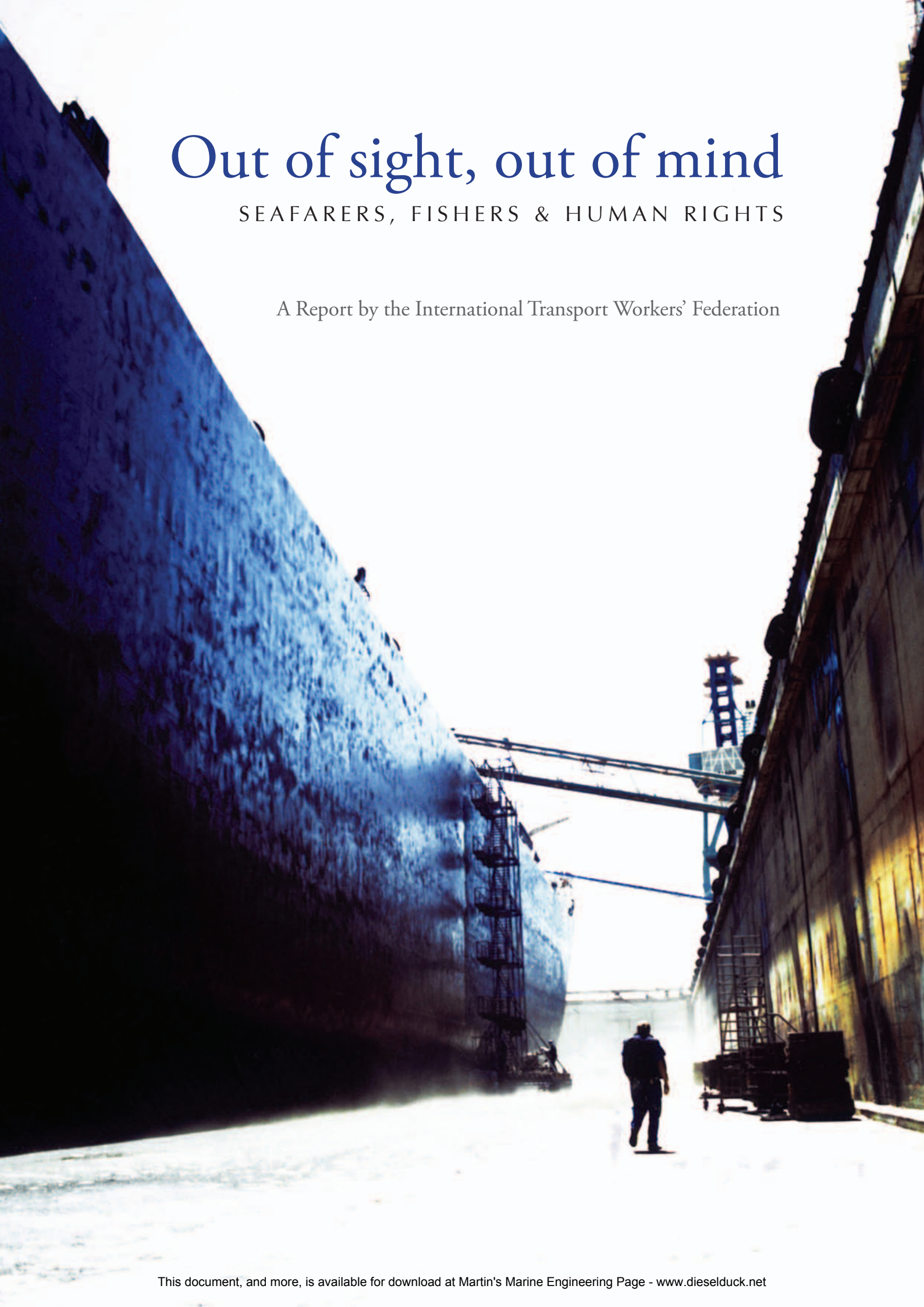


Out of sight, out of mind

SEAFARERS, FISHERS & HUMAN RIGHTS

A Report by the International Transport Workers' Federation



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SEAFARERS, FISHERS & HUMAN RIGHTS

A background document addressed to the United Nations and to Intergovernmental Organisations concerned with the principles and practice of human rights and decent working conditions

International Transport Workers' Federation

June 2006

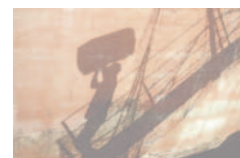
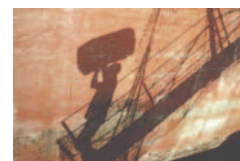
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The International Transport Workers' Federation (ITF) is a federation of more than 600 transport workers' trade unions in 136 countries representing over 4.5 million workers.

The ITF represents transport workers at world level and promotes their interests through global campaigning and solidarity. It is dedicated to the advancement of independent and democratic trade unionism, and to the defence of fundamental human and trade union rights.

The ITF is a member of Global Unions, an alliance of international trade union organisations, which includes the ten sector-based Global Union Federations and International Federation of Free Trade Unions (ICFTU). www.global_unions.org



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PREFACE

This report draws on information received by the ITF from its worldwide network of inspectors and affiliates and through relationships with NGOs working within the maritime and fisheries sectors. It is not a comprehensive survey of the human rights violations in this field, rather the report aims to give examples of some of the horrific conditions and abuses inflicted on some workers and to expose some systemic failures in the industry's regulation and practice.



INTRODUCTION

Efthimios E. Mitropoulos, Secretary General of the International Maritime Organization, in his World Maritime Day 2005 statement described the history of shipping as 'glorious and proud'. He applauded the technical advancements, the increased safety of ships and their great improvements in terms of environmental damage limitation. He underlined the vital role played by the maritime industry in the global economy, noting that more than 90 per cent of global trade is carried by sea.

Whilst there is much to celebrate in the maritime industry today, there is also much room for improvement of the conditions of those living and working at sea. For despite the vision of a progressive, responsible industry at the cutting edge of scientific and economic developments and sensitive to twenty-first century environmental concerns, the maritime and fishing industries continue to allow astonishing abuses of human rights of those working in the sector.

Such abuses range from instances of extreme physical violence against crew members to systematic cheating by owners and agents of seafarers' wages. There are numerous examples of crew abandoned without subsistence, having not been paid for months, sometimes years and forced to accept charity in order to survive. Seafarers and fishers are routinely made to work in conditions that would be unacceptable in civilised society. In some cases they are afraid to complain or seek assistance from trade unions or welfare organisations for fear of blacklisting.

These cases occur in spite of the existence of an extensive body of international instruments in the form of conventions, treaties, codes and recommendations,

which purport to protect human beings in general and, in some cases, seafarers or fishers in particular.

Such instruments need ratification and effective implementation before this vulnerable workforce can be adequately protected.

The International Labour Organization and the International Maritime Organization both affirm that:

*'Seafarers are recognized as a special category of worker and, given the global nature of the shipping industry and the different jurisdictions that they may be brought into contact with, need special protection, especially in relation to contacts with public authorities.'*¹

They acknowledge that, in addition to hardships of the workplace, seafarers face particular legal vulnerabilities. On the one hand they can find themselves responsible for the aftermath of a genuine accident, on the other they may find themselves without access to justice due to the limitations within the systems of governance of certain flag States.

The cases cited in this report can sometimes be attributed to exceptional rogue elements within the industry, but more insidious are the routine exploitations that indicate severe failings in the international regulatory process.



BACKGROUND

Seafaring is an industry steeped in history and tradition. From as far back as the seventeenth century there has been a recognisable international community of seafarers. Whilst medieval codes of customary law maintained that ship owners should provide such basics as food, accommodation and medical care, seafarers found themselves, by and large, both physically and legally isolated. In many ways not much has changed.

In the eighteenth and nineteenth century, the many wars at sea gave rise to shortages of crew, leading to the recruitment of seafarers native to the countries and islands where ships went to trade. Often these crew were abused, abandoned on islands, or simply not paid.² Again, parallels can be drawn with circumstances today. It is still the case that certain owners find it more cost effective to abandon one set of crew and engage another, leaving a trail of unpaid wages from port to port. And it is an unfortunate feature of the industry today that criminally irresponsible owners can hide behind the corporate veil afforded by the flag of convenience system.

