

Fair treatment of seafarers

Joint IMO/ILO working group

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There is a saying: 'If you knew how laws and sausages were made, you would have nothing to do with either'. Much the same feeling descended on observer delegations attending the three days' deliberations of the joint IMO/ILO ad hoc expert working group on the fair treatment of seafarers, meeting in January. However, in the end matters came out more or less right with achievable procedural and political goals commanding almost universal acceptance; the understanding that something needs to be done to ensure that seafarers are treated fairly and humanely by governments, through their law enforcement and administrative agencies.

The setting for the joint working group's meeting was the outcome of concerns at ILO and IMO, discussions between the secretariats and helpful resolutions in both organisations. The terms of reference came from the ILO: 'The group should prepare recommendations for consideration by the IMO Legal Committee and the ILO (International Labour Organisation) governing body, including draft guidelines on the fair treatment of seafarers in the event of a maritime accident.' It was felt in many quarters that these terms were too narrow since seafarers face contingencies other than those consequent on a 'maritime accident' when in port, coastal waters or even on the high seas; however to change them was neither practical nor prudent. On the joint working group, the IMO was represented by eight countries: China, Egypt, Greece, Nigeria, Panama, Philippines, Turkey and the United States. On the ILO's side the social partners were the seafarers and the shipowners. Other delegations were invited as observers and a good number of

countries sent representatives who contributed to the discussions.

Approaches to fair treatment issues were formulated in written submissions from a number of countries and organisations, while other positions were discussed in conversations or in the course of meetings. Behind the different concepts were the underlying purposes of the states and those of the organisations putting forward proposals for consideration. It would appear to some delegations that those underlying purposes were apparent while to others they were of minor importance. At the heart of the differences over concepts was the efficacy and effectiveness of any guidelines, assuming orderly progress in the procedural mills of the ILO and IMO.

The concepts of affording all seafarers fair treatment in the event of a maritime accident and that mariners are entitled 'to have full, fair and thorough marine accident investigation conducted on their behalf to promote maritime safety by determining the cause of workplace accidents...' are laudable but may be meaningless in terms of concrete protection against arbitrary or unlawful treatment.

The request that the guidelines 'should contain a summary of applicable international law, the requirement for the commission of a criminal act in terms of knowledge and intention; it should also distinguish between criminal, civil and administrative sanctions and provide practical guidance directed to port or coastal states, flag states, shipowners and seafarers alike' is more particular to the issues but lacks focus and verbal precision as to how seafarers should be treated.

One delegation urged the 'creation of an international instrument in this regard'; while another written submission drew the attention of the Legal Committee to 'cases of possible criminalisation of seafarers serving on board abandoned ships that may cause damage to persons, property or to the marine environment'.

The simplest concept continues to be the release and repatriation of seafarers

after the shortest possible time required by state authorities to obtain evidence of prima facie wrongdoing on the part of the those detained or prevented from leaving a country not their own. The written submission from one delegation acknowledges the fact that 'both individuals and states have rights and obligations, but unwarranted detention is a violation of human rights [and that] derogation from human rights obligations is accepted only if events make it necessary and if it is proportionate to the danger that those events represent... For seafarers to receive fair treatment in context of marine accident...within the jurisdiction of a coastal state or flag state, the International Covenant on Civil and Political Rights (entered into force in 1976 – the covenant has 147 state parties) appears to be the most relevant: "No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation"... Seafarers' presence in a coastal or flag state connected to marine accident...is lawful, save in very exceptional circumstances...The contract referred to...is the seafarers' employment contract with the shipowner to work on the ship connected to the marine accident...'

The annex to the submission contains a body of principles that would apply for the protection of seafarers against detention following a marine accident or incident or commercial dispute relating to their ship and/or her cargo. These are modelled on a United Nations General Assembly resolution in 1988 that deals with fair and lawful treatment of all persons in detention or under arrest in any country.

Three of the principles have special relevance to seafarers:

■ 'No seafarer shall be detained in the territory of any state beyond seven days from the date of the accident or incident or dispute alleged to have adverse consequences in that state [and] during the period when the seafarer is being prevented by the authorities to leave the country, he or she may only be confined onboard his/her ship, provided it is safe to do, in appropriate accommodation and

living conditions or in a hotel or guest house of comparable standards and from where the seafarer's freedom of movement is assured...

■ 'The cost of accommodating the seafarer during the period referred to [above] shall be borne by the seafarer's employer...

