

WORLD MARITIME UNIVERSITY
Malmö, Sweden

**THE SHIFT OF SEAFARING FROM
TRADITIONAL TO EMERGING
MARITIME STATES:
An Analysis of the Trends**

By

JABETH SENA JEPATH A. DACANAY
Philippines

A dissertation submitted to the World Maritime University in partial
Fulfilment of the requirements for the award of the degree of

MASTER OF SCIENCE

In

MARITIME AFFAIRS

(MARITIME ADMINISTRATION)

2003

DECLARATION

I certify that all the material in this dissertation that is not my own work has been identified, and that no material is included for which a degree has previously been conferred on me.

The contents of this dissertation reflect my own personal views, and are not necessarily endorsed by the University.

Signed:

Jabeth Sena Jepath A. Dacanay

Date:

29 August 2003

Supervised by:

Professor Proshanto K. Mukherjee
Course Professor, Maritime Administration/MSEP
World Maritime University

Assessor:

Mr. John Liljedahl
Lecturer, Maritime Administration/MSEP
World Maritime University

Co-Assessor:

Captain Pat Nawaratne
Senior Principal Surveyor
Cayman Islands Shipping Registry

ACKNOWLEDGMENTS

I wish to express my sincere gratitude and appreciation to a number of people who have unselfishly shared their valuable resources, time and effort, and who have provided me the inspiration, guidance, enlightenment, comfort and love while undertaking this dissertation.

To the seafarers of the world, for the inspiration they have given me in taking on this subject.

To my sponsor, Mr. Yohei Sasakawa of the Nippon Foundation/Ship and Ocean Foundation (SOF), for his magnanimity in funding my 17-month programme at the World Maritime University (WMU). My deepest gratitude is also extended to Capt. Eisuke Kudo of SOF for facilitating my scholarship. Domo arigatou gozaimashita.

To my agency, the Maritime Industry Authority (MARINA), for allowing me to pursue my academic endeavour in WMU. In particular, I wish to thank MARINA Administrator, Atty. Oscar M. Sevilla, Deputy Administrators Atty. Lamberto Pia and MS. Elenita C. Delgado who endorsed my application for graduate studies, and MARINA Directors Atty. Gloria J. Victoria-Bañas and Atty. Hiyasmin H. Delos Santos who encouraged and supported me in all my professional endeavours. Maraming salamat po!

To my dear supervisor, Professor P.K. Mukherjee, for his valuable advice and conscientious guidance. His unrelenting support and encouragement strengthened and inspired the completion of this dissertation. Thank you Sir.

To my teacher, Lcdr. Max Q. Mejia, for being an excellent resource person, sharing his valuable knowledge on the subject. Mabuhay!

To the WMU Administration and teaching staff, for providing high quality education and excellent library facilities. I wish to extend my sincere appreciation to

the Maritime Administration (MA) faculty, particularly to Mr. John Liljedahl and Lcdr. Jennifer Ketchum who provided guidance and assistance in my studies. I specially thank Ms. Susan Wangeci-Eklow, Mr. David Moulder and Ms. Cecilia Denne for helping me with the necessary reference materials.

To my Swedish parents, Sven-Erik and Helena Ekdahl, my surrogate family, Ely Åhlander, Therese Åhlander and Kjell Kurtsson, a community of friends, Linda and Bosse Sorensson, Linda Crebello, Claire Björnbäck, Piding Lövgren, Nancy, Kenneth and Atlas Sandevi, Mely, Ador, and Lala Curbi, Linda and Manny Hilario, for their hospitality, warmth and moral support. Täck så mycket.

To my friends and classmates, Jean Ver P. Pia, Samuel Batalla, Jo Pielago, Athelo “Bay” Ybañez, Aaron Reconquista, Jerry Nibre, Edmund Tan, Presca Lee Lugo, Ferdinand Velasco, Rodolfo Isorena, Rey Commendador, Joeven Fabul, Allan de la Vega, Bong and Anna Villanueva, Lydia Pacheco, Trinh Coung, Janeta Toma, Inga Bartuseviciene, Colin Young, Kentaro Furuya, Sitalingi Payne, Yingping Li, Bo Li and Guirong Wei, for their friendship and help. My heartfelt gratitude is also extended to Lito dela Cruz and Manuel Portus for painstakingly editing my dissertation. To Edward, thanks for serving as my inspiration and pillar of strength through the years.

Finally, to my parents, Atty Severo Dacanay, Jr. and Mrs. Cecilia Dacanay, for their nurturing love and prayers; my sisters, Vercille, Herbe, Grahane and Xylpha; my brothers-in-law, Ferd and Randy; my niece, Gg and nephews, Joshua and Christer, for their encouragement and unending love. Diyos mabalos saindo.

And above all, I lift the honour and glory to God Almighty, the source of all knowledge and wisdom.

ABSTRACT

Title of Dissertation: **The Shift of Seafaring from Traditional to Emerging Maritime States: An Analysis of the Trends**

Degree: **MSc**

This dissertation is an analysis of the shift of trends in the seafaring profession from traditional to emerging maritime states.

An examination is made of the structural changes that have accompanied the shipping industry and the manning of ships with the growing internationalisation of shipping.

An overview of the global maritime manpower market is provided, taking into consideration the worldwide demand and supply of seafarers, the growth of open or international registries and the decline of seafaring as a profession of choice in the traditional maritime states. The effect of advances in maritime technology and the existing labour regulatory framework are also examined.

Seafarers' rights and welfare benefits are extensively discussed focusing mainly on their fundamental human and employment rights. Appropriate references to case law and international conventions are included. The various regulatory frameworks that govern and protect those rights are also examined.

The development of the seafaring industry in the Asian region is examined by investigating the growth of the industry as a career opportunity for Asian states as well as its economic and social impact on the seafarer as an individual and on the labour-supplying countries in general.

The issues relating to seafarers serving on ships under foreign flags are also explored. A detailed study on the employment policies and issues of China, India and the Philippines, all countries of the Asian region, is conducted as they currently represent the most important source of labour for the world merchant fleet.

The concluding chapter analyses the current and future trends in the maritime manpower market and offers proposals on how the present state of the seafaring industry can be improved and how Asian labour-supplying countries can and maintain their positions as the principal suppliers of maritime labour in the midst of growing shortage in skilled maritime manpower in the traditional maritime states.

KEYWORDS: Seafarers, Traditional Maritime States, Globalisation, Labour-Supplying Countries, Seafarers' Rights, Asian Region, Seafaring Industry.

TABLE OF CONTENTS

Declaration	ii
Acknowledgments	iii
Abstract	v
Table of Contents	vi
Table of Cases	viii
List of Tables	ix
List of Abbreviations	x
Chapter 1: Introduction	1
Chapter 2: Overview of the Global Maritime Manpower Market	5
1.1. Worldwide Demand for and Supply of Seafarers	6
1.2. Effect of Open Registries in the Nationalities of Seafarers	9
1.3. Decline of Skilled Maritime Manpower in the Traditional Maritime States	13
1.4. Effect of Advances in Maritime Technology	14
1.5 Existing Labour Regulatory Framework	16
Chapter 3: Seafarers' Rights and Welfare Issues	20
3.1. Seafarers' Rights	25
3.1.1. Right to Life	25
3.1.2. Right to Payment of Wages and Maritime Lien	28
3.1.3. Right to Healthy, Safe and Decent Working Conditions	32
3.1.4. Right to Repatriation	33
3.2. State's Responsibility Towards Protection of Seafarers' Rights	35
3.3. International Maritime Labour Regime on Seafarers' Rights	36

Chapter 4: Development of Seafarers in Asia	39
4.1. Growth of Seafaring as Career Opportunity for Asian Countries	39
4.2. Economic Impact of Seafaring Industry	42
4.3. Social Impact of Seafaring Industry	43
Chapter 5: Legal Regime of Seafarers Serving under Foreign Flags	47
5.1. National Policies and Employment Issues in the Region	47
5.1.1. China	48
5.1.2. India	52
5.1.3. Philippines	56
5.2. Overregulation or Ineffectual Regulation by Government Agencies	63
5.3. Lack of Effective and Efficient Grievance Machinery	65
5.4. Non-compliance with International Labour Laws and Inadequate National Legislations	66
Chapter 6: Summary and Conclusions	68
6.1. Current and Future Trends	68
6.2. Proposals	71
References	xii
Appendix	xvii

TABLE OF CASES

<i>Mobil Oil New Zealand Ltd. v. The Ship “Rangiora”</i> (2000) 1 NZLR 82	30
<i>The Arosa Star</i> (1959) 2 Lloyd’s Rep. 396	31
<i>The Batavia</i> (1822) 2 Dods 500	28
<i>The Castlegate</i> (1893) A.C. 38	29
<i>The Ever Success</i> (1999) 1 Lloyd’s Rep. 829	29
<i>The Galubchick</i> (1840) 1 W. Rob 143	28
<i>The Juliana</i> (1822) 1 Dods 504; 165 ER 1560	22
<i>The Margaret</i> (1835) 3 Hag. Adm. 238	28
<i>The Minerva</i> (1825) 1 Hagg 347, 355; 166 ER 123, 126-127	21
<i>The Neptune</i> (1824) 1 Hag. Adm. 227	28
<i>The Sydney Cove</i> (1815) 2 Dods 11	28
<i>The Turriddu</i> (1999) 2 Lloyd’s Rep. 401	31

LIST OF TABLES

Table 1	Supply by Area of Domicile 2000	7
Table 2	Supply and Demand in 2000 (000s)	8

LIST OF ABBREVIATIONS

ASF	Asian Shipowners' Forum
BIMCO	Baltic and International Maritime Council
CBA	Collective Bargaining Agreement
CDC	Continuous Discharge Certificates
CMI	Comite Maritime International
COSCO	China Ocean Shipping Company
COSE	China Coordination Council for Overseas Seamen Employment
CSG	China Shipping Group
DG	Directorate General of Shipping
DOLE	Department of Labour and Employment
EU	European Union
FAME	Filipino Association for Mariners' Employment
FOC	Flag of Convenience
FOSMA	Foreign Owners Ship Management Association
FUSI	Forward Union of Seafarers of India
ICC	International Chamber of Commerce
ILO	International Labour Organisation
IMB	International Maritime Bureau
IMO	International Maritime Organisation
INSA	Indian National Shipowners' Association
ISF	International Shipping Federation
ISM Code	International Safety Management Code for the Safe operations of Ships and for Pollution Prevention
ISPS Code	International Ship and Port Facility Security Code
ITF	International Transport Workers Federation
JMC	Joint Maritime Commission
MASSA	Maritime Association of Shipowners, Shipmanagers and Agents
MOC	Ministry of Communications
MOFTEC	Ministry of Foreign Trade and Economic Cooperation
MSA	Maritime Safety Administration

MTC	Maritime Training Council
MUI	Maritime Union of India
NGOs	Non-governmental Organisations
NLRC	National Labour Relations Commission
NUMAST	National Union of Marine Aviation and Shipping Transport Officers
NUSI	National Union of Seafarers of India
OECD	Organisation for Economic Cooperation and Development
OWWA	Overseas Workers Welfare Administration
PAMAS	Philippine Association of Manning Agents and Shipmanagers
POEA	Philippine Overseas Employment Administration
PRC	Professional Regulations Commission
PSC	Port State Control
PSPC	Philippine Seafarers Promotion Council
STCW	International Convention on Standards of Training, Certification and Watchkeeping
SSS	Social Security System
TCC	Terms and Conditions Contract
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea

CHAPTER 1

INTRODUCTION

Seafaring is one of the oldest professions known to mankind, thus, enriched with long maritime tradition. In fact, ocean voyages were undertaken before land travel; there were sailors before the farmers and shepherds, ships before the settlement¹. Hence, seafaring or manning of ships as a component of the shipping industry has played significant role, since time immemorial, in the movement of goods and people in the vast ocean space.

For the past decades, series of structural changes transformed the world's shipping industry. Most of these changes were technical in nature while others affected the labour market. It is to be recalled that in the 1960s the shipping world was more absorbed with the 'steel'. Technological innovations that influenced trade patterns paved the way to building bigger, faster and versatile ships that were beyond doubt aimed at cheapening transport costs and increasing profits. By 1970s and 1980s the centre of attention was shifted to the emergence of free registries which in the maritime world are commonly referred to as flags of convenience (FOC), second registries, international or open registries² and the transfer of flags by Organisation for Economic Cooperation and Development (OECD) countries to open registries, in desperate attempt to maintain their competitive edge in the wake of a slump in the world trade, overcapacity of ships and depressed freight market conditions. For various reasons the international registries have steadily become

¹ Bruce Farthing, "International Shipping: An Introduction to the Policies, Politics and Institutions of Maritime World", London, Lloyd's of London Press, 1987 at p.1.

² In this paper, the terms FOC, open and international registry are used interchangeably.

more important within the global maritime industry. It is a popular belief that while flagging out is primarily caused by the desire to minimize costs, there are other factors such as the quality of available labour, management costs; fiscal considerations and questions of effective control that are similarly important elements involved in such decisions.³ This phenomenon led to the eradication of national boundaries in the labour market for seafarers, which significantly made shipping as the world's first genuine global industry.

With the volatile climate of the world economy and the harsh trading conditions imposed for international shipping, the need to cut down the labour cost, among others, was given preferential attention by shipowners and ship operators to stay viable and competitive in the shipping business. Since the open registries allowed freedom of choice over nationality of crew as well as freedom from wage agreements, the effect has been the dramatic shift in the workforce of the industry, away from the developed economies towards crews from, in particular, the Far East⁴.

Such development not only provided the much-needed cost savings to ship owners but also laid the foundation for growth of seafaring as a career option in developing countries. Since the end of Second World War, concomitant to the growth of maritime industry in Asia and other developing nations, people of various nationalities were enticed to join the seafaring community. On the other hand, shipping industry lost its sheen in the OECD countries due to the emergence of alternative career opportunities, which were equally or more rewarding in a less risky or even comfortable environment.

Globalisation with all its virtues has also its share of negative impacts. While international trade profited much from competition in the form of lower freight rates and opening up of maritime manpower market through flexible international registries to new low-cost labour-supplying countries, such commercial advantage

³ A.S. Bergantino and P.B Marlow, "An econometric analysis of the decision to flag out", Final report, Cardiff, Seafarers' International Research Center, 1997, p.10.

⁴ S.J. Bergstrand, "Buy the Flag: Developments in the Open Registry Debate", Transport Studies Group, Discussion Paper No. 13, 1983, p.60.

was reportedly gained at the expense of rampant violations or non-observance of seafarers' rights and neglect of their social well-being.

Against this backdrop, this dissertation will analyse the present state of the maritime labour market by examining the effects of globalisation and changing conditions in maritime industry. This study will also look into the rising demand of seafarers from developing countries based on the Baltic and International Maritime Council (BIMCO)/International Shipping Federation (ISF) 2000 Manpower Report with the Asian seafarers being the main subject as they currently represent the most important source of labour for the world merchant fleet. Various issues relating to aforesaid seafarers serving foreign flags will also be tackled focusing mainly on seafarers' rights and the present regulatory framework that governs those rights, primarily those dealing with the health, safety and welfare of these seafarers. This paper will likewise probe into the numerous international labour regulations and initiatives concerning those issues and will thoroughly analyse how these crew-supplying countries address them within the context of their national framework. Further, an analysis will be conducted on how Asian crew-supplying countries cope and possibly maintain their position as the premier supplier of maritime labour force. Finally, this dissertation will attempt to make an intelligent forecast as to whether the shift of seafaring from the traditional maritime powers to emerging Asian states is still reversible or not.

This study is undertaken to establish the growing impact of seafaring industry in the Asian region in the midst of growing shortage of skilled manpower in the traditional maritime nations and to present insights and clearer perspectives with the end in view of helping and sustaining the maritime manpower development of the labour-supplying countries in the region. It is hoped that the findings and outcome of this study will provide a helpful start to the concerned national maritime bodies in the assessment and possible revision of their existing regulatory framework, policies and regulations, including their priorities, where their seafarers' rights and welfare are concerned.

For what is vital in attaining global success and maintaining the status as the leading supplier of maritime manpower is the image and reputation of each nation's seafarers as manifested by their competence and commitment to the profession amidst immensely changing ideals and demands of international shipping industry.

CHAPTER 2

OVERVIEW OF THE GLOBAL MARITIME MANPOWER MARKET

The state of maritime manpower market is directly influenced by the upsurge and downturn in the demand for shipping services, which in turn, is dictated by the developments affecting global economy and international trade. The growing internationalization of shipping evidenced by changes in ownership, registration and manning of ships, as well as the recession in shipping over the past decades have had important and far-reaching consequences and implications in the recruitment, placement and selection of seafarers¹. Structural changes in maritime trade and the demands for ships, changes in the size and composition of national fleets, the advent of shipping technology, management changes, new manning requirements, government involvement and international shipping agreements have greatly affected today's global employment situation.² This chapter will focus on the main issues and trends relative to the availability of manpower and the present state of the international maritime labour market. Concerns on the growing shortage of skilled manpower, particularly, in the traditional maritime states will be investigated and the effect of open registries in the nationalities of seafarers will be analysed.

¹ Bjorn Klerck Nielssen, "Key Issues and Trends in the International Recruitment and Placement of Seafarers", ILO, Geneva, at p.50.

² *Ibid.*

1.1. Worldwide Demand for and Supply of Seafarers

Despite its importance as a catalyst to global economy, transporting the vast majority of world trade, the general public knows very little about shipping industry, particularly, the maritime manpower sector – which comprises the most essential and vital resource in the shipping industry. In fact, it was only on October 1989 that a proper world study of the supply and demand for seafarers was conducted by the Institute for Employment and Research at Warwick University at the behest and funding of the Baltic International Maritime Council (BIMCO) in Copenhagen and International Shipping Federation (ISF) in London. The aim of the study was to describe the present state of the labour market for seafarers and to make a forecast on how this will likely to change between then and the end of the century.³ While the study was a helpful start in assessing the numbers constituting the worldwide supply of manpower, it did not delve deeper to consider complex issues such as the effect of changes in competitive wage rates or the adequacy of training and experience of seafarers. An update of the said study that was published in 1990 Report was made in 1995.

