referred to him.

5.3 Procedures for Enforcement of all Statutory Penalty Provisions

When a case is prepared and forwarded by the District Commander or a member of his staff to the hearing officer for action, he makes a preliminary examination of the material submitted. Based on this material and on this examination if it is determined that there is insufficient
evidence to proceed, or that there is any other reason which would make penalty action inappropriate, the officer returns the case to the district commander with a written statement of this reason. The District Commander may close the case or cause a further investigation of the alleged violation to be made with a view toward resubmitting the case to the hearing officer.

5.4 Notification of the Alleged Violator

The term "party" is used in the regulation of the U.S. related to the procedures for enforcement and administration of the statutory penalty provisions. This term, as defined by the same regulation, means a person who bear some responsibility for alleged violation of a statute or regulation to which a civil penalty applies. It includes an individual or public or private corporation, partnership or other association, or a governmental entity.

If on the basis of the preliminary examination of the case file, the hearing officer determined that a violation appears to have been committed, the hearing officer notifies the violator in writing of the following:

- The alleged violation and the applicable law or regulations;
- The amount of the maximum penalty that may be assessed for each violation;
- The general nature of the procedures for assessing and collecting the penalty;
- The amount of penalty that appears to be appropriate based on the material then available to the hearing officer.
- The right to examine all materials in the case file
and have a copy of all written documents provided upon request;

- Finally, the fact that the party may demand a hearing prior to any actual assessment of a penalty.

The aforesaid notification of the alleged violation is legally considered as a notice of the initiation of the action.

5.5 Preliminary Matters

Within 30 days after the receipt of notice of the initiation of the action, the violator may request a hearing, provide any written evidence and arguments in lieu of the hearing, or pay the amount specified in the notice as being appropriate. A hearing must be requested in writing in order to be considered. The request must specify a non-jurisdictional issue and the points which are in dispute.

The hearing is a right of the violator, however, if the request for this right is not submitted within 30 days after receiving the notice of the alleged violation the aforesaid right is waived. For more flexibility the hearing officer is given authority at his discretion to grant a hearing if the violator submits a late request.

The specification of issues in dispute may be amended by the party at any time up to 10 days before the scheduled date of the hearing, all the issues raised later than 10 days before the date of the hearing can be presented only at the discretion of the hearing officer.
5.6 Hearing Procedures

All the hearings requested have to be promptly scheduled by the hearing officer who gives any delays or continuation which may be necessary or desirable in the interest of fairly resolving the case.

Upon request the alleged violator may receive a free copy of all the written evidence in the case file except material that would disclose or lead to the disclosure of the identity of a confidential informant. Other evidence or material, such as video tapes, oil samples, and photographs may be examined in the hearing officers office. The evidence may be given for examination or testing at another location if the hearing officer sees that there are adequate safeguards to prevent loss or tampering.

The hearing officer insures that the party is aware of the nature of the proceeding and the alleged violation and the provisions of the law or regulation allegedly violated. He must conduct a fair and impartial proceeding in which the party is given full opportunity to be heard.

After the evidence in the case has been presented, the alleged violator may present arguments on the issues in the case. He has the right to be present at all stages of the proceedings by counsel. The party may also request an opportunity to submit a written statement for consideration by the hearing officer and for further review. The hearing officer has to allow a reasonable time for submission of the statement and shall specify the date by which it must be received. If the statement is not
received within the time prescribed, or within the limits of any extension of time granted by the hearing officer then the decision in the case is rendered.

5.7 Record of the Hearing

The hearing officer is not obliged to prepare a verbatim transcript. He only prepares notes on the material and points raised by the alleged violator in sufficient detail to permit a full and fair review. However, the alleged violator at his own expense has the right to cause a verbatim transcript to be made. In such case two copies have to be submitted to the hearing officer who must include them in the records.

5.8 The Decision of the Hearing Officer

5.8.1 Dismissal of the Case

The hearing officer issues a written decision which must be based upon substantial evidence in the record, if he finds that there is no substantial evidence establishing the alleged violation or some other violation of which the party has full and fair notice. The hearing officer has to dismiss the case and refer it to the District Commander. However, such dismissal is without prejudice to the district commander's right to refile the case and have it reheard if additional evidence is obtained, nevertheless a dismissal following a rehearing is final, so the case is definitely dismissed.

5.8.2 Assessment of a Penalty

If the hearing officer finds that there is enough
evidence to establish the alleged violation, he issues a written decision which must contain a statement advising the party of the right to an administrative appeal. The alleged violator is advised to submit an appeal within the prescribed time which is 30 days from the date of receipt of the decision. The failure to file an appeal within the prescribed time limit results in the action of the hearing officer becoming the final agency action in the case.

5.9 Action on Appeals

When the hearing officer receives an appeal, he must provide a copy of the appeal and any supporting brief to the District Commander who referred the case. He has 30 days to submit any comments about the case on appeal to the hearing officer who has to forward all material in the case including the comments of the District Commander (if any) to the US Coast Guard Commandant. The submission of the case on appeal has to be done not later than 30 days after receipt of the appeal.

When receiving the case on appeal the US Coast Guard issues a written decision in each case and furnishes copies to the alleged violator. The Commandant may affirm, reverse, or modify the decision of the hearing officer, or remand the case for new additional proceedings. If the Commandant does not remand the case, then his decision concerning the case on appeal is final. The US Coast Guard Commandant has authority to remit, mitigate or suspend the assessment of the penalty in whole or in part.

5.10 Reopening the Hearing
The alleged violator may petition to reopen the hearing on the basis of newly discovered evidence. The petition to reopen the hearing must be in writing, describing the newly found evidence and must state why the evidence would probably produce a different result favorable to the petitioner and whether the evidence was known to him at the time of the hearing and, if not, why the newly found evidence could not have been discovered in the exercise of due diligence.

The aforesaid petition must be submitted to the hearing officer who has authority to consider it unless an appeal has been filed, in which case the petition is considered by the US Coast Guard Commandant. The District Commander may file comments in opposition to the petition; if such comments are filed, a copy is provided to the alleged violator. On the basis of the record, the petition and the comments in opposition, if any, the decision on the petition is rendered in writing. It will be useful to emphasize that the petition is considered only under the following conditions:

- Newly found evidence is described which has direct and material bearing on the issue; and
- A valid explanation is provided as to why the new evidence was not and could not have been, in the exercise of due diligence produced at the hearing.

If a petition to reopen a hearing is denied, the alleged violator is given 30 days to file an appeal if one has not already been filed, or to amend an appeal which has already been filed.

5.11 Collection of Civil Penalties
Payments of a civil penalty have to be made within 30 days after receipt of the US Coast Guard Commandant’s decisions on appeal, or the hearing officer’s decision in a case in which no appeal has been filed. The violator must submit payment of any assessed penalty to the office specified in the assessment notice. Failure to make timely payment will result in the institution of appropriate action under the relevant United States law which is the Federal Claims Collection Act.

5.12 Criminal Penalties

According to section 1.07 of the 33 CFR, the prosecution in federal courts for violations of those laws or regulations enforced by the United States Coast Guard is a matter finally determined by the Department of Justice. The aforesaid final determination consists of deciding whether and under what conditions to prosecute or to abandon prosecution. However, there are exceptions where the approval of the US Coast Guard Commandant is mandatory. Generally the district commander is authorized to refer the case to the US Attorney. The U.S. Coast Guard Commandant’s approval to refer the case to the attorney is required in the following cases:

- Marine casualties or accidents resulting in death,
- Marine boards (CFR 46, Part 4), and
- Violation of port security regulations 33 CFR Parts 6, 121 and 126 inclusive).

It can be noted that in the case of a marine casualty resulting in death or in the case of marine boards as provided in 46 CFR Part 4, the approval of the US Coast Guard Commandant is mandatory prior to referring the case.
The attorney must receive from the District Commander the identification of the laws or regulations under which the proceedings are to be instituted by the U.S. Attorney in every case.

5.13 Civil and Criminal Penalties

If a violation of law or regulation carries both civil and criminal penalties, the District Commander is authorized to determine whether to institute civil penalty proceedings or to refer the case to the US Attorney for prosecution. If the US Attorney declines to institute criminal penalty proceedings the District Commander decides whether to institute civil penalty proceedings or to close the case.

6. Suspension and Revocation

It was mentioned in this chapter that the marine casualty investigation is carried out to decide, among other things, whether an act of misconduct, incompetence, negligence, or willful violation of law was committed by any individual whether licensed, certificated, or documented and whether it has contributed to the cause of the casualty so that appropriate remedial action under the legal provisions related to suspension and revocation contained in Chapter 77 of the 46 USC may be taken. Therefore, what are the main points of the aforesaid legal provisions?

6.1 Purpose and Nature of Suspension and Revocation Actions
Suspension and revocation actions against a licensed, certificated or documented person are administrative actions rather than remedial, and not penal in nature. They are intended to help maintain standards for competence and conduct essential to the promotion of safety at sea.

6.2 Basis for Suspension and Revocation

According to section 7703 of title 46 of the USC, the basis for suspension or revocation of a license, certificate or registry, or merchant mariner's document issued by the US relevant authorities is:

- Violation or failure, when acting under the authority of the above mentioned licence, certificate or document, to comply with any law or regulation intended to promote marine safety or to protect navigable waters;
- Committal of an act of incompetence, misconduct or negligence, and
- Conviction for an offense that would prevent the issuance or renewal of a license, certificate of registry or merchant mariner's document.

Section 523 of 46 CFR gives more explanation about the bases for suspension or revocation and stipulates the following: Charges against a holder of the aforementioned documents must be stated as one of the following:

- Misconduct, negligence or incompetence,
- Violation of law, regulation,
- Conviction for a dangerous drug, and
- Use of dangerous drug, or addiction to the use of dangerous drugs

6.2.1 Misconduct
The definition of misconduct as provided by the above title in section 527 is a human behavior which violates some formal, duly established rule. Such rules are found in, among other places, statutes, regulations, the common law, the general maritime law, ship’s regulations or orders and so on. It is an act which is forbidden or a failure to do that which is required.

6.2.2 Negligence

The same title in section 5.25 defines negligence as a commitment of an act which a reasonable and prudent person of the same station, under the same circumstances, would not commit, or the failure to perform an act which a reasonable and prudent person of the same station, under the same circumstances, would not fail to perform.

6.2.3 Incompetence

According to section 5.31 of the above mentioned title, incompetence means the inability on the part of a person to perform the required duties, whether due to professional deficiencies, physical disability, mental incapacity or any combination thereof.

6.2.4 Violation of law or regulation

Section 7703 of Title 46 of the USC provides a basis for suspension or revocation when there is a violation or failure to comply with the legal provisions contained in subtitle II of the 46 USC and related to vessels and seamen, a regulation prescribed under this subtitle, or any other law or regulation intended to promote marine
safety and protection of navigable waters. This charge will be "violation of law" or "violation of regulation" supported by a specification of the law or regulation by title and section number, and the manner in which it was allegedly violated.

6.2.5 Convictions for dangerous drug law violation, use of, or addiction to the use of dangerous drugs

In this case, the proceeding is based only on the provisions contained in section 7704 of title 46 of the USC where the charge will be, conviction for a dangerous drug law violation or use of dangerous drug or addiction to the use of dangerous drugs.

6.3 Investigations

6.3.1 Investigating officer

Section 5.15 of 46 CFR defines clearly who is the investigating officer. It can be noted that the provisions contained in the aforesaid section and those of section 4.03.30 are very similar. It is expressly stated that the Coast Guard officer who is authorized by law to conduct a marine casualty investigation and who also has the authority to carry out the required investigation necessary for suspension or revocation proceedings, even though, as stipulated in section 4.06-35 of 46 CFR the preferment of charges against any holder of a license or certificates issued by the US Coast Guard for the suspension of revocation purpose is independent and apart from any other action which may be ordered by the authorities as a consequence of marine investigations.

6.3.2 Conduct of investigations
When it appears that there are reasonable grounds to believe that the holder of a license, certificate or document, issued by the Coast Guard, has committed one act or more from those listed in this chapter as a basis for suspension or revocation, investigations may be initiated.

The investigating officer has the same power as in a marine casualty investigation case, such as administration of oaths, issuance of subpoenas, and requiring persons having knowledge of the subject matter of the investigation to answer questions.

6.3.3 Investigating officer’s decisions

- During an investigation for suspension or revocation of a license, certificate or document issued by the US Coast Guard, the investigating officer may take appropriate action as follows:
  - Prefer charges (formal accusation);
  - Accept voluntary surrender of a license, certificate or document in preference to appearing at a hearing,
  - Accept voluntary deposit of a license, certificate or document in the event of mental or physical incompetence;
  - Refer the case to the US Coast Guard Commandant, or to an officer in charge, marine inspection (OCMI), at any port for completion of administrative action if an adequate basis for action is found and the person under investigation or witnesses are not locally available;
  - Give a written warning to any person holding a license, certificate or document. Refusal to accept the written warning can results in charges being placed under
the suspension and revocation proceedings. However, if it is accepted, the written warning becomes a part of the person's record. Also the investigating officer may decide to close the case.

6.4 Hearing in a suspension or revocation proceeding

According to section 5.501 of 46 CFR, a hearing in a suspension and revocation proceeding is presided over and it is conducted under the exclusive control of an Administrative Law Judge. Qualified persons may be is designated by the US Coast Guard Commandant as administrative law judges pursuant to the Administrative Procedure Act (Title 5 USC section 556b). This appointment gives them authority to conduct hearings arising under USC 46 section 7703 related to the basis for suspension or revocation, or section 7703 concerning dangerous drugs as grounds for revocation. The administrative law judge, has power to admonish, suspend or revoke a license, certificate or document issued by the US Coast Guard. Title 46 CFR, subpart H, explains clearly all matters regarding the hearing, records and public access to hearings, disqualification of the administrative law judge testimony by deposition, and administrative law judge orders and their modification. Subpart I of the same regulation is devoted to reopening of hearings, procedures for submitting petitions and action on petitions. Finally three other subparts of the above mentioned regulation are reserved for appeals, review of administrative law judges' decisions in cases where charges have been proved, and issuance of new licenses and documents occur after revocation or surrender.

7 Marine casualty investigation by the NTSB
In addition to the role of the US Coast Guard, there is another governmental agency which also has an important role in the marine casualty investigation.

This second agency is called the National Transportation Safety Board (NTSB), so it is useful to give a brief description of this agency.

7.1 Functions of the National Transportation Safety Board: (N.T.S.B)

The NTSB was formed in 1966. Section 831.2 of Title 49 defines the responsibility of the NTSB which consists of the organization, conduct and control of all accident investigations involving civil or military aircraft, within the United States and out of it, if the accident involves US civil or military aircraft and occurs outside another state.

The NTSB is also responsible for the investigation of railway accidents in which there is a fatality, substantial property damage, or which involves a passenger train. The responsibility of the NTSB also includes major marine casualties and marine accidents involving public and non-public vessels or involving Coast Guard functions, and highway accidents and some others.

7.2 Organization of the NTSB

The NTSB consists of five members appointed by the President of the United States with the advice and consent of the Senate. One of the members is designated by the President as Chairman and one as Vice-Chairman. It is an
independent agency of the United States. Its staff comprises, four offices and five bureaus, which are:
- The office of the Managing director,
- The office of Government and Public Affairs,
- The office of the General Council,
- The office of Administrative Law Judges,
- The Bureau of Accident Investigation,
- The Bureau of Field Operations,
- The Bureau of Technology,
- The Bureau of Safety Programs, and
- The Bureau of Administration.

7.3 Notification of the NTSB of a Marine Casualty

By virtue of 46 CFR section 4.40.10, the US Coast Guard has the duty to notify the NTSB of any casualty described below:
- A major marine casualty as determined from a preliminary investigation conducted by the US Coast Guard.
- A casualty involving a public and non-public vessel and at least one fatality or $75,000 property damage.
- A casualty involving a Coast Guard and non-public vessel and at least one fatality or $75,000 in property damage.
- A major marine casualty which involves significant safety issues relating to Coast Guard safety functions such as search and rescue, aids to investigation, vessel traffic systems, commercial vessel safety, etc.

7.4 Responsibility of the NTSB in marine casualties

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The NTSB may conduct an investigation of any major marine casualty, according to a definition described by CFR 46 section 4.40-5. A major marine casualty is a casualty involving a vessel other than a public vessel that results in the following:

- The loss of six or more lives,
- The loss of a mechanically propelled vessel of 100 or more gross tons,
- Property damage initially estimated at $500,000 or more,
- A serious threat, as determined by the US Coast Guard Commandant and concurred in by the Chairman of the NTSB, to life, property, or the environment by hazardous materials.

The NTSB may also investigate any casualty involving public and non-public vessels. When the NTSB convenes a hearing in connection with the above mentioned investigations, the legal provisions contained in 49 CFR, Part 845 are applied.

In certain cases, the NTSB can investigate a casualty only when there is an agreement with the US Coast Guard Commandant. This is clearly stated by 46 CFR, section 4.40-15. Effectively, the above agreement is necessary for the NTSB to conduct the investigation when the casualty involves a public and non-public vessel and at least one fatality, or $75,000 in property loss, or when the casualty is a major marine casualty which involves significant safety issues relating to Coast Guard safety functions. However, the aforesaid agreement is not needed for the NTSB to investigate a casualty which involves a Coast Guard and a non-public vessel and at least one
fatality or $75,000 in property damage.

7.5 Objective of the NTSB investigation

The objective of an investigation, in a marine casualty conducted by the NTSB is defined in 46 CFR, sec. 4.40-20.

It is stated expressly that the NTSB determines the cause or probable cause of a casualty and issues a report on this basis. Therefore, it can be noted that the objective of the aforesaid investigation is limited to highlighting the cause, or the probable cause, of a marine casualty in order to take action to prevent recurrence of similar casualties in the future.

This role is also performed by the US Coast Guard even though this organization also has authority at the same time to enforce, civil penalties and refer criminal cases to the US attorney and take action against the holder of a license involved in a marine casualty, suspension or revocation measures. This overlapping can be a source of difficulty for this reason, to prevent any conflicting relationship which may arise between the above two mentioned agencies a memorandum of understanding was adopted in 1981 by the two agencies.

Even though this mutual agreement is old and may has already been amended, nevertheless, it shows how the two agencies manage to conduct separate investigations into the same casualty without duplication.

7.6 Memorandum of Understanding NTSB-USCG

To conduct an investigation where both the NTSB and the
USCG have responsibility, in order to avoid duplication as much as possible, it has been decided since 1980 to implement some rules embodied in letters exchanged between the Chairman of the NTSB and the Commandant of the US Coast Guard. Two letters spelt out the guidelines which will apply in carrying out the provisions of the joint regulations governing "Coast-Guard, NTSB marine casualty investigations contained in 49 CFR, Sec. 850 and 46 CFR Sec. 4.40. According to the Memorandum of Understanding cited above the following can be noted:

- All collisions between a Coast Guard vessel and a non-public vessel involving at least one fatality or $75,000 in property damage are investigated by the NTSB.

- Under mutual agreement of the two agencies, the NTSB can investigate any public or non public vessel casualty resulting in at least one fatality or $75,000 in property damage or any major marine casualty which involves significant safety issues relating to Coast Guard functions such as SAR, VTS, marine inspection, etc.

- The role of the NTSB and the USCG related to other accident investigation within the scope of regulation 49 CFR 49 and 46 CFR, 4.40 continue unchanged.

- When the investigation is conducted by the NTSB a list of the respective activities of NTSB and the USCG is carefully defined by the memorandum of understanding cited above. This checklist of activities makes the duties of the two agencies very clear which certainly very much reduces the possibility of duplication.
CHAPTER 4

COMMENTS

1. The Algerian Maritime Administrative Organization:

   1.1 Maritime Structures, the right approach

   It is very clear that marine casualty investigation is one of the most important functions of a maritime administrative organization and this important function cannot be carried out properly, unless within an appropriate maritime organization. In other words, a maritime administration which is not adequately structured is not able to implement its duties as and the aims of the policy maker. For these reasons, it seems useful in the case of Algeria to start from this point.

