

REPORT to IFSMA
on *Fair Treatment of Seafarers* issue at the IMO
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This is a brief report on the Fair Treatment of Seafarers at the IMO. IFSMA's involvement with the issue has been considerable from the beginning and is continuing. We are having substantial goodwill and support from government and observer delegations alike during formal sessions and when discussing the subject with them informally. The Secretariats of the IMO and the ILO are actively assisting in the process by having facilitated the establishment of a Joint IMO/ILO Ad Hoc Expert Working Group on the Fair Treatment of Seafarers (to give its official title) that had its first meeting last January. The issue is now firmly on the agenda of both organisations.

The first meeting of the working group accomplished little apart from agreeing that the task of drawing up guidelines on the fair treatment of seafarers is more complicated than at first thought. Different concepts advocated by that many delegations as to what the guidelines should contain only contributed to the confusion evident in the debates. The objective assessment of what is needed from the seafarers' point of view, i.e. prompt release, was lost sight of in the recital of instances of criminalisation, duties of states and who should pay for the accommodation when of seamen are detained or prevented from returning to their own country. In the end we managed to produce a draft resolution that contains the bare bones of the future guidelines by including references to most of the objects and concepts delegations put forward.

A brief history for the record: IMO Council, at its 92nd session, had approved this new item on the Legal Committee's work programme to develop guidelines on the fair treatment of seafarers and agreed that a joint IMO/ILO working group should be established. The ILO Governing Body, at its 290th session (June 2004) had similarly approved the establishment of the working group on the *Fair Treatment of Seafarers in the event of a Maritime Accident*, as a tripartite body. The words in italics became the term of reference when the Legal Committee of the IMO, at its 89th session, accepted it and agreed to the establishment of joint working group. Eight country delegations are representing the IMO and the social partners of the tripartite body are the seamen and the shipowners. Other delegations were invited to attend sessions of the working group and many are doing so making valuable contributions to the deliberations.

IFSMA, India and Brazil made written submissions to the Legal Committee which were passed by that committee on to the joint working group for consideration. IFSMA's document, and its annex, contained legal justification, under international law, for the fair treatment of seafarers and a proposal for a body of principle for the protection of seafarers under any form of detention following a marine accident or maritime incident or commercial dispute involving their ship and/or her cargo. India's

submission urged the creation of an international instrument to deal with the fair treatment issue while Brazil's document drew attention to cases of possible criminalisation of seafarers serving on board an abandoned ship that may cause damage to persons, property or to the environment. The working group received additional submissions that were duly discussed at its first meeting but without conclusions as to the shape and form of the guidelines.

The 90th session of the Legal Committee (April 2005) had not much time to deal with the fair treatment issue. The report of the joint working group was noted and the draft resolution approved. The committee was also asked to consider the need to clarify the terms of reference. IFSMA submitted three further papers to Legal Committee: One asked it to expand the term of reference to include contingencies within public and private law domains encountered by seafarers, shipmasters in particular, in the course of their employment. This was in line with our earlier submission because we believe that the restriction of the terms of reference to 'maritime accidents' was inadequate in the real world of shipping today. Although there is support from a number of delegations for the inclusion of commercial disputes that may penalise seamen, just as many delegations were against such inclusion. However, there is consensus that the terms of reference will have to be expanded or at least explained. This will be done in the coming months and drafted into the guidelines.

Our second paper dealt with the open issues, thrown up during discussions in the working group. The most important of which is possible legal and procedural mechanisms of prompt release from detention or other form of restriction on the seafarer's movement within the state conducting the investigation or inquiry into a marine casualty or oil spillage. We also asked the Legal Committee to advise the working group to include in the guidelines words and expressions to the effect that seafarers must not be used as human tools to gain or force compliance with private or public obligations on the part of the shipowner, charterer and/or their insurers or on the part of the flag state. The third paper from IFSMA informed the Legal Committee of the five key resolutions passed at IFSMA's two-day conference in February on the criminalisation of seafarers.

Henceforth, the real work will be done by the intersessional correspondence group (agreed to by the working group at its first meeting) where every interested delegation may contribute. We hope to set up a dedicated web-site and e-mail address for documents, comments, etc. to be collected. There is a five day meeting of the working group scheduled for January 2006. The correspondence group will have done its job by then and at that meeting a set of guidelines will be formulated and agreed. In the spring of 2006 the Legal Committee of the IMO will have to approve the guidelines in order for them to be promulgated to states. If that happens as planned, we have done well.