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Statement to the United Nations Open-Ended Informal Consultative Process on Oceans and the Law of the Sea June 2, 2003

Mr. Chairman,

Thank you for letting us participate in these important consultations. I represent Human Rights Watch, an international organization monitoring human rights issues in some seventy countries.

There are several issues involving shipping that are relevant to our work: the human rights of seafarers, the rights of stowaways and migrants and refugees interdicted or rescued at sea, and maritime arms transfers to human rights abusers. We hope that this forum will provide an opportunity to raise these concerns and to prompt further discussion.

The report of the Secretary General on Oceans and the Law of the Sea touches on some of our concerns. We will first discuss our interest in three general issues of wider relevance and then expand on specific human rights-related issues. We hope that they will merit further attention during this week's consultation and in future deliberations.

Flag State Responsibility

A key theme of the Secretary General's report is the responsibility of flag states to uphold international standards. The report rightly draws attention to the lack of implementation and enforcement, particularly by flags of convenience.

Flag state responsibility is a human rights issue. The failure of flag states to uphold their obligations facilitates human rights abuses against seafarers, migrants and refugees, and provides a permissive environment for weapons to be transported to destinations where they can contribute to gross human rights abuses.

We therefore encourage continued attention to efforts to better define flag state responsibilities and strengthen flag state enforcement and implementation. We join other civil society groups in drawing special attention to the proposal, at paragraphs 243 and 249, to define the requirement for a “genuine link” between the country of registration and the ship that flies that state’s flag.

Port State Control

Port states can help enforce international maritime standards. Their efforts to screen ships entering their ports do not substitute for effective flag state control but can provide an added level of protection. Moreover, actions taken with a view to enhancing port security can be useful from a human rights point of view. For example, greater diligence in inspecting cargo, checking for substandard ships, and monitoring conditions on ships could reduce the incidents of abuses associated with ships.

Along these lines, the Secretary General’s report, at paragraph 93, describes a measure by the European Commission to publish a blacklist of ships that have failed to comply with international standards. We would encourage making the list global and extending it to include ships and their personnel that have been implicated in human rights abuses or engaged in arms trafficking.

Crimes at Sea

Crimes at sea are another issue of concern. As noted in the Secretary General’s report, in Section V, the international community has begun to work to address crimes at sea with special attention to fighting terrorism and international organized crime. However, we believe that the type of crimes should also include labor rights violations, human trafficking, and the illicit transport of weapons. We believe that states should enhance efforts to prevent criminal activity, rigorously investigate suspected criminal activity, and prosecute the perpetrators.

Workers’ Human Rights

Human Rights Watch is troubled by persistent reports of workers’ human rights violations aboard ships, especially on ships that fly flags of convenience. For example, we noted with concern the International Labor Organization (ILO) study that found that respect for workers’ human rights varies widely among ships registered in different countries, that nonresident seafarers are discriminated against, and that labor-supplying states are rarely able to uphold effectively the rights of their nationals working on foreign-flagged vessels. These concerns are reflected in the Secretary General’s report, at paragraph 48.

We are encouraged that, in addition to the ILO, many organizations, including the International Maritime Organization (IMO) and trade unions, have focused attention on these issues, highlighted the responsibilities of flag states, and sought to protect the rights of seafarers by, for example, repeatedly calling attention to flag state responsibilities to implement and enforce international labor standards.

Stowaways and Persons Interdicted or Rescued at Sea

Another area of concern relates to stowaways and persons rescued or interdicted at sea. We welcome discussions about the responsibilities of states toward such persons, which can include migrants and asylum seekers. It is important to emphasize fundamental human rights principles that should guide state action in this area:

1. Comply with international refugee protection standards with respect to persons who may be fleeing persecution;
2. Afford special protections to victims of trafficking;
3. Uphold fundamental, core rights of undocumented migrants with respect to detention, procedural guarantees, and deportation;
4. Consistent with international human rights standards, no person—regardless of status—should be ill treated, subjected to arbitrary or discriminatory treatment, or returned to territories where there are substantial grounds for believing she or he would be in danger of being tortured;
5. Immediate humanitarian assistance should be provided to people in distress

We encourage you to reflect further on these principles as they relate to developments in the law of the sea. For example, there is a need to broaden the responsibilities of states with respect to asylum seekers rescued or interdicted at sea and to secure an agreement to facilitate the landing of such persons. We also draw attention to the distinction between undocumented migrants and persons who are trafficked for the purpose of forced labor, as addressed in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Trafficking Protocol), supplementing the United Nations Convention against Transnational Organized Crime

We welcome the fact that inter-agency deliberations on the rescue of persons in distress, as described at paragraph 95 of the Secretary General's report, have addressed rights issues. We hope that future meetings elaborating on these issues will provide an opportunity to consult with individuals and organizations with expertise in the areas of migrant rights, refugee rights, and trafficking.

Arms Transfers

We are also concerned that ships are sometimes used to transport arms in contravention of existing legal standards, including arms embargoes. Such arms transfers facilitate gross human rights abuses in many regions of the world. However, very little attention has been paid to this serious problem. The Secretary General's report recognizes at paragraph 87 that some ships are engaged in arms smuggling. It does not, however, elaborate further. We hope that future reports will provide more detail about this problem.

Other issues raised in the report, however, are also highly relevant to arms transfers. For example, requiring more detailed cargo declarations, enhancing risk assessment and cargo inspections, improving transparency regarding ownership and ship identity, and creating disincentives for the use of substandard ships could help ameliorate the problem of irresponsible and illicit arms transport.

One issue the Secretary General's report does not mention, but that also warrants attention, is the use of revenues from ship registries. In contrast, a U.N. expert panel on Liberia documented that such revenues had been used to finance illicit arms purchases.

Conclusion

Human Rights Watch is concerned about the role shipping can play in facilitating human rights abuses. We have just begun a research project to study the question of arms transfers by ship to human rights abusers. More generally, we see important opportunities to address these human rights issues in the context of the law of the sea.

In particular, we hope further attention can be paid to the following items:

1. Elaborate the responsibilities of flag states and the requirement for a "genuine link" between the ship and the flag state;
2. Strengthen port state enforcement of international standards, consistent with human rights norms;
3. Enhance efforts to prevent, investigate, and prosecute crimes at sea;
4. Protect seafarers' human rights;
5. Emphasize fundamental human rights and refugee law principles to guide action in the treatment of stowaways and the interdiction and rescue of persons at sea; and,
6. Examine the scope and extent of arms transfers by ship.

We also welcome the chance to take part of this process, and look forward to more attention on these issues. Thank you.