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Sent: 02 August 2005 13:08

To: 'lfernandez@panamauk.org'

Subject: FAO H E Liliana Fernandez/ chairperson / Correspondence Group of Ad Hoc JEWG on Fair Treatment of Seafarers

Cc 'cyoung@imo.org'; 'nunlu@imo.org'; 'legouas@ilo.org'

Re: your message and Chris Young's follow on e-mail communication dd 28th July 2005

Thank you to all concerned in moving the Correspondence Group's deliberation forward. IFSMA would wish to make observations on the "draft prepared by the drafting group at the WGFTS 1" by placing on record our objection to the inclusion of the draft document referred to above and attached as Annex 4 to the IMO Secretariat's Note to the Legal Committee of the First Session of the WG: LEG 90/7 -9 February 2005. In our respectful submission the said draft document is without any provenance for the following reasons:

1./ There is no mention of the Drafting Group (which broke up before the end of the first day without reaching any conclusions, apart from the fact that no guidelines worthy of the name could be drafted within the time available and the lack of acceptable formula even draft guidelines should take) in the Report of the Working Group (IMO/ILO/WGFTS 1/11) attached in the said Note by the Secretariat to the Legal Committee 90th Session. (LEG 90/7)

2./ The very tentative nature of the 'draft guidelines' is shown by the 14 square bracketed texts therein, some of them of substance and of considerable importance to the subject matter of the out 30 paragraphs of Annex 4.

3./ The Secretariat's Note to the Legal Committee (referred to above) deals with the impossibility of drafting guidelines, as it happened in the event, in paragraphs 7.51 - 7.56 (both inclusive). The only document that survived the Working Group, in 17-19 January 2005, is the draft resolution attached as Annex 5 to the Secretariat's Note and confirmed in term in paragraph 7.56 therein:

"The Plenary considered a draft resolution on fair treatment of seafarers in the event of a maritime accident for the consideration of the IMO Assembly and of the Governing Body of ILO. The paragraphs of the draft resolution appear in bold type below."

4./ Those 'bold type' text were to become the Draft Resolution that the Legal Committee approved at its 90th Session (paragraph 193 of LEG 90/WP.3) and "contained in annex 5 of document LEG 90/7 unchanged".

5./ The Legal Committee noted that "the Group had been able to prepare a draft resolution for approval by the Committee and thereafter formal adoption by the Assembly, but there had been insufficient time to complete the task of developing guidelines" (paragraph 183) and "the adoption of the resolution was only a first step which paved the way for the adoption of guidelines" (paragraph 192). In the eyes of the Legal Committee the first step is the resolution for the Assembly and not the drafting group's aborted effort to construct one.

6./ The Action Requested of the Legal Committee by LEG 90/7 was to "take note of the information contained in [the document and] note the report of Joint Working Group". The Legal Committee duly did so and that report makes no mention of any drafting group during Working Group's 1st session.

Therefore IFSMA's would like to respectfully submit to the Correspondence Group, that Annex 4 to IMO/ILO/WGFTS 1/11 has no assured procedural provenance nor does it possess sufficient authority, and therefore cannot be used as a basis on which to structure guidelines for the fair treatment of seafarers.

Best regards, Capt. Rodger MacDonald,

Secretary General

<http://www.ifsma.org/fairtreatment>

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