

SUBMISSION TO ICONS

from

THE CENTER FOR SEAFARERS' RIGHTS

NEW YORK September 15, 2000

Hon. Peter Morris
International Commission on Shipping
PO Box 162 Civic Square
Canberra ACT
Australia 2614

Re: Center for Seafarers' Rights Submission

Dear Mr. Morris:

I share your observation that most members of the maritime community want to see quality in shipping. However, we, like many others, are frustrated that despite numerous seafarers' protections in the general maritime law and comprehensive international instruments and national legislation designed to protect ship's crews, substandard operators continue to jeopardize seafarers' lives, health and well-being. I am hopeful that the International Commission on Shipping will propose measures that will improve the lives of the world's seafarers.

We have looked at some of the issues that you are considering. I am enclosing some of the documents that we have produced, hoping that they will be useful to you.

In addition to the enclosed documents, please consider the following general observations:

- Access to justice. Despite numerous legal provisions in national and international laws, seafarers are often denied justice because they cannot afford lawyer counsel. The high cost of litigation makes it impossible for many seafarers to protect their rights in court.
- Criminal sanctions against ship's owners. Unscrupulous ship owners and operators can operate with impunity because crews cannot afford to initiate civil actions against them and criminal sanctions rarely apply to them. For example, under United States federal criminal laws, there are crimes that prohibit ship's masters and officers from abandoning or mistreating crews, but there are no such sanctions against ship's owners or operators who engage in the same conduct.
- Flag hopping. There are no international standards for a flag state to register ships under its flag, to transfer ships from one register to another or to expel a ship from its

register. This void in international standards has left many seafarers without an adequate authority to protect their rights.

- **Losing the Right to Fly the Flag of a State.** When vessels do not comply with the standards of a registry, some registries expel the vessels, rather than taking appropriate measures to correct deficiencies. Such drastic actions have grave consequences for seafarers and for port states because the vessel then becomes stateless. When a stateless vessel is abandoned in a foreign port, seafarers' have no effective mechanism to enforce their claims and return home. The port state is then saddled with the responsibility for caring for the crew and dealing with the abandoned vessel. Such vessels often have many SOLAS and MARPOL deficiencies that threaten the port states safety and environment.
- **Transfer of the flag of a Ship to Another Register.** In some cases, unscrupulous shipowners evade their obligations to their crews and creditors by transferring the flags of their vessels. Shipowners can do this because there are inconsistent flag state procedures and requirements for registering and discharging vessels, and there is no international system to ensure that flag state requirements are met before shifting flags. In some states, a vessel cannot be removed from a register until all of the vessel's liens and enforcement actions have been satisfied. In such cases, flag states typically require that a "deletion certificate" or "certificate of discharge" be issued before it can leave the register. This is to ensure compliance with flag state actions and to protect lienholders. In other states, ships cannot be registered unless the owner certifies that there are no outstanding liens or enforcement actions, but the flag states do not verify whether the owner's certification is accurate. In still other states, there are no requirements for the applicant to verify that there are no outstanding liens or enforcement actions, and hence, no requirement for the flag state to check the vessel's status. The situation is further complicated by some states that allow vessels to leave their registry with few formalities or with the need to clear all debts.

If I can be of any assistance to the Commission's proceedings, please do not hesitate to contact me.

Sincerely,

Douglas B. Stevenson
Director

Intervention
by
Douglas B. Stevenson
to the
Meeting of States Parties to the United Nations Convention on the Law of
the Sea
May 21, 1998

Good afternoon. My name is Douglas Stevenson, and I represent the Seamen's Church Institute of New York and New Jersey. As this is our first opportunity to address the Meeting of States Parties, I would like to express our appreciation to the States Parties for having accepted us as observers to this important meeting.

The ocean can be a dangerous, unruly and unpredictable environment. The international community looks to the United Nations to help create order out of chaos and to encourage the rule of law on the seas through the Law of the Sea Convention and through this meeting of States Parties.

We, at the Seamen's Church Institute are particularly concerned about the health and well-being of the world's men and women who toil in the workplace of the seas. We hope that we can assist the States Parties in their deliberations by sharing the insights and experience that we have gained through our international programs of hospitality, professional training and legal assistance.

In May of 1995 we organized a roundtable discussion on modern-day piracy. We brought together a broad group of interests, including shipowners, government agencies, seafarers, trade unions, security experts, legal scholars and representatives from pirate producing countries to exchange views on the growing worldwide piracy phenomenon. At the end of the roundtable, we concluded that:

1. Seafarers and the maritime industry were threatened by a growing piracy problem in many parts of the world.
2. Existing legal definitions of piracy needed to be updated to reflect modern piracy practices.
3. The extent of the piracy problem was not well understood because piracy incidents were under-reported.