At the time of writing this report, the ITF is involved with 18 cases of abandonment. On the *Al Manara*, 20 crew members of mixed nationality: Indian, Burmese, Somali, Iraqi, Ukrainian, Sudanese and Ethiopian are abandoned in the Seychelles with no means of subsistence, having not been paid for seven months. The St Kitts and Nevis flagged ship that was transporting coal from Somalia to Dubai had to be rescued by the Seychelles Port Authority after it drifted off course for 18 days with a broken engine. During the voyage crew members were shot at by their Somali armed guards, endured on-board infestations of rats and cockroaches and were subject to death threats from the owner, an Iraqi national with a company based in Dubai.

On inspection in the Seychelles the vessel was found to be unseaworthy and lacking in any valid certification. The owner disputes the Captain's decision to seek help, incurring towing costs, presumably preferring to let the vessel and crew drift in the open seas. In this case the flag State, a relatively new registry established in February 2005 and keen to avoid an early black mark against its name, has been more receptive than some to concerns expressed by the ITF. However its ability to exercise control over a rogue operator on its register is clearly non-existent.

Flags of convenience (FOCs) originally served to prevent the vagaries of international political disputes from interfering with the smooth passage of commerce. Vessels swapped flags to ensure neutrality and avoid the unwelcome attention of warring nations. However the registration of the current world fleet has its roots more firmly in the twentieth century. The Panamanian flag played a critical role in circumnavigating first US prohibition laws, and second, laws that forbade the carriage of goods to countries at war in Europe. After the war, international pressures and internal instability in Panama itself caused US ship owners to reconsider the desirability of registering their vessels under the Panamanian flag. This created an opportunity for the establishment of some new international registers: Liberia, Honduras and, later, Costa Rica. 'These shipping registers were willing to accept ships irrespective of their ownership, management or crewing'.³ In the context of trade liberalisation, FOCs allow businesses to minimise regulatory constraints whilst pursuing the most lucrative business opportunities. They can be attractive to companies seeking to reduce the higher crewing costs associated with national flags that stipulate quotas of crew of the same nationality. They offer tax advantages and minimal

bureaucracy. The net result is to create an unfair playing field that benefits those who seek competitive advantage at the expense of all other considerations, notably the observance of international rules and standards. Ship owners that run substandard ships in violation of technical safety standards are not known for the provision of decent working conditions or respect for the human rights of their crew.

FOC registers have shown themselves either unable or unwilling to exercise any control over companies using their flag. In a recent exposé of the practise of illegal, unreported and unregulated fishing,⁴ the Belize register objected to the tarnishing of its name, maintaining that it was trying hard to evict such operators from its registry. Two salient points arise. The first is that on further investigation by the authors of the report it became clear that there were a number of discrepancies between the register's records and those of Lloyd's List, suggesting that the flag State itself was unable to monitor with accuracy the vessels on its registry. The second is the fact that the throwing of a vessel off one FOC registry merely means that it will transfer to another, slightly more disreputable one.



Human Rights and Rights of Seafarers & Fishers

- Right to life
- Freedom from forced labour
- Freedom from torture, cruel, inhuman or degrading treatment
- Freedom from discrimination
- Elimination of child labour
- Right to a legal remedy and access to justice
- Freedom of association and right to collective bargaining
- Right to strike
- Right to employment agreement
- Right to free employment services and continuity of employment
- Right to identification documents and shore leave
- Right to safe and healthy working conditions
- Right to fair wages
- Right to reasonable working hours and holidays
- Right to health and medical care
- Right to social security and welfare
- Right to repatriation

INTERNATIONAL HUMAN RIGHTS FRAMEWORK

Within the international system, seafarers have entitlements under international, regional and domestic human rights law in their capacity as human beings. They also have rights as workers and as seafarers, depending on the scope of the definitions given in the various instruments of the International Labour Organization (ILO) and the IMO. To a lesser extent the same applies to fishers.

Virtually all States accept as authoritative the international human rights standards laid out in the Universal Declaration of Human Rights and the International Human Rights Covenants. These include the right to life, liberty and the security of person. They prohibit slavery, torture and any form of cruel, inhuman and degrading treatment and they recognise the right to equality before the law. Article 23 addresses rights that are to be afforded in the sphere of work.

In recognition of the special nature of the work of seafarers, the ILO has, since 1920, held special sessions addressing maritime labour standards. These standards include among others recommendations on hours of work and manning, recruitment and placement, employment agreements, crew accommodation and catering, access to medical treatment and social security.

In his speech at the International Labour Conference following the final session of the Maritime Labour Convention negotiations, the Secretary General of the IMO noted that the basic human rights, taken for granted by many, have particular resonance for seafarers:

'Everyone should have a right to decent working conditions. That is something we can all agree. But for seafarers, the negative impact of conditions that fail to meet acceptable standards can be more

*than usually damaging. For most seafarers, their place of work is also, for long periods, their home. If conditions are poor, there is often no respite, no comforting family to return home to, for months on end.'*⁵

Whilst the ILO seeks to regulate employment conditions, and in the case of seafarers and fishers, living conditions of workers, the IMO was established in 1948 with the principle aim of promoting safety at sea. Though its focus has been seen as primarily technical, it has recognised the integral role of 'the human element' in safety and environmental protection at sea.

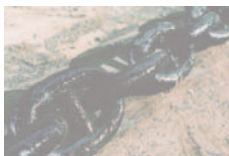
Where human rights treaties and ILO conventions endeavour to create rights for individuals, IMO conventions impose obligations on States, which, in some cases, can benefit seafarers. That said, it is clear that in spite of the international framework of human rights declarations and associated conventions, fine words do not translate into real protections unless they are incorporated into national legislation and effectively implemented.

An indication of the particularly lamentable state of regulation in the fishing industry is found by contrasting the number of ratifications of conventions relating to fisheries as opposed to maritime transport. Take the International Convention on Standards of Training, Certification & Watchkeeping for Seafarers (STCW) and its fisheries counterpart – STCW-F. The former was adopted in July 1978 and came into force in April 1984. It has been ratified by 150 States, representing 98.78% of the world fleet. By contrast STCW-F has five contracting states representing 2.84% of the world fleet. It was adopted in June 1995 but needs 15 signatories before it will come into force.

The International Convention for the Safety of Life at Sea (SOLAS), was adopted in 1974 and came into force in 1980. It is deemed to be the most important of all international treaties concerning the safety of merchant ships. It covers all ships entitled to fly the flags of contracting States, excluding warships, small ships of less than 500 gross tonnage, wooden ships of primitive build, pleasure yachts and fishing vessels.

SOLAS has been ratified by 156 member States, representing 98.79% of the world fleet, its updating Protocols of 1978 and 1988 cover 95.35% and 66.92% of the world fleet respectively. Its fisheries equivalent, the Torremolinos International Convention for the Safety of Fishing Vessels, 1977, was superseded by the 1993 Protocol. The Protocol took into account new technical advancements and its pragmatic approach was intended to encourage ratification. Fifteen States with an aggregate fleet of at least 14,000 vessels over 24 metres in length are required to sign in order for it to come into force. There are currently 12 signatories representing 9.66% of the world fleet.⁶





The fundamental instrument for establishing cooperation on the high seas (covering maritime and fisheries activities) is the UN Convention on the Law of the Sea (UNCLOS). Under UNCLOS, the applicable jurisdiction on board vessels outside territorial waters is that of the flag State (article 94). However, the fact that many internationally operating vessels fly flags of convenience means that often the ‘genuine link’ (specified in article 91) between shipowner and flag State is absent, making it extremely difficult for the flag State to exercise any jurisdiction over a company with no assets or personnel in its territory – no property to seize, no people to arrest.

There has been considerable debate over what should constitute a ‘genuine link’, but equally there is strong resistance from those that benefit from the FOC system to formulate a concrete definition.

In January 2004, UN General Assembly resolutions A/58/14 and A/58/240 gave the IMO the task of convening an inter-agency meeting ‘to study, examine and clarify the role of the “genuine link” in relation to the duty of flag States to exercise effective control over ships flying their flag, including fishing vessels’.

