

Forum for Integrated National Security – FINS

Thinktank



Forum for Integrated National Security (FINS) is an apolitical think tank to raise, discuss & propagate issues of national security. FINS believe that a secured nationhood can provide peace and prosperity to citizens. Thus, this forum, tries to raise issues with eminent people and lawmakers for them to take a holistic view of current challenges facing our economy, defence, international relations and relevant social systems keeping national security at its core. FINS is a platform for various experts to share their perspective and ideas with civil society.

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Seminar Report

FINS one day Seminar on “Human Rights at Sea” with the initiatives from Sh Bal Desai Ji (Secretary General – FINS) at Mumbai on 28 Feb 2019. The Seminar was attended by more than 250 delegates from Shipping Industry, Seafarers , DG Shipping , Seafarers Union Leaders, Ministry of External Affairs representative, Human Rights At Sea , UK NGO & Registered Charity, Retired Indian Navy Officers and Senior representatives of various Associations, Journalists etc

Figure 1: Adv Bal Desai - Secretary General of FINS



“I was abandoned by my Shipping company and put in Jail in a foreign land for no fault of mine and after prolonged legal battle I was declared innocent after 2 Years. I was branded a criminal , sustained mental – physical injuries before being released. Was it that because I am a Seafarer ?”

This was blunt question raised by Navigating Officer during Seminar.

Human element started getting special attention in 1990s and lead to finalization of Maritime Labour Convention (MLC 2006) to protect “Rights of Seafarers”. The subsequent incidences of 9/11, Somalian Piracy, 26/11 Mumbai Attacks, 1993 Mumbai blasts and the global economic slowdown coupled with Human

migration / Exodus / Trafficking in or around Mediterranean Coast has exposed the Seafarer to a void world where he finds lack of effective support, lack of effective legislation and general empathy from World bodies.

Figure 2: Lt General D B Shekatkar (R) - President FINS



The long stretched downfall in global trade accompanied by excessive and stringent International regulations has lead to slump in shipping, leaving many Seafarers abandoned for no fault of theirs. This has found the Shipping in general and the Seafarers in particular as the culprit leading to imprisonment at port state jurisdiction with virtually no support. Ships on International trades are exposed to Drug trafficking, Human Trafficking, Transportation of explosives deliberately or without knowledge of Seafarers manning the vessel, eventually being charged at the port of call. Some of them are languishing in jail for months and years. **A rough estimate indicates well over 2000 Seafarers being abandoned annually, more than 300 being imprisoned and by and large the nations have not been empathetic to their plight.**

Limitation of legal regimes including the UNCLOS has exposed the Seafarers and one tends to ask whether "The Seafarers are denied of their Human Rights". This point has been consistently raised by Human Rights At Sea , UK NGO & Registered Charity from Year 2013.

Ms Sonali Banerjee , 1st Indian Woman Seafarer to attain the rank of Chief Engineer on Merchant Ships began the proceedings by inviting Honourable Guests to light the lamp and sing of National Song in unison. This was followed by the curtain raiser by Sh Atul Kulkarni “ Convener of Maritime Security Study Group – FINS”. He briefed the audience on Four agenda items of the seminar:

1. Abandonment of Seafarers
2. Criminalization of Seafarers
3. Trafficking at Sea
4. India’s influence at IMO



Figure 3: Sh Atul Kulkarni - Convenor FINS

The subject of abandonment and criminalization has been dealt on a case to case / adhoc basis by all Maritime Nations including India , therefore the seminar was to highlight the issue and draw attention of all , so as to move in a coordinated manner to address and find a solution.

Capt Sanjay Prashar , FINS member who has also been involved in numerous cases of assisting Indian Seafarers during their phase of abandonment and release from prison, highlighted the need for:

- a) Effective coordination between different agencies like Indian Embassy, DG Shipping , Flag State, PNI Club, Ship Owners , Seafarers Unions, Recruitment Agencies in India (RPSL Holders) Civil Society, and NGOs.
- b) Legal assistance given to Seafarers in foreign land.
- c) DGCOS Data analysis on grievances as reported by Seafarers
- d) Review of the preventive mechanism such as e-migrate process
- e) Urgent need of case studies of all those seafarers who returned home after facing the agony of abandonment / Criminalization.
- f) India's influence in policy making at IMO impacting Seafarers
- g) Having more research work on trends of " Trafficking at sea".



Figure 4 Capt Sanjay Prashar

Guest of Honour , Sh Pradeep Rawat , Chairman - National Shipping Board echoed the sentiments and mentioned that Human element must be protected , nurtured for better output under each and every circumstances. This can only happen with coordinated efforts of every entity involved in shipping. Individual efforts may help but cannot be sustained forever. Since there's no single agency to enforce the rights of Seafarers at Sea, this issue will need more assertive approach from Seafarers supplying countries through IMO. India has a big role to play in this and Shipping Industry , Civil Society and Unions must stay active on this account.

Figure 5: Sh Pradeep Rawat , National Shipping Board Chairman



Chief Guest on the occasion , Director General of Shipping , Sh Amitabh Kumar speech



Figure 6: DG Shipping , Sh Amitabh Kumar

Quote

Indian seafarers actively employed on Indian or foreign flag vessels increased from 103835 in the year 2013 to 126945 in the year 2015, 154349 in the year 2017 and **a whopping 2,08799 by the end of the year 2018 showing an unprecedented growth of more than 35%**. As we continue to add the number of active Indian seafarers, the instances of the exploitation of their human rights also continue to add. The biggest and the most common violation of human rights now is non-payment of wages and abandonment of seafarers, and Indian seafarers have been the largest group to suffer on these counts. Indian maritime administration is completely alive to this challenge and has taken several effective steps to stop this menace. India became one of the first parties to ratify the Maritime Labor Convention which, amongst other things, provides for monthly disbursement of salary, **deemed abandonment if salary is not paid for more than two months**, responsibility of the P&I to disburse unpaid wages of up to four months, and repatriation of seafarers in case of abandonment. The new CDC Rules, which did away with the requirement of experience on board of ship

for issue of CDC, finished the lure of gaining experience by hook or crook without bothering to look at the quality of the vessel or the working conditions. An e-migrant software has been developed and linked to the e-migrant portal of the Protectorate General of Emigrant and the Immigration authorities, which allows immigration of only those seafarers who have been sponsored by the registered RPSL. To make sure that the RPSL also do their due diligence, before sending any seafarer on a ship, an e-governance solution for the RPSL companies has also been prepared which captures the details of the vessels under their contract, their history, their insurance status including MLC certificate etc., and the seafarers would be allowed to board only those vessels that are financially secured. DG shipping has also become the first Maritime administration to actually blacklist certain companies, shipowners or ships from employing Indian seafarers and the privileges of these entities are blocked from our e-governance system. In short, the emphasis is not only on job creation, but also on creation of quality jobs.

In our effort to secure the rights of abandoned seafarers, however, we have noticed two major lacunae in our regulatory regime.

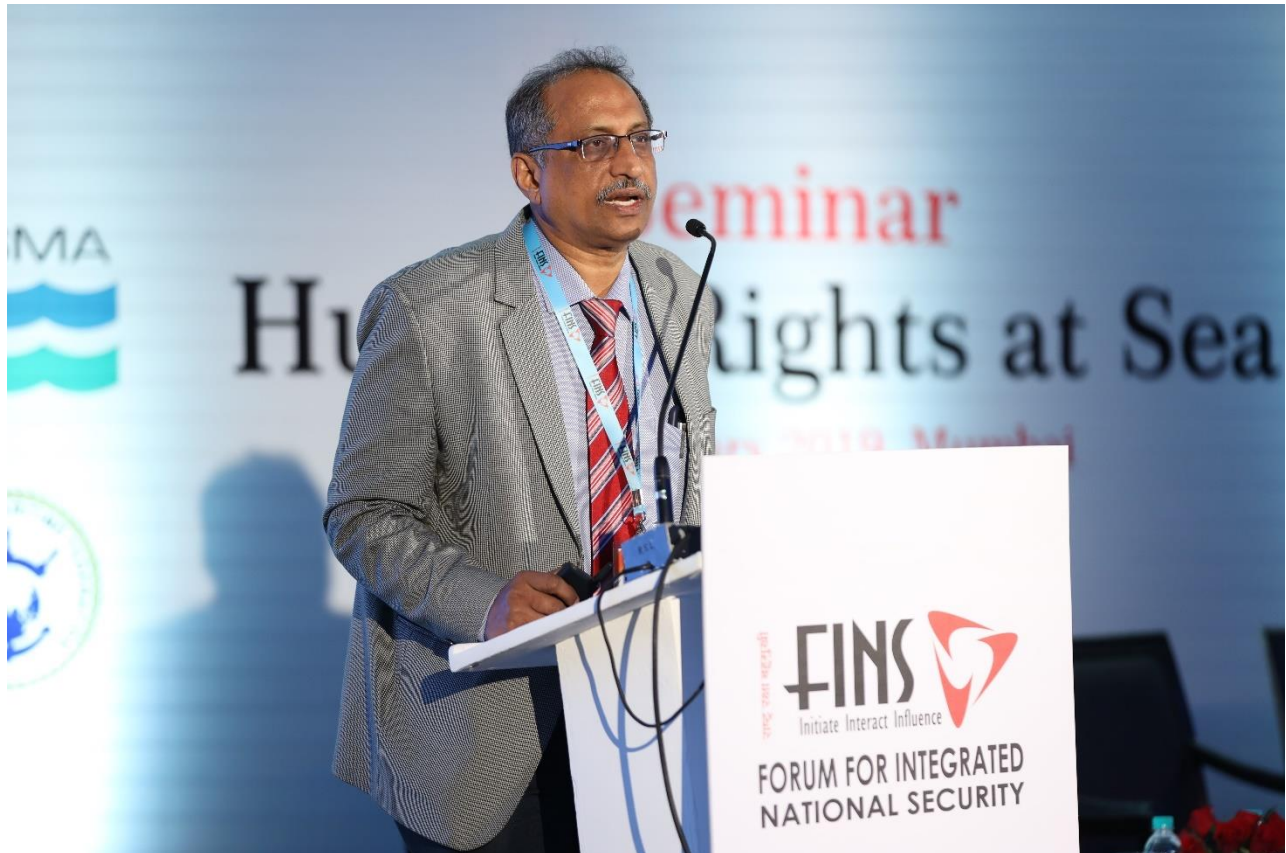
- a. While DG Shipping has adequate powers to regulate the RPSL companies registered with it, there exists no provision in the Merchant Shipping Act to take action against the non-registered RPS. In many cases, we request the police to invoke the provisions of IPC and CrPC, but the action taken so far has not been satisfactory.
- b. The other loop-hole has emerged in the MLC regime itself, which provides for repatriation of abandoned seafarer, but does not cast any obligation on the insurance agency to provide a replacement seafarer. The ports around the world become constrained to allow repatriation of seafarers, till a replacement is provided. **India has prepared a draft paper for the next tripartite meeting of ILO and has circulated the same to the ship-owners, trade unions and other countries to garner support for provision of replacement crew.** I'll use this platform, to appeal to all countries present here to support this paper of India in the next tripartite committee meeting.

Unquote

The technical session followed with anchoring by Capt LK Panda (Nautical Advisor to GOI – Retd), which consisted of 3 presentations.

1. Capt Jayakumar (NA – GOI) highlighted the present position under National and International legislations (MS Act and MLC 2006). He also highlighted that with due monitoring by flag states, PNI Clubs and even by the RPSL holders, the cases can be reduced. Communication and effective implementation is the key to handle such situations. RPS agencies profile in DGS records now need PNI Cert copy as well as Financial responsibility from the Ship Owner. Failing this, RPSL can be reviewed / withdrawn. Infact every Seafarer should be shown / given a copy of these Certificates so that they can exercise their rights to initiate prompt action with security provider immediately on not providing necessities for maintenance, or wages for two months or repatriation procedures as per MLC 2006.

Figure 7: Capt K P Jayakumar , Nautical Advisor to GOI, DG Shipping



2. A heartfelt narrative was delivered by one of the victims of “Criminalisation”. He was navigating officer and the incidences beyond his control onboard the ship landed him in Jail for two Years. He joined from a Crew Recruitment company which was certified by DG Shipping , India. His narrative clearly depicted the apathy toward Seafarers by all concerned. His ordeal was very touchy and heart wrenching:

- a. Without any charges, straight away imprisoned in common jail with hardcore criminals (Addicts, convicts etc)
- b. No consular access or legal advise or even translator
- c. A mute spectator during proceedings , not knowing the fate or the future action
- d. Was tortured by inmates. I suffered then from broken hands, racial abuse because of my nationality

- e. Lack of basic facility: Food , hygiene, no communication allowed, violation of common rights given to a human being etc
- f. Complete breakdown of self esteem , prestige , thus driving me to things which I don't wish to say.

Figure 8: Navigating Officer Lionel



His few questions at the end were

- i) What was my fault and Why the systems for protection of my rights were not followed
- ii) Can I regain my self esteem, 2 years of loss time and my career again?

He stated that it was his mother who sold all her savings (including family gold) to keep it going for two years. His father , a Seaman with a Shipping company had passed way when he was in school. It's the family which too suffers the agony. There is no support system in place. Even from prison , Seafarers are hardly allowed to communicate with Families. In foreign countries, during such cases , Seafarers are made to sign so many papers without even knowing the local language. It's all done forcefully with no choice.

After coming back to India, getting employment was another big issue. All Crew Managers do listen to the sufferings but employment is difficult to get as there's gap of more than 2 Years from the last sailing date on Merchant Ships.

He was thankful to the considerate Employer “ VR Maritime Services Pvt Ltd” , who gave him a break to begin his career afresh.

2. Mr David Hammond , Founder and Trustee of Independent Maritime Human Rights NGO HRAS spoke on the need for comprehensive International debating on the issue of the widest application of fundamental “Human Rights” of the Seafarers at Sea and even if the same is not explicitly covered under UNCLOS , MLC 2006 or any other IMO convention.

Figure 9: Barrister (non practising) David Hammond , Founder of NGO , Human Rights At Sea - UK



He reiterated the public exposure of abuses of fundamental of Human Rights for Crew onboard ships, fishing vessel and for migrants & refugees , was not widely or publicly known , and there needed to be much greater awareness and transparency at State level. He was of the firm conviction that the NGO HRAS founding principle ***‘Human rights apply at sea, as equally as they do on land’*** and went on to recommend :

- a. **Embrace and be explicit** in the everyday use of the concept of ‘Human Rights at Sea’ throughout the Indian maritime sector at State, civil society and commercial level.

- b. **Support and adopt** the founding principle that ‘Human Rights apply at sea, as equally as on land’.
- c. **Regulate maritime recruitment agents** and ensure victims have timely access to effective remedy through the courts which can held out as examples, both nationally and internationally.
- d. **Provide regional leadership** in driving forward the overt application of human rights and welfare protections in the maritime environment.

The presentations were followed by the Group Discussion duly anchored by Capt LK Panda and the participants were

Figure 10: Capt LK Panda , Nautical Advisor to GOI (R), Member of FINS Thinktank



Capt Rajesh Tandon (Varun Awardee and Chairman of IMEC), gave an insight of support by IMEC and was of the opinion that if due process under MLC is followed by every ship owner and the PNI club, such violations of Human Rights should not recur. IMEC is very sensitive to the Human Element and takes due cognizance

of such issue. Capt Rajesh Tandon has been on the forefront from many years , working for “ Fair Treatment of Seafarers”.

Capt Sanjay Maini (Indian representative of Marshal Island Flag) reiterating that MI takes pride in being the most competent open registry flag and ensures that Human elements are duly given utmost priority by their ships , Insurers, Ship Owners through implementation , thus there have been very incidents on MI Flag vessels.

Capt Santosh Darokar (Dy Nautical Advisor to GOI) has been on the forefront and the contact point through the DGCOM center on all issues related to casualties , abandonment etc. He urged that instant communication and notification to DGCOM can solve many issues. Nevertheless the present structure and practices limits DG Shipping to enforce compliance and addressal with the Insurers, Flag states and the Foreign ship owners. However in the recent past the cases have come down by 80%. He added that with ever stakeholder’s active participation , the issue can be addressed more effectively.

Figure 11: L-R Capt RK Tandon, Capt Sanjay Maini, Capt Santosh Darokar , Sh JK Sao (MEA)



Mr JK Sao (POEA , Mumbai , Ministry of External Affairs) explained the effectiveness of e-migrate system for Seafarers. The data captures can exhibit to authorities the date of departure and arrival of Seafarers. He also stated that DG Shipping may have online grievance redressal system for Seafarers whereby punitive proceedings can be initiated against RPSL as well as non-RPSL agents on similar lines as Videsh Bhawan (POE office). He gave insight to Pravasi Bhartiya Bima Yagna (PBBY) which Indian Seafarers may utilize. Premium of INR 275 covers compensation for loss of life, Injury, loss of passport , repatriation etc.

Third session was anchored by Mr Atul Kulkarni and considered of two presentations followed by a Group Discussion with experts.

Dr. Mrs Malini V Shankar (IAS , DG Shipping retd) sharing her experience, highlighting the achievements of India at IMO and related Maritime initiatives such as

- Implementation of IRNSS , LRIT , Being elected at IOPC Funds for the post of Vice Chair , Formulating Draft Guidelines for Floating Armouries , CGPCS Co-Chair of Operations at Sea

She stressed the importance of following to have better effect in the national interest:

- Permanent Representative at IMO
- Identify and partner countries to promote common interests
- Fill legislative gaps, strengthen enforcement protocols
- Create active IMO Cell at DG Shipping by increasing with Technical Officers
- Networking & leveraging at every International Forum with due representation of the IMO cell & concerned representatives.

Figure 12: Dr Malini V Shankar , IAS (DG Shipping , Secretary to GOI - Retd)



FINS President Lt Gen (R) DB Shekatkar gave a broad overview of Ocean Security , important of 8 global choke points and trafficking at Sea. FINS as a thinktank integrates all elements of security “ Land , Air & Maritime”, including the fourth dimension “ SPACE”, so as to be aware , analyse and present it’s view points to the National agencies for their information and appropriate action.

In order to achieve this FINS conducts such Seminars , deliberations with people concerned and create a dedicated Thinktank specific to area concerned. He expressed his happiness for the first time under the aegis of FINS duly supported by Shipping fraternity such seminar is organised and looks forward to input in the national interest.

The presentation was followed by panel discussion with representatives

Capt Mohit Behl from DG Shipping informed that DGS has initiated effective measures by creating cells to participate at all IMO meetings in a constructive manner. During the last couple of years, India has been a part of every meeting , working group and slowly asserting itself to protect it’s interest. He also added that , after formulation of RPS rules , the Directorate is sincere in implementation with promotion and punitive actions as the case may be.

Figure 13: L-R , Sh SM Rai, Sh Bhagwantrao D More - IPS, Sh Atul Kulkarni , Vice Admiral AR Karve (R), Capt Mohit Behl (Nautical Surveyor, DG Shipping)



Vice Admiral (R) A R Karve highlighted the efforts of coordination whilst transiting the piracy infested areas and High Risk Areas (HRA). He elaborated efforts made by Indian Navy and Coast Guard for protection of Seafarers as well as prevention of illegal activities at Sea. He assured that Indian Navy is capable of protecting the assets including the life at Sea under every condition.

Sh Bhagwant Rao D More - IPS (R), associated with Human Rights Commission Maharashtra was vocal about efforts made by Coastal state Marine Police & Yellow Gate Police station to handle Seafarers issues with sensitivities. He opined that there is a need for better coordination and cooperation besides understanding the whole process in detail for effective implementation.

Sh SM Rai , representing INSA (Indian National Ship Owners Association) thanked the DG Shipping for the initiatives taken and informed that there have been cases of abandonment for which necessary assistance has been extended DG Shipping, however he was of the opinion that due representation at IMO , ILO & such bodies be made so that the Indian Shipping interest is protected and they are not over burdened with frequent changes of requirements and compliances.

During various discussion, there was mention of Hon Minister of State Sh Gajendra Singh Shekhawat, who as Friends of Seafarers had helped many Seafarers and was our main contact point of help at Delhi.

Figure 14: Ms Suhasini Shekhawat accepting FINS momento from Sh Bal Desai Ji. Hon Minister of State Sh Gajendra Singh Shekhawat (Friends of Seafarers) due to urgent meeting at Delhi couldn't make it to Seminar



Capt LK Panda summarised the deliberations and assured the attendees that FINS will bring out a paper on the outcome of the seminar and also informed that FINS will make all efforts to transmit the recommendations made by various representatives to all authorities concerned for their pragmatic implementation.

The valedictory by Sh Dyaneshwar Mulay (Secretary MEA (Ministry of External Affairs and Overseas Indian Affairs – Retd) had an insight how e-migrate came into being for INDIAN Seafarers. Some excerpts from his valedictory :

Quote

I took over as Secretary (CPV & OIA) in 2015, one of the first case brought before me was regarding thousands of Indian Seafarers stranded & missing in Iran. These were sent by illegal shipping agents who had lured young seafarers from parts of Uttar Pradesh, Punjab & Maharashtra, promising them Sea time to get regular employment on merchant vessels. They have been sent on dead rusted vessels docked on parts of Iran due to international sanctions on Iran at that time.

We decided to send an Indian delegates comprising of officials of Ministry of External Affairs, DG Shipping to meet port & Maritime organisation of Iran for rescue of these Indian Seafarers. The delegate went there and we were able to rescue most of the stranded Indian Seafarers. **Also since there was no provision of penal action in the Merchant Shipping Act, we had used Ministry of External Affairs PGE/PoE/Police to crack down and lodge FIR against illegal Shipping Agents under the Emigration Act, 1983.**

The most important take away from the whole Iran episode was that there should be a mechanism of safe and legal migration of Indian Seafarers, so that they should allowed to go through Registered Shipping Agents (RSPL) only.

At Ministry of External Affairs, we have been using State of the art e-governance, an online platform for migration of Indian workers abroad called' e-Migrate'. e-Migrate ensures Indian worker can travel abroad only through registered recruiting agents. In the e-Migrate, all the Stakeholders viz; Foreign Employer, Recruiting Agent, Indian Mission abroad, Protector General of Emigrants, Protector of Emigrants are on one platform. Thus, if any Indian migrant is in distress, using e-Migrate we can activate the concerned Foreign Employer, Recruiting Agent to Rescue him.