The previous studies in 1990 and 1995 pointed out the impending shortages of skilled labour in the maritime industry, and advised an increased training in order to offset the losses due to retirement and wastage. The 2000 BIMCO/ISF Manpower Report, which is the latest and the most comprehensive account of the said studies was published to build on the earlier studies, to describe the worldwide supply and demand situation for seafarers in 2000 and to predict the likely situation in 5-10 years' time in order to prepare the industry anticipate changes and take corrective actions, whenever necessary.⁴ The 2000 Update also attempted to take full account of the views of senior executives in the shipping industry, providing a synthesis of academic analysis with the practical experience of international employers.⁵

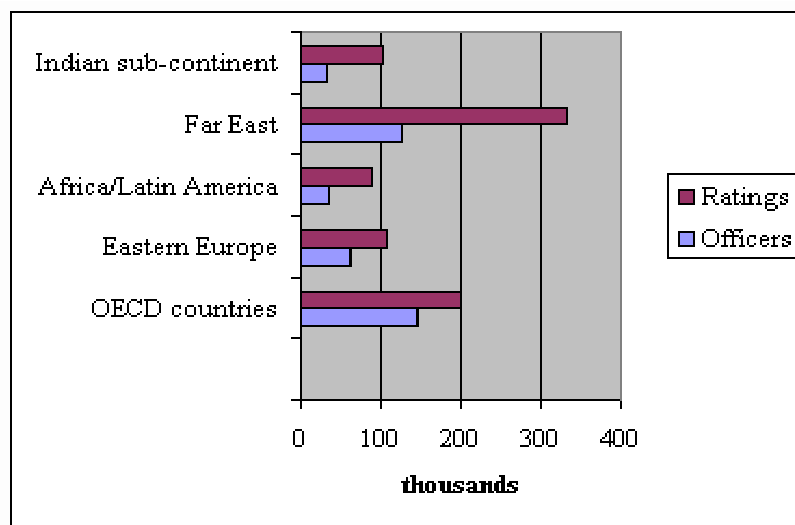
³ BIMCO/ISF Reports, 1990, 1995 and 2000.

⁴ BIMCO/ISF 2000 Manpower Update, "The Worldwide Demand for and Supply of Seafarers", Main Report, University of Warwick, April 2000.

Based on the report, the worldwide supply of seafarers in 2000 is estimated to be 404,000 officers and 823,000 ratings. The OECD countries (North America, Western Europe, Japan etc.) remain the most important source for officers, but growing numbers of officers are now recruited from the Far East and Eastern Europe. On the other hand, the majority of the shipping industry's ratings are recruited from developing countries, especially, the Far East. The Philippines alone provides almost 20% of the global maritime workforce. China and India are also significant maritime labour supply nations, with many seafarers from these countries enjoying employment opportunities on foreign flagships operated by international shipping companies.

Table 1. Supply by Area of Domicile 2000

(Note: catering and hotel staffs are excluded)



(Source: BIMCO/ISF 2000 Manpower Update)

As regards the current worldwide demand for seafarers based on the estimates taken during the 1990 and 1995 studies, the report showed the current figures as 420,000 officer and 599,000 ratings.

⁵ *Ibid.*

Table 2. Supply and Demand in 2000 (000s)

	Supply	Demand	Balance
Officers	404	420	-16
Ratings	823	599	+224

(Source: BIMCO/ISF 2000 Manpower Update)

It can thus be seen that there exists a modest theoretical shortfall of officers required to man the world fleet of 16,000 or 4 per cent of the total workforce. As for ratings, it is evident that there continues to be a significant overall surplus, although there are doubts about the extent to which large numbers of these ratings are qualified for international service.

It is further observed that there is some evidence that recruitment levels increased during the late 1990s, although they fell again slightly in 1999 when it coincided with the difficult year for shipping that followed the Asian economic crisis. But then, any overall increase in training broadly seems to have been matched by an increase in the rate at which officers have left the industry. Meanwhile, the number of ships in the world fleet grew by only 1.0 per cent per annum between 1995-2000. This, together with the phasing-out of older ships which required higher manning levels, meant that additional demand for officers was not quite so great as anticipated in the 1995 Update. As a consequence, the overall supply/demand imbalance for seafarers is very similar in 2000 to the situation in 1995.

The report also stated that the estimated shortfall of 16,000 officers could have more severe impact if account is to be taken on the obstacles that prevent surpluses of some nationalities of seafarer from compensating shortages experienced by other countries. These barriers include cultural and language differences, lack of international experience and the nationality restrictions that apply to many flags.

Finally, forecasting the future supply and demand situation, the report concluded that even with the use of somewhat conservative assumptions based on an analysis of developments over the last 5-10 years, taking into account a modest expected increase in the number of ships in the world fleet of around 1 per cent per annum (the observed historical growth rate over the past decade) as well as the maintenance of recruitment and wastage levels experienced during the past five years, it would seem that the clear message is “the current moderate shortage for officers will worsen unless training is increased or measures are taken to address the rate at which seafarers leave the industry”.

The findings just outlined in the 2000 BIMCO/ISF report identifying a worldwide shortage of 16,000 competent officers which is expected to reach 46,000 by the year 2010 and an exceedingly oversupply of ratings reaching to 264,000 are alarming. A great deal of implications can be deduced in such a shortage situation. Foremost is that, companies may be compelled to retain inferior seafarers in employment if they are unable to recruit replacements. At the same time, incompetent but certificated applicants may be taken without a further check on their competence. Furthermore, this situation may be used by unscrupulous shipowners and manning agencies to exploit the oversupply of ratings from developing countries who are desperate to earn income and are vulnerable to deception and deceit that flourishes in the shipping industry during such times. Also, such situation can easily aggravate the social injustices at sea in the form of reduced remuneration, insufficient welfare benefits, abandonment of seafarers and dismal state of working and living conditions onboard ships. This scenario may be happening today, if not earlier. Finally, the implications of these practices on safety and quality shipping cannot be overemphasized especially in the light of major accidents in recent years which had been attributed in most or 80 percent of the time to human error.

1.2.Effect of Open Registries in the Nationalities of Seafarers

As it has been witnessed in recent years, the open and international registers have practically taken over the traditional maritime countries and they still continue

to attract a major part of the world merchant fleet. It is a growing phenomenon and is here to stay⁶.

The United Nations Conference on Trade and Development (UNCTAD) Review of Maritime Transport in 2000 reported that the two largest users of open or offshore registries were Greek owners with 88.173 million dwt and Japanese owners with 76.717 million dwt. The United States trailed third with 37.980 million dwt. Greek owners comprised 12.4% of the Liberian registry; 72.3% of the Cyprus registry; 11.4% of the Panamanian registry; 19.1% of the Bahamian registry; 54.7% of the Malta registry; and 5.5% of the Vanuatu registry. Japanese owners held 40.1% of the Panamanian registry, 30.0% of the Vanuatu registry, 6.1% of the Liberian registry and 1.8% of the Bahamian registry.⁷

It is to be recalled that before the 1970's, the nations⁸ that built the ships, usually owned the ships, registered the ships, serviced the ships, crewed the ships, trained the crews, supervised the performance of crew and ships, and often provided the cargoes inbound and outbound.

Flagging out has occurred only in response to depressed freight levels and rising operational costs following the oil crisis of the 1970's and the subsequent recession in the world economy.⁹ As open or international registries enabled owners to employ foreign crews rather than their own higher paid nationals, many traditional maritime nations took advantage of this option.

As revealed in the special hearing by the European Parliament Socialist Group Transport Sub-Committee held in London on the 22nd and 23rd of November 1983, there has been substantial decline in the numbers of personnel, both officers and

⁶ P.K. Mukherjee, "The Changing Face of Flag State: Experience with Alternative Registries", Unpublished lecture handout, World Maritime University, Malmö, Sweden.

⁷ UNCTAD, "Review of Maritime Transport 2000", at <http://r0.unctad.org/en/pub/ps1rmt2000.en.htm> (visited 05/22/2003).

⁸ These nations are referred to as traditional maritime countries and include United Kingdom, France, Germany, Norway, Netherlands, etc.

⁹ See, e.g. Martin Stopford, *Maritime Economics*, Second Edition, London, Routledge, Taylor and Francis Group, 1997 at p. 57.

crews, employed in the merchant marines of the historical seafaring nations in North Western Europe.

The growth of open registries is viewed by others negatively in that as they enable shipowners, *inter alia* the unlawful practice of tax avoidance, transfer pricing, trade union avoidance, recruitment of non-domiciled seafarers and passport holders on very low wage rates, non-payment of welfare and social security contributions for their crews and avoidance of strictly applied safety and environmental standards, thereby, enjoying a competitive advantage over those bona fide national registries that operate with high running costs and are subject to laws and regulations of properly established maritime administrations in the flag states. Others, however, are of the view that these registries are economically and functionally more attractive, giving them freedom of choice over nationality of the crew and freedom from wage agreements, therefore, more convenient.¹⁰

Although, Article 91 of the United Nations Convention on the Law of the Sea (UNCLOS) requires every state to fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag, and as a fundamental principle, “there must exist a genuine link between the State and the ship”, the definition of “genuine link” has never been defined.¹¹ Thus, it can be observed that open registries severed common link of citizenship among seafarers, trainers, employers, administrators, supervisors, ship owners and often cargo owners.

While it is further enjoined by Article 94 that flag states shall exercise effective jurisdiction and control in administrative, technical, social and labour matters over ships flying its flag and, in doing so, it is required to conform to generally accepted international regulations, procedures and practices and to take any steps which may be necessary to secure their observance, it is alleged that

¹⁰ See, e.g., S.J. Bergstrand, “Buy the Flag: Developments in the Open Registry Debate”, Transport Studies Group, 1983, Discussion Paper No. 13; *Supra* footnote 6.

¹¹ See, e.g. *Supra* footnote 6.

many of the so-called FOCs or open registries pay scant regard to their obligations towards thousands of seafarers onboard their ships.

Because of the difficulties of remoteness, accessibility, lack of effective administration, language, culture and delay that aggrieved seafarers may face if they have to seek compensation, injury or wage justice in the distant offshore flag state of their ship, it is further alleged, that those barriers create added reasons why many corrupt owners place their ships on offshore registers.

With the growth of the open registries in the last past few decades, great impact in the traditional manning of ships evolved. The traditional supply sources in manning the ships typically from the western world moved to non-traditional countries like India, Philippines, Indonesia, China, etc. Whereas in the 1960s and 1970s it was USA and UK that ruled the sea-going labour market, along with Norway, Germany and other European countries, in the 1980s and 1990s countries such as India and the Philippines become the undisputed leaders of this market.¹²

The dramatic shift in the workforce of the industry, away from the developed economies towards crews, from particularly, the Far East gave scope for people in these countries to get maritime experience and encouraged growth of such allied industries as maritime academies, ship management firms, etc.

While it cannot be denied that the growth of FOCs brought about by the free market and globalisation of merchant crews, has resulted to very low freight rates internationally that the world market has enjoyed, its adverse effect on the safety and welfare of seafarers should not be neglected. Indeed, there is some basis in supporting the growing body of opinion that supranational regulatory enforcement especially by labour-supplying countries as well coordinated agreements and actions by the United Nations (UN), International Maritime Organisation (IMO), International Labour Organisation (ILO), International Transport Workers Federation

¹² See, e.g. Lee, *Shipping in China*, Plymouth Studies in Contemporary Shipping and Logistics, Ashgate Publishing Limited, 2002 at p. 20.

(ITF) and other International organizations and associations should be instituted to have more control in the effective manning of ships.

1.3. Decline of Skilled Maritime Manpower in the Traditional Maritime Powers

There was a time in developed countries when going to the sea as an officer or master was an attractive career, an opportunity to see the world and a stepping-stone to a shore-based occupation. For officers and engineers, it was then an occupation of respect and dignity that paid better than most available jobs ashore. Today, in developed countries, such is no longer the case. With the quick turnaround times, remote terminals, lesser competence levels among crew, added responsibilities and ship managers being driven by desire to cut costs, going to sea has lost its appeal for most seafarers coming from traditional maritime states. Across virtually all of the developed nations, going to sea is no longer an attractive career option.

As navigation and engineering technology becomes increasingly complex, the ship's complement smaller, voyages shorter due to increased speed and port stays, the attractiveness of the occupation to individuals, particularly in developed countries is progressively less. Moreover, as a result of economic development and higher levels of commerce in home countries, a potential entrant to the seafaring occupation from these countries, has more occupational choices that are far more rewarding than ever before.¹³

Furthermore, the move to open or offshore registries by traditional maritime nations on account of lower costs of seafarers has resulted in a massive decline in nautical training and education in these countries and a growing reliance on the under-resourced, inexperienced and poorly regulated training and educational

¹³ *Ibid.*

colleges in the new labour-supplying countries.¹⁴ While the initial gap in the relative standards in the “old” and “new” sources of seafarers was inevitably wide, such training quality gap has narrowed in recent years as training standards have considerably and rapidly improved in developing countries, especially those that are significant suppliers of seafarers.

While attempts in the past were made by traditional maritime nations to create a highly skilled and professional seafaring labour force at all levels of the shipboard division of labour, the situation has steadily changed due to the decreasing demand for places in training institutions. In fact, for some years, the number of students enrolled in the British, Irish and Australian colleges have greatly exceeded those of home students.¹⁵ In more recent years there have been concerted attempts in Norway, the Netherlands and now the United Kingdom to arrest the decline in the training of nationals, the effect of such move has yet to be seen.

Considering these developments, it can be said that new entrants from the traditional, developed maritime countries are and will be difficult to find unless the seafaring industry competes with what opportunities ashore have to offer. For people in developed countries, economic and social advances lead them to take career paths other than the seafaring industry. In lesser-developed countries, however, so long as money and the status of sea-going positions is still attractive, the seafaring profession will continue to be chosen even by individuals who hold University degrees.

1.4. Effect of Advances in Maritime Technology

No doubt the advent of maritime technology in the shipping industry has brought about a considerable impact on seafarers.

¹⁴ ILO, “The impact on seafarers’ living and working conditions of changes in the structure of shipping industry”, Report for discussion at the 29th Session of the Joint Maritime Commission, Geneva, 2001, JMC/29/2001/3, at p.29.

While technological innovations resulted in greater efficiency in ship's navigation, less manual work and better ship-shore communication, thereby, diminishing physical strain on seafarers, such development, nevertheless, created some deleterious effects on them. Automation both in ships and port operations has made it possible to reduce the size of crew on modern vessels. Where it was normal before to have between 40-50 warm bodies, nowadays, the figure lies between 20 and 30. The full brunt of these cuts is therefore felt in the intensity and duration of work. Similarly, with modern freight handling technology, reduced turnaround time for ships in port result in less shore leave for seafarers, hence, more time spent at sea.

Further, along with these developments in shipping is the demand for better-trained seafarers with technical "know-how" in handling the modern ship and its equipments. Considering that training equipments tend to be expensive and costly to maintain and operate, labour-supplying countries may explore the possibility of regional technical cooperation by setting-up centres for upgraded training programs.

Whatever the situation, emerging labour-supplying countries should endeavour to keep abreast with the technological advances in shipping industry by maintaining common standards of training, developing pro-active links with other organisations such as the Asian Shipowners' Forum (ASF), International Shipping Federation (ISF), etc. to exchange ideas for upgrading training standards within the region and undertaking research projects to review effective ways of implementing new technological advances in shipping. It is by continually improving their maritime education and training that they can satisfy the demand for a competent and well-trained labour force and thus could remain a reliable crewing source in the coming years.

As eloquently pointed out by IMO Secretary General William O' Neil:

"No matter what wonders technology produces in the next millennium, they will still depend on people for their

¹⁵ *Ibid* at p.54.

implementation – and it is people, the seafarers, who suffer if something goes wrong. And because technology will become more advanced and complex, as well, people will have to possess greater skill, be better trained and motivated to do their jobs properly. They will become more rather than less important¹⁶. (emphasis added)

1.5. Existing Labour Regulatory Framework

The existing maritime labour regulatory framework has evolved alongside the developments affecting the whole shipping industry. Due to the international character of this industry, labour issues that used to be solely governed and regulated by the maritime labour law of individual countries has now been elevated in the realm of international arena.

From its inception in 1919 as an inter-governmental organisation under the defunct League of Nations and later as a specialised agency of the United Nations, the ILO has already adopted numerous conventions and recommendations concerning seafarer's rights as well as maritime labour standards for the protection and safety of seafarers.

Standards for labour protection of seafarers basically operate to protect the seafarers, in his individual capacity, from the specific problems of the profession, including recruitment and placement agencies, articles of agreement or maritime employment contract, special identity documents, health care, social welfare and repatriation. Safety standards, on the other hand, are standards set to ensure that competent, able-bodied and highly motivated crew safely navigates a ship. These safety standards include the minimum age for employment, medical examination for sea service, hours of work and manning, prevention of accidents, crew accommodation, food and catering and the competency and certification requirements for officers and ratings, respectively.

¹⁶ Speech by IMO Sec.Gen. William O'Neil, International Lifeboat Conference, Bournemouth, 21 June 1999 at <http://www.imo.org/home.asp> (visited 04/10/2003).

The standard-setting activities of the ILO are complemented by the work of other specialized agencies of the United Nations (UN), particularly, the IMO with regard to maritime safety and environmental protection, and the World Health Organisation (WHO) on health and medical issues. In fact, during recent years, IMO has taken over responsibilities from ILO matters pertaining to training and certification of seafarers with the implementation of the 1978 International Convention on the Standards of Training, Certification and Watchkeeping (STCW), as amended.