The report of this meeting has recently been published.⁷

Unfortunately, however, though the parties commented that ‘in many cases ships that are not in compliance may be indicative of systemic non-compliance or failures at the flag State level’, the meeting noted ‘above all... the restrictions placed by the current mandates of the participating organizations to respond to non-compliance by States.’

What is needed is for the issue of the 'genuine link' to be seriously addressed by flag States themselves, who must take responsibility for the consequences of continuing with an opaque system that benefits a few at the expense of the respectable and responsible industry.

The fact that shipowners can register their vessels with States with which they have no connection whatsoever, and that this is a routine, acceptable occurrence is fundamental to the difficulty in effecting compliance with international agreements.

State parties, perhaps in the form of a negotiating committee established through the UN framework, need to establish some tangible guidance on an acceptable relationship between shipowners and the flag States of their vessels – a relationship that would facilitate flag State implementation of the regulations that would protect seafarers from exploitation and abuse.

In the mean time, the High Seas Task Force (a ministerially led task force on IUU fishing), rather than attempting to define and enforce the genuine link requirement, suggests approaching the problem from a different tangent. Failure by a flag State to perform its duties under article 94, could constitute evidence of the absence of the 'genuine link' required in article 91. This proof of failure to exercise jurisdiction in the event of a breach of the international legal system could be seen to render a vessel stateless and, as such, susceptible to arrest.⁸



United Nations Declaration of Human Rights

Article 23

1. *Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.*
2. *Everyone, without any discrimination, has the right to equal pay for equal work.*
3. *Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.*
4. *Everyone has the right to form and to join trade unions for the protection of his interests.*

United Nations Convention on the Law of the Sea

Article 91

Nationality of Ships

1. *Every State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly. There must exist a genuine link between the State and the ship.*

Article 94

Duties of the flag State

1. *Every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.*

ABANDONMENT OF SEAFARERS & FISHERS

The continued existence of abandoned seafarers and fishers is a shameful reflection on the maritime industry. At best abandoned seafarers are subject to cruel, inhuman and degrading treatment, at worst they find themselves in life-threatening working conditions with no means of subsistence. In most cases of abandonment, crew members have not received wages for months, sometimes years and are effectively subject to forced labour. They suffer the indignity of relying on the charity of local people and welfare organisations. At home their families go hungry, and their children's school fees remain unpaid. Without a wage being remitted, some resort to money-lenders and find themselves doubly under pressure from spiralling debts. In some cases, where sporadic contact is still maintained by the company, the crew are manipulated by a combination of vicious threats and empty promises.

In a recent case, seafarers abandoned in Turkey were arbitrarily accused by the shipowner of being terrorists. Their substandard, Comoros-flagged vessel was detained in port and the crew hoped to embark on legal proceedings to arrest the ship and obtain the wages that were owing to them. Instead, they were forcibly repatriated without wages and without the means to recover them. The vessel continues trading with a new crew.

A striking feature of abandonment cases is the absolute imbalance of power. The seafarers or fishers concerned lose all ability to exercise control over their circumstances, whilst in the background, the vessel owners are able to pull strings or simply disappear.

The Joint IMO/ILO Ad Hoc Working Group on Liability and Compensation Regarding Claims for Death, Personal Injury and Abandonment of Seafarers

agreed to establish an on-line database to monitor the prevalence of cases of abandonment and to encourage those responsible to take action to resolve them. The database has recently been launched and is now publicly accessible on the ILO website at www.ilo.org/dyn/seafarers

The Working Group has also developed two resolutions and related guidelines, one on the provision of financial security in case of abandonment of seafarers, the other on shipowners' responsibilities in respect of contractual claims for personal injury to, or death of, seafarers, which were approved by the IMO and ILO governing bodies in 2002.

Following the ILO Maritime Labour Conference, a resolution was passed urging the Working Group to continue with its task and to develop a standard to be included in the Maritime Labour Convention or in another existing instrument.

It is vital that no more time is lost in finding a solution to the affront of abandonment. The Maritime Labour Convention was adopted almost unanimously, with only two countries abstaining and no delegates voting against. It was a remarkable result, reflecting a true spirit of cooperation and goodwill between governments', employers' and workers' groups. It is to be hoped that a similar commitment will be made to establishing a viable system of protection for abandoned seafarers and fishers.



M.T. Arabian Victory: hijacked or abandoned?

In May 2002 the Belize-flagged tanker **M.T. Arabian Victory** was stranded in Dubai Anchorage for 45 days without food, water or fuel. In scorching temperatures of 44 degrees Celsius, the nine Indian and Ukrainian crew suffered dehydration, vomiting and skin disease. The Master repeatedly called the owner to send supplies, none were forthcoming. Requests for assistance were made to Port State Control, the Dubai Police and the Indian Consulate in Dubai, again to no avail. With the crew in a critical state and fearing possible fatalities, the Master issued a 48-hour distress notice to the owner informing of his intention to seek refuge in any Indian port. The Dubai Mission to Seafarers provided the vessel with enough fuel and provisions to enable it to reach Mumbai.

Astonishingly, on arrival at the Port, the vessel was denied entry. The owner had lodged a complaint with the Director General of Shipping in India, maintaining that the crew had hijacked the vessel and should not be permitted to enter the port.

The Master changed course for the port of Cochin. In the meantime a representative of the ITF met with the Cochin Port Chairman to request an entry permit, again on the basis of seeking refuge for the endangered crew. Permission was refused. The Director General of Shipping had instructed the Port Authorities to deny entry to the vessel.

At this point, conscious of the crew's conditions of extreme distress, the ITF representative approached the Kerala High Court, requesting that an order be issued granting entry to the **M.T. Arabian Victory** to Cochin Port. The Indian Coast Guard inspected the vessel and it was confirmed that the seafarers were indeed without food and water and in extremely poor health. On July 04 2002 the **M.T. Arabian Victory** was at last allowed into the port and medical assistance provided.

In addition to existing in intolerable living and working conditions, the crew of the **M.T. Arabian Victory** were owed a considerable amount of backpay. By the end of December 2002, the outstanding sum stood at US\$250,000. The seafarers had made individual contracts with the owner, and these had all expired. Far from hijacking the vessel, the crew had been shamefully abandoned and maliciously endangered by the owner of the vessel. The fact that the shipowner was able to use his influence with the authorities, who themselves were perhaps unaware of the full situation, reveals the unfortunate vulnerability of seafarers who can find themselves desperately isolated and unable to protect their rights.

With no response from the owner to a court notice, the crew filed claims for their outstanding wages and the court ordered that the vessel be auctioned according to the Merchant Shipping Act. However the seafarers' ordeal was not over. The shipowners had filed a criminal case against the master and crew for hijacking the vessel.

To further complicate matters, another creditor lodged a claim in the Kerala High Court. The vessel had been mortgaged as additional security for a bank loan of US\$10,250,000 and the Al Ahali Bank of Kuwait contended that proceeds from the sale of the vessel should go directly to them. The multiple claims resulted in a considerable delay in payment of wages to the long-suffering crew, who eventually were awarded an interim payment in August 2003 covering their owed wages up until May 2002.

**Source: P. H. Mohammed Haneef,
Cochin Port Staff Association**

The table below shows current, outstanding abandonment cases of which the ITF is aware. It is certain that a significant number of cases go unremarked in ports without ITF inspectors or maritime welfare organisations.

Vessel	Flag	Abandoned	Port
Abu Abdullah I	Comoros	January 2006	Suez Canal, Egypt
Al Manara	St. Kitts & Nevis	February 2006	Port Victoria, Seychelles
Capbreton 1	St. Vincent & Grenadines	January 2004	Lagos, Nigeria
Carl Philipp	Bolivia	June 2004	Port-au-Prince, Haiti
China Sea Discovery	Liberia	August 2004	Kaohsiung, ROC
Concel Pride	Nigeria	May 2005	Algeciras, Spain
Dauria	Comoros	August 2005	Antalya, Turkey
Frenaso	Panama	September 2005	Dakar, Senegal
Grenland	Dominica	February 2006	Aviles, Spain
Leda [fishing vessel]	Ukraine	September 2004	Conakry, Guinea
Maha	Belize	March 2004	Abidjan, Côte d'Ivoire
Maznah	Indonesia	August 2005	Tawau, Malaysia
Nordland	St. Vincent & Grenadines	June 2005	Santander, Spain
Ormos	North Korea	January 2005	Kakinada, India
Pots Express	Panama	September 2005	Monrovia, Liberia
Silva	Cambodia	February 2004	Esbjerg, Denmark
Spirit II	Honduras	June 2004	Naples, Italy
Sri Lakshmi	India	October 2005	Bahrain, Saudi Arabia



Capbreton 1: from wage claim to prison sentence

In January 2004, the crew of the oil tanker, **Capbreton 1**, contacted the ITF for help with a wage claim. The vessel had been sold by a French company the previous year to new Nigerian owners and the crew had stayed on board.