Thus to prevent large number of young Indian seafarers from being cheated, duped and trafficked by illegal shipping agents. Hon'ble External Affairs Minister decided to utilize "e-Migrate Portal" for

seafarers, so that those seafarers, who have been recruited by registered RSPL agencies are allowed to migrate abroad. **This was implemented in record period of two months and I am very happy to announce that close to around 4 lakhs seafarer have travelled through e-Migrate in a short span of one & half years.**

Figure 15: Sh Dyaneshwar Mulay (Secretary MEA (Ministry of External Affairs and Overseas Indian Affairs – Retd)



In my view, this step will go in a long way to ensure safe & legal migration of Indian Seafarers and since the whole of information of Seafarers is available in Emigrate. **It will help Indian mission abroad to rescue & help the seafarers in distress situation.** Remember, Indian Mission abroad is our “Home away from home” (परदेश मे आपक दोस्त भारतीय दूतावास).

Here I would like to mention a very innovative step taken by Ministry of External Affairs i.e. “Pre-Departure Orientation Training Programme (PDOT)”. It is a one day free of cost training given to Indian workers going abroad for work by Ministry of External Affairs. In this training workers are informed about the DO’s and Don’ts of the foreign country, the rights and welfare measures available to them

by Government of India. This empowers the Indian worker and makes them confident & less vulnerable to exploitation. We have imparted PDOT to around 40,000 Indian workers in less than a year. **I would like to propose a similar Pre Departure Training be started for India Seafarers going abroad.**

☐ Here, I would also like to mention about a welfare measure provided to Indian worker going abroad for work. **This is called Pravasi Bharatiya Bima Yojana (PBBY).** Each Indian emigrant going abroad is insured for Rs. 10 lakhs accidental insurance for a mandatory filing one time premium of Rs. 275. Here, I would like to suggest similar scheme be started for Indian Seafarers.

☐ In the end I would like to conclude by Reiterating the slogan of our Hon'ble EAM.

“सुरक्षित जाओ, प्रशिक्षित जाओ, विश्वास के साथ जाओ”

Unquote

Capt Sanjay Prashar invited the Officer Rajesh Dwivedi of MV Seaman Guard Ohio who had been released after 6 years in imprisonment in India. The crew gave an insight of the legal fight which broke every Seafarer's family's back. Mr Manoj Joy, Union Leader B Sreekumar and ITF supported their quest for justice. Now they are struggling to have a job and being assisted by Mr Manoj Joy who runs NGO from Chennai to support Seafarers.

Figure 16: Officer Rajesh and AB Thandapani of MV Seaman Guard Ohio Figure 17: AB Vikram (Abandonment in Iran)





Other Seafarers who faced abandonment and criminalisation and their presence was acknowledged were AB Rajan Thandapani (From Tuticorin), Cook, Jagdeesh, AB Vikram (Nagpur) and Capt Kataria (Rajasthan).

Capt Prashar conveyed the vote of thanks, especially the sponsors. He also expressed his gratitude on behalf of FINS and assured that FINS will be arranging such thought provoking seminars in future also, not only to address the Human element but ready to deliberate and find solutions for all issues related to Maritime Security.

Figure 18: Women Power at Seminar , L-R, Dr Malni V Shankar , Mrs Sonika Prashar , Ms Suhasini Shekhawat, Mrs Saleha Shaikh & Ms Sonali Banerjee



Figure 19: FINS team who worked behind the curtains with all stakeholders , L-R Mr Abu, Mr Abhimanyu Soni and Mr Gaurav Yadav



Figure 20: Journalist Sushil Rao (TOI) with Lt Gen Sheketkar (R)



Seminar Outcome (14 Points)

1. **Awareness campaign “Human Rights at Sea”** is required by Shipping Companies including 433 Recruitment & Placement Service (RPS) companies in India, Seafarers Unions, 200 plus Maritime Training Institutes (MTIs) at national level. This can be on similar to the program conducted by Ministry of External Affairs i.e. “Pre-Departure Orientation Training Program (PDOT)”. It is a one day free of cost training given to Indian workers going abroad for work by Ministry of External Affairs. In this training workers are informed about the DO’s and Don’ts of the foreign country, the rights and welfare measures available to them by Government of India. This empowers the Indian worker and makes them confident & less vulnerable to exploitation. MEA has imparted PDOT to around 40,000 Indian workers in less than a year. **Similar Pre Departure Training be started for India Seafarers going abroad.** The awareness program may encompass the preventive measures and the action to be initiated by a seafarer in cases of abandonment/criminalisation or such contingencies. It is also suggested that such issue may be brought as a formal part of maritime training.
2. DG Shipping India has made it mandatory for all RPS agencies to recruit Seafarers only for those Ships who have valid PNI and Financial Liability Certificate. 15 March 2019 has is effective date for RPS agencies to upload this information in e-governance system called **“Company Profile”**. Effectiveness of this system should b revised after 3 months. Since the Pni clubs provide security incase of abandonment, the recruiting agencies will have to provide the details of the club in advance to the DGS as well as the joining seafarer.
3. **DG Shipping may consider to have a contingency fund to** assist the stranded Seafarers who face abandonment and criminalisation and recover the cost from the RPSL and the insurer.
4. **E-migrate** for Indian Seafarers: All International Airports in India and Seaports in India must **maintain one policy** of Seafarers clearance. Presently interpretation at certain ports allows non DG approved RPS agents to operate thus stranding Seafarers in various parts of the world.
5. **Seafarer’s Employment Agreement to include statement** on Abandonment and Criminalisation. Every such contract of employment must have the name of the Insurer issuing the blue card.
6. DGCOM receives all reports on Abandonment and Criminalisation of Seafarers. Analysis and data of such cases may be put up on public domain , as it is being displayed by the ILO on their web-site. The causative effects can be analysed for future action.
7. **Issue SOP** “ Standard Operating Procedures” for every Indian Embassy and Consulate overseas for addressing matters pertaining to Indian Seafarers cases on abandonment, criminalisation, or any violation of his “ Human Rights” related to maritime matters.

8. Ministry of Shipping may prepare **SOP for foreign nationals** who face abandonment and criminalisation in Indian waters and Indian Ports.
9. **Admiralty Courts:** it has been noted that maritime cases take considerable time and are not handled in designated Admiralty courts. It is suggested that , the Ministry of law may be requested to take note of such issues and take cognizance of national and International guidelines/advocates, in which India is a signatory , while dealing maritime cases.
10. **IMO & ILO:** Keeping in mind EUs policy initiative to influence world bodies, Asian countries like Japan, China, Iran having their permanent representatives for taking care of the maritime interest, India should participate effectively in all matters, meetings dealing with subjects, including human elements , so as to effectively protect national interests. It is time , India considers to have a permanent representative conversant of the subject to be posted at our office in London.
11. **Insurance policy.** It is noted that , well established and Recognized shipping companies tend to have their PnI club insurance with the IG Clubs. Govt of India has recognised such IG clubs and few more for the purpose of transaction of business under Port Entry Rule of 2012 for safeguarding the interest of Ports. On the similar lines, it is suggested that if the Pn I club of the employer is not approved by GOI under the Port Entry rules , it will be the responsibility of the RPSL to ensure that , every such seafarer must have a coverage under “ Pravasi Bhartiya Bima Yogna” for Indian Seafarers covering all aspects of MLC 2006 compliance, Abandonment & Criminalisation of Seafarers.
12. **Continuous Research** on trends of fallacies on “ Human Rights at Sea” should be published. National Maritime Day Committee to create more paraments to reward those who work in the field of Human Rights at Sea. Human rights violations are increasing and taking different shapes by way of exploitation, suicides, murders etc. India having significant footprints and third largest manpower supplier to the maritime industry can not remain silent and has to take pro-active steps at each and every forum through monitoring, analysis and research.
13. **Annual review by DG Shipping. Noting the fact that DG Shipping is the nodal body for all aspects related to seafarer,** there is a need to have continuous interaction with the maritime Industry so as to amend and improve the legislation, guidelines etc. For example the present RPS Rule needs amendment on several sections.
14. In order to address all the issues related to Human rights of the seafarer, Unions will have to be more active and take the first step towards detection and sensitization, therefore it is prudent that Unions take a proactive role and to do so , all seafarers may be part of such initiatives.

PROGRAMME ITINERARY (28 Feb 2019 @ The Leela, Mumbai)

Session 1 - Inaugural (0930 - 1115 hours)

- ✓ Registration
- ✓ Curtain Raiser and Introduction by Sh. Atul Kulkarni
- ✓ FINS Presidential address: Lt. Gen (R) DB Sheketkar
- ✓ Theme Setting: Co Convener, Maritime Study Group FINS, Capt Sanjay Prashar
- ✓ Address by Guest of Honour: Sh. Amitabh Kumar, Director General of Shipping
- ✓ Address by Chief Guest: Sh. Pradeep Rawat, Chairman-National Shipping Board
- ✓ Vote of Thanks by Adv Bal Desai , Secretary General – FINS

Session 2 - Abandonment and Criminalisation of Seafarers

- ✓ 1130 – 1150 Hrs: Abandonment of Seafarers & Remedies (Capt Jayakumar , Nautical Advisor – DG Shipping)
- ✓ 1150 – 1200 Hrs: Experience sharing on Criminalization - Lionel Fernandes, Navigating Officer
- ✓ 1200 – 1220 Hrs: Criminalisation of Seafarers – Barrister David Hammond (HRAS UK)
- ✓ 1220 –1300 Hrs: Moderated Panel discussion
 - Sh. JK Sao (POEA , Mumbai),
 - Capt Santosh Darokar, (DG Shipping)
 - Capt. Sanjay Maini (Marshal Island Flag Rep)
 - Capt Rajesh Tandon (Chairman IMEC)
 - Capt LK Panda (FINS - Moderator)

Session 3: Trafficking at Sea

- ✓ 1400-1425 hours: Trafficking in Indian Ocean Rim
- ✓ 1425 - 1455 hours: India's role at IMO, Dr. Malini Shankar (IAS) DG Shipping (R)
 - 1455 - 1530 hours: Moderated Panel Discussion by Sh. Atul Kulkarni (FINS)
 - Capt Mohit Behl (Nautical Surveyor , DG Shipping)
 - Vice Admiral AR Karve (R)
 - Sh Bhagwant Rao, IPS (R), Former Addl. DGP Maharashtra
 - SM Rai (Industry Rep)

Session 4: Conclusion and takeaways

1600 – 1605: Honouring Seafarers who faced abandonment and Criminalisation

1605 – 1615: Conference Recap by FINS

1615 – 1655: Valedictory by Dr. Dnyaneshwar Mulay (IFS) Former Secretary OIA, MEA (R)

1655 – 1700: Vote of Thanks by FINS

HUMAN RIGHTS AT SEA

Seminar at Mumbai on 28 Feb 2019



**IMAGE GLOBAL TRAVELS
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**Foreign Owners Representatives and Ship
Managers Association**



**INTERNATIONAL MARITIME
FEDERATION**



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Paper by Capt LK Panda, Nautical Advisor to GOI (R) and Capt Sanjay Prashar - FINS

Can India show the way?

1. The world is synonymous to the term of Global Village. Rapid exchange of knowledge, trade and commerce has led to such development. Shipping has been the flag bearer of such trade and commerce by providing the cheapest and efficient mode of transport from by carrying the commodities from a pin to a plane, from the solid to gaseous form from east to west and north to south by even traversing through the polar routes. No wonder it is said that ‘ Had there been no shipping, half the world would have died of hunger and the other half of cold ‘
2. It is accepted that for economic development and move towards prosperity of human kind shipping plays a vital role as over 70% of goods move by sea and every element of human consumption has a shipping element in it. To make such facilitation possible ships have to move day n night, snow or rain, storm or calm waters from east to west and north to south continuously. Such gigantic carriers some carrying goods equal to GDP of a country or fuel supply for months are run efficiently by a few seafarers braving all, leaving their families for months ensuring the continuity of supply chain. While such unselfish, devoted seafarers pour their heart out to carry freight expeditiously, but it is a travesty of justice that, they are the first to suffer, when the ship owner faces economic difficulty. The ship and seafarers are abandoned to their fate with no supply of any kind for days, months and some even years at distant ports well away from his home and having no means of communication, well detached from his dear ones. The questions, he asks are “ What is my mistake, why no one is helping me, when I have been helping them for ages “. These are the issues, we need to address in a pragmatic answer and find doable methods, and can India be the first to walk the talk.
3. As on today, as per the International Labour organization data, there are over 150 ships and over 1000 seafarers stranded at various ports, of which more than 100 Indian seafarers are yearning to come home. The analytical data with reasons in the graphical form in the attached annexes presents a gloomy picture.
4. The primary reasons of abandonment of seafarers have been the financial constraints, bankruptcy and the inability on the part of the ship owner not being able to clear the financial dues to the creditors. As the mounting debts/credits on the ship exceeds the financial strength on the vessel (Freight and cost of the vessel) the owner abandons the vessel, leaving the seafarers to take care of themselves. At times the vessels are arrested under the Admiralty law and maritime lien is brought on the ship. As the seafarer has a lien on the ship for his wages, he is forced to remain on the ship, lest he may lose his earnings, waiting on ship goes from days to months and months to year at times.

5. The unfortunate scenario can be avoided if the authorities and responsible organizations, not limited to but including, The flag state, The coastal state, The statutory body governing manpower agencies (In our case DGS), Insurers, and the Unions, sincerely follow the law and the prescribed procedures. It is tacitly accepted that, the flags of convenience, the gulf states, West African states have not been giving due attention in discharging their obligation as under the Conventions/legislations which they have agreed to.

6. It is not that there is no legislation to address these, at International basis, Regional basis, and national basis or at port state basis, but the will to implement in sincerity is lacking for several reasons. If we examine, we will find plethora of legislation, guidelines, advisories, many NGOs etc. in the scene, but the figure of 156 ships abandoned with over 1000 seafarers stranded defies any logic.

7. Starting with United Nations ' United Nations Convention on Law of the Sea' know as UNCLOS, in which every nation has affirmed compliance, have sadly erred in compliance, since Article 91, provides the responsibility of the nation, giving nationality to the ship, Article 94 stipulates duties of the flag state, specially the subsection 3(b), makes it obligatory for overseeing the compliance of all human elements. In addition to flag state, the Convention in article 217 and 218 reminds the flag as well as the port state (where the ships are calling) of its obligation for compliance with International instruments. Had the International community complied with the basic tenants of UNCLOS, the apathy towards seafarers would have never taken place. **It is unfortunate that till this date, no nation has raised the issue in the UN forum and, India can show the way by raising the issue and showing concern, expressing solidarity with Seafaring community, cutting across all borders, caste and creed to show its resolve.**

8. It not limited to UN based UNCLOS, even the UN organization ILO, IMO have urged member states and come out with several guide lines, convention to address the agony of seafarers and fair treatment, the key drivers of shipping. After years of deliberation the ILO has been able to form an enforceable Convention, known as Maritime Labour Convention 2006 duly amended in 2014. The MLC addresses the social, structural and financial aspects of employment of seafarers. It mandates good working conditions, food, hygiene, remuneration and above all repatriation of seafarers on the owners of the vessels. The party to the Convention, the countries are required to ensure the compliance. To ensure compliance, as per practice the Ship owners delegate the financial aspects, ranging from salary, repatriation, medical exigencies to the Insurance companies at a certain premium. The convention allows so but does not exonerate the flag state, port state of its responsibility, sadly neither the flag state nor the port sate, despite agreeing, signing and party to the Convention, refuse to take up the responsibility.

9. Vis –Vis above paradigm, Indian seafarers have built a reputation difficult to match by many. To day Indian Seafarers are employed on ships of over 100 flags. Indian officers command the largest Tanker, bulk carrier and even the Gas carrier. A rough guess-estimation is over 2 lakh seafarers are sailing on ships remitting home well over USD 7 Billion / Year, besides supporting a strong back up maritime industry in major ports of India. Despite such financial impetus, foreign exchange remittances , it is unfortunate that the brave hearts of sea, seafarers have to pass through such ordeal of abandonment.

10. With such enviable position in the world shipping and to create more employment opportunities, India has enacted the principle of MLC in its Merchant Shipping Act and Rules thereunder. Going a step forward, to ensure that seafarers are not exploited and are recruited through genuine accountable employers India as a preventative measure enacted the “ Recruitment and placement of seafarers Rules 2014 “. Under such rules an employer is required to be a license holder to function as recruitment agency. It is his responsibility to ensure that the seafarer employed through him is not deprived of the rights under the MLC. It is the License holder’s responsibility to bring back the seafarer home in case of any exigency. For this purpose he is required to have a Gurantee deposit with the DG Shipping. The DG Shipping through the Seaman Employment officer is required to invoke such Gurantee and cancel the license for any default.

11. While the International, National rules and guidelines are in vogue, India has gone a step forward, in implementing the “ E migrant” program. Under such program, no seafarer can avail an exit permit unless otherwise he is recruited through a licensed RPS holder. The intention is to take preventive action and stop exploitation. The ministry of external Affaires is to be commended for such initiative. The honorable minister Smt Sushma SwarajJI has single handedly ensured compliance, great effort for which the seafaring community is obliged.

12. The DG shipping being the nodal body, duly authorized under the Act has initiated several programs, circulars and guidelines for the seafaring community. The issues can be addressed to communication center, which is open on a24x7 basis. Though it is not adequate, since it is operated by private operators and built for a different purpose with contribution form the Industry, still it is serving the purpose.

13. For the welfare of seafarer a ‘ seaman welfare fund’ has been created with the contribution of the employers and the government. It is understood that it has a deposit of over 200 crores to be utilized for the seafarers in accordance the SWFS act by the trustees. It is understood that the US Govt has specifically allocated 5 million for such purpose. Govt of India may consider such at a later stage

14. The seafarers, mainly divided to two segments, officers and ratings have their respective Unions, MUI, NUSI, and FSUI etc. Such Unions have affiliation with the International Trade workers federation, the ITF; the unions get contribution from the employers for the welfare of the seafarer.
15. With such International Conventions, Acts, Rules, i.e International and National Legislation process, welfare bodies, Licensing and preventing mechanism at air ports. One tends to ask the questions”
 - a. Why so many Indian abandoned seafarers?
 - b. Despite, Ratified International Convention of UN, IMO, ILO and other National legislations, how such abandonment is taking place and the apathy of flag state, costal states etc.?
 - c. Who has employed them and why the Recruiting agency (RPSL in India) is not repatriating them back? & Why D, G, Shipping is not exercising the Bank Gurantee of the RPSL to recover the cost of repatriation and cancel the license of the defaulter.
 - d. Why the funds with SWFS, MUI or NUSI, the Unions of India are not utilized to bring the seafarers home., doesn’t such repatriation in the given circumstances become “Welfare Activity”?
 - e. As per MLC, it is the Insurer, who is responsible for payment of 3 months wages n is required to repatriate such sea farers, therefore the DGS must impress on them to discharge their obligation, failing which such defaulting Insures should be restricted or banned for their activity in accordance with the Port Entry Rule or as a matter of principle. Why the Seaman Employment office and the DGS has not initiated such punitive and pragmatic attitude against the defaulters?
 - f. Seafarers are stranded abroad, and their first point of contact is the Consulate, or Embassy office. In the absence of specific guideline, the Consulates or Embassy find it difficult to coordinate. Why a specific guideline has not been prepared till date by the DGS and forwarded to the Ministry of External Affaires for implementation.
 - g. Why the funds at SWFS which is over 200 crores are not utilized to initiate the process of repatriation of stranded seafarers in case the RPSL fails to do so and in case the Consulate/Embassy assists in repatriation of seafarers? Why the DGS can not initiate the process where-in the expenses incurred by MEA can be compensated by the SWFS and later be recovered from the RPSL holder or the insurer?

These are several questions, which are not very difficult to address. What is required is to appreciate the difficulty of the seafarers, feel for it and move towards resolving the issue first and then follows up with punitive steps for all defaulters. In this regard, based on the experience, prevailing circumstances, few steps are recommended for improvement and reducing the agony of the abandoned seafarers. Having nearly 3 lakh registered seafarers and India being a major manpower supplying country can show the maritime industry of its sincere approach thus bringing in confidence among seafaring community in turn betterment of the national prestige at large.

Steps Recommended

- a. The DGS to display data on it's website in similar fashion as ILO , for all cases report as per DGCOS notification. The data is already available and small initiative at DGS will help to see the trend.
- b. The DGS has a committee on RPSL which includes those from Industry. It's lying dormant now. All cases reported should be put forward to this committee as it has base knowledge to resolve or give recommendations.
- c. DGS may consider to work in sincerity, create confidence and start taking punitive action against the defaulting Recruitment agencies and Insurers. Presently SEO serves show cause notice but other than suspending the Lic, financial rewards are seldomly seen to close the case.
- d. The DGS, with the industry and MEA has to prepare the SOP for addressing such issues, when the seafarers are abandoned at a foreign port.
- e. SWFS, NUI, NUSI, who have collected crores of donations, will have to be accountable and provide financial resource for welfare of seafarers. There cannot be a better welfare activity than bringing back home a stranded seafarer home. SWFS objectives may need a revisit.
- f. Noting the fact that shipping is International crossing all boundaries in the course of trade and for the benefits of human race, further the provisions in the UNCLOS, obligates all member states to comply the Convention, India having a large stake in Maritime employment scenario, no one till date has addressed the apathy to seafarers and such abandonment issues, Ministry of External Affairs may draw attention of the world body through a information paper or any as appropriate.

WITH EMPATHY IN HEART , A LOT CAN BE ACHIEVED.

WE ARE PROUD OF OUR CULTURE AND EMPATHY FOR ALL.

