

INTERNATIONAL MARITIME CONVENTIONS: SEAFARERS'S SAFETY AND HUMAN RIGHTS

INTRODUCTION

Like the wind and waves, the dangerous nature of the seas has never changed. One of the earliest studies on accidental fatalities of seafarers, carried out by the British Board of Trade in 1894, revealed a mortality rate of 113 deaths per thousand per year, i.e., 9 times that of railway employees, and 147 times that of factory and shop operatives.¹ A more recent study by Li and Wonham confirms that the average fatal accident rate from 1962 to 1988 in the British shipping industry was 1.28 deaths per thousand per year, 3 times that of the coal-mining industry, 5.5 times that of the construction industry, and 25 times that of the manufacturing industry.² Every year, about 6,500 seafarers lose their lives due to shipping disasters, personal accidents, suicide, homicide and diseases at their places of work.³ Such studies indicate that seafaring was, and still is, a dangerous occupation.

BETTER PROTECTED OR IGNORED?

The nature of seafaring has made seafarers a politically, legally and economically weak group in society, as they are "a group set apart from other members of the work force. Thus ... they do not enjoy the same freedom as their sisters and brothers who work on shore by virtue of having to live and work far from home and community."⁴ Justice Joseph Story in *Brown v. Lull* described them as "a class of persons remarkable for their rashness, thoughtlessness and

1 Quoted in T.J. Larsson & C. Lindquist, "Traumatic fatalities among Swedish seafarers (1984-88),"15 Safety Science 173-82 (1992).

2 Kevin Xingang Li & Jon Wonham, "Maritime Legislation: New Areas for Safety of Life at Sea," 28Mar. Pol'y & Mgmt. 213-24 (2001). Kevin Xingang Li, "Seamen's Accidental Deaths World-Wide: A New Approach," 25 Mar. Pol'y & Mgmt. 149-55 (1998). Kevin Xingang Li & Jon Wonham, The Role of States in Maritime Employment & Safety: A Legal and Economic Study 317 (2001) (hereafter Li & Wonham)

3 *Ibid.*

4 Paul K. Chapman, Trouble on Board-The Plight of International Seafarers 110 (1992).

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improvidence. They are generally necessitous, ignorant of the nature and extent of their own rights and privileges, and for the most part incapable of duly appreciating their value."

INTERNATIONAL SEAFARERS

"Of all sections of the community, seafaring men ... have been the most ignored and therefore the worst treated."⁵ Among all seafarers, the most ignored are international seafarers who work for foreign ship owners, mainly aboard open-registry ships. There are no official data or records as to how many seafarers have worked, been injured and died on such ships. Nor have there been effective programs for the protection of the health and safety of such seafarers, reflective of rights both fundamental and recognized in international law.⁶

The "lack of academic attention to the working conditions of international seafarers is a shame in that the growth of international economic interdependence has increased the importance of the maritime industry worldwide. There is much to be done in this area by both researchers and governments.

SEAFARER'S RIGHTS

A. MARITIME CONVENTIONS AND SEAFARER'S RIGHTS

Numerous international conventions, covering a variety of issues in shipping, have been adopted by, among others, the International Labour Organisation (ILO), the International Maritime Organisation (IMO) and the United Nations Conference on Trade and Development (UNCTAD).

Most relevant to maritime labor issues are the conventions adopted by the ILO. The ILO establishment in 1919, it has adopted more than fifty conventions and recommendations applying specifically to seafarers. These constitute a comprehensive set of minimum labor standards, but they have not, unfortunately, been widely adopted. The implementation rate generally among ILO members is only fifteen per cent.

⁵ Jonathan S. Kitchen, *The Employment of Merchant Seamen* 1 (1980).

⁶ "Everyone has the right to life, liberty and security of person." Art. 3, The Universal Declaration of Human Rights,

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IMO conventions cover all technical aspects of maritime safety, including navigation, ship design and equipment, subdivision, stability and load lines, search and rescue, life-saving appliances, carriage of dangerous goods, fire safety, marine pollution, maritime training and certification, international maritime traffic facilitation, health management, flag state duties, port state control and piracy.

B. THE RIGHT TO LIFE

As the seas link distant lands and ships sail all over the world, it has been accepted since ancient times that international cooperation is a necessary aspect of all maritime ventures. In the event of worst weather, for example, a ship has the right to refuge in a foreign port, and the duty to aid others in distress at sea. For example, the United Nations Convention on the Law of the Sea⁷ obliges the master of a ship to assist any person, including seafarers of other nationalities, or even an enemy, who is in danger of being lost at sea, and to rescue people in distress as quickly as possible, if he is aware of their need for assistance, in so far as such an action may reasonably be expected of him, and provided he can do so without serious danger to his vessel, her crew and her passengers.

