

ITF Submission to ICONS

Executive summary

This paper shows how the toleration of a corporate structure based on one ship registered companies, the existence of flags of convenience (FOCs) — a regulatory system which in practice allows shipowners to determine the extent to which they will comply with international minimum rules and standards — together with a culture of secrecy, is not only dysfunctional for the long-term future of the industry itself but also to the wider civil society. The problems which beset the industry and the culture of non-compliance, or at best grudging compliance, which has been allowed to develop cause human suffering on a scale which is hard to quantify. If we were to sit down and produce a plan for an industry which was in practice able to operate outside any regulatory control, we would be hard pressed to better the system which has been allowed to evolve into today's shipping industry.

Introduction

This paper should be read in conjunction with the background documents the ITF has already forwarded to the Commission:

1. *"Troubled waters"* — a joint submission to the 7th session of the United Nations Commission on Sustainable Development;
2. *"Oslo to Delhi"* — A comprehensive review of the ITF FOC Campaign;
3. An OECD study entitled *"Competitive advantages obtained by some ship owners as a result of non-observance of applicable international rules and standards"*. It should however be noted that this study seriously underestimates the economic incentives as it only addresses SOLAS related deficiencies and does not cover compliance with human element or environmental (MARPOL) instruments;
4. An OECD *"Discussion paper on possible actions to combat substandard shipping by involving players other than the shipowners in the shipping market"*;
5. A historical listing of flags with above average detention rates and hence targeted by regional Port State Control arrangements;
6. Copies of the annual ITF FOC reports for 1997 and 1998;
7. Copies of the ITF and NUMAST fatigue studies;
8. A copy of the interpretative report of the MORI Seafarers' Living Conditions Survey;
9. A copy of *"Voyages of Abuse"* by Alastair Couper;
10. Copies of the papers the ITF submitted to the 1999 meeting of the joint IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Crew Members;
11. Copies of the NUMAST Reports *"At the Sharp End"*, *"Conditions for Change"* and *"How Many More?"*;
12. A copy of the 1999 ILO Report on Safety and Health in the Fishing Industry;
13. A copy of ITF Publication *"The Trade Union Rights of Chinese Seafarers"* which includes the Report of the ILO Committee of Experts and a copy of a 1995 ILO ruling about the oppression of Burmese seafarers;
14. A copy of a 1998 ITF Report on the Blacklisting of Filipino Seafarers;

15. A copy of a 1999 ITF Report on The Panamanian Ship Registry entitled "*Proud to be an FOC?*"; and

16. A copy of an ITF presentation on "*Malta: a snap shot of an FOC register*".

The ITF considers that there is a fundamental and structural crisis within the maritime sector. The crisis is manifested by the projected shortage of suitably skilled and qualified seafarers, the growing age of the world fleet, the large number of lives lost at sea, the lack of flag state implementation and the spiraling increase in the number of port state control detentions. In our view the principal cause of the crisis is the failure to ensure that sufficient environmental, safety and social standards are implemented as a result of unfair competition and the competitive distortion caused by the existence of the flag of convenience (FOC) system.

Maritime transport is essential to the global economy of today and the sustainable development of the shipping industry is crucial not just to world trade but also to addressing the degradation of the marine environment. It would therefore be expected that such a strategic industry would be run on rational lines and adopt best practice. Unfortunately this is not the case as shipping has been for many years and continues to be an industry in crisis. It is an industry which lurches from obscurity to notoriety whenever a major oil pollution incident takes place, but for most people it is a forgotten industry.