VIEWS EXPRESSED BY

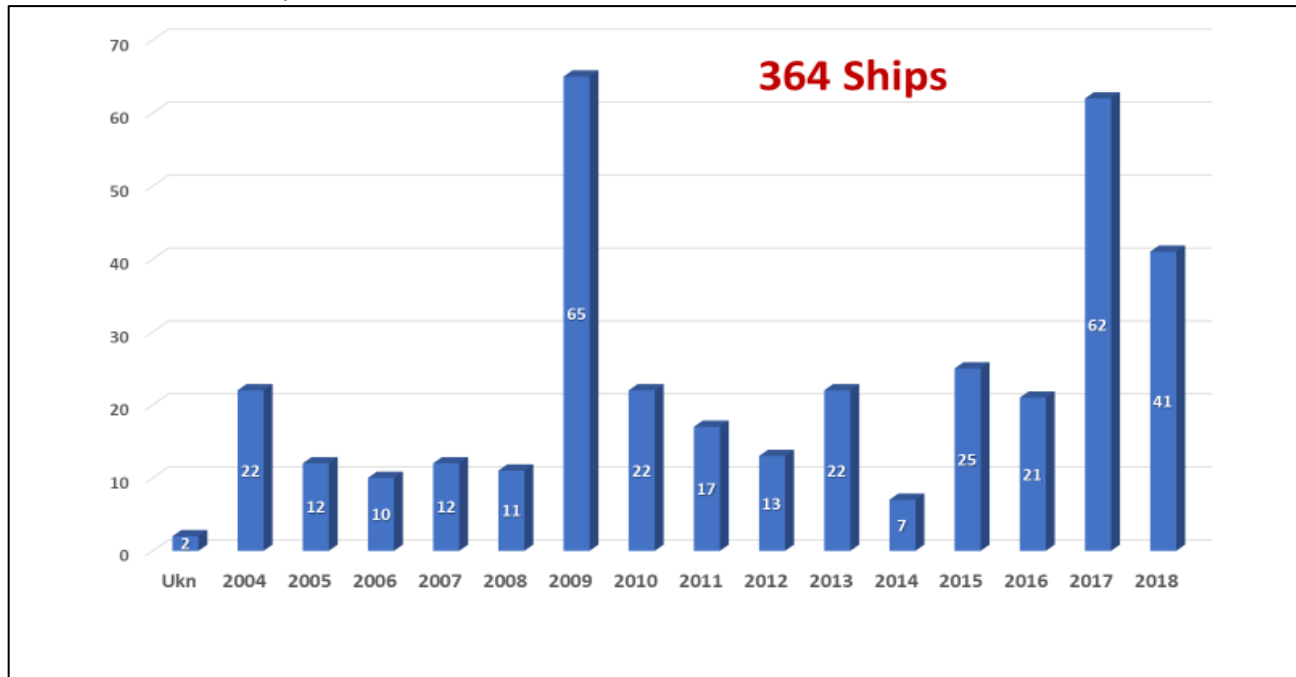
FINS – Maritime Security Study Group

CAPT L.K.PANDA - Retd. Nautical Adviser to Govt of India

CAPT SANJAY PRASHAR – Shipping Company Owner and Entrepreneur

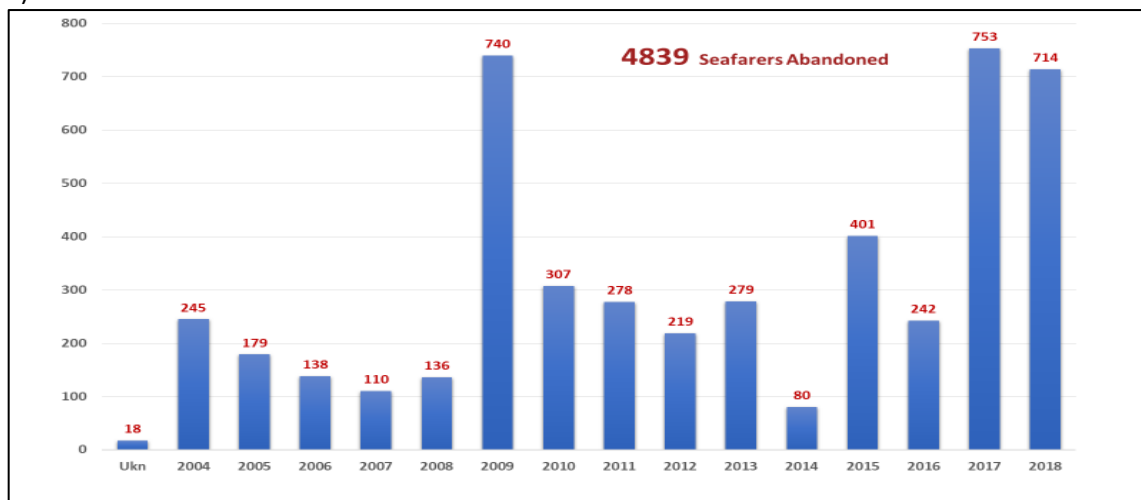
Annexure A - 17th January 2019

1) Abandoned Ships since 2004



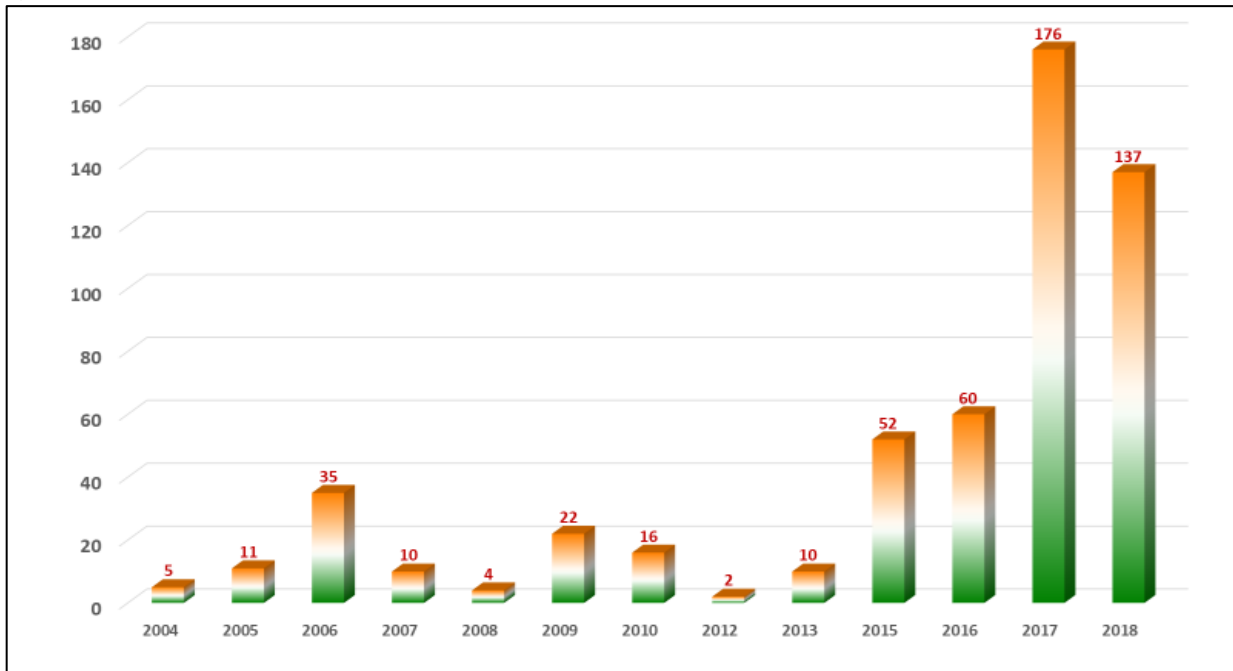
Source: <http://www.ilo.org/dyn/seafarers/seafarersbrowse.home>

2) Abandoned Seafarers since 2004



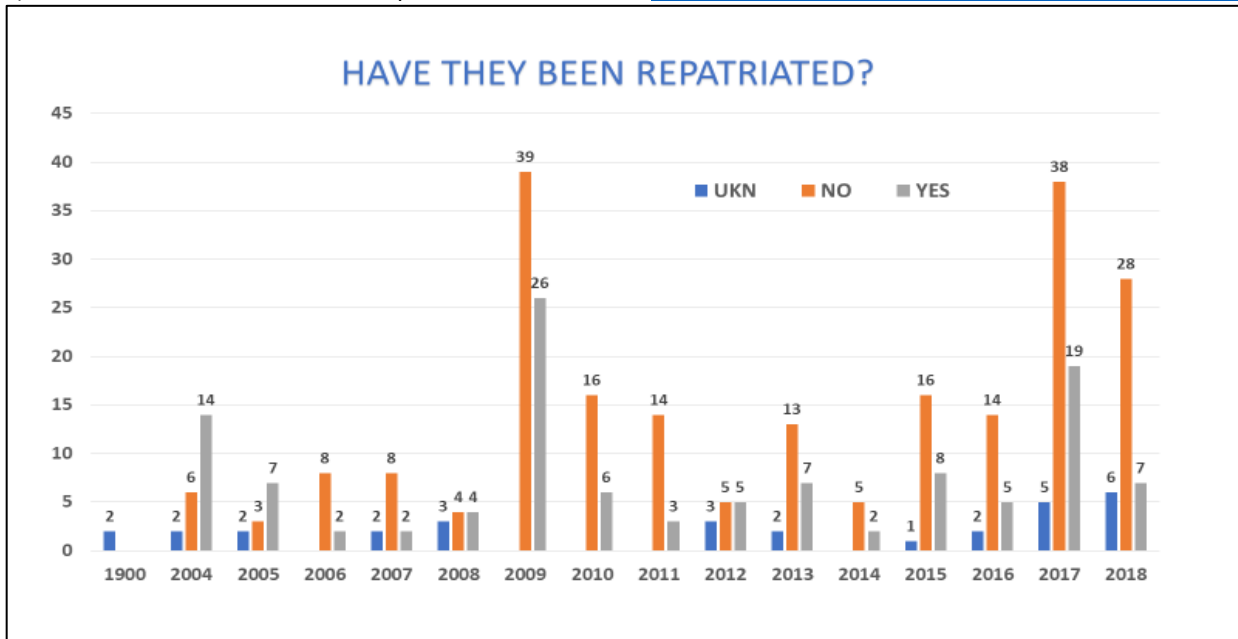
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3) Abandoned Indian Seafarers

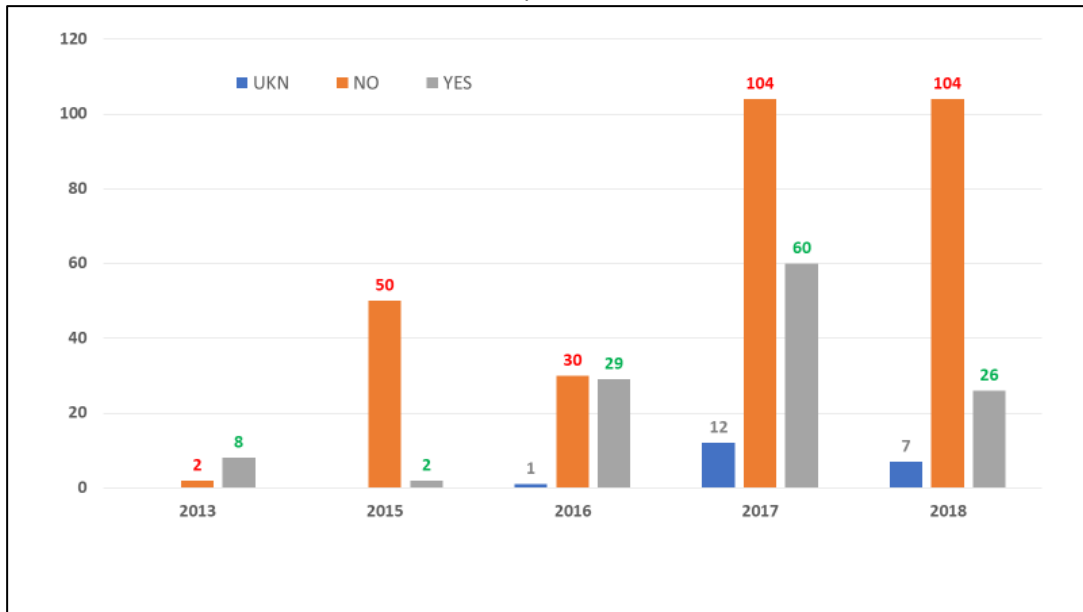


Source: <http://www.ilo.org/dyn/seafarers/seafarersbrowse.home>

4) Status of Abandonment: Repatriation done or not? <http://www.ilo.org/dyn/seafarers/seafarersbrowse.home>



5) Status of Abandonment- Indian Seafarers: Repatriation done or not?

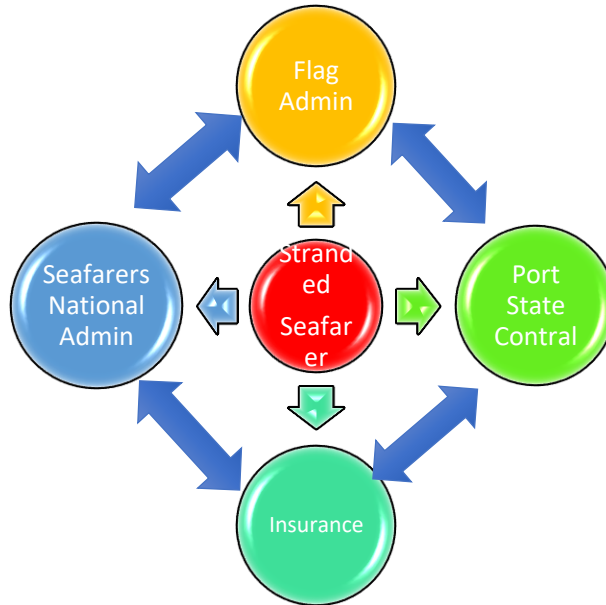


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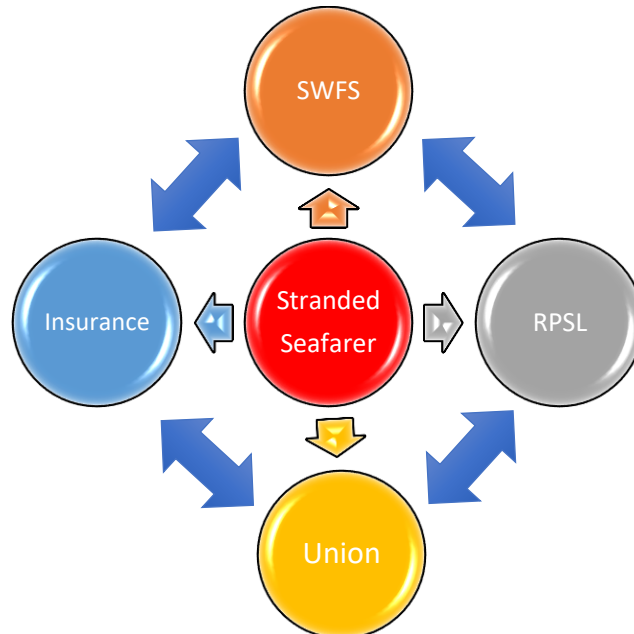


ANNEXURE B

1) RESPONSIBLE ENTITIES



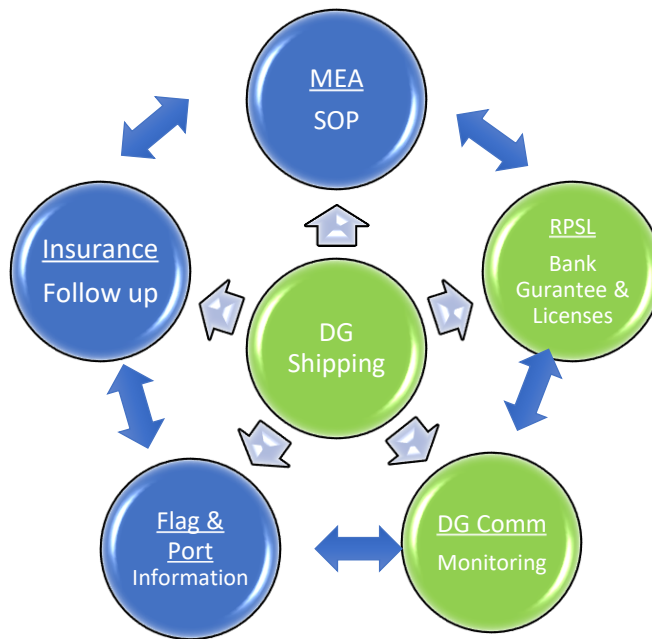
2) PROJECTED ASSISTANCE



3) MONITORING AGENCIES



4) PROPOSED DIRECTIONS



Criminalisation of Seafarers - Paper by Capt Pankaj Kapoor +91-9867342357 , pankaj@veenus.in

In one of the recent cases, a VLCC on a voyage from South Korea to Singapore was pursued by Taiwanese coast guard in the high seas for allegedly hitting a fishing boat resulting in death of two fishermen. Second Officer and duty AB were arrested. Master who at that time was asleep and off duty was arrested too and prohibited from leaving Taiwan for nearly two years. Master was charged with Manslaughter, one of the very serious crimes. Later investigations revealed that the VLCC was nearly one hour away from the capsized fishing trawler and there were no visible indications of any impact on ships hull. BUT the master by then had already lost two years of his life trying to defend himself in a foreign land from a crime which he had not committed .(TOSA)



In yet another case , a vessel bound from Europe to Nigeria, was instructed by her owners to briefly stop at Senegal to pick up surveyors, who thereafter completely changed the ullage reports and also Bill of ladings were switched showing origin of cargo as Senegal. On arrival Nigeria, Master, Ch officer and Surveyors were not only manhandled by the authorities but also temporarily put behind bars. One wonders if obeying instructions from owners is also a CRIME .

Not very long ago , a Croatian Captain, Croatian Chief Mate, and a Filipino bosun were arrested when 51 kg of cocaine were found in a cargo of fruit discharged in the port of Patras. They were charged with smuggling cocaine, despite no evidence being laid against them. The Master and Chief Officer were found guilty and initially sentenced to long periods of confinement. The Chief Officer was subsequently released after more than a year in prison. He suffered severe mental problems and committed suicide. The Master was released after more than 17 months in harsh confinement and acquitted, but he was deported from Greece which made it initially impossible to resume his career with a criminal conviction remaining on his record. He was awarded the 'Man of the Sea' Award in 2008 in Lloyd's List Greek Shipping Awards.(CORAL)

Under law a perfect crime consists of two ingredients "ACTUS REUS" and "Mens Rhea" . For a crime to be complete the person committing it must have the intention(Mens Rea) and subsequently also put that thought into action (Actus reus). This means that one may meditate on committing a crime (Mens Rea) but if he does not put it into action (actus reus) he cannot be prosecuted for it.

ARE WE SEAFARERS CRIMINALS.....though we may be involved in a accident or incident where an action has occurred BUT did we have the intention to commit that action. The answer is a BIG NO. Then it cannot be under law treated as crime.

Then why should he be treated as a criminal !!!!!

Criminalisation of seafarers is the expression used when a master, officer or other maritime professional faces criminal charges as a result of an incident or accident involving their vessel or someone onboard. Often when charges are brought against masters it is *implied* that there was the intent to commit an offence.



International Chamber of shipping in its recent report states

“That over 80 per cent of global trade by volume is being carried on board ships and handled by seaports worldwide, the importance of maritime transport for trade and development cannot be overemphasized.”

World shipping acts as an engine for sustainable growth and development and performs a strategic function in the AGENDA 2030.

Paradoxically our shipping industry , a back bone of International trade, is also one of the most regulated and unfortunately the most neglected one.

The famous quote “out of sight, out of mind” befits squarely on International Shipping. That which you can’t see, you can’t feel.

On questioning a landlubber to rattle out some of the famous ship names , all that we would recall is Titanic ,Costa Concordia and the few who are more knowledgeable than some would just might also quote the name of the Captain of Costa Concordia.

Gone are the days when grateful passengers would club together and present an address of thanks, together with a gift to the master, who have delivered them safely to their destination after a long sea voyage. Presently maritime progress and the advancement of technology has brought with it a gradually increasing intolerance of any sort of accident, which in the new century has become quite extreme.

The master and the crew of an internationally trading ship find themselves exposed to the whole gamut of different legal regimes and codes as the ship moves around the world. A minor pollution incident in one country, which may even escape censure, will be treated as a heinous crime in another, with responsible officers marched ashore in manacles and subjected to exceeding treatment. Even a commercial dispute over cargo short landed, which will be dealt with by a protest note in country A might, in what passes for law in country B, see the ship and the master arrested, charged with theft and held in disgraceful conditions along with criminals, against the posting of a huge P&I club bond. A minor discrepancy in a customs declaration form, over, for instance, the number of painkillers in the dispensary, could see the master of the ship arrested by corrupt authorities seeking to be “bought off”.

The difficult position of the master who is completely co-viewed with the conduct of the ship makes him or her into a easy punching bag for authorities. A master, because of what he is rather than what he has done, can find himself sanctioned because of matters over which he has little personal control.

There has been little justice in a number of French pollution cases, where highly dubious evidence from aircraft, unsupported by any other facts, has been used to obtain convictions. In one notorious case, the owner of the ship pointed out, in vain, that the slick had been not only at right angel to the track of the ship but also ahead of the vessel. The master an officer with long and unblemished record was so disgusted at this treatment that he resolved to leave the sea

One need not go too far back to realise the ill-treatment of ship’s crew by authorities, there are plenty instances like the ERIKA,PRESTIGE,KARACHI 8,HEIBI SPIRIT.

A worrying indictment of the plight of seafarers has been delivered by a far-reaching survey of the experiences of seafarers facing criminal charges with seafarers complaining of unfair treatment, intimidation and a lack of legal representation and interpretation services.

Of the seafarers surveyed by SRI, 8% had faced criminal charges; 4% had been witnesses in criminal prosecutions, while 33% knew of colleagues who had faced criminal charges. Almost 24% of masters in the survey had faced criminal charges.

Questions in the survey specifically asked about the experiences of seafarers who had faced criminal charges. 44% of seafarers reported that they were bodily searched. 87% who faced charges relating to the discharge of their professional duties said that they did not have legal representation; 91% of seafarers who needed interpretation services said that they were not provided with such services; and 89% of seafarers who had faced criminal charges said that they did not have their rights explained to them.

Overall, 81% of seafarers who faced criminal charges felt that they had not received fair treatment.

=====

Another threat which casts its draconian shadow over our industry are the unscrupulous manning agents who take advantage of prospective seafarers from inland cities, where the gullible youth are tempted with attractive wages. It's a known fact that these heartless monsters disappear after they have fleeced their innocent victim.

We are fortunate that to counter this disease DG shipping along with the MEA has brought in the e-migration system. This has in-fact brought a phenomenal reduction in such nefarious activities. Though however, a suggestion is that DG shipping should create a cell which should constantly monitor every manning agent and should continuously update the list of "bad apples".

As its mandatory for every Indian seafarer to complete the STCW courses, this list should be displayed in each institute (conducting STCW courses) for every student to inspect. Also it should be made obligatory for every institute to share this list with all students doing STCW course. This would bring awareness in the future seafarer and give him an adequate advance warning. A brief lecture must be included in the STCW courses where the institutes must give adequate knowledge to students of existence of such rascals and educate them to check the antecedents of a company before joining it.

Maritime unions also must cooperate with the DG shipping to amend/update this list continuously. Another suggestion is that DG shipping should reward "whistle blowers" who give information of such manning or recruiting agents.

Problems of a seafarer do not end by just checking the lineage of the company. As there have been various cases where the seafarer is stranded on board without wages and means of survival. Abandonment happens either because the shipowners have financial difficulties or because they can make more money by not paying the wages and the bills they owe. This may be more frequent on older ships at the end of their sea life. In some cases the ship is worth less than the money owed to crew and other debtors.

ITF advises that before accepting a position on board a vessel, find out as much as you can about the company and the ship you will be joining. Look for indications of problems on board. Use the 'Look-up a ship' section of the ITF website to check if the vessel is covered by an ITF agreement and the outcomes of any ITF inspections.

If you are recruited through a crewing agency, try to make sure that the agency is properly run and has a system for checking the stability of the companies for which they supply crew. Check maritime social media to see which companies are the subject of frequent complaints by seafarers.