   As already explained, the Algerian Maritime Administration was similar to the French administration, but in 1973 Algeria introduced a new maritime structure. The objectives of this new maritime policy were made very clear in Ordinance No. 73-12 enacted on 3 April 1973. This is especially true when dealing with its provisions seen in preparatory work already mentioned in chapter one.

   Effectively, by virtue of the Ordinance cited above, the rule of the new Algerian maritime administrative organization was decided as follows:

   - Regulatory functions, devoted exclusively to the minister in charge of merchant marine. (Cause, laws and regulations).
   - Enforcement functions, devoted exclusively to the new maritime agency which is legally empowered to carry out
at the local level all merchant marine enforcement functions. This new maritime agency is the National Coast Guard Service. For this reason, it was expressly stated in the preparatory work of Ordinance 73/12, creating the new agency, that the local maritime administration "Inscription Maritime" under the authority of the Merchant Marine Ministry has to be abolished.

It was also mentioned in preparatory work that the prospective maritime administration will be in charge of the enforcement of all maritime functions and then only one administrative task remains for the "Inscription Maritime" which is the registration of seafarers and vessels this was the reason for the conclusion drawn in the preparatory work. That it is not reasonable to maintain a whole administration to take care of only one remaining task. Therefor it can be noted that in the preparatory work, provision for the abolition of the "Inscription Maritime" as well as for this functions was spelled out. However, the local maritime administrations has continued to exist, eventhough a new maritime organization has been established. This has caused a duplication of functions.

Now in Algeria, there are two maritime administrations to carry out the same maritime functions. This is causing the Algerian Maritime Administration not only a dissipation of material and human resources, but it also can be considered the key problem which is negatively influencing the performance of maritime functions, including marine casualty investigations. Because this duplication of functions has created confusion between the regulatory functions under the Merchant Marine Directorate Authority and those of the Coast Guard, which are devoted
normally to enforcement of the maritime laws and regulations issued or caused by the minister in charge of the merchant marine.

This confusion in maritime administration is due to two main reasons:
- The first reason is that the abolition of the maritime districts under the authority of the Ministry of Transport was not stated expressly by the ordinance which established a new maritime structure (Coast Guard). However, it is stipulated in the cited ordinance that all the navigational means and seafarers of the maritime districts are transferred to the National Service of the Coast Guard; and also it was stipulated that the Coast Guard personnel are to perform the marine functions under the jurisdiction of the Ministry of Transport.

The above cited provisions, combined with those contained in the preparatory work material, are sufficient to find out the intention of the Algerian legislature, which is the transfer of all the existing resources of the maritime districts as well as their functions to the new maritime structure (Coast Guard) and, consequently its abolition is obvious, even if this is not stated expressly in the new regulation.

- The second reason is that this is necessary for the wording of the maritime code related to the territorial and maritime administrative organization, to be consistent with the new maritime structure policy contained in the ordinance creating the Algerian Coast Guard. The provisions of Article 03 of the maritime code should also give an opportunity to the representative of the National Coast Guard Service to participate establishing a
definition of the functions and the organization of local maritime administration as far as, the enforcement of such functions is under Coast Guard responsibility. It is the same in the provisions of Article 5 of the maritime code cited above. By virtue of this article, maritime districts, principal stations and stations are created. This is not in line with the provisions contained in the ordinance related to the new structure (Coast Guard) because, the Minister of National Defence is not associated to the issuance of the organizational regulation related to the definition of the number of these maritime districts and stations and their territorial jurisdiction limits.

Effectively, the maritime functions are within the jurisdiction of the Minister of Transport, however, the enforcement maritime authority has been placed, by law, under the responsibility of the Minister of Defence. Therefore, make a clear separation between the maritime enforcement functions under the responsibility of the Coast Guard and the maritime regulatory functions, which should be exclusively under the authority of the central maritime administration (Merchant Marine Directorate), both the ordinance creating the Algerian Coast Guard and Articles 3 and 5 of the maritime code should be adjusted.

Mokarem Yahia, MSc World Maritime University, has raised the point that the marine casualty investigation function should be carried out by the Algerian Coast Guard and not by the structures under the authority of the Minister of Transport to avoid any possibility of actual or perceived conflict of interests. The Coast Guard is not a regulatory body and it is under a neutral ministry. Effectively, the point raised is consistent with the
intentions of the Algerian Legislature when establishing the new maritime structure in 1973. The objective is the separation of the two maritime functions cited above. Therefore, the marine casualty investigation as an enforcement function should be under the National Service of the Coast Guard.

This maritime organization should perform a similar role to that played by the Coast Guard organizations in many countries of the world. The example of the United States Coast Guard as shown in chapter three is indicative being a military service and a branch of the armed forces. However, the US Coast Guard is in charge of a very large number of marine functions, including marine casualty investigations for enforcement of civil and criminal penalties and for the improvement of safety standards.

The same example can be provided by the French maritime organization in which the maritime functions are all performed by the Marine Affairs Administrators Body, which is a military organization, and only a few of them are civilians. (see the brief review of the statute of the aforesaid employees in chapter two).

It can be seen that the government has given the Algerian Maritime Administration a similar organization to that which exists in the above-mentioned developed countries. The Algerian Coast Guard model is in line with those organisations and should be considered as the strongest point of the Algerian Maritime Organization as far as any enforcement of maritime regulations or law overseen by the Ministry of Transportation. Nevertheless the actual existing structural duplication and the confusion between the regulatory and the enforcement
functions are the most serious problems which are negatively affecting the national maritime administration.

1.2 The Local Maritime Organization established in 1991, necessity for its abolition

As mentioned in chapter one, in 1991 a common ministerial decree established the maritime local administration within the Directorate of Transportation of the Maritime "Wilaya". The title for this administration is "The Service for Port Maritime Transportation".

An analysis of the ministerial common decree cited above shows the following:

- There is no consistency between the aforesaid common decree and the legal provisions contained in the maritime code. Articles 3 and 5 of the maritime code give authority to the sole minister in charge of the merchant marine to define the functions and the organization of the local maritime administration. There is no legal basis for the participation of the other two ministries in the promulgation of the aforesaid common decree.

- The title of this administration is decided by law to be; maritime districts, principal stations and stations, and not "Service for Port and Maritime Transportation".

- According to the maritime code, there is no legal provision which gives authority to the local transportation service within the Wilaya to include the local maritime administration.

- The duties listed in Article 6 of the above cited common decree. are the same as those devoted to local units of the Algerian Coast Guard, except for
the registration of ships and seafarers.

- The list of the duties cited in article 6 do not include marine casualty investigations, while the Coast Guard is not empowered expressly to carry out marine casualty investigations for the purpose of improvement of safety standards.

- An adjustment is very necessary between the ordinance creating the Coast Guard and articles 3 and 5 of the maritime code and the Ministerial Common Decree related to local maritime administration issued in 1991 to establish an efficient framework to carry out the different maritime functions, especially those related to marine casualty investigations.

- To avoid the duplication of local maritime governmental maritime agencies there is no need to create a second local maritime agency, as far as the Coast Guard local units are legally authorized to enforce the maritime functions under the jurisdiction of the Ministry of Transport. Furthermore, the maritime code devotes the maritime regulatory functions exclusively to the central maritime administration. For example, out of about sixty one referrals to the regulatory authority to regulate some maritime issues, the maritime code refers only in one of them to the Wali (local governor) and none of them to the local maritime administration, so the question is whether it is reasonable to create a whole local organization to carry out only one task, that is, the registration of ships and seafarers.

1.3 Marine Casualty Investigations by Safety Commissions, inconsistency with the maritime code
As already explained in chapter one, the maritime code has instituted a Central Safety Commission and the Local Maritime Commission for inspections. Although Article 236 of the maritime code delegates to the minister in charge of the merchant marine only the power to describe its composition and its functioning rules by ministerial decree, Article 237 of the maritime code defines the duties of the Central Safety Commission. However, the ministerial decree related to the composition and functioning rules of the Central Safety Commission has added another function which is to carry out marine casualty investigations. This can raise the question as to whether the ministerial decree is consistent with the provisions of the maritime code. Furthermore, the ministerial decree does not establish any rule concerning either the procedure for marine casualty investigations or anything related to the aims and objectives of such an investigation. The local maritime commissions are in the same conflicting situation. In addition to this legal problem, there is a lack of procedural rules which should govern marine casualty investigations and the rules which should state the objectives of such marine inquiries.

The promulgation of a complete legal regulation to govern marine causality investigations is possible. This is because Article 607 of the maritime code authorizes the minister in charge of the merchant marine to issue a ministerial decree, to regulate the investigation of reported marine casualties, as stated in Articles 604 and 606 of the code cited above. Nevertheless, these provisions can also be criticized, in that the concerned minister is empowered only to describe regulations for the declared casualties, but nothing is mentioned concerning
non declared marine casualties and accidents. Also the 1989 Algerian constitution stipulates that any regulation which may affect the liberty of individuals is issued only by the legislative authority (National Assembly).

In order to bring the Algerian regulations related to marine casualty investigations in line with the practices applied by other nations, a new law should be issued and Article 607 of the maritime code should be adjusted in accordance with the above mentioned practices and with the provisions contained in the Algerian constitution.

2 MARINE CASUALTY IN THE ALGERIAN MARITIME CODE

2.1 Definition of Marine Casualty.

Chapter four of the Algerian maritime code is devoted to marine casualties. Without paying careful attention to these provision the reader can easily be confused. Effectively, the definition of a marine casualty which is provided by the aforesaid chapter is far from clear because when reading articles 273 and 274 one can not determine if such a definition refers to marine casualties. It is felt that it concerns collisions only and does not include all types of marine casualties and accidents.

Only a careful reading of the third sub-part of article 274, combined with the title of the chapter can clarify a definition of a marine casualty. This third sub-part stipulates that an allision between seagoing vessels and fixed installations, as well as any damage caused to another vessel or to things and persons onboard, these events are supposed to be a collision even if there is no
direct collision. In other words, these maritime events are legally considered to be a collision and then all the legal provisions applicable to the collisions are at the same time applicable to these maritime events. As a result, in the Algerian maritime code the terms marine collision and marine casualty or accident have the same meaning. Therefore, it is necessary to introduce a new clear definition of marine casualty in the Algerian maritime code.

2.2 Reporting of Marine Casualties

As already seen, both the United States and the French regulations establish a mandatory duty to report all marine casualties, and at the same time provide statutory punishment for failure to comply with casualty reporting obligations. Effectively, in cases of violation, the French Disciplinary and Penal Code of the Merchant Marine (DPCMM) punishes any master of the involved vessel with one month to two years imprisonment and/or a fine of 100,000 to 500,000 FF (Article 63 of the DPCMM).

The United States Code, section 6103, establishes a penalty which can be applied in case of failure to comply with the marine casualty reporting duty.

The reporting of a marine casualty in the Algerian maritime code is dealt with in Book Two devoted to the commercial use of the vessel. Article 604 obliges any master of a ship, within 24 hours after arrival at the destination port, to present a report to the maritime authority, in case of occurrence of serious damage to the vessel, cargo or persons onboard.
The questions which can be raised are:
- Why this important issue is dealt with in the part of the maritime code reserved for the commercial use of the vessel?
- Is not it more relevant to deal with it under the chapter devoted to marine casualty?
- What happens if the damage is caused to the marine environment and not to the things mentioned in the above cited article?
- Furthermore, why is the minister in charge of the merchant marine authorized to prescribe regulations to govern only the declared marine casualty, what can the maritime authority do if the master does not fulfil the reporting requirements?

In case of a marine accident, the second sub-part of Article 605 does not allow the master to start the discharging of the cargo before a physical check and necessary verification by the maritime authority, bearing in mind the application of the maritime code. (commercial use of the vessel) this can provide a very different legal interpretation of the mandatory reporting duty cited above in article 604. It can be understood that this reporting obligation is only for the use commercial or claims settlements; and it has nothing to do with the reporting duty as understandable in the marine casualty context. The report is presented to the maritime authority only to authenticate the event.

To avoid any confusion, chapter four of the maritime code should be amended, with a clear provision related to the reporting duty. The offence which can be enforced in case of failure to report a marine casualty has to be embodied in the chapter mentioned above as well.
2.3 Responsibility in Case of Oil Pollution Caused by a Marine Casualty

National maritime legislation related to marine oil pollution caused by a marine casualty presented in chapter one provides a legal basis to settle many issues, such as the principles of oil pollution damage, shipowner's liability, procedure for compensation, etc. However, the aforesaid legislation has to be improved, because it lacks some very important points. For example, neither the maritime code nor the Environmental Protection Act designate and empower an Agency in Algeria to ask for compensation of damage to the marine environment, in cases of marine casualties involving tankers or ships loaded with dangerous cargo. On the other hand, both codes mentioned above establish penalties and procedural rules applicable in the case of marine pollution. The lack of the designation of such an agency to ask for maritime civil claim, may cause a serious legal problem. If the damage is suffered by a person or a private property the litigation can be legally applay to the party which suffered the damage, but in the case of harm caused to the marine environment, who may secure the environmental claims

This case is solved in the USA by virtue of section 1321, of Title 33 USC which empowers the administrator of the department in which the Coast Guard is operating, to ask for any maritime claim related to oil pollution damage.

2.4 Responsibility in Shipwreck
In the case of a marine casualty involving tankers or sinkings, the maritime authority faces a critical problem related to cost of removal of marine pollution, or related to the removal of the ship wrecks which are hazards to navigation. For this reason, the maritime code should be amended in sections which deal with the salvage of maritime wrecks. As already explained in chapter one, the maritime code is silent concerning the case where the costs of removal are higher than the value itself of the maritime wreck, while many provisions deal with other aspects related to property rights of the owner and salvage.

The maritime wreck, as a threat to maritime navigation or the maritime environments, is not dealt with sufficiently. Only Article 368 of the above mentioned code authorizes the maritime administrative authority to pronounce the forfeiture of property rights under certain conditions, if the maritime wreck is considered as a threat to maritime navigation and it may cause a marine casualty. In the case of the forfeiture of the maritime wreck, legally the maritime authority can only sell it; this means when the wreck has no value, the problem is shifted completely to the administration side and the owner of the maritime wreck is no longer responsible for the future injuries which it might cause. This weakness in the maritime code has had a very negative impact since along the Algerian coast there are many abandoned shipwrecks they threaten the marine environment and spoil the coastal scenery.

To solve the problem cited above, the maritime authority should be empowered to take other preventive measures and also to charge the owner for any expense
caused to the administration when taking such measures, like buoys, and chart costs. The maritime authority should be empowered to avoid any possible marine casualty by taking the aforesaid preventive measures. It should be authorized to conduct the removal of a wreck or apply other necessary measures if it is determined that the owner is not conducting a proper removal. This proposed change relates to the maritime code provisions dealing with the wreck which could be introduced in both the Environmental Protection Act and the maritime code in the articles concerning marine pollution, especially in the case of a catastrophic spill.

The aforesaid proposals are based on the actual practices found in both the USA and France. In the USA under section 311 of the Clean Water Act, such powers are provided and require the on-scene coordinator, in case of oil spill, to assume control of the response if he determines that the person responsible for the spill is not responding correctly or if this person is unknown.

Following US practices, it would be very helpful if the Algerian maritime code established a fund to support the expenses which may be paid to remove a maritime wreck or marine pollution discharge when the responsible party is unknown, or succeeds in escaping. It should also enable the Algerian Coast Guard to stop the responsible party from continuing the clean-up operation if this is not performed properly, allowing for the designation of others the cost of which would have to be supported by the polluter. The same authority should be vested in the Coast Guard in the case of maritime wreck removals is needed.

Concerning maritime wrecks Articles 8 and 9 of the
1961 French Decree as amended authorize the maritime authority to take direct preventive measures on the maritime wreck if there is an actual threat to maritime navigation, the environment, fishing activities and the port, or if it might cause an unsafe entrance. However, in certain other cases the maritime authority can take appropriate measures only upon the demand of the owner of the maritime wreck or after prior warning. The measures undertaken are conducted by the maritime administration, but the charges are paid by the owners. In cases where the owner is unknown the maritime authority may save, remove, destroy or take any other measure intended to prevent any danger which may be created by the maritime wreck. (1)

2.5 Purpose of the Marine Casualty investigation in the Algerian Maritime Legislation

Maritime legislation related to marine casualties enacted by Algerian legislative or regulatory authorities does not provide any express legal provision which makes the aim and purpose of a marine casualty investigation clear.

The 1982 ministerial decrees related to the maritime safety commissions, issued by the minister in charge of the merchant marine, authorized the aforesaid commissions

(1) "Collection Mer": Maritime Wrecks Management.

This reference is published by French State Secretariat of Sea.
to conduct marine casualty investigations, but nothing else was mentioned, neither concerning the purpose of the marine investigation nor the procedures and action to be taken. Nevertheless, concerning the legal marine casualty investigation, even if there is no express statement concerning its purpose, some provisions embodied within the maritime code combined together are able to determine a penal purpose in some cases. This confusing situation is making the conduct of legal marine casualties investigation in Algeria very difficult, and often without any effect. The provisions of the maritime code which provide a criminal enforcement purpose are those which establish penal or disciplinary liability in some cases for marine casualties (see Articles 224 to 298 in chapter four, and also contained in Articles 529, 530, 562) related to the authorities and procedures concerning maritime crimes and finally the provisions of the maritime code devoted to the violations of maritime navigation safety rules. (See Articles 477 to 487). The lack of clear provisions in the maritime legislation concerning the purpose of the marine casualty investigation is one of the most important points of weakness in the Algerian maritime casualty system. To avoid this confused situation express provisions should be included in chapter four of the Algerian Code cited above.

The United States legislation is a good example where section 6301 of the USC, already mentioned, has not only defined clearly the purpose of the marine casualty investigation but also provides regulatory authority to
prescribe regulations to govern immediate investigations of marine casualties.

2.6 Maritime Offences Related to Marine Casualties

The Algerian legislature has established many maritime offences which can be committed before, during or after the occurrence of a marine casualty. According to Article 477 of the maritime code the master of a ship who proceeds to sea with an unseaworthy ship can be charged for a criminal act even if there is no accident. The punishment is stronger in the case of an occurrence of a casualty involving death or material damages.

There are also maritime offences which can be committed while the marine casualty is occurring as in the event of the master not duly conducting the rescue operation during a collision. In general, the examination of the French Disciplinary and Penal Code of the merchant marine in the regulations devoted to losses of vessels, collisions, groundings and other marine accidents, which are dealt with in the second chapter of this paper, and the provisions of the Algerian maritime code concerning the violations to safety of maritime navigation, reveal that they contain mainly similar maritime crimes related to marine casualties. The United States marine legislation also establishes some crimes directly connected to marine casualties, some of which are presented in chapter three. However, if both French and USA legislations have provided a number of clear rules and procedures to implement the aforesaid maritime crime, it is not the case in the Algerian legislature. The difficulties in the Algerian legislation are in the investigating authorities, the maritime penal procedures, and the competent tribunals.
2.7 Investigating Authorities Necessity for Further Powers

According to existing Algerian maritime laws, there are two types of maritime investigations conducted. The first type is addressed by different authorities, while the second type is conducted only by two separate commissions. By virtue of Article 529 of the Algerian Maritime Code the maritime administrative authority and any merchant marine agent under oath, as well as any similar agent of the National Service of the Coast Guard and all the judicial police officers either in the General Directorate of the National Security (GDNS) or in the National Security (Gendarmerie Nationale) are authorized to conduct a maritime investigation to assess criminal penalties committed by a seafarer or by any other persons onboard a vessel. This includes those crimes related to marine casualties and accidents. However, this appointment creates many problems. The major legal problem is about the nature of the authority of the agents under oath of the National Service of the Coast Guard and the merchant marine agency; the question is whether or not they have the same power as a Judicial Police Officer (JPO) if the answer is no, what is the limit of their authority?