■ 'On expiry of the period [during which he/she is not allowed to leave the country] the seafarer shall be repatriated to the country whose passport he or she holds and into the personal care of that country's head of state, acting as agent of that state, and who will undertake to produce the seafarer at any subsequent legal or administrative proceedings in any country where the presence of the seafarer is required...'

The importance of the prompt release of seafarers was lost sight of in the first day of the proceedings. Delegates were led to believe that a set of guidelines could be manufactured by confining the contents to generalities of fair treatment. Simultaneously, the importance of conducting the investigation into the cause of the casualty was emphasised, together with the duties and obligations on states to do the decent thing by seafarers. It appeared to some that one particular argument was designed to salve the conscience of the state in which seafarers often meet harsh personal treatment; while another gave the impression of wanting to spread the blame for mistreatment among all states equally, calling on each in turn to comply with their duties assumed under IMO treaties. Both arguments have validity in the context of maritime investigations and the duties of states in connection with these – but their targets in the fair treatment debate missed the point at issue.

Nevertheless, a drafting group was constituted and tasked to draw up the guidelines. It did not take long to discover that major differences of opinions exist, especially between the seafarers' and the shipowners' side as soon as definitions of the criminality of seafarers were required, the cost of maintaining them while under investigation and the scope of the working group's terms of reference itself. In the event, the drafting group gave up the effort and the plenary session resumed on the second day. It was then realised that agreeing meaningful guidelines was beyond the capability of the working group in one short session. The issues were too serious and complex to be hastily drafted in a form that would in all probability, be rejected by the Legal Committee. The moral and PR momentum already gained

in the quest to obtain fair treatment for seafarers could be lost if the official attempt falls at the first hurdle.

With the assistance of the secretariats, a resolution was drafted for the next IMO Assembly and the governing body of the ILO stating the importance of the problem for the international maritime community and the need to find remedies consistent with the obligations of all parties concerned with a maritime accident. The resolution recognised 'the established rights of states to prosecute or extradite in accordance with international laws those accused of criminal behaviour... that states should conduct investigations into maritime accidents... that the issue of fair treatment of seafarers is the direct responsibility of the port or coastal states, flag states, the state of the nationality of the seafarer, shipowner and seafarers... that recommendatory guidelines are an appropriate means of establishing a framework of legal certainty and consistent good practice to ensure that, in connection with maritime accidents, seafarers are fairly treated and their rights are not violated [and] that given the global nature of the shipping industry, seafarers need special protection.'

It urges all states 'to respect the basic

human rights of seafarers involved in maritime accidents... expeditiously to investigate maritime accidents to avoid any unfair treatment of seafarers... to adopt speedy procedures to allow the prompt repatriation or re-embarkation of seafarers following maritime accidents. 'It invites member governments and non-government organisations with consultative or observer status in IMO or ILO, as appropriate, to record instances of unfair treatment of seafarers in the event of maritime accident and to provide data to the IMO and ILO whenever requested.'

Agreement was reached on the establishment of a correspondence group to continue the process and find common ground on which to build the guidelines during the coming months. This year's IMO Assembly may see them in acceptable form; if not, the 2007 Assembly will certainly do so.

The conceptual differences must disappear if we all want the same thing from the working group. Much goodwill and even more understanding will have to be displayed by all parties to tease out what is central to the fair treatment issues. However, I believe the future is bright because words and solutions will be found to write good guidelines that states will come to accept and observe.



GUERNSEY HARBOUR MASTER (DESIGNATE)

The Public Services Department, which is responsible for the control and operation of the Guernsey harbours of St Peter Port and St Sampsons, is seeking an experienced Master Mariner or a person with equivalent qualifications to succeed the present Harbour Master on his early retirement in August 2005.

The Harbour Master is responsible for the administration and operation of the harbours and other maritime affairs, including Search and Rescue Co-ordination and Registrar of British Ships.

The successful applicant would start the handover in early May 2005 and take over from the Harbour Master in due course.

Applicants must be in possession of the appropriate Guernsey residential qualifications in order to be eligible to apply for this post.

Further details and an application form can be obtained from the Harbour Master, Harbour Authority, St Peter Port, Guernsey, telephone 01481 720229 or email guernsey.harbour@gov.gg

Salary Scale: £56,121/63,280

Closing Date: Applications should be submitted to the Head of Human Resources, Policy Council, Sir Charles Frossard House, La Charroterie, St Peter Port, Guernsey, GY1 1FH to arrive no later than 31 March 2005.