

7 FAM 770

PROTESTS, DISPUTES, AND OFFENSES

(CT:CON-111; 09-15-2005)
(Office of Origin: CA/OCS/PRI)

7 FAM 771 SUMMARY

(CT:CON-111; 09-15-2005)

- a. United States law allows merchant mariners the right to protest, dispute and report offenses whether serious or incidental that involve **seamen of the United States**. These situations may occur in a variety of ways and instances, and may indirectly affect the safety of life at sea, the welfare of seamen, and the protection of property aboard ship.
- b. The United States Coast Guard (USCG) is responsible for the safety of life and property at sea on United States flag vessels. It is the USCG's policy to initiate action to ensure the safety of life at sea, the welfare of seaman, and the protection of property aboard ship.
- c. In addition, various international agreements, such as the International Convention for the Safety of Life at Sea of 1974 (SOLAS) grant port states the authority to enforce the terms of the agreement on applicable vessels.
- d. Crimes committed by seamen of the United States aboard a vessel in foreign ports and involving the peace of the port, in territorial waters or ashore in foreign ports are subject to the jurisdiction of the local government. Questions about territorial water boundaries should be referred to CA/OCS/PRI. (See 7 FAM 400).
- e. Crimes committed by seamen of the United States aboard a vessel not involving the peace of the port are usually handled by officers of the vessel and consular representatives of the country of registry.
- f. Crimes and other offenses committed on the high seas generally are subject to the jurisdiction of the courts of the country of the vessel's registry. Consult with CA/OCS/PRI prior to protesting the assertion of jurisdiction by foreign authorities over crimes committed aboard United States flag vessels on the high seas regardless of the nationality of the offenders.

7 FAM 772 MARINE NOTES OF PROTEST

(CT:CON-111; 09-15-2005)

- a. Different laws, union contracts, collective bargaining agreements, and treaties and consular conventions cover marine notes of protest. Since consular involvement occurs so infrequently, we refer you to the U. S. Coast Guard website, the USCG at 202-267-2200 or FAX: 202-267-4839; 46 U.S.C. (shipping) and/or to ASKPRI@STATE.gov for guidance.
- b. Marine Notes of Protest, although rarely filed in the United States any more, do exist in other countries. They are used to report any incident that occurred during the voyage and may be used by the operators, or insurance companies, in future claims regarding damage to the ship or cargo caused by conditions beyond the master's control.
- c. Taking of a marine note of protest is a notarial service for the owner and the operators of a vessel. You are not to investigate the protest. There is no fee for U.S. vessels, but for foreign vessels, fees are charged in accordance with the Schedule of Fees (22 CFR 22.1). The original is filed with the ship's entry/clearance papers and certified copies are given to the master.
- d. There is no requirement that a marine note of protest be filed under any circumstances, although the master, owner, operators or agent of a vessel may elect to do so. If so, you must require the master (or an officer designated in writing by the owner, agent or the operators) of a vessel to make the protest in person before you. You may not waive the personal appearance by the master/officer without the specific authorization of the ship's owner, operators or agent.
- e. Information may be taken in the form of a letter or memorandum indicating:
 - (1) The date and place of the protest;
 - (2) The name of the protester (master);
 - (3) Name of the vessel and its tonnage;
 - (4) Type of cargo;
 - (5) The date of the occurrence and date of arrival in local port; and
 - (6) The nature of the incident.
- f. Sign and notarize the "Note of Protest."

7 FAM 773 MINOR OFFENSES

(CT:CON-111; 09-15-2005)

Generally, the master of the vessel has considerable disciplinary power under the statutes to cope with minor offenses of which seamen may be guilty aboard ship.

7 FAM 774 COMPLAINTS AND PROTESTS

(CT:CON-111; 09-15-2005)

- a. The provisions cited above regarding complaints of unfitness, while still law, were developed for an earlier time, when vessels were away from the United States for very long periods of time and could not communicate easily or quickly. Today the likelihood of a consular officer encountering such a situation is rare, given that most merchant mariners on deep draft commercial vessels are covered by collective bargaining agreements, and can communicate quickly with their unions, the Coast Guard, or other organizations even when in remote areas of the world. It is important to remember that complaints may be a part of an overall labor disagreement in which you generally should avoid involvement.
- b. By law, U.S. merchant mariners serving on all United States vessels (except fishing or whaling vessels or yachts) are entitled to present complaints and protests to you regarding, for example, the vessel's provisions, the vessel's seaworthiness or the continuance of the voyage contrary to agreement. Depending on the location of the vessel, the subject matter of the complaint, and the number and type of merchant mariner making the complaint, these complaints may be made to a consular officer, the cabinet Secretary with authority over the Coast Guard, chief official of the "Customs Service," or even the commanding officer (CO) of a United States naval vessel.
- c. When seamen's written complaints concerning alleged problems with the **seaworthiness of a vessel** are received, you must arrange to have an appropriate survey conducted. Most ports have representatives of classification societies such as the American Bureau of Shipping or Lloyds of London, and you may arrange with them to conduct a survey, or report the matter to the local port authorities. The master must pay all costs of the survey.
- d. Most disputes may be settled informally and often verbally by you acting as a mediator rather than as arbitrator. Seamen should be advised that you are required to protect their rights under the statutes, but are not

authorized to intervene in disputes between parties signatory to collective bargaining agreements. However, you may take statements without becoming a party to the dispute.