While these labour standards set by international bodies are aimed at achieving uniformity in dealing with matters that affect maritime labour, they remain unenforceable regulations unless adopted and transformed by individual national states in their own labour legislations.

This matter of implementing and enforcing international regulations into the national legislations has raised serious questions on the credibility of international bodies that produce them and their effectiveness in affording real concern in safeguarding the rights and welfare of the seafarers.

While this view might find support in the fact that, indeed, labour conventions continue to be snail-paced with regard to their adoption and do not gain wide acceptance by member states, it cannot also be undermined that the trend in today's shipping is towards "quality shipping" where technical aspect and human element are expected to be at the highest level of standards.

Be that as it may, it should be realized that what really gives substance and fruition to any regulation or standard, whether it be of international or domestic origin, is its effective implementation and enforcement.

Pursuant to international law, it is the flag state that has the duty to effectively exercise jurisdiction and control in administrative, technical and social

matters over ships flying its flag¹⁷, and is, thus, mandated to implement various international legislations on protective and safety labour standards. Port state controls (PSC), while they also provide effective enforcement as to standards of ship safety and measures to rectify any conditions on board foreign flag vessels which are clearly hazardous to safety or health¹⁸, these, are only in the nature of spot checks. Aside from the fact that there are very few states that conduct effective PSC, most of the PSC inspections are confined mainly to structural aspect of safety and do not extend to safety of the living and working conditions of seafarers. Thus, it can be said that treatment and conditions of seafarers onboard ships remain unchecked and often unregulated.

Despite the enforcement authority given to the flag state and port state in ensuring that safety and welfare of seafarers are observed and sufficiently provided, every labour-supplying country should not lose sight of the fact that owing to the allegiance of its citizens in its sovereign power, it is its moral and legal duty to afford protection and ensure the well-being of its nationals, wherever they may be and in whatever occupation they may engage in. As elucidated by Professors Louis B. Sohn and Richard R. Baxter:

No state, regardless of its political and economic philosophy, can remain indifferent to mistreatment of its nationals abroad. In any interdependent world, the well-being of many countries rests upon an influx and managerial skills, the owners of which must be given effective protection against unjust prosecution or discrimination.¹⁹

To this end, therefore, each country that has maritime interest either in maintaining its national fleet or supplying seafarers should seriously review and, wherever appropriate, amend its labour legislations by incorporating international regulations found to be beneficial to the well-being of its seafarers. It should likewise develop employment manpower plans that would assess its present maritime manpower against projected trend in the demand of labour workforce. Further, standards of employment within the context of its national maritime legislations

¹⁷ Article 94 United Nations Convention on the Law of the Sea (UNCLOS).

¹⁸ Art. 4 ILO Merchant Shipping (Minimum Standards) Convention, 1976.

should be regulated in such a way that rights and welfare of its seafarers are protected while affording best deal and economic gains to the shipowners. As a supplementary method of enforcing standards, a state can make its national law applicable to contracts extending beyond its boundaries. For instance, national legislation of a crew-supplying country can stipulate that it is applicable to contracts concluded between national seafarers and foreign ship owners.

¹⁹ L. Sohn and R. Baxter, "Responsibilities of states for injuries to the economic interests of aliens", *American International Law*, 1961, at p.545.

CHAPTER 3

SEAFARER'S RIGHTS AND WELFARE ISSUES

Shipping as an indispensable pillar of the global economy has grown to be imbued with public interest. Thus, over the centuries, the law developed protective lines towards the rights and welfare of seafarers, who man the ships and constitute the human element in shipping. In the olden days, as soon as ship was put to sea, seafarers' safety, health and welfare were very much left in the control of the master of the vessel¹. They were, therefore, subjected to all sorts of exploitation and cruel treatment. Their conditions onboard were often deplorable and they were prone to desertion. Since they were then considered as joint venturers to the risk of maritime undertaking, their wages depended heavily on the success of a certain voyage². This was characterised by the phrase "freight is the mother of wages".

As trade developed, the dynamic importance of shipping to the economy led maritime nations to take a positive stance in ensuring the safety and welfare of seafarers.

Seafarers' rights thus evolved to encompass rights that are guaranteed to every worker and such other rights that are solely for the benefit of the seafarers owing to the harsh and dangerous nature of their profession. This special treatment accorded to seafarers finds basis in the fact that their employment is often for voyages in distant places, which necessarily expose them to special hazards and

¹ See, e.g. Christopher Hill, *Maritime Law*, Fifth Edition, Lloyd's of London Press Ltd. at p.449.

² *Ibid* at p. 452.

deprive them of the comfort and facilities that are normally available to land-based workers³.

The recognition and protection of seafarers' rights was first established with the signing of the ship's articles of agreement to ensure that the seafarer fully understands his rights and obligations. Articles of agreement cover such matters as the wages the seafarer will be paid, his rights to treatment and care, at the employer's expense, in the event of any sickness or accident occurring during the voyage, his repatriation under certain circumstances and his protection against arbitrary dismissal during a voyage.

This can also be gleaned from the wealth of jurisprudence decided by the early maritime courts of traditional maritime nations, e.g. the admiralty courts of United Kingdom that then dominate and control world shipping.

It is reported that during the first half of the 19th century, the Admiralty Court displayed a singular sympathy for the seafarer as a result of its awareness of the "harshness of his working environment, the great power imbalance between him and the shipowners, the relentless drive of commerce as then practised, and the ignorance, injudiciousness and imprudence of the common mariner⁴

Seafarers were then perceived as relatively powerless figures in need of protection against conscious or subconscious abuse or, in the words of Lord Stowell as:

Men generally ignorant and illiterate, notoriously and proverbially reckless and improvident, ill provided with the means of obtaining useful information, and almost ready to sign any instrument that may be proposed to them; and on all accounts requiring protection, even against themselves.⁵

³ See, N.J.J. Gaskell, C. DeBattista and R.J. Swatton, *Chorley and Giles' Shipping Law*, 8th Edition, London, Pittman Publishing 1988 at p. 109.

⁴ D.R. Thomas, *Maritime Liens*, at p. 168.

⁵ *The Minerva* (1825) 1 Hagg 347, 355; 166 ER 123, 126-127.

Descriptions of this kind appear quite frequently in decisions of the Admiralty Court in the early 1800s; particularly those of Lord Stowell under whose guidance the Court's practise of assessing the equity of the common law courts' approached admiralty matters, and recognition of the need for special protection for seafarers, reached its zenith⁶.

During those times, the admiralty courts developed their own admiralty jurisprudence cognizant of the problems of seafarers and protective of them as a class.

One of notable example of the Admiralty Court's practice of assessing equity of the common law courts' approach to admiralty matters, and of demanding special protection for seafarers is the case of *The Minerva*⁷. The case involved the subtraction of seafarers' wages on account of the seafarers having allegedly deserted their ship in mid voyage. The voyage for which the seafarers were contracted was described in their written agreement as being "from London to New Wales and India, or elsewhere, and to return to a port in Europe", with the words "or elsewhere" having been hand-written in the margin of the otherwise printed paper. The central issue was whether this description of the voyage as including "or elsewhere" was enforceable against the seafarers or put it in another way, whether the description of the seafarers' voyage was indeed binding and conclusive. Lord Stowell stated that to hold otherwise would cause injustice to the sailor. In his Lordship's words:

Seafarers, who are favourites of the law, on account of their imbecility, and placed particularly under its protection, may be made the victims of their own ignorance and simplicity. To such men, no such response can be made, as that which is irresistibly made in other cases of contract – it is your own contract, you have signed it with your eyes open; for they want both organs of sight for reading, and organs of discernment for judging. To those who are acquainted with this Court, it can be no secret how deeply some of these men are affected with surprise and concern, when

⁶ See, e.g., *The Juliana* (1822), 1 Dods 504; 165 ER 1560.

⁷ *Supra* footnote 5.

they find that they have ever executed any engagement drawing after its consequences so disastrous.

The facts of *The Minerva* are worthy of close attention, since they reveal the reality with which Lord Stowell and other judges in admiralty – and ultimately the legislature – were concerned. The case is also of interest for the various alternative grounds upon which the Court found in favour of the seafarers. It is not surprising therefore that legislative action was taken to protect seafarers soon after *The Minerva* was decided⁸.

Years ago, it was easy to regulate and protect seafarers' rights as shown in the cited cases because usually the states that owned the ships, manned them with their nationals and operated them within the traditional parameters of international maritime law, thus, exercising effective jurisdiction and control over their ships. This set-up ensured a degree of protection for the concerned seafarers as they were, in the main, governed by the laws of their country of domicile and to a large extent supported by strong trade unions⁹. Then we had a picture in which owners, seafarers and flag state authorities were comfortably familiar with the overall situation.

Today, however, that picture has changed as the shipping industry has become truly international. Global competition, growing labour market fragmentation and rapid change in all aspects of the maritime sphere have created a mounting challenge for labour-protection now that national boundaries for the labour market have been steadily eradicated. As stated by IMO Secretary General William O'Neil, international shipping is now virtually in the hands of the developing world¹⁰. The mushrooming of alternative registries, i.e. open or international registries, and the general thrust of the industry to reduce costs in the face of economic considerations have been regarded by some people as a negative development in the shipping

⁸ Speech of Australian Federal Court Chief Justice M E J Black, "Admiralty Jurisdiction and the Protection of Seafarers", The F S Dethridge Memorial Address 1999.

⁹ See, e.g. P.K. Mukherjee, "The Changing Face of the Flag State: Experience with Alternative Registries", Unpublished lecture notes, World Maritime University, Malmö, Sweden.

¹⁰ See, e.g. Speech by William O'Neil, Secretary General of the IMO at Seatrade Awards Ceremony Dinner reported in *Seatrade Review* July/August, 1999 at pp. 4-6.

industry that has brought consequential impacts on crew conditions. This, as they suggest, came about since the majority of seafarers are not domiciled in the country of the flag of the vessel and are living and working in a jurisdiction with which they have no direct connection.

A number of particular issues have also been identified within the maritime industry such as problems that are more specific to conditions of work and life in the shipping industry with particular emphasis on shipboard conditions. This includes issues such as wages, hours of work, food, accommodation and welfare, and even abandonment of seafarers.

To this end, international bodies such as IMO, ILO, UNCTAD, Comité Maritime International (CMI) and other International organisations have been established to specifically address the various issues that come to fore with the growing internationalisation of shipping that present tremendous impact on maritime safety and labour conditions on board ships.

The IMO is generally recognised as having performed a valuable role as a global source of technical standards in establishing conventions and codes of conduct to regulate international shipping. The IMO standards traditionally have concentrated on the technical standards for ship construction, maintenance, operation and equipment. But more recently, it has given greater recognition to the overwhelming influence of human factors in shipping incidents and has sought to develop appropriate standards for human behaviour, through such measures as the International Convention on the Standards of Training, Certification and Watchkeeping (STCW), and the International Safety Management Code for the Safe operations of Ships and for Pollution Prevention (ISM Code).

On the other hand, the special conditions of maritime work, along with the need for the special protection of seafarers against the specific risks¹¹ inherent in

¹¹ This includes natural, technical and social risks. Natural risks are caused by perils of the sea; a vessel may suffer a maritime casualty or even sink, unless it is properly maintained and operated. Technical risks are those that stem from the operation of a modern and sophisticated mechanical vessel. Social risks for seafarers would be their vulnerability to

maritime employment explain why the regulation of the conditions of seafarers' work occupy such a unique place in the ILO's standards and justified the creation of a special maritime sector to attend to the specific category of seafarers¹². Since its inception, there have been 11 maritime sessions of the International Labour Conference and more than 50 Conventions and Recommendations have already been adopted, covering a wide variety of labour and social security matters specially for maritime employment. At present, ILO has set renewed focus on the human element as evidenced by numerous ILO regulations on safety and occupational health¹³.

Despite these international regulations aimed at creating uniformity in the standards to be observed in alleviating the plight of seafarers, especially of foreign seafarers serving under foreign flags and the benevolent posture of courts towards seafarers rights, substandard shipping and violations of seafarers' rights continue to thrive. As such, it can be said that much remains to be done to address the "human side of shipping, to prevent loss of life, injury, injustices and inhumane treatment of seafarers" as compared to improvements made on construction, equipment and environmental ship standards¹⁴.

3.1 Seafarers' Rights

3.1.1. Right to Life

The right to life is the most fundamental right of every human being. Yet it is recognised that poor safety practices and unsafe ships make seafaring as one if not the most dangerous of all occupations. A recent study¹⁵ revealed that the average

be routinely cheated and abused, abandoned, refused repatriation and cheated on wages, intimidated, refused medical treatment, received poor food, subjected to non-compliance with their contracts and suffer from illegal practices by employment agencies.

¹² ILO, "International Labour Standards, A Global Approach", Geneva, 2002 at p. 536

¹³ See, e.g., ILO Conventions on Safety and Occupational Health at <http://www.ilo.org/public/english/info/index.htm>.

¹⁴ Alecks P. Pabico, "Despite the Risk, Filipino Seafarers Toil in the World's Oceans" at <http://www.pcij.org/stories/2003/seafarers.html>, 18/07/2003.

¹⁵ K.X. Li and Jim Mi Ng, "International Maritime Conventions: Seafarers' Safety and Human Rights", *Journal of Maritime Law & Commerce*, Vol.33, No. 3, July 2002, p. 381.

fatal accident rate from 1962 to 1988 in the British Shipping Industry was 1.28 death per thousand per year, 3 times that of the coal mining industry, 5.5 times that of the construction industry, and 25 times of the manufacturing industry. Every year it is estimated that about 6,500 seafarers lose their lives due to shipping disasters, personal accidents, suicide, homicide and diseases at their places of work.

Maintenance and Cure¹⁶ is also one of the many rights that the law accords to seafarers. It is one of the oldest and most enduring rights enjoyed by seafarers. So firmly established is this right in the general maritime law and by long tradition, that it is assumed to be part of every seafarer's employment contract. Thus, it cannot be contracted away even by the individual seafarer himself.

Today, however, several attempts are made to erode seafarers' rights on this aspect. To cite some examples; it is reported that Panama has recently made concessions to the cruise industry in its laws by reducing maintenance and cure rights for all seafarers working on passenger vessels¹⁷. This 1998 change to the Panamanian law is said to erode the maintenance and cure rights of all crewmembers working on international passenger vessels by reducing the time that wages are paid to recuperating crewmembers to thirty (30) days¹⁸. Seafarers on all other Panamanian ships were entitled to be paid wages during their recuperation for up to twelve months¹⁹.

In another development, the Philippine Overseas Employment Administration (POEA) recently approved a new standard contract for all Filipino seafarers working on ocean-going vessels. This new contract is seen by some seafarer groups as a sell-out and shows government's regard to the seafarers as a commodity, whose

¹⁶ The coverage of medical care and living expenses when a seafarer becomes sick or injured.

¹⁷ Douglas B. Stevenson, "Seafarers' Rights Face A Worldwide Crisis, at <http://thewitness.org/agw/scipressrelease.html> (visited 7/23/2003).

¹⁸ *Ibid.*

¹⁹ *Ibid.*

entitlements need to be diminished so they can be marketable²⁰. Among other changes, the standard contract is said to deprive Filipino seafarers of their historic right to maintenance and cure by limiting medical care benefits only to conditions directly caused by employment.

Another adverse development affecting seafarers has been the spread of piracy, including violent acts against ship's crews at sea and in certain ports. In some cases local authorities have been unable and in some cases apparently unwilling to take appropriate action. It is said that seafarers continue to be harassed, injured and killed by the depredations of pirates and robbers, with the attacks increasing both in number and violence. In fact according to the International Chamber of Commerce (ICC) International Maritime Bureau's (IMB) Piracy Reporting Centre, there had been 171 attacks on ships during the last six months of the year 2002.²¹ To make matter worse, their lives are put at risk not only at sea but also ashore. It is reported that ships' crew are facing additional security responsibilities as a result of the September 11 terrorist attacks. Since they are often treated as potential terrorists, with increased shore leave restrictions, their lives have become miserable. Finally, maritime security has always been thought of mainly in terms of the ship, and nowadays, the country of destination of a ship has become aware of the potential that vessels have for facilitating the importation of terrorism. However, the safety and security of seafarers seem to be given only incidental importance on all fronts. Indeed, currently, they are innocent victims of seemingly overzealous port and coastal state security initiatives.

Also, deep concern is expressed in the industry about the many cases that have arisen recently where ships' masters are detained without trial for long periods. Increasingly, masters and sometimes their crew are being thrown into jail before questions are asked. It seems to be a case of locking them up so the public can see that something is being done, and then justify the actions later. The British National Union of Marine Aviation and Shipping Transport Officers (NUMAST) is among the

²⁰ Alecks P. Pabico, "Despite the Risks, Filipino Seafarers Toil in the World's Oceans, at <http://www.pcij.org/stories/2003seafarers.html> (visited 07/18/2003)

²¹ Michael Grey, "UN urged to review protection as nation states accused of ignoring crew rights", *Lloyd's List*, June 18, 2003, p.6.

many organisations that are calling for the IMO to address the increasing exposure of ship masters and other senior officers to detention and potentially draconian fines and jail sentences.²² They believe that there is a strong case for a change of regulatory approach to ensure that shipmasters and senior officers cannot be used as “pawns” or “escape goats” in wider disputes over liability or damages.

Such cases necessarily diminish the human rights of seafarers and, in extreme cases, render illusory if not nugatory the rights well established under international maritime law and the wealth of jurisprudence protecting seafarers’ rights.