It should also be noted that, in his preface to the report of the 1992 Australian Parliamentary Inquiry entitled "*Ships of Shame*", Peter Morris MHR stated:

"At the onset of the inquiry Committee members were generally aware that there were problems associated with some ships calling at Australian ports. They were not prepared for the sickening state of affairs associated with the operation of sub-standard ships that was revealed as the inquiry proceeded. The Committee was told of:

- *the operation of unseaworthy ships;*
- *the use of poorly trained crews, crews with false qualification papers, or crews unable to communicate with each other or Australian pilots;*
- *ships carrying false information;*
- *classification societies providing inaccurate information on certificates;*
- *flag states failing to carry out their responsibilities under international conventions;*
- *careless commercial practices by marine insurers;*
- *inadequate, deficient and poorly maintained safety and rescue equipment;*
- *classification societies that readily classed ships rejected by more reputable societies;*
- *beating of sailors by ships' officers;*
- *sexual abuse of young sailors;*
- *crews being starved of food;*
- *crew members being forced to sign dummy pay books indicating they had been paid much more than they actually received;*
- *sailors being forced to work long overtime hours for which pay was refused;*
- *crew members being denied telephone contact with home when family members have died;*
- *sailors not being paid for several months and/or remittances not being made to their families at home;*
- *sailors being denied medical attention;*
- *officers regarding crew members as dispensable; and*
- *crew being denied basic toilet and laundry materials."*

The materials previously submitted by the ITF indicate that in practice little has changed in the intervening years.

THE DEBATE ON QUALITY SHIPPING

To date there has been considerable attention given to the promotion of quality shipping and the need to eliminate sub-standard operations. The debate and the proposed solutions have focused on the sub-standard operator and, to be frank, they have not ameliorated the situation and are unlikely to do so in the future. What is necessary is to concentrate on the system which allows the sub-standard operator to prosper and to continue trading. That is, the system which allows owners/operators to shop around and choose the most "suitable" register. Moreover, despite the growing rhetorical commitments of some of the flag of convenience registers to improving compliance with international minimum standards, the question is, does the system itself permit it? Recent reports have indicated that a number of such registers, which generally have an abysmal record, are to take steps to make it easier to remove vessels from their register. That is, they will not stop such vessels trading but merely export the problem elsewhere. Given the ease of registration within such registers, which frequently permit "provisional certificates" to be issued by a Consul and do not require a flag state survey to be carried out for six months, such measures are hardly going to solve the problem.

Similarly, the current discussions on quality shipping have given too great a prominence to the instruments promulgated by the IMO and failed to address the wider issues. The March 2000 Singapore Seminar on Quality Shipping agreed that:

"a sub-standard ship or operation is one that is "substantially below" IMO requirements in accordance with IMO 787(19). A "quality" ship or operation on the other hand is one that is in accordance with the applicable international standards of the day, as well as any related or additional standards set and adopted by others."

However, IMO Assembly Resolution A.787(19) defines a "sub-standard ship" as:

"A ship whose hull, machinery, equipment, or operational safety is substantially below the standards required by the relevant convention or whose crew is not in conformance with the safe manning document". (Para 1.6.9)

The ITF considers that such a definition is rather limited even in terms of the mandate of the IMO as it fails to reflect some of the control provisions found in IMO Conventions. It also fails to reflect other human element aspects, for example it does not fully reflect the control procedures as set out in Regulation I/4 of the revised STCW Convention. It should be noted that the United Nations General Assembly has placed considerable emphasis on the universal character of the United Nations Convention on the Law of the Sea (UNCLOS) and has repeatedly stressed its fundamental importance for the maintenance and strengthening of international peace and security, as well as for the sustainable use and development of the seas and oceans and their resources. The United Nations General Assembly has also repeatedly reaffirmed that UNCLOS provides a framework for national, regional and global action in the marine sector as well as reaffirming the unified character of the Convention. UNCLOS is an umbrella or framework convention which is further built upon by the applicable instruments and standards developed by the specialised United Nations agencies which have established competencies under UNCLOS.