Yet another threat which a seafarer is exposed to is abandonment.

What is abandonment

Abandonment occurs when the shipowner:

- fails to cover the cost of the seafarer's repatriation; or
- has left the seafarer without the necessary maintenance and support; or
- has otherwise unilaterally severed their ties with the seafarer including failure to pay contractual wages for a period of at least two months'

RIGHTS OF SEAFARERS

UNCLOS which is the predominantly accepted law governing a seafarer is very clear and specific under Art 218/220 and 230. These articles give precise guidelines that in the event of any incident a seafarer can not be arrested as he/she is only under the jurisdiction of the vessels flag state, unless the incident is caused intentionally (MENS REA) by the seafarer.

As regards abandonment , its important to know that the insurance will cover you for up to four months outstanding wages and entitlements in line with your employment agreement or CBA – So don't leave it too late! If you wait six months to apply, you'll only get four months backpay.

The insurance must also cover reasonable expenses such as repatriation, food, clothing where necessary, accommodation, drinking water, essential fuel for survival on board and any necessary medical care.

SUGGESTIONS FOR BETTERMENT OF SEAFARERS

1. Create a monitoring cell in the DG shipping which will on a regular basis update the list of suspicious manning agents.
2. Ensure that the list is displayed in every institute imparting STCW courses.
3. Make it obligatory for all institutes imparting STCW courses to conduct at least one session of one hour educating the students of the precautions to be observed prior joining any company.
4. Impose a restriction on PNI club which has failed to support the seafarer in cases of abandonment.
5. Form an impartial committee headed by DG shipping to manage SWF amount for providing relief to seafarers.
6. Create a system whereby every manning agent must submit a “midterm” report to DG shipping giving details of the wages paid to all the seafarer employed by him. DG shipping may kindly consider the contents and frequency of the report in order to ensure that manning agent is always on his toes. This would ensure that, if there is any lapse in payment of the crew, the situation is controlled at an early stage itself.





Human Trafficking and Human Smuggling: Ferries

By Malvika Rangta

4th year

Symbiosis Law School, Pune



Introduction: Human Trafficking

Article 3, paragraph (a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons defines Trafficking in Persons as *“the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”*¹

Human trafficking occurs not only domestically but transnationally as well. It is also considered to be the fastest growing activities of transnational criminal organizations and has resulted in a “32 billion dollars” annual profit, with no real cost.^{2 3} Human trafficking is considered to be highly profitable, hard to detect and the law as such is lacking, thus making the punishment incurred worth the crime for some.

The most common victims of human trafficking are women and children from poor, rural areas in developing countries. There continue to be many forms of trafficking, some of them being⁴;

1. Trafficking for forced labour - Victims mostly originate from developing countries. They are held in conditions similar to that of slavery in various jobs.
2. Trafficking in women for sexual exploitation – This certain trafficking affects every region of the world, that is vulnerable, regardless of it being a developed or developing country. Victims are usually taken under the false pretence of decent employment to achieve a better life.
3. Commercial sexual exploitation of children in tourism – Mostly prominent in Asia but has now found a hold in Africa and South America as well.

¹ UNODC, Human Trafficking. <https://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html>

² UNODC, Human Trafficking - People for Sale, Fact Sheet, 2012, p. 1. http://www.unodc.org/documents/toc/factsheets/TOC12_fs_humantrafficking_EN_HIRES.pdf

³ Louise Shelley (2010). Human Trafficking: A Global Perspective.

⁴ Interpol, Types of Trafficking. <https://www.interpol.int/Crime-areas/Trafficking-in-human-beings/Types-of-human-trafficking>

4. Trafficking for tissue, cells and organs – This trafficking is a rapidly growing field as it is very lucrative. This is due to the fact that in most countries the waiting list for transplants is very long.

Trafficking at sea involves seafarers and fishers in the context of at-sea activities, i.e. it includes fishing, transporting and fish processing, while on vessels, rafts, fishing platforms, or otherwise offshore. This does not include any sort of shore-based operations like packaging, and any kind of port-based work.



Inadequate investigation and examination has been done for trafficking at sea as a standalone subject, be that as it may, there keeps on being an assemblage of writing on work and labour issues that fishers and seafarers might face, involving any kind of violation, infringement and exploitation they may confront. This group of learning, while not unequivocally about trafficking, can reveal insight into various parts of the seafaring and fishing sectors, including how these may converge with human trafficking and where human trafficking has gone unrecognized in this labour sector. Additionally, there have been an increase in recent reports tackling exploitation, human rights and even human trafficking. However, it stands to say that there is dearth in the information available regarding the issue of trafficking of and by seafarers and fishers

Human Trafficking and Human Smuggling

In this time and age it has also become important to differentiate between human trafficking and human or migrant smuggling. Unlike human trafficking where the individual has not given any consent and is exploited, human smuggling occurs when a person voluntarily enters into an agreement with a smuggler to gain illegal entry into a foreign country and is moved across an international border. It is defined in the Protocol against the Smuggling of Migrants by Land, Sea, and Air (Migrant Smuggling Protocol), supplementing the United Nations Convention against Transnational Organized Crime. Nevertheless, we cannot ignore the fact that people who are smuggled can be extremely vulnerable to human trafficking, abuse, and other crimes, as they are illegally present in the country of destination and often owe large debts to their smugglers. Technically speaking, the smuggler and the migrant's relationship should come to an end as soon as the person has arrived in the destination country.⁵ Nonetheless, evidence points out to something altogether different where the illegal migrants are continued to be exploited, this is done through constant threats and demands for additional fees made by the smugglers. There have been cases where migrants are forced to work for years on end in the illegal labour market to pay off the resultant debt due to their transportation. This is where both human trafficking and people smuggling start overlapping.⁶

Human trafficking and human smuggling are two distinct phenomena, and yet they are interlinked and partly overlapping. An important difference between both of these would be that smuggling is more of a crime that violates the national and international borders in place as compared to trafficking which is a crime which primarily violates the fundamental rights of a person.⁷ The state will provide support and assistance to the victims of trafficking whereas it generally does not recognise the smuggled migrants as victims of crime. Despite all of this, the distinction between both of these crimes is not that easy to discern and authorities find themselves challenged, this includes ferry personnel.

⁵ UNODC 2008, 4-5

⁶ OECD, Can we put an end to smuggling?

<https://www.oecd.org/migration/Can%20we%20put%20an%20end%20to%20human%20smuggling.pdf>

⁷ Europol 2016

Circumstances have indicated that smuggled migrants may become victims of trafficking, and that traffickers are also found to be acting as smugglers and use the same routes for both trafficking and smugglings.⁸ Trafficking in persons and the smuggling of migrants are part of a continuum of a migration process and the person who is smuggled one day may be a trafficked person the next.⁹

It stands to say that even if initial consent has been, it becomes legally irrelevant as the trafficker starts using threats, coercion, deception or fraud in order to exploit the victim.¹⁰ The recent increase in migration into Europe has shown that the categories are not as clear cut e.g. in situations where female migrants are forced to provide sexual services to smugglers, or when migrants are forced to compensate the costs of smuggling through labour.

Main Sea Routes for Human Smuggling and Human Trafficking

“Modern slavery doesn’t happen only in warzones. It exists in areas of both darkness and plain sight of people all over the world – even at sea ... there are many, many stories ... where unscrupulous fishermen use the isolation of the sea to hide their crimes ... And the reasons aren’t hard to figure out. When criminals are able to turn a profit in an illegal fishing market, they’ll go after as many fish as possible. ...the more labor they have on board, the larger their catches will be. The economic incentives are there, which is precisely why illegal, unregulated, and unreported fishing practices have grown into a \$20 billion a year industry.”

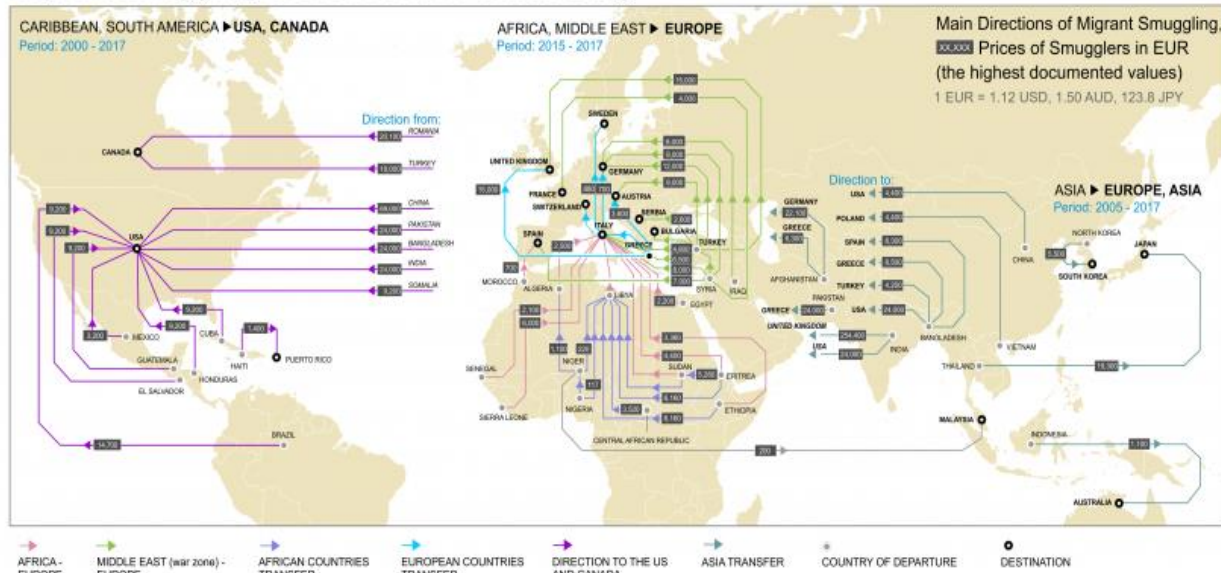
- Secretary Of State John Kerry, Remarks at the 2016 Trafficking in Persons Report Ceremon

⁸ UNODC 2008, 4

⁹ Miller & Baumeister 2013, 28

¹⁰ Europol 2016

Migrant Smuggling in the World: A Global Story



Source: IOM, visualization by MINDS/ČTK, 2017.

11

- From Africa to Europe

At present, there are two focal routes of smuggling from Africa to Europe, crossing the Mediterranean between Libya and Italy (the central Mediterranean route) and between Morocco and Spain (the Western Mediterranean route). Recently, a growing number of Africans have been detected to be transiting via Turkey, although the figures remain moderately low so far.

A much greater route crosses the central Mediterranean from Libya (and in 2011, Tunisia) towards Italy. Smugglers have connived to hire boats and, if they pilot them, abandon them before the rescuers can reach the terminus. There has also been noticeable flow into Italy from Egypt and Turkey. Increased expected profits and the business for traffickers on the central Mediterranean route can be seen due to the influx of relatively affluent Syrian migrants, majorly transiting from Egypt to Libya along with the increased use of social media to reach out potential clients. This has also led to the creation of

¹¹ <https://migrationdataportal.org/themes/smuggling-migrants>

comparatively new and inexpensive opportunities for African migrants who are seldom middle-class and may face difficulties in paying the huge fee demanded by smugglers for a full package trip.

- To and across Europe

A large number of potential refugees make up the population being smuggled to Europe through the Eastern Mediterranean route between Turkey and Greece. For example, most people fleeing Syria use the pay-as-you-go system with smugglers to reach Greece and then either contact other brokers to further reach the western Balkans or choose to travel independently.

Other routes such as from Central and Eastern Europe to the EU for the purposes of human trafficking and smuggling, are older yet persist. They are less prominent and the composition of flows and their modus operandi have changed since the 2004 and 2008 EU enlargements and subsequent visa facilitation.¹²

- Smuggling routes in Asia

In Asia, the route between Indonesia and Malaysia has been used for a long period time by smugglers to bring in Indonesians who will work illegally. Another route into Malaysia serves the Rohingyas, a Burmese minority group who are fleeing from Myanmar. Despite eras of settlement, the Rohingyas, a Muslim Minority estimated to be at 1.3 million in Myanmar have been denied citizenship and endure various restrictions on their right to marriage, family size, access to public education and adequate medical services and freedom of movement. In 2015 in the months of January to March itself about 25,000 journeyed from Bangladesh via boats in the Bay of Bengal.

How is the ferry industry affected?

The most evident connection between the ferry business and human trafficking is that of transportation in the commission of the trafficking. As a result, the ferry business is by all accounts generally in a roundabout way affected; ships are utilized by people or different criminal organisation as a method for

¹² <https://www.reuters.com/article/us-europe-migrants-blacksea/people-smugglers-test-new-migrant-sea-route-through-romania-idUSKCN1BT21T>

transport in carrying out human trafficking or human smuggling. According to an assessment by Swedish authorities focusing on 350 vessels in the Baltic Sea region, passenger ferries especially on the Riga-Stockholm route are used by persons with the intention of committing crimes¹³. For example, on a single trip to Sweden or from Sweden, a vessel may carry 20-30 persons with links to criminality such as drug trafficking and firearm crime.

Likewise, ferries are utilized as a method for transport in the commission of the human smuggling. For example, in Finland, every fourth case of illegal immigration was on human smuggling¹⁴. Notwithstanding being utilized as a method for transport for human trafficking and human smuggling, passenger ships may also in a few occasions likewise be utilized for the misuse of unfortunate victims. There have been media reports of prostitution on board passenger ships.¹⁵ Even though such happenings are considered to be rare, the fact that this might a resultant of human trafficking cannot be ignored. In such situations, the ferry companies are more or less ignorant of the fact that the ferries are being used as sites where prostitution is offered to potential clients. Research covering the global cruise industry indicate widespread exploitation of workers' rights especially on vessels flagged under flags of convenience.¹⁶ These include insecure contracts, low wages, debt and high living costs, extremely long working hours and high intensity, racial and gender discrimination, fatigue and inadequate training, and resistance to trade union organization by ferry companies.

Identifying Smuggling and Trafficking in Ferries

Even though victim identification can be challenging, ferry staff are apt at recognising any unusual conditions on board. These skills should be honed so that the staff can learn to identify possible situations of trafficking. However, it is important to understand that law enforcement officers themselves find it challenging to identify victims on board because when travelling by ferry, the victims more or less exude personas that are

¹³ SvD 2015a

¹⁴ Harju 2013

¹⁵ Expressen 2011

¹⁶ Mather 2002

travelling for legitimate purposes, such as work. Out of fear they often try to not create any sort of scene that requires attention. Nevertheless, there are certain instances where the person might be travelling against their will and are uncomfortable due their situation, which makes it easier for staff to notice such happenings. Potential instances of trafficking and, specifically, smuggling or undocumented entry, can be distinguished if and when passenger archives are checked. Random checks might be conveyed in the waiting region in the port, at the registration area in the harbour, upon embarkation and control of tickets, or in checks by security guards when entering the ship and the voyage itself. The booking office is the main spot where identity records are deliberately checked, yet just a few travellers are checked. Tickets are likewise purchased on the web and a portion of the booking office in the port have been supplanted with electronic registration booths. While it makes the journey faster for passengers and reduces personnel costs for the ferry companies, it increases the risks of undocumented entry. However, staff at the booking office may not possess sufficient experience and knowledge to recognise suspicious documents or potential situations of trafficking or smuggling.

Conclusion and Suggestions

It is evident that human trafficking and human smuggling contrast in several ways even though they can overlap at times. Understanding the dissimilarities between the two criminal actions is vital if law enforcement agents are to be effective in identifying traffickers and smugglers. This is the only way to guarantee that the right treatment is given to all individuals involved in both activities.

The law enforcement experts recognize that the spotting of victims of trafficking and exploitation going on board ferries is tough, both for the experts themselves and for ferry delegates. Law enforcement and the ferry business are two altogether different entities with isolated objectives, obligations and orders, and this ought to be acknowledged when developing further methods for collaboration. There has to be sharing of information and combined response between the ferry staff and the law enforcement authorities. To strengthen this collaborative effort there have to be more systematic regular meetings between both of them, then only will there be an enhanced exchange of information. Ferry staff at the operational level would appreciate and benefit from concrete feedback by the law enforcement authorities regarding cases reported

by them or where ferry staff have provided information at the request by authorities. Law enforcement representatives should thus provide ferry companies with more substantial information such as operational data and data on specific trends. Keeping in mind the increase in migration, any responsibilities imposed on the ferry companies should be done through consensus. The representatives of law enforcement agencies should also share tools and guidelines as to victim identification, with ferry companies and its staff. It should be confirmed by law enforcement agencies that the ferry staff have correct contact details for the authorities so that they be contacted as and when needed. The representatives should effectively train ferry staff on identification and intervention. This would ensure that their expertise on concrete cases is transmitted to ferry staff, avoid duplication of training efforts, and strengthen the existing communication between operational ferry staff and law enforcement representatives.



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Abandoned Seafarer , MT Dharma (Report Feb 2019)

Dated: 23 Feb 2019 (Statement by Abandoned Seafarer , Off Sharjah UAE, Mr Ashwini Kumar Kataria)

My name is Ashwini Kumar Kataria and I am a resident of Rajasthan, District Zhunzhunu, Village of Kankaria in Khaddi sub-division. I had joined Alco Shipping Services LLC, based in Dubai (UAE) on 03 August 2015 on a 12- month contract. Upon completion of my contract, I requested the company for a 'sign-off letter', but my request was ignored.

I then contacted the company owner Mr. Ajiz Hassan for the sign-off letter via phone-call, and was assured by him that the letter would be issued within the week. However that did not happen. After repeated call, Mr. Hassan complimented me for being a valued member of his crew and praised me as an efficient Captain, and stated his wish that I continue as his ship's captain. He also assured me that he would be applying for me to obtain a residency permit for UAE.

However, when I called him after a few days, he disconnected my calls. My repeated calls to him were ignored by him. I then had my father call him from India. After receiving the first call, in which he assured my father that all pending issues would be resolved, he stopped taking my father's calls. During this time, my engagement was also called off since I was not able to return home. Mr. Hassan blocked my father's number and refused to answer my calls.

This entire episode happened over a period of 28 months. The ship was in a bad shape. The ballast tanks were corroding and there was water leakage in the engine compartment. I sent pictures of the damage to the ship and its deteriorating condition to the owners via WhatsApp and was ignored. The weather at this time was rough and the ship was dragging. I had to anchor the ship only about 2 Cable length from the rocky coast-line. My attempts to contact the company owners were futile and they did not respond. I had the responsibility of 13 crew member on my shoulders, and the damage to the ship had created fear among them, including the Chief Engineer. Given the safety issues of ship and crew at that time, I took the decision to enter the harbor without permission from the authorities.

The ship was soon surrounded by the UAE Coast Guard, Port Authority and Police persons. I was threatened at the point if an AK47 to remove the ship from the dock and return to the original anchor position. I refused. Their threats of having me shot to death or put into prison did not deter me and I kept refusing to remove the ship from the dock. Finally, the officials relented and I was able to station the ship at that dock for the next 16 months.

While at the port, I contacted the Indian Embassy in Abu Dhabi and the Consulate in Dubai; but they couldn't guarantee me settlement of wages with Ship Owner. My resolve was breaking every day. I contacted many agencies and other organizations for help and assistance, but there was no real help coming. Over a period of time my crew members left the ship, taking whatever little money that was offered to them by the

company. The Embassy officials visited me twice in these 16 months but they couldn't arrange a Lawyer to fight the case. My Marriage was fixed but was broken 4 times.

I rec'd a phone call from Capt Sanjay Prashar who explained me that about risks which were as below:

- Ship didn't had Insurance, I was not covered by any Insurance. I was alone onboard.
- My License had expired and all me STCW 2010 documents needed revalidation.
- Ship was unsafe and not sea-worthy.
- Limitations of FTA Dubai and Indian Embassy to enforce sale of Ship for recovery of my wages.
- No response form Flag state and PNI club who had already cancelled the Certificates many months back.
- If all my documents are valid and I clear Interview, I was told by Capt Sanjay Prashar that Sea-Going job / employment can be considered.

I realised that I am on DEAD SHIP. After struggling and fighting for my rights for 32 months, I returned to India on 05 Feb 2019 after accepting USD 700 from company against my salary dues of USD 59,400.

I learnt that I should join only from Indian DG Shipping approved Recruitment and Placement Licensed agencies. I had joined from Non RPS Agency.



Capt. Ashwani Kumar Kataria

Ph No +91-8905354629, email : katariaa976@gmail.com

MV Seaman Guard Ohio

Case Study on Criminalization of Seafarers – Mr Manoj Joy , 25 Feb 2019, manojjoy@gmail.com , +91-7200029025

Background

On 12 October 2013, the Indian Coast Guard intercepted the Sierra-Leone registered MV Seaman Guard Ohio, an anti-piracy vessel in Tuticorin for entering the Indian waters without permission with arms and ammunitions. The ship belongs to maritime security firm Adventfort, a US based company.

The investigation team found 35 firearms, 5682 ammunition and 102 magazines on the ship. The prosecution said the 35-strong crew owned up that they had no documents to show for the arms and ammunition. Besides, 2,000 liters of diesel was found on the ship. The investigation officials are understood to be concerned the ship's captain could not produce certain documentation.

The vessel was escorted to the Tuticorin Port with 10 crew and 25 guards. They were interrogated by a multi-agency joint investigation team comprising members of the Indian Coast Guard, Indian Navy, Customs, Research, and Analysis Wing and the Q Branch of India's Intelligence Bureau.

Legal Proceedings

The crew and the Guards were charged with offences under the Arms Act, 1959, the Essential Commodities Act, 1955, and the Motor Spirit and High Speed Diesel (Regulation of Supply, Distribution, and Prevention of Malpractices) Order 1990.

The shipowner approached the Madras High Court against the detention. On 10 July 2014, the Madras High Court dismissed the charges against the crew and armed guards, while reaffirming that the captain and the fuel vendor were liable to punishment for the ship's being refueled with subsidized diesel fuel.

The High Court quashed charges under the Arms Act, saying there was nothing wrong in the ship possessing arms and ammunition as it was involved in “anti-piracy business.”

Justice PN Prakash of the High Court did not find any evidence to point even a “needle of suspicion about the involvement of the crew members and others in the ship in any crime that is prejudicial to the interest of this country.”

His order further states that “I hold that the anchoring of MV Seaman Guard Ohio within our territorial sea was out of necessity and their action is saved by the principle of 'innocent passage' contemplated by Section 4(1) of the Territorial Waters, Continental Shelf, Exclusive Economic Zone, and Other Maritime Zone Act, 1976 and Article 18 and 19 of UNCLOS. Therefore, the crew and the security guards cannot be prosecuted for an offence under the Arms Act.”