It should always be remembered that it is only when the industry preserves traditional seafarers’ rights that they feel that they are valued and respected for their contributions to the enterprise. When the industry erodes the human rights and the traditional seafarers’ rights then they come to another conclusion. Mariners’ perceptions of their worth and dignity are certainly major factors not only in joining and in their remaining in a shipboard career but, to a large extent, in the promotion of overall safety onboard vessels.

3.1.2. Right to Payment of Wages and Maritime Lien

It has long been recognised that under the general maritime law as administered in the English Court of Admiralty, a seafarer possesses a maritime lien in respect of claim for wages.²³ In fact, a seaman’s lien for wages is treated as “sacrosanct” and afforded comprehensive protection by the legislature, which has made it incapable of being renounced by agreement²⁴. For example, Section 16 (1) of the Merchant Shipping Act 1970 provides that, “a seaman’s lien, his remedies for the recovery of wages... shall not be capable of being renounced by any agreement”.

²² “Who would want to be a ship’s master any more?”, *Fairplay*, August 10, 2000.

²³ *The Sydney Cove* (1815) 2 Dods.11; *The Neptune* (1824) 1 Hag. Adm. 227; *The Golubchick* (1840) 1 W.Rob. 143; *The Batavia* (1822) 2 Dods 500; *The Margaret* (1835) 3 Hag. Adm. 238, cases referred to in D R Thomas, *Supra* footnote 4.

²⁴ *Supra* footnote 4 at 175.

The lien of a seaman has regularly been supported by reference to considerations of public policy and jurisprudentially explained by reference to a seaman's service to the ship. It was the "service" and not the contract of employment" which procured the lien and pledged the security of the ship²⁵. So powerful is this right that the ship is liable even though the seaman lienor has no claim against the shipowner. In the words of Lord Watson in *The Castlegate*²⁶ "the lien attaches to ships independently of the personal obligation of the owner. In the same case Lord Field observed that "service done is the very essence of a maritime lien". Consequently, a seaman continues to enjoy a lien upon a ship notwithstanding he is purportedly employed by a person who has fraudulently obtained possession of or stolen the ship, or is employed by a person who has mere possession but no title in the ship²⁷.

The position of seafarers as the "favourites of law" is reflected in the principles relating to seafarers' contracts of employment, and to seafarers' liens for wages, often referred to as a "sacred lien". Whilst the modern maritime lien was not fully established until the middle of the 19th Century, the priority of seafarers' claims for wages over other claims was recognised by the ancient sea codes, including the *Consulat de la Mer*: "*car le matelot doit etre paye quand meme il ne reteroit qu'un clou pour le payer*"²⁸. Decisions of the English High Court of Admiralty from the 18th century also expressly recognised the existence of the lien, as an unequivocal privilege of the seafarers arising out of his service to the ship, and enforceable against the ship.

As we are now in the 21st century, with the benefits of unprecedented advances in transport and communication and with the development of a global economy, it may be asked whether the concern of courts of admiralty for the protection of seafarers is still soundly based, particularly since we would no longer

²⁵ *The Ever Success* (1999) 1 Lloyd's Rep. 829.

²⁶ (1893) A.C. 38.

²⁷ *Supra* footnote 25.

²⁸ *Consulat de la Mer*, Pardessus' Collection, Vol. II, p. 129, quoted in Thomas, *supra* footnote 4, p. 175.

attribute to seafarers the characteristics attributed to them by judges 200 years ago. Some of the recent cases provide the answer to such question.

For one thing, recent cases show that seafarers are still the victims of the financial collapse of those to whom they should look for payments of their wages. The cases also show that seafarers still face the hazard of unforeseen discharge, without pay, in foreign ports.

The case of *Mobil Oil New Zealand Ltd v The Ship "Rangiora"*²⁹ in this regard is particularly instructive. The principal issue for decision in that case was whether redundancy payments contractually due to ratings employed on the vessels *Rangiora*, *Ranginui* and *Takitimu* were protected by maritime wages lien over the proceeds of their sale. In holding that redundancy payments were "wages", Fisher J. observed that:

There are now more convincing rationales for the modern wages lien. One is the need to protect individual employees against an imbalance of power when negotiating employment packages with major commercial entities. The latter have better opportunity to protect themselves through proprietorship or security. There is nothing new about this as a relevant consideration. Earlier judicial attitudes emphasised the relative ignorance of seafarers as compared with the acumen of owners and their creditors... While such descriptions do less than justice to the modern seafarer, the lien is still explainable in part by the power imbalance compared with the ship owners and major commercial creditors.

In response to the argument that since 1822 (the year in which *The Juliana*³⁰ was decided) seafarers had made progress through collective bargaining at national levels, Justice Fisher noted that collective bargaining usually addressed the terms of employment rather than security for payment. His conclusion, therefore, was that the desirability of protecting seafarers' emoluments through wages lien was as strong now as it ever was.

²⁹ (2000) 1 NZLR 82.

³⁰ *Supra* footnote 6.

Likewise, the applicability of old principles to modern conditions was affirmed in *The Ever Success*³¹. In this case the master and members of crew who remained on board after the vessel was arrested, hoping that they would be repatriated but not being able to afford to pay for their own repatriation, claimed a maritime lien for their wages. In upholding the interests of the seafarers, Clarke J. held as follows:

Mr. Jacobs submits that conditions are very different today. It is of course true that conditions are indeed very different. As was pointed out by Sir Newnham Worley, C.J. in the *Arosa Star*³², the Admiralty Court must adapt to changing circumstances, but in my judgment, even in these times, the court should be astute to look after the interests of seamen. The facts of this case show that they are vulnerable. How for example, were the plaintiffs to get home if no one assisted them.

So too, the recent decision of the English Court of Appeal in *The Turridu*³³ shows that the old principles of admiralty law protective of seafarer's wages are still considered to have relevance and force. In that case the Cuban crew of a Maltese vessel sought to maintain a maritime lien over the proceeds of sale in priority to the mortgage of a bank. It was argued on behalf of the bank that the contractual arrangements for the payment of crew's wages by way of allotment had the effect of barring the crew's rights by the operation of the old common law rule that a party to a contract cannot recover by way of judgment in debt a sum which it has been agreed will be paid to a third party. The argument failed. After a survey of the cases, including *The Minerva*³⁴ and *The Juliana*³⁵, Lord Justice Brooke (with whom the other members of the Court agreed) looked to the substance of the matter. The payments in question, he held, had never lost their character as wages. It would be, as his Lordship said, "deplorable, given the history of the maritime lien, if a third party bank was able to maintain a priority to the crew in relation of unpaid wages simply because the crew had given instructions that an allotted part of their wages, which they did not need on board ship, should be sent home."

³¹ *Supra* footnote 24.

³² (1959) 2 Lloyd's Rep. 396.

³³ (1999) 2 Lloyd's Rep. 401.

³⁴ *Supra* footnote 5.

³⁵ *Supra* footnote 6.

It can thus be seen that the special concern for seafarers and their protection, which has been the characteristic of admiralty jurisdiction and jurisprudence over the centuries continues to this day especially in the area of the maritime lien for wages.

3.1.3. Right to Healthy, Safe and Decent Working Conditions

The special treatment of the seafaring profession as a class is evident in the employment or service contracts of seafarers since they contain welfare terms that are not usually required in purely domestic surroundings where existing services can be called upon in case of need³⁶. Many of these welfare provisions are the result of international conventions.³⁷

Another important factor shaping seafarers' employment is his working environment, which even to this day presents certain limitations on living comforts and good working conditions for crews. For example, noise and vibration and cramped machinery spaces continue to plague many modern ships. Thus, very clearly defined statutory requirements are now laid down in respect of a healthy, safe and decent working accommodation recognising the fact that an essential prerequisite to a seaman's health in addition to his personal comfort, dignity and welfare, is that he has adequate accommodation³⁸.

Despite the advent of modern ships, working and living conditions have remained deplorable; cramped and often damp living spaces, lack of storage facilities, unhygienic toilets, to often stinking cabins and infested storages causing contraction of illnesses.

Better employment and economic prospects have to go hand in hand with a real improvement of conditions of life and work, and particularly, the respect for

³⁶ *Supra* footnote 2.

³⁷ A list and brief summary of the ILO Conventions and Recommendations is provided in the Appendix.

³⁸ *Supra* footnote 1 at 458.

fundamental labour standards. In the context of globalisation, fundamental or core labour standards is an indispensable tool for promotion of social justice³⁹.

The flag states are primarily under an obligation to ensure that the administrative, political and social matters of seafarers are taken care of. To them rests the implementation of the ILO and IMO-generated conventions prescribing the standards that will guarantee the observance of the seafarers' rights to a healthy, safe and decent working conditions.

3.1.4. Right to Repatriation

The seafarer's right to repatriation is considered an important one. Where duly observed, it goes some way towards compensating seafarers for the disadvantages of their occupation *vis-à-vis* shoreworkers. Considering the seriousness of the problem that a stranded seafarer may face, it has been regarded as a minimum condition for employment of seafarers.

For many years there has been a wide acceptance of the principle that a seafarer whose ship suffered shipwreck, or who has to be left behind in a foreign port for medical treatment, or whose contract of employment ended in a foreign port, was entitled to repatriation at the shipowner's expense. This principle was first enshrined in the Repatriation of Seamen Convention, 1926 (No.23). The application of this principle is ensured through legislation, collective agreements, individual employment contract or a combination of the three, depending on the concerned country.

In recent years, however, a number of practical problems have emerged in connection with the application of this principle. Many of the problems stem from the increasingly multinational character of the crews of many ships. For instance, in a number of countries current arrangements for repatriation do not apply to non-

³⁹ Speech of Speech of ILO Deputy General Kari Tapiola at the "ILO Symposium on Labour Issues in the Context of Economic Integration and Free Trade", Spain, 20 January 1999, at <http://www.ilo.org/public/english/standards/norm/speeches/1999/tapiola/1trinida.htm>.

nationals, or non-domiciled non-nationals of the flag state, thus, non-applicable to seafarers, as well. Confusion oftentimes arises concerning the responsibility for payment of repatriation expenses⁴⁰. This led to the revision of the said Convention in 1987 to ensure the repatriation of seafarers in case a shipowner fails to discharge the obligations⁴¹. The revised ILO Convention 166 specifies that the principal responsibility for repatriating seafarers rest with the shipowner. It also prohibits the shipowner from requiring an advance payment from the seafarer towards the cost of repatriation, and from recovering the costs of repatriation from seafarers' wages. If the owner fails to make arrangement for repatriation, the convention provides for the flag state to be responsible for repatriating the seafarers. If the flag state fails to act, then the seafarer's home state or the port state may arrange repatriation and recover the costs from the flag state.

In addition, the Joint IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation came up with a draft resolution on the provision of financial security in case of abandonment of seafarers. The draft resolution affirms that provision for repatriation, maintenance while abandoned and payment of remuneration should form part of the seafarer's contractual and/or statutory rights and are not affected by the failure or inability of the shipowner to perform its obligations. It also recognises that, in cases where the shipowner fails to perform, flag states and, in some cases, the state of nationality of the seafarer or the port state may be called upon to intervene. The draft guidelines further state that shipowners should provide a financial security system that provides for the expenses of the repatriation to be met without cost to the seafarer, and for the maintenance of the seafarers from the time of abandonment to the time of arrival at a place of repatriation. Finally, the guidelines state that shipowners should ensure that their seagoing ships engaged on international voyages have on board a certificate attesting to the existence of a financial security system in the event of abandonment of seafarers, which should be posted in a prominent position in the seafarers' accommodation.

⁴⁰ ILO Convention No. 23 leaves it to national law who shall pay.

⁴¹ ILO Repatriation of Seafarers Convention (Revised), 1987 (No.166).

Instituting legal process in a foreign country for a breach of the employment contract can be very difficult, very expensive and extremely time-consuming, not to mention the possibility of being blacklisted by world employment agencies. Hence, the dilemma that confronts seafarers is that if they can get repatriation home and they are owed relatively large amounts of money, then they will not be present in the port state where they were abandoned to press their claim against the eventual proceeds of the sale of the ship. It is also a truism that courts of a particular country are less likely to be motivated in cases that do not involve their seafarers⁴².

3.2. State's Responsibility Towards Protection of Seafarers' Rights

The rights and welfare of seafarers depend heavily on the respect and priority accorded to them by the various stakeholders of the shipping industry. In an ideal world the responsibility as regards crew conditions should be the concern of the industry. However, since voluntary action is unlikely, in view of competitive pressures, responsibility for action has been shifted to the governments.

Pursuant certain provisions in UNCLOS, the primary responsibility for ensuring that shipowners maintain and crew their ships to international standards rests with the flag state. Flag states have the duty to ensure safety at sea of vessels flying their flags, with regard to seaworthiness of the ship and competence of the crew⁴³. The issue is not whether the flag state operates an open or a second registry, or if it places competitive pressures on other flags, but rather, a question of whether the flag state is properly conducting its operations in accordance with international convention requirements. While flag states have the flexibility in deciding how to administer their ship registries, they have, nevertheless, the concomitant responsibility to ensure that their standards are up to that level expected by the international shipping community.

⁴² Alastair Couper, *Voyages of Abuse: Seafarers, Human Rights and International Shipping*, Pluto Press, London, 1999.

⁴³ Article 94 of UNCLOS.

Port states also play a vital role in ship safety enforcement regulation. It is widely recognised that port state control data is essential in assisting the industry and regulators to identify and target sub-standard ships. Port state control activities when enhanced through improved targeting regimes and harmonising regional port state control systems can be an effective way of ensuring that labour standards are implemented. They could also put up tougher penalties against sub-standard ships in the form of more detailed inspection and enhanced safety system audits, fines and banning from ports. Port states also have an important role in requiring shipowners to provide proof of adequate insurance cover or arrangement to ensure adequate protection to seafarers in case of abandonment and non-payment of wages by shipowners.

Governments of labour supplying countries have a duty to introduce meaningful regulations of seafarer employment and training, including comprehensive regulation of manning agencies in line with international obligations. Particular attention must be given to eliminate the practice of blacklisting and the recruitment of non-qualified seafarers. Avenues for speedy consideration and redress of seafarer complaints about working conditions, and for repatriation in the event of abandonment are also required. Current procedures for handling seafarer complaints and abandonment are difficult for them to access, costly and all too often practically non-existent.

3.3. International Maritime Labour Regime on Seafarers' Rights

Plans for far-reaching revision of the rules governing seafarers' rights and conditions are now underway at the ILO in order to update the minimum wage of seafarers, examine the impact on seafarers' living and working conditions of changes in the structure of shipping industry which is expanding along with global trade, and fashion a new "bill of rights" for all seafarers on the high seas.

This revolutionary move at the ILO aims to consolidate the existing body of 39 Conventions and 28 Recommendations into one major framework instrument representing a kind of "bill of rights" for the industry. It has been recognised by the

Joint Maritime Commission (JMC) of the ILO that many of its maritime instruments were already outdated some dating back to 1920s, most had not been ratified, many of them deficient and did not reflect modern practice. Some of them were not practical for today's ship operation and manning, and the follow-up inspection was close to nil.⁴⁴ At the same time, existing instruments did not cover many issues that had later become relevant. Thus, the need to review and thresh out new set of rules that is hopefully adopted during the next maritime session of the International Labour Conference in 2005, and if possible, to be implemented for effective enforcement around year 2006.

The role of the ILO as an international standard-setting organisation has become far more important with the transformation of the shipping industry over the past few decades and the globalisation of the seafarer labour workforce. Many people express the view that as a truly global industry, the shipping industry requires a global response with a body of global standards.

While many people in the industry support the recent initiative of the ILO maritime body in converting into a single ILO consolidating instrument the numerous ILO conventions and recommendations, others find such move to be too little if not too late. ⁴⁵In supporting the latter view, proponents submit that while there have been calls for the review and updating of said conventions and recommendations for many years, the situation of maritime labour scene has radically changed in recent years with the introduction of the port state scheme, the revised STCW certification and the ongoing ISM certification. They further advance the view that ILO conventions have no mandatory effect without the relevant national ratification, hence, very limited enforcement if the regulation is violated, even if ratified.

On the other hand, advocates of the proposed consolidated convention envisage incorporating, in so far as possible, the substance of all relevant maritime labour standards with the necessary updating to be easily updatable to keep pace with the developments in the maritime sector, be drafted in such a way as to secure

⁴⁴ Arne Sagen Companion, "Seafarers' working conditions", *Seaways*, March 2002, at p. 15.

⁴⁵ *Ibid.*

the widest possible acceptability, place emphasis on the means of enforcing its provisions and be structured in such a way as to facilitate the achievements of the foregoing objectives.⁴⁶

Notwithstanding the growing criticism on the proposed consolidation of ILO maritime labour instruments, it cannot be denied that the need for a self-confident, proud and highly skilled workforce is urgently needed now by the industry more than ever. While coherence and quality in training of seafarers were already addressed by the STCW 1995 and ISM Code, the same will not in themselves be sufficient. There are still pressing social and human rights issues associated with crew composition and size, wage levels, continuity of employment, health and safety, the quality of shipboard life and, above all, and quite fundamentally, an unfailing recognition of the seafarer's need for dignity and respect. None of these issues can be properly dealt with without the appropriate and effective regulation of the labour market at the global level. As the proposed consolidation of the ILO maritime labour conventions and recommendations endeavour to improve their implementation, thus, contributing to the protection of seafarers and their human rights, such move should be supported.

⁴⁶ ILO, "The proposed consolidated maritime labour Convention: Key features", Eight Item on the Agenda, Committee on Legal Issues and International Labour Standards, 286th Session, Geneva, March 2003.

CHAPTER 4

DEVELOPMENT OF SEAFARING INDUSTRY IN ASIA

4.1. Growth of Seafaring as Career Opportunity for Asian Countries

Even during the early colonial periods, Malays, Indonesians, Chinese, Indians, Filipinos and other Asian seafarers were already utilized by British, Dutch, and German vessels plying the Far East-European routes and coastal trades within the region,¹ however, it was only when these Asian countries were liberated and given their independence that they were able to claim as maritime nations in their own right.