From May 2003 the crew were not paid and, in July, the vessel was arrested by the maritime police for being in Nigerian waters without the required authorisation. The owners assured the crew that this would soon be lifted and asked them to stay on board to ensure maintenance of the ship. They soon began to suffer from a lack of regular food, water and fuel supplies, but remained on board hoping to secure their outstanding wages by liaising with their respective embassies and with a local lawyer to try and resolve the situation amicably. After fruitless negotiations, the seafarers took their complaints to the press; their poor living conditions and lack of payment became the subject of various reports by Nigerian journalists and the BBC.

In February 2004 their situation took a turn for the worse. Police inspectors arrived on board and accused them of carrying an illegal cargo of oil extracted from vandalised pipelines. They were promptly transferred to police cells and from there to Ikoyi prison in Lagos. In an appeal to the ITF one seafarer wrote: 'We have not been paid for eight months and are now under arrest for something our shipowner has done. We believe that it was all mounted by our shipowner who can use us as scapegoats for a crime he has done, and on top not pay the wages that he owes us.'

The unfortunate seafarers from Cote d'Ivoire, Benin, Togo and Burkina Faso were charged at a time when the Nigerian government had decided to publicly crack down on illegal bunkering and was seeking to make examples of the perpetrators. They found themselves in a complex legal situation, with the lawyers of the two owners alternately seeking to make deals to extricate one or the other from blame and place all responsibility on the other party, whilst simultaneously portraying the seafarers as criminals.

Locked up in jail, the seafarers were dependent on the ITF and religious organisations for humanitarian assistance. During this period one of their number became ill with a heart condition and in need of medication. Without any means of subsistence from their employers, the crew had to apply to their embassies for help with medical costs and even for transportation between the prison and the court. Their hopes were endlessly raised and dashed by a see-saw of hearings and adjournments in the Nigerian courts. After an excruciating 21 months in prison they were finally released on 30 November 2005 and were repatriated with some of their wage arrears. They have received no compensation for the mental and physical distress caused by their unjust internment.

Source: ITF Actions Department

The table below shows the frequency of some examples of problems encountered by ITF representatives when carrying out ship inspections.

Problem	2001	2002	2003	2004	2005
Abandonment	38	44	30	21	19
Agency Fees	3	7	8	9	6
Owed Wages	763	772	811	751	702
Ship's Safety	74	107	70	72	77
Substandard Accommodation	90	5	80	79	86
Substandard Food	75	122	91	83	111
Substandard Safety Equipment	35	55	31	65	51
Victimisation	40	59	45	71	74

Global Pioneer: a cavalier attitude to kidney failure

On Easter Sunday 2004 a 25-year-old Burmese seafarer was taken into a seafarers' clinic in Vancouver. He was on the verge of collapse and the doctor diagnosed renal failure. Though he had complained to the Captain of his vessel, the Burmese flagged **Global Pioneer**, for many months he was offered no medical treatment. Had his condition been treated earlier he would not have lost 90% of his kidney function.

The company's first effort to engage with the problem was to cancel the planned biopsy that would establish the extent of the damage, and to endeavour to repatriate the seafarer prior to his receiving any medical treatment. The company moved swiftly to remove the seafarer from Canadian territory and to limit their liability. In a life or death situation, the seafarer, with advice from immigration lawyers and an ITF inspector, made a formal application for refugee status, which was eventually granted.

In addition to the serious health problem, the seafarer was also owed more than US\$4,000 in unpaid wages.

Over a year later the case for compensation was finally concluded, with compensation awarded for sickpay, backpay and disability allowance. The seafarer is now settled in Canada, and needs dialysis twice a week until a transplant is possible.

Source: Peter Lahay, ITF Co-ordinator, Canada

FISHING: PHYSICAL ABUSE & UNSAFE CONDITIONS

As previously noted, the fishing industry is home to some of the worst examples of work-place abuse. A particular blight on the fishing industry is the practice of illegal, unreported and unregulated (IUU) fishing. Recent estimates from the Marine Resources Assessment Group (MRAG) suggest that, across all oceans, IUU fishing is costing states between US\$4.2 billion and US\$9.5 billion in lost revenue each year – or 20% of the value of the global catch.⁹ In addition to the adverse effects on depleted fish stocks and efforts to ensure a sustainable fishing industry, conditions on IUU vessels are often found to be dangerously substandard. Along with poor working conditions the crew, often recruited from rural areas and with limited seagoing experience, seem to be frequent victims of physical abuse and callous disregard by criminal employers.

In comparing the global high seas fishing fleet with the global merchant fleet, the High Seas Task Force notes that the former ‘is comparatively unregulated and suffers from a lack of transparency about who owns and manages these boats. Fishing vessels as a class are exempt from many of the IMO conventions that apply to merchant vessels. In a world that is increasingly conscious of the importance of maritime security, safety and respect for human rights, this situation is anomalous and troubling.’¹⁰

A recent report commissioned by the Australian Department of Agriculture, Fisheries & Forestry, the ITF and WWF International - **The Changing Nature of High Seas Fishing** - exposes how flags of convenience provide cover for IUU fishing. It notes the large number of large-scale fishing vessels that are registered to FOCs and the ease with which they can practise ‘flag-hopping’



in order to run from the law or access new fishing grounds.

‘Aside from the threat posed to the conservation and sustainable management of fisheries in international waters, the FOC system in fisheries fundamentally distorts international efforts to address the issue of equitable access to fisheries on the high seas and results in human rights abuses continuing behind a veil of secrecy.’¹¹

On 10 October 2000, the Sao Tome & Principe flagged longliner, **Amur**, sank in sub-antarctic waters off Kerguelen. The vessel was known to be unseaworthy and most crew members had neither proper contracts nor insurance cover. The life-saving equipment did not function and 14 of the crew of 40 drowned, unable to escape from cabins located in dangerous parts of the ship. The vessel had left the port of Montevideo, Uruguay under the name of Sils and flagged to Belize. It changed name and flag whilst at sea and was illegally engaged fishing for toothfish when it sank.

Tunago #61: Chinese fishers brutalised in American Samoa

On 26 September 2005 six Chinese fishers jumped ship in American Samoa. For a few days they hid in the mountains, fearing capture by their captain. They sought assistance from their company's agent but no advice was forthcoming. They were turned away from the police station and eventually took refuge in the Pago Pago Seafarers' Centre, which alerted the ITF to their plight.

The men gave eye witness accounts of the extreme physical abuses suffered by crew members on board the **Tunago #61**, on which they 'received beatings sporadically and systematically every day' at the whim of the skipper and his brother, the chief engineer. The men were also subject to death threats by the skipper, who told them that he carried a gun and that they could easily be 'written off' as having been swept overboard.

One worker, beaten with an iron rod, sustained serious head injuries and, bleeding profusely, was locked up in the bow for three days without food or water. His offence was to ask for leave from the boat.

Another fisher, thought to have been chatting with a colleague, was grabbed by the hair and repeatedly punched in the face. After the first assault by the chief engineer, the man was beaten with a thick wooden rod 3ft long on his thigh, stomach and back.

For failing to secure bait firmly on all hooks before they were flung in the sea, a young fisher was attacked by the skipper who, reportedly, punched him in the face again and again then kicked him in the head when he fell to the deck. The fisher's punishment continued with another round of baiting, making him work continuously for almost 48 hours.

These are a few examples of the sustained physical abuse to which the young Chinese workers were subjected.