Article 562 of the maritime code, even though it states that the aforesaid agents under oath have to prepare a report of the violation according to the penal procedure code provisions, is still silent concerning the power of these agents. The issue becomes more confused as the legal provisions of the penal procedure code state that, except for the JPO, the agents who are carrying out specific functions related to law enforcement have to act under the
authority of the specific law. This clearly means that the maritime code is the sole legal reference which should define the authority of these agents under oath. A clear re-definition of the authority of the agents under oath will certainly facilitate the enforcement of maritime laws and regulations, particularly those concerning marine causalities and accidents. At present the JPOs in the field of marine investigations have a clear authority compared to other agents under oath but lack specific maritime training since they have very difficult and wide inland duties.

The above mentioned problem does not appear in the same form in both the USA and France, because their maritime legislation provides clearer statements. For example, Article 36 of the Penal and Disciplinary Code, as amended in 1943 and 1962, gives to the marine affairs' administrator, who is the investigating officer in a case of marine casualty, the same authority as the investigating judge within an ordinary tribunal. The same article specifies expressly that he may issue the same orders which can be decided by an investigating judge, such as subpoenas, warrant for arrest and summons, and a warrant for committal of fault. The marine affairs' administrator, who is authorized to preside over the maritime tribunal, which has jurisdiction over the crimes related to marine casualty, has the same authority.

Concerning the authority to suspend or revoke the licence or the certificate of a master, or a pilot involved in a marine accidents and alleged violations as defined in the second part of Article 81 of the DPCMM, if it is not the duty of the marine affairs administrator article 22 of decree No. 60, 1193 of 7th November 1960
nevertheless gives possible power to the marine affairs
director to suspend for a period the right to operate a
vessel as a master or pilot, then it is up to the minister
of the Merchant Marine to decide whether the case should
be submitted to the disciplinary council and whether the
suspension should be maintained or not.

In the United States, the Investigating Officer who is
in charge of conducting a marine casualty investigation or
the hearing officer responsible at his level for the
enforcement of civil penalties including those which are
related to the marine accidents, the administrative law
judges when taking suspension or revocation measures or
the district commander's decision of referral of a
criminal case to the US Attorney. All authorities given
to the above mentioned Coast Guard employees are well
defined in Title 46 and CFR 33 as well as Titles 46 and 5
of the USC.

The United States legislature does not give
jurisdiction to the marine agency responsible for maritime
matters (US Coast Guard) to settle criminal cases, even
if concerned with a nautical maritime crime. As already
explained, the Coast Guard Commander in the case of
criminal penalty only has the authority in some cases,
such as a marine casualty or accident resulting in death,
to identify the laws or regulations which were violated
and also has the authority to make specific
recommendations to the US Attorney. Nevertheless, the US
Coast Guard has been given full authority to enforce civil
penalties (fines) and also to take measures to suspend or
revoke a marine certificate or licence.

In both examples, there is no direct control of the

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Department of Justice. The decisions taken either by the administrative law judge or by the Hearing Officer cannot be reviewed except before the US Coast Guard Commandant through the appeal process which has already been mentioned in chapter three of this paper. The review of the act taken by the US Coast Guard employees cited above under relevant maritime regulations cannot be carried out by the Department of Justice because these Coast Guard employees have been given, in their field of responsibility, the authority of judges. For example, the power to issue subpoenas, to administer oaths to witnesses, to regulate the course of hearings and to assess either a civil penalty in the case of a hearing officer or to suspend or revoke a marine licence in the case of administrative law judges. Now in the United States they are referred to as "judges" and "your honor" and most of them wear judicial robes. Therefore, it can be noted that in both the USA and France the employees in charge of maritime law enforcement, including maritime casualty investigations, have been given the same authority which is given to judges in ordinary tribunals.

The difference between the two systems is only about the subject of this authority. French maritime employees are authorized to enforce either criminal or civil penalties through a particular procedure and before a maritime tribunal totally independent from the authority of the minister of justice and at the same time they are involved indirectly in suspension and revocation measures. In the United States the aforesaid employees have authority to enforce civil penalties and to take measures to suspend or revoke a maritime certificate or licence without any interference from the Department of Justice, and at the same time they are indirectly involved in
maritime criminal penalties as explained above. It can be noted that in both France and the USA, employees directly involved in the enforcement process for maritime laws and regulations, in addition to their authority in this field, are at the same time under military statute. In France, the marine affairs administrator, either the one who is in charge of investigations or the one who has been given authority to preside over the maritime tribunal, are officers in the French navy. In the USA, the investigating officers and the hearing officers are military officers while, the administrative law judges are civilians and military officers employed within the US Coast Guard which is a military service. In Algeria, employees of the maritime agencies (Coast Guard and merchant marine) have been authorized to enforce maritime laws and regulations, but they have not been given sufficient judicial power. Being under oath this helps them only to submit an official report, but this normally does not give them the authority to take measures such as issuance of subpoenas, administration oaths, conducting or participating in hearings even when this is very necessary to properly carry out a law enforcement duty. Finally, the review of the provisions of Articles 529, 530 - 562 of the Algerian maritime code is very necessary in order to bring the authority of these agents under oath in line with the authority of those similar employees in other countries such as USA and France.

3 Marine Investigations Related to Marine Casualties

Need for New regulations

In case of a marine casualty, two maritime investigations may be conducted at the same time. The first is conducted to decide whether there is criminal
penalty or not and it is carried out by the authorities mentioned in Article 529 of the maritime code. The second is conducted by either the Central Safety Commission, if the vessel involved is equal to or greater than 500 tons, or by the Local Commissions for Inspection of Navigation and Maritime Labour, if the vessel involved is less than the tonnage mentioned above. This type of investigation is not very well defined, either concerning the actions to be taken or concerning the procedural rules to be fulfilled during the different stages of the investigation.

As already explained, this marine casualty investigation task is not the duty of the commission cited above, because the law which is superior to the ministerial regulation has defined the function of these commissions and has not given to them any authority over marine casualties. According to Article 607 of the maritime code, the investigation into a marine casualty has to be regulated in a separate ministerial decree. This regulation should be devoted to describing the procedural rules regarding the reporting duty and investigation into declared marine events. However, as mentioned in this chapter, a review of Article 604 to 608 of the maritime code regarding the reporting duty and investigation rules for marine events as well as the review of the two ministerial decrees related to the safety commission are very necessary for the reasons which have already been explained.

3.1 Need For Specific Maritime Penal Procedures

To enforce the maritime felonies and misdemeanors established by the Algerian maritime code, especially those related to maritime casualties and accidents, the
Algerian legislature has given the ordinary tribunal jurisdiction over these offences and has decided that the same penal procedure code which governs the enforcement of other penal provisions is applied in the case of the enforcement of maritime crimes.

This is expressly stated by Article 530 of the Algerian Maritime Code. If the application of the penal procedure code in the case of maritime crimes does not create any major problem for the judicial police officers within the GDNS and N.S (Gendarmerie Nationale) G.N, it is a real legal problem for agents under oath who are acting under the authority of the merchant marine and the National Coast Guard agencies. The reason for this is that the penal procedure code governs only actions of the JPOs or the assessors of the JPOs and at the same time this code stipulates expressly that the specific law, in the case of maritime crimes, the maritime code has to govern the action of other employees who have been given particular authority to enforce specific substantial penal laws.

Facing this "negative conflict of laws" between the maritime code and the penal procedure code, the entry of a new penal procedure rule seems to be the most appropriate solution. This is to enable the Algerian system in the case of a marine offence related to a marine casualty to perform the actions which may be necessary such as imprisonment, fine suspension or revocation of the marine licence or all of them together.

In both the USA and France, very clear provisions are issued to prescribe the procedure to enforce civil and criminal penalty proceedings. In the case of the USA, sub-part 1.07 of the 33 CFR is devoted to prescribing very
clear procedural rules to enforce civil and criminal penalties while among others, sub-part A and B of Part 5 of Title 46 CFR also provides clear procedural rules which are governing the suspension and revocation actions taken against a license or certificate.

In France, the suspension or revocation of a license of a master of vessel or of a pilot is basically under the authority of the minister of the merchant marine and to a certain extent the disciplinary council. Concerning the enforcement of maritime crimes, especially those related to marine casualty, a clear special maritime procedure was issued by decree No. 63.891 on the 24th August 1963. The provisions of this decree were spelled out in chapter two of this dissertation.

It is very necessary to introduce the necessary legal changes in the maritime code, especially those provisions of Article 530, in order to facilitate the role of the agents under oath in the enforcement of the penal provisions dealing with marine casualties and accidents.

3.2 The Competent Penal Tribunal, Need for Specialized court

Article 530 of the Algerian maritime code stipulates that the ordinary tribunals have jurisdiction to assess any felony or misdemeanor committed on board a vessel by a seafarer or by any other person. The practice in Algeria has shown that these ordinary tribunals carry out their duties properly when the case submitted before them is an "ordinary crime" like "homosexuality on board a vessel". However, when the case is a "A maritime crime" which cannot be understood without at least a minimum background
in the field of maritime navigation or other aspects regarding the different maritime areas, it is noticeable that the tribunals in Algeria do not easily perceive how serious the case is.

To illustrate this point in the last marine casualty which happened in 1989 a fishing vessel sank and four fishermen were killed in Benisaf. In this casualty the justice authority and the JPO who was in charge of the marine investigation were conducting an investigation devoted only to different personnel’s injuries and death claims. The master of the fishing vessel was very negligent and a lot of evidence proving this could be easily provided. Due to the lack of marine background of the judge and the JPO it was not possible for them to identify the violation of the maritime code which is not usually used in an ordinary tribunal.

The judge and the JOP who were conducting this marine casualty investigation did not perceive that the case was criminal in its nature because the maritime code stipulates that if any master by negligence, or willfully, proceeds to sea with an unseaworthy ship, he commits a felony if a casualty occurs and causes loss of the vessel and one fatality or more.
CHAPTER 5

PROPOSALS

All the proposals which will be presented in this last chapter will be based on the provisions contained in the United States and French practices and legislation. These two references are very useful for clarification of all the points which are unclear in the national casualty investigating system as well as for those necessary points which do not exist in the Algerian regulations related to the marine casualty subject. The most important proposals will be explained hereinafter, while only a list of some other points needed for a complete system will be given.

5.1 Some Principles to be adopted

5.1.1 Definition of Maritime Casualty

Chapter Five of the maritime code should be amended as follows:

Article 273 The term marine casualty or accident shall mean any occurrence involving any vessel other than a Coast Guard or navy vessel if such occurrence happens within the Algerian territorial sea, or any occurrence wherever it happens if such occurrence involves an Algerian vessel which is not a Coast Guard or navy vessel.

The term marine casualty or accident includes any accidental grounding, or any occurrence involving a vessel which results in damage by or to a vessel, its apparel,
gear, or cargo, or injury or loss of life of any person; and includes among others: collisions, strandings, groundings, foundering, heavy weather damage, fires, explosions, failure of gear and equipment and any other damage which might affect or impair the seaworthiness of the vessel. The term marine accident also includes any loss of life or injury to any person while diving at sea and using underwater breathing apparatus, and a discharge of a hazardous substance into the maritime waters under national jurisdiction, whether or not resulting from a marine casualty. (This definition is derived from section 4.03.1, 46 CFR).

5.1.2 Reporting

Article ... stipulates that, reporting is required in the following marine casualties:

- death of one or more individuals,
- serious injury to an individual,
- material loss of property,
- material damage affecting the seaworthiness or efficiency of the vessel or,
- significant harm to the marine environment.

The reporting duty applies to a foreign vessel when involved in a marine casualty within the territorial waters of Algeria, or near these water when there is a risk of marine pollution. The tankers and other vessels loading dangerous cargo as defined by decree, even if there is no accident, are required to report their passage through the territorial sea. The report should include the speed, the direction, the nature of the cargo on board and any other details.
Article ... An owner, charterer, managing operator, agent, master, or individual in charge of a vessel failing to report a marine casualty as required under Article .... of the maritime code is liable to the Algerian authority for a civil penalty of ..... Algerian Dinars. The master of tankers or any other vessel loading a dangerous cargo failing to report their entrance into the Algerian territorial sea is punished by one month to two years imprisonment and/or a fine of ... to ... Algerian Dinars.

According to Article ...., the minister in charge of the merchant marine and the minister of national defence by joint decree shall prescribe other marine casualties to be reported and the manner and the time limit of the reporting duty.

5.1.3 Objectives of the Marine Casualty Investigation

The marine casualty investigation carried out under Article.... aims to:

- Define as closely as possible the cause of any death or serious injury,
- Decide whether an act of misconduct, incompetence, negligence, unskillfulness, or willful violation of law committed by any individual licensed, certificated, or documented has contributed to the cause of the casualty, or to a death or serious injury involved in the casualty;
- Find out whether there is evidence that an act subjecting the offender to a civil or criminal penalty under the Algerian law has been committed so that appropriate measures may be undertaken either to collect penalty or to refer the matter to an
appropriate authority for prosecution,
- Decide whether there is need for new laws or regulations or amendment or repeal of existing laws or regulations to prevent the recurrence of the casualty.

5.1.4 Disclosure of the Marine Investigations

Article ... states that each investigation shall be open to the public, except when evidence affecting the national security is to be received. The final marine casualty report has to be published.

Article ... authorizes the advocates to represent the parties in interest, to cross-examine witnesses and to call witnesses. The following are considered parties in interest:
- An owner or any holder of a licence or certificate of registry,
- Any holder of merchant mariner’s document,
- Any other person whose conduct is under investigation, and
- Any other person seriously injured or any other party in interest.

5.1.5 Subpoena Authority

According to Article ........, The attendance and testimony of witnesses including parties in interest and the production of any evidence during a marine casualty or accident may be compelled by subpoena.

When a person fails to obey a subpoena issued by the investigating authority, the president of the tribunal in
which the investigation is conducted or in which the person failing to obey is found, upon the request of the investigator has to issue an order directly to that person to comply with the subpoena. Disobedience of the tribunal order may be punished.

The investigating authority, in addition to the issuance of a subpoena also has also power to administer oaths to witnesses.

5.1.6 Notification of the report to Ministerial Authorities:

By virtue of Article......, the commandant of the National Service of the Coast Guard shall notify the minister in charge of the merchant marine and any other concerned ministers, or the national authority, of any marine casualty which involves a death, significant harm to the marine environment, or serious property damage, unless this notification is prohibited by law or regulation.

The National Service of the Coast Guard shall establish an annual summary of marine casualties reported during the year, a statement concerning the action to be taken may be joined to the report and submitted to the concerned national authority.

5.2 The need for clarification regarding legal investigation

5.2.1 The Investigating Authority

Article .... states that in order to avoid duplication, the local Coast Guard units are exclusively empowered to
conduct a marine casualty investigation. Articles 529 to 567 of the maritime code have been amended to include the following provisions.

5.2.2 The Investigating Officer

According to Article..., the agents who are listed in Article 529 of the maritime code, when conducting a marine casualty investigation or any collection of information are under the control of the investigating officer.

The investigating officers are those officers or employees of the National Coast Guard service who are designated by common ministerial decree of the minister of justice and the minister of defence, for the purpose of making legal investigations of marine casualties and accidents. They are appointed to the Coast Guard maritime stations.

Article...states that, the district commanders, the lawyers of the Coast Guard as well as the safety inspectors are considered by law investigating officers, without further designation. The permanent duty of these employees is the enforcement of the maritime laws and regulations including those related to marine casualty investigation.

Article...stipulates that the report submitted by the investigating officers is used as a legal basis to decide the following:
- Whether or not the designation of a marine board either at regional or national level is in the public interest; such a decision should be undertaken by the Coast Guard Commandant or the
district chief.
- The establishment of a hearing by the Coast Guard lawyers to assess civil penalties or refer criminal cases to the maritime penal tribunals and also to decide the suspension or revocation of any licence, certificate or marine document delivered by the maritime administration, when the holder is involved in a marine casualty or in any other case defined by law.
- The compensation of any damage, caused to a person, ship, goods or to the marine environment according to the maritime code provisions concerning civil liability related to marine casualties (as dealt with in the first Chapter of this paper).

5.2.3 Powers of Investigating Officers

According to Article..., the investigating officers within the Coast Guard maritime station conduct a preliminary investigation under the authority of the Coast Guard lawyer. The investigating officers have the power to administer oaths, subpoena witnesses and require persons having knowledge of the subject matter of investigation to answer questionnaires. The Coast Guard lawyers have the same powers as the investigating judges, particularly the authority to issue a warrant for arrest, a warrant for committal in jail and summons. The Coast Guard lawyer within the maritime district has the authority to suspend for a period the license or any other maritime document of a person involved in a marine casualty if there are sufficient charges against the holder. He also has authority to assess any civil penalty reported by the investigating officer against any alleged violator.
5.2.4 Report of Investigation

By virtue of Article........at the conclusion of the investigation, the I.O. submits to the concerned authorities via the Coast Guard lawyer and the District Commander a full report of the facts as revealed by the investigation, together with their opinions and recommendations.

Article.....stipulates that the Coast Guard lawyer and the District Commander forward the investigating officers' report to the concerned authorities with an endorsement deciding:

- Any action taken with respect to the opinion and recommendations of the I.O. such as suspension or revocation, collection of civil penalty or referral of the case to the maritime penal tribunal.
- Any further investigation which should take place to decide as closely as possible what should be done to improve maritime safety, through the issuance of new regulations or repeal of existing laws to prevent recurrence of the casualty.

Article.....states that the authorities to whom the investigating report has to be forwarded by the Coast Guard lawyer and District Commander are the Algerian authorities which have been given by law the power to take action in the maritime field, such as promulgation of maritime law and regulations, enforcement of civil or criminal liabilities, assessment of civil penalties especially by the Commandant of the National Service of the Coast Guard, the Minister In Charge Of the Merchant Marine and the Attorney General.
5.2.5 Maritime Investigating Procedure

By virtue of Article.....the investigating officers will be in charge of preliminary investigations within the zone of the responsibility of the Coast Guard maritime station. The marine investigations acts are carried out by the I.Os under the authority of the Coast Guard lawyers, according to the principles listed below.

5.2.6 Initiation of the Preliminary Investigation

According to Article.....the investigating officer is empowered by law to open any inquiry into the marine casualty report of the master of a ship or upon any complaint filed by any person or information received by any means.

Article.....states that in the case of a report of a marine casualty to many investigating officers within the same maritime district, the Coast Guard lawyers within the maritime district have to appoint the I.O. who will conduct such marine investigations. In case where the report of a marine casualty is submitted at the same time to I.O.s within different maritime stations, under the jurisdiction of different maritime districts, the appointment of a suitable I.O. is decided by the Coast Guard lawyer at the central level of the Coast Guard

5.2.7 Technical Assistance to the I.O

According to Article.....the I.O has to be given the opportunity to be assisted by
- a Coast Guard Deck Officer or Engineer.
- a holder of a foreign going licence and any other qualified technicians if needed. In such a case the appointment is decided by the district commander. The assisting officers of the I.O. participate with the IO to:
- collect Specimen, samples, and take declaration,
- enter vessels and casualty location, and
- make necessary examinations.

Article.....stipulates that, at the conclusion of the investigation the report signed by the I.O. and the assisting officers, if any, is submitted to the maritime district commandant and the Coast Guard lawyer for further action which is required according to maritime laws and regulations.

5.2.8 The Coast Guard Lawyer’s Orders

Article...states that, in order to properly enforce the Algerian maritime laws and regulations especially those concerning marine casualty, the Coast Guard lawyers who are appointed, at least one in each maritime district, are empowered by law to take the following written decisions:

- Nonsuit order

This order is issued if the Coast Guard lawyer, after evaluation of the facts and evidence is convinced that there is no violation of any laws or regulations and neither civil penalty nor criminal or disciplinary liability can be established.