Now, three years later, seafarers are still threatened by pirates in many parts of the world. Piracy definitions are still inadequate to define and prosecute pirates. And, under-reporting still persists.

Pirate attacks occur with alarming frequency in many parts of the world. In South East Asia, ships steaming through narrow straits are attacked by pirates from small high-speed vessels. In South America and West Africa, armed attackers board ships anchored awaiting entry into ports.

Merchant vessels steaming close to the coast of East Africa are attacked by armed speedboats. Pirates usually threaten crewmembers and steal what they can carry away from the ship's safe, crew's possessions, and high value cargo. There have been cases reported in Asia where pirates have hijacked ships, sold their cargo and then sold the repainted ship under another name, the original crew having mysteriously disappeared.

To mariners who have been victims of these attacks, pirates are not fictional characters. They are vicious outlaws who have forcibly invaded their quarters, stolen their property, killed and injured their shipmates, and left them emotionally scarred.

It is of little solace to the victims of these attacks that in most cases their attackers can not be brought to justice as pirates under current law. Classical definitions of piracy require that the crimes must occur on the high seas and be for private ends. Today's pirates plunder, maim and kill with impunity in the territorial seas of many countries. In some countries there is no effective government to protect their waters from pirates, and the pirates apparently attack for political rather than private ends. In other countries there is a lack of political will or financial resources to combat piracy. In still other countries, there are suspicions that pirates operate with governmental complicity. In each of these situations, there needs to be new mechanisms not found in current international law to combat piracy because clearly the coastal states are not maintaining order in their seas.

The reported cases are chilling reminders of the risks that mariners endure in their profession. However, even more frightening is the fact that pirate attacks are grossly under-reported. There are a variety of reasons for this. Reporting a pirate attack to local authorities can result in detaining the vessel for a lengthy investigation – sometimes requiring bribes to free the ship. Some companies may fail to report piracy losses because they are afraid that reporting piracy losses could damage their commercial reputation. In some cases, losses due to piracy are reported as other losses when insurance policies do not cover piracy losses. Local officials may discourage reporting piracy attacks in an attempt to burnish their nation's reputation and to protect their tourism industry.

Piracy attacks may well persist because there is little commercial or official incentive to put a stop to them. As one commentator noted: "since pirates tend to go for the crews more than they attack ships and cargoes, there is sadly little profit in piracy prevention."

Law enforcement authorities put a low priority on fighting piracy because under-reporting miscalculates the extent of the problem, because the victims are primarily transient foreign mariners and because shipping companies appear to accept piracy losses as a reasonable cost of doing business. A modern container ship operator can easily lose \$25,000 to \$50,000 a day for each day a ship is detained. The pecuniary loss that a ship operator may suffer from a pirate attack could be a fraction of the losses that would occur in delaying a vessel for law enforcement purposes.

When we had our roundtable on piracy in 1995, we were very concerned about the violence and losses seafarers were suffering at the hands of pirates. Now, 3 years later, we are even more concerned because the problem seems to be increasing and the level of violence seems also to be rising.

Piracy losses may be a reasonable cost of business for some ship operators but it is not a reasonable cost for mariners. Crewmembers are the chief victims of piracy. They lose their property and lives to pirates. They are physically and emotionally scarred from pirate attacks.

A shaken seafarer recently came into our center in Port Newark to talk to one of our chaplains. The man was demoralized and distraught. He had been a victim of a pirate attack where he was forced to hand over his money, watch and wedding ring. He wanted to know if his shipping company would compensate him for his loss. A quick phone call confirmed that he would be paid for the value of his

property, but nothing could possibly compensate him for his having to give up his wedding ring and the trauma he suffered. He told us that because of the experience, he would never sail again.

What is needed now is to take a new look at the definition of piracy and for countries that are victimized by piracy to take tough measures to protect their ships and crews - even for acts that occur in the territory of other countries.

The international community must work together to find new ways protect vulnerable crewmembers from the threat of pirate attacks. I urge you to put a high priority on international efforts to eradicate piracy and to keep this issue prominently on the United Nations' agenda.