Quashing the charges he stated that, “The ship had made a distress entry into our waters in search of food and fuel. It anchored at the outer port limit of Tuticorin port and was waiting for supplies. When the Coast Guard questioned them, they admitted straight away that there were arms and ammunition on board the

ship. The ship was brought into the Tuticorin port for further investigation by the Indian Coast Guard. After having brought them to our port for investigation, they cannot be prosecuted for violation of the notification.”

Prosecution appeals in the Supreme Court

The prosecution filed an appeal in the Supreme Court against the Madras High Court order. On 1 July 2015, the Supreme Court heard an appeal filed by the CID ‘Q’ Branch police against the 2014 judgement by the Madras High Court. Supreme Court Bench of Justices Vikramjit Sen and Abhay Manohar Sapre set aside the High Court's decision as “illegal and erroneous.” explaining that “The very fact that huge quantity of arms and ammunition were recovered from the possession of the crew members from the vessel and they were unable to satisfy their legal possession over such arms/ammunition is sufficient to attract the provisions of Arms Act, The Supreme Court ordered the Tuticorin District Principal Sessions Court to complete the trial of the case and give its judgment within six months.

Before parting with the case, the Judges said, “we consider it appropriate to make it clear that we have not decided any issue arising in these appeals on its merits and nor has made any observation on merits of controversy except to interpret Section 45 (a) of the Arms Act to enable the concerned competent Trial Court to decide the rights of the parties accordingly in accordance with law while deciding the case”.

The Trial Court (competent Court) would, therefore, decide the case strictly in accordance with law uninfluenced by any of our observations and of the High Court.

The trial in the Sessions Court, Tuticorin

Based on the directions of the Supreme Court, the trial was held at the Principal Sessions court in Tuticorin. On 11 January 2016, judge of Tuticorin District Principal Sessions Court N. Rajasekar sentenced all the 10 crew and 25 guards to undergo 5 years of rigorous imprisonment and a fine of Rs. 3000 each under the stringent provisions of the Arms Act, 1959.

The charges against eight persons from Tuticorin accused of smuggling diesel and transporting it to the vessel were not proved and they were acquitted for charges under the Essential Commodities Act.

The ship crew and Guards went on appeal against the conviction order of the Tuticorin Sessions court. The Indian crew members and Indian armed Guards were represented by Madras High Court lawyers T. Mohan and P. Muthusamy, legal coordinator of Sailors Helpline in the Madurai Bench of the Madras High Court. V. Manoj Joy of Sailors Society assisted the lawyers in the case.

Appeal in the High Court: No evidence that the ship was within territorial waters.

Leading the argument in the High Court Advocate Mohan, argued that in order to hold the officers and crew of the ship guilty under Indian Law, the primary fact to be established was that the ship was within the territorial waters of India.

He said that the Single Judge of the High Court, who heard the matter, held that the prosecution had failed to establish this fact. According to the prosecution, the ship was found at a distance of 10.8 Nautical Miles

from Vilangusuzhi Island and 3.8 Nautical Miles away from the baseline promulgated by the Ministry of External Affairs Government of India Notification. The baseline drawn in the Map relied on by the prosecution was found to have been not proved by the competent person and not drawn in terms of UNCLOS and Maritime Zones Act, 1976. The entries found in the Log Book seized from the vessel and produced by the prosecution also proved the fact that the vessel anchored on 12.10.2013 at 3.30 Hrs till 7.25 Hrs was not in the territorial water limits of India. The Judge also found fault with the prosecution for not having produced the Navigating Chart of the vessel.

Right of Innocent Passage

Advocate Mohan argued that even if the ship was found to be in the territorial waters of India, there was nothing unlawful in it as the ship was exercising the right of innocent passage. Articles 17 & 18 of the UN Convention on the Law of Sea(UNCLOS) and Section 4 of the Maritime Zones Act 1976 recognize the right of innocent passage. As per this right, every ship is entitled to the Right of Innocent Passage through the territorial waters so long as the passage is not prejudicial to the peace, good order or security of the coastal state. Under Article 18(2) of UNCLOS, the passage includes stopping and anchoring insofar as the same are incidental foreign navigation or render necessary by force majeure or distress.

High Court judge, Justice Basheer Ahmed in his judgment said, “The Court found that the ship was in distress as it had run out of fuel and provisions, and hence anchoring within the territorial waters for refilling fuel (‘ bunkering’ , as per maritime parlance) was within the right of innocent passage”).

Entitled to exemption under Section 45(a) of Arms Act

Advocate Mohan argued that Section 45(a) of the Arms Act exempts arms or ammunition on board any sea-going vessel or any aircraft and forming part of the ordinary armament or equipment of such vessel or aircraft, from the provisions of the Act.

The High Court found that the disputed vessel was a utility vessel engaged in the supply of arms guard to merchant vessel in antipiracy operation and for which business, the arms carried by it form part of it ordinary arms of the vessel. Therefore, the Court held that the exemption under Section 45(a) of the Act was applicable to the arms and ammunition found in the ship.

No prohibited arms found in ship

Advancing his argument, Advocate Mohan said, “The case of the prosecution was that the arms found in the ship were prohibited arms as per the Arms Act. The expression, "prohibited arms" have been defined to means “firearms so designed or adopted that, if the pressure is applied to the trigger, the missiles continue to be discharged until the pressure is removed from the trigger or the magazine containing the missile is empty". In other words, the weapons should be such that if the pressure is applied once, missiles continue to be discharged until the pressure is removed. However, the Ballistic Expert examined by the prosecution stated that all weapons were semi-automatic. Therefore, the High Court held that the trial Court ought not to have classified it as prohibited weapons. Hence, the conviction under Section 7 of the Arms Act for possessing prohibited weapons was set aside”.

High Court acquits the crew members of criminal charges

After extensive hearing of the arguments, summing up the conclusion, High Court judge Justice A.M. Basheer Ahamed observed as follows :-

The prosecution has failed to prove that the disputed ship is engaged in any of the activities prejudicial to the peace, good order or security of the State and the burden of proving the fact is only on the prosecution. It is proved in this case that the ship was anchored at the given place on account of distress for want of provisions and fuel. In shipping parlance, the word, 'Bunker' means filling fuel for the ship. The ship never had an intention of visiting Indian ports, because the captain was waiting for further instructions and for getting provisions and fuel. It was also held that the Arms Act, 1959 cannot be invoked by the Indian Authorities on board Flagship viz., "M.V.Seaman Guard Ohio" and the provision of Section 45(a) of the Arms Act, 1959, will protect the crew and guards from being prosecuted.

Therefore, the appeals was allowed, by setting aside the order of conviction and sentence.

The plight of the ship crew- Support by Sailors Society and ITF

As the seafarers did not have the money to fight the legal battle the ITF inspector, Sreekumar persuaded the ITF London office to provide legal expenditures for the lawyers representing the seafarers. As the trial was held in Tuticorin and the appeal was held in the Madurai Bench of the Madras High Court in Madurai, it was essential to meet the expenses of the lawyers to travel from Chennai to Tuticorin / Madurai. The ITF met the entire cost of the legal expenditure.

The Indian crew members were kept in Palayamkottai Central Prison near Tirunelveli and the Ukrainian master and chief engineer were held in Puzhal prison in Chennai.

The Ukrainian captain's health condition deteriorated while in prison. The jail authorities took him to the hospital and the doctors found that he is suffering from cancer. The captain was shifted from prison to the Royapettah government hospital in Chennai.

The jails authorities informed Sailors Society and the ITF inspector about the worsening health condition of the captain. Manoj and Sreekumar were given permission to meet the captain in the hospital who was under the custody of the police.

Manoj and Sreekumar also held a meeting with the chief doctor, oncologist and the team of doctors attending to captain. The team of doctors advised that the captain is in the fourth stage of cancer and he is shifted to a private hospital which has advanced facilities for treating cancer.

The captain's health condition was brought to the notice of the High Court and he was shifted to the Apollo cancer specialty hospital in Chennai.

Sreekumar, took up the matter with the ITF London and urged the ITF to meet the medical expenses. The ITF paid USD 20,000/- towards the hospital bills.

Manoj and Sreekumar took special permission from the police authorities to meet the captain in the hospital.

The families of the crew members are residing in different parts of the country and they did not have money to travel all the way to Tirunelveli to meet their loved ones in the prison. The families were in deep trauma and some even contemplated committing suicide as they could not cope up with the unprecedented challenges.

In such an unprecedented situation the Sailors Societies priority was to support the family members and provide Pastoral care which was very essential. Care was provided by the Sailors Society to the family members of the crew members throughout the period the seafarers were in the prison. Sailors Society provided financial support to the crew member's families. Manoj was in constant touch with the families to ensure they are not alone during the hour of crisis.

Manoj and Sreekumar undertook regular visits to the prison in Palayamkottai to meet the jailed seafarers and kept their morale high.

What was particularly galling for one of the security guard on board Seaman Guard Ohio, were media reports that described the men as terrorists planning an attack on the Kudankulam nuclear plant. Speaking to the media he said "I have served for 16 years in the Indian Army, including in the NSG. How can my patriotism be questioned?" he wondered, whose father died soon after the trial court convicted him and others in January 2016. "I decided not to ask for permission to go to my father's funeral. I didn't want to see the humiliation my family suffered," he said.

Meanwhile one of the jailed seafarer's father died and he could not get parole in time to attend the funeral. The seafarer broke down in the prison and it was devastating for him. The Sailors Society provided support to the seafarer and his family. Manoj visited him in the prison and consoled him.

On the day of judgement in the High Court, Manoj and Sreekumar were present. The judge pronounced that the crew members are acquitted of all the charges and be released from the prison forthwith. Manoj and Sreekumar took the court's release order and travelled to Palayamkottai Central Prison to release the crew members.

When the crew members were released from prison they did not have money to return to their home. The Sailors Society provided them the financial support for their travel, for onward journey expenses and to buy a new pair of dresses.

The Sailors Society is still continuing and supporting the crew members and their families. The Sailors Society is working on rehabilitating the crew members.



Figure 21: . With the father of 2nd officer Radheshaym Divedi at the Madurai Bench of the Madras High Court, Madurai (waiting to collect the release order from the court)



Figure 22: Indian crew coming out from the prison soon after their release



Figure 23: One of the crew members reunites with his family.



Figure 24: The armed guards arrested by the Tamilnadu police.



Figure 25: The armed guards arrested by the Tamilnadu police.



Figure 26: Master of Seaman Guard Ohio



Figure 27: Ship Seaman Guard Ohio

Seafarers' and Applicable Laws

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Introduction

It is important for seafarers to do all they can to avoid causing pollution of the marine environment. Sometimes commercial pressures put seafarers in difficult situations and although the company may not instruct the crew to take shortcuts, this may be the only way to keep to deadlines. In the current climate, any action that could cause damage to the environment, whether intentional or by accident, can lead to seafarers taking the blame and being treated as criminals.



How do legal systems vary?

Each country has its own judicial system, and not all apply procedures with which seafarers may be familiar or expect in their home country. For example, the right to remain silent, confidentiality of information, safeguards covering arrest and detention, access to legal advice and representation, a fair trial, and processes for extradition will vary between countries. If in doubt, seafarers should get advice from their union and from their company.

What should seafarers do if there is an accident?

If the seafarers' vessel is involved in a maritime accident, there are international guidelines to ensure that they are treated fairly if there is an investigation or if they are detained following the accident.

Seafarers should be aware that information given in the investigation of a maritime accident could be used against them and possibly their colleagues in a criminal prosecution. So, if seafarers are questioned about an accident involving their vessel, they should ask for a lawyer if necessary, and contact their union and company for advice and assistance.

The State under which the seafarers' ship is flagged has the right under international law to institute legal proceedings requesting the immediate release of any seafarers detained following an accident or pollution incident at sea. Unfortunately, Flags of Convenience (FOC) states are notorious in failing to pursue this right on behalf of crews of ships under their flags.

The ship-owner and the ship's insurers should provide seafarers' with legal support and advice if they are arrested or detained, and support any welfare needs that arise. International Maritime Organisation (IMO)

/ International Labor Organisation (ILO) guidelines on the fair treatment of seafarers in the event of a maritime accident are available online on various websites.

Advice to Seafarers' regarding legality of their Contracts

The best guarantee of proper conditions of employment at sea is only to sign a contract drawn up in accordance with a Ministry of Shipping or approved Collective Bargaining Agreement.

1. Don't start work on a ship without having a written contract.
2. Never sign a blank contract, or a contract that binds seafarer to any terms and conditions that are not specified or that they are not familiar with.
3. Check if the contract being signed refers to a Collective Bargaining Agreement (CBA). If so, seafarers must ensure that they are fully aware of the terms of that CBA, and keep a copy of it along with their contract.
4. Make sure that the duration of the contract is clearly stated.
5. Don't sign a contract that allows for alterations to be made to the contractual period at the sole discretion of the ship-owner. Any change to the agreed duration of the contract should be by mutual consent.
6. Always ensure that the contract clearly states the basic wages payable and make sure that the basic working hours are clearly defined (for example 40, 44 or 48 hours per week). The International Labor Organization states that basic working hours should be a maximum of 48 per week (208 per month).
7. Seafarers should make sure that the contract clearly stipulates how overtime will be paid and at what rate. There could be a flat hourly rate payable for all hours worked in excess of the basic. Or there may be a monthly fixed amount for a guaranteed number of overtime hours, in which case the rate for any hours worked beyond the guaranteed overtime should be clearly stated. The ILO states that all overtime hours should be paid at a minimum of 1.25 x the normal hourly rate.
8. Seafarers must make sure that the contract clearly states how many days paid leave per month they are eligible to get. The ILO states that paid leave should not be less than 30 days per year (2.5 days per calendar month).
9. Seafarers must ensure that payments for basic wages, overtime and leave are clearly and separately itemized in the contract.
10. Seafarers should never sign a contract that contains any clause stating that they are responsible for paying any portion of their joining or repatriation expenses.

11. Seafarers should never sign a contract that allows the ship-owner to withhold or retain any portion of their wages during the period of the contract. They should be entitled to full payment of wages earned at the end of each calendar month.
12. Seafarers should be aware that an individual employment contract will not always include details of additional benefits. Therefore, they have to try and obtain confirmation (preferably in the form of a written agreement or contractual entitlement) of what compensation will be payable in the event of:
 - Sickness or injury during the contractual period
 - Death (amount payable to the next of kin)
 - Loss of the vessel
 - Loss of personal effects resulting from the loss of the vessel
 - Premature termination of the contract

Seafarers shouldn't sign a contract that contains any clause that restricts their right to join, contact, consult with or be represented by a trade union of their choice.

Ensure that they are given and they retain a copy of the contract they have signed.

Check that their contract states that they are entitled to the costs of their repatriation.

Check the conditions for termination of their contract, including how much notice the ship-owner must give to terminate the contract.

Important: Whatever the terms and conditions, any contract/agreement that seafarers enter into voluntarily would, in most jurisdictions will be considered legally binding.

Basic Rights under ILO

Over the years the ILO has maintained and developed a system of international labor standards aimed at promoting opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security and dignity.

KEY INTERNATIONAL LABOUR STANDARDS

The ILO sets international labor standards through key international agreements. The eight 'core' ILO Conventions cover the fundamental rights expressed also in the Declaration. These Conventions cover:

- Forced labor

- Freedom of association and protection of the right to organize
- Right to organize and collective bargaining
- Equal remuneration
- Abolition of forced labor
- Discrimination (employment and occupation)
- Minimum age
- Elimination of the worst forms of child labor

DECLARATION ON FUNDAMENTAL PRINCIPLES AND RIGHTS AT WORK

Declaration of Fundamental Rights at Work (1998) enshrines the right of workers to organize and bargain effectively, as well as freedom from discrimination and other basic employment rights.

In addition to the fundamental labor conventions the ILO Declaration on Fundamental Principles and Rights at Work adopted in 1998 is an commitment by governments, employers' and workers' organizations to uphold basic human values - values that are vital to our social and economic lives; to respect and promote principles and rights in four categories, whether or not they have ratified the relevant Conventions.

These categories are: freedom of association and the effective recognition of the right to collective bargaining, the elimination of forced or compulsory labor, the abolition of child labor and the elimination of discrimination in respect of employment and occupation.

The Declaration makes it clear that these rights are universal, and that they apply to all people in all States – regardless of the level of economic development. It particularly mentions groups with special needs, including the unemployed and migrant workers. It recognizes that economic growth alone is not enough to ensure equity, social progress and to eradicate poverty.

THE MARITIME LABOUR CONVENTION

The Maritime Labor Convention, 2006 requires all governments which have ratified the convention to have laws and regulations that safeguard the following fundamental rights:

- The right to freedom of association (the right of seafarers' to join a trade union of their choice)
- Effective recognition of the right to collective bargaining (the right of a union to negotiate a CBA on seafarers' behalf)
- The elimination of all forms of forced or compulsory labor (seafarers' right to work of their own free will and to be paid for that work)
- The effective abolition of child labor
- Elimination of discrimination in respect of employment and occupation (seafarers' right to be treated in the same way as fellow seafarers doing the same work regardless of race, religion, nationality, gender, sexual orientation or political views).

In brief, the seafarers have a right to a safe and secure workplace, where safety standards are complied with, where you have fair terms of employment, decent living and working conditions and social protection such as access to medical care, health protection and welfare.

Rights of Women Seafarer

Owing to the lesser representation of women seafarers in the maritime industry, many a times their rights are overlooked. In any kind of male dominated industry, prejudice against women professionals is obvious. This often runs a risk of their rights being denied to them. Keeping this in mind, International Labor Organization (IMO) came up with a list of rights for women seafarers.

Here is a list of rights of women seafarers that cannot be denied to them:

- The first and most basic right according to International Labor Organization (IMO) states that all women seafarers hold right to equality in job and education
- All female seafarers, like their male counterparts, are entitled to minimum wages and working conditions which has been set at \$465.
- Women seafarers shall be allowed same working hours as their male counterparts, with maximum limit being 14 hours in a 24 hour period.
- Women seafarers will be entitled to be paid for overtime above the stipulated hours of work as set by the International Marine Organization (IMO) for all seafarers.
- IMO states that no lady mariner can be denied any maritime post on a vessel in lieu of her gender.
- Women have right to be guaranteed against any form of discrimination between men and women for any maritime job, in terms of equipment, working conditions or facilities.
- In case of maternity, women seafarers are entitled to same rights as in any other profession.

- For Flag of convenience vessels, the rights for maternity leaves for a lady mariner are as mentioned by the flag state. In certain cases, there may be no specified rights for such a situation at all. However, IMO secures their position with minimum rights that those women would still be entitled to.
- Women seafarers have the right to form or join any trade unions to represent themselves.
- IMO recommendations ensure that in case of pregnancy, women seafarers will be allowed to repatriate with no deductions in salary.
- The time for repatriation is influenced by the state of legislation and the conditions on board. Depending on the country under whose legislation the vessel is sailing or the availability of a medical practitioner on the vessel, the time of repatriation can vary.
- IMO recommends that a pregnant lady mariner cannot be exposed to hazardous conditions while aboard.
- Under rights of women seafarers, IMO recommends guaranteed re-employment of the seafarer after the maternity leave.
- A lady mariner shall be given two months of salary as part of the maternity payment.
- IMO has recommended a policy for women seafarers against bullying and harassment aboard. This policy applies to both men and women and indicates that no form of bullying or harassment would be tolerated against seafarers.

Under a policy to improve the current rights for women seafarers', the following is under consideration:

1. Reducing the percentage gap between women and men holding important maritime jobs in officers' ranks should be bridged. Presently only 7% women are appointed officers.
2. Better representation for women through trade unions
3. Access to better facilities which include sanitary facilities, contraception, access to medical assistance onboard and onshore
4. Seek combined assistance of international organizations and ship owners' organization to lower the extent of discrimination between men and women for important seafaring positions
5. Dealing with cases of sexual harassment, along with strengthening their safety aboard
6. Issues that jeopardize women's safety and rights aboard vessels are constantly raised so that improvements can be made. Labor organizations have to constantly work towards making the marine industry fairer in offering opportunities to both genders of the society.

Riding Squads

Introduction

The work of seafarers has been diluted through the increasing employment of 'riding squads': gangs of workers – not seafarers – brought on board as additional labor.

Although originally specialist workers brought in as and when the need arose, riding gangs are increasingly used to do a wide range of work: repair and maintenance of electrical, mechanical, radio and navigational equipment; cleaning and painting; cargo handling; security; and mooring.

The casual workers employed in riding squads are not covered by collective agreements on pay rates or conditions of work. They do not need to be declared medically fit to work on board, and they do not need to be trained in emergency procedures.

Now there is growing evidence that riding gangs are becoming attached to ships permanently, rather than short term, and are in fact carrying out seafarers' duties.

The employment of riding squad workers can undermine and undercut agreed pay rates and terms of work for seafarers. And although they are casual laborers, some states now count riding gang workers as part of the ship's crew for minimum safe crewing levels. The employment of unchecked and unregistered workers can also undermine the ship's security under the International Ship and Port Facility Security (ISPS) code.

Do riding squad workers have rights?

Although riding gang workers are employed outside of collective agreements, most unions believe they need protection of their rights when they work on board.

Union guidelines on riding squads suggest that:

- All riding squads must be covered by agreements giving at least comparable rates of pay to the crew, and minimum conditions and protections within the appropriate International Labor Organisation (ILO) conventions and recommendations
- The introduction of riding squads should not be used to replace current crew or be used to permanently undermine union agreed labor agreements
- The maximum period a riding squad should operate on board a vessel is one month in any 12-month period

What should be the policy on riding squads?

The policy on riding squads should be to condemn the practice of reducing the permanent crew on vessels by the extensive use of riding squads, and calls for:

- All workers on board a vessel to have an agreement that complies with ILO minimum pay rates and do not undermine the agreement of the ship's crew.
- Conditions for riding squads to conform to the ILO policy on the need for an acceptable work environment and safe and decent working conditions.
- Sufficient crew permanently on board to ensure normal security requirements, as specified under the ISPS (International Ship and Port Facility Security) code.

Abandoned Seafarers

Why are seafarers abandoned?

Abandonment happens either because the ship-owners have financial difficulties or because they can make more money by not paying the wages and the bills they owe. This may be more frequent on older ships at the end of their sea life. In some cases the ship is worth less than the money owed to crew and other debtors.

What Seafarers should do if they are abandoned?

On 18 January 2017 important new rules came into force on abandonment. Under the Maritime Labor Convention 2006 (MLC) ship-owners must have insurance to assist the seafarers on board vessels if they are abandoned.

All ships, to which the convention applies, whose flag states have ratified the MLC must have the insurance certificate on board and displayed in English.

Abandonment occurs when the ship-owner:

- fails to cover the cost of the seafarer's repatriation; or
- has left the seafarer without the necessary maintenance and support; or
- has otherwise unilaterally severed their ties with the seafarer including failure to pay contractual wages for a period of at least two months'

The insurance will cover seafarers for up to four months outstanding wages and entitlements in line with their employment agreement or CBA.

