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ANY OTHER BUSINESS

Fair treatment of seafarers

Submitted by Cyprus, Greece, the Philippines, Poland, the International Chamber of Shipping (ICS), the International Shipping Federation (ISF), the International Confederation of Free Trade Unions (ICFTU), BIMCO, the International Federation of Shipmasters' Associations (IFSMA), the International Salvage Union (ISU), the International Association of Independent Tanker Owners (INTERTANKO) and the International Association of Dry Cargo Shipowners (INTERCARGO)

SUMMARY

Executive summary: The sponsors of this document note, with concern, the detention of seafarers following maritime incidents and propose that guidelines on the fair treatment of seafarers be developed, or that other appropriate measures be considered.

Action to be taken: Paragraph 6

Related documents: United Nations Convention on the Law of the Sea (UNCLOS) and IMO instruments as appropriate

Introduction

1 IMO instruments encourage Governments to protect seafarers when using their professional judgement at times of stress, such as during a maritime incident. The preamble to the ISM Code (resolution A.741(18)) recalls the text of resolution A.443(XI) and invites Governments "to take the necessary steps to safeguard the shipmaster in the proper discharge of his responsibilities in regard to maritime safety and the protection of the marine environment." However, practice suggests that these instruments need reinforcement.

2 In a recent address to the European Parliament Temporary Committee on Improving Safety at Sea (MARE Committee, 22 January 2004), the Secretary-General of IMO, while assuring the Committee that he fully understood the frustration, even the wrath, of the victims of any accident at sea, the anguish of those who lose loved ones at sea and the anger of those whose coasts and livelihood are damaged by serious pollution incidents, expressed concern regarding seafarers detained ashore as a result of accidents involving ships on which they are serving. He described three areas of particular concern:

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- The impact that prolonged detention might have on the morale of the seafarers under detention;
- A general feeling of insecurity seafarers may have for their livelihood following an accident involving a ship on which they are serving; and
- The impact an act of detention may have on the global campaign to attract youngsters to the maritime profession.

Maritime incidents

3 It is the responsibility of the shipmaster to operate his ship with the highest level of professional expertise and to take special care to avoid accidents. Masters understand the heavy responsibility they bear in this regard. Unfortunately, there have been a number of occasions in recent years where shipmasters, and other crew members, have been imprisoned or detained, without trial, following a maritime incident. It is recognised that the seafarer may be the only locally identifiable individual with responsibility for the operation of the ship in question and the only “on scene” representative against whom action can readily be taken under local or national as opposed to international law. However, any enquiry after such an incident should respect basic human rights and international guidelines, and there seems to be little justification for the imprisonment or detention of a seafarer after an incident where, even if he is found guilty, the punishment in international law could not include a custodial sentence.

Guidelines or other measures

4 The sponsors of the paper believe that the production of guidelines or other appropriate measures on the fair treatment of seafarers would highlight the plight of the individuals involved and illustrate the expectations of the international maritime community in such cases. It is therefore proposed that the Organization (perhaps in co-operation with the International Labour Organization (ILO)) should consider the development of appropriate guidance, based not only on the principles of the 1982 United Nations Convention on the Law of the Sea (UNCLOS) and relevant IMO instruments, but also on the fact that unwarranted detention is a violation of basic human rights.

5 The sponsors of the paper suggest that the prospective guidance should, *inter alia*, ensure that the following basic principles are explained:

- The fundamental human rights of seafarers should be considered at every stage of any proceedings in incidents arising out of the alleged violation of anti-pollution instruments.
- Seafarers should not be unduly detained and, if initially detained, should be released promptly, unless charges of wilful misconduct or criminal negligence can be substantiated.
- Particular regard should be given to the provisions of UNCLOS with respect to monetary penalties and the need for the prompt release of seafarers once security, such as a bond, has been lodged. Reference should also be made to other IMO instruments including MARPOL and the various liability and compensation conventions.
- The opportunity to resort to international arbitration or other dispute settlement mechanisms, including the International Tribunal on the Law of the Sea should be

mentioned.

Action requested of the Legal Committee

6 The Legal Committee is invited to consider the above and decide as appropriate. In particular, the Committee is invited to give urgent consideration to approving a new work item on its agenda to develop guidelines on the fair treatment of seafarers following maritime incidents or other appropriate measures.