- Referral Order
This order is issued:
- to refer the matter to the competent maritime tribunal in the case of a criminal liability of any person involved in a violation of a maritime law or regulation;
- to refer the matter to the authority in charge of suspension and revocation matters;
- to ask for further investigation by the regional marine board of investigation in order to decide whether there is a need for new safety regulations to prevent the recurrence of the casualty;
- to litigate on behalf of the government any party which has caused damage to the marine environment or litigate any person for the recovery of any expense to the government for combating oil pollution or removal of wrecks and any other costs related to maritime matters; and
- to deliver any recorded evidence to a party in interest which is involved in a marine casualty or accident and has suffered any damage, if such evidence is legally acceptable as basis for claiming any reparation for damage suffered.

Article... states that, the orders cited above are considered judicial in their nature. They should be notified by the Coast Guard lawyer to the concerned party, like any other decision taken, such as a warrant for arrest or committal for a prisoner. These orders of a penal nature are subjected to legal review by the investigating chamber within the court of justice, in accordance with penal procedure code provisions.
5.3 The needed changes related to Administrative Investigations

5.3.1 The National Marine Board of Investigation (NMBI)

This structure in fact already exists within the Algerian Coast Guard National Service. At the local and regional levels there are also the local marine board of investigation (LMBI) and the regional marine board of investigation (RMBI). Nevertheless, these marine casualty investigation structures are not covered by any laws and regulation. Their instigation is the result of a real need for a proper conduct of maritime accident investigation. To provide the necessary legal basis of the above mentioned structures, it is very necessary to amend the maritime code in order to define some principles and to enable the regulatory authority, together with the Commandant of the Coast Guard, to describe the needed regulations concerning the marine casualty investigation system.

Mokarem Yahia, MSc WMU, when dealing with this issue has proposed the statutory establishment of national, regional, and local investigating bodies, simply because this framework has already become customary practice within the Algerian Coast Guard. For the same reason, the author of this paper proposes that the above mentioned commissions be legally adopted. However, at the local level, it seems that it would be more efficient to carry out the investigating functions through a single officer, even if he may be assisted by one or more technical advisors throughout the duration of the preliminary investigation. The creation of a local Marine Board of Investigation may not be easily justified. This may be the
reason why in both the USA and France, marine casualty investigation systems at the local level are based only on a single employee who is empowered to carry out the preliminary investigation. The aim of such an investigation in these two countries is devoted to determining, in addition to any type of civil, criminal or administrative responsibility, the need for further investigations.

To establish an efficient framework in Algeria it is necessary to differentiate between an inquiry which has to be carried out by an I.O., which should be a formal investigation and closed to the public, and the work carried out by a marine board of investigation which has to be disclosed to the public And should be administrative rather than formal for this reason a number of provisions have to be entered into the maritime code.

According to Article..... A National Marine Board of investigation established within the National Coast Guard Service. The NMBI has jurisdiction over all major shipping casualties with national implications, such as a major oil spill, maritime accidents involving deaths, etc.

Bu virtue of Article.......Te NMBI is headed by a Coast Guard officer as chief inspector of marine accidents. Four Coast Guard officers coming from the fourth main marine discipline, Nautics, Engineers, naval architects, and law, are appointed as members, the composition of the NMBI may include any other representatives of any concerned ministry. The reports and the recommendations of the NMBI are submitted by the president to the minister in charge of the merchant marine via the commandant of the Coast Guard.
5.3.2 Regional Marine Board of Investigation (RMBI)

Article...... established within the Coast Guard Maritime District a Regional Marine Board of Investigation (RMBI). Its composition as well as its working procedural are described by a common ministerial decree of the minister in charge of the merchant marine and the minister of national defence.

5.3.3 Powers and Designation of the RMBI

Article....states that, the Commandant of the National Coast Guard Service, and the District Commander are legally authorized to order the RMBI to conduct marine casualty investigations if he estimates that such an investigation will promote safety of life and property at sea. The NMBI and the RMBI apply the same investigating procedure, and have the authority to administer oaths, require persons concerned to answer questionnaires, summon witnesses and to require the production of relevant books, papers, documents, or any other evidence.

By virtue of Article.....when either the RMBI or the NMBI is convened in accordance with, orders which are issued by the Coast Guard Commandant or the maritime district commander, the I.O. shall immediately furnish the designated board with all testimony, statements, reports, documents, papers, a list of witnesses including those whom he has examined, other material which he may have gathered and a statement of any findings. The preliminary investigation shall cease forthwith and the aforesaid material shall become a part of the concerned marine board of investigation report.
5.3.4 Sessions of the RMBI

According to Article......the President of the RMBI notifies the time and place of the investigation conducted by the RMBI to any person whose conduct is under investigation and to any other party in interest. The cross-examination of witnesses and the summoning of witnesses is made possible for the party in interest either through an advocate or by him directly. Except when the sessions of the RMBI receive evidence of a classified nature or affecting national security, all other sessions devoted to obtaining evidence are open to the public.

Article...states that, if an investigation is to be carried out into an accident occurred in the Algerian territorial sea which involves a substantial interest of a foreign party, it is always possible that the flag states for that vessel will also participate in the investigation carried out by either the RMBI or the NMBI. The representatives of the flag state, may interrogate the witnesses and have access to the file case. This right is recognized only under reciprocity principle and does not include the legal marine casualty investigations conducted by the investigating officers.

5.3.5 Record of Proceedings

Article....stipulates that, the RMBI takes a complete record of its proceedings, and a written report including findings of facts, together with opinions and recommendations have to be submitted to the Algerian Coast Guard Commandant for his consideration. If it appears to the RMBI that there is probable evidence to charge a
person involved in a marine casualty, the RMBI is authorized to notify the Coast Guard lawyer within the maritime district, either immediately following its session or before the witness has left, or during the RMBI investigation. The Coast Guard lawyer is given the legal authority to take action without waiting for the approval of the report by the Algerian Coast Guard Commandant. The Coast Guard lawyer’s actions or proceedings are independent and apart from any other action which may be later ordered by the regulatory authority, the Coast Guard commandant or by the district commandants.

5.4 Judicial Authority Which Should have Jurisdiction to Enforce Criminal Penalties and Suspension or Revocation Proceedings

5.4.1 The Maritime Tribunal (MT)

As already mentioned in this paper the Algerian legislature has given authority to an ordinary tribunal to enforce criminal penalties. It can also be noted that, according to Article 518 of the maritime code, suspension and revocation measures can be taken by the ordinary tribunal. It was established that the most suitable way to properly enforce the tasks cited above is to set up maritime tribunals, not in the same manner as in Algeria during the colonial period or as they actually exist in France but rather following the new judicial organization in Algeria. These maritime tribunals can be created within the courts of justice which have jurisdiction over maritime zones. To make this possible, a change should be introduced in both the maritime code and the Penal Procedure Code.
The necessary provision should be as follows:

5.4.2 Proposed Composition of the Maritime Tribunals

By virtue of Article........, article 530 of the maritime code is amended. To enforce the maritime crimes as well as the suspension or revocation of a marine license or to settle any maritime claim, specialized maritime tribunals (MT) within the courts of justice of Algiers, Annaba and Oran are created.

Article........ stipulates that, the MTs are presided by professional judges from the court of justice of Algiers, Annaba and Oran.

- the Coast Guard Maritime District Commandants,
- a judge from an ordinary tribunal,
- an experienced master of seagoing vessels in retirement, and
- a surveyor, with Nautic, Engineer, or naval architects depending on the case involved are appointed as assessor judges

5.4.3 Principles and Particular Procedures Before the Proposed MT.

...all rules and procedures which are applied in France can be considered a useful reference for establishing a new maritime judicial organization in Algeria. However, in the aforesaid country these tribunals are under the authority of the ministry in charge of the merchant marine and also the public prosecutor's role which is carried out in by a navy officer. These two points are not relevent with the basic principles of
the Algerian judicial organization. The establishment of
the maritime tribunals in France as well as the particular
procedures before these tribunals and other related issues
are dealt with in chapter two of this paper.

5.4.4 The Function of the Public Prosecution

As can be seen in the USA, the prosecuting function is
carried out by the US attorney in the case of criminal
penalty related to a marine casualties. Nevertheless, in
this case the District Commander has the duty to identify
the laws or regulations which were violated and also has
to make specific recommendations concerning the
proceedings to be instituted by the US attorney. The US
legislature has given the authority to the US Coast Guard
to assess civil penalties (fines).

In France the prosecuting function has been given to a
naval officer who is under the authority of the French
Navy. However, as noted, in Algeria the above cited
function is carried out by the Algerian attorney according
to the Penal Procedures Code.

The change which are necessary for the Algerian system
to be more efficient is to give to the Algerian Coast
Guard lawyers within the maritime districts the
opportunity to be a joint party to the public prosecution
and act jointly with the Algerian attorney. The reason is
that a maritime law case needs particular training, not
only in maritime laws, but also in various maritime
fields. This is certainly the reason for the appointment
of a Naval officer in France to act as a prosecutor and
the establishment in the USA of the aforesaid procedure in
the case of a violation related to a marine casualty.
5.4.5 Other Points Which Should Be Embodied Within The Algerian Maritime Code

As already mentioned, in order to institute a complete national marine casualty investigation system, in addition to the proposed provisions cited above, the Algerian maritime legislation should also include the following points:

5.4.5.1 Testimony by interrogators and depositions

- Examination of witnesses upon application of any party in interest.
- Examination of witnesses upon the initiative of the IO, or RMBI, or NMBI.
- Format of applications for depositions (such as the written form of obligation, the reasons why such deposition should be taken...etc).
- The response of the IO or the RMBI or NMBI when receiving the aforesaid application.
- Interrogators to be propounded to the absent witness, and arrangements to allow the adversary parties to submit either list of interrogators or a list of cross-examination questions. The role of the IO, RMBI, or NMBI in this case should be clearly defined.
- Presentation of the deposition to the adversary parties for their examination and the ruling authority of the IO, RMBI or the NMBI on the admissibility of the deposition or any part thereof and of any objection offered by either party.

5.4.5.2 Referral of the case for Administrative action
As mentioned before, one of the objectives of a marine casualty investigation has to be the determination, as closely as possible, if an act of negligence, misconduct, or incompetence is committed by any individual licensed or certificated, so that suspension or revocation measures should be taken against the aforesaid individual. For this purpose, the Algerian maritime code has to include:

- Basic authority which should govern actions against a person's license, certificate or document.
- Procedure for actions against a mariner's license or any other document issued by the Algerian maritime administration.
- Bases for suspension or revocation and definition of each charge, offences for which revocation of licenses, certificates or documents have to be mandatory, and the other acts for which the aforesaid measure is sought.
- Authority to initiate investigations in any situation in which it appears that there are reasonable grounds to believe that the holder of any marine document issued by the Algerian maritime administration has committed any act which is considered by law as grounds for a suspension or revocation measure.
- Powers of the investigating officer, and actions which can be taken during an investigation by the I.O.
- Preparation and service of charges and specifications
- Voluntary deposits of a license, certificate, or document issued by the maritime administration in the event of mental or physical incompetence, and voluntary surrender to avoid a hearing.
- Issuance of subpoenas by the investigating officer
- Hearings in suspension and revocation proceedings which are conducted by the authority empowered by
law, for such purposes including: opening the hearing, public access, disqualification of the employee in charge of the conduct of the hearing, appearances and failure of the respondent to appear at a hearing, record of the hearing,... etc.

- Orders which should be entered by the authority in charge of the conduct of a hearing in suspension and revocation proceedings, such as dismissal of the charge or admonition, suspension with or without probation, or revocation... etc.

- Reopening of hearings. This part should include among others, a petition to reopen a hearing, procedures for submitting a petition and action on a petition.

- All the points related to appeals in general, such as action on appeal... etc.

5.4.5.3 Referral of the case for Judicial Action

It was mentioned before that the objectives of a marine casualty investigation should be stated clearly in the national maritime legislation. The determination of whether a criminal act has been committed, so that the case may be referred to the judicial authority for action, should also be considered one of the most important objectives. Without the definition of such penal objectives, the statutory rules and regulations concerning marine casualty investigations cannot be respected, which certainly negatively affects maritime safety. However, the determination of the aforesaid penal objective, and the crimes related to marine casualty only will not help to properly implement the maritime regulations, if maritime legislation does not contain clear procedures for enforcement and administration of all statutory provisions related to civil and criminal penalties. For this reason,
the Algerian maritime code, should be amended in chapter three, section four, in order to prescribe new provisions related to penal procedures for the enforcement of the crimes related to marine casualties.

5.4.6 Conclusion

As is already apparent, the marine casualty investigation system in Algeria needs to be enhanced; in order to preserve a variety of interests. It is also established that the aforesaid system is not in line with those practices and regulations which are fulfilled in other maritime nations, where the marine casualties investigations are in the majority of cases successfully conducted.

The proposals which have been presented in this paper with the objective of improving the Algerian system are a direct result of a comparative study between the Algerian marine investigations practices, the US and the French systems which currently exist. The study has shown that, without an adjustment between the existing maritime structures, especially, the local units of the Coast Guard and the maritime administration under the authority of the directorate of transport, the Algerian system will remain in structural confusing. Therefore, a restructuration of the maritime administration is an urgent necessity.

It is proposed in the structural issue, for the implementation of the provisions of the ordinance establishing the Coast Guard, as understood in keeping with the information contained in the preparatory work of the above mentioned ordinance. This because a big part of the
difficulties which are hampering the Algerian system can be solved only if this initial stage is achieved. However, the necessary improvement cannot be totally obtained without the adoption of the proposed changes related the laws and regulations governing the marine casualty investigations. The adjustment between the existing maritime structures, and the amendments of the maritime regulations as proposed in this paper will provide to the national marine administration a marine casualty system as shown by chart in this last chapter.
MIO/MM. Minister In Charge Of Merchant Marine
NMIB. National Marine Board Investigation
RMBI. Regional Marine Board Investigation
CG... Coast-Guard
MD... Maritime District
MSC... Maritime Station Chief
IO... Investigating Officer
Appendix No1:

List of the principal questions which should be asked when examining witnesses at maritime declarations, for the use of consular courts.
LIST OF THE PRINCIPAL QUESTIONS WHICH SHOULD BE ASKED WHEN EXAMINING WITNESSES AT MARITIME DECLARATIONS, FOR THE USE OF CONSULAR COURTS

I. The following information should be obtained at all Maritime Declarations:

1. The name and type of ship, the year in which it was built, its port of registry and distinctive number or letters, or, in the case of fishing vessels and small crafts, the registration number.

2. Gross and net tonnage.

3. Class and classification society.

4. The date of expiry of passenger, trade and loadline certificates, equipment certificate for fishing vessels, and safety certificates.

5. Name and address of Owner.

6. Name, date of birth and home address of Master.

7. Master's qualifications (certificate). Where and when he took up his duties as Master of the ship.

8. The voyage during which the casualty occurred. State time and date of departure from last port of call before the disaster and of arrival at first port of call after it.

9. The cargo carried (particularly with regard to deck cargo).

10. Draft on departure, (forward and aft).

11. Freeboard on both sides.


13. a. Was life-saving equipment in accordance with regulations?
    b. When was it last inspected:
       1) by the crew?
       2) by official surveyors?

14. a. When and where were the 3 last boat and fire drills held?
    b. Are they recorded in the log?

15. a. Number of crew on voyage. Were they signed on?
    b. Full complement according to scale of manning?
    c. Did officers and engineers hold certificates according to their positions (any dispensations)?
    d. In the event, the reason why there was not a full complement according to the scale of manning?

16. Number of passengers.
17. Name, age, occupation and home town (address) of any deceased persons.
(A copy of the crew list is to be handed in, to be forwarded to the Inspector of Shipping).

II. Further additional questions are to be put, relevant to the circumstances in each particular case. Lists of the questions which should be asked are given in the following, arranged in groups according to the nature of the disaster or damage. These lists must naturally not be considered exhaustive, but must be adapted to cover the case at issue. Some questions may be left out, or others added, according to the circumstances. Similarly, it may be necessary to put questions from different groups, in cases which may belong under more than one of the headings given.

| A. Casualties involving personal injury, poisoning, death | p. 2 |
| B. Collisions between ships | p. 5 |
| C. Grounding | p. 7 |
| D. Loss of ship | p. 9 |
| E. Fire (including explosions) in ship or cargo | p. 11 |
| F. Other damage to the ship, or damage to property other than the ship | p. 13 |
| G. Cargo shifting | p. 15 |

**A. Casualties involving personal injury, poisoning, death.**

1. Full name, date of birth, registration number, and home address of the injured or deceased person.
2. Which of the ship's officers gave orders for the work being performed by the injured/deceased person? Who was in charge of the work?
3. a. Where and when was the injured/deceased person last examined by a doctor (for signing on, if the person concerned was engaged on the ship)?
   b. By whom was he/she examined?
4. Was there anything unusual with regard to the injured/deceased person's mental health, state of mind or behaviour before the accident (signs of nervousness, depression or other abnormality)?
5. When and how was it first discovered that the person concerned was sick/injured?
6. a. What symptoms did the injured/deceased person have (pains in the region of the heart, breast or stomach, vomiting, tem-
perature, diarrhea, unconsciousness, paralysis, confusion, restlessness, etc.)? Describe symptoms and course of events in as much detail as possible.

b. What illness/injury was he thought to be suffering from?
c. What treatment did he receive on board for his illness/injury?

7. a. Did the injured/sick person receive regular attention? How often? By whom?
b. Was anyone appointed to keep watch over the person concerned?

8. a. Was medical advice obtained by radio?
b. Where and when was medical advice received?
c. What medical advice was given?

9. a. Who was the last to see and speak to the person concerned before he was injured/died?
b. How did he behave at that time?

10. a. Is it known whether the person concerned imbibed alcohol or other intoxicants in the time immediately preceding the accident/death?
b. Did the person concerned give the impression of being addicted to alcohol or other intoxicants?
c. Was he assumed to have been indisposed before the accident (lack of sleep, hangover, etc.)?

11. In cases of poisoning:
a. What substance caused the poisoning?
b. What was the person concerned using the substance for?
c. How was the substance stored and used on board?
d. Who was responsible for its storage and use?
e. Had the person concerned been informed of the dangers connected with the substance and the precautions to be taken when using it?
f. How was the container marked?

12. In cases of accidents:
a. When and how did the accident occur? Give a detailed, continuous description, including any attempted rescues and why they failed.
b. Was the accident due to any fault, negligence or lack of due care on the part of officers, crew or other persons?
c. Was the accident due to any fault or deficiency in the ship, its equipment, accessories, fittings, or complement?
d. What precautions were being observed while work was in progress?
e. If deck cargo was being carried, were regulation passageways arranged?
f. If work was being done in holds or tanks where gas might accumulate or where there might be a lack of oxygen, had the holds or tanks been properly aired? Were the tanks/holds examined with a gas detector/safety lamp before work started and in that case, what gas detector was used? Were ropes being used? Was anyone on watch at the hatch coaming on deck?
g. What type of cargo was being or had been carried in the hold or tank when the accident occurred?
h. If the ship was in ballast, what was the last type of cargo carried in the tanks or hold before the accident? When was that cargo discharged? Were the holds and tanks cleaned and gas-free when the accident occurred?
i. If the ship was moored alongshore or at anchor, where was the watchman when the accident occurred?
j. Was the gangway or accommodation ladder in accordance with regulations? Was there a lifebelt and line near the gangway?
k. Was there good lighting at the place of the accident?
l. If work was being done from a stage or bosun's chair, inboard or outboard, did the person concerned have a rope or lifeline round his waist?
m. Was the accident due to the nature of the cargo, or any fault, deficiency or carelessness with regard to the manner of stowing or securing the cargo?
n. Describe the type of gas-masks and smoke masks provided on the ship, when last inspected before the accident and when oxygen flasks were last filled and checked. When was drill and instruction in the use of the equipment last given, and who was responsible for maintenance and instruction?
o. Who was the officer on watch and who was responsible for and in charge of the work?
p. What was the weather like when the accident happened (direction and force of wind, state of sea, overclouded, rainfall etc.)?
q. If the accident was due to the failure of cargo-handling appliances, the records book and prescribed certificates are to be produced. When was the equipment last tested and when and by whom was the last entry made in the record book? Is the greatest permissible working load given on the cargo-handling appliances? What was the working load when the accident occurred?
13. Was the medicine chest in regulation condition? When was it last certified?