Article 94 of UNCLOS sets out the duties of a flag state and requires that every state shall effectively exercise its jurisdiction and control in administrative technical and social matters over ships flying its flag. It also establishes express requirements on the following aspects:

- maintenance of records of the ships which fly its flag;
- assumption of jurisdiction under its internal law over the ship and the crew;
- ensuring the safety of ships with regard to:
 - construction, equipment and seaworthiness;
 - manning, labour conditions and training of crews;
 - maintenance of communications and prevention of collisions;
- ensuring that each ship is surveyed before registration and thereafter at appropriate intervals;
- ensuring that the ship carries charts, nautical publications and navigational equipment and instruments appropriate for the safe navigation of the ship;
- ensuring that the master and officers possess appropriate qualifications;
- ensuring that the crew is both adequate in number and suitably qualified;
- ensuring that the master and crew are conversant with applicable international regulations; and
- conforming to generally accepted international regulations, procedures and practices and taking any steps which are necessary to secure their observance.

It is therefore evident that the concept of quality shipping cannot be based solely on the rules and regulations established by the IMO. It must also look at the social and labour dimensions, which means looking at human and trade union rights standards, as established by the ILO and other competent international bodies.

The international community has also attached considerable importance to the establishment of a safety culture on board ships and if this is to be achieved it will require that the human element is addressed in a holistic manner and that seafarers are in practice able to effectively exercise their inherent human and trade union rights.

There are other related obligations and requirements established by UNCLOS and, as the United Nations has stressed the unified character of the Convention, attention must also be given to the other relevant provisions. These would, inter alia, include Article 91 (Nationality of ships) and Article 217 (Enforcement by flag States).

The foregoing section should not be taken as indicating that the ITF considers that the debate on quality shipping has not made substantial progress. It clearly has and these developments have been strongly supported by the ITF. It should be noted that the summary conclusions of the March 2000 Singapore Seminar on Quality Shipping contain the following:

“Many of the key note speakers proposed that the promotion of quality shipping required a balance of the carrot and the stick. In the discussion on possible measures of accountability or penalty for sub-standard ships, it was suggested that there was a need for a new international instrument that laid down the minimum requirements and obligations of a flag State. Those who did not fulfil these minimum requirements could be black listed by others in the industry such as the class societies. Port States could also consider more inspections or even ban ships under blacklisted flag States from their ports. The “carrot” was less inspections for quality ships.”

There has also been wide agreement on the importance of greater transparency within the industry, that quality seafarers are essential to quality shipping and that, while the primary responsibility for quality

shipping is with the owner or operator of the ship, all those involved in the chain of responsibility have a role to play.

CRITERIA FOR QUALITY SHIPPING

The analysis of the regulatory framework provides some guidance on the general criteria and the performance criteria for quality shipping and quality registers:

- ratification and implementation of UNCLOS, relevant IMO Conventions, applicable ILO Maritime Conventions (especially ILO 147) and giving effect to basic human rights instruments (including the ILO Declaration on Fundamental Principles and Rights at Work of 1998);
- being able to demonstrate the effective enforcement and compliance with the obligations established by the relevant treaties; and
- an ability to demonstrate that the flag state gives full and complete effect to applicable generally accepted international regulations, procedures and practices.

It is axiomatic that quality shipping needs quality seafarers and quality registers. "Quality" is generally defined as possessing a high degree of excellence and being concerned with the maintenance of high quality. Therefore the term "quality" means more than mere compliance with international minimum requirements and requires meeting the best practice standards, it being understood that best practice is something which is subject to continuous improvement.

