

CONCLUSIONS

ON CRIMINALIZATION OF SEAFARERS

The organizers of the Round Table: Ministry of the Sea, Transport and Infrastructure of the Republic of Croatia; Croatian Shipowners' Association - Mare Nostrum; Seafarers' Union of Croatia and Croatian Maritime Law Association; held in the Port City of Zadar on the 17th April 2009 decided to announce their conclusions on criminalization of seafarers in an effort to contribute to the improvement of the treatment of seamen in criminal proceedings, which - as illustrated by publicised cases - often puts the seamen not only in an unjustifiable, but even in an absurd position.

The observers of the Round table were representatives of IMO, ILO, CMI, ITF and ICS/ISF, who presented what their respective organizations or institutions have done in protection of seafarers. However, the organizers emphasize that the representatives of the International Maritime Organization and the International Labour Organization, as international civil servants who work in the secretariats of these intergovernmental organizations, were not in any way involved in discussing, drafting or adopting the text of this declaration.

Background

- (1) Croatia is a country with a long maritime tradition. The medieval Croatian cities developed legal systems which regulated navigation and seaborne trade with great understanding of their nature and needs. Specialised maritime judges (*iudicibus maris*) had inspectional and judicial powers in supervising and regulating maritime matters.
- (2) A great number of Croatian seafarers serve on the international fleet and unfortunately some of them have appeared in the mentioned judicial cases in which after lengthy proceedings under the absurd charges they were finally acquitted.
- (3) Being aware of the peculiar position of the seafarers depicted in "The Guidelines on Fair Treatment of the Seafarers in Event of a Maritime Accident", individual human dramas suffered by the seamen and their families, need of motivating, educating and training the crew to work and behave as expert professionals, the participants believe that counterproductive proceedings under the absurd charges against seafarers should be avoided. Such cases are a bad advertisement for young, hard working, promising people considering seagoing careers as their choice of profession.

Conclusions

- (4) In analysing recent criminal proceedings in widely publicised cases the participants came to the conclusion that a lack of basic knowledge and understanding of shipping is the main

reason for unfounded charges and unjust court decisions which have sparked world wide criticism and protest.

- (5) It is impossible to judge or apportion blame for a maritime causality or any other offence relating to shipping without a proper understanding of shipping operation, practice, technology and the role of seamen within the framework of their duties and objective limits.
- (6) The unit of measure for criminal recklessness or negligence of a seaman is the state of mind of the accused seaman compared to the would-be state of mind of a *reasonable* seaman in the similar situation. The test states:

A person acts recklessly ... when he/she consciously disregards a substantial ... risk ... its disregard involves a gross deviation from the standard of conduct that a *reasonable person* would observe in the actor's situation.

A person acts negligently with respect to a material element of an offense when he/she should be aware of a substantial and unjustifiable risk ... that the material element exists or will result from his/hers conduct. ... The risk must be of such a nature and degree that the actor's failure to perceive it ... involves a gross deviation from the standard of care that a reasonable person would observe in the actor's situation.

Only shipping experts could judge and explain to the prosecutors and the court what a reasonable seaman would have done in the given circumstances of a suspected crime.

- (7) It is therefore recommended that maritime experts are always involved at the very early stages of any criminal investigation to give expert evaluation of the facts and advise the prosecutors and the court about all aspects of the case in respect of knowledge and understanding of shipping practice, technology, crews' responsibilities and their reasonable ability to take action. This is required in order to comprehend what happened and who had to do what to avoid or minimise the consequences of a purported criminal act. In the case of a maritime accident no charges should be brought against any seaman until findings of an official maritime enquiry conducted by the relevant state have been published strongly indicating the existence of criminal liability.
- (8) The participants believe that a resolution rising awareness for the necessity of shipping expertise in criminal matters involving seafarers and furthermore, calling for the introduction of experts in the criminal investigations and trials would contribute to improving the quality of criminal proceedings and would help to ensure that such cases are conducted fairly and justly. In addition the resolution should:
 - a. Establish a pool of independent shipping and transport experts, under the auspices of IMO or other international body, to assist in the early stages of criminal investigations and trials.
 - b. Lay down guidelines on the method of bringing in these shipping experts, obtaining their opinion and using them as consultants throughout criminal proceedings involving crimes or offences related to shipping.
 - c. Stress the principle that the ship officers in particular the master cannot be prosecuted under the "command liability" which boils down to the principle that the master is in charge of the ship and therefore responsible for whatever happens in respect of the ship. In a judgement criminal responsibility of a master was based on the fact that he was in charge of the ship and under Shipping Code Act responsible for loading the cargo, and therefore is guilty for smuggling of drugs hidden into a few boxes of among over 180.000 similar boxes loaded on board by the stevedores.

- d. Make sure that adverse consequences for the seamen do not continue after he or she is acquitted. A fully acquitted master is as a consequence of the trial still black listed and can not enter EU and US therefore, despite being acquitted this master cannot sail and earn a living. In the case discussed the master spent over a year in jail during investigation and trial, after which he was acquitted of the original charges but because of the time spent in jail he was accused of violating EU law for exceeding the permitted duration of allowed stay in the country. Isn't it a culmination of absurdity?

- (9) In addition, the Round table accepted suggestions from the ICS/ISF that action should be taken for:

- Unifying national laws, based on the internationally agreed standards in MARPOL and UNCLOS, so that seafarers have the security of uniformity and certainty as to how their conduct and actions will be determined under the applicable law;
- Ensuring that national or regional legislation such as EU Directive 2005/35/EC on Ship-Source Pollution (and Article 4 and 5 in particular) will not result in conflicts with States' international treaty law obligations under MARPOL and UNCLOS by interpreting such legislation in a manner consistent with these international treaties;
- broadening the scope of the IMO/ILO Guidelines on Fair Treatment of Seafarers in the Event of a Maritime Accident so that they are applied to all cases where a seafarer is detained or charged for alleged wrongdoing concerning the operation of a ship;
- Agreeing a mechanism to monitor the implementation of the IMO/ILO Guidelines on the Fair Treatment of Seafarers.

- (10) At the end of the session the attention was also drawn to the risk of piracy which has to be taken seriously and eliminated through international action.

It is worth highlighting that a number of pirates caught in the act of piracy have been released because of the lack of legal authority for their prosecution. It is appreciated that we have to be sensitive to any illegality or injustice even against the pirates, but on the other hand, we have to be sensitive when illegality or injustice is done to the seamen of the international merchant fleet who work in a difficult environment in accordance with the standards of their profession to ensure that people across the globe get the goods and services that they need.