We are also concerned about several other issues that relating to the Law of the Sea Convention. Time does not permit me to explore each of these in detail now but in future meetings we hope that the States parties will consider:

- ◊ The physical and mental abuse, including brutal beatings and even murder that occurs on deep sea fishing vessels, especially those with multinational crews;
- ◊ The prolonged detention of the crews on fishing vessels that have been seized by port authorities for fisheries violations;
- ◊ The problems of repatriating seafarers who have been left stranded in foreign ports by their ship's owners;
- ◊ The effects of drug smuggling on merchant vessel crews;
- ◊ The failure of flag states to comply with their duties under Article 94 of the Convention; and
- ◊ Port state polices that conflict with the Article 98 duty to render assistance to persons in distress at sea.

I will conclude with a case that illustrates some of these issues:

Late last November a dangerously overloaded cargo vessel sank in the Caribbean. The crew was rescued by a passing tanker and taken to the tanker's next port of call. When they arrived in port, the shipwrecked victims were paroled by the port state's immigration authorities into the custody of the rescuing vessel's agent. The rescuing vessel, facing a large fine if any crewman broke the terms of the parole, detained the crew under armed guard in a motel. The owner, who had no money and no insurance, refused to pay the men their wages or repatriation. The flag state of the shipwrecked vessel refused to follow its own law requiring the repatriation of all the shipwrecked crew. The crew was locked up like criminals until Christmas Eve when they were eventually repatriated. The flag state repatriated only its own citizens. The remaining seafarers were repatriated by the port state under the condition that they could never return to that country until they repaid their repatriation expenses (which amounted to about 3 months wages per crewmember).

The rescuing vessel, meanwhile, incurred approximately \$15,000 in expenses for feeding, housing and guarding the crew that it had rescued.

This case is disturbing because all of the laws, customs and conventions that exist to protect seafarers and to encourage search and rescue were not followed when it was time to implement them.

The Law of the Sea Convention creates a legal framework that addresses a variety of interests. Let us never forget that the most important of these interests is to protect the safety and well-being of the people who work and travel on the seas.

Intervention
by
Douglas B. Stevenson
to the
Meeting of States Parties to the United Nations Convention on the Law of
the Sea
May 28, 1999

Good afternoon. My name is Douglas Stevenson, and I represent the Seamen's Church Institute of New York and New Jersey.

Mr. President, I appreciate your giving us this opportunity to speak to share some of our thoughts with you today. I realize that you have a very busy agenda and that the meeting has been struggling with a number of tough issues.

We appreciate your hard work because the peace and prosperity on three quarters of the world depends on your effectively implementing the Convention and on your adapting the Convention to meet changing circumstances and needs.

The ocean can be a dangerous, unruly and unpredictable environment. The international community looks to the United Nations to help create order out of chaos and to encourage the rule of law on the seas through the Law of the Sea Convention and through this meeting of States Parties.

In its early development, long before the Law of the Sea Convention and long before the first written codes of the sea, the most notable feature of maritime law was the protection it accorded to ships' crews. The ancient maritime codes granted seafarers numerous rights that were very progressive, even by modern standards. One of the earliest written codes, the Rules of Oleron, was written in the thirteenth century. It provided sick or injured seafarers free medical care, living expenses and wages during their recuperation. Our present-day doctrine of maintenance and cure is almost identical to the Oleron code written seven centuries ago. The maritime code of Barcelona, also developed in the middle ages, required shipowners to feed their crews bread every evening, meat three times a week, and wine twice daily three times a week. Other ancient maritime codes provided for the rights of seafarers to be paid wages, given shore leave, and to be repatriated.

The ancient maritime laws provided these broad protections for seafarers, not out of a sense of charity or magnanimity, but rather out of a recognition of the simple fact that orderly and reliable seaborne commerce depended on encouraging competent people to work on ships and to protect their lives and livelihood once there.

In later years, the focus of maritime law moved away from promoting efficient and practical commercial interests and protecting people. It attempted to accommodate the differing interests of coastal states, flag states, exploiting the ocean's resources and maintaining freedoms of navigation.

And, the result is that maritime law has become extraordinarily complex, as is demonstrated by the contents of the United Nations Law of the Sea Convention.

The Law of the Sea Convention creates a legal framework that addresses a variety of interests. However, the most important objective of this regime, and any other regime, is to protect the weak and the vulnerable. I don't want to suggest that seafarers are weak. They are tough, highly skilled professionals, but they are very vulnerable. We see their vulnerability through the cases that we, and others, deal with on a daily basis.

When I spoke with you last year about modern day piracy, I described how seafarers are still threatened by pirates in many parts of the world and urged you to put a high priority on international efforts to eradicate piracy and to keep this issue prominently on the United Nations' agenda. Now, a year later, I am sorry to report, the piracy problem has grown even worse. According to data from the International Maritime Bureau, not only are there more reported piracy incidents, but the incidents have become more violent.