CORPORATE STRUCTURES AND TRANSPARENCY

The typical form of corporate structure in world shipping involves the use of one ship registered companies. The only assets of these shell companies, which are the registered owners of the vessel, is the ship itself. The unwillingness of many courts to pierce the corporate veil and establish who is the real beneficial owner allows shipowners to limit their liabilities. This in turn means that many innocent victims are unable to recover the losses they have suffered through no fault of their own. This, in itself, is indicative of the fact that a culture of evasion permeates the entire shipping industry and therefore it is unrealistic to expect that such an industry is capable of self-regulation. The complexity of corporate structure led to the following newspaper quote in the aftermath of the catastrophic oil pollution caused by the grounding of the SEA EMPRESS:

"Built in Spain, owned by a Norwegian, registered in Cyprus, managed from Glasgow, chartered by the French, crewed by the Russians, flying a Liberian flag, carrying an American cargo and pouring oil on to the Welsh coast. But who takes the blame?" (Independent, 22 February 1996)

It was therefore not surprising that in the aftermath of the ERIKA pollution incident it was a full two weeks before the real owner of the vessel was identified. This was in spite of the best efforts of a number of governments and, of course, the media. It should be recalled that in the aftermath of the AEGEAN SEA and BRAER disasters a confidential British Petroleum memo was published in the media. It revealed that BP surveyed 3,206 tankers owned by charter firms and rejected 986 of them after finding them "unacceptable", i.e. a major oil company found one third of the tankers it surveyed to be unsafe.

One of the achievements of the attempts to promote quality shipping has been to make some significant inroads into the culture of secrecy which permeates the maritime industry. Transparency has become an important objective and the March 2000 Singapore Seminar on Quality Shipping agreed transparency and the communication of information were one of the important points which must continue to be addressed. It agreed that:

"It is essential to ensure that Equasis becomes an international system, able to be used by all sectors of the industry in the identification of sub-standard ships and shipping. It is also essential to set up systems that will ensure transparency and communication between and within each industry sector."

In recent years the issues of shell companies and tax havens have come under great scrutiny as the international community seeks to control corruption and money laundering, which is essential for the operation of international criminal syndicates. It is therefore interesting to note that there are considerable correlations between FOCs and tax havens, offshore banking centres and countries which, in OECD terms, practise harmful tax competition policies.

For FOC countries the provision of a shipping register is often seen as one in a number of services which can be offered to attract an international clientele. They may not even require the establishment of a shell company within their jurisdiction to be the notional registered owner of the vessels which they allow to fly their flags. Most of the FOCs do not require the provision of audited accounts, including some of the largest registers, e.g. Panama, Liberia, Bahamas, Belize. A number do not reveal the names of shareholders or directors, e.g. Liberia, Bahamas, Belize. Where shareholders are named, nominees can be chosen and a company from another jurisdiction which allows greater secrecy is put into the chain between the beneficial owner and the ship. It is both easy and very cheap for an owner to hide behind a string of companies. Bearer shares are permitted in half of the countries concerned, e.g. Panama, Bahamas, Belize, Honduras. This is not a culture which promotes the spread of meaningful information concerning the shipping activities of any company or owner under their flag.

In almost all of the cases of FOCs there is a level of secrecy regarding shareholders which makes it very difficult to trace an owner. Confidentiality is a provision in the law for many of these countries (e.g. St Vincent, Liberia, Bahamas). In the case of the ERIKA the registered owner of the vessel was a Maltese company which had two shareholders, both being Liberian companies. Liberia (or the registry office in the USA) ensures confidentiality of directors and shareholders.

The lack of audited accounts and information has proved a problem for those chasing money launderers as well as those seeking the true owners of ships. Shell companies are used in virtually all money laundering schemes because they offer complete anonymity to owners. The United Nations Commission on Crime Prevention and Criminal Justice received the following recommendation from the Expert Group Meeting on Corruption (Buenos Aires, 17-21 March 1997):

"In view of the complex nature of corrupt practices and the difficulties in detecting and investigating related crimes, the elimination or curtailment of bank secrecy is essential."

Extracts from the conclusions and recommendations of the United Nations Economic and Social Council Expert group meeting on corruption and its financial channels, held in Paris 30 March to 1 April 1999, raised the concerns that even the judicial authorities in some of these financial centres were not guaranteed access to information, and shell companies and other complex corporate structures made it

possible to conceal the beneficiaries of such transactions. A United States narcotics report for 1999, published by the State Department, observed that:

"Panama's location, largely unpatrolled coastline, advanced infrastructure, underdeveloped judicial system and well developed financial services sector make it a crossroads for transnational crime such as drug trafficking, money laundering, illicit arms sales and alien smuggling."