Source: Dr. Christopher Evans, Director, Pago Pago Seafarers' Centre

M/V Salus: 'reign of terror'

The Belize-flagged **Salus** arrived in Rønne, Denmark on 17 October 2001, where it was used to freeze sprats for sale in the Russian market. In February of the following year, the ITF became involved when told by crew members that none of them had been paid since their arrival on board, for some of them a period of two years.

Instead of paying the crew, the managing director of the Kaliningrad-based ship operators, arrived in Rønne issuing threats of violence and demanding that the crew sign a declaration against the ITF.

These were not idle threats, on 03 July he was charged by the police for punching an ITF inspector and trying to throw him off the gangway. The next day crew members reported to police that they had been warned of the imminent arrival of two new 'crew members' who would 'cut out their lungs and make them swim in their own blood' if they didn't co-operate.

Two men duly arrived, apparently seeking work as able seamen. On his return from discussions with the ITF official, one crewman from the ship was pushed around by the new arrivals whilst the managing director and bodyguard prevented his escape from the vessel. He was kicked and beaten on deck by the two, who then moved him to the bridge out of sight. When the police arrived they found the seafarer locked in a cabin with tape wrapped round his mouth and head, his arms taped behind his back and his feet taped together. It took five minutes to free the man who was by then fighting for his breath.

Source: Kjartan Gudmundsson, ITF Inspector, Denmark

In June 2005 the Ukrainian flagged **Simiez** caught fire in suspicious circumstances in Montevideo. The 11 crew, nine Chinese, one Indonesian and their Ukrainian skipper died in the blaze. Montevideo port authorities were reported to believe that the crew were probably locked in their cabins at the time of the fire.

Though it is difficult to document conditions on board IUU vessels, SINTONERS, a Chilean union representing fishworkers, claims that abuses of human and labour rights are a common occurrence:

“The crew on IUU fishing vessels often either do not have contracts or, if they do, the contracts are signed by fictitious companies, which are impossible to find, in cases where there are violations of labor or human rights, or in cases where crew are arrested or vessels sink.

...Crew that are considered “inefficient” or who “cause problems” on board IUU vessels are sometimes abandoned in foreign ports and must themselves seek help from embassies, local fishermen’s unions, churches, or aid organizations to get home.

...Physical and/or psychological mistreatment of crew on board IUU vessels often occurs,

...In some cases Asian crew members have been known to work on board IUU fishing vessels as forced labor and are locked in their quarters or placed in chains’¹²

Tual, Indonesia has now been home to around 1,000 Burmese fishers for over two years. Discharged from their Thai flagged vessels, most did not have their travel

documents, which were kept by the vessel owners or by representatives of Thai fisheries companies in Tual. As a result they found themselves frequent victims of extortion by local security and immigration officers. Hired without individual work contracts, they were not paid properly and were often subject to inhumane treatment. Most of the Burmese were not originally fishers, but farmers who fled from Burma to Thailand as refugees. Their current situation is being monitored by the Indonesian Seafarers Union - Kesatuan Pelaut Indonesia (KPI) but is hindered by their lack of acknowledged refugee status.

Indonesians working for foreign fisheries companies are also known to suffer from a lack of legal protection due to inadequate employment agreements. In another case being investigated by KPI, 28 fishers were recruited by PT Baruna Siwa agency in Bali to work on the **FV Ianthe**, operated by Micronesia Longline Fishing Company. During their three-year period of employment they received no wages. They have no collective bargaining agreements or individual contracts.

While seafarers would appear to suffer unduly at the hands of unscrupulous employers and ineffectual regulation, some of the worst cases of abuse are found in the fishing sector. An industry that embraces a wide scale of operations, from factory ships to family ventures, has proved difficult to organise and to regulate. In June 2005 the ILO Conference on Working in the Fishing Sector failed by a narrow margin to adopt the convention seeking to regulate and improve conditions for workers in the industry. The Conference will reconvene in May/June 2007 and it is hoped that the outcome will be more positive and that Member States will move swiftly to ratify and implement its provisions.

Sky 75: ruthless exploitation of fishing crew

On Wednesday 14 September 2005, 10 Indonesian fishers scaled the Port Company security fence in Port Nelson, New Zealand seeking protection from the abuse and inhumane conditions on board the **Sky 75**, a Korean registered fishing vessel over 30 years old.

The crew complained of constant verbal and physical abuse and excessively long working hours. They were fed bad food, with rotten meat and vegetables and products past their sell-by date. They were expected to sleep 12 to a cabin, with no blankets and for washing were told to stand on deck and 'shower' in the waves. There was no medical provision on board, or protective clothing, and the crew gave the example of one of their number who crushed his arm in some machinery and was told to carry on working, without treatment.

In addition to the indignity and discomfort of their working and living conditions, the crew had not been paid since joining the vessel in July 2005. Each had paid over US\$600 to a Jakarta manning agent to secure their jobs. The owner claimed to have forwarded their modest wages of US\$200 per month to the agent in Jakarta who was then to pass it on to the fishermen's families. This had not occurred.

In spite of the appalling conditions on board the **Sky 75**, eight crew members chose to stay on the vessel. Having borrowed money to pay the manning agent the 'job fee', they were too fearful to return home without the funds to repay their debts.

Source: Kathy Whelan, ITF Co-ordinator, New Zealand

MANNING AGENTS, CORRUPTION & BLACKLISTING

The vast majority of seafarers from the major labour supply countries find their positions through the services of manning agents. In some cases this is a mutually beneficial relationship, but in many instances seafarers find themselves paying fees for jobs or cuts of their salary for spurious administrative services and non-existent social security. The degree of legality involved in such practises can be blurred and there are regional variations in common practice.

At the extreme, criminal end of the spectrum, the ITF in India and the Mission to Seafarers in Dubai found themselves dealing with dozens of Indian cadets swindled out of thousands of dollars by fake manning agents and left stranded without work in the United Arab Emirates. In some cases the cadets had paid over US\$5,000 for the opportunity of sea time but on arrival in Dubai found no welcoming agent and no vessel to join.

The ILO Maritime Labour Convention (2006) states as one of its purposes that 'all seafarers shall have access to an efficient, adequate and accountable system for finding employment on board ship without charge to the seafarer' (Regulation 1.4). Though this is the norm in most parts of the developed world, it is not standard practice in some significant labour supplying countries.

In the Philippines, competition for jobs makes the payment of bribes to crewing agencies common. There are examples of would-be seafarers working without pay for agencies, sometimes for several years, before they are rewarded with a contract. The scarcity of better opportunities and the promise of relatively high wages at sea causes people to work, effectively as slaves, in the offices of manning agents.

Kahveci & Nichols carried out a number of interviews and surveys for their recent publication: **The Other Car Workers: Work, Organisation and Technology in the Maritime Car Carrier Industry**. Though this research focuses on one particular sector of the industry, many of the findings can be viewed as representative of the maritime industry as a whole:

*'One seafarer we interviewed recounted how it took him two years to get the job. He worked for the crewing agency for eight months as a utility boy (Filipinos sometimes refer this as 'OJT' – On the Job Training). He did office work, carrying papers and parcels as a messenger, going to the Embassy to take other people's visa applications. He cleaned the office and so on. For these eight months he worked without any pay at all in order to get a contract. He said that at that time there were about 200 unpaid utility workers.'*¹³

Although seafaring is seen as a means of advancement in a number of countries, the free market nature of the industry ensures that there is constant pressure on seafarers from the threat of cheaper labour supplies. This makes for a reluctance to press for higher salaries and or better conditions of employment. In some cases seafarers are prolonging their time at sea and foregoing visits to their families for fear of competition.

Discrimination according to nationality is endemic in the shipping industry. Shipowners consider cost savings on crews from developing countries to be a legitimate lever in achieving competitive rates. Such a system has inherent problems: concern over adequate training, cultural and language barriers in mixed crews, to name but two. A particular concern engendered by the drive

to undercut crew salaries is the practice of double book-keeping. In recent research undertaken when the ITF basic monthly rate of pay for an AB was US\$645 (as specified in the Uniform Total Crew Cost Agreement [TCC], 2005 for crews on FOC ships), 58 seafarers provided information on their basic salary. Of these only three were paid at the ITF rate, all the rest were paid less – on average US\$557 and at worst US\$400. However those seafarers supposedly on the ITF rate of pay were themselves receiving considerably less. Three hundred and seventy five dollars was deducted from their first month's salary – recorded as a 'cash advance', one that they did not receive, and monthly deductions of US\$75 were made for the duration of the contract. Further swindles were achieved through irregular calculations of leave pay and subsistence.