14. a. What has been done with the body of the deceased and his effects?
   b. Has the prescribed notice of injury been sent to the National Health Insurance Office? When and from where?

15. Can Witness give any other information of interest with regard to the death?

16. What, in the opinion of the Witness, was the cause of the accident/illness/injury?

17. If medical records have been kept, enclose a copy.

B. Collisions between Ships.

(Produce the chart used when navigating).

1. a. Which ships collided?
   b. Where, when and how did the collision occur? Give a continuous account of how the collision occurred, its consequences — describing the damage to own ship and cargo and any damage to the other ship — and what was done with the ships involved after the collision.

2. a. What was the state of the weather and sea prior to and at the time of the accident?
   b. Describe visibility stating whether there was fog or thick weather. If the collision occurred at night, state whether it was particularly dark.

3. a. Who was the officer on watch on the bridge?
   b. Where was the Master at the time and when did he come up on to the bridge?
   c. Who was at the helm?
   d. Was anyone else on the bridge directly before and at the time of the collision?

4. Who was lookout and where was he stationed?

5. What steering gear did the ship have? Was there a man at the helm or was the ship being steered automatically?

6. What was the number of crew on deck and in the engine room?

7. Was there a licensed pilot on board and was the ship under his direction?

8. What course was being steered prior to the collision? What course was the ship heading at the time of the collision?

9. What speed was the ship making prior to and at the time of the collision? If visibility was shortened, was the ship then being
navigated according to Rule 16 of the Rules of the Road of Sea? What is the ship's speed in calm weather: at full speed, at half speed and slow?

10. Were there any defects or deficiencies in the ship, her instruments or equipment?

11. What lights was the ship carrying? How often were they checked? Were they alight prior to and at the time of the collision?

12. a. Did the ship hold valid certificates for the lights?
   b. When were they issued?

13. a. Was there a radar on the ship? If so, what make and type?
   b. Was it in use prior to and at the time of collision?
   c. Was it in order?
   d. If the device was not functioning, give the reason for this.
   e. Who was operating the radar, and who was responsible for the maintenance of it?
   f. Do the radar have a dead field at the centre?
   g. Are there blind sectors on the radar? If so, where?
   h. How are masts, posts and cranes placed in relation to the radar aerial
   i. Were derricks and cranes laid down?
   j. Was plotting being carried out? If so, give the result.
   k. Was there an alteration of course due to blind sectors?
   l. Was there a course recorder on the ship. If so, was it functioning and was it used?

14. Show on the chart or by latitude and longitude the position where the collision took place.

15. a. At what distance, in which direction and how long before the collision was the meeting ship first observed?
   b. What course did the meeting ship then appear to be heading and what speed was she making?

16. a. Which lights could be seen on board the meeting ship?
   b. In which direction and at what times (how long before the collision)?
   c. What lights was that ship carrying?

17. a. What sound signals were heard from the meeting ship?
   b. At what times?

18. a. Had the fog signal or steam whistle been sounded on board your own ship before the meeting ship was observed?
   b. If so, how often?
   c. Was the fog signal and steam whistle in good condition?

* Altered and extended in relation to the The Maritime Directorate's list of Principal Questions issued 1967.
19. What sound signals were given on your own ship after the meeting ship was observed, seen or heard, and at what times?
20. a. What manoeuvres did your own ship make to avoid or lessen the force of the collision and at what times?
   b. Did the engines and rudder operate satisfactorily during these manoeuvres?
21. What manoeuvres were made by the meeting ship and at what times?
22. What speed was the meeting ship assumed to be making at the time of collision?
23. Where were the ships hit?
24. Has Witness had his eyes tested with regard to sight and colour blindness? State date of last test.
25. Had any member of the crew or the pilot imbibed alcohol during the last 8 hours before the collision?
26. If applicable, how was the crew saved? Did life-saving equipment operate satisfactorily?
27. Can Witness give any other information of interest with regard to the collision?
28. a. What in Witness’ opinion was the cause of the collision?
   b. Did anyone on board your own ship or the other ship commit any error or act of neglect?
29. Specify the damage to your own ships and if possible also the damage to the other ship.

C. Grounding.

(Produce the chart used for navigating).

1. Where, when and how did the grounding occur? Mark the place on the chart or give the latitude and longitude. Give a continuous account of how the accident happened and what consequences it had, whether the ship was refloated, if any assistance was given, by whom, and upon what salvage conditions.
2. Were there any defects or deficiencies in the ship, her instruments or equipment? Was the radio station in order?
3. What type of steering gear did the ship have? Was there a man at the helm or was the ship being steered automatically?
4. What was the state of the weather, wind and sea prior to and at the time of grounding? Visibility?
5. a. Were there defects in the charts, lights, beacons etc.? What chart was being used (publisher, title and No.)? What was the date of the last corrections made to it?
b. What was the date and number of the last «Etterretninger for sjøfarenes» or Notices to Mariners received on board?

6. Was the ship equipped with radar? If so, what make? Was it in use prior to and at the time of grounding? Who was operating it? Who was responsible for the maintenance of it? If the device was not functioning, give the reason for this. Was plotting being done?

7. Was there Decca or Loran on the ship? Was it (they) in use prior to and at the time of grounding? Who was operating it (them)? Who was responsible for the maintenance of it (them)? If it (they) was not functioning, state reason for this.

8. Who was the officer on watch on the bridge? Who was on the bridge directly before and at the time of grounding? When did the Master come on to the bridge?

9. Was there a licensed pilot or local pilot on board and was the ship under his direction?

10. Was there a lookout on duty and where was he stationed? Who was he?

11. How many men were on watch apart from the officer and engineer of the watch?

12. When and where were the compass certificates issued?

13. When and where were the compasses last adjusted and deviation tables drawn up by a professional compass adjuster?

14. How often was deviation verified during the voyage? What type of instruments were used for taking observations? When was the last observation taken before grounding? Are deviation observations recorded in compass and chronometer logs? If verification was not carried out, state the reason for this. Was the ship listing before the grounding?

15. Were the courses which had been steered since the position was last determined, accurately determined and plotted on the chart? (If the extract from the log does not give the courses steered, the true courses and the distances made good, these must be established by examination and recorded). Who last altered the course?

16. Where according to the reckoning taken from the last fix should the ship have been when it ran aground? Were currents allowed for in the reckoning?

17. When were the last observation(s) and bearing(s) including any taken by radio, radar, Decca, Loran, Console, taken to determine the position of the ship before grounding, and what result did it (they) give? If observation(s), bearing(s) were not taken on the same or the previous day, state the reason for this. When was
the last chronometer rating made? Was it recorded in the compass and chronometer log?

18. Were the cargo booms up so that the compass, radio compass and other navigating instruments could have recorded wrong bearings?

19. Were soundings taken in the time immediately before running aground and if so, how often? Are the depths recorded in the ship’s log?
   Were they taken by lead-line, patent log or echo sounder? Which patent log or echo sounder?
   When was the patent log or echo sounder last inspected and how?

20. What type of log was used? Had the full distance from the last fix been made good according to the log at the time of grounding?

21. What speed was the ship making before and at the time of grounding? If visibility was shortened, was the ship navigating in accordance with Rule 16 of Rules of the Road of Sea? What is the ship’s speed in calm weather: at full speed, at half speed and slow?

22. Had any member of the crew or the pilot imbibed alcohol during the last 8 hours before grounding?

23. Can Witness give information concerning anything else of interest relating to the grounding?

24. a. What in Witness’ opinion was the cause of the accident?
   b. Was any error or act of negligence committed by the master, crew, pilot or local pilot?

_D. Loss of Ship._

(Produce the chart used for navigating).

1. When, where and how did the disaster occur? Give a continuous account of the course of events; give information concerning the weather from the time of leaving the last port of call until the ship had to be abandoned.

2. Was there any fault or deficiency with regard to the state of the ship on departure from the last port of call?

3. Was the ship adequately provided with navigating instruments and other equipment and were they in order?

4. How many men were on watch apart from the officer and engineer of the watch?

5. How were the boats placed and equipped and what other life-saving appliances did the ship carry?

6. What was the carrying capacity of the ship (D.W.)? (At summer and winter loadlines.)
7. How much was the ship carrying on the last voyage (cargo, ballast, fresh water, other weights)?
8. Was the ship overloaded and if so, why?
9. How was the cargo or deck cargo and ballast, if any, distributed and secured? Enclose extract of stowage plan or sketch showing distribution of cargo between the different holds.
10. State quantity and height of deck cargo.
11. If the cargo was grain, ore or other cargo carried in bulk, were shifting boards erected according to any regulations given in respect of such cargo? If so, had the boards been approved by the local authorities or by any other institution and in that case by whom?
12. a. Was the ship listing and if so, to what degree and to which side? State as accurately as possible the time when the list arose.
   b. Or was the ship crank (top-heavy)?
   c. Was an inclining test made before departure? How and with what result?
13. How much bunkers was carried on departure and how was it distributed?
14. Was water ballast taken in after departure and if so, how much and where was it placed?
15. How many hatch openings were there, how large were they and how were they battened down?
16. a. How many shifting beams were there in each hatch opening?
   b. Were shifting beams fastened to hatch coamings by bolts?
17. a. Were the hatches of wood or steel, and how many tarpaulins were on them?
   b. Were they secured by battens or lashing?
18. a. Did the ship have any tonnage openings?
   b. Where were they and how were they closed?
   c. Did the ship have any side openings? Where were they and how were they closed and secured?
19. How often were soundings taken of tanks and holds and were they recorded in ship's log-books? Were any leaks discovered by the soundings taken?
20. a. How did the leak arise?
   b. How big was it before the ship was abandoned?
21. a. Had anyone previously noticed that the deck (deck plating) or hull gave when carrying ore or similar heavy goods?
   b. Had the plating ever bulged or cracked?
   c. Had any leakage been found in the ballast tanks since the last survey was held?
22. When was the ship last docked?
23. Were sea-cocks and rudder with braces and pintles inspected at that time? Was the propeller shaft drawn?
24. Has the ship run aground since then?
25. When was the steering gear last surveyed (repaired)?
26. How and by whom were the crew saved? Describe the rescue operations. Did the ship's life-saving equipment operate satisfactorily?
27. Can Witness give any other information of interest relating to the loss of the ship?
28. What in Witness' opinion was the cause of the disaster?

E. Fire (including explosions) in the ship or cargo.

1. What was the position of the ship when the fire (explosion) broke out?
2. When, how and where did the fire (explosion) break out? Give an account of events as detailed as possible. Produce if possible a sketch (photograph) showing where the fire on board broke out and what damage it caused.
3. Specify as much as possible the damage to the hull, accomodation, machinery or cargo, etc.
4. What steps were taken to extinguish and/or restrict the fire?
5. How and by whom was the fire discovered?
6. Who was on watch and where were they?
7. What was the direction and force of the wind and what was the ship's course?
8. In the event of fire in cargo:
   a. Was a watch kept in the holds during loading/discharging? If so, who was on watch in the hold in which fire broke out?
   b. What type of cargo was there at the place where fire broke out?
   c. Describe the condition of the cargo when it was loaded. Was it raining when cargo was being loaded/discharged?
   d. Produce a stowage plan or a sketch showing the position and nature of the cargo.
   e. Was the temperature in the hold checked at regular intervals and were readings entered in the log? Had the temperature risen?
   f. When had anyone last been in the hold where fire broke out? Who was there last and was anything unusual found?
g. Were notices put up prohibiting smoking in and near the holds and/or on deck, written in Norwegian and in a language understood locally?

h. Were steps taken to ensure compliance with the prohibition?

i. Did Witness see anyone smoking in the hold or near the open hatchway to the hold in which fire broke out? Was this stopped?

j. Were ventilators covered by mesh? Were there fire flaps? Were air pipes leading to burning spaces closed?

k. What fire extinguishing media were available to extinguish fire in the holds? What extinguishers were used?

l. Was any particular odour noticed before the fire was discovered?

m. Was any smoke seen? What colour was it?

n. Was there a smoke detector on the ship? Was it in use? Was it working and was the fire discovered by means of it?

o. What kind of packing was used? Burlap sacks? Gunny sacks? Paper bags? Were they impregnated? Wooden casks? Tins drums or containers? Were they whole? Were they rusty?

9. In the case of fire in the boiler or engine room:

a. Was the oil firing system for boilers/the fuel system for main and auxiliary engines with the appurtenant pipes and tanks, oil-tight? When was there last a leak in oil pipes and where was it?

b. Were all air pipes in regulation order and provided with mesh and/or fire flaps?

c. Were there drip trays with drainage to the waste oil tank under fuel oil installations? How often were the trays cleaned?

d. When was the floor (tanktop) under boilers and machinery last cleaned?

e. From what points could the oil supply for burners and engines be shut off?

f. Where were service tanks located?

g. Were cofferdams satisfactory?

h. Were there quick-closing valves on service tanks and how could they be closed? Were they closed?

i. Were there discharge valves on the service tanks and if so, where did they discharge to?

j. Were degassing pipes insulated in the regulation manner? Did the fire break out near them?

k. What type of permanent, main extinguishing system was there in the engine and/or boiler room? Was it used? What effect did the system have?
1. What fire extinguishing appliances were there in the engine and/or boiler room and where were they placed?

m. Were they in regulation order and easily accessible? What appliances were used and what effect did they have?

n. Were the empty (oil) tanks free from gas?

o. Was any work being performed in the vicinity which could produce sparks? What types of tools were being used?

p. What type of lighting were they using?

p. Was oil pumped prior to the fire? If oil was pumped to service tanks: Who was watching the pump? How was pumping supervised and by whom? Was oil spilled (by overflowing)?

r. How much oil was there in the service tanks when the fire broke out? How much oil was there in the drip trays under the service tanks?

s. In the case of fire in scanning air belt for the main engine: When was it last cleaned?

t. In the case of crank case explosions: Were bearings overheated or was there any failure in the oil supply before the explosion? When was the lub.oil last analysed? What was the result of the analysis?

10. In the case of fire in cabins or other accommodation spaces:

a. Was there a party or other social gathering in any of the cabins or accommodation spaces at the time?

b. Were highly flammable fluids (petrol, thinners etc.) kept in any of the accommodation spaces? Was the owner of the cabin in which fire broke out, in the habit of laying aside cigarettes without putting them out?

c. How were cabins, messrooms etc. heated?

d. In the case of heating by solid fuels or oil, were the stoves/heaters of an approved type? Was the insulation connected with stoves/heaters/smoke uptakes in regulation order?

e. Were electric heaters used? Were they of an approved type?

f. Was there an artificial draught in the cabin where fire broke out? Where could it be shut off? When was it shut off? Were air pipes leading to the spaces closed?

g. Did any automatic warning or extinguishing system function?

11. a. When were the electrical installations last inspected by a classification society or the Inspector of Electrical Installations? Were they then found to be in regulation order?

b. Were there any electrical wiring, lighting or other appliances where the fire broke out? Was the current on?
12. When was the fire extinguishing equipment last surveyed by the Ship Control authorities?

13. Had the Ship Control authorities or the classification society made any recommendations regarding the ship or its machinery, which had not been carried out?

14. What in Witness' opinion was the cause of the fire? Make a statement concerning the possibility of spontaneous combustion caused by smoking or carelessness with regard to fire.

F. Other damage to the ship, or a damage to property other than the ship.

1. Where, when and how did the accident happen? What was the extent of the damage? Give a continuous account of the events leading up to the damage to the ship or to property other than the ship. Describe weather conditions from the time of departure from the last port until the accident happened.

2. Where there any faults or deficiencies in the ship or equipment before the incident occurred?

3. a. Was the cargo-handling equipment and appliances in order when they were last used before the accident occurred? Did anyone notice that anything was wrong while using them just before the accident? When and by whom was the said equipment inspected, and was this entered in the records book? Were the prescribed certificates in order? Is the greatest permissible working load given on the cargo-handling equipment? What was the working load at the time of the accident?

b. When, where and by whom were the last load tests carried out for the cargo-handling equipment? Enclose an extract from or photographic copy of the records book showing all entries for the past 12 months.

4. In the event of collision, with what did the ship collide? (For collisions with ships, see list B above.)

5. What speed was the ship making when the accident occurred? How long had the ship been proceeding at that speed before the accident?

6. a. If floating objects were damaged, what were they?

b. Was anyone injured? State what injuries were received, if any.

7. Was there any damage to harbour installations, sluices, lights, beacons or other real property?

8. What in Witness' opinion was the cause of the accident?

9. Had the ship by radio or other means received any warning of wrecks etc. and their positions? What was the date and number
of the last «Etterretning for sjøfarende» or Notices to Mariners received on board?

Boiler Casualties:
10. How many boilers were there, what type, where and when were they built?
11. When and where were the boilers and fittings last surveyed by the classification society and when do certificates expire?
12. When were boilers last cleaned and how many hours had they been in use since they were last cleaned?
13. Was there anything wrong with the boilers, furnaces or fittings when they were last cleaned?
14. Which of the ship's engineers was responsible for maintenance and who was in charge of the cleaning?
15. Who were the engineers and members of crew on watch when the damage/accident occurred?
16. How long is it since the water gauge glass was last blown out at top and bottom, before the accident? With what result?
17. How often were specimens of the water taken and when was this last done before the damage/accident.
18. When were chemicals last added to the boiler, what type and how much?
19. How much water does each boiler hold?
20. When was the boiler last replenished and where was the feed taken from?
21. Did the boiler have automatic replenishing? If so, state how and where the feedwater comes from.
22. When was the cascade tank last cleaned and when was the last time it was inspected before the damage/accident? Had any grease formed on the tank at that time?
23. Were instructions for firing, airing and attending the boilers posted up in the stokehold?
24. Before the damage/accident, had any irregularities been observed with regard to the water gauge or firing, or was there any fault or failure in automatic controls?

Engine Damage:
25. When was each piston last overhauled?
26. When were top and bottom end bearings and the main bearings last inspected before the damage, and with what result?
27. When were indications last taken and with what result?
28. When was the lub.oil temperature and pressure last taken before the damage occurred?
29. When was the exhaust temperature last taken before the damage?
30. When was the lub.oil last examined and with what result?
31. When was all the lub.oil in the system last changed?

**G. Shifting Cargo.**

(Produce the chart used for navigating.)