The insurance must also cover reasonable expenses such as repatriation, food, clothing where necessary, accommodation, drinking water, essential fuel for survival on board and any necessary medical care. It will apply from the moment of abandonment to the time of arrival back home.

International Group of P&I clubs (Insurance group) have set up 24 hour emergency help-lines.

P&I (IG) Clubs:

- The Swedish Club - Swedish.club@swedishclub.com Tel + 46 31 151 328
- UK P&I Club- mlc@ukpandi.com Tel +44 (0) 20 7283 4646 *
- Skuld - MLC@skuld.com Tel +47 22 00 22 00 / +47 952 92 200
- Britannia - MLC@triley.co.uk Tel + 44 (0)207 407 3588
- Steamship Mutual - duty.team@simsl.com Tel + 44 (0) 247 9490
- Gard – mlc&gard.no Tel +47 90524100
- The London P&I Club – MLC@londonpandi.com Tel + 44 (0) 20 7772 8000
- West of England - MLC@westpandi.com +44 7795 116602
- North – MLCEnquiryTeam@nepia.com Tel +44 (0) 1912325221
- Shipowners – claims@shipownersclub.com
- The Standard – pandi.london@ctplc.com Tel +44 79 3211 3573
- The American Club – mlc@american-club.com Tel +1 212 847 4500
- The Japan Ship Owners’ Mutual Protection & Indemnity Association – claims-dpt@piclub.or.jp Tel +81 3 3662 7221

Legal Rights of Seafarers

Seafarers’ rights is a complex area since their rights can exist at different levels and they can be overlapping and sometimes conflicting. Therefore when seafarers face a legal problem it’s necessary that they seek advice from their union and a lawyer who has knowledge of specific situations that face seafarers.

- **Flag State law**

A vessel has the nationality of the flag that it flies. Also, under international law, the laws of a flag State apply to a ship regardless of the location of the ship. Therefore seafarers are entitled to the protection of, and are governed by, the laws of the flag State wherever the ship is and regardless of

their nationality. For example, if the seafarer is an Indian national on-board a Panama flag ship, they have rights (and obligations) under the laws of Panama. So, seafarers should always be aware of the flag the ship is flying and where necessary, ask for assistance to find out what are the laws of that flag State.

- **Port State law**

When the ship enters a port, that port State can exercise certain powers over the ship while it is in port. Generally a port State does not intervene in the internal affairs of a ship unless there is a dispute which concerns the peace and good order of the port (for example: if a crime is committed on board a ship). However in many jurisdictions around the world, if seafarers have a legal claim, for example: for unpaid wages, they should be able to start legal action in the courts of the port State. Again where necessary, seafarers in distress should ask for assistance to find out about the laws of the port State.

- **Seafarers' home State**

Seafarers will be able to rely on rights contained in their home State law if that law governs their employment contract. Otherwise, if seafarers are in trouble when abroad, their home country should provide support and assistance through its consular offices. Therefore seafarers in distress should ask for assistance through their countries consular officers.

- **Seafarers' contract of employment**

Seafarers individual contract of employment will set out what their rights as between them and their employer. Seafarers contract may be (1) a private contract and/or (2) a collective bargaining agreement produced by a trade union or an employers' association and/or (3) a form of contract in which the government has taken an active role, such as a Contract that is approved by the Protector General of Emigrants in India. Seafarers contract may be directly with the ship-owner, or it may be with a labor supply agent, or it may be with some other agent for the ship-owner. All these different arrangements can affect seafarers' rights. However the most important aspect is that seafarers have

a copy of their contract of employment, that they have read it and that they understand the rights are contained in it.

- **International laws**

International laws are laws made at the highest level between States. Since it was founded in 1919, the International Labor Organisation (ILO) has set international labor standards for all workers, and specifically has set standards for seafarers in more than 65 Conventions and Recommendations. These instruments, taken together, constitute a comprehensive set of standards and concern practically all aspects of living and working conditions of seafarers. In February 2006, these existing conventions and recommendations were updated and consolidated in the Maritime Labor Convention, 2006, a single, coherent international maritime labor standard for seafarers that entered into force on 20 August 2013.

Human rights instruments also exist at international and regional level which may be relevant to the rights of seafarers. At the international level, Conventions of the International Maritime Organisation (IMO) impose obligations on States, a number of which have the effect of creating benefits for seafarers

Seafarers' Recruitment Scams

There are various types of seafarers' recruitment fraud, but they almost all depend on the offer of jobs that require no qualifications but which will pay high wages or attract large tips (the same thing applies to false job offers on oil rigs).

The main type involves a promise of work in return for a bribe or payment. This may be disguised as an 'agency' or 'registration' fee or increasingly, as payment for a medical examination, visa, passport processing or bank transfers that is only asked for when applicants think that they are on the point of getting the job. It may be made to look like something they have to pay a government department, clinic or bank, or they may be asked for money for airfares to join a ship and promised a refund when they reach. These are all indications of a scam.

Other frauds include:

- Payment of money direct to a local bank in order to join a cargo ship (often supposedly waiting in African ports).
- Payment to have the job application or CV circulated to prospective employers, often with a money-back guarantee in case a job is not secured.
- Social media, Facebook, LinkedIn , WhatsApp groups, Websites that invite candidates to post their CV for free. Seafarers personal details can be used for identity fraud, especially if they are then approached by an employer who asks them to send their passport and seafarers' certificate (this is also a common feature of most Nigerian scams whose perpetrators regularly use different company names, including ones supposedly based in the USA or Europe).
- Unsolicited job offers that arrive by e-mail.

How do scammers get away with their scams?

By using high quality websites, newspaper adverts and fictitious addresses in countries such as the UK in order to appear legitimate, or by laying a trail through several countries in order to confuse jurisdiction or hide their location in a country where the authorities either don't care or will turn a blind eye. *An example of this is Caledonian Offshore, which uses a post office box address in Canada when in reality it's based in Panama.* The biggest scam till date was the Al-Najat scheme, which was based in the UAE but which defrauded thousands and thousands of victims through levying a 'medical fee' while working with the governments of the many other countries affected.

The Al Najat Scam

This scam was organized by an international fraudster who has disappeared after conning millions of dollars from poor people who thought they were getting cruise ship jobs. Meanwhile seafarers' unions are on the look-out for any signs that the conman may still be operating.

Despite constant warnings from the seafarers' unions, many nations harbored or co-operated with Pakistani citizen Muhammad Ali Pasha, whose United Arab Emirates-based company Al Najat Marine Shipping conned over 120,000 desperate job seekers into paying for non-existent work. Muhammad Ali Pasha, who claimed to have dual British/Pakistani nationality, has now disappeared with the money.

Al Najat extracted fees of US\$58 upwards on the promise of well paid, no experience necessary jobs on western cruise ships, targeting applicants in India, Indonesia, Kenya, Morocco, Pakistan, Syria, Tanzania, Vietnam and almost certainly other countries. ***Seafarers' Unions can confirm that at least in the cases of Kenya and Morocco, the key to the success of the fraud was the active participation of those countries' employment ministries in promoting the scheme.*** Only Vietnam responded to urgent warnings from seafarers' unions and pulled the plug on Al Najat at a relatively early stage.

The victims parted with up to US\$1600 in "medical examination fees", illegal charges made by Al Najat's local agents, and passport charges levied by their governments. Many people lost everything in the scam, including their houses. In some cases, entire families sank all their money into sponsoring one person to work in jobs that promised to pay each month what in Kenya, for example, was double the average annual national wage. These were jobs offered by a company whose bona fides were apparently guaranteed by the government.

Morocco has set up a commission to look at ways of compensating its victims of the scam, while Jordan has said it will recompense the 700 applicants there who paid Al Najat for non-existent jobs.

ITF General Secretary David Cockroft, who was the first person publicly to label the Al Najat scheme an illegal scam, stated: *"We always suspected that if the UAE wouldn't act and the affected countries refused to bring in Interpol and risk having their involvement tested, then Ali Pasha would one day take the money and run. Despite the constant threat of legal action against us, we have had no choice but to step in when governments and their police forces failed to act to protect thousands of the world's poorest people."*



Five Indian Seafarers in Greece Jail since 06 Jan 2018, Tanzania-flagged MV Andromeda, seized, Released after 14 Months (Declared Innocent)

28 Feb 2019: Report by Capt Sanjay Prashar, +91-9930467030

Declared innocent on 07 March 2019 by Courts in Greece, we are expecting Seafarers to reach India soon.

06 Jan 2018: MV Andromeda , Tanzania flag impounded and all 9 Crew detained. Includes 5 Indian Nationals. Please note that we had a similar case in Italy 2016. Link attached. http://www.indianembassyrome.in/event_detail.php?id=100&tp=1

Indian agent who sent the Seafarers on Ship as Per 1st Engineer Jaideep Thakur (CDC : MUM 209910 & INDOS 09ZL1534) is Mr Sunil Pathak , +91 99676 50367

OMEGA Ship Management Pvt Ltd , RPSL MUM 211

Plot No. 66, Hilton Center, 1st Floor, Office No. 110,
Sector-11, CBD Belapur, Navi Mumbai-400 614.

Phone: [+91 - 22 - 2756 02 22](tel:+91-22-27560222) /23 / [+91 - 22 - 4123 0430](tel:+91-22-41230430)

E-mail:- info@omegashipmanagement.com , crewing@omegashipmanagement.com ,
omegaship10@yahoo.com

Indian Embassy in Italy, Tanzanian Flag, PNI Club, ITF : No Help

Seafarers families hire a Lawyer and pay fee of EURO 12,500.

Ship Owner: He is fighting for himself and not paying Lawyer fee for Seafarers.

<http://www.euronews.com/2018/01/10/greek-coastguard-intercepts-ship-carrying-explosive-materials>

Below is recd from 1st Engineer Jaideep Thakur (whatsapp +30 694 822 5923) on 16 April 2018

Respected SIR AND MAM

I REQUEST TO YOU PLZ HELP US . WE ARE 5 INDIAN IN GREECE PRISON WITHOUT ANY Mistake . we all off are seafarers . Sir we need help for Indian embassy sir our ship cargo and all documents is legal but the Greece police put us in prison . sir now almost 3 month we are here but nobody help us we don't no about the Cyprus and Greece political matter but we are innocent sir Greece police nothing found anything illegal in cargo but we are still in prison sir we are worker we don't no about the cargo because all the container are sealed we send many tweets sushma mam but she didn't give any reply . India government no help us we all are request please help us and take us out from Greece prison here some

day we eat or some day we no eat because here he use more then cow meet and beef and that we no eat please help us

Regards JAIDEEP THAKUR.

It's been 3 months now and my questions are

1. We are just doing our job and cargo documents are not our responsibility. Then why we have been put behind bars? I joined after Cargo was loaded and we had Ship machinery problems that I was attending to.
2. Government Of India take this up at highest level to immediately get us out as we are totally innocent.
3. Is Greece settling some political issue in our case ?

Seaman Detained are:

- a. Jaideep thakur s/o balwan singh v/p/o kahnuwan distt gurdaspur (punjab), India
+919872110675
- b. Rohtash kumar s/o pritam singh v/p/o hatana distt mathura (UP) ph +919837094577
- c. Satish patil s/o vishwanath sataba patil v/p/o budihal distt belgaum (Karnataka) ph
+917676528552
- d. AB Bhupinder Singh
- e. AB Gagandeep Kumar

Prison name: korydallos Athens Greece.

Previously also there were two cases which Indian Embassy in Athens know well.. One of them is Seaman Kalpesh who was later released from Jail after being declared innocent.

<https://www.dnaindia.com/india/report-look-where-my-son-s-dream-job-had-landed-him-2202890>

Stranded Seafarer Rohit Yadav returns from Istanbul on 20 Feb 2019 (Flaw in E-Migrate is used by agents to cheat), A Report

28 Feb 2019: Report by Capt Sanjay Prashar, +91-9930467030

32 Seafarers have been cheated in last one week as per attached report and 9 of them departed India , to be stranded at Istanbul & Malaysia.

We propose corrective measures to E-Migrate system for Seafarers at the earliest as there' serious need for training of BOI / FRRO staff at all Indian Airports as this is 2nd case reported on one week. Previously self had reported on 14 Feb 2019 a case where 8 Seafarers were stranded in Malaysia as they departed from Bhuvneshwar Airport where FRRO / BOI has been casual to allow them to depart without e-migrate. Recently the trend is that Seafarers are stranded when they depart India without e-migrate. **This is contravening DGS Circular 2 of 2018 where FRROs where clearly advised that Seafarers can transit Airports to join ships only after e-migrate. But this circular doesn't state the validity of e-migrate entry as made by RPS Agency in DGS System Form 1.**

It's poor implementation of e-migrate for Indian Seafarers which is resulting in seafarers getting stranded and checks at Indian Airports are failing.

a) Facts of the case:

Tr OS Rohit Yadav pays money to NON RPSL Agent Mr Bhagwant Singh (Agent had CDC MUM 270329 , INDOS 14HL6887) , departs Mumbai Airport on 18 Feb 2019. Immigration at Mumbai clears him basis e-migrate entry of 21 Feb 2018 of Pragati Marine Services Pvt Ltd (RPSL 173, Copy attached). Total of 24 Seafarers were cheated by same agent for a fraud amount of INR 20,39,500 (INR Twenty Nine Lakh, Thirty Nine Thousand and Five Hundred). Also agent has ran away with two Seafarers passports.

He reaches Istanbul on 18 Feb and unable to contact local agent at Airport for his clearance. Seeks help from Airport Police and Indian Consulate at Istanbul. He was deported by OMAN Air and reached Mumbai on 20 Feb 2019. His passport is now with Oman Air office and he needs to pay them INR 33,710 for the release of passport.

b) List of documents submitted to DG Shipping:

FIR copy dated 18 Feb 2019 , CDC copy of Cheater Bhagwant Singh (Ph No 7304352030) , MUM 270329 , Photos of 4 cheaters including Bhagwant and Pradeep , E-Migrate one year old copy of OS Rohit Yadav which was used by BOI at Mumbai Airport to clear him , Tweet snapshot where Seaman Rohit asked help , Istanbul agent fake letter , sys-egovernance.org : sample email which Tr OS Rohit never got on his email id as his Seafarers profile in DG Shipping is that of Institute (IMA Chennai)

c) Corrective action as suggested:

1. We request Time period validity for e-migrate entry. BOI at Airport / Seaports should not allow one entry for one year or 6 months. 7 Days time limit be considered.
2. CDC of Seaman Bhagwant Singh be permanently withdrawn as he has FIR against him.
3. Training Institutes should not be allowed to put their email ids for Seafarers. A notice be issued to all MTIs as well as Seafarers on this.
4. Industry at it's end shall conduct special sessions for Seafarers especially at MTIs about how to verify EC (Emigration Clearance) status on www.emigrate.gov.in
5. Master Checker: Seafarers be advised at all MTIs the value of correct data to avoid Fraud.
6. Punitive action be taken against those stranded seafarers who bypass e-migrate.

8 Indian Seafarers stranded in Sibü (Malaysia), 13 Feb 2019 Police compliant filed in Malaysia

28 Feb 2019: Report by Capt Sanjay Prashar, +91-9930467030

Self rec'd below email and call from Mr Abhishek & Rituraj from Malaysia ph no (+91-7717727069 & +601123275991).

Incident:

- Indian Seafarers reach Malaysia in Feb 2019 to join ship (without e-migrate) with the assistance of agent Abhishek Kumar Mishra. Agent abandons 8 Seafarers and tries to escape. Seafarers lodge police compliant and agent arrested. FIR copy attached.
- Seafarers paid money to secure job. After they reached Malaysia, they were stranded and realised that Agent has cheated them.
- Assistance by Local Malaysian Police at Sibü and Indian Embassy at Kuala Lumpur : Six Seafarers return on 28 Feb 2019. Other two Indian Seafarers AB Ramesh and Trainee Rating Diryang got placement on Ship in Malaysia itself.
- All Seafarers got their money back from the accused. The accused is still in Malaysian Jail.
- No E-Migrate done for Seafarers and they flew out of Bhuvneshwar Airport to Malaysia.
- Agent doesn't have License to Recruit Seafarers as per DG Shipping norms.

Stranded Seafarers Details with INDOS number:

1. 3rd Engineer Hrituraj Malhotra - 07EL0813
2. 4th Engineer Abhishek Singh Kaushik - 12EL 3168
3. 3rd Officer Srijesh - 10NL1253
4. Oiler Jatinder Kumar - 12HL6935
5. Oiler Surinder Kumar - 14ZL6996
6. Able Seaman , Ramesh Kakkala - 16HL9666
7. Able Seaman , Kushikan - 12SL3549
8. Trainee Rating Diryang Tandel - 14GL4307

Name of Agent who cheated the Seafarer: Mr Avishek Kumar Mishra , Passport No N8453554, Place of Birth is BATH (Bihar), DOB 05 April 1996.

Sonum Shipping Company (No address as it was obtained from Facebook), Ph no +60-197562106 / +60-192148652 / +91-9811468419.

Agent Mishra took money by way of online payment in his relatives' bank account in India. Bank account details , INR 1.10 Lakh deposited by Mr Abhishek Kaushik on account of Vinay Kumar Mishra, SBI Madhepur, 3156-1071461, IFSC SBIN 0012574. This was done on 04.02.2019.

Reverting with more details as Father, brother and other family members of agent Mishra are equally involved. Sonum Shipping company ([Facebook](#)) is from Madhubani.

24.01.2019: 3/E Hrituraj (Indian COC Class IV), Oiler Jitendra Kumar (Belize CDC), Oiler Surinder Kumar (Belize CDC), flew from Bhuvneshwar to Kaula-Lumpur. They departed basis Letter of Guarantee and OKTB. These Seafarers were promised Yard Delivery " MV Horrel Will".

AK 30 , Air Asia, Dep 2355 Hrs , **NO E-MIGRATE done.**

30.01.2019: 4th Engineer Abhishek Singh Kaushik (Indian COC IV), 3rd Officer Srijesh (Indian COC). These Seafarers were promised Yard Delivery " MV Horrel Will".

They departed basis Letter of Guarantee and OKTB.

AK 30 , Air Asia, Dep 2355 Hrs, **NO E-MIGRATE done.**

04 Oct 2018: Able Seaman, Kushikan - 12SL3549, departed from Chennai. He was working on Tug boat and he left Tug Boat on 21 Jan 2019 as Mr Mishra (Agent) promised him a job on Big Ship (Ro-Ro, Malaysia Star, IMO 9032331)

07.02.2019: Trainee Rating Diryang Tandel - 14GL4307 departed from Bhuvneshwar to Kaula Lumpur. He was promised to join Landing Craft.

AK 30 , Air Asia, Dep 2355 Hrs , **NO E-MIGRATE done.**

AB , Ramesh Kakkala - 16HL9666, is there in Malaysia SIBU for last one year. He was working on Tug in Sibu and paid Agent INR 1.5 Lakh.

Sh Amitabh Kumar , Director General of Shipping , India

Complete speech

President, Forum for Integrated National Security (FINS), Lt. Gen Dr. D.B. Shekatkar, Chief Guest for today's seminar Shri Pradeep Rawat ji, Chairman, National Shipping Board, Excellencies, distinguished guests, Delegates, Ladies & Gentlemen,

It is indeed an honor and privilege to stand here today in front of this distinguished audience to share my views on the growth of Indian shipping and the issues faced by India on today's subject, 'Human Rights at Sea'.

India is fortunate to have inherited a rich maritime culture. The evidences of our ancient trade links with the Greek Civilization, Mesopotamia, the Mediterranean rim countries and the middle east dating way back to 3500 BC are seen in the writings of Megasthenese and other Greek-Roman authors, in the discoveries of artifacts from Indus Valley Civilization in Egypt and Middle Eastern countries, in the discovery of a tidal dockyard at Lothal in Gujarat dating back to 2500 BC, and in our cultural and commercial ties with South East Asia and China. Our traditional expertise in building hand-made sailing boats which has survived till today is again a strong testimonial to our rich maritime heritage.

The modern India is also blessed with a large coast-line of more than 7500 km, inland waterways of nearly 20000 kms, more than 200 major and minor ports and an increasing ship building, ship repair and ship recycling industry. India has a large merchant marine fleet of more than 1400 vessels both on foreign going and coastal operations. In addition, it has a large fleet of vessels operating in the inland and near coastal waters. Nearly, 90% of India's overseas trade by volume is carried by maritime transport and nearly 92% of these goods are carried through foreign flag vessels. With the Indian economy poised to grow at a faster pace, there exists more opportunities for both, the Indian and foreign flag vessels to carry large volume of goods to and from the Indian coast.

The Govt. has been alive to the possibility of a substantial increase in the maritime activities around the Indian coast. A huge push has been given by the Govt. for upgrading our maritime infrastructure and for reforming the regulatory framework to provide ease of doing business. Sagar Mala, the flag ship program of this Govt., has been launched in 2015 for port led development. The program has 4 limbs viz. Port Modernization and new port development; Port connectivity; port led industrialization; and port community development. Under the first limb of this program, 6 new major ports are being developed and more than 150 projects have been identified for modernization of existing ports including construction of new berths and terminals. It is proposed to increase the port capacity to 3000 MMTPA by 2025. In order to provide the last mile connectivity from the ports, more than 130 projects in rail and road sectors are in the pipeline. Sagar Mala is estimated to attract an investment of over 100 billion dollars by 2025. In order to harness our 20000 kms of inland waterways, 111 waterways fit for river navigation have been identified, out of which 32 waterways will be developed in the first phase with an estimated investment of 800 million dollars. The

intermodal terminal, river information system and navigational aids are being established for developing inland water transportation. Since the Indian Govt. allows 100% FDI in the shipping sector, these flag ships programs have opened major investment opportunities for the international community.



India has been one of the founder members of IMO and has had the privilege of being elected to the IMO Council in Category B since then, except for the term of 1983-1984, representing nations with the largest

share in International sea-borne trade. Dr. C.P. Srivastava, an Indian has the distinction of being the longest serving Secretary General of IMO from 1974 to 1989 and has often been credited for the establishment of World Maritime University in Sweden, International Maritime Academy at Italy and the International Maritime Law Institute at Malta.

As we go for a major expansion in our maritime activities, our engagement with IMO will become even more important and its guidance even more valuable. The resolve of the International community to engage with India as a major maritime power was reflected in the last IMO Council election when India received the 2nd highest votes, just one short of Germany, for its bid for re-election in IMO Council for Category B. Since then India has also been nominated as a Co-Chairman of the Working Group on operations of the Contact Group on Piracy off the Coast of Somalia [CGPCS]. India is the largest contributor of the International Oil Pollution Compensation Fund [IOPC Fund] and has accepted the position of Vice Chair of the Executive Committee of the Funds and is in its Joint Audit Body.