*'The on-board paperwork showed none of this short-changing. The cuts in these Filipino's pay were made by the crewing agency in Manila, which in this case was run by the company. The company simply paid less money into the seafarers' bank accounts – a procedure that was in fact a condition of the seafarer being employed in the first place. A 'double contract system' meant that the seafarer agreed to one contract (the real one) and signed another, in which everything appeared above board. Such conditions were accepted because... Filipinos are desperate for such work.'*¹⁴

Problems with manning agencies are not limited to the Philippines. An ITF inspector from the Seafarers' Union of Russia gives the following account:

'In the Far East of Russia there are hundreds of crewing agencies and most of them accept bribes (or commission) in exchange for a job. A lot of seafarers, except highly qualified people and high officers, have to pay. The price ranges from US\$200 to US\$500. One third officer I spoke to, named Dmitriy, paid one month's wages for placement on an FOC tanker, with a good salary, after he graduated from the Far Eastern State Marine Academy. An electrical engineer, Alexey, paid US\$400 to be placed on a fishing vessel.

*'There are a lot of ways to get money from seafarers. Very often seafarers have been cheated - they pay money but never receive a job. And often they don't get receipts for the money they have paid. Some crewing agencies do their business without any licence.'*¹⁵



Freedom of association is a right upheld by the International Convention on Civil and Political Rights (1966) and the International Convention on Economic, Social and Cultural Rights (1966). The latter states:

*'1. The States Parties to the present Covenant undertake to ensure:
(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;'*

On a regional level the principle is enshrined in the European Convention on Human Rights and Fundamental Freedoms (1950), the European Social Charter (1961) and the American Convention on Human Rights (1969). The African Charter on Human and Peoples' Rights (1981), though not specific to employment relations, allows for free association and assembly with others.

The right to participate in trade union activities is defended in a various ILO conventions, most notably, ILO Freedom of Association and Protection of the Right to Organize Convention (1948) – C87 and ILO Right to Organize and Collective Bargaining Convention (1949) – C98. Additionally Article 3 of Convention 179 – The Recruitment and Placement of Seafarers Convention (1996) affirms:

'Nothing in this Convention shall in any manner prejudice the ability of a seafarer to exercise basic human rights, including trade union rights.'

The fundamental principles found in these conventions as they relate to seafarers, are similarly embraced by the newly adopted ILO Maritime Labour Convention (2006).

*'Article III – Fundamental Rights and Principles:
'Each Member shall satisfy itself that the provisions of its law and regulations respect, in the context of this Convention, the fundamental rights to:
(a) freedom of association and the effective recognition of the right to collective bargaining;'*

In spite of the extensive coverage by international instruments asserting the right to engage with trade unions, the practice of blacklisting persists in the maritime and fishing industries. The problem is particularly insidious as, by its very nature, it is virtually impossible to monitor and document blacklisting with any accuracy. That it exists and is prevalent in certain countries is without question, but those who report it are often unwilling to name names for fear of the consequences. Blacklisting is not only used to alert employers to the 'undesirable' qualities of potential recruits, it is also used for intimidation. The mere threat of blacklisting, effectively making a seafarer unemployable, unable to pursue his or her chosen career and without the means to support a family, can be enough to prevent them from seeking help from seafarers' trade union representatives. Whilst it is difficult to find physical evidence of blacklisting itself, the threat of blacklisting is even more difficult to quantify.

In 2000 at a public meeting in Manila organised by the International Commission on Shipping, a leading manning agent in the Philippines confirmed that blacklists were circulated by fax amongst manning agents. At the same time the Mariners Association for Regional and International Networking Organization (MARINO), reported that there were more than 10,000 blacklisted seafarers in the Philippines.

Katerina: no work for the witnesses

The Greek owned, Maltese-flagged, 16,320 ton cargo ship **Katerina** arrived at the port of Long Beach on 10 September 2004. After four seafarers blew the whistle on the captain and senior officers of the vessel for falsifying pollution prevention records, all 13 Filipino crew members were designated material witnesses in the case. In spite of agreeing to assist the US in its strict approach to pollution control, the innocent seafarers were brought in to court in handcuffs, connected in single file by ankle chains. As witnesses, they were required to stay in the US for the duration of the criminal investigations, and until 15 November their accommodation costs were met by the shipping company in accordance with an 'agreement on security' signed between the shipowner and US Government. Beyond this date the US Government continued to require their presence, yet neither shipowner nor Government was prepared to pay the seafarers any wages, maintenance or provide them with housing.

The US Attorney's office explained that 'in such cases the government's only alternative is to detain material witnesses and house them at a minimum security federal custodial facility, such as a camp or community confinement center.' Noting the cooperative nature of the men concerned, the Attorney's office magnanimously permitted their release to the care of Father Henry Hernando and the Seafarers' Center. For assisting the US Government in its efforts to combat pollution, the seafarers were effectively given the choice of prison or charity.

Fortunately a combination of Filipino community groups, seafarers' welfare organisations and unions was able to provide the men with material support for the duration of their enforced stay. However at the end of the trial, their ordeal was not over.

On returning to the Philippines, those seafarers that did not benefit from the financial rewards of whistle blowing found themselves unable to get work. To quote from a letter written to the ITF from one the men's daughters: 'They would like to work again in the ship but the problem is, all the company here in the Philippines will not accept them because of the incident that happen which involves them. They are being black listed in all the companies that they have applied in.' An additional mark against them appeared to be the manning agent's objection to a successful backpay claim facilitated by the ITF.

Source: Jeff Engels, ITF Co-ordinator, USA

It is understood that the limitation on the requirement of the shipowner has now been lifted and in future cases any crew members participating in investigations at the behest of the US Government must be accommodated at the company's expense.

CRIMINALISATION & ACCESS TO JUSTICE

In recent years awareness and concern over environmental pollution has grown significantly. Between 1995 and 2005 the US enforced 30 criminal convictions on intentional discharge of oil, netting US\$133 million in fines.¹⁶ Whilst all efforts to protect the environment are to be welcomed, an unfortunate side effect within the maritime industry has been a tendency to criminalise seafarers for offences committed unintentionally and/or unavoidably during the course of their professional duties.

A recent study by the Baltic International Maritime Council (BIMCO) showed that in eight high profile cases (**Million Hope**, **Orapin Global**, **Erika**, **Asian Liberty**, **Amorgos**, **Prestige**, **Tasman Spirit** and **Celine**), sanctions were taken against seafarers before any deliberate act of negligence had been admitted or proven in court.¹⁷ These cases were characterised by a lack of negligent behaviour on the part of the master and seafarers. Nevertheless, they were punished for their involvement and subjected to extreme stresses, not least as a result of extensive media coverage. Such cases must be considered as part of a human rights report on two counts - firstly, in terms of increased work-related stress and, secondly, with respect to fair treatment before the law.

In the modern maritime industry, reduced crews are expected to effect fast turnarounds and take ever greater responsibility for maritime security and pollution prevention. On the one hand they are subject to pressure from the company to remain economically competitive at all costs. On the other hand they face the threat of heavy-handed sanctions by States eager to find scapegoats for politically sensitive cases involving environmental damage.



In the case of the **Celine**, the US Coast Guard raised the stakes of a routine inspection, calling in the FBI and seizing the hard drive of an on-board computer. The vessel was formally detained for suspected violations relating to the oily water separator equipment. Following this the chief engineer tragically committed suicide. In addition the US authorities held the captain for some considerable period without charge, unsympathetic to the fact that his father was seriously ill in his home country. The shipowner's attorney observed that 'the quest for truth and justice seems to have been replaced by the search for a viable criminal defendant.'