The IMB reported that pirates hijacked the Panamanian bulk carrier *M/V Cheung Son* in the South China Sea. Seven pirates arrested by Chinese authorities confessed that they gathered the twenty-three crewmembers on deck and shot them. They then bound and weighted the bodies and threw them overboard. Six crewmembers' bodies were recovered in the nets of Chinese fishing vessels.

In another incident, a hijacked ship, the Panamanian general cargo vessel *M/V Tenyu* was discovered operating in a Chinese port with a different name with a new crew. The fate of the original fourteen crew on board the ship is unknown and they are feared murdered.

Countries that are victimized by piracy need to take tough measures to protect their ships and crews - even for acts that occur in the territory of other countries. This will involve taking a new look at the definition of piracy. The international community must work together to find new ways protect vulnerable crewmembers from the growing threat of pirate attacks.

We are also concerned about several other issues that relate to the Law of the Sea Convention.

Abandoned ships are another escalating problem. Last year my office dealt with fourteen ships that had been abandoned by their insolvent owners leaving their crews without pay, food, water, fuel or the means to go home - and the cases that we learn about are just the tip of the iceberg. Although Maritime law theoretically provides remedies for seafarers caught in such circumstances, the remedies are often beyond their reach. In many cases, crews cannot afford to pay litigation costs, legal fees or to support themselves during protracted legal procedures that would be required to avail themselves of the law's protections.

Whenever a ship is abandoned, it is devastating to the crew and, I might add, shameful for the entire maritime industry. It is hard for me to describe the desolation on one ship I visited in Yalta, Ukraine last fall. The crew of the ship - proud, highly trained, hard-working men - had been reduced to beggars in a country far from home, totally demoralized, dehumanized and dependent on handouts and charity for their survival. Their ship's owner, operating out of a Western European capital, had stopped paying crew wages, crew medical expenses, and for food, water and fuel. And, of course there was no money available to repatriate the crew.

In this case, and with other cases like it, the shipowner's ability to avoid flag state scrutiny was facilitated by the ease with which he could jump from flag to flag. We need to look beyond the

requirements for granting nationality to ships to how ships lose their nationalities and who is responsible for crews of ships that have lost or changed their nationality.

Present in every abandoned ship case, and also in other situations, is the problem of repatriating stranded seafarers. You would think that there would be no repatriation problems, given the many layers of insurance cover, flag state and port state laws providing for repatriating seafarers. Sadly, there are many gaps in the laws and in their implementation that result in destitute crews relying on charitable donations to pay their way home to their families. We recently prepared a report on repatriation that exposed this escalating problem and proposed innovations to both prevent and resolve it. Some of the most interesting proposals, which came from the maritime industry, called for such things as creating super-priorities for other claimants to pay repatriation expenses and new insurance provisions that would cover repatriation expenses. Their implementation would require leadership from the states parties and the maritime industry. I can provide copies of the report to any interested delegation.

On May 11 of this year we rejoiced when we received news that four Ukrainian seafarers who had been held hostage on the *M/V Dubai Valour* for almost two years had been released.

In July 1997 the *M/V Dubai Valour* lost a small amount of cargo in heavy weather while sailing from India to Nigeria. When the vessel arrived in Port Sapele, Nigeria in late July 1997, the cargo owner, a Nigerian businessman, claimed a \$17 million loss, for cargo that was worth only about \$200,000. Although acceptable security was provided to the Nigerian court that would allow the ship to leave Nigeria pending adjudication of the claim, the cargo owner used armed force to hold the ship and crew hostage. Twenty-three of the crew were released last September. The remaining four, the master, chief mate, chief engineer and radio officer, were held hostage on the ship, deep in the interior of Nigeria, without proper medical care, food or water, and without visitors for more than one and a half years. They were kept prisoner merely to extort money out of an insurance company for a cargo claim. Except for a few dedicated people and states, their plight had gone unnoticed by the maritime industry and the general public.

While rejoicing that the men have returned home safe and free, we are ashamed that in this day and age, innocent seamen could be held hostage for a commercial claim in brutal conditions, deprived of their families, friends and normal living for almost two years in defiance of the rule of law and humanity while the law and the community of nations stood by powerless to come to their aid.

This case above all others that we dealt with this year cries out to the community of nations here assembled that we must return to our roots in maritime law and refocus our attention on protecting the men and women whose workplace is the sea. We need a practical, effective and uniform regime that will protect them and all of us who so depend on their labors.