While a strong thrust has been given by the Govt. on creating Maritime Infrastructure, the pride of Indian Maritime community remains its seafarers. You will be glad to know that the number of Indian seafarers actively employed on Indian or foreign flag vessels increased from 103835 in the year 2013 to 126945 in the year 2015, 154349 in the year 2017 and a whopping 2,08799 by the end of the year 2018 showing an unprecedented growth of more than 35%. The total number of seafarers employed on Indian flag vessels also increased from 22103 in 2017 to 27364 in 2018 while in the same period the employment in foreign flag vessels increased from 132246 to 181435. The number of officers employed have increased from 60194 in 2017 to 72327 in the year 2018 while ratings have increased from 72052 to 109108.

This phenomenal growth in the number of Indian seafarers, when the shipping industry itself is passing through a prolonged phase of recession, has been possible due to a series of measures taken by the Government in the last 3 to 4 years to improve the standards of maritime training, increase the on-board training opportunities, improve the examination and certification system and facilitate ease of doing business.

The training curriculum for the officers and the ratings were revised in 2016 not only to meet the global standards but also to meet the expectations of the foreign employers. In order to regulate the training institutes working in the private sector, a system of 'Comprehensive Inspection Program' (CIP) was designed to assess the quality of the institute on various parameters such as infrastructure, quality of student's intake, quality of faculty, pedagogy, performance in examination, on-board training and placement of students. To standardize the course material of these institutes, an e-learning module was prepared by the Directorate General of Shipping and provided free of cost to all Indian seafarers, to allow them to upgrade their knowledge and skills before appearing for the examination. To ensure increase in the supply side, a 15-year-old ban on setting up of new training institutes or increasing the capacity of the existing training institutes was lifted provided the Institutes also made arrangements for on-board training of their trainees. Maritime training requires compulsory training in the class room and on-board a ship without which a cadet (trainee) cannot be certified by the Maritime Administration for obtaining a job in merchant navy. While

India has created a large capacity in imparting class room training for Merchant Navy, there has been a major constraint in providing on-board ship training for the students enrolled for class room training. A policy shift was made by the regulator by holding the training institutes responsible for on-board ship training of the students also and not only for the class room training. Further, to release more on-board ship training slots, a decision was taken to allow on-board training of officers and ratings on tugs and offshore vessels also. These two initiatives have opened additional berth for nearly 4000 trainees.

The Govt. has also brought major regulatory relaxation for obtaining Indian Continuous Discharge Certificate (CDC) which is a pre-requisite for boarding a vessel for the purposes of employment. A new liberalized CDC regime was introduced in 2017 which allowed 10th pass Indian citizens who had completed a 14 day basic maritime course to obtain Indian CDC. Earlier, they were required to complete at least 6 months training for obtaining CDC. Many seafarers having past experience in sailing have managed to procure Indian CDC. The Directorate General of Shipping has so far issued nearly 70000 CDCs under new CDC Rules, in the year 2018-19, itself.

The Govt. has also given a lot of emphasis on introducing e-Governance initiatives in the field of Maritime Administration and today the entire process of obtaining CDC, training, issue of Certificate of Competency, application for examination and interviews, obtaining of medical certificates, Immigration for boarding a foreign flag vessel etc. have been made on-line.

It is in the context of the present focus of the Indian Maritime Administration on the human resources that this seminar on 'Human Rights at Sea' becomes most contextual and relevant for us as a maritime nation. As we continue to add the number of active Indian seafarers, the instances of the exploitation of their human rights also continue to add. The biggest and the most common violation of human rights now is non-payment of wages and abandonment of seafarers, and Indian seafarers have been the largest group to suffer on these counts. As the shipping industry is passing through a prolonged financial downturn, some unscrupulous shipowners have made with-holding of seafarers wages their business model to increase their own cash flow. The callous behavior of some Indian RPSL companies but mostly non-recognized recruitment agencies has also contributed to this human crisis. Nonpayment of wages completely destroys the morale of the seafarers and brings unnecessary financial and emotional burden on their families.

Indian maritime administration is completely alive to this challenge and has taken several effective steps to stop this menace. India became one of the first parties to ratify the Maritime Labor Convention which, amongst other things, provides for monthly disbursement of salary, deemed abandonment if salary is not paid for more than two months, responsibility of the P&I to disburse unpaid wages of up to four months, and repatriation of seafarers in case of abandonment. The new CDC Rules, which did away with the requirement of experience on board of ship for issue of CDC, finished the lure of gaining experience by hook or crook without bothering to look at the quality of the vessel or the working conditions. An e-migrant software has been developed and linked to the e-migrant portal of the Protectorate General of Emigrant and the Immigration authorities, which allows immigration of only those seafarers who have been sponsored by the registered RPSL. To make sure that the RPSL also do their due diligence, before sending any seafarer

on a ship, an e-governance solution for the RPSL companies has also been prepared which captures the details of the vessels under their contract, their history, their insurance status including MLC certificate etc., and the seafarers would be allowed to board only those vessels that are financially secured. DG shipping has also become the first Maritime administration to actually blacklist certain companies, shipowners or ships from employing Indian seafarers and the privileges of these entities are blocked from our e-governance system. In short, the emphasis is not only on job creation, but also on creation of quality jobs.

In our effort to secure the rights of abandoned seafarers, however, we have noticed two major lacunae in our regulatory regime. While DG Shipping has adequate powers to regulate the RPSL companies registered with it, there exists no provision in the Merchant Shipping Act to take action against the non-registered RPS. In many cases, we request the police to invoke the provisions of IPC and CrPC, but the action taken so far has not been satisfactory. The other loop-hole has emerged in the MLC regime itself, which provides for repatriation of abandoned seafarer, but does not cast any obligation on the insurance agency to provide a replacement seafarer. The ports around the world become constrained to allow repatriation of seafarers, till a replacement is provided. India has prepared a draft paper for the next tripartite meeting of ILO and has circulated the same to the ship-owners, trade unions and other countries to garner support for provision of replacement crew. I'll use this platform, to appeal to all countries present here to support this paper of India in the next tripartite committee meeting.

Indian seafarers have often been at the receiving end of the incidence of piracy and have been taken hostage for prolonged periods. To their utter dismay, they have also faced situations where their employers washed their hands off on the grounds that their contract came to an end during the period of their captivity. To ensure that the seafarers were not deprived of their due rights and medical facilities, India along with other organizations have been taking up the issue of deemed extension of seafarer's contract, if the same expired during their period of captivity. I am happy to inform that the ILO and IMO's Tripartite Committee decided to amend the Code of MLC 2006 to give effect to the continuation of seafarer's contract during the period of their captivity, made them entitled to wages and other emoluments during this period and put the responsibility of their repatriation on the employers. The International Community, therefore, joined hands with India to show their resolve to minimize the sufferings of the victims of piracy.

India has been actively participating in the security meetings of the IMO, CGPCS and other International bodies such as Share Awareness and De-conflicting (SHADE), and Maritime Information Exchange Vessel Operations Meeting (MIEVOM) to ensure cooperation amongst the International community to curb the menace of piracy. In addition, to deal with the potential maritime security situation arising out of any hijacking at sea of merchant vessels with Indian crew, an anti-piracy contingency plan has also been put in place for dealing with piracy and kidnapping of Indian crew on merchant ships and the same is activated at the time of such an incidence.

We feel that the CGPCS is a very successful mechanism formulated under the United Nations Security Council Resolution 1851 and has shown positive results in suppressing piracy off the Coast of Somalia. However, as per the United Nations Security Council Resolution, CGPCS has a mandate to only combat the Somalia based

piracy. Considering that there is an increased armed robbery activity in the Gulf of Guinea and especially considering that vessels with Indian seafarers were hijacked in this area, India is pushing towards the creation of a multilateral effort like CGPCS to combat piracy in other areas such as the Gulf of Guinea.

Piracy off the coast of Somalia had increased the risk for merchant vessels in the west Indian Ocean Region, which has now been suppressed due to the efforts of CGPCS. Since, substantial efforts have been made by the Navies of various countries, including India, to make areas such as Gulf of Aden and Oman safe and secure for merchant shipping, the other agencies such as insurance underwriters are being asked to consider these aspects in identifying listed areas so that the benefits of the efforts of CGPCS is passed on to the shipping industry and the end users. India has made interventions in this matter in forums such as CGPCS, SHADE and also with the Lloyd's Market Association [which enforces these listed areas]. I am given to understand that the demand to re-define HRA and 'listed area' has gained momentum mainly due to our efforts and we hope for a successful resolution in this matter soon.

The rise of piracy off the Coast of Somalia has resulted in a new phenomenon called Floating Armories. These ships, often unflagged keep weapons & untrained manpower to provide armed guards to the merchant vessels when they are transiting through Indian EEZ specially from Sri Lanka to the Gulf of Aden. The lack of international regulation for such floating armories has been a major cause of concern for Indian Maritime Administration. India has made several presentation in IMO and CGPCS for framing of regulations for such floating armories so that, these armories are registered with a responsible flag state, a method of reporting by floating armories to the nearest coastal state is developed, a protocol for compliance to directions of coastal states to the floating armories is established, information on entry of private security guards and foreign owned fire arms into the territorial waters or ports are provided in advance so that these fire arms are bonded and sealed before entering into coastal waters of a country; the information about the vessel used by floating armories like its IMO number and size etc is provided to the coastal states; and the documentations and certification requirement for floating armories are determined. Due to the unrelenting pressure of this country, the United Nations Office on Drugs and Crimes (UNODC) has now decided to examine the issue of floating armories and a draft summary of applicable law was discussed by UNODC Global Maritime Crime Programs Legal Conference in Colombo, Sri Lanka from 18th to 20th June 2018. India has requested the IMO Secretariat to continue consultations with UNODC and various stakeholders regarding establishment of a binding legal and regulatory regime around floating armories.

I'm extremely glad to note that the technical sessions will touch upon many more subjects on 'Human Rights at Sea' and India's engagement with IMO and other international bodies. I'm sure these deliberations will result in some concrete suggestions for strengthening of our engagement with these bodies. From our side, we assure you of proactive implementation of all implementable solutions. With these words I would like to conclude my speech here and wish the organizers and participants all the very best for a very fruitful and enlightening discussions ahead.

Thank you.

Jai hind

FORUM FOR INTEGRATED NATIONAL SECURITY SPEECH: SEAFARER CRIMINALISATION

28 February 2019

Mr. David Hammond

Barrister (Non-practicing)

Founder & Trustee, Human Rights at Sea

www.humanrightsatsea.org , david.hammond@humanrightsatsea.org

Introduction

First, I would like to express my sincere thanks to the Board of the Forum for Integrated National Security for the very kind invitation to attend this key seminar in Mumbai, and more importantly, for taking a bold leadership role in developing the 'Human Rights at Sea' narrative here in India.

Most importantly, I would like to warmly congratulate the Government of India for being the first State that I am aware of, to openly consider a detailed review and development of the specific concept of 'Human Rights at Sea' with the explicit use of those four key words.

If subsequently integrated into common language and policy throughout the Indian maritime sector, the supporting maritime supply chain, and Government-level commercial and political engagement; it would be a matter of clear global leadership in the emerging field of maritime human rights, particularly for Indian seafarers, fishermen, their families and the supply chain which supports them.

I would further counsel that this is an opportunity that should not be allowed to slip by, as we can assume that there are other States closely following the ongoing development of social justice in the maritime space and its ramifications for national policy, security and commercial interests.

To start with, I would like to share with you the origins of our concept for ‘human rights at sea’, the background to the current maritime human rights narrative and the Human Rights at Sea platform which started in early 2013.

Organisation & Platform

We are an *enabling organisation*, not an operational welfare one. We conduct our work through research, education and advocacy, and we are driving the narrative through evidence, case studies and publications to continually raise awareness of human rights abuses at sea.

In terms of our online platform, it may surprise you that it was conceived in 2013 during an evening shower, somewhere close to the historical port and naval base of Portsmouth, home of the first iron-clad ship HMS Warrior, and the final resting place of Horatio Nelson’s flagship, HMS Victory.

So, if anyone ever asks where the platform concept originated, that is the true story behind what is now a leading maritime human rights platform and which today, finds itself supporting the Indian State’s development of this key subject matter.

Context

In terms of context, I believe that we should first address some common myths.

Noting, among other important Conventions, the 2006 Maritime Labour Convention, the 1982 UN Convention on the Law of the Sea, and the leading influence of the ILO for over 100 years pursuing better working conditions for workers, driving social responsibility and social welfare standards, *we should be very careful* not to take for granted that human rights, (which includes core labour rights standards), are well-

known, understood, or yet fully accepted throughout the maritime sector. If they were, I would not be standing here today. The issue is one of a lack of awareness and education about human rights.

It is one thing to reference law. It is another to apply it, and most importantly achieve effective remedy when abuses occur. It is one thing to ratify a Convention. It is another to effectively educate all those to whom it applies in how to apply it, how to enforce it and how to integrate it into daily working practices.

Our organisation says that there is much more of the academic, educational and legal road to travel to *ensure* and *assure* that individual rights for those working, living, transiting and being rescued at sea are protected and robustly enforced in terms of the rights by the individual to seek that seemingly often illusive *effective remedy*.

We are further concerned that human rights abuses are being buried in legal and insurance casework, are subject to political interference or power-play as most recently exemplified by some EU Member States in the central Mediterranean Sea in terms of the so-called 'Mediterranean migration crisis'; and that an 'out of sight, out of mind' approach because of scale and challenges of the maritime environment provides the easy excuse and route not to address abuses at sea.

Additionally, getting the facts into the public arena is a continual challenge for us. A challenge that most ordinary seafarers, fishermen and their families can never hope to achieve.

Did you know that the words 'human rights', let alone 'human rights at sea' do not explicitly feature in UNCLOS, or the MLC?

This is because it is assumed that they are impliedly taken in to account as part of State responsibility. Of course, UNCLOS Art 311 '*Relation to other conventions and international agreements*' allows for the interpretation of implied engagement of human rights by stating that:

“2. This Convention shall not alter the rights and obligations of States Parties which arise from other agreements compatible with this Convention and which do not affect the enjoyment by other States Parties of their rights or the performance of their obligations under this Convention.”

I recently re-reviewed the 2014 IMO International Maritime Law Institute Manual on International Maritime Law, Volume I, Law of the Sea and specifically the section on human rights authored by Dr. Irini Papanicolopulu; a section of some 20 pages of 672, itself telling in the scope of its then coverage in 2014.

Notably, Irini made some inciteful points which set the stage of the subject matter. Some of her key points, which I would like to share today are:

1. “Traditionally, even when it has at heart human concerns, the law of the sea has spoken the language of State duties and not of individual rights.”
2. “Human rights need protection at sea, as well as on land”
3. “Different treatment is therefore the exception to the general rule which requires that human rights be granted to all individuals, with discrimination (whether seafarers, pirates, migrants or passengers, and I would add fishermen).
4. “None of the human rights treaties deal specifically with individuals at sea, or indeed provide for specific regulation for situations occurring at sea.”
5. “Human rights are a vector for further development of the law of the sea...”

While it has been suggested that there should be exceptions to human rights norms in the maritime environment due to the nature of the environment, this perspective is academically viewed as unacceptable as it would be contrary to the universal application of human rights from the origins of the 1948 Universal Declaration, as well as the scope of human rights treaties.

We say that there is absolutely no reason why in this day and age we should be afraid to be explicit in our support for maritime human rights, and as our founding principle states: ***'Human rights apply at sea, as equally as they do on land'***.

Consequently, we say that States should be more explicit in their protection of, respect and accreditation of human rights for the individual in the maritime environment, including aligning with the 2011 UN Guiding Principles on Business and Human Rights and legislation combatting slavery and trafficking.

Criminalisation

Turning to the issue of criminalisation, we are all variously aware of the global issue for seafarers and ship Masters, but maybe less so for migrant seafarers (of which I include fishermen) and their families.

I would therefore like to raise the issue of law-abiding migrant seafarers and fishermen, often who fall into the category of migrant workers and who, by no fault of their own, may find themselves on the wrong side of the law for pursuing work at sea as part of their own betterment in life.

This, is as opposed to the normal view of criminalisation for decisions taken at sea by crew and ship's Masters, which I will not address today.

I would therefore like to consider the reported cases to our organisation and partner organisations whereby the following occurs:

- Maritime migrant workers believe that they do not have any employment opportunities and they believe that they are going to be better paid at sea.
- A potential migrant worker may pay between £2,000 - £6,000 (GBP) to a 'recruitment agent' in respect of recruitment fees. The source of the money is usually a formal loan from banks and/or

through unregulated lenders. Some of the migrant workers sell their land and property to raise the fee, thereby potentially leading to indebted bondage if repayments are missed through loss of role, illness or loss at sea.

- The 'recruitment agents' are unregulated, so anyone can set up as a recruitment agent. The affected workers therefore have little or no standardisation or recourse mechanisms for grievances.
- Passports are often confiscated, with the employer, or local authorities having control over their lives. They effectively are stateless and unable to prove who they are. [UAE Case].
- If workers run away from the abuse perpetrated by their employer, the employer may file a false and malicious report against them with the local Police. They are arrested and detained in Police Custody, or sent to prison pending investigation. This is often subject to delay and is rarely reported to the Indian Consulate. They end up being finger printed and deported with a criminal record. This appears on their records when they apply to work in other countries and acts as a barrier to future employment, thereby they are unable to pay their debts.
- When they return home, individuals are not prepared to share their experiences to deter other migrant workers. They may have been humiliated and traumatised. There is little free support available to them.
- Reporting the matter to their local Police is often difficult and enforcement actions against the agents appear rare.

In short, the odds are stacked against many Indian workers who go to sea to work for a better life.

Flag State Impunity

I would also like to raise the associated issue of flag State impunity. This session is not long-enough to address the issue in any depth, but in terms of who should legally and often more importantly, *morally*, take charge when Indian seafarers are unfairly criminalised, abandoned and otherwise abused at sea.

We say that flag States need to take more accountability under the 2011 UN Guiding Principles, and that collectively with the profits made through the global maritime supply chain which is enabled by the flag States through ship registrations, there should be a global fund, if not a State fund specifically set aside to assist seafarers who have been subject to abuse.

Recommendations

As I conclude, I would like to offer up our counsel in four recommendations.

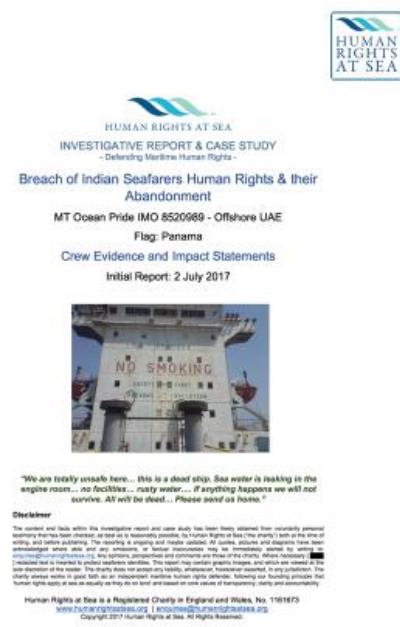
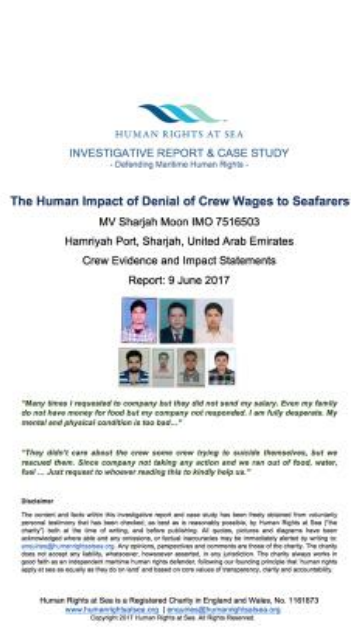
1. **Embrace, and be explicit** in the everyday use of the concept of ‘Human Rights at Sea’ throughout the Indian maritime sector at State, civil society and commercial level.
2. **Support and adopt** the founding principle that ‘Human Rights apply at sea, as equally as on land’.
3. **Regulate maritime recruitment agents** and ensure victims have timely access to effective remedy through the courts which can held out as examples, both nationally and internationally.
4. **Provide regional leadership** in driving forward the overt application of human rights and welfare protections in the maritime environment.

Thank you once again for your time and close attention in this emerging and fundamental matter of better protection for Indian seafarer and maritime migrant workers human rights.

It has been my pleasure to address you.



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4



Criminalisation of Seafarer: Real Life experience (May 2014 to July 2016)

I was sailing as 2nd Officer in May 2014 and sailing on a ship, my ship was arrested and I was put in Jail. Here's what I say " Criminalisation of Seafarers – Harsh Reality".

My father was Fitter with a Shipping Company. He passed away when I was in school. My Mother is housewife. After obtaining 2nd Mate lic, I joined **MV Aberdeen** on 21st April 2014 at Drydock in Hamburg. We sailed out and she loaded "Provisions" at Casablanca anchorage.

Crewlist: 12 Indians, 2 Syrians and 1 Cargo Supervisor from Cyprus.

Date of Arrest: 21 June 2014

Date of Release of 12 Indians : 22 June 2016 as we were declared innocent. Syrian Master, Syrian C/E and Cypriot Cargo supervisor still in Jail as they were declared guilty.

Total No of court Hearings in Italy : 8

12 Indian Sailors Jailed In Italy Freed, Says Sushma Swaraj

48 India, Press Trust of India | Updated: June 16, 2016 21:50 IST



External Affairs Minister Sushma Swaraj said, "I appreciate Indian Embassy in Rome for the release of 12 Indian sailors."

NEW DELHI: Twelve Indian sailors, who were in jail in Italy since June 2014 on allegations of possessing drugs, have been freed, External Affairs Minister Sushma Swaraj said today.

"I appreciate Indian Embassy in Rome for the release of 12 Indian sailors on board MV 'Aberdeen' who were in jail in Italy since June 2014," Ms Swaraj said.

The Indian sailors had been arrested from aboard a ship seized by Italian police in June, 2014, and were accused of possessing a huge quantity of drugs.

COMMENT

Criminalisation of Seafarer: Real Life experience (May 2014 to July 2016)

Abandoned by Ship Owner, Flag State, PNI Club, RPSL Company



Indian Embassy: We met only after we were released. But Embassy was making regular follow up with Lawyer.

Family: Once in 2 weeks, we were allowed to talk to family for 10 mins.

MV Aberdeen

RPSL: I joined through them but when arrested, no contact with company.

DG Shipping: Families were in touch with Capt Santosh Darokar (Mumbai) and always supporting.

In Jail: NGO, Father of Church supported our cost One Euro per day per Seafarer for 24 Months.

ITF: Came once and gave 10 Euros. Not met them thereafter.