Given the geographical location and feature of the Asian region, the sea is regarded as one, if not the most important resource that brought about dynamic economic growth and increasing share in international trade. Concomitant with this development is the growth of seafaring as a career opportunity in developing countries within the region.

As it has been witnessed in recent years, Asia represented the most important source of labour for the world merchant shipping today. The 2000 BIMCO/ISF results confirm that the centre of gravity of the manpower industry has continued to move away from most of the traditional maritime countries in Europe, Japan and North America towards countries in the Far East, the Indian sub-continent and Eastern Europe. Seafarers from OECD countries currently constitute

some 27.5 per cent of the marine global workforce compared to 31.5 per cent in 1995 and there have been particularly substantial reductions in the numbers of junior deck and engine officers from OECD nations.²

While this development is a welcome employment opportunity that can alleviate the financial burden and unenviable plight of thousands of seafarers and can, in turn, spur economic activity within the Asian region, safeguards through regulatory framework should be put in place, in order to protect seafarers' rights and prevent exploitation and abuses that has been reported to be committed against these often helpless Asian seafarers.

Moreover, with the various international requirements set to improve the quality of seafarers and the pressure from the international community to improve the human element in shipping, emerging crew-supplying countries in Asia have to live up to the challenges of the changing situations operating within the industry. They may have to engage in programs and activities that would not only maintain their position in the global market but also enhance the maritime manpower development in the region.

According to the BIMCO/ISF 2000, referred to above, about 70% of companies surveyed agreed that in the future, the majority of senior officers will be Asians. The cited reasons for this include the existing knowledge of trends showing the decline of OECD seafarers, the current large numbers of Asian junior officers, and the age profiles of the different grades of current officers. Several companies even stated that current trends were such that they could no longer be reversed, even if there was a desire to do so, which many (including some European companies) doubted.³

¹ Mary R. Brooks, *Seafarers in the ASEAN Region*, Singapore, Institute of Southeast Asian Studies, 1989 at p. 23.

² BIMCO/ISF 2000 Manpower Update, "The Worldwide Demand for and Supply of Seafarers", Main Report, University of Warwick, April 2000.

³ *Ibid.*

With such report, the competitive advantage of Asian officers to fill-in the gap of shipboard officers and their potential take over in the global manpower market should be strengthened by maintaining and improving the systems and standards of the various countries' maritime educational and training institutions. In this respect, the technical and development assistance, such as the training programs to upgrade the competence, knowledge, skills and attitudes of seafarers, extended by international organizations and associations must be used to further enhance and improve the region's maritime manpower capacities.

As suggested by one author⁴, potential officers now need to be actively identified, cultivated and supported throughout the maritime educational process, as this is the only way in which the shipping industry can ensure that it will have enough manpower in the future. She further elucidated that addressing the problem of officer shortages requires careful, concerted and focused effort among those involved in the world shipping industry. While some are of the view that seafarers from emerging maritime countries could fill the gaps for senior officers' positions globally, it is a widely held view that to be able to sustain such proposition in the long term requires much more than just personal interest on the part of the seafarers. Alongside with such interests, efforts on the part of the employers and the participation and involvement of manning agents, maritime schools, and other stakeholders with whom the seafarer deals in the course of his profession are required.

The reported worldwide shortage of officers and the vast oversupply of ratings should be looked upon both as a threat and challenge to labour supplying countries in Asia – a threat to their position as the primary source of maritime manpower market and a challenge to fill in the demand left by OECD states. Maintaining such position will largely depend on the quality of Asian seafarers that would be deployed and the ability to comply with the requirements set by the STCW Convention and other internationally agreed regulations.

4.2. Economic Impact of Seafaring Industry in the Region

Following the decline of skilled maritime manpower in traditional maritime states and the move to flexible open and second registries in the desire of the shipowners, among others, to cut ships' operating costs, the employment of seafarers from developing countries, particularly in the Asian region, has, in recent times, been a growing phenomenon.

The consequent economic impact of seafaring played an important role in addressing substandard living conditions in Asia, which statistically accounts for almost two-thirds of the world's poor⁵. Regular remittances from seafarers working on vessels that trade internationally comprise more than 25 percent of gross national product in some labour-supplying countries⁶. For individual families, this meant an improvement in their quality of life as exemplified by sending their children to good schools and universities, affording better nutrition, health care, clothing and decent living facilities, earning enough for recreation, family leisure and entertainment. Their dollar remittances and propensity for consumption upon their arrival continue to prop up the economy. As a Bangladeshi expert pointed out: "Maritime employment is of consequence to developing countries in a number of ways, most important of all, it is a source of employment to the able-bodied men of the developing world".⁷ In the case of the Philippines, the "manning capital of the world", supplying 209,593 seafarers onboard ocean going vessels, the overseas seafarers remain a major dollar earner remitting USD218.9 million in calendar year (CY) 2001 and USD283.7 million during the first five months of CY 2002⁸. Thus, many young Filipinos strive to enter into maritime schools to find work on board ships worldwide.

⁴ Carla S. Limcaoco, "Adding Value", *Seaways*, December 2002 at p.14-16.

⁵ ILO, "Decent Work", International Labour Conference, 87th Session at p.52.

⁶ Introduction to the Regional Maritime Programme and Its Strategic Plan; Six Year Strategic Plan for 2002-2005.

⁷ A. Hafnat, "Seafarers in the Asian Region (Bangladesh)", in *Seafaring welfare in the Asian region*, Report on the regional seminar, Singapore, February 1990

⁸ "The Maritime Manpower Sector in the Philippines", A situationer report 2001-2002 at <http://www.marina.gov.ph/report/manpower/manpower2002.pdf>.

Considering its importance to the economy as a source of substantial employment opportunities for the country's labour force, crew-supplying countries undertake any and every possible effort to demonstrate their capability and commitment to steadily supply competent officers and skilled ratings in accordance with the requirements of the 1978 International Convention on the Standards of Training, Certification and Watchkeeping (STCW), as amended.

As labour supplying countries, they are obliged under the STCW regime to comply with the minimum standards prescribed by the Convention. They are, therefore, required to train and qualify their seafarers accordingly. This necessarily entails setting up infrastructures and upgrading the competence of practically all those involved in training, education and certification of seafarers, from the academy to the government agencies and on to shipping companies which will finally employ the seafarer.

It is for these reasons and to ensure continued viability and a steady supply of maritime manpower to the world merchant fleet that the labour-supplying countries need to streamline government bureaucracy so that efficient and quality service to the seafarers and to the international maritime community is provided. It would be greatly advantageous if a Commission, Department or Body is created in this respect to serve as a one-stop-shop office where all seafarer-related activities covering education, training, examination, assessment, certification, employment and welfare can be handled.

4.3. Social Impact of Seafaring

Despite the positive economic impact of seafaring in the form of remittances generated to seafaring communities within the region, the industry, continues to adversely affect the safety and social well being of seafarers while on board and even ashore. It is a grim reality that notwithstanding the various international and national laws established by maritime authorities detailing stringent requirements on

the ship and its equipment as well as to improve the conditions on board, the ship is still regarded as a dangerous place to work and others even consider today's ships as little better than the slave ships of yesteryears⁹.

Seafaring as a profession demands a social life different from land-based occupations. For a seafarer, the ship is both his home and his workplace. Serving on board ship is, therefore, not just a job but also a way of life for him. From the time he boards the vessel, he is introduced to a society with behavioural norms and social values different from the outside world. The growing internationalization of crew adds to this peculiarity. Thus, constant adjustment to cultural and linguistic differences becomes essential, if harmonious living and working relationships are to be desired by all concerned.

The ship as a home to seafarers is a noisy metal structure with no fixed foundation, prone to rolling and pitching by sudden movements of the wind and the waves. Considering the length of time that seafarers have to endure living and working in isolation from the rest of the world, a non-seafarer can only imagine what a seafarer has to endure to earn a living for himself and his family at home.

The reduction of shipboard manning levels due to automation and advances in maritime technology coupled with long working hours, lack of sleep, lack of recreational facilities, lack of or diminished shore leaves have greatly added to the physical and psychological stress of seafarers. If left unchecked, these factors will not only cause the seafarer to suffer fatigue, boredom and depression, but may also lead to accidents that can result in loss of lives, property and damage to the marine environment.

It has been reported that there exists a link between shipboard living conditions in terms of work organization, manning, hours of work and health of crews and human error. Fatigue and overwork is said to distort the judgment of a competent, well-trained individual. A 1994 study by the German Institute of Shipping

⁹ See, e.g., International Commission on Shipping (ICONS) Report on *Ships, Slaves and Competition*.

Economics and Logistics¹⁰ highlighted this fact when it evaluated 330 accidents that occurred between 1987 and 1991 involving merchant ships. This is also evident in the growing importance given to studying the human element and mitigating any negative effects it might have on ship safety. According to Eriksson and Mejia, because of man's imperfect nature, the need to fill the gap between advanced technical standards and better, more responsive, safety-conscious management became self-evident. They add that "even with a technologically advanced vessel, highly qualified crew and world-class managers, a company's casualty record still stood or fell on the presence of a safety culture among all personnel."¹¹

Many seafarers have signed employment contracts expecting and trusting, that they will have decent lives on board and that their human dignity will be respected¹². All that has remained as unfulfilled expectations for many seafarers. Long and fast paced working hours, non-existent or inadequate rest, repetitive tasks, hostile environment, insufficient food and unsanitary living conditions are some of the factors that not only adversely affect seafarers' health, mental and physical equilibrium and productivity but also cause tension, fatigue and job dissatisfaction. It is not acceptable that one's profession should endanger one's treasured possessions of health, physical integrity or his career, professional skills or dignity. As well as providing for the necessities of life, work should likewise offer personal satisfaction and a sense of achievement.

The seafarer's social life continues to be abnormal and stressful even beyond the workplace and is often linked to his life, family and social responsibilities. Finding a new employer is a major problem confronting seafarers after every contract ends. Owing to seagoing labour surplus in some developing countries, seafarers have to wait for vacancies. And since the waiting period between jobs are often long, they have to stretch their income during those idle times. They are

¹⁰ "The impact on seafarers' living and working conditions of changes in the structure of the shipping industry", Report for discussion at the 29th session of the Joint Maritime Commission, ILO, Geneva, 2002, p.100.

¹¹ Per Eriksson and Max Mejia, "IMO's Work on the Human Element in Maritime Safety", SUNDRIK Project, Report No. 2003, Lund: Lund University Centre for Risk Analysis and Management, LUCRAM, 2000 at p. 20.

¹² Paul Chapman, *Trouble on board*, ILR Press, Ithaca, New York, 1992 at p. 77.

sometimes forced into financial debt between jobs against expected earnings, and worse, accept lower wages and poor terms of employment simply to secure any job to pay off debts. Thus, many seafarers are regarded as “economic hostages to a life at sea”. Physical separation is also an ongoing cause of stress for seafarers. Long absence makes it impossible to lead and be involved in a normal family life. Often the separations cause strain and irritability that sometimes result, in extreme cases, to serious conflicts and broken families.

People from various nationalities have different motivations for choosing seafaring as a career. Some go to sea due to family tradition or to fulfil a boyhood dream, while others are attracted to the invisible romance of sea life. For some it is a means of escape to see far off places. For most developing countries, however, seafaring is chosen mainly for economic and financial reasons. As their livelihoods depend on this occupation many of them are forced to accept lower than standard wages and a reduced quality of living and working conditions.

Despite the seemingly negative social impacts, seafaring, fortunately or unfortunately will remain a chosen profession in Asia for as long as conditions at home are less tolerable than onboard¹³. Given this deplorable scenario, together with flag states, which are found remiss in affording protection and overseeing the welfare of foreign seafarers working on board their ships, it is the inherent duty and responsibility of labour-supplying countries to take appropriate measures within the context of their respective national legislation and regulatory framework, to guarantee that the rights and welfare of their seafarers while working on board foreign ships are observed and respected.

¹³ *Ibid.*

CHAPTER 5

LEGAL REGIME OF SEAFARERS SERVING UNDER FOREIGN FLAGS

5.1. NATIONAL POLICIES AND EMPLOYMENT ISSUES IN THE REGION

The promotion of seafaring among Asian labour-supplying countries as a result of the declining interest in this profession among traditional maritime nations has created real economic benefits for developing countries. Specifically, it has generated employment opportunities and foreign exchange earnings. At the same time it has enabled these countries to develop their own maritime tradition and improved technical and management skills¹. It is for these developments and the need to organise effectively the maritime labour market that the national governments of the labour-supplying nations were called upon by ILO to establish appropriate agencies and adopt legislation requiring the registration of seafarers. Such agencies are held responsible for all aspects of shipping and seafaring industry, in regulating and helping to ensure that seafarers are paid appropriate wages, accorded proper terms and conditions of employment and not forced to work on substandard ships². A study of the three (3) leading maritime labour-supplying countries in Asia, namely, China, India and the Philippines presents a helpful insight into their national policies and how they address employment issues within the context of their national framework.

¹ Chia Lin Sein, "Key Issues regarding employment services for the recruitment and placement of Asian seafarers", a lecture delivered at the ILO Regional Seminar, Manila, 20-25 November 1989.

² *Ibid.*

5.1.1. China

Much of the economic growth China is experiencing in recent decades can be attributed to the fundamental changes in its government's policy with the opening up of its economy to the international trade or what is known as the "open door" policy. Prior to the adoption of such policy, international shipping was centrally managed by the state and could only be operated as planned transport under national protection³. The whole fleet was also made up of aging vessels, of unsuitable composition, outmoded technology, rigid management and lack of economic vigour and market competition⁴. With the introduction of a market-oriented economy there was an immediate expansion in the Chinese-owned shipping industry both in terms of numbers and tonnage, giving way to the progressive development of seafaring labour force⁵.

Two major shipping companies, the China Ocean Shipping Company (COSCO) and the China Shipping Group (CSG), currently dominate the Chinese fleet. As of 2002, COSCO operates some 600 vessels, of which 160 fly the flag of an open registry, mainly Panama, while CSG has a fleet of 400 vessels with a small percentage flying a foreign flag.⁶

It was revealed by Chinese Maritime Authorities in 1989 that Chinese seafarers employed on board foreign ships since China began carrying out a series of reforms and opened its doors to developed shipping countries totalled 4,000⁷. In 2001, twelve years later, the figure increased dramatically with 40,000 being employed on foreign-flagged vessels, representing a tenfold increase from the 1989 figure.

³ Tae-Woo Lee, Michael Roe, Richard Gray and Mingnan Shen, *Shipping In China*, Ashgate Publishing Limited, 2002, at p 9.

⁴ *Ibid* at p. 10.

⁵ "Report on an ILO investigation into the living and working conditions of seafarers in the Asia/ Pacific region, Report of the ILO Regional Maritime Conference in the Asia/Pacific Region", Singapore, ILO, 2002, p. 5.

⁶ *Ibid* at p. 8

Unlike the current age profile in traditional maritime countries, seafaring in China is very much a young man's occupation. The average age of ratings is 41 years and 39 years for officers, with very few over 50 years of age. One of the reasons for this relatively short-lived career of Chinese seafarers is the increasing preference for land-based occupations.

Nevertheless, with China's growing shipping industry, its commitment on education and training of its seafarers remain unwavering and made even stronger by the allocation of substantial resources for this purpose. Among the areas that they are currently examining is the teaching of English language to the seafarers. The Chinese are now seriously improving the standard of English of seafarers for employment on foreign-going vessels, and as an essential education for shore-based employment.⁸ Thus, the Ministry requires that specialist courses be taught in English while at the same time prescribing that 20 percent of other courses be conducted in English as well.

Investigation on recent maritime accidents revealed that some of them can be attributed to the deficiency in communication skills, particularly, English language which, at times, results in misunderstanding between seafarers and other ships or coast stations. In 1991, for example, the Chinese bulk carrier *Tuo Hai*⁹, sailing in Canadian waters, did not understand the instruction of a local VTS station, and as a result, collided with a Japanese fishing vessel.

Some commentators are of the view that inability to communicate in English has in the past been recognised as a barrier for Chinese seafarers but it is now

⁷ "Recruitment and Placement of Asian seafarers", Report of the ILO Regional Seminar, Manila, 20-25 November 1989, p. 120.

⁸ *Supra* footnote 5 at p. 12 and *Supra* footnote 3 at p. 24-25.

⁹ "Collision between the bulk carrier *Tuo Hai* and the factory F.V *Tenyu Maru* with the subsequent sinking of the *Tenyu Maru*, Off Cape Beale, West Coast of Vancouver Island, B.C., 22 July 1991", *Transport Canada*, at <http://www.tc.gc.ca/tcss/tsb/marine/1995-recs/M91W0004.html>.

becoming a thing of the past as English is being widely taught in maritime educational institutions.¹⁰

Even in China, seafaring has never been an attractive career. In fact, there appears to be a shortage of officers at the junior level that highlights the recruitment problem particularly in smaller shipping companies.

Recently, however, it was noted that an increasing number of Chinese seafarers prefer working on foreign-owned vessels, the primary reason is the more attractive wage levels (often 50 percent higher) that are tax-free. The employment of these seafarers is supervised by the China Coordination Council for Overseas Seamen Employment (COSE) and approved by the Ministry of Foreign Trade and Economic Cooperation (MOFTEC). They are responsible for the annual deployment of 40,000 seafarers to 54 companies with vessel registries based in Greece, Hong Kong (China), Japan, North America, Norway, Singapore, Taiwan and Republic of Korea. COSE has a coordination, guidance and consultation function to assist the relevant government institutions in coordinating and monitoring the activity of overseas seamen employment. The guidance they provide includes technical training, knowledge of the country, specific operational standards and requirements of the company. It handles matters of international concern on behalf of its members and is concerned with the legitimate interests of the seafarers. As part of the process, it actively establishes and strengthens business links with its counterparts at home and abroad and promotes cooperation between its members and foreign shipowners.¹¹

It has been estimated by CSG that there is an annual increase of 5 percent Chinese seafarers working on foreign ships.¹² Commentators subscribe to such forecast and affirm that, "Chinese seafarers are the obvious long-term alternative to those from the Philippines. According to a latest study done by the Chinese

¹⁰ K.X. Li and J. Wonham, "Who mans the world fleet", *Maritime Policy and Management*, 26(3), 1999, p. 296.

