INTERNATIONAL MARITIME ORGANIZATION

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SUB-COMMITTEE ON STANDARDS OF TRAINING AND WATCHKEEPING
37th session
Agenda item 4

STW 37/4
1 August 2005
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UNLAWFUL PRACTICES ASSOCIATED WITH CERTIFICATES OF COMPETENCY

Revised reporting format on fradulent certificates

Note by the Secretariat

SUMMARY

Executive summary:	This document considers the legal implications for the Organization relating to the publication of the nationality of the individual holding a fraudulent certificate
Action to be taken:	Paragraph 4
Related document:	STW 36/17

1 The Sub-Committee, at its thirty-sixth session (10 to 14 January 2005), considered the advice from the Legal Division of the Secretariat (STW 36/4/1) and agreed that it was not appropriate to include the name and passport number or other identification of the individual holding a fraudulent certificate in the report published by the Secretariat.

2 The delegation of Cyprus, supported by others, was of the opinion that if the nationality of the individual holding a fraudulent certificate was included in the report published by the Secretariat, it would assist Member Governments in gaining information that could eventually lead to a prosecution. The Sub-Committee agreed that this should be further discussed at the next session, after the IMO Legal Division had examined the matter in detail (STW 36/17, paragraph 4.8).

3 The Legal Division of the Secretariat has examined the position of, and the implications for the Organization if such information were to be published and its advice is set out in the annex.

Action requested of the Sub-Committee

4 The Sub-Committee is invited to note the information provided and take action as appropriate.

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ANNEX

ADVICE FROM LEGAL DIVISION

Background

At its thirty-sixth session, STW agreed it was not appropriate to include the name and passport number or other identification of the individual holding a fraudulent certificate in the report published by the Secretariat (STW 36/17, paragraph 4.7); however, one delegation suggested it might be useful if the nationality of the individual holding a fraudulent certificate was included in the report. The Sub-Committee agreed that this should be further discussed at the next session, after the IMO Legal Division had examined the matter in detail (STW 36/17, paragraph 4.8).

Opinion

If our understanding of the proposed system is correct, when a fraudulent certificate is discovered, the nationality of the individual holding the document would be included in the report to be filed with the Secretariat which in turn would compile a summary report for presentation to the Sub-Committee. The result would be a statistical picture which suggests, hypothetically, that during a particular period of time persons with the nationality of State X were found with fraudulent certificates, say, 50 times, while persons with nationality of State Y were found with such certificates, say, two times, while persons with the nationality of State Z were not found with such certificates at all during the same time period. In this example, a simple statistical comparison would create a negative impression regarding State X and a positive impression regarding State Z, even though (a) the circumstances may have more to do with the number of seafarers from State X than the fact that seafarers from that State were more likely to hold fraudulent certificates than those from other States, and (b) it is possible that a particular port State may be checking for and reporting fraudulent certificates more vigorously than other port States, when ships with seafarers from State X have made more frequent port calls to that port State than ships of other flag States and/or with crews from other countries.

Misuse of statistics could be mitigated to some extent with careful explanatory analysis. Furthermore, it is possible to include a disclaimer in an IMO summary report which identifies the source of the information and indicates it is outside the Organization’s control. However, even with these mitigations, the risk of misinterpretation remains and there is a risk that seafarers from any State whose seafarers show up in the reports in disproportionate numbers might be adversely affected on matters related to recruitment and employment.

Conclusions

The reporting of nationality in itself does not seem to us to raise the same legal concerns as those relating to personal data. We have only used the above hypothesis to suggest the decision on whether or not to include nationality in reports rests largely on policy rather than legal considerations.

Since the reporting of nationality potentially has implications for Member States, it is strongly recommended that before including such information in the reporting format, explicit concurrence is sought from the Council.

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