Legal: We got Italian Govt advocate, who met us once in 6 months.

Criminalisation of Seafarer: Real Life experience (May 2014 to July 2016)

My Ordeal in Jail

1. Without any charges, straight away imprisoned in common jail with hardcore criminals (Addicts, convicts etc)
2. No consular access or legal advise or even translator
3. A mute spectator during proceedings , not knowing the fate or the future action
4. Was tortured by inmates. I suffered then from broken hands, racial abuse because of my nationality
5. Lack of basic facility: Food , hygiene, no communication allowed, violation of common rights given to a human being etc
6. Complete breakdown of self esteem , prestige , thus driving me to things which I don't wish to say.



Criminalisation of Seafarer: Real Life experience (May 2014 to July 2016)

Fair Treatment of Seafarers

1. **Ship's communication access:** Jute bags at anchorage port made me suspicious. Bridge watch always by Capt/ Cargo Supervisor. Self gave letter of protest to Master during sailing and this helped me in court of law. " How do we report when onboard?"
2. **Signing of Docs:** When Italian Coast Guard boarded the ship and arrested us, we were asked to sign papers which were in Italian Language. No legal access for 14 days. Does Vienna Convention apply to Seafarers also?
3. **Financial support:** My mother sold all gold ornaments and used savings of my late Father to run home. 2 Years. Inside Jail, we should get some financial aid to overcome small costs like Soap, winter clothes, cream, slippers etc. Unpaid wages of Seafarers. No compensation given by any agency.
4. **Legal Aid:** Too long time between hearings. Lower courts convicted us for 12 years imprisonment, we appealed. Released by higher court as " Innocent". Unable to understand the legal recourse. Witness as accepted in High court were same but outcome different. What should Seafarer do when arrested?
5. **Job after coming back:** I went to 47 RPS companies from August 2016 to June 2017. Jobs was refused by all "why so much gap and why jail". I got job in July 2017 from one RPS company and I continue with them today.
6. **Action against abandoned by Ship Owner, Flag State, PNI Club, RPSL Company**



**Italian marines case:
SC allows substitution
of sureties for
Massimiliano Latorre**

HUMAN RIGHTS AT SEA & INDIA'S PARTICIPATION AT IMO

Malini V Shankar

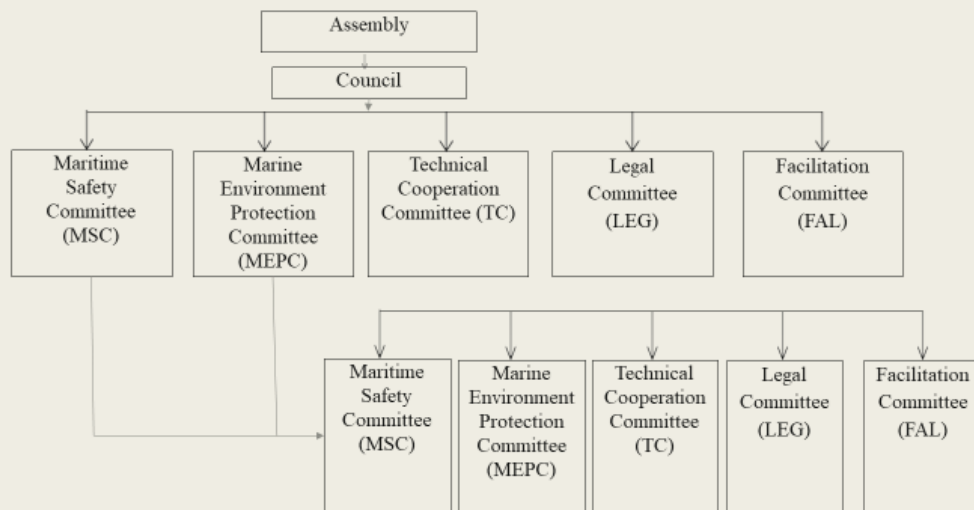
Distress situation

- Marine accidents
- Captivity
- Hijacking
- Abandonment

IMO – global regulator of shipping

- Platform for inter-governmental cooperation
- Standards – maritime safety
- Remove discriminatory action and unfair restrictive practices
- Promote trade
- Prevent marine pollution

IMO Institutional Structure and Law-Making Process



Actors in the IMO Law

The IMO Convention of 1948 created room for three types of entities to participate in the IMO law-making process.

1. 174 Member States and 3 associate members.
2. 64 Observer Organizations: Inter-governmental organisations - e.g. IOMoU, Tokyo MOU, IOPC 1992 FUND, INTERPOL, Council of Europe
3. 81 international non-governmental organisations as organisations with consultative status – e.g. PNI Clubs, IACS, BIMCO, WISTA International

Secretariat

The Secretariat of IMO consists of the Secretary-General and some 300 international personnel based at the headquarters of the Organization in London.



The Secretary-General of the Organization is for an initial four-year term.

Chandrika Prasad Srivastava
(India) : 1974-1989

IMO: India's Participation

Council members for the 2018-2019 biennium

Category (a) 10 States with the largest interest in providing international shipping services: China, Greece, Italy, Japan, Norway, Panama, Republic of Korea, Russian Federation, United Kingdom, United States.

Category (b) 10 States with the largest interest in international seaborne trade: Australia, Brazil, Canada, France, Germany, **India**, Netherlands, Spain, Sweden, United Arab Emirates.

Category (c) 20 States not elected under (a) or (b) above, which have special interests in maritime transport or navigation and whose election to the Council will ensure the representation of all major geographic areas of the world: Bahamas, Belgium, Chile, Cyprus, Denmark, Egypt, Indonesia, Jamaica, Kenya, Liberia, Malaysia, Malta, Mexico, Morocco, Peru, Philippines, Singapore, South Africa, Thailand, Turkey.

Significant initiatives - India

- IRNSS
- LRIT
- IOPC Funds – Vice Chair
- Draft Guidelines – Floating Armouries
- CGPCS Co-Chair – Operations at Sea

IMO & ILO guidelines

(non mandatory)

- Guidelines on the fair treatment of seafarers in the event of a maritime accident A-1056(27).
- Guidelines on liability and compensation regarding claims for death, personal injury and abandonment of seafarers 931(22).
- Guidelines on provision of financial security in case of abandonment of seafarers – 930(22)

Enhance sphere of influence

- Permanent Representative at IMO
- Identify and partner countries to promote common interests
- Fill legislative gaps, strengthen enforcement protocols
- Active IMO Cell
- Networking & leveraging





Forum for Integrated National Security

Human Rights at Sea Seminar

Mumbai, 28 February 2019

Paper: Introduction to Seafarer Abandonment

Sayedeh Hajar Hejazi , Human Rights at Sea Researcher & Consultant

Introduction

Abandonment of seafarers is a problem that has continuously arisen with the growth and development of the global shipping industry. In most cases of abandonment, the crew is unexpectedly deserted by their employer who has become incapable of generating required funds to continue with its operations. Abandoned seafarers often find themselves stranded in a country where they do not speak the language, facing the difficulties of financial constraint due to unpaid wages, the possible abuse of local authorities, and a lack of access to timely and proper legal procedure and support.

Deplorably, life at sea for many global seafarers often involves a degree of abuse, including confiscation or loss of identity documents (they effectively become stateless), physical abuses such as beatings, sexual assault, inadequate medical treatment, substandard accommodation, and inadequate nourishment, and mental abuses that arise from isolation, cultural insensitivity,

and lack of amenities for social interaction. Non-payment of wages and delays in paying entitlements to families, especially in the case of seafarers' abandonment, are additional abuses that contribute to the suffering of a large proportion of seafarers. Seafarers may face abandonment for many months, sometimes years, without residential facilities or pay, and little hope of repatriation. The flag States' courts and administrative systems lack the legal infrastructure to successfully address the struggles these maritime workers face.

Add to this the fact that the individual seafarers who are involved in abandonment cases are often members of the lowest classes in shipping societies, which increases their vulnerability in the face of large shipping companies and shipowners who do not always have their workers' best interests in mind. This is where seafarer's human rights and welfare become vulnerable, in the face of legal complexities and uncertainties. In cases of seafarers' abandonment, in which shipowners abandon their crew (usually for financial reasons) in an often illegal manner, the legal protections of the abandoned seafarers become inadequate.

In response to the rampant violation of seafarers' rights and the rising trend of criminalisation of seafarers in abandonment cases, various international laws and legal instruments have been formulated and instituted by different international bodies and entities to address the above stated problems. While some legal terms or references purposely for seafarers have been established in Conventions such as the International Convention for the Safety of Life at Sea (SOLAS 1974), the United Nations Convention on the Law of the Sea (UNCLOS 1982), and the Maritime Labour Convention of 2006 (MLC 2006), a comprehensive code of law governing their rights and duties does not exist. Although these laws have come into force and have been ratified by many shipping nations, often the enforcement of the laws leading to effective remedy for abuses against seafarers is still lacking, and human rights at sea are still not as adequately protected as they are on land.

Seafarer Abandonment in India

Introduction

India has a coastline of 7500 km, and in the average year, “90% of the trading that is done by the [Indian] government is done via the sea. Maritime transport is a critical component of the nation’s ability to sustain itself and support more than 1 billion people.”¹ According to business commentator Brandon Gaille, “Although overall growth may be hampered at first because of the need for infrastructure upgrades, this industry may turn out to be one of the fastest- growing industries in the world over the next 10 years.”²

India’s place in the international shipping scene is prominent, but as work by Human Rights at Sea (HRAS) is continually revealing, India may lack some proper legal instruments or legal due processes that protect the human rights and welfare of its maritime workers. Of the most recent publicly available cases on seafarer abandonment with which HRAS has been involved, all have involved predominantly Indian seafarers. This striking fact raises questions and concerns about the level of detail of state scrutiny and shipowner responsibility and due diligence in India. Is the seafarer recruitment process in India following the 2011 UN Guiding Principles on Business and Human Rights, in the very least?

Through my work as a researcher and consultant for HRAS, I have witnessed some positive aspects to the systems in place for Indian seafarers seeking assistance. For example, Indian seafarers in abandonment in foreign port States have reported the availability of special phone numbers and links at Indian embassies for seafarers in urgent circumstances. This fact

¹Gaille, Brandon. “18 Indian Shipping Industry Statistics, Trends & Analysis.” BrandonGaille.com, Brandonegaille.com, 10 Oct. 2018, brandongaille.com/18-indian-shipping-industry-statistics-trends-analysis/.² *ibid.*

demonstrates important steps that the Indian government has taken in its maritime legal system and industry to support human rights, however, as demonstrated by the following case study and others, further work needs to be done.

Case Study: The MV HALANI 1



This is a case³ that was reported to me in my function as a researcher for HRAS. The seafarers aboard the vessel appealed to help from HRAS when the normal outlets for assistance failed.

An Indian vessel, MV HALANI 1 (flag State: St Vincent and Grenadines, IMO No. 7816379), abandoned in Walvis Bay, Namibia, Africa, contained 8 Indian seafarers who had been stranded without wages, insufficient provision, physical and mental health problems, and expired protection and indemnity

insurance. Some seafarers were reported to have been stranded like this for over 24 months. Two of the abandoned seafarers expressed intentions of killing themselves due to the unpaid wages.

Capt. Amarjit Singh Bajwa, who appealed to me and the HRAS charity for help, stated:

“The owner has seriously violated our human rights by not providing us enough food, not paying our wages and not allowing us to go home after we have complete our contracts.

I have a crew member on board who is now in the 24th month of his service, as against

[https://www.humanrightsatsea.org/wp-³content/uploads/2019/01/HRAS_Case_Study_Abandonment_Walvis_Bay_Namibia_29_Jan_19_single_pages_SECURED.pdf](https://www.humanrightsatsea.org/wp-content/uploads/2019/01/HRAS_Case_Study_Abandonment_Walvis_Bay_Namibia_29_Jan_19_single_pages_SECURED.pdf)

his contract of 6 months. The owner has pursued this strategy of labour against seafarers in the past 2 years, including vessels in India, and he seems to be getting away with it. Considering that the crew members are Indians, the owner is also Indian, the contracts have been signed in Mumbai, we ask ourselves how come the government of India and Director General of Shipping in India have taken no action against the ship owner? We ask for justice to prevail.”

This case is similar to other cases with which HRAS has dealt, in which the shipowner of an abandoned ship effectuates abusive labour conditions with the intention of demoralizing the crew to the point where they leave the ship without receiving their due wages. Capt. Amarjit Singh Bajwa tried repeatedly to contact the shipowner, but he was repeatedly ignored.

Conclusion

This case raises the question of whether the MLC 2006 and other conventions are really effective legal instruments for handling such cases of abandonment. It also begs the question of whether or not India is following proper labour standards and international regimes when it comes to its shipping industry. This case of Indian seafarer abandonment, one case among many, uncovers the fact that there are many gaps in the human rights protections of Indian seafarers, and more needs to be done to ameliorate the situation.



Abandonment of Seafarers and Remedies

Capt K.P.Jayakumar
Nautical Adviser to Govt of India (i/c)

Overview



- ▶ What is abandonment?
- ▶ Remedy under the Maritime Labour Convention
- ▶ What is covered by Financial Security
- ▶ Some cases
- ▶ Why does abandonment continue to happen?
- ▶ Some possible solutions

What is Abandonment?



- ▶ The dictionary meaning of abandonment is “leave a person, thing, or place for ever”
- ▶ Concept of deemed abandonment was introduced by the 2014 amendment to MLC 2006

What is Abandonment?



- ▶ As per the 2014 amendment to MLC 2006 (Standard A2.5.2.2)
- ▶ “a seafarer shall be deemed to have been abandoned where, in violation of the requirements of the Convention, or the terms of the seafarers’ employment agreement, the ship owner.-

What is Abandonment?



- ▶ (a) fails to cover the cost of the seafarer's repatriation; or
- ▶ (b) has left the seafarer without the necessary maintenance and support; or
- ▶ (c) has otherwise unilaterally severed their ties with the seafarer including **failure to pay contractual wages for a period of at least two months.**



Remedy under MLC



- ▶ *Maintenance of effective financial security system to assist seafarers in the event of their abandonment.*
- ▶ *several options for financial security (like social security scheme, insurance or national fund, or similar arrangements).*
 - ▶ *Generally, Insurance cover is provided*



Remedy under MLC



- ▶ *Financial security system shall provide direct access, sufficient coverage and **shall be granted promptly upon request made by seafarer***
- ▶ *Copy of the financial security shall be placed at a conspicuous place on board where it is available to the seafarer.*

What is covered?



- ▶ outstanding wages and other entitlements due from the ship owner to the seafarer under the employment agreement, the relevant collective bargaining agreement, limited to four months of any such outstanding wages and four months of any such outstanding entitlements;

What is covered?



- ▶ all expenses reasonably incurred by the seafarer, including the cost of repatriation;



What is covered?



- ▶ the essential needs of the seafarer including, adequate food, clothing where necessary, accommodation, drinking water, essential fuel for survival on board the ship, necessary medical care and any other reasonable costs or charges until the seafarer's arrival at home.



Case I- vessel at berth



- ▶ *Seafarers did not invoke their rights*
- ▶ *Requested MMD to intervene*
- ▶ *Dialogue initiated with Security provider*
- ▶ *All seafarers disembarked after receipt of payment and were repatriated.*
- ▶ *All Doors and openings of vessel locked and keys handed over to owner*

▶

Case 2 – vessels at Anchorage



- ▶ *Again, Seafarers did not invoke their rights directly*
- ▶ *Requested MMD to intervene*
- ▶ *Problem – what happens to safety of vessel at anchorage if all crew disembarks at same time?*
- ▶ *Dialogue initiated with security provider*
- ▶ *seafarers disembarked and repatriated at stages with essential manning maintained on board till weather conditions improved*

▶

Why does it continue to happen?



- ▶ Ignorance
- ▶ Sea-time requirement
- ▶ Seafarers unwilling to initiate action against their employer



Some Possible solutions



- ▶ Awareness campaign be carried out by all stakeholders including Unions informing seafarers of their right to initiate action directly with the security provider without needing the involvement of any authority.



Some Possible solutions



- ▶ All seafarers to be urged to initiate prompt action with security provider immediately on not providing necessities for maintenance , or wages for two months

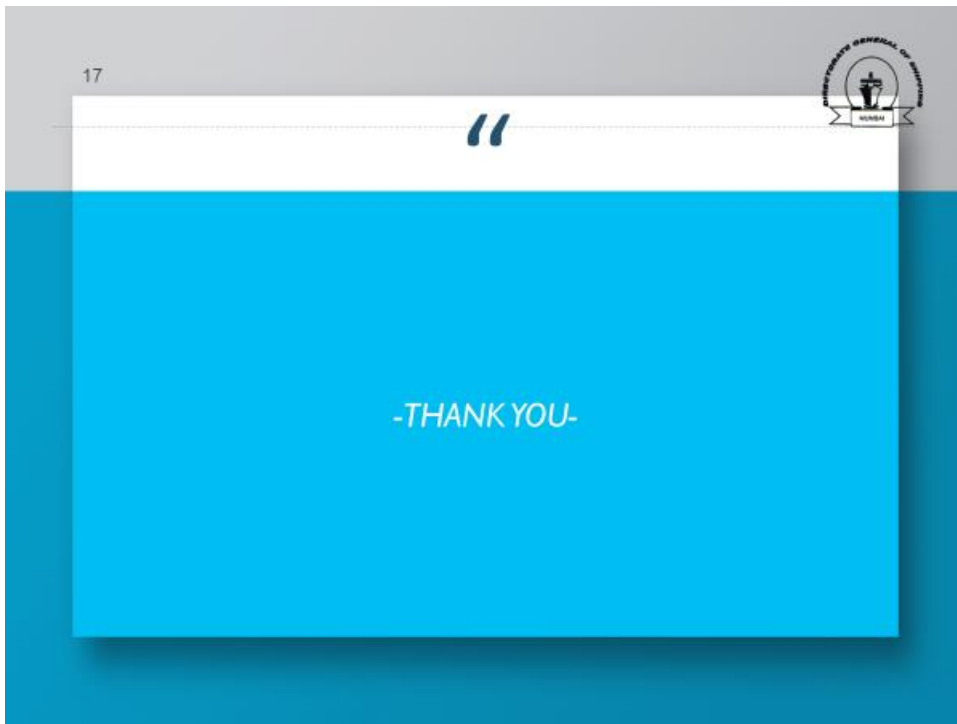


Some Possible solutions



- ▶ More effective Flag State Inspections and Port State Inspections targeting MLC compliance





TRAFFICKING AT SEA

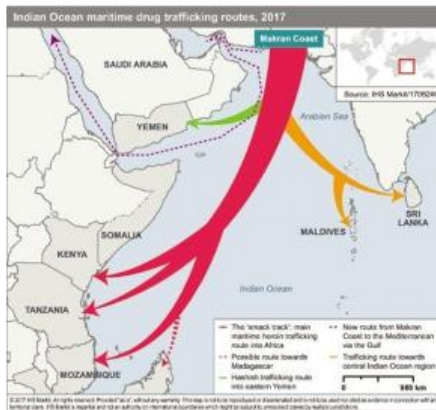
INDIAN OCEAN

Vice Admiral Karve (Retd)

TRAFFICKING – CRIME AT SEA

- **Trafficking** - Human , narcotics , arms, ammunition, wild life ,
contraband goods, pharma
- **Oceans** - Biggest crime scene
Vast open space and unregulated
Anonymity and freedom from law enforcement
- **Threat to** - Seafarers
Blue economies

NARCOTICS TRAFFICKING MAP OF INDIAN OCEAN



- Pakistan - Afghanistan main source
- Transport in dhows
- Transshipment – Tanzania / Sri Lanka / Kenya etc
- Syndicates always shifting / changing location

PIRACY -IMPACT ON NARCOTICS TRAFFICKING

- **2008-2012** Peak of Piracy off Somalia
- **2013 – 2018** Steady decline in Piracy
Not completely eliminated
- **Success** Effective action by Naval Forces
Implementation of 'legal finish' process (UNODC – GMCP IO)
- **Narco Trafficking** Information and modus came to light
Seizures increased
- **Challenges** Withdrawal of international Naval forces
Limited capability / capacity of local naval / CG forces
Ineffective 'legal finish' procedures

HUMAN TRAFFICKING BY SEA ROUTE - INDIA

- TRAFFICKING IS LIMITED – ILLEGAL MIGRATION IS MORE PROMINENT
 - MOSTLY TAMILS EX SRI LANKA
 - RECENTLY ‘ DAYAMATA’ CASE (JAN 2018) WITH 43 MIGRANTS TO AUSTRALIA FROM KERALA
 - RHONGIYA CRISIS – ILLEGAL MIGRATION FROM SEA ROUTE
 - NAVY / COAST GUARD CAN STOP / PUSH BACK IN MIGRATION – NOT OUT – DUE TO INADEQUATE LEGAL PROVISIONS
- (Trafficking and illegal migration from Ethiopia / Somalia to Yemen and from Thailand to SE Asia have been seen in the recent past)

HUMAN RIGHTS OF TRAFFICKED PERSONS

- 26/11 , PIRACY , MASSIVE ILLEGAL MIGRATION IN MEDITERRANEAN
- **RESULT**
 - Stricter port security (ISPS Code)
 - Proliferation Security Initiatives (PSI)
 - Increasing Maritime Security Operations by Navies and Coast Guards to enforce maritime order
 - Impacts Human Rights of trafficked persons as also seafarers

TRAFFICKING OF ARMS AND AMMUNITION

- Small arms and light weapons (SALW) smuggled through the sea route into Bangladesh and Sri Lanka
- SALW shipped from Afghanistan and Pakistan through the sea route to East Africa and Somalia
- Arms supplied by Iran to rebels in Yemen through the sea route
- Nuclear weapons proliferation through the sea route originating in North Korea to Pakistan and Iran
- Proliferation of Private Armed Security guards and presence of 'floating armouries'

EXISTING STRUCTURES FOR SECURITY IN IOR

- Djoubiti Code of Conduct for maritime security co ordination between East African countries
- Indian Ocean Rim Association (IORA) for overall maritime co operation between IOR littorals
- Indian Ocean Navies Symposium (IONS) for collaboration between Navies
- Information Fusion Centre for MDA
- SHADE for anti piracy etc

RECOMMENDATIONS FOR STRENGTHENING MARITIME SECURITY AGAINST TRAFFICKING

- **ESTABLISH** - Overarching security architecture
- **IMPLEMENT** – Information sharing protocols
- **SET UP** - Pan – region Maritime Domain Awareness mechanism
- **WORK TOWARDS** – Enacting enabling legal instrument (national and international) on lines of Global Maritime Crimes Programme of UNODC
- **DEVELOP** - Capacity and capability of regional Navies and Coast Guards



Disclaimer

The Human Rights At Sea Seminar document is intended to raise awareness among all stake holders.

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