¹¹ See, e.g. *Supra* footnote 5 at p. 14-15 and *Supra* footnote 3.

¹² *Supra* footnote 5 at p. 15.

Government, it is projected that, by the year 2010, the supply of Chinese seafarers to foreign ships will rise to 60,000, of whom 32,000 will hold officer qualifications".¹³

Chinese seafarers working on foreign vessels receive a separate service contract, which covers the period of work in a foreign company. They are also entitled to a special pension scheme by contributing as other Chinese nationals ashore, but receive a 40 percent higher benefit than their land-based counterparts.¹⁴

As a sign of their commitment to quality working conditions, in 1991, the Ministry of Communications (MOC) started publishing regulations relating to the protection of seafarers, which were primarily safety related. While there were no specific regulations on food and accommodation, the Ministry, nonetheless, specified an amount in dollars as the quota for each seafarer.¹⁵ It is usually the contract with the shipowner that regulates food, accommodation and living conditions of seafarers. In addition, collective bargaining agreements (CBA) determine the hours of work, wages, responsibilities and leave of the Chinese seafarers.

Since conditions on foreign vessels are difficult to monitor and control as living and working conditions vary from company to company, the manning agencies through COSE set out basic conditions for safety and living conditions. Thus, companies are surveyed and evaluated by COSE before they enter into contractual arrangements with seafarers. Furthermore, if the ship calls at a Chinese port, inspections of the living conditions may be carried out by Port State Control Officers (PCSO) from the Maritime Safety Administration (MSA)¹⁶

While the MOC and major shipping companies do not consider Chinese seafarers as a potential major supplier to the world fleets because of its own substantial fleet requirements, such opinion is not shared by COSE which actively

¹³ *Supra* footnote 10 at p. 297.

¹⁴ *Supra* footnote 5 at p.16.

¹⁵ *Supra* footnote 5 at p.17.

¹⁶ *Ibid* at p.17.

promotes Chinese seafarers on foreign-flagged vessels and sees the numbers as increasing substantially.¹⁷

It can thus be seen that China's position as a major international maritime nation has been gradually secured over the recent decades and continues to be filled with opportunities and challenges. As it further aspires to increase the quantity of its fleet and enhance the quality of its seafarers, it should continue to recognise the essential international characteristics and potential opportunities of the industry *vis-à-vis* its labour workforce.

5.2.2. India

Effective legislation and collective agreements concerning seafarers working on Indian and foreign-flagged vessels have been established over the years through the cooperation of the major players, *i.e.*, the Government (Ministry of Shipping and Director-General of Shipping), the Indian National Shipowners' Association (INSA); the National Union of Seafarers of India (NUSI), the Forward Union of Seafarers of India (FUSI), and the Maritime Union of India (MUI).

The Directorate General of Shipping (DG Shipping) is a statutory authority appointed under the Merchant Shipping Act of 1958 and is responsible for implementing the provisions of the Act and the operational development of the maritime industry in India.¹⁸ Under the department, there are shipping offices responsible for supervising the engagement and discharge of seafarers and the issuing of continuous discharge certificates (CDCs) for those eligible under the Act.¹⁹

There is also a National Maritime Board composed of an equal number of members representing shipowners/employers and ratings' unions. The INSA

¹⁷ *Ibid* at p.18, See also, *Supra* footnote 10.

¹⁸ "A Survey of the Maritime Education in India" at http://www.imaritime.com/resources/research/monitor/Archives/Oct2000/oct2000_education.htm (visited on 08/06/2003)

¹⁹ *Supra* footnote 5 at p. 27.

nominates nine members, of which three are representatives of foreign shipowners/employers using Indian ratings. The decisions of the Board cover all areas pertaining to living and working conditions such as safety, accommodation, food, wages, overtime and leave, which are included in their summary of agreements.²⁰

With over 80,000 ratings attempting to secure one of the estimated 32,000 jobs, there is a substantial surplus of manpower in this area. It is said that the situation is likely to be aggravated in the coming years with the increase in the issuing of CDCs. Some union representatives are of the view that the issuing of certificates should only reflect the employment opportunities and potential vacancies.²¹

As far as Indian ratings are concerned, they prefer working on Indian-flagged vessels because of the favourable terms and conditions of employment. The situation is quite different for Indian officers who find employment on foreign-flagged vessels more attractive. This is largely because of the favourable income tax provisions available to Indian citizens living outside India for 182 days or more as they are then considered to be non-residents for income tax purposes.²² Thus, whereas an officer working on a foreign-flagged vessel pays no tax, an officer earning a comparable salary on an Indian-flagged vessel is subject to tax at the normal rate, and is therefore at a major disadvantage.

The growing competition in the international seafarers' labour market is a fact that is now very well appreciated by the Government, shipowners and unions alike in India. They are confident though that they have a disciplined workforce that is of very high quality. Fluency in the English language and communication skills are also important qualities that Indian seafarers are well equipped with compared to other seafarers from the developing world.

²⁰ National Maritime Board (India) Summary of Agreements as referred to in *Supra* footnote 5 at p.28.

²¹ *Supra* footnote 5 at p. 31.

²² *Ibid.*

In India, the Government is responsible for quality assurance in all training institutions for both ratings and officers, for which it has established three major maritime districts in Kolkata, Mumbai and Chennai. Each of these districts has a principal officer with an academic council comprising of industry and government representatives.²³ It is clear, therefore, that both the government and maritime institutions take training and quality control seriously. This is consistent with the government's central strategy of producing quality labour, not only for the benefit of its own flag vessels, but also for the wider international market.

As regards wages, there is a general perception that Indian seafarers belong to the higher end of the international wage scale that reflects high quality workforce.²⁴ While this may be true in the case of ratings, the same cannot be said of the officers.

Ratings on board foreign-flagged vessels are either covered by the International Transport Workers' Federation (ITF) Terms and Conditions Contract (TCC), whenever applicable or what the union recommends with the ILO as a minimum acceptable rate. In ships of certain flags, however, it has been noted that seafarers were made to sign receipts of the ITF wage but in reality received a lesser amount. These are obviously fraudulent practices. The Indian unions claim that generally their ratings would refuse to be a party to such questionable activity.

As it is, the seamen's unions in India are extremely powerful. Thus, no seafarer who is not a member of one of the unions can be hired by any shipowner.²⁵ It is also worth mentioning that within the context of the domestic economy, the wage level for seafaring officers is high compared to the average professional person in India.²⁶

²³ *Ibid* at p.34.

²⁴ *Ibid* at p.35.

²⁵ "Chinese invasion, threat to Indian, Filipino seamen", *Lloyd's List Maritime Asia*, March 2003, p. 15.

²⁶ *Ibid* and *Supra* footnote 5 at p.36.

Indian ratings who seek employment onboard foreign-flagged vessels are recruited by manning agencies. Aside from the two recognised associations of such agents in India, *i.e.* the Foreign Owners Ship Management Association (FOSMA) and the Maritime Association of Shipowners, Shipmanagers and Agents (MASSA), there are numerous of other agents who are not members of these associations and are therefore, unregulated. It is hoped though that with the ratification of ILO No. 179²⁷ and its subsequent implementation in Indian law, proper regulations and working conditions for seafarers will be enforced with impunity.

On the other hand, the majority of officers are employed directly by the company but the trend is changing so that the traditional structure where officers were perceived as company men serving from cadet to master or chief engineer is no longer true for many Indian seafarers. Most of them do not continue with their companies if there are better employment opportunities available elsewhere.

Another key issue that confronts Indian seafaring is the absence of statutory protection for seafarers engaged by other flag states. Thus, matters involving Indian seafarers arising outside India are not handled by the Ministry of Shipping but by the Ministry of Foreign Affairs.²⁸ This is not an ideal situation because Foreign Ministry officials have very limited knowledge and competence, if any at all, to understand and act on seafarers' causes and interests.

From the above discussion, it can be gleaned that the Indian seafaring labour force clearly encompasses two different systems of employment, one for the officers and the other for ratings. Further, the economic conditions, which affect these two distinct groups, create pronounced differences in employment preference. Finally, it can be said that regulation and legislative framework on manning agents

²⁷ The ILO Recruitment and Placement of Seafarers Convention, 1996 (No. 179) makes explicit the fact that private recruitment services should be regulated. Under this Convention laws or regulations should be established to ensure that no fees or other charges are borne directly or indirectly in whole or in part by seafarers. It further mandates that recruitment agencies should be closely supervised and prohibited from using means, mechanisms or lists intended to prevent or deter seafarers from gaining employment.

²⁸ *Supra* footnote 5 at p. 39.

that are responsible for the employment of ratings are inevitable for the greater protection that these will afford to the ratings, hence, encouraging more to seek employment on foreign-flagged vessels. As far as officers are concerned, higher wage rates offered by foreign registers coupled with beneficial tax provisions may result to potential shortage of quality officers within the Indian flag, thus, policy makers of the country should address this matter seriously.

5.1.3. Philippines

The role of employment is obviously crucial to any economic or commercial activity and this is especially true of the Philippines where overseas employment is so extensive.²⁹ The BIMCO report 2000 estimates that the supply of Filipino seafarers stood at 50,000 officers and 180,000 ratings or 20% of the total seafarers in the world, ranking first in the top-ten labour supplying countries in the maritime field and contributing as much as USD2.5 billion in foreign exchange obviously assisting in large measure to keep the Philippine economy afloat.³⁰

Behind these impressive figures, the Filipino seafarers are faced with fierce competition in the international manpower market, which falls into two broad categories: systematic problems and the relative competitiveness of other developing maritime labour-supplying countries.³¹

The systematic problems stem from the bureaucracy in administration, doubts about the quality of maritime education, corruption, and legal issues, particularly high profile claims involving million of dollars by Filipinos in foreign courts.³² The complexity of the bureaucratic system in the Philippines is a result of the multiplicity of government agencies involved in the processing and documentation of seafarers, e.g. passports, seamen's record books and work visas. A number of government agencies have significant involvement with the overseas Filipino seafarer. The Department of Labour and Employment (DOLE), for example,

²⁹ *Ibid* at p.47.

³⁰ "Rough sailing for Filipino sailors", *Philippine International Review*, Vol.1, No.4, Spring 1999.

³¹ *Supra* footnote 5 p. 48.

has four offices each with a differing role to play: the Philippine Overseas Employment Administration (POEA), the Overseas Workers Welfare Administration (OWWA), the Maritime Training Council (MTC) and the National Labour Relations Commission (NLRC).

Such a complex set of institutions handling seafarers and manning agencies, has generated bureaucracy, corruption and abuse of Filipino seafarers. While the framework has been constantly reorganised, these agencies are perceived as making unnecessary requirements instead of aiming to upgrade the profession. Seafarers often cite absurd situations where bureaucrats who hardly know anything about maritime matters are empowered to evaluate their competencies.³³ Moreover, some alleged that it takes at a minimum of 2 months for the Professional Regulations Commission (PRC) to act on deployment of seafarers, a situation that is unacceptable to shipowners who would rather look for crews elsewhere than wait³⁴.

An equally important issue is the increasing number of legal cases involving Filipino seafarers that are being used as the basis for further action being taken in foreign courts, notably Panama and the United States. Such legal actions cast Filipino seafarers in an unfavourable light.³⁵

The problem of fraudulent certificates has also recently tainted the image of Filipino seafarers. Following the publication of a report of an international research group on fraudulent practices,³⁶ the Philippines has established tighter security measures for the production of certificates, notably a special paper printed by the

³² *Ibid.*

³³ Basco Fernandez, "The Filipino Sea-Based Workers in the Netherlands: What Dutch Policy Makers Could Do To Ensure Humane Standards", at <http://www.ffon.org/documents/seafarers.doc>.

³⁴ *Fairplay*, 11 October 2001, p.18.

³⁵ *Supra* footnote 5 at p.48, See also, "Battle for quality shipping", *Lloyd's List*, February 26, 2003.

³⁶ Seafarer International Research Center (SIRC) "A study on fraudulent practices associated with certificates of competency and training, Cardiff University, 2001, p.5.

Central Bank that contains at least five security features which are invisible to the naked eye.³⁷

In a bid to further reassure foreign employers and to ensure real-time information to Parties to the STCW Convention and to shipping companies with regard to the authenticity of certificates, endorsement and documentary evidence of its Filipino seafarers, the MTC launched on 01 February 2002, the registry of seafarers who are duly certificated under the requirements of the amended convention.³⁸

Despite these measures, foreign shipping companies have been pursuing other alternatives to fill their requirements for officers and ratings.³⁹ A recent survey conducted by two of the country's manning groups, i.e. The Filipino Association for Mariners' Employment (FAME) and the Philippine Association of Manning Agents and Shipmanagers (PAMAS) showed that 80 of their member agencies lost around 8,300 jobs to other Asian, Eastern European and Chinese competitors over the last two years.⁴⁰ They estimate that 50 percent were lost to other Asian crews, 27 percent to Eastern European and 14 percent to China. It is said that shipowners are finding the quality of work to be comparable and the wage levels are considerably lower. A comparison of wage scales between Filipino and Chinese seafarers showed that the lowest scale for Filipinos is higher than its closest competitors highest scale.

Given the huge supply of young recruits, there is a natural preference for younger and physically fit seafarers in an arduous profession. Moreover, younger seafarers are generally cheaper to employ than those with more experience. A major factor, according to the Government and unions, is the requirement for

³⁷ Ramon T. Tionloc, Jr., "The Philippines: Issues Related to Merchant Marine Administration and Efforts to Give Full and Complete Effect to the Provisions of the 1978 STCW Convention, As Amended, Unpublished lecture notes, Maritime Administration Seminar, World Maritime University, 11-15 November 2002, Malmö, Sweden.

³⁸ The MTC can easily be accessed through its website <http://mtc.gov.ph>, *Ibid*.

³⁹ Eduardo Carillo, "One last attempt at supremacy", *Tining ng Marino*, January-February 2002.

⁴⁰ *Supra* footnote 37.

medical insurance, which becomes relatively expensive after the age of 45, thus, leading to substantial, if indirect, age discrimination.⁴¹

Social structures were also seen as a reason behind this trend. Close family ties for instance suggest that when the costs of schooling children have been met and less money is required, the seafarers may opt to move ashore in less lucrative employment to be with the family. Hence, the tendency to shift from overseas to domestic trade vessels at this time. Whilst this trend is clear for ratings, age is thought to be less of a problem for officers. In this group the potential cost disadvantage is outweighed by qualification and experience.⁴²

The Philippines has also recently come under criticism with regard to the quality of its maritime education which has resulted in tighter quality control and monitoring by the government. Furthermore, such criticism together with the need to implement STCW 1995 led to the establishment of the MTC, which was given the overall responsibility for overseeing the quality of maritime education in the Philippines.

In recent years, certain shipping companies and maritime states recognized the Philippines as a potential source of officers, particularly, at junior levels. A Japanese foundation is funding an apprenticeship programme of 600 apprentices and three master mariners. The programme started 14 years ago.⁴³ The Netherlands has recently initiated a similar scheme since March 2002, with 30 cadets per year. The establishment of such schemes manifests the confidence that flag states have in Filipino seafarers and their potential in meeting the dwindling supply of officers.

Under the labour laws of the Philippines, overseas seafarers are regarded as contractual employees. As such, they do not enjoy the same rights as workers ashore in terms of security of tenure, minimum social security benefits and other rights as prescribed by the Labour Code. Thus, the contract between the employer

⁴¹ *Supra* footnote 5 at p.54

⁴² *Ibid* at p.55.

⁴³ *Ibid* at p.56.

and employee is crucial in determining the terms and conditions of employment. The POEA issues and prescribes a standard employment contract (SEC) which contains the minimum terms and conditions of employment, but does not prevent employer and employee from agreeing to better terms and conditions.⁴⁴

Collective agreements are an important part of determining terms and conditions. These are agreed upon by the unions and employers. These unions enter into CBAs with shipowners setting the terms and conditions of work, together with support programmes such as legal assistance, welfare aid, medical benefits, savings and loans, and training.

Manning agents play a vital role in the employment process in the Philippines and as such must be licensed by the Government. As part of the agreement, they are obliged to recruit medically and technically qualified seafarers. Further, they assume full responsibility for all claims and liabilities that may arise in connection with the use of the licence, assume joint and several liability with the employer for all claims and liabilities arising out of the contract, and guarantee compliance with Philippine labour laws as well as those of the country of employment of the seafarers. The licences are normally valid for two years, which can be renewed but not transferred. All licensed manning agencies can be subjected to inspection by the POEA to specifically verify that no fees are charged to the seafarers for recruitment and placement services. It appears that there is more breach than in compliance in this regard.

The wage rates generally follow the ILO minimum but with a significant time delay. Although a minimum wage is in existence, it is noted that there have been some reported incidents of seafarers accepting less than this in order to gain employment. Filipino seafarers on foreign-flagged vessels, however, can earn widely varying wage levels. The wages agreed by CBAs are often far more favourable than those set by the POEA.