In two of the most notorious cases of recent times, the **Erika** and the **Prestige**, the ship's masters were hastily detained for long periods though they had done their best to minimise the impact of disaster. In Pakistan the seven crew members and one salvor from the **Tasman Spirit** were held in captivity for nine months following the grounding of the vessel in July 2003 - in spite of the fact that the vessel had been navigated with the guidance of a licenced pilot from the port authority.

The International Covenant on Civil and Political Rights (1966) provides for equal, non-discriminatory treatment before the law and effective remedy for any persons whose rights or freedoms are violated. Article 9 sets out the right to liberty:

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have enforceable right to compensation.

UNCLOS has more to say on the subject of the prompt release of vessels and crews. Article 292.4 states:

'Upon the posting of a bond or other financial security determined by the court or tribunal, the authorities of the detaining State shall comply promptly with the decision of the court or tribunal concerning the release of the vessel or its crew.'

In the case of the **Prestige**, a Greek-owned, Bahamas-flagged tanker sank off the coast of Spain, causing serious oil pollution. The vessel had previously been refused access by the coastal State to a place of refuge in order to undertake salvage operations. The master was forcibly removed by the Spanish military and subsequently held in jail for over three months. Bail was set at an astronomical €3 million. He was eventually released from custody on a lesser bail amount being paid, but was repeatedly refused permission to leave Spain, before he was finally permitted to return to Greece.

Similarly in the case of the **Erika**, a Maltese flagged, Italian owned vessel caused heavy oil pollution when it foundered off the coast of France in 1999. The Indian Master was imprisoned for some considerable time by the French authorities. Although serious pollution was the outcome of both incidents, the masters did not intend to commit acts of pollution - in fact they did their utmost to limit the consequences of an accident beyond their control. In addition they had to make judgements whilst working in alarming adverse weather conditions on structurally flawed vessels - circumstances that most land-based workers could not imagine. As such, it is unconscionable that they were treated as perpetrators of criminal offences.

Tasman Spirit: hostages to a fortune

In July 2003 the Maltese-flagged crude oil tanker Tasman Spirit ran aground under pilotage near the harbour mouth at Karachi port and began to leak oil. Salvors were called in and the pilot was suspended. A combination of bad weather and soft mud hindered the salvage operations and the vessel broke up losing 45% of its cargo of Iranian light crude, causing serious pollution. Karachi Port Trust arrested the ship's master, crew and the salvage tug's captain.

In a letter to the ITF the 'Karachi Eight' complained of delaying tactics applied by the prosecutors and stated 'we are being kept detained in this country not because there is a case to answer or any case that could be made against us, but we are being kept as human pawns in the dirty battle between local authorities and the vessel's P&I insurers regarding the amount of compensation to be paid.'

The eight men were effectively held hostage until April 2004, a full nine months later, when they were unconditionally released following interventions from the IMO Secretary General, the European Union and the US Secretary of State alongside widespread international condemnation.

Amid a complex array of claims and counter claims two central cases are still being fought out. The shipowner, Assimina Maritime (a Polembros company) is claiming damages from the charterer, Pakistan National Shipping (PNSC) for using an unsafe port and breaching a 'safe ports' warranty, whilst Pakistan is claiming compensation for pollution.

At the time of the accident, Pakistan had not signed the Civil Liability Convention and thus does not qualify under the oil compensation fund and can sue only under its own law of negligence. Having released the detainees, its only security is the vessel's scrap value of \$1.8 million.

Source: Fairplay, Volume 356, Issue 6374 & ITF Files

Most of the vessels cited above from the BIMCO report are registered to flags of convenience. FOCs have repeatedly been seen to facilitate the evasion of liability by substandard operators and, in addition, they have a poor record of providing diplomatic protection to seafarers when they need it most. It is striking that the flag States in the **Prestige** and **Tasman Spirit** cases – Bahamas and Malta respectively – chose not to exercise their right under international law to institute legal proceedings, through the International Tribunal of the Law of the Sea under Article 292 of UNCLOS, to secure the prompt release of the seafarers involved. This application for prompt release can only be made by or on behalf of the flag State of the vessel. Considering the number of ships flying FOCs, this is a major obstacle for seafarers seeking access to justice.

The International Law Commission has also observed, during its work on the codification and progressive development of diplomatic protection, that:

*'If the ship flew a flag of convenience, the State of registration would have no interest in exercising diplomatic protection should the crew's national Governments fail to do so.'*¹⁸

Given the global nature of shipping, seafarers clearly need special protection. Not only must they contend with multiple jurisdictions: the flag State, the port State and the State of their nationality, which may or may not assume precedence in any situation, they can also be confronted with complex laws and procedures in a language they do not understand. It is essential that seafarers are treated fairly and that their fundamental rights are respected. These include the right to avoid self-incrimination and the right to be addressed in a language they understand.

Unfortunately, in spite of the provisions within UNCLOS and in the various international conventions designed to ensure universal fair treatment before the law, recently adopted legislation, in the form of the European Directive on Criminal Sanctions for Ship-Source Pollution, due to be implemented in March 2007, undermines existing human rights protections. The Directive introduces sanctions, including criminal sanctions for offences effectively caused unintentionally.

Whereas the generally accepted industry standard in the IMO Convention for the Prevention of Pollution from Ships (MARPOL) liability is based on 'intent to cause damage or recklessly and with knowledge that damage would probably result', the European Directive lowers the base to 'intent, recklessly or by serious negligence.' The problem lies with the curious term 'serious negligence', a concept that is not defined within the European legal system and is thus open to broad and inconsistent interpretation. In addition to the unacceptable vagueness of its definitions, the Directive fails entirely to safeguard the rights of seafarers and masters, which - as has been shown by the shameful treatment of the captains of the **Prestige** and **Erika** - need to be improved, not undermined.

The IMO and ILO recently drafted guidelines on the fair treatment of seafarers in the event of a maritime accident. It is hoped that these will shortly be adopted by the IMO Legal Committee and the ILO Governing Body. In addition, an industry coalition led by Intertanko is presenting a legal challenge to the validity of the EU Directive, indicating that there is at least some opposition to the concerning trend of criminalising seafarers.

Governments and industry must at least ensure that seafarers are:

- treated in a manner that preserves their human dignity at all times
- protected from discrimination
- provided with subsistence in the event of detention
- protected from arbitrary detention without charge
- entitled when detained to be informed promptly of the charges against them
- given prompt access to courts to challenge the lawfulness of detention
- entitled to trial without delay
- provided with compensation for unlawful detention
- given access to interpretation services and independent legal advice
- protected from self-incrimination whilst fulfilling the requirements of the ISM Code

ACCESS DENIED – IMPACT OF THE NEW SECURITY REGIME

The International Ship and Port Facility Security (ISPS) Code was fast tracked through the IMO and came into effect on 01 July 2004. Whilst it sought to establish a new security - conscious regime in the post-September 11 climate, it also acknowledged the need to retain seafarers' access to essential facilities and to shore leave.

Paragraph 11 in the Preamble to the ISPS Code states:

'Recognizing that the convention on the Facilitation of Maritime Traffic, 1965, as amended, provides that foreign crew members shall be allowed ashore by the public authorities while the ship on which they arrive is in port, provided that the formalities on arrival of the ship have been fulfilled and the public authorities have no reason to refuse permission to come ashore for reasons of public health, public safety or public order, Contracting Governments, when approving ship and port facility security plans, should pay due cognisance to the fact that the ship's personnel live and work on the vessel and need shore leave and access to shore-based seafarer welfare facilities including medical care.'

Approximately one year after the entry into force of the ISPS Code, the ITF received responses to a survey sent to 230 seafarers' union affiliates, representing approximately 700,000 members, and to 127 ITF inspectors, to gauge the effectiveness of the Code and the implications of its implementation for seafarers.¹⁹

The unions that responded can be said to speak on behalf of approximately 165,000 seafarers. The results were striking.

Key issues affecting seafarers identified by the ITF questionnaire on maritime security:

- increased workload
- increased responsibility
- lack of commensurate increase in pay
- inadequate training
- restrictions on shore leave
- problems in obtaining US visas
- difficulties for seafarers' welfare and trade union representatives seeking to board vessels to provide services to crew

Whilst most thought that the ISPS Code had had a positive effect on improving security, the vast majority were adversely affected by its implementation – either as a result of increased work-load or due to greater restrictions in terms of access to shore leave and welfare facilities.