7 FAM 775 JURISDICTION OF THE UNITED STATES IN OFFENSES COMMITTED ON VESSELS OR THE HIGH SEAS

(CT:CON-111; 09-15-2005)

- a. 22 U.S.C. 256 is a law originally codified in the Revised Statutes Section 4079 derived from the Act of June 11, 1864, chapter 116, Sec. 1, 13, Stat 121. It gives consular officers jurisdiction over disputes between seamen on a United States vessel if it is stipulated by treaty or convention between the United States and any foreign nation. While Articles 5(k) and (l) of the Vienna Convention on Consular Relations pertain to consular functions in shipping and seaman matters, that Convention does not include reference to exclusive consular jurisdiction in disputes between seamen. Certain treaties of Friendship, Commerce and Navigation, which pre-date the Vienna Convention, do include such provisions. (See Treaties in Force). Consular practice regarding this statute is described in Hackworth, Digest of United States Practice in International Law, Vol. IV, 876-877 and Whiteman, Digest of United States Practice in International Law, Vol. 7, 699-700.
- b. In such a case, you should advise CA/OCS/ACS of the circumstances so that they may consult with CA/OCS/PRI and the Office of the Legal Adviser, and the Department of Justice as appropriate. Do not undertake investigations or other activities without specific guidance from the Department.
- c. 18 U.S.C. 7 defines the Special Maritime and Territorial Jurisdiction of the United States. Questions concerning offenses committed on the high seas or in foreign ports should be directed to CA/OCS/ACS who will consult with CA/OCS/PRI, the Office of the Legal Adviser, and the United States Department of Justice as appropriate. Consular officers should coordinate closely with the regional security officer (RSO) and Legal Attaché in such cases.

7 FAM 776 ROLE OF THE CONSULAR OFFICER

(CT:CON-111; 09-15-2005)

- a. Inform CA/OCS/ACS immediately of serious crimes allegedly committed by seamen on board United States vessels on the high seas, in the territorial seas of other countries, or in foreign ports, and crimes committed by seamen of the United States ashore in foreign ports. (See 7 FAM 400).
- b. Identify the seaman by his Merchant Mariner Documentation (MMD) number.
- c. Report the facts of the incident, in as much detail as possible and include any statements taken.
- d. CA/OCS/ACS will consult with CA/OCS/PRI and the Office of the Legal Adviser, and the United States Department of Justice as appropriate. You should coordinate closely with the Regional Security Officer and the Legal Attaché in such cases.

7 FAM 776 MUTINY AND PIRACY CASES

7 FAM 776.1 Mutiny?

(CT:CON-111; 09-15-2005)

- a. Mutiny occurs: When one or more members of the crew unlawfully and with force, or by fraud, or intimidation, usurps the command of a vessel from the master or other lawful officer in command thereof, or deprives the master of authority and command on board, or resists or prevents the master in the free and lawful exercise of the vessel, or transfers such authority and command to another not lawfully entitled. (See 18 U.S.C. 2193).
- b. Mutiny does not occur: When insubordination, disobedience, or violence against the master is not accompanied by intent to remove the master from command.

7 FAM 776.2 Role of the Consular Officer

(CT:CON-111; 09-15-2005)

Statutes, treaty provisions, established usage and jurisdictional cooperation between the Bureau of Consular Affairs (CA) and other bureaus, and other agencies govern your role and jurisdiction when mutiny occurs. Report mutinies to CA/OCS/ACS for guidance.

7 FAM 776.3 What is Piracy?

(CT:CON-111; 09-15-2005)

United States law references the “law of nations” in defining piracy. (See 18 U.S.C. 1651). Under Article 101 of the United Nations Convention on the Law of the Sea of 1982 (which has not been ratified by the United States but is accepted as reflective of existing maritime law and practice), occurs when illegal acts of violence or depredation against property committed for private ends by the crew or passengers of a private ship and directed against another ship on the high seas or place outside the jurisdiction of any State or against the persons or property on that ship.

7 FAM 776.3 Role of the Consular Officer

(CT:CON-111; 09-15-2005)

- a. Respond to casualties to United States citizens and seaman of the United States that occur on board vessels of the United States that are on the high seas when the incident occurs and provide appropriate assistance.
- b. Consult with the Department (CA/OCS/PRI) if questions regarding treaties, conventions and consular agreements affecting your posts, and/or jurisdiction in international waters and in foreign ports are unclear. Contact us at ASKPRI@state.gov.
- c. Report incidents to the local authorities and to CA/OCS/ACS.

7 FAM 777 THROUGH 779 UNASSIGNED

7 FAM EXHIBIT 771 SELECTED LEGAL AUTHORITY

(CT:CON-111; 09-15-2005)

46 U.S.C. 10901	"Application: This chapter applies to a vessel of the United States except fishing, or whaling vessels or yachts."
46 U.S.C. 10902	Complaints of Unfitness of Vessel
46 U.S.C. 10903	Proceedings on Examination of Vessel
46 U.S.C. 10905	Complaints in Foreign Ports
46 U.S.C. 10906	Discharge of Crew for Unsuitability
46 U.S.C. 10910	Permission (for Crew) to Make Complaint
46 U.S.C. 10911	Penalty for Sending Un-seaworthy Vessel to Sea
46 U.S.C. 11503	Duties of Consular Officers Related to Insubordination