⁴⁴ *Supra* footnote 5 at p. 57

As far as social security is concerned, seafarers under the Social Security Act, 1997 may be covered by the Social Security System (SSS) on a voluntary basis. If they choose, they can be entitled to various benefits, such as death, sickness, leave, funeral benefits and retirement pensions. They may also participate in the National Health Insurance Programme administered by the Philippine Health Insurance Corporation, which provides health-care insurance. Given the present and potential competition from other labour-supplying countries, the variation in labour unit cost is likely to become more apparent, particularly as shipowners see this as a vital and perhaps only flexible element of their operational costs⁴⁵.

The threat of international competition and the surplus of labour particularly in the ratings market places a great impact in the way policy issues are shaped in the Philippines. To a certain extent, it can be said that the consequence is a workforce that is vulnerable to various forms of discrimination. Age discrimination is based on the costs of employment in terms of medical insurance premiums which are greater for those over 45 years of age. Wage discrimination appears to be common as seafarers are forced to accept wages less than the ILO stipulated minimum wage to secure employment. Even when a ship is covered under the ITF agreement, there have been cases where the seafarers would sign for the ITF rate but actually receive the POEA rate. Two sets of accounts are kept onboard ships to perpetrate this deception. In the year 2000, the ITF has dealt with cases totalling \$1,000 million in unpaid wages or contract payments, and the Manila office cases have covered 1,100 vessels and 2,000 seafarers over the last three years.⁴⁶

Watchlisting and blacklisting is probably the worst form of discrimination being perpetrated by the manning agencies with the POEA's blessing. The process of arbitration in such cases is said to take several years to decide during which time the seafarer will not be eligible for employment. In cases where the claim is unfounded, the seafarer gets no compensation.

⁴⁵ *Ibid* at p.60.

⁴⁶ *Ibid* at p. 61.

In view of these systematic and unsystematic problems confronting the Philippine seafaring industry, the Philippine Seafarers Promotion Council (PSPC) was established, an entity dedicated to the promotion of the Filipino seafarer. Apart from its commitment to the highest standards of training and education, it aims to rationalize the complex bureaucracy with the creation of a “one-stop” processing and documentation centre for seafarers’ deployment. In addition it plans to rationalize wages through the creation of an Asian seafarers’ union, which will define and set uniform wage rates.⁴⁷

The issue of competitiveness of Asian seafarers is not a simple matter of supply and demand. Lower pay and observance of less than the minimum international standards will never promote competitiveness. It is widely accepted that the most crucial factor is the quality underlying their education, training, certification and recruitment. The requirements of efficiency and new technologies have likewise shifted the focus on high-quality skills and competences. A high level quality in these areas does not only ensure economic competitiveness but also contributes to the goals of safety and environmental protection.

The advantaged position of the Asian seafarers will be seriously threatened if concerned governments in the region do not take immediate and decisive steps to improve the national system of their maritime education and training. Similarly, the same thing will happen if the governments do not rationalise or delineate functions of their regulatory institutions in the fields of certification, recruitment and deployment of Asian seafarers. These actions are paramount for these countries to maintain their status on the white list of countries complying with treaty standards under the STCW 1995.

Since manning agencies play a significant role in the deployment of Asian seafarers, it is imperative that national governments of these labour-supplying countries regulate their activities through adequate legislations and effective administrative regulations to ensure that seafarers are protected and their rights are

⁴⁷ *Ibid* at p. 62.

well respected. ILO's Convention on Recruitment and Placement of Seafarers (No.179) is a good departure point in developing and establishing regulations concerning manning agencies.

Finally, port state authorities of these countries should also play a more active role in the protection of the human and employment rights of their seafarers. They should be vigorous in checking the labour conditions on board ships calling at their ports, giving more emphasis on crew working and living conditions.

5.2. Overregulation or Ineffectual Regulation by Government Agencies

The only way labour-supplying countries can fully uphold the rights of seafarers at their level is by way of specific regulations and streamlined administrative procedures that are responsive to the fast changing realities of the seafaring industry. Needless to say, regulations and procedures have to be introduced, periodically adjusted or overhauled, to address the significant issues besetting the industry.

As far as training and certification are concerned, governments can look up to the prevailing international standards of excellence in maritime training by offering comprehensive, well structured, knowledge and skill based education. To ensure that standards are satisfactorily met, a continued assessment of maritime institutions necessarily follows to ensure that their masters, officers and crew are appropriately trained and qualified in accordance with the IMO STCW Convention. The practice of imposing unnecessary and unreasonable training requirements must be vigilantly guarded to prevent widespread victimisation of seafarers by profiteering training institutes. It is absolutely imperative that corruption or unwanted fee exactions and delays in the processing of documents be eliminated through constant review of procedures and prosecution of corrupt and inefficient civil servants.

The multitude of administrative agencies and government bodies involved in the education, certification training, selection, and deployment of seafarers that exists in many of these labour-supplying countries is said to cause a lack of unity

and “turf war” among these agencies resulting in inefficiency and disservice to seafarers. This has also led to burdensome requirements, overlapping bureaucratic practices and opportunities for the manning agencies to abuse seafarers. Such a fragmented set-up will not only adversely affect the ability of a labour-supplying country to establish or refresh its present status in the IMO “white list” but will also be detrimental to the efficient development of the country’s shipping industry and the protection of the rights of seafarers, to say the least. Efforts undertaken for the establishment of a centralised and competent maritime agency that will effectively implement international maritime conventions and promote the rights and welfare of the seafarers will undoubtedly improve the situation.

A national regulatory framework that establishes labour supply arrangements with the necessary legislations/regulations concerning licensed manning agencies is an effective way to specifically address problems relative to wages, hours of work, allotments, repatriation, placement fees, transportation and blacklisting. A wide latitude of discretion in the conduct of business by these manning agencies is observed by the government as the agencies serve as vital links to their seafarers and foreign shipowners. But if administrative and procedural formalities, and compliance with regulatory conventions and national legislation are taken for granted, the intended national interests will not be served adequately.

To ensure proper treatment of seafarers as workers, labour-supplying countries are expected to take a lead or active role in adopting relevant IMO and ILO regulations, such as the issues of abandonment and claims arising from death or injury of seafarers⁴⁸.

With regard to the care of seafarers, governments need to conduct special training and seminar courses and, if practicable, develop reference manuals for their diplomatic and consular officials to enable them to deliver in a more effective and efficient manner unique assistance required by their seafarers. Furthermore, through

⁴⁸ See *e.g.*, “Guidelines on Provision of Financial Security in Case of Abandonment of Seafarers” and “Guidelines on Shipowners’ Responsibilities in Respect of Contractual Claims for Personal Injury to or Death Seafarers, both of which took effect on 01 January 2002.

non-governmental organisations (NGOs) and trade union representatives seafarers leaving the country can be given pre-departure briefings regarding their rights, welfare benefits, etc. Moreover, access to medical care and facilities should be made available to them, and if possible, to their families. Finally, governments of these labour-supplying countries, in recognition of the economic contribution of their seafarers, should guarantee pension benefits for them after accumulating years of service even though they may be considered contractual employees.

If these basic needs are fulfilled, Asian labour-supplying countries will not only ensure the competitiveness of their seafarers, but will be able to protect the rights and well being of their seafarers.

5.3. Lack of Effective and Efficient Grievance Machinery

Efficient grievance machinery in the administration of seafarer's rights and welfare is essential to every country's institutional infrastructure as a labour supplying country. Such grievance machinery serves to act speedily on all seafarers' claims. The concerned administrative bodies and the judicial departments must resolve all cases, including cases on appeal expeditiously to dispel the allegation that the machinery of justice grinds too slow in the settlement of seafarers' claims and the adjudication of cases involving seafarers.

Ideally, each manning agency or company should have its own grievance machinery so that disputes, questions, complaints are first brought for resolution, conciliation, amicable settlement before they are brought to a Labour Arbiter or Court. It is imperative that such grievance machinery be available for use in dealing with labour-management complaints in shipping companies for the lasting benefits of both labour and management in all aspects of the deployment of seafarers'. It has to be a practical, efficient and fair system that seafarers can rely on to pursue their rights.

The provision for such mechanism should be incorporated in the standard contracts of seafarers so that problems arising from the relationship of seafarers and shipowners/manning agencies/masters will be promptly and properly addressed without legal and bureaucratic hurdles that may possibly arise out of the existing contract.

To effectuate seafarers' rights, the legal process of claims should also be redesigned to give due consideration to the seafarer's right to a just and speedy trial. Legal assistance or funding of legal fees should be made part of the welfare benefits that seafarers should be entitled to, in certain cases. But most of all, the strong hand of governments should focus on those consistent violators of seafarers' rights and should not allow them to have access to their seafaring workforce after having demonstrated their inability to live up to their commitments.

5.4. Non-compliance with International Labour Laws and Inadequate National Legislations

It is deplorable that most labour-supplying countries who should be the first to adopt international labour conventions beneficial to their labour workforce are neglecting, if not, totally ignoring these laws.

Being significant suppliers of maritime manpower to the world's merchant fleet, national governments of these labour-supplying countries, specifically, the legislature, should continually review their existing laws concerning the seafaring industry, with a view to implementing maritime conventions into national legislation to improve all aspects of the industry, from training, certification, recruitment of seafarers to the actual deployment of seafarers onboard foreign ships. Their respective maritime industries, to which the seafaring sector belongs, should plug all inadequacies and loopholes with respect to the seafaring industry and take concrete steps to upgrade the levels of training and competence of their seafarers. Such steps will not only ensure their competitiveness, but will also ensure their safety and welfare.

As the centre of gravity for the seafaring industry is now in Asia, it is an opportune time for labour-supplying countries in the region to make a concerted effort to develop regional policies and legislation that will further promote the interests and welfare of their seafarers. The time may be ripe for them to consider the idea of uniting through an organisation such as the European Union (EU) so that international laws and standards can be enforced in all states regardless of whether they are members of IMO. As a lasting solution, it would be advisable to invoke the proposal of the shipowning association who have stated that international regulation, rather than national regulation of the revised labour standards are essential. Such regulations must be widely accepted and properly enforced, irrespective of the flag of the ship or the nationality of the crew, or the port that the ship visited. In that way, seafarers' interests will be adequately protected.

CHAPTER 6

SUMMARY AND CONCLUSIONS

Current and Future Trends

The advent of globalisation has created several changes in the structure of the shipping industry and the manning of ships. Technological advances toward larger and more specialised vessels have resulted in reduced crewing, faster turnaround of ships and need for new manpower skills and competencies. It has also ushered in the shift from national flags of traditional maritime states to foreign flags in respect of registration of ships. These flag states, otherwise referred to as open registries or FOCs, enable the retention of ownership in the traditional maritime states yet allow the recruitment of low-cost seafarers from developing countries. At present, there is an increasing shortage in the number of officers and a significant surplus in the number of ratings that currently operate the ships. This is brought about by the growing number of seafarers from traditional maritime powers leaving the profession and subsequently shifting to land-based occupations. Most are unhappy with the difficulties of sea life in all its facets. Moreover, as economic and social conditions continue to improve in these states, the seafaring profession has lost its attractiveness as a career especially to the younger generation.

Due to these factors and circumstances, emerging maritime states, particularly, Asian labour-supplying countries have become the immediate benefactors, as they fill the gap to adequately meet and replenish the dwindling supply of seafarers in the traditional maritime states. They try to improve, upgrade and expand their respective maritime industries, especially in rigid training certifications and employment of their seafarers for gainful employment in foreign

flags. As shown by several studies, the average age of officers and ratings in the OECD group is much higher than that of the Asian workforce, indicating that problems with the supply of European seafarers will accelerate in the future as older seafarers retire. Thus, whilst there will be a decline in the number of economically active seafarers from traditional maritime states or OECD countries, the supply of Asian seafarers is expected to rise. In particular, the Philippines, which currently supplies 20 percent of the world's seafarers, and China will continue to be major suppliers in the future. What is needed in the crew-supplying countries is public policy support, high entrepreneurial initiative and good training infrastructure.

Despite the achievements and efforts of the emerging Asian states in uplifting the standards and competence of their seafarers, without radical changes in shipping culture, it may still be difficult for them to catch up with the traditional maritime states who continue to enjoy a maritime reputation nurtured by their past achievements. With their history of success, emergence of early training facilities and global language of trade, they have taken advantage of the visibility and recognition in the maritime world. Although there is now a lack of interest of nationals from these maritime states in a shipping career and demand is, therefore, available for other nationals, seafarers from emerging states are finding it hard to get their fair share of recognition and positions as many shipping lines still prefer to hire OECD nationals even at a higher cost.

Notwithstanding the fact that IMO is offering technical assistance to comply with the requisite instructional standards, the raging question remains whether with equal achievement in training, education, language, experience, etc., will Asian seafarers, get equal status as OECD nationals in the shipping world.

While there is no denying that seafarers from traditional maritime states have proven themselves to be skilled and competent, it is unfair to assume that their seafarers are better trained, competent and experienced than those from the third world countries. With the implementation of the STCW 1995 and the ISM Code, it is possible for seafarers from developing countries to be at par with those of the traditional maritime states. It is therefore discriminatory that in cases involving

accidents, there is almost always a presumption of competence in favour of OECD officers, but in recent maritime disasters and pollution cases, masters and crew from third world countries are the first to be blamed and punished, even by imprisonment, even before the fault of the shipowners or classification societies in the matter, is investigated. Discrimination between economically advanced states and those from developing world is still widespread in the shipping industry. This blame culture and irresponsible actions of law enforcers in certain traditional maritime states degrades the dignity of seafarers from developing countries, in addition to depriving them of their fundamental rights.

The quality of the industry ultimately depends on the quality of the people in it. It is increasingly difficult to draw the right calibre of entrants into the industry, both for shipboard and shore jobs. We need to improve the condition and the image of the industry so that those who serve in it can have a safe, rewarding and fulfilling career.¹

It is increasingly difficult for the industry to recruit and retain quality people given the current climate of disregard for seafarers' fundamental human rights and with the law ceasing to be sympathetic to ship's personnel. The Erika experience has been reported to have shaken an Indian master Captain Mathur's faith in the law. Speaking for all ship masters and personnel, he expressed the view that if masters continue to be harassed by the law and thrown to jail without being allowed bail, there could come a time when shipowners will have a hard time finding men of quality to command their ships. Also, the dreadful picture of Captain Apostolos Mangouras, master of the tanker *Prestige*, being held in a Spanish high-security jail for months against ridiculous bail conditions and still prohibited from leaving the country, is not only appalling but creates a gloomy picture of how seafarers are treated by society ashore. One day they are in command of a vessel; the next day they are treated like criminals. Furthermore, the various security measures being implemented unilaterally by states and now as an international initiative with the adoption of the International Ship and Port Facility Security [ISPS] Code creates a

¹ See, e.g. Keynote address of Mr. Peter Morris at the 4th L.S.M. Asia Pacific Manning and Training Conference in Manila on 20th November 2001.

serious impact on the life and work of seafarers as it places additional responsibilities on them. While they purport to intensify security measures on the ship and guard against possible importation of terrorism, they fail to address the issues that may affect the enjoyment of seafarers' rights in the scheme of things, and worse, even constitute violation of their human rights. Shore leave restrictions on certain nationals as a security measure not only violates the fundamental rights of seafarers to liberty without any legal basis but also constitute a hazard to their safety as they are denied the opportunity to recharge their energies after a prolonged voyage at sea with heavy workload.

Those who work at sea in the service of a ship face particular perils, endure substantial physical hardships and separation from family. As they have a special kind of life and work environment they necessarily require special laws to protect them. But the remainder of society which benefits from the labours of seafarers seems to have little regard for the seafarers' rights and welfare, even the most basic ones.

PROPOSALS

At the level of national governments, it is the responsibility of labour-supplying countries to ensure adequate provision and funding for maritime education and training. Governments of countries which supply large numbers of seafarers for employment on ships of other flags should appreciate that the revenue derived from the employment of their seafarers in foreign fleets should not be regarded as a mere general revenue to be spent for the general good of the country without regard to its source. Astute governments, interested in the long term will ensure that a proportion of that revenue is directed towards the improvement of seafarer training facilities.² It is important that in national policies regarding the maritime sector, the implications of education and training are taken fully into account. Particularly, policies should take a more pragmatic and radical view of the sector and its economic and technological evolution especially in the information

² W S G Morrison, *Competent Crews = Safer Ships: An aid to understanding STCW 95*, WMU Publications, 1997, at p. 184.

technology field that has drastically changed the nature of the seafaring profession and has created the need for new skills. The social partners need also as a matter of urgency to discuss measures to ensure the steady supply and retention of trained personnel. To this end, shared facilities and a co-operative approach among labour-supplying countries, especially within the region with significant number of seafarers should be explored.

As predicted by various studies, a collapse in the supply of officers from traditional maritime states as retirement increasingly outstrips recruitment has become imminent in recent years. Thus, to take advantage of the situation, emerging crew-supplying countries should train and educate their crew beyond the mandatory requirements to develop junior officers and help them in the transition to management levels. It should be noted that keeping abreast of the changing world of the maritime industry requires up-to-date expertise and knowledge.

Maritime administrations should constructively discuss the coordination of maritime policy with other agencies involved in seafarers' employment. As far as practicable, re-organisation and assessment of existing legislation should be considered with a view to developing a central point of contact in dealing with all seafarer-related issues. Regulators should also understand the economic consequences of layered additional rules and should consult with the industry prior to implementation. They should ensure that existing and proposed legislation appropriately addresses the problems and issues, which it seeks to address, and fully considers its economic impact on affected stakeholders. Rationalising and harmonising STCW 1995 together with the national government's seafaring licensing and certification processes is the course for the future as they serve to enhance the focus on the human element in ship safety and marine pollution prevention.

The agenda of national governments should heighten the level of awareness with a view to transforming public perception of the industry. Efforts must be expended to enhance seafarers' status and recognition of their technical skills and contributions to worldwide economy.