1. Where was the cargo shipped and for what destination?
2. Who was the officer(s) in charge of loading?
3. Were all holds fully loaded?
4. Produce a stowage plan, or a sketch, showing the distribution of the cargo and any vacant space in the holds.
5. Produce a capacity plan showing the capacity (grain and bale) of the ship and of each hold.
6. If the cargo consisted of grain, ore or other bulk cargo, were shifting boards erected in accordance with any regulations given for such cargo? If so, were boards approved by local authorities or by any other institution and in that event by whom?
7. If bulk cargo was being carried and holds were not right full, what arrangements were made to prevent the cargo shifting?
8. In the event of timber carried on deck, how many struts were used on each side and how far apart were they? What were the dimensions of the struts and how were they fastened to the deck and bulwarks? How high above deck was cargo stacked?
9. How was deck cargo lashed (how many lashings and what lashings consisted of)?
10. How much bunkers, fresh water, ballast and other weights was the ship carrying on departure and where were they placed?
11. Did the ship have a list and if so, to which side and how many degrees? State as accurately as possible the time when the list arose.
12. What steps were taken to right the ship before departure or after the list had appeared?
13. Was an inclining test taken before departure? If so, describe how and with what result.
14. How was the cargo in the holds shored up?
15. What caused the cargo to shift?
16. What was done to secure the cargo after it had started shifting?
17. Did the local authorities or any other institution supervise the loading of the ship, and if so, which of them? Was a certificate issued? (If so, produce the certificate.)
18. What type of cargo was the ship carrying on the previous voyage?
19. Had the holds been thoroughly cleaned before the cargo was shipped? Had the holds been inspected and approved, if so by whom?
20. Specify the damage caused to the ship, equipment and cargo as result of the shifting.
21. Was anyone on board injured?
22. Who was on watch on deck and in the engine when the cargo shifted?
23. Did the ship have to seek a port of refuge or request assistance?
24. What in Witness' opinion was the cause of the cargo shifting?
25. Include as part of the court records the extract from the ship's log concerning the state of the weather, wind and sea from the time of departure from the last port and until the accident occurred.
Appendix No2:

Technical report as issued by the NTSB, Washington, DC concerning an collision of Algerian vessel M/V IBEN BATOUTA and U.S bulk carrier SS YELLOWSTONE.
NATIONAL TRANSPORTATION SAFETY BOARD

WASHINGTON, D.C. 20594

MARINE ACCIDENT REPORT

COLLISION OF
U.S. BULK CARRIER SS YELLOWSTONE
AND ALGERIAN FREIGHTER M/V IBN BATOUTA
MEDITERRANEAN SEA
JUNE 12, 1978

KTSB-MAR-79-11

UNITED STATES GOVERNMENT
16. Abstract
At 1107 on June 12, 1978, the U.S. bulk carrier SS YELLOWSTONE and the Algerian frigate M/V BAGUTA collided during a dense fog in the Mediterranean Sea about 15 miles southeast of Gibraltar. Five crewmen on the YELLOWSTONE died and two were injured. On the following morning the ships were separated, and after the retreating tide of the YELLOWSTONE was deployed to rescue ships at the scene, the ship was put under tow. Shortly thereafter, the ship sank stern first. Although the M/V BAGUTA sustained major bow damage, none of the crew was injured.

The National Transportation Safety Board determined that the probable cause of this accident was the failure of the master of the YELLOWSTONE to properly use the ship's radar, which led to his crossing the bow of the M/V BAGUTA in an effort to prevent a collision in a close-quarters situation. Contributing to this accident were the excessive speed of both vessels in a dense fog; their failure to avoid a close-quarters situation; and the failure of the M/V BAGUTA to sound fog signals, to have the engine ready for immediate maneuver, and to use the bridge-to-bridge radiotelephone to establish a safe passing maneuver.

17. Keywords
Collision; rules of the road; Greenwich mean time; maneuvering board; vessel traffic services; bridge-to-bridge radiotelephone; Strait of Gibraltar; Royal Navy anti-submarine division.

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COLLISION OF
U.S. BULK CARRIER SS YELLOWSTONE
AND ALGERIAN FREIGHTER MV IBN BATOUTA
MEDITERRANEAN SEA
JUNE 12, 1978

INTRODUCTION

This accident was investigated jointly by the National Transportation Safety Board and the U.S. Coast Guard. A formal investigation was convened in New York City on June 19 through 21, 1978, and depositions were taken in London, England, on November 27 through December 1, 1978. The Safety Board has considered all facts pertinent to the Safety Board's statutory responsibility to determine the cause or probable cause of the accident and to make recommendations.

The Safety Board's recommendations are made independently of any proposed by the Coast Guard. To assure public knowledge of all Safety Board recommendations and responses by the Coast Guard, all such recommendations and responses are published in the Federal Register.

SYNOPSIS

At 1107 3/4 on June 12, 1978, the U.S. bulk carrier SS YELLOWSTONE and the Algerian freighter MV IBN BATOUTA collided during a dense fog in the Mediterranean Sea about 14 miles southeast of Gibraltar. Five crewmen on the YELLOWSTONE died and two were injured. On the following morning the ships were separated, and after the remaining crew of the YELLOWSTONE were deployed to rescue ships at the scene, the ship was put under tow. Shortly thereafter, the ship sank stern first. Although the IBN BATOUTA sustained major bow damage, none of the crew was injured.

The National Transportation Safety Board determines that the probable cause of this accident was the failure of the master of the YELLOWSTONE to properly use the ship's radar, which led to his passing the bow of the IBN BATOUTA in an effort to prevent a collision in a close-quarters situation. Contributing to this accident were the excessive speed of both vessels in a dense fog; their failure to avoid a close-quarters situation; and the failure of the IBN BATOUTA to sound fog signals, to have the engine ready for immediate maneuver, and to use the bridge-to-bridge radiotelephone to establish a safe passing maneuver.

/3/ All times herein are Greenwich mean time based on the 24-hour clock, unless otherwise indicated.
INVESTIGATION

The Accident

At 1100 on June 12, 1978, the U.S. bulk carrier YELLOWSTONE was inbound in the Mediterranean Sea at 15 knots on course 079°T after passing through the Strait of Gibraltar. The master, third mate, and a helmsman were on the bridge with its doors open. The sky was cloudy and the visibility was about 5 miles; the wind was from the northeast at 10 to 12 knots. The current, according to the pilot chart, was setting northeastwardly about 2 knots, and there was a slight swell and no sea.

The master testified that at about 1105 he changed course to 082°T, because he thought that the ship was north of the intended trackline, 079°T.

The master said he did not see any radar targets forward of the beam that "worried" him except a strong radar target "very close on the starboard bow" (later identified as the Algerian freighter IBN RATOUTA) between 2 and 3 degrees, 11 miles distant; he left the radar cursor on the target. The radar was on a 12-mile scale setting. (See figure 1.) The master did not plot the relative motion, did not determine the course and speed, and did not determine the closest point of approach of the IBN RATOUTA. He did not request any crewmember to get this information.

The master testified that at about 1109, when the IBN RATOUTA was 5 miles distant on the radar, which then was set on a 6-mile scale setting, he could not see the vessel, even though he used his binoculars. Fog had settled in and the visibility was decreasing fast to about 300 yds. He ordered the third mate to put the engine on standby and to call the lookout; then he blew one blast on the whistle. He did not slow the ship's speed which was set at about half. (Putting the engines on standby alerts the engineer on watch to stand by the throttles and the propellers, ready to answer orders.) The master looked at the radar and found the IBN RATOUTA was coming down the cursor line which was still set at 2 to 3 degrees on the starboard bow. This meant that the bearing was not changing and that the IBN RATOUTA was on a collision course with the YELLOWSTONE.

At 1107 the master ordered the helmsman to come right to 100°T. When the helmsman reported he was on 100°T, the master told him to make it 105°T as he watched the IBN RATOUTA on radar moving over a "good two points" (2½ degrees) on his port bow. As the approaching IBN RATOUTA closed to 3 miles on the radar, the master found that the bearing was holding steady on the port side. The master then used his VHF bridge-to-bridge radiotelephone on channel 16 to call the IBN RATOUTA, but got no answer. He said he had talked to the Lloyd Signal Station and the SS BERMUDA in Gibraltar earlier that morning on channel 16, so he believed the radiotelephone was working properly. He looked again at the radar and saw the IBN RATOUTA "coming down the bearing line."
At 1101 he gave the order "hard right" to the helmsman and blew one blast on the whistle. He then went out on the port wing of the bridge to listen for any whistle, but heard none. Out of the fog he saw the IBN BATAUTA 200 yds away just forward of his port beam and approaching fast. For a moment he thought it might clear, but realizing that it would not, he ordered the helmsman "hard left" on the wheel. However, it was too late to swing the stern clear, and the rudder only came left as far as 20 degrees right and jammed when the vessels collided at 1107.

A seaman who had been called up for lookout when the fog rolled in never made it to the bow lookout station. He reported hearing one whistle blast as he was making his way onto the main deck from the after house. About a minute later when he was below the bridge wing, he heard a second blast. As he turned around, he saw the IBN BATAUTA about 300 feet away and coming right at the YELLOWSTONE.

When the YELLOWSTONE and the IBN BATAUTA collided, the bulbous bow of the IBN BATAUTA plunged into the machinery space and crew spaces at midships on the port side of the YELLOWSTONE, penetrating about 30 feet into the hull. Both ships remained interlocked until the next day when they were separated, shortly after which the YELLOWSTONE flooded and sank.

Immediately after the collision, the master of the YELLOWSTONE ordered the engines stopped, rang the general alarm, and went back out on the wing of the bridge. The lights went out for a minute, then some came on again as the emergency generator was started by the chief engineer. After shutting off the general alarm, the master received reports of the injured, casualties, and ship damage.

When the YELLOWSTONE lost power, the radio operator came up on 500 KC on his emergency equipment. The master made a general call for assistance and then called the IBN BATAUTA to transmit a request for medical aid. His call was not acknowledged. The nearby British submarine FRAGILE heard garbled distress messages and was the first to offer assistance. The FRAGILE had not heard the YELLOWSTONE's message to the IBN BATAUTA just before the collision.

During the morning of June 12, 1978, the third officer was in charge of the 0800-1200 watch on the IBN BATAUTA as the ship approached the Strait of Gibraltar from the east in the Mediterranean Sea. Visibility was good and the ship was on automatic pilot; the helmsman was on the bridge wing as a lookout. The master came up on the bridge at 0830, found everything satisfactory, and went below to his quarters at 0940. He remained there the rest of the morning except when he dined with the chief engineer in the officers' saloon.

27 Although the ship was on Greenwich mean time plus two, all times have been converted to Greenwich mean time for uniformity.

The second officer testified that at 0950 he relieved the third officer. The ship was on course 274°T at full speed of 360 rpm for 1°E on radar he had a group of targets "line on the port bow" at 12 miles. He said he felt at the time that this situation "didn't represent any risk." Out of this group one vessel (later identified as the YALLOSTONE) continued to approach on the port bow.

Although shortly after 1000 the visibility reduced to 300 yards (528 yds) as fog rolled in, the ship remained on automatic pilot. No fog signals were sounded and the helmsman remained on the port bridge wing as a lookout. Both doors of the pilothouse were left open. The master was not notified of the reduced visibility, and the low lookout was not called up. Two radars were in operation; one gyro-stabilized radar was on a 12-mile maximum scale, and the other, smaller radar without gyro was on a 24-mile scale.

At 1010, the second officer saw three radar targets in formation pass 2 miles to starboard, and then two others passed in the same direction along the same side. The watch neither saw the ships nor heard any fog signals. Meanwhile, the second officer testified that he continued to follow the YELLOWSTONE on radar, as it approached to 6 miles, with his cursor, which was then at about 15 degrees on the port bow. So plot was made of this target; however, he saw by the cursor the angle on the bow was getting smaller, which indicated a bearing change on the target from the left to right. The smaller radar was then set to the 6-mile scale, but the gyro-stabilized radar was left on the 12-mile scale.

The YELLOWSTONE continued to move to the right as the range reduced to 3 miles, dead ahead. The radar scale on the smaller radar was set on 3 miles, and the YELLOWSTONE moved to 2.8 miles, 7 degrees on the starboard bow. The YELLOWSTONE's shape on the radar was long with a small tail visible behind it; this shape indicated to the second officer that the YELLOWSTONE could pass without danger on the right side. Both members of the watch tried to see the ship with their binoculars but could not do so. Nothing was heard on the VH radio receiver which was set on channel 16 and which was on, according to testimony. The second officer said that as he entered the pilothouse, he heard a short whistle; about 2 seconds later, he heard another one, after which he saw the shadow of a ship approaching from his right side at a distance of 150 meters (164 yds).

The second officer said he instinctively turned the automatic pilot button for the wheel to "all starboard" and switched over to hand steering by holding the wheel to the right. He brought the engine telegraph to stop, hesitating there only a second and then to full speed astern as the bow of the YELLOWSTONE crossed the IBN BATAUTA from right to left. The IBN BATAUTA crashed into the port side of the YELLOWSTONE at 1100, according to the second officer.
The master ran from the officers' saloon to the bridge, and the chief engineer ran to the engineroom immediately after the crash. The bridge watch determined the ships' position to be latitude 36° 02'N and longitude 5° 06'W.

**Injuries to Persons**

<table>
<thead>
<tr>
<th></th>
<th>YELLOWSTONE</th>
<th>IBN BATOUTA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fatal/Missing</td>
<td>5</td>
<td>0</td>
</tr>
<tr>
<td>Nonfatal</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>None</td>
<td>34</td>
<td>31</td>
</tr>
</tbody>
</table>

**Damage to Vessels**

The IBN BATOUTA struck the port side of the YELLOWSTONE, at an 80-degree angle to the YELLOWSTONE's bow, between frames 152 and 167, just aft of the forward bulkhead of the machinery space at frame 146. (See figure 2.) She entered about 30 feet into the machinery space and penetrated the after deckhouse. Since the IBN BATOUTA was at a light draft, its bulbous bow, designed for full load draft, was partially out of the water and acted as a battering ram, piercing the hull of the YELLOWSTONE. Deck and hull plates of the YELLOWSTONE were pushed in and the forward part of the IBN BATOUTA's bulbous bow was torn off. Steel plates of each ship were folded into the other. The bow of the IBN BATOUTA which rested on the hull of the YELLOWSTONE towered 20 feet above the main deck. The entire machinery space on the YELLOWSTONE flooded immediately and the ship settled slowly by the stern and continued to do so after the collision. (See figure 3.)

While the ships lay locked together, the IBN BATOUTA apparently twisted in its entry position until the angle opened to 100 degrees and the bow moved outward 10 feet. The IBN BATOUTA had no flooding.

The YELLOWSTONE sank in 600 fathoms of water in position latitude 35° 43.6'N, longitude 03° 51.6'W in the Mediterranean Sea at 1325 the next day as the result of the collision. The bow damage to the IBN BATOUTA has since been repaired and the ship is back in service.

**Crew Information**

The crews and the masters on both vessels were properly licensed and documented. The crew of the YELLOWSTONE consisted of Americans and Canadians. The officers of the IBN BATOUTA were Yugoslavian, Egyptian, and Algerian, and the unlicensed crew were Algerian. See Appendix A for additional information.
Vessel Information

The YELLOWSTONE was a 591.6-foot, United States-registered bulk carrier built in 1943 as a C-4, troop carrier. In 1965, it was converted to a bulk carrier and two original watertight bulkheads at frames 64 and 163 were removed. At the time of the collision, the YELLOWSTONE was carrying 15,113 long tons of amber durum wheat en route from Lake Conew, P.Q., Canada to Tunis, Tunisia, North Africa. It was chartered by the American Bureau of Shipping (ABS) and had all of the required international safety certificates.

Its other principal dimensions were:

<table>
<thead>
<tr>
<th>Dimension</th>
<th>Detail</th>
</tr>
</thead>
<tbody>
<tr>
<td>Depth</td>
<td>39.5 feet</td>
</tr>
<tr>
<td>Breadth</td>
<td>71.7 feet</td>
</tr>
<tr>
<td>Drafts-- on Sailing</td>
<td>32 feet 7 inches forward</td>
</tr>
<tr>
<td></td>
<td>33 feet 9 inches aft</td>
</tr>
<tr>
<td>Estimated at collision</td>
<td>31 feet 6 inches forward</td>
</tr>
<tr>
<td></td>
<td>23 feet 0 inches aft</td>
</tr>
<tr>
<td>Deadweight</td>
<td>16,210 long tons</td>
</tr>
<tr>
<td>Gross tons</td>
<td>11,034 long tons</td>
</tr>
<tr>
<td>Net tons</td>
<td>7,346 long tons</td>
</tr>
</tbody>
</table>

The YELLOWSTONE was equipped with a 12-inch Buesa radar and a 316 radiotelephone, which could monitor and transmit on channel 16. The vessel had the proper navigational lights, compass, signals, and internal communications and control system which had been last inspected by the Coast Guard on December 15, 1957, and found to be in satisfactory condition.

The Buesa radar on the YELLOWSTONE was a model RM 916, which operated on the X band of 9415 to 9475 MHz (wavelength of 3.2 cm). It had a 5-foot antenna which rotated 28 rpm. There were nine range scales from 1/4 to 48 nautical miles. The radar had no variable range markers but used range rings. The range ring accuracy was within 1/2 percent of the maximum range scale in use or 75 yards, whichever was greater. The bearing accuracy was better than 1 degree. The radar was reported as being in satisfactory condition.

From previous tests, the YELLOWSTONE in a full load condition and average draft of 32 feet 9 inches was stopped 560 yards from the head at 70 rpm to 50 rpm astern in 5 minutes 30 seconds. Its turning diameter was found to be 820 yards.

The YELLOWSTONE was equipped with a radio direction finder, a stethometer, and a course recorder which were not operating at the time of the collision. The steering gear was functioning properly. The master testified that the following navigation lights were on at the time of collision: stern light, side lights, and masthead and range lights.
The condition of the hull and some machinery as observed by members of the Royal Navy rescue team was poor. The hull was rusty and some topside after deckplates were warped. The emergency generator was reported to have been arcing severely.

There was an access from the lower level in the machinery space to the shaft alley. Although a watertight door was installed, it was never used and the door always remained open, according to testimony. To close the sliding, watertight door, a handwheel was on the door and a remote control wheel was above.

The IBS BATOUTA is a 368.6-foot Algerian freighter built in 1973 at Luebeck, Germany. It was en route to Bremen, West Germany from Oran, Algeria, and was partially loaded with trucks and empty containers. It was cleared by Germanischer Lloyd and had all the required international certificates.

Its other principal dimensions are:

<table>
<thead>
<tr>
<th>Dimension</th>
<th>Measurement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Depth</td>
<td>32.42 feet</td>
</tr>
<tr>
<td>Breadth</td>
<td>56.53 feet</td>
</tr>
<tr>
<td>Drafts—average, normal</td>
<td>24.6 feet</td>
</tr>
<tr>
<td>Drafts—on sailing</td>
<td>8 feet 6 inches forward</td>
</tr>
<tr>
<td>Deadweight</td>
<td>7,400 long tons</td>
</tr>
<tr>
<td>Gross tons</td>
<td>4,306 long tons</td>
</tr>
<tr>
<td>Net tons</td>
<td>3,308 long tons</td>
</tr>
</tbody>
</table>

The IBS BATOUTA had the proper navigational equipment. It had a radar—16-inch Raytheon with gyro and a 12-inch Decca without gyro. It had a VHF radiotelephone reportedly set on channel 16 for monitoring. The vessel also had the proper lights, compasses, signals, and internal communications and control systems. The bridge radio equipment provided the bridge automatic control of the engines was out of order. The engine was inoperative and the ship had no course recorder. The steering gear and the engine order telegraph were working properly.

The Raytheon radar on the IBS BATOUTA was a model type 186, model 1660/1258, with a 16-inch display. It could be operated gyrocompass-stabilized, or with the ship's head up at bearing 000° with relative motion display on range scales of 1/2, 1 1/2, 2, 6, 22, 24, or 40 nautical miles. It had both range rings and a variable range marker. The Decca radar was a model type WH1229 without gyrocompass stabilization relative motion picture, using a 3-cm wavelength on the X band frequency 9380-9440 MHz. It had a 9-foot antenna rotating at 28 rpm, nine range scales from 1/4 to 48 nautical miles, and a variable range marker. The range accuracy was within 1 1/2 percent of the maximum of the range scale in use or 75 yards, whichever is the greater, and a bearing 1 better than 1 degree accuracy.

In April 1978, the IBS BATOUTA completed a 5-year survey in a shipyard in Hamburg, Germany where repairs and overhauls had been made.

**Meteorological Information**

The YELLOWSTONE's weather for 0800 on June 12, 1978 was "light air, barometer 29.12 and steady, cloudy–hazy, sea smooth, and visibility fair to good." For 1100 the fog had entries of 72°F and 70°F for dry and wet bulb air temperatures, and the water temperature was 64°F; this is a proper combination for the existing conditions for advection fog.