In this regard, international maritime law also requires that "every coastal state shall promote the establishment, operation and maintenance of an adequate and effective search and rescue service regarding safety on and over the sea"⁸ and adopts measures necessary to enforce the duty of the master to save life at sea.⁹

Crimes at sea pose another threat to seafarers' safety. Piracy is the oldest crime at sea. It endangers or takes not guilty human lives, jeopardizes fundamental freedoms and seriously impairs the dignity of human beings.¹⁰ It is a common misconception that piracy has disappeared in modern times. Unfortunately, it is much more serious today than popularly imagined. According to the International Maritime Bureau (IMB), during the period of 1991

⁷ United Nations Convention on the Law of the Sea, Dec. 10, 1982, 21 I.L.M. 1261 (1982)

⁸ UNCLOS 1982 art. 98(2).

⁹ 1989 Salvage Convention art. 10(2).

¹⁰ SUA, 1988.

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to 1999, a total of 2,452 crimes against seafarers at sea were reported to the IMB, 187 seamen were killed, 137 injured, 1,652 taken hostage, 343 threatened, and 133 assaulted. Safety at sea obviously cannot be achieved without provision of safe-and peaceful-working conditions for seamen.

C. THE RIGHT TO SAFE WORKING CONDITIONS

As employers, shipowners have an obligation to seafarers to ensure that their ships are seaworthy, in order to provide a safe working environment. In this context, "seaworthy" generally has the same meaning as it is commonly understood to have in a commercial contract.¹¹ In contracts for the carriage of goods by sea, for example, the carrier is obliged to the shipper to put into effect due diligence to make the ship seaworthy before and at the start of the voyage.¹²

D. THE RIGHT TO PARTICIPATE IN SAFETY MANAGEMENT

The ISM Code,¹³ one of the most essential documents adopted by the IMO, was later incorporated as Chapter IX of SOLAS. One of the objectives of the ISM Code is to prevent human injury and loss of life at sea by the establishment of a safety culture throughout the whole system of the management and operation of a shipping company, and to improve the system in a dynamic way. Under the ISM Code, if a ship's safety is jeopardised by its crew being over-worked or billeted in unhealthy conditions, the designated person should be available to address these conditions when the ship's management fails to do so. However, the appointment of a designated person should by no means replace the chain of command, in particular, the master's authority in navigation and management of the vessel. The intention of the provision is to provide for effective monitoring of the chain of command, and to recognise and redress any failure in it.

¹¹ Thor Falkanger, Hans Jacob Bull & Lasse Brautaset, Introduction to Maritime Law: TheScandinavian Perspective 238 (1998).

¹² Hague Rules art. 3 (l)(a).

¹³ International Management Code for the Safe Operation of Ships and Pollution Prevention, Nov. 4,1993.

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E. THE RIGHT TO PROFESSIONAL CERTIFICATES

Seafarers' certificates evidence not only their professional achievements, but also their qualifications, experience and competence. The international nature of seafaring makes it necessary that such certificates be accepted by port states. It is also in each seafarer's interest to see that all certificates from the maritime authorities reflect that seafarer's true skills and competence. Inaccurate certification will jeopardize not only the safety of his ship but also the security of his job.

STCW 1978 provides that those "who, to the satisfaction of the administration, meet the requirements for service, age, medical fitness, training, qualification and examinations in accordance with the appropriate provisions" are entitled to receive certificates for seafarers.¹⁴

F. THE RIGHT TO SAFETY TRAINING

Ships used to be simple to run and similar to each other. Seafarers therefore found it easy to move from one ship to another. With the advancements in various shipboard technologies and greater specialization, today's ships are very different from each other. A seafarer working with confidence on one type may find himself lost on another. Shipping companies are required to assist seafarers in coping with these differences by establishing procedures to ensure that new personnel, as well as personnel transferred to new assignments, are given proper training for their new duties.¹⁵ The revised STCW Convention also provides that seafarers should be given the opportunity for training in safety and survival.

Implementing the revised STCW Convention has enhanced the scope for such co-operation.

All newly employed seafarers should have the opportunity to become familiar with the shipboard facilities, operating procedures and other arrangements required to carry out their duties properly before they assigned to these duties. They have the right to receive training, instruction and information on survival crafts, rescue boats and fast rescue boats, advanced firefighting, and first aid and medical care.

¹⁴ STCW 1978 art.VI.

¹⁵ See ISM Code ¶ 6(3), 6(5).

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G. THE RIGHT TO SUFFICIENT REST

A ship is like a floating factory, surrounded by seas, often rolling and pitching with the wind and waves. Working and living in such conditions can forestall sufficient sleep and rest. Want of quality sleep has been recognized as one of the main reasons for fatigue among seafarers, which results in poor performance and, ultimately, in accidents.¹⁶ There is a need, therefore, to regulate the maximum hours of work or minimum hours of rest. STCW 1995 requires that, for the reason of preventing exhaustion, officers in charge of watches, and ratings forming division of a watch, must have a minimum of ten hours of rest per day. It can be divided into two parts, each of which must have a duration of at least six hours. More importantly, the revised STCW Convention created some new provisions entitling the master and duty officer to take into account "the factors which can contribute to fatigue" when they make decisions on ship operations. These provisions may mean that the master of the ship will decide to have a longer stay in a port to give the crew a sufficient rest, if he believes it is necessary.

