

20 December 2010

TO ALL MEMBERS

Dear Sirs

Venezuela – Illegal Narcotics onboard Vessels

The International Group supports efforts by all countries to prevent vessels being used to smuggle illegal narcotics. However, the International Group has become increasingly concerned with what appears to be the indiscriminate and disproportionate application of criminal law in Venezuela in cases where vessels have been targeted by drug smugglers for the carriage of illegal narcotics.

New legislation to regulate the investigation and potential prosecution of shipowners and crews in such circumstances recently entered into force on 21 October 2010. The “Organic Drugs Law” (“ODL”), repealed earlier laws and appears to increase the evidential burden and potential penalties imposed on shipowners and their crews.

We accordingly wish to draw Members’ attention to certain risks associated with trading their vessels to Venezuela.

It has become the usual practice of the Venezuelan authorities to charge the crew of a vessel on which drugs have been found with concealment and trafficking of narcotics. It appears that the most commonly used methods of secreting drugs on board vessels is by way of a diver attaching them to the vessel’s hull or security gratings or placing them inside the rudder stock spaces. While the prosecutor has the theoretical burden of proving beyond reasonable doubt the involvement of the crew in the concealment or trafficking of drugs, in practice this burden has been shown to be relatively easily discharged. Prosecutions under the previous narcotics legislation have resulted in a number of cases of seafarers being convicted and sentenced to substantial prison terms of 8-9 years without any obvious link being established between the activities of the crew and the presence of the drugs on board the vessel. Vessels and their cargo have also been confiscated by the courts. In other cases crews and vessels have been released without members of the crew being prosecuted but only after substantial periods of detention.

It also appears that little weight has been given to co-operation by the crew with the Venezuelan authorities, since the mere presence of drugs onboard a vessel has, in the great majority of cases, resulted in the detention of the vessel and crew and charges being brought against individual crewmembers.

The international shipping community has raised with the Venezuelan Permanent Representative to the IMO and individual members of the Venezuelan Congress, their concerns that the application of the law has unfairly resulted in innocent seafarers being detained, prosecuted and convicted, when their vessel has been targeted by drug smugglers without their knowledge.

Unfortunately it seems that the ODL, rather than addressing these concerns has introduced a more onerous regime.

Under the ODL a crew member will commit a crime if he is involved in the illicit traffic, commerce, sale and distribution, concealment, carriage by any means, storage or brokerage of illegal narcotics.

“Concealment” includes any actions related to the concealing or simulating the illicit possession of narcotics.

“Trafficking” includes the production, manufacture, extraction, preparation, offer, distribution and sale, delivery, brokerage, shipment, carriage, import or export of narcotics.

A seafarer convicted of an offence under the ODL is liable to imprisonment of between 15 and 25 years. This period of imprisonment represents a substantial increase in the terms prescribed by the repealed legislation. Moreover judges and prosecutors who are held not to have properly applied the legislation for a variety of reasons, are subject on conviction to terms of imprisonment ranging from 4 to 8 years.

The ODL, as did the repealed legislation, provides for the confiscation of vessels employed in the commission of an offence. At the request of the Prosecutor a judge may order the preventive seizure of a vessel concealing or trafficking narcotics for up to three months until a preliminary hearing, at which the owner must demonstrate a lack of intention to commit an offence. The effect of the ODL is to place the burden of proving such lack of intention upon the Owner. It is highly unusual to compel a party to prove a negative – in this case a lack of intention. It is not yet clear, what, if any, evidence would be accepted by the court as sufficient to discharge this difficult concept of “lack of intent”. However the IG is advised that factors which may assist an owner in discharging this burden would include:

- The fact that the vessel was on bareboat charter and the Owner had insufficient control over its use to form the required intention.
- The fact that the vessel was chartered (either on a voyage or time basis) and the Owner was not involved with the planning of the vessel’s itinerary.
- The existence of a third party management contract – particularly relating to the commercial management of the vessel – may also be relied upon to show an Owners’ “lack of intention”.

If, one year after the preventive seizure of the vessel, an owner has not entered an appearance or there is evidence that it has abandoned the vessel, the Prosecutor may apply for the vessel to be confiscated by the Venezuelan state.

The International Group and its industry partners all wish to work with the Venezuelan authorities in an effort to frustrate the activities of the narcotic traffickers and to ensure that vessels and their crews are fairly treated in circumstances where they have not been complicit in the concealment of drugs on board. As noted above, contact has already been made with Venezuela’s permanent representative at IMO and members of the Venezuelan Congress in this regard and efforts will continue to engage the relevant authorities in dialogue regarding this problem.

Yours faithfully
A BILBROUGH & CO LTD
(MANAGERS)

All Clubs in the International Group have issued a similar Circular.