Eighty-six per cent maintained that the ISPS Code had resulted in extra work with an adverse impact on crew performance and well-being, whilst only 4% reported an increase in manning levels to cope with the additional work load. In the context of human rights abuses, of primary concern is the issue of shore leave and the restrictions placed on seafarers wanting to leave a vessel.

As seafarers live and work on their ships for months on end, the importance of shore leave, and access to shore based facilities cannot be underestimated. Fifty-eight per cent of responses to the ITF survey informed of members being denied shore leave, with a particular emphasis being placed on US ports. The Associated Marine Officers and Seamen's Union of the Philippines (AMOSUP) carried out an internal survey of its members and discovered that no less than 70% had been denied shore leave, again citing the US as being the most problematic.

Being confined to a vessel for long periods, interacting only with a small group of people – possibly of multiple nationalities – bringing linguistic and cultural challenges, can cause physical and mental problems. This combined with an inability to maintain contact with family or gain access to healthcare facilities is an intolerable strain for seafarers. One representative quoted in the ITF survey reported: 'Seafarers say that in US ports they fear becoming ill and needing to go and get medical assistance at a clinic or hospital and perhaps not being allowed to leave their vessel.'

Whilst the need to improve security in the maritime sector is recognised and not disputed, it must be implemented in such a way as to safeguard the human rights of seafarers.

'On the one hand seafarers are expected to take on additional work, without financial recompense, in the name of international security, and on the other they face new procedures and restrictions. They are expected to embrace the role of security guard whilst simultaneously being treated as international terrorists.'²⁰

M.V. Sunny Globe: the heavy hand of arbitrary officialdom

In December 2005 the **M.V. Sunny Globe** arrived in Long Beach to off-load cement and take on scrap metal, a task that would take about seven days. On 14 December an immigration officer came on board the vessel to question the seafarers.

One of those questioned was a Filipino Ordinary Seaman (OS) who had not long been at sea. When asked about his previous career he replied that he had been a mechanic. This prompted a follow-up question on the uses of brake and engine oil – the official seemed set on testing the seafarer's technical knowledge. The OS was shy and had limited English language skills. He could not answer the question. The Master of the vessel offered to vouch for his crew-member, saying that he had sailed on two previous contracts with him and confirming that he was of reliable character. The reference was not deemed acceptable. Instead the immigration officer issued a 'notice to detain the alien on board', requiring that the seafarer be 'detained on board under safe guard at all time while in the US'.

His stated reason for the detention was given as 'malafide'. The rest of the crew were allowed ashore.

Source: Stefan Mueller-Dombois, ITF Inspector, USA

CONCLUSION

This report has looked at abuses visited on those working in the maritime and fishing sectors, without commenting on the fact that these are substantially different industries. That said, there are evident similarities in the working conditions and vulnerabilities of these two work forces, though they fall under the limited protections of different legislations and organisations. Both seafarers and internationally operating fishers are dependent on the ratification and effective implementation of international conventions to protect their fundamental rights. They rely on the responsible engagement of flag States, port States and labour supply States.

Currently the burden of monitoring industry standards falls squarely on the shoulders of port States that have, in some parts of the world, been effective (through such mechanisms as the Paris and Tokyo Memoranda of Understanding), in detaining substandard vessels. The new ILO Maritime Labour Convention (2006), when in force, will broaden the scope of inspections from the

largely technical, to include minimum standards for seafarers' employment and social rights. However, port States that lack the resources of developed countries, or a stable system of governance (some may even lack a permanent government) are certainly not able to ensure the implementation of the international instruments designed to protect fundamental human rights.

The cases cited in this report represent a small fraction of the human rights violations experienced in the maritime and fisheries industries. That such abuses occur should be recognised by the international community as an appalling anachronism in the 21st century. Seafarers' and fishers' rights have for too long been brushed aside in the pursuit of flexible, commercially focused policies, where fundamental rights have become subservient to business imperatives. It is time to raise the profile of the human element of these global industries. Seafarers and fishers must not be disregarded as out of sight, and out of mind.



RECOMMENDATIONS

Some specific recommendations relating to the various areas of this report:

- Human and labour rights of seafarers and fishers should be prioritised when formulating the work agenda of the relevant UN agencies, and should be placed high on the agenda for discussion at the next meeting of the UN informal consultative process on the Law of the Sea (UNICPOLOS)
- The UN should address the need to develop a complementary implementing agreement to ensure that flag States effectively discharge their obligations under UNCLOS
- More serious consideration must be given to defining the 'genuine link' that must exist between the flag of a vessel and its beneficial owner
- Ratification and implementation of the ILO Maritime Labour Convention (2006) should be promoted
- More effective regulation of the fishing industry must be introduced, beginning with the adoption of the ILO Work in the fishing sector convention
- States are encouraged to make effective existing regulation in the fishing industry by ratifying STCW-F and the Torremolinos Protocol
- A mandatory instrument must be developed to ensure that vessel owners make the necessary provisions for financial security in cases of abandonment of seafarers and fishers
- States must ensure, when implementing the ISPS Code or any other procedures relating to security, that they do not impinge on the rights of seafarers to shore leave and access to port facilities, nor should representatives of welfare and/or labour organisations be prevented from providing services to crew on board ships
- States should be encouraged to ratify ILO Convention 185 – Seafarers' Identity Documents, a convention designed to enhance security but that protects seafarers' and international commercial fishers' rights to shore leave and overrides the new requirement by some States for seafarers to obtain individual visas
- States are advised against the adoption of measures that seek to protect the environment at the cost of criminalising seafarers
- More research needs to be undertaken to expose the insidious practice of blacklisting seafarers and fishers

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MAIN HUMAN RIGHTS TREATIES ADOPTED BY UN ORGANISATIONS

- **The Universal Declaration on Human Rights 1948 (UDHR)**
- **The International Covenant on Economic, Social, and Cultural Rights 1966 (CESCR)**
- **The International Covenant on Civil and Political Rights 1966 (and its Protocols) (CCPR)**
- **The International Convention on the Elimination of All Forms of Racial Discrimination 1965 (CERD)**
- **The Convention on the Elimination of All Forms of Discrimination Against Women 1979 (and its Protocol) (CEDAW)**
- **Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 (and its Protocol) (CAT)**
- **Convention on the Rights of the Child 1989 (and its Protocols) (CRC)**

ADDITIONAL UN CONVENTIONS RELEVANT TO SEAFARERS

- **UN Convention on the Law of the Sea (UNCLOS)**

REGIONAL HUMAN RIGHTS TREATIES

- **European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 (and its Protocols) (ECHR)**
- **European Social Charter 1961 (and its Protocols) (ESC)**
- **European Social Charter (Revised) 1996 (ESC)**
- **American Convention on Human Rights 1969 (and its Protocol) (ACHR)**
- **African Charter on Human and Peoples' Rights 1981 (and its Protocols) (AC)**

CORE ILO CONVENTIONS

(now incorporated in the ILO Maritime Labour Convention (2006))

- **The Freedom of Association and Protection of the Right to Organize Convention 1948 (ILO C87)**
- **The Right to Organize and Collective Bargaining Convention 1949 (ILO C98)**
- **The Forced Labour Convention 1930 (ILO C29)**
- **The Abolition of Forced Labour 1957 (ILO C105)**
- **The Minimum Age Convention 1973 (ILO C138)**
- **The Worst Forms of Child Labour Convention 1999 (ILO C182)**
- **The Equal Remuneration Convention 1951 (ILO C100)**
- **The Discrimination (Employment and Occupation) Convention 1958 (ILO C111)**

CORE IMO CONVENTIONS

RELEVANT TO SEAFARERS

- **International Convention for the Safety of Life at Sea 1974 (as amended, and its Protocols) (SOLAS)**
- **International Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1978 (STCW)**
- **International Management Code for the Safe Operation of Ships and for Pollution Prevention 1993 (ISM) adopted under Chapter IX of SOLAS**
- **International Ship and Port Security Code 2004 (ISPS)**

Human Rights Treaties and ILO Conventions create defensible rights for individuals.

IMO Conventions create obligations on States which may create benefits for seafarers.



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