SHIPOWNER'S LIABILITY

Most of the seafarer's rights so far discussed are complemented with obligations and liabilities assigned to the ship's owner or operator. Some complementary obligations and liabilities are shouldered by authorities, however, and others by other private parties, e.g., shippers. As a general principle, a ship-owner should provide his employees, i.e., the crew, with safe working conditions, as detailed above.

Regarding the carriage of cargo, there are three conventions, i.e., the Hague Rules, 1924; the Hague-Visby Rules, 1968; and the Hamburg Rules, 1978, all of which clearly provide that the carriers or ship owners have an obligation to provide seaworthy ships. Compared with attention to the protection of cargo, attention to the protection of life has been less pronounced in maritime conventions. This should be addressed in international maritime

Legislation, particularly in ILO legislation.

¹⁶ Louise Reyner & Stuart Baulk, *Fatigue In Ferry Crews: A Pilot Study* (1998).

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STATE'S RESPONSIBILITY

In principle, international law obliges each state to ensure that ships in its register adhere to the international standards of safety.¹⁷ In particular, international maritime conventions require states to ensure the prevention of accidents, safe working environments aboard ships flying their flags, and the prevention of crime against seafarers and at sea.

A. PREVENTION OF ACCIDENTS ON BOARD SHIPS

Under the ILO's "umbrella" convention, the Merchant Shipping Convention, states are required to provide laws or regulations laying down safety standards for ships registered in their territory, substantially equivalent to articles 4 and 7 of the Prevention of Accidents (Seafarers) Convention,¹⁸ (No. 134), unless the states are already bound by ratification of that convention to give all its provisions full effect. However, the Merchant Shipping (Improvement of Standards) Recommendation,¹⁹ recommends that ILO Convention No. 134 be applied in full.

From articles 4 and 5 of ILO Convention No. 134, it follows that national legislation should lay down general and basic compulsory provisions for the prevention of occupational accidents in maritime employment.

B. A SAFE WORKING ENVIRONMENT

Under ILO's Convention No. 148, national laws and regulations are required to prescribe measures "for the prevention and control of and protection against occupational hazards in the working environment due to air pollution, noise and vibration."²⁰ While such legislation may be of general scope, it should be made specifically applicable to seafarers who work on board ships, bearing in mind the possible effects of such factors on seafarers. ILO Convention No.148 requires that national legislation should ensure that shipowners and seafarers have a duty to comply with relevant safety procedures, and that the competent authorities collaborate

¹⁷ See Merchant Shipping Convention art. 2(a)(i). See also UNCLOS 1982 art. 98(2).

¹⁸ Prevention of Accidents (Seafarers) Convention, Oct. 30, 1970 (No. 134).

¹⁹ Merchant Shipping (Improvement of Standards) Recommendation, Oct. 29, 1976 (No. 155).

²⁰ Working Environment (Air Pollution, Noise and Vibration) Convention, July 11, 1977 (No. 148),art. 4.

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with shipowners' and seafarers' organizations to "establish criteria for determining the hazards of exposure to noise pollution and air pollution etc." on board ships and to set exposure limits.²¹

C. PREVENTION OF CRIME AGAINST SEAFARERS

UNCLOS defines piracy as any act against seafarers and other people on any ship on the high sea.²² Each state has an obligation under international law to co-operate, to the fullest possible extent, in the repression of maritime piracy, and to make illegal acts at sea punishable by appropriate penalties.²³ Although maritime violence, including piracy, remains an extremely serious and growing problem, national governments have not pressed for a new international convention on the subject. The common of such incidents take place within or just outside waters under coastal state jurisdiction.

SHIPPER'S LIABILITY

Many deaths and injuries of seafarers have been caused by dangerous or harmful goods carried as cargo, because the goods were not properly marked or packed, or else because the seafarers were inadequately informed about their hazards. Shippers are required to declare properly any cargo of a hazardous nature and to provide guidelines on the handling of such cargos. This is particularly important now that dangerous cargos are being carried increasingly in containers. Today, if the master has "reasonable grounds for suspecting that dangerous goods are concealed on board," he has the right to search the ship and, if necessary, to break and open the box or package "without being subject to any civil or criminal liability."

CONCLUSION

At present, international law, as embodied in multi-lateral conventions, does not clearly oblige a ship-owner to provide his seafarers with a safe ship. Compared with provisions for

²¹ Working Environment Convention, arts. 5 and 8.

²² 1982 UNCLOS art.101(a) (i), (ii).

²³ 1982 UNCLOS art 100.

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the protection of property and the environment, the protection of human life gets less emphasis in maritime conventions. There are many good provisions scattered through more than fifty international documents, but they have not been implemented properly by many states. The unification of ILO maritime labour conventions and guidelines could improve their implementation, contributing to the protection of seafarers and their human rights.