**Survival Aspects**

The lights of the YELLOWSTONE went out when the ships collided, but some came back on when the chief engineer started the emergency generator. It was not time and all of the crew were up and about the ship, except one seaman on watch. Six crewmen were in the engine room which was penetrated by the bow of the IBS BATOUTA. The emergency lights came on momentarily in the machinery space. Only three men successfully escaped the space by floating and finding vertical escape trunks by their sense of touch. Some walked on pipes, rails or tops of machinery and battled the flooding waters until reaching safety on deck. The bodies of the three crewmen who did not escape were not found. The body of another crewman who was in his room on the port side of the vessel at the time of the collision was also not found.

The two injured crewmen were in the crew's mess area at the time of the collision. They were injured by being thrown about the space. One crewman struck his right side and the other had a mangled leg. The dead crewman was found crushed in the folds of the twisted shell plate in the crew's mess.

Although the crew was in shock, there was no panic. A muster was held to determine if anyone was missing; the starboard lifeboat was swung out; the injured were found and given first aid; and soundings were commenced to determine which compartments were flooded. The ship's radio and radiotelephone were used to request medical aid and to report the accident. Lifejackets had been broken out and many of the crew were wearing them.

A rescue team from the Royal Navy submarine TIMIDALE assisted in transferring the injured to the nearest hospital, searched the spaces using underwater breathing apparatus, and checked the ship for fire hazards. Hatches were stored and a constant vigilance was set for sounding spaces. Only the ship's plans from 1945, showing the ship as originally built as a troop carrier, were available. This showed the search and delayed the rigging of deck lights and securing the ship to maintain its buoyancy.
During the rescue by the officers and crew of the FINNALE, the FINNALE's first lieutenant came aboard the IBN BATOUTA and requested to use the VHF radiotelephone to report to his captain. The Navy lieutenant saw the mast trim the bit on after he made his request to use it. He reported that it worked well while he used it.

On June 13, 1978, the wind had increased to 25 kts, causing a 5-foot sea to ship water over the starboard side of the main deck. Also during the night the sounding in the No. 7 cargo hold had increased to full with traces of fuel oil.

With the assistance of tugs pulling on the stern of each ship and the IBN BATOUTA going full astern, the ships were successfully separated; after which the YELLOWSTONE began to slowly settle by the stern. At noon a towline from the tug CYCLONE was made fast to the YELLOWSTONE and rather than slip the tow to put junks aboard for de-watering, it was decided to continue the tow for Gibraltar. With the stern awash and the water starting to climb up on the deck everyone on board was alerted, and at 1256, the master ordered all hands off the ship and the tow was slipped. Just before the alert, a loud cracking sound was heard near the forward bulkhead of the machinery space. At 1323, the vessel stood on its stern and sank.

Other Information

Engineering Watch on the IBN BATOUTA. The third engineer had the watch in the engine room of the IBN BATOUTA. The ship was on automatic pilot. He was standing his watch in the engine control room, two levels above and between 20 to 30 meters (65 to 98 feet) from the maneuvering station. The automatic bridge control was out of order, so it was necessary for the bridge watch to transmit engine orders to the engineer in watch on the engine order telegraph. Also, the automatic logging device for engine orders was inoperative, so all orders had to be recorded by hand.

At 1110, the third engineer heard the engineroom telegraph klaxon sound and saw the alarm light. The repeater for the telegraph in the engine control room showed "stop." Since the engine could not be operated in the control room, he rushed below to the engineroom telegraph which indicated "full speed astern." After answering the telegram by putting his handle at the indicator, he set the fuel wheel to zero, switched the directional controller from ahead to astern, and saw the propeller shaft come down to 30 rpm ahead as he felt the shock of collision. He built up to 300 rpm astern and shortly received a stop bell which he answered quickly. The chief engineer had arrived in the engineroom to find the engine stopped. No more engine orders were received by the third engineer during that watch.

Observations by the FINNALE. On the morning of June 13, 1978, the FINNALE was operating on the surface in the western end of the Mediterranean Sea where the YELLOWSTONE and IBN BATOUTA were converging. At 1045, the visibility in this area was set at 7,000 yards by 200 yards, so fog stations were set and the FINNALE's speed was reduced from 12 to 6 knots on course 105°. Shortly after the fog rolled in, the FINNALE's watch heard distant fog signals. The control center within the submarine reported two targets. One target, later identified as the IBN BATOUTA, was on bearing 130° at 7,000 yards, and the other target, identified later as the YELLOWSTONE, was on bearing 245° at 5,000 yards. The submarine control center determined that the two targets were on a collision course with each other and the second target was on a collision course with the submarine. At about 1110 to 1115, the two radar targets were seen to merge on bearing 240° and 3,400 yards range from the submarine.

Just before they merged, five short fog signals were heard, a set of three followed by a set of two. The FINNALE had been sounding fog signals, one 6-second blast of horn every 2 minutes. The closest point of approach of the IBN BATOUTA was plotted at 2,500 yards on bearing 295° from the submarine, but it was not seen visually. The best estimated position of the FINNALE about the time of collision was latitude 36° 02' N, longitude 5° 02' 14" W, and the collision was recorded at latitude 36° 02' 14" N, longitude 5° 04' W.

Based on its radar observations, the FINNALE concluded that until 2 minutes before the merge both targets were maintaining constant courses and speeds. The IBN BATOUTA was estimated to have been on course 290° and the YELLOWSTONE on course 080°, both at estimated speeds of 10 knots. At about 2 minutes before the merge, the target on radar identified as the YELLOWSTONE was seen to have turned to starboard and a minute later, the IBN BATOUTA turned slightly to starboard. In another minute, the two targets were seen to merge. The radar operator on the submarine estimated that if both targets had maintained their courses and made no turns, the ships would have passed clear of each other by only 200 yards. He also estimated that if the YELLOWSTONE had held its course of 080° and the IBN BATOUTA had made its course alteration to starboard, as her second officer reported she did before the merge, the ships would still have collided, depending on the amount of rodder that was applied and the amount of course change. By radar, neither target was seen to have turned left.

After it was determined that the two ships actually merged, the submarine was turned to investigate and assist. Upon arrival at the scene at 1130, the crew of the FINNALE found the ships were stopped and locked together with the bow of the IBN BATOUTA embedded into.

3/ The submarine was on Greenwich mean time plus one; however, for uniformity, all times have been converted to Greenwich mean time.
about one-third of the beam of the YELLOWSrück in the after port side.
The angle between the respective port sides of the vessel was observed
to be slightly less than 90°. The rudder of the IBN BATUTA was riddled
at full righth; the rudder of the YELLOWSrück was submerged and out of
sight, but the rudder indicator on the bridge was at 20° right rudder.

Rules of the Road. — At the time of the accident, both vessels
were subject to the International Regulations for Preventing Collisions
at Sea, 1972 (72 ILM 399). These regulations are commonly called the
"Rules of the Road" and are based upon international agreement by nation
nations. Both the United States and Algeria are signatory nations to the
agreement. (See Appendix B.)

YELLOWSrück Subdivision. — Cargo vessels such as the YELLOWSrück
are not required by regulation to be built to a specific level of subdivision,
although they are required to have and comply with the requirements of
individual trim and stability information submitted by the owner and
reviewed and approved by the Coast Guard. However, because the YELLOWSrück
was originally built under the auspices of the U.S. Maritime Commission
as a troopship, it had to meet a one-compartment standard. This means
that the ship could survive if any one compartment, such as between two
adjacent watertight bulkheads, was flooded. Before its conversion, the
YELLOWSrück (ex-SS MARINE PERCH) was in compliance with the passenger
vessel subdivision requirements of July 1948 (one-compartment).

When the vessel was converted to a bulk cargo carrier, two watertight
bulkheads, one at frame 69 and the other at frame 163, were removed.
Calculations by the Coast Guard indicated that the YELLOWSrück still met
a one-compartment standard of subdivision, except in any of the machinery
space at the water line or at a draft of 33 feet (22 feet 10 inches).
The YELLOWSrück was penetrated in its machinery space, its most vulnerable
space, when it was at maximum full load draft; thus, the two fatal criteria
for sinking were present.

American Bureau of Shipping. — The YELLOWSrück was granted bulk
classification Baltic Cross ATE and machinery classification Baltic Cross
Class A by the American Bureau of Shipping (ABS) in 1945 with an
amendment to the classification in 1965. This means that the ship was in full
classification with the ABS, and that it was built in accordance with
the ABS rules for building ships.

It met all the requirements for surveys after it was built, and
there were no outstanding recommendations against the vessel which would
affect its class. ABS records indicated that the YELLOWSrück underwent
a conversion from a C-4 type vessel, troop carrier, to a bulk cargo
vessel in August 1965.

The last special survey was Number 6 commenced on April 1, 1974, and
was completed on December 4, 1974. On February 3 through 11 of 1975, the
vessel was going to an underwriter's condition survey, which was found
satisfactory. The last survey was made on February 15, 1975. By June 1975,
all surveys were up-to-date, although the vessel had some outstanding repair
items which were deferred until the next repair period.

A principal surveyor testified that plate gauge readings were taken
on the shell plates, tank tops, frames, in scuttles, and on the 20'x5'
mains, and pump decks. No evidence was presented that gauge readings
were taken on internal and external bulkheads. He further testified that in bulk
cargo holds, corrosion usually occurs in the lower portions of bulkheads in
cargo holds, in bilge wells of cargo holds, and in the internal surfaces
(particularly unprotected saltwater ballast tanks).

Recording of Records. — Depositions from the crew of the
IBN BATUTA revealed that both the deck and engineering logs had been
falsified. Additions and alterations were made after the logs were
written to show that the vessel had complied with the Rules of the Road
for sounding fog signals, setting the engine for maneuvering, and
reducing speed due to the fog — all of which were not carried out.

ANALYSIS

The Collision

According to testimony, the YELLOWSrück and the IBN BATUTA were
in a head-on situation; the YELLOWSrück was on course 002°T and
the IBN BATUTA was on course 278°T. Each vessel was going at about 15 kts.
with a closing relative speed of about 30 kts in a dense fog. However,
the Safety Board, in attempting to reconstruct the accident, found it
impossible to develop a collision when the above information was considered
along with other testimony of witnesses on the YELLOWSrück.

The master of the YELLOWSrück testified that he first saw the
IBN BATUTA as a radar target at about 11 miles and 30 degrees on the
starboard bow. Had he made a simple relative movement plot using his
radar observations, he would have found that the IBN BATUTA would have
crossed 5 miles ahead with a closest point of approach (CPA) of 1,000 yds
to port. Later, when he found the target at a range of 5 miles on the
same bearing, a second plot would have indicated that the target
would have crossed only 2 miles ahead with a CPA of 400 yds to port. He further
confirmed that he turned his ship to starboard just when the IBN BATUTA
was at this 5-mile range. Had his reported sightings of the target been
correct, his timely starboard turn would have opened the distance to the
IBN BATUTA that was to pass to the port side and, thus, made the
collision impossible. The fact that the vessels did collide after his
turn to 105°T proves some inaccuracy in his radar ranges and bearings.

The master of the YELLOWSrück testified that the turn to starboard
to 100°T was made about 5 minutes before the collision, and then at
about 4 minutes before the collision he ordered "Hard right." He stated
that after standing on course 105°, he found that the IBN BATUTA 2 points
on the port bow (77° degrees) 1 miles on radar. A plot of this
situation would have indicated that the CPA of the IBN BATOUTA had increased to 2,800 yards to port. The YELLOWSTONE’s last radar report of the IBN BATOUTA was 2 miles on the same bearing. A revised CPA for this information, had it been plotted, would have been 1,800 yds to port. For each of these reports, clear passage between the ships would have been indicated without a collision.

The radar operator on the nearby FINMELLE testified that the IBN BATOUTA had turned right slightly just before the collision. This additional evasion tactic would have further reduced the collision possibility by opening the distance between the vessels based on their positions as reported by the YELLOWSTONE witnesses. The attempt in the last few seconds before collision to turn the YELLOWSTONE to port had no effect. The rudder had become jammed at 20 degrees right as it had come from "hard right."

Since a collision could not be redeveloped from the testimony of the YELLOWSTONE witnesses, the Safety Board had to rely more heavily on other witnesses to the accident. The second officer on the IBN BATOUTA testified that he saw the YELLOWSTONE on radar about 15 degrees on the port bow at 6 miles and continued to follow the target as it came across his bow. Using this information plus courses of 082°T for the YELLOWSTONE, 274°T for the IBN BATOUTA, and a speed of 15 kts for each vessel, the CPA of the YELLOWSTONE would have been 1,800 yds to port. As the target drew nearer, the second officer saw it cross the bow of the IBN BATOUTA at 3 miles. A revised CPA for the YELLOWSTONE would have been 600 yards to starboard. The last position of the YELLOWSTONE observed on radar by the second officer was 7 degrees on the starboard bow at 2.8 miles. Assuming that the YELLOWSTONE had completed its turn to starboard and was now on course 105°T, its CPA would have been about 100 yards to starboard, or close enough for a possible collision.

Based on the results of a relative movement plot, the Safety Board determined that when both ships were making about 15 kts each, and with the YELLOWSTONE on course 082°T and the IBN BATOUTA on course 274°T, they crossed in a meeting situation when they were 3 miles apart. Shortly after crossing, the YELLOWSTONE turned right to avoid the IBN BATOUTA, while the IBN BATOUTA maintained its course. Neither vessel slackened speed. When the vessels were about 200 yds apart with the bow of the YELLOWSTONE coming across the IBN BATOUTA, a last-second avoidance attempt was made by each vessel. The IBN BATOUTA tried to swing right just as the YELLOWSTONE tried to swing left to clear its own stern, but the vessels collided.

The FINMELLE’s estimated courses of the targets were 080°T for the YELLOWSTONE and 290°T for the IBN BATOUTA; actually they were 082°T and 274°T, respectively. The estimated speeds were 10 kts for each vessel; actually they were about 15 kts each. As the data presented by testimony were sketchy and the accuracy of the two targets was questionable, the Safety Board could not give much weight to the witnesses’ observations other than the verification that the YELLOWSTONE changed course to starboard within 4 minutes of the collision, and that the IBN BATOUTA made a slight course change to starboard within the last minute. Neither vessel was seen to turn left.

Reconstructed Tracklines

In the development of the reconstructed tracklines (see figure 1), three critical positions selected from testimony were found to be accurate enough to effect the collision: the 1000 position of the YELLOWSTONE in the sea lane at the eastern end of the Strait of Gibraltar, 2.3 miles off Punta Lemos; the location of the collision as determined by the IBN BATOUTA; and the IBN BATOUTA’s 0942 position. A process of dead reckoning from the collision location was used. The YELLOWSTONE’s recorded collision position 4 miles east of the IBN BATOUTA was quickly disproved because none of the times, speeds, ranges, and bearings of the two vessels preceding the collision were compatible. All recorded times were converted to Greenwich mean time for convenience and the time of collision at 1107, as recorded by the YELLOWSTONE, was considered to be most accurate. The IBN BATOUTA had only approximated the time of 1110, the same time assumed by the FINMELLE, and a dead reckoning for the 3 minutes difference was made by subtracting 3 minutes from all times to collision reported by the IBN BATOUTA and the FINMELLE so that all events would agree with the YELLOWSTONE’s time.

Prior to collision, a current of about 2 1/2 kts was setting northeasterly at the eastern end of the Strait of Gibraltar and it affected the courses of all vessels in the area. For example, the YELLOWSTONE was steering course 135° for 15 kts, but by dead reckoning required a speed of 16 kts on course 073°T to have reached the collision area at 1107. The master had realized his ship was being set north by watching radar, and he attempted to bring his ship down to his intended trackline at 079°T at 1045 when he changed his course to 083°T. His radar fix at 1056 on Gibraltar verified this northerly set, but the fix was faulty because it indicated a speed of better than 18 kts for his vessel, which was hardly likely. While on the new course, 083°T, the ship made good a course of 076°T at 16 kts. By dead reckoning on this course to 1102 and then a course change to 105°T for 1 minute before his "hard right" to about 174°T, the collision was developed.

The IBN BATOUTA was also affected by the current as she approached the Strait of Gibraltar. Between its 0947 fix and the 1107 collision fix, the IBN BATOUTA made good against the current 13.7 kts on course 276°T while steering 274°T for 15 kts. She was getting a northerly set but not as much as the YELLOWSTONE which was closer to the Strait of Gibraltar.
These refined courses and speeds of both vessels, as modified by the current, satisfied many of the observed ranges and bearings taken by the approaching vessels, as well as those taken by the FINNAIIE nearby. The IBN BATOUTA remained for most of the time "true on the starboard" bow of the YELLOWSTONE. At the point of crossing where the YELLOWSTONE plotted dead ahead of the IBN BATOUTA, the distance between the vessels measured 3 miles, which was actually reported by the watch on the IBN BATOUTA. Also, the YELLOWSTONE could be plotted at 2.8 miles from the IBN BATOUTA at 7 degrees on its starboard bow using the redeveloped tracklines. However, the bearing of the YELLOWSTONE when it was 6 miles off the port bow of the IBN BATOUTA plotted only as 5 degrees, not 13 degrees as reported, which could have been inaccurately determined. No ranges and bearings were recorded in the ship's logs.

With the addition of the FINNAIIE to the plot, the redeveloped tracklines were further proved possible. The submarine at 1114 by radar had plotted the merged ships at 1.9 miles bearing 240°. By plotting its position from the merge position and using dead reckoning to its 1100 position on course 105° and 6 knots speed, verification of its initial contact of the two approaching vessels was possible. The ranges and bearings reported by the FINNAIIE plotted reasonably well to prove the redeveloped tracklines.

Operation of the YELLOWSTONE

Shortly after 1045, the visibility decreased from 5 miles to about 500 yds. Although the master of the YELLOWSTONE had a target on radar at 5 miles about 3 degrees on his starboard bow, he did not reduce his speed from 15 knots to a safer speed. He had been watching this target on radar when he first saw it at 11 miles and left the cursor on it to see if it might change its relative bearing. It did not change. He knew he was on a collision course with the target.

The master, well aware of the fog, ordered the engine to be put on standby, ready for maneuvers. He ordered the third mate to call the lookout and commenced fog signals. As the fog thickened and the visibility shrank to about 200 yards, he still did not reduce his speed. He next tried an evasive maneuver, altering his course to starboard to 105° and continued sounding fog signals. The running lights were on. The course change was a significant one, and it was enough to create the collision.

Although the master had over 20 minutes after first seeing the target on radar to determine the course, speed, relative movement, and closest point of approach of the target, he failed to do so. When he made the right turn maneuver, he had no idea of its effect on the situation. He waited too long before acting, and in an effort to improve the situation, made it worse. His last-minute efforts to maneuver to avoid the collision after he saw the IBN BATOUTA coming at him out of the fog failed.

The Safety Board concludes that the master of the YELLOWSTONE did not slow to a safe speed when the vessel entered the dense fog, and that he turned his vessel across the path of the IBN BATOUTA without knowing its course, speed, closest point of approach, and relative movement in advance of the maneuver to avoid a collision. He waited too long before taking evasive action and in his desperation to avoid the oncoming target, he unknowingly made the situation worse.

Operation of the IBN BATOUTA

The second mate on watch saw on radar, just as he relieved the watch, a group of targets on his port bow; as the watch continued, he saw a single target approaching. He left his cursor on the target and found that it was slowly going to starboard; he kept watching the target as it closed to 6 miles on radar. The second mate had put the running lights on.

Although the second mate saw the visibility reduce drastically to about 300 yds, he failed to do many things required of an alert watch by 22 COLINDS. He did not go to a maneuvering condition for the engine, he did not reduce his speed below 15 knots to a safe speed, and he did not sound fog signals. He did not inform the master of the change in visibility and the approaching target, and he did not call up the bow lookout. He also kept the automatic steering engaged, and there was no helmsman at the wheel. He failed to make a plot of the approaching target to get its course and speed and determine its closest point of approach.