The traditional legal bias in favour of the seafarer and the time-honoured protection of seafarers are eroding and should be reversed. Seafarers' rights and entitlements should be protected especially as regards their right to safety, decent living and working conditions, remuneration and against abandonment. While observance of these rights' and entitlements may cost maritime employers more than what land-based employers might pay, these costs are necessary for recruiting and retaining good and dedicated seafarers.

The wide range of criminal liability that may befall seafarers as a consequence of a typical "blame culture" that is pervading the industry is causing professional dedicated mariners to seek other employment. This worsening situation must be avoided. Furthermore, employment contracts of seafarers should provide for legal representation whenever it is needed.

There should also be continuing improvement of the international labour regime on seafarers' rights and for the serious promotion and enforcement of the pertinent policies related thereto. As the shipping industry is said to be facing a worldwide crisis in attracting people and retaining them in shipboard careers, it should be a lesson for these new labour-supplying countries to learn that there is a direct relationship between seafarers' rights and recruitment and retention. If the industry simply protects seafarers' rights, most if not all, of the problems of the shipping industry, particularly in the recruitment of qualified and motivated crew can be resolved.

Regulating an industry that is transnational in nature and having limited instrumentalities of domestic and international law would be difficult if not impossible. Yet, there actually exist a well-developed set of conventions that are being implemented in places where the necessity of regulation has been recognized. These conventions, being a product of negotiations among shipowners,

trade unions, and states, are important points of departure for the improvement of seafarers' conditions.³

In the past, non-adherence to minimum standards set by international conventions have been resorted to by most shipping operators as a cost-cutting strategy which has put quality shipowners at a disadvantage. This is no longer true today as the current trend is towards quality shipping and eradication of substandard operators and unbearable working and living conditions aboard ships in view of their inherent risks, breach of national laws and growing market unacceptability. If countries will just join forces to create an environment, hostile to substandard shipping, through various enforcement mechanisms available to flag states, port states and labour-supplying states then a much-improved seafaring industry will emerge.

As shipping is international in nature with a global workforce, it therefore requires international regulations that deal specifically with the maritime manpower sector. Since criminal laws for each state differ from one another, international bodies should develop conventions that will oblige states to adopt certain uniform laws governing the conduct of investigation and prosecution of seafarers whenever they are found criminally liable as a consequence of damage or pollution cases. The fact that the globalised workforce today comes from third world countries with weak governmental support and influence, they are left at the mercy of powerful states that trample on their rights and use them as "pawns" or "scape goats".

With the changing nationality of seafarers from traditional maritime states to developing countries in the Asian region, it is now a foregone conclusion that these emerging labour-supplying countries will take over the world's merchant fleet in the future. Such trend is unlikely to be reversed, as there is evidence of a decline in the number of new recruits as compared to those leaving the industry despite the

³ These can be referred to specifically in the intent of the following conventions or recommendations: ILO Conventions No. 109 (Rev. 1958) on Wages, Hours of Work on Board Ship and Manning; ILO Convention No. 133, 134 (1970) pertaining to crew accommodations and prevention of occupational accidents of seafarers; ILO Convention 145 (1979) pertaining to continuity of employment; ILO Convention No. 147 (1976) on minimum standard in Merchant Ships; and ILO Convention 163 (1987) on Seafarers' Welfare at Sea and in Port.

collaborative efforts by governments and industry to improve the situation in the traditional maritime states. Such being the case, if seafarers from these emerging maritime states are not accorded the same respect and value previously bestowed on their predecessors, then indeed, there might come a time when the shipping industry will run out of qualified, competent and dedicated seafarers and international trade and commerce will suffer.

Seafarers from these emerging labour-supplying countries are not merely manpower recruits in a truly globalised labour market. They are not merely a group of ordinary or manual labour workers in an international and highly competitive industry. They are more than just a sectoral concern in national or international policy-making. They are people with values, vulnerabilities, needs and aspirations. Their work at sea should not make them less human, nor justify the neglect and inhumane practices aboard and ashore that, most often than not, reduce many of them as commodities or mere figures in statistics.

BIBLIOGRAPHY

BOOKS

Brooks, Mary R., *Seafarers in the ASEAN Region*, Institute of Southeast Asian Studies, Singapore, 1989.

Chapman, Paul K., *Trouble On Board: The Plight of International Seafarers*, ILR Press, Ithaca, New York, 1992.

Couper, A.D. *Voyages of Abuse: Seafarers, Human Rights and International Shipping*, Pluto Press, London, 1999.

Farthing, Bruce, *International Shipping: An Introduction to the Policies, Politics and Institutions of Maritime World*, London, Lloyd's of London Press, 1987.

Gaskell, N.J.J., Debattista, C. and Swatton, R.J., *Chorley and Giles' Shipping Law*, 8th Edition, London, Pittman Publishing 1988.

Hill, Christopher, *Maritime Law*, 5th Edition, Lloyd's of London Press Ltd.

International Labour Organisation, *International Labour Standards: A Global Approach*, 75th anniversary of the Committee of Experts on the Application of Conventions and Recommendations, Geneva, 2002.

Lee, Tae-Woo, Roe, Michael, Gray, Richard and Shen, Mingnan, *Shipping In China*, Plymouth Studies in Contemporary Shipping and Logistics, Ashgate Publishing Limited, 2002.

Li, K.X. and Wonham, J., *The Role of States in Maritime Employment & Safety*, Dalian Maritime University Press, 2001.

Morrison, W S G, *Competent Crews = Safer Ships: An aid to understanding STCW 95*, WMU Publications, 1997.

Stopford, Martin, *Maritime Economics*, Second Edition, London, Routledge, Taylor and Francis Group, 1997.

Thomas D.R., *Maritime Liens*, Vol. 14 of British Shipping Laws, London, Stevens & Sons, 1980.

ARTICLES

Bjorn, Klerk Nielssen, "Key Issues and Trends in the International Recruitment and Placement of Seafarers", Geneva, International Labour Organisation.

Carillo, Eduardo, "One last attempt at supremacy", *Tining ng Marino*, January-February 2002.

Companion, Arne Sagen, "Seafarers' working conditions", *Seaways*, March 2002

"Collision between the bulk carrier *Tuo Hai* and the factory F.V *Tenyu Maru* with the subsequent sinking of the *Tenyu Maru*, Off Cape Beale, West Coast of Vancouver Island, B.C., 22 July 1991", *Transport Canada*, at <http://www.tc.gc.ca/tcss/tsb/marine/1995-recs/M91W0004.html>. (visited 7/23/2003).

Grey, Michael, "UN urged to review protection as nation states accused of ignoring crew rights", *Lloyd's List*, June 18, 2003.

Li, K.X. and Ng, Jim Ni, "International Maritime Conventions: Seafarers' Safety and Human Rights", *Journal of Maritime Law & Commerce*, Vol.33, No. 3, July 2002.

Li, K.X. and Wonham, J., "Who mans the world fleet", *Maritime Policy and Management*, 26(3), 1999.

Limcaoco, Carla S., "Adding Value", *Seaways*, December 2002.

Mukherjee, P.K., "The Changing Face of Flag State: Experience with Alternative Registries", Unpublished lecture notes, World Maritime University, Malmö, Sweden.

Pabico, Alecks P., "Despite the Risk, Filipino Seafarers Toil in the World's Oceans" at <http://www.pcij.org/stories/2003/seafarers.html>, (visited 18/07/2003).

"Rough sailing for Filipino sailors", *Philippine International Review*, Vol.1, No.4, Spring 1999.

Sein, Chia Lin, "Key issues regarding employment services for the recruitment and placement of Asian seafarers", a lecture delivered at the ILO Regional Seminar, Manila, 20-25 November 1989

Sohn, L. and Baxter, R., "Responsibilities of states for injuries to the economic interests of aliens", *American International Law*, 1961, at p.545.

Stevenson, Douglas B., "Seafarers' Rights Face A Worldwide Crisis, at <http://thewitness.org/agw/scipressrelease.html>, (visited 7/23/2003).

Tionloc, Ramon Jr., "The Philippines: Issues Related to Merchant Marine Administration and Efforts to Give Full and Complete Effect to the Provisions of the 1978 STCW Convention, As Amended, Unpublished lecture notes, Maritime Administration Seminar, World Maritime University, 11-15 November 2002, Malmö, Sweden.

UNCTAD, "Review of Maritime Transport 2000", at <http://r0.unctad.org/en/pub/ps1rmt2000.en.htm>.

"Who would want to be a ship's master any more?", *Fairplay*, August 10, 2000.

TEXTS AND DOCUMENTS

Bergantino A.S. and Marlow, P.B., "An econometric analysis of the decision to flag out: Final Report", Cardiff, Seafarers' International Research Centre, 1997.

Bergstrand, S.J. "Buy the Flag: Developments in the Open Registry Debate", Transport Studies Group, Discussion Paper No. 13, 1983.

BIMCO/ISF 2000 Manpower Update, "The Worldwide Demand for and Supply of Seafarers", Main Report, University of Warwick, April 2000.

Hafnat, A., "Seafarers in the Asian Region (Bangladesh), in Seafaring welfare in the Asian region", Report on the regional seminar, Singapore, February 1990

ILO, "Decent Work", International Labour Conference, 87th Session.

ILO, "Recruitment and Placement of Asian seafarers", Report of the ILO Regional Seminar, Manila, 20-25 November 1989

ILO, "Report on an ILO investigation into the living and working conditions of seafarers in the Asia/Pacific region", Report for discussion at the Regional Maritime Conference in the Asia/Pacific Region, Singapore, ILO, Geneva, 2002.

ILO, "The impact on seafarers' living and working conditions of changes in the structure of the shipping industry", Report for discussion at the 29th session of the Joint Maritime Commission, Geneva, ILO, 2002.

ILO, "The proposed consolidated maritime labour Convention: Key features", Eight Item on the Agenda, Committee on Legal Issues and International Labour Standards, 286th Session, Geneva, March 2003.

The Maritime Manpower Sector in the Philippines, A situationer report 2001-2002 at <http://www.marina.gov.ph/report/manpower/manpower2002.pdf>.

TREATY INSTRUMENTS

IMO Conventions and Instruments

1978 International Convention on Standards of Training, Certification and Watchkeeping, as amended. (STCW 1995)

United Nations Convention on the Law of the Sea. (UNCLOS 1982)

International Safety Management Code for the Safe operations of Ships and for Pollution Prevention. (ISM Code)

International Ship and Port Facility Security Code. (ISPS Code)

ILO Conventions

Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133)

Accommodation of Crews Convention (Revised), 1949 (No. 92)

Certification of Able Seamen Convention, 1946 (No. 74)

Certification of Ship's Cooks Convention, 1946 (No.69)

Continuity of Employment (Seafarers) Convention, 1976 (No. 145)

Employment of Seafarers (Technical Developments) and Recommendation, 1970 (No.139)

Food and Catering (Ships Crew) Convention, 1946 (No. 68)

Health Protection and Medical Care (Seafarers) Convention No. 164

Medical Examination (Seafarers) Convention, 1946 (No. 73)

Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147)

Minimum Age (Sea) Convention (No. 7)

Officers' Competency Certificates Convention, 1936 (No. 53)

Prevention of Accidents (Seafarers) Convention, 1970 (No. 134) Recommendation No. 142

Recruitment and Placement of Seafarers Convention, 1996 (No. 179)

Repatriation of Seafarers Convention (Revised), 1987 (No. 166) Recommendation No. 174

Seafarers' Annual Leave with Pay Convention, 1976 (No. 146)

Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180)

Seafarer's Identity Documents Convention, 1958 (No. 108)

Seafarers Welfare Convention, 1987 (No. 163), supplemented by Recommendation No. 173

Seamen's Articles of Agreement Convention, 1926 (No. 22) and Convention No. 58

Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No. 55)

Sickness Insurance (Sea) Convention, 1936 (No. 56)

Social Security (Seafarers) Convention (Revised), 1987 (No. 165), supplemented by Recommendations Nos. 48 (1936) and 138 (1970).

Vocational Training (Seafarers) Recommendation, 1970 (No. 137).

SPEECHES

Keynote address of Mr. Peter Morris at the 4th L.S.M. Asia Pacific Manning and Training Conference in Manila on 20th November 2001.

Speech of ILO Deputy General Kari Tapiola at the "ILO Symposium on Labour Issues in the Context of Economic Integration and Free Trade", Port of Spain, 20-22 January 1999, at <http://www.ilo.org/public/english/standards/norm/speeches/1999/tapiola/1trinda.htm>

Speech of Australian Federal Court Chief Justice M E J Black, "Admiralty Jurisdiction and the Protection of Seafarers", The F S Dethridge Memorial Address 1999.

Speech of IMO Secretary General William O'Neil at the Seatrade Awards Ceremony Dinner reported in *Seatrade Review* July/August, 1999

Speech of IMO Secretary General William O'Neil at the International Lifeboat Conference, Bournemouth, 21 June 1999 at <http://www.imo.org/home.asp>.

APPENDIX

INTERNATIONAL LABOUR STANDARDS IN THE MARITIME SECTOR

The principal statement of international labour standards in the maritime sector is the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147), which ensures observance of a wide range of standards in merchant ships, including those laid down in most of the Conventions mentioned below. In particular, any ratifying country undertakes to have appropriate laws on safety, social security and conditions of work and life on board ship, and to verify their application by inspection or other means.

Conditions for admission to employment

The minimum age for the admission of children to employment at sea was initially fixed at 14 years by Minimum Age (Sea) Convention (No. 7), adopted in 1920. That international labour standards was revised by Convention No. 58 in 1936, raising the age to 15 years.

Entry into employment, security of employment, and end of employment

The Recruitment and Placement of Seafarers Convention, 1996 (No. 179) requires the competent authority to closely supervise all recruitment and placement services and to license or otherwise regulate private recruitment and placement services which operate within its territory. The Seamen's Articles of Agreement Convention, 1926 (No. 22), specifies the manner in which articles of agreement are to be signed and terminated, and the particulars to be included in these documents. The special employment problems arising from technical developments on board ship are the subject of the Employment of Seafarers (Technical Developments) Recommendation, 1970 (No. 139), which contains provisions on manpower planning, recruitment and placement, training and retraining, and regularity of

employment. In addition, the Continuity of Employment (Seafarers) Convention, 1976 (No. 145), supplemented by Recommendation No. 154, provide that countries with a maritime industry must take steps to promote continuous or regular employment for qualified seafarers. The Repatriation of Seafarers Convention (Revised), 1987 (No. 166), supplemented by Recommendation No. 174, covers the conditions under which the right to repatriation arises, acceptable destination on repatriation, responsibility for costs, and responsibility for supervising repatriation.

Vocational training and certificates of competency

The vocational training of seafarers is dealt with in detail in the Vocational Training (Seafarers) Recommendation, 1970 (No. 137).

Specific ILO standards are designed to ensure that only properly qualified persons may be engaged to perform certain on board ship.

The Officers' Competency Certificates Convention, 1936 (No. 53) contains provisions on the minimum requirement of professional competency for masters and officers

The Certification of Able Seamen Convention, 1946 (No. 74) provides that able seamen must hold appropriate certificates of qualification.

The Certification of Ship's Cooks Convention, 1946 (No. 69) requires ships' cooks to hold an appropriate certificate of qualification.

Safety, health and welfare

Standards relating to the safety, health and welfare of seafarers are set forth in several ILO instruments. One of the earliest is the Medical Examination of Young Persons (Sea) Convention, 1921 (No. 16), followed by the Medical Examination (Seafarers) Convention, 1946 (No. 73) requiring a periodic and job-specific examination to determine fitness for sea service. The Prevention of Accidents (Seafarers) Convention, 1970 (No. 134) requires States to specify measures for the prevention of accidents which are peculiar to maritime employment by enacting

laws, regulations, codes of practice or other appropriate means. The Convention is supplemented by Recommendation No. 142 concerning the prevention of industrial accidents to seafarers, and two 1958 Recommendations (Nos. 105 and 106) containing medical advice by radio to ships at sea and the contents of medicine chests on board ship.

Detailed requirements regarding crew accommodation are laid down in the Accommodation of Crews Convention (Revised), 1949 (No. 92) and the Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133) , supplemented by two Recommendations, Nos. 140 and 141, on air conditioning and noise control.

Questions concerning food and catering for crews are dealt with in the Food and Catering (Ships Crew) Convention, 1946 (No. 68).

The Seafarers Welfare Convention, 1987 (No. 163) , supplemented by Recommendation No. 173, requires that each ratifying State ensure adequate welfare facilities and services at sea and in port for all seafarers, irrespective of nationality, race, colour, sex, religion, political opinion or social origin and irrespective of the State in which the ship on which they are employed is registered. The Health Protection and Medical Care (Seafarers) Convention No. 164 provides for measures to ensure health protection and medical care for seafarers on board ship. Two earlier instruments, the Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No. 55) and the Sickness Insurance (Sea) Convention, 1936 (No. 56) deal with the respective obligations of shipowners and seafarers in cases of illness or accident at sea or in port.

Several instruments, including some standards previously mentioned which also deal with illness and disability, set social security standards for seafarers. The most recent of these is the Social Security (Seafarers) Convention (Revised), 1987 (No. 165), setting standards for a comprehensive and modern system of social security for the seafaring profession.

The seafarers' welfare in port and at sea is set out in Recommendations Nos. 48 (1936) and 138 (1970).

General conditions of employment

The Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180) prescribe maximum hours of work or minimum periods of rest on board ship, as well as manning of ships.

The Seafarers' Annual Leave with Pay Convention, 1976 (No. 146) is a modern standard providing that seafarers shall be entitled to annual leave with pay of at least 30 calendar days for one year of service.

Special identity documents for seafarers

The Seafarer's Identity Documents Convention, 1958 (No. 108), requires a government to issue a seafarer's identity document to each of its nationals who is a seafarer. This document entitles the seafarer to land for shore leave in another State that has ratified the Convention, and may also enable the seafarer to transit without visa to join his ship or for repatriation.