The second mate did not attempt to use the bridge-to-bridge radiotelephone. Although he testified that the set was on and tuned to channel 16, he did not hear any call from the YELLOWSTONE just before the collision. After the collision when the first lieutenant on the FINNAIIE requested to use the radiotelephone to give his commanding officer a situation report, he saw the master turn the set on, which indicated that the set may have been off -- not on -- just prior to the collision. Had the second mate raised the YELLOWSTONE by VHF bridge-to-bridge radiotelephone when he first saw it on radar, he could have established agreement in time to take proper avoidance action.

The Safety Board concludes that the watch on the IBN BATOUTA failed to slow to a safe speed when the vessel entered a dense fog, failed to set the engine on standby for maneuvering, failed to call out a bow lookout, failed to deactivate automatic steering and put his helmsman on the wheel, failed to sound fog signals, and failed to plot the course, speed, relative movement and determine the closest point of approach of the YELLOWSTONE. He also failed to inform the master of the fog and close passage of the target on radar. The master had over 24 years of sea experience and had sailed 11 years as master. His knowledge was needed on the bridge.
Rules of the Road

When the YELLLOWSTONE and the IBN BATOUTA were on courses 082°T and 274°T respectively, they were approaching each other on a divergent angle of 12 degrees. Neither vessel saw the other because of the dense fog. The visibility was reduced to 200 yds. The Rules of the Road provide rules for mariners to follow when not in sight of another vessel in restricted visibility. Rule 19 first specifies that each vessel shall proceed at a safe speed and a power-driven vessel shall "have her engines ready for immediate maneuver." Neither vessel slowed and only the YELLLOWSTONE came to engine standby for maneuvering. In addition, the rule states that vessels which detect by radar the presence of another vessel shall determine if a close-quarters situation is developing and/or risk of collision exists. Although both vessels had radar, each failed to determine the closest point of approach, the course, or the speed of the other.

Rule 19 states that if risk of collision exists, the vessels shall take avoiding action in ample time and avoid changing course to port for a vessel forward of the beam or towards a vessel beam or abeam the beam. The IBN BATOUTA on automatic pilot did not change course, but the YELLLOWSTONE, after it had unknowingly crossed ahead of the IBN BATOUTA, turned to starboard on a direct collision course. The radar presentation would have warned the master of the YELLLOWSTONE that he had crossed ahead of the target and was clear of the situation and that a turn to starboard would be hazardous.

Both vessels were going too fast to have complied with the last and very important part of Rule 19. This part states that a vessel which hears a fog signal ahead of her beam or which cannot avoid a close-quarters situation with another vessel forward of her beam shall reduce her speed to the minimum at which she can maintain course, and if necessary, take all way off and navigate with extreme caution until danger of collision is over. In this case, each vessel was making 15 knots and neither made an effort to reduce speed.

Only the YELLLOWSTONE had any fog signals. In a head-on situation this would mean one prolonged blast every 2 minutes or for every 2,000 yds of vessel separation. Sound does not carry to great distances, so not many signals could have been heard by the watch on the IBN BATOUTA to warn them as the vessels closed. The watch on the IBN BATOUTA reported hearing only two signals less than 1 minute apart, one of which may have originated from the FINNAIRLA. At high closing speeds, it is unlikely that sufficient fog signals will be heard to allow audible tracking of the approaching vessel before both ships are in extremis.

Survival

The lack of lighting in the machinery space on the YELLLOWSTONE after the collision made escape difficult. Most who managed to escape had to rely on sense of touch to find an escape route. Because the machinery space flooded and the watertight door was open, the shaft alley would have been flooded and caused flooding of the No. 7 cargo hold above it. This loss of buoyancy aft increased the rate of sinking and reduced the time available for crewmen to escape.

The lack of updated ship's plans delayed the rescue teams in conducting search and rescue procedures. The Safety Board has previously recommended that the Coast Guard seek a requirement that all ships of more than 300 gross tons post an arrangement plan of the ship to aid rescue personnel.

Qualifications for Radar Observer

Title 33 CFR 10.05-16 requires all U.S. applicants for an original merchant mariner's deck license, a raise in grade, or an increase in scope of license for service in vessels over 300 gross tons to pass a written examination on the proper operation and use of marine radar equipment. Successful completion of the test certifies the applicant as a "radar observer." This is also required for license renewal every 3 years. The examination covers plotting, procedures, to determine course and speed of another vessel and the time and distance of closest point of approach of a meeting vessel. Merchant mariners of other countries are required to pass similar examinations.

Although the officers on watch on both the YELLLOWSTONE and IBN BATOUTA had had these examinations and made radar observations of each approaching vessel, they failed to make any plots, although there was ample time to do so. They could have forgotten the procedures from lack of use. Apparently, the system was used to qualify deck officers in the use of marine radar falls to keep them proficient. A periodic refresher course, particularly in plotting, appears necessary.

Vessel Bridge-to-Bridge Radiotelephone

Title 33 CFR 26 implements the provisions for the Vessel Bridge-to-Bridge Radiotelephone Act which require ships of tonnage equivalent to that of the YELLLOWSTONE and the IBN BATOUTA to have a VHF radiotelephone to warn in time, that transmissions be sent for confirming intentions of vessels. Had both vessels been required by international agreement to meet a comparable bridge-to-bridge radiotelephone regulation, the collision might have been averted by a timely confirmation of the intention of each vessel by VHF radiotelephone on the local channel 16 used near Gibraltar. The use of VHF bridge-to-bridge radiotelephone on

A common navigational channel should be made mandatory for all vessels on all international waters. Although the Intergovernmental Maritime Consultative Organization (IMCO) has had such a proposal under consideration since September 1978, there is no indication that it will be adopted on an expedited basis.

Although both the YELLONSTONE and the IBN BATOUTA had adequate radiotelephone equipment, they failed to use it properly. The master of the YELLONSTONE delayed too long to use his radiotelephone before the collision, and the Safety Board concludes that the receiver of the IBN BATOUTA may have been turned off or set too low for proper reception.

**Vessel Traffic Service**

This accident happened about 14 miles southeast of Gibraltar at the western end of the Mediterranean Sea. There is no vessel traffic service (VTS) there. If there had been an operational, effective VTS with adequate surveillance in operation on June 12, 1978, this accident could have been prevented. An effective VTS could have alerted the vessels of the intended courses and speeds of the other. The Strait of Gibraltar is heavily trafficked by ships of all nations. Fog in the area makes it even more dangerous. Although ships are usually provided with radar and have the Rules of the Road to follow, the additional information which would have been given these two ships by an operational VTS could have alerted them to navigate more cautiously.

**Requirement of Subdivision**

The YELLONSTONE was a cargo ship of U.S.registry which, according to regulations is not required to meet any particular subdivision requirements. A cargo ship is not designed to survive should the compartment or space between any two watertight bulkheads be flooded. However, according to records, the YELLONSTONE was much safer than originally designed cargo ships. It had been originally designed as a trampship to sustain flooding of any one compartment. As converted it could survive flooding of any one compartment except the engineroom, even with the ship at full load. The removal of the bulkhead in the engineroom, when converted, reduced the inherent safety of the original design.

**Gouging of Bulkheads**

The master of the YELLONSTONE testified that just before he left the sinking ship he heard a loud report and thought it was the rupture of the forward engineroom bulkhead. The ship had been gouged for a special survey in 1978, but only the shell plates, tank tops, frames, coamings, and some exposed decks were selected. No gouges were taken of the bulkhead thicknesses for wastage. A principal ABS surveyor testified that in vessels which are bulk carriers, corrosion often occurs in the lower portions of bulkheads in cargo holds, in bilge wells of cargo holds, and in the internal surfaces (particularly unprotected saltwater ballast tanks). Based on this testimony and knowing the importance of major watertight bulkheads on ships, the Safety Board concludes that gouges of these areas should be included in periodic surveys of bulk carriers that are more than 15 years old.

**CONCLUSIONS**

**Findings**

1. The bridge watches on the YELLONSTONE and the IBN BATOUTA failed to interpret and use properly the information presented on their radars to avoid the collision, although the officers had training in the use of radar.

2. The watch on the IBN BATOUTA failed to take early evasive action after entering fog to prevent the development of a close-quarters situation with the YELLONSTONE.

3. The 15-knot speed for both the YELLONSTONE and IBN BATOUTA was excessive for navigating in dense fog with other vessels in the vicinity.

4. The fog signals of the YELLONSTONE were ineffective in preventing the accident.

5. When the master of the YELLONSTONE turned to the right to avoid the IBN BATOUTA, he did so without accurate information about the IBN BATOUTA.

6. Had the YELLONSTONE not turned after crossing ahead of the IBN BATOUTA, the collision may not have occurred.

7. Since the two vessels were in a meeting situation, each should have slowed and maneuvered to avoid each other well in advance of the passage.

8. The plans found by the Royal Navy rescue teams on the YELLONSTONE were outdated and reduced the effectiveness of their mission.

9. A requirement in the International Rules of the Road for vessels in restricted visibility to require use of VHF radiotelephones to establish communication with other vessels in the area to exchange their intention of passage may have prevented the collision.
10. A manned, active VTS could have provided timely and accurate information to each vessel relative to the course and intention of the other. This timely information would have provided better data to be used in making maneuvering decisions.

11. Cargo ships of U.S. registry are not required to meet any specific requirements for subdivision. As a modified trophship, the YELLOWSTONE could have survived damage in any compartment except in the machinery space when at full draft. She experienced the last two conditions on June 12, 1978.

12. The system used to qualify deck officers in the use of radar did not keep them proficient.

13. The current practice of gauging in periodic surveys of bulk carriers more than 15 years old is not adequate to determine wastage from corrosion in the lower parts of bulkheads in cargo holds, in bilge wells of cargo holds, and in the internal surfaces (particularly unprotected saltwater ballast tanks).

Probable Cause

The National Transportation Safety Board determines that the probable cause of this accident was the failure of the master of the YELLOWSTONE to properly use the ship's radar, which led to his crossing the bow of the IBM BATOUTA in an effort to prevent a collision in a close-quarters situation. Contributing to this accident were the excessive speed of both vessels in a dense fog; their failure to avoid a close-quarters situation; and the failure of the IBM BATOUTA to sound fog signals, to have the engine ready for immediate maneuver, and to use the bridge-to-bridge radiotelephone to establish a safe passing maneuver.

RECOMMENDATIONS

As a result of its investigation of this accident, the National Transportation Safety Board recommended that the U.S. Coast Guard:

"Establish a timetable for expediting Coast Guard action to promote the adoption by the Intergovernmental Maritime Consultative Organization of a requirement for the use of bridge-to-bridge radiotelephone in collision avoidance. (Class II, Priority Action) (N-79-76)"

"Require periodic gauging of bulkheads on bulk carriers that are more than 15 years old. In particular, the lower portions of bulkheads in cargo holds, bilge wells, saltwater ballast tanks, and machinery spaces should be gauged for timely renewal due to corrosion and wastage. (Class II, Priority Action) (N-79-73)"

THE NATIONAL TRANSPORTATION SAFETY BOARD

/s/ JAMES B. KING
Chairman

/s/ TIMOTHY T. DRIVER
Vice Chairman

/s/ FRANCIS B. McADAMS
Member

/s/ PATRICIA A. GOLMAN
Member

y 19, 1979
APPENDIX A

YELLOWSTONE and IBN BATOUTA Crew Biographies

YELLOWSTONE

Captain Robert Gray, 36, the master of the YELLOWSTONE, graduated from the California Maritime Academy in June 1963 and received his third mate’s license. He then sailed on various ships for 6 years as a deck officer in all billets including chief mate, and in May 1975, he received his master’s license, all oceans, all tonnages with a radar observer’s endorsement. Since 1977 he has sailed as master of the YELLOWSTONE, with the exception of one trip to Egypt when he sailed as chief mate. At the time of the accident he was in the wheelhouse.

Third Officer Robert Egilbert, 57, was the mate on the 0800-1200 watch on the day of collision. He was licensed to serve as master of uninspected motor vessels of not over 500 gross tons upon oceans with qualification as a radar observer. He had 13 1/2 years sailing as third mate.

David J. Reck was the helmsman on the YELLOWSTONE at the time of the collision. He held a rating as able-bodied seaman, 36 months unlimited, and had joined the ship in May 1978. He had been going to sea since August 1971 in the deck department, with 22 months experience as helmsman.

IBN BATOUTA

Captain Tonci Radovnikovic, 44, the master of the IBN BATOUTA, graduated from middle nautical school in Dubrovnic, Yugoslavia in 1954 and sailed as a cadet, third, second and first officer on various ships. In 1964, he graduated from the higher nautical school in Rijeka, and then passed his exams for captain. He had experience as captain on oceangoing tugs and Liberian cargo ships from 1967 to 1973 when he joined Compagnie Nationale Algerienne de Navigation and continued sailing as master of various types of cargo ships. He joined the IBN BATOUTA on February 21, 1978.

Second Officer Jozo Kraljevic, 29, graduated from the government school, Pomorska Skola, in Zadar, Yugoslavia in 1971 and in 1972 earned his first license as third, second and first officer and master of a ship with limitations. In 1972, he sailed as third officer and 1 1/2 years later became second officer. On March 7, 1978, he joined the IBN BATOUTA as second officer. He had the watch at the time of collision.

Third Engineer Vjetar Marinje was in charge of the engineering watch on the IBN BATOUTA at the time of collision. He held two Yugoslavian licenses. His 1972 license was for fourth engineer, unlimited horsepower, and his 1977 license was for first class engineer.
APPENDIX B

The following rules of the International Regulations for Preventing Collisions at Sea, 1972 are pertinent to this accident:

Section I—Conduct of Vessels in any Condition of Visibility

RULE 4
Application
Rules in this Section apply to any condition of visibility.

RULE 5
Look-out
Every vessel shall at all times maintain a proper look-out by sight and hearing as well as by all available means appropriate to the prevailing circumstances and conditions so as to make a full appraisal of the situation and of the risk of collision.

RULE 6
Safe Speed
Every vessel shall at all times proceed at a safe speed so that she can take proper and effective action to avoid collision and be stopped within a distance appropriate to the prevailing circumstances and conditions.

In determining a safe speed the following factors shall be among those taken into account:

(i) the state of visibility;
(ii) the traffic density, including concentrations of fishing vessels or any other vessels;
(iii) the manœuvrability of the vessel with special reference to stopping distance and turning ability in the prevailing conditions;
(iv) the presence of background light such as from shore lights or from lights of her own lights;
(v) the state of wind, sea and current, and the proximity of navigational hazards;
(vi) the draft in relation to the available depth of water;

(vii) Additionally, in vessels with operational radar:

(i) the characteristics, efficiency and limitations of the radar equipment;
(ii) any constraints imposed by the radar range scale in use;
(iii) the effect on radar detection of the sea state, weather and other sources of interference;
(iv) the possibility that small vessels, ice and other floating objects may not be detected by radar at an adequate range.

(c) the number, location and movement of vessels detected by radar;
(d) the more exact assessment of the visibility that may be possible when radar is used to determine the range of vessels or other objects in the vicinity.

RULE 7
Risk of Collision

(a) Every vessel shall use all available means appropriate to the prevailing circumstances and conditions to determine if risk of collision exists. If there is any doubt such risk shall be deemed to exist.

(b) Proper use shall be made of radar equipment if fitted and operational, including long-range scanning to obtain early warning of risk of collision and radar plotting or equivalent systematic observation of detected objects.

(c) Assumptions shall not be made on the basis of scanty information, especially scanty radar information.

(d) In determining if risk of collision exists the following considerations shall be among those taken into account:

(i) such risk shall be deemed to exist if the compass bearing of an approaching vessel does not appreciably change;

(ii) such risk may sometimes exist even when no apparent bearing change is evident, particularly when approaching a very large vessel or a boat when approaching a vessel at close range.

RULE 8
Action to Avoid Collision

(a) Any action taken to avoid collision shall, if the circumstances of the case admit, be positive, made in ample time and with due regard to the observance of good seamanship.

(b) Any alteration of course and/or speed to avoid collision shall, if the circumstances of the case admit, be large enough to be readily apparent to another vessel observing visually or by radar; a succession of small alterations of course and/or speed should be avoided.

(c) If there is sufficient sea room, alteration of course or speed may be the most effective action to avoid a close-quarters situation provided that it is made in good time, is substantial and does not result in another close-quarters situation.

(d) Action taken to avoid collision with another vessel shall be such as to result in passing at a safe distance. The effectiveness of the action shall be carefully checked until the other vessel is finally past and clear.
(e) If necessary to avoid collision or allow more time to assess the situation, a vessel shall slacken her speed or take all way off by stopping or reversing her means of propulsion.

Section III—Conduct of Vessels in Restricted Visibility

RULE 19

Conduct of Vessels in Restricted Visibility

(a) This Rule applies to vessels not in sight of one another when navigating in or near an area of restricted visibility.

(b) Every vessel shall proceed at a safe speed adapted to the prevailing circumstances and conditions of restricted visibility. A power-driven vessel shall have her engines ready for immediate maneuver.

(c) Every vessel shall have due regard to the prevailing circumstances and conditions of restricted visibility when complying with the Rules of Section I of this Part.

(d) A vessel which detects by radar the presence of another vessel shall determine if a close-quarters situation is developing and/or risk of collision exists. If so, she shall take avoiding action in ample time, provided that such action consists of an alteration of course, as far as possible the following shall be avoided:

(i) an alteration of course to port for a vessel forward of the beam, other than for a vessel being overtaken;
(ii) an alteration of course towards a vessel ahead or astern.

(e) Except where it has been determined that a risk of collision does not exist, every vessel which bears apparent forward of her beam the fog signal of another vessel, or which cannot avoid a close-quarters situation with another vessel forward of her beam, shall reduce her speed to the minimum at which she can be kept on her course. She shall if necessary take all way off and in any event navigate with extreme caution until danger of collision is over.

PART D—SOUND AND LIGHT SIGNALS

RULE 32

Definitions

(a) The word "whistle" means any sound signaling appliance capable of producing the prescribed blasts and which complies with the specifications in Annex III to these Regulations.

(b) The term "short blast" means a blast of about one second's duration.

(c) The term "prolonged blast" means a blast of from four to six seconds' duration.

RULE 33

Sound Signals in Restricted Visibility

In or near an area of restricted visibility, whether by day or night, the signals prescribed in this Rule shall be used as follows:

(a) A power-driven vessel making way through the water shall sound at intervals of not more than 2 minutes one prolonged blast.
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1. The Criminal Tribunal, Mahieddine Attoui (Advocate).
3. Ordinance No 73-12 of the 3th April, 1973 creating the National Service of the Coast Guard official translation
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6. Decree No 78-272 on March 9, 1978 related to the organization of governmental actions at sea.
7. Decree No 76- 1228 on December 24, 1976 relating to the special statute of the Marine Affairs Officers.
### Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>NSCG</td>
<td>National Service of the Coast Guard</td>
</tr>
<tr>
<td>GN</td>
<td>Gendarmerie National (National Security)</td>
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<tr>
<td>GDNS</td>
<td>General Directorate of the National Security</td>
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<tr>
<td>JPO</td>
<td>Judicial Police Officer</td>
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<td>JPA</td>
<td>Judicial Police Agent</td>
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<td>IJ</td>
<td>Investigating Judge</td>
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<td>IO</td>
<td>Investigating Officer</td>
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<tr>
<td>RMBI</td>
<td>Regional Marine Board of Investigations</td>
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<td>NMBI</td>
<td>National Marine Board of Investigations</td>
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<tr>
<td>MIOMM</td>
<td>Minister In Charge Of the Merchant Marine</td>
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<tr>
<td>DPCMM</td>
<td>Disciplinary and Penal Code of the Merchant Marine</td>
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<td>CFR</td>
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