In these circumstances it seems that the corporate structure which underpins the FOC system does not just affect merchant shipping but has considerable negative implications for the wider civil society as it facilitates transnational criminal activities.

SHIPOWNERS

Shipowners do not like restrictions and have become accustomed to a regime which gives them almost total flexibility. The bulk of the current shipping regulations have been forced upon them and, at best, they reluctantly agree to them. Usually this is in the face of public outcry following a disaster like the TITANIC, after which they were compelled to provide adequate life saving appliances for the crew and the ship's passengers. Other more recent examples follow pollution incidents where media attention focuses on oily seabirds. Rarely, however, is it as a consequence of dead seafarers.

Shipping has developed in a way which puts too great an emphasis on the needs of shipowners and, apart from a brief period following the Second World War and leading up to the major period of flagging out, the interests of seafarers have been secondary to the needs of the employers. The result is too much freedom and too much competition as indicated in the previously submitted NUMAST report entitled "*How many more?*".

Unfortunately too many shipowners take advantage of this situation to abuse and exploit seafarers and to avoid safety and environmental controls. It has also resulted in a culture where short-term cost savings have prevented the necessary decisions being taken to ensure the long-term sustainability of the maritime industry. It is obvious that the rush to flags of convenience has made shipowners less accountable, standards harder to maintain and, therefore, all the more likely to be breached or ignored.

After six bulk carriers had sunk off Western Australia in just 18 months, a wide ranging Australian government investigation exposed the sordid world of sub-standard (FOC) shipping. Its official report, aptly titled "*Ships of Shame*", reserved some of its most scathing comments for the exploitation of seafarers, many from developing countries on desperately low pay. It stated that seafarers were:

"beaten or starved by officers, forced to sign dummy pay books disguising gross underpayments, poor working conditions and unendingly long hours".

Shipowners, managers and charterers were reported to have displayed a "*callous disregard for human life*", neglecting vital life saving appliances and procedures. Seafarers were denied access to appropriate medical care, were the subject of sexual molestation and rape and were generally considered as "*dispensable*". Little has changed and port state control data shows that deficiencies with regard to life saving and fire fighting appliances constitute the two most common reasons for the detention of vessels.

Despite the fact that international regulations have been introduced in an attempt to curb and curtail exploitative employment practices within the industry, it is unfortunately the case that present employment

practices do not appear markedly different from those commonly used by shipowners during the last century. The Mission to Seamen, which was established to protect the spiritual welfare of sailors, is to this day still documenting cases of exploitation and physical abuse — many of which would have outraged Victorian society. In its submission to the Donaldson Inquiry, which followed the BRAER disaster, the Mission to Seamen stated that:

“Over the past decade, our chaplains have expressed growing concern about what they are finding on board ships. They regularly report poor safety standards, inadequate training, unjust treatment of crews and increased stress and fatigue”.

The report also noted that in the past two years the frequency of these reports has more than doubled. It concluded that fear is a common condition for seafarers today:

“Fear of sailing unsafe ships, fear of complaining and fear of being replaced by someone who can be paid less”.

The shipowners' choice to engage ever cheaper sources of exploitable and expendable labour is becoming the defining feature of the shipping industry. Competitive pressures are ensuring that such practices are extending to some national flags.

The 1996 OECD study on the *“Competitive advantages obtained by some ship owners as a result of non-observance of applicable international rules and standards”* clearly shows that there is a positive economic incentive in not complying with international minimum standards and that the competitive advantage which the sub-standard operator gains are staggering. It also shows that the current port state control regime provides neither an adequate deterrent nor an economic disincentive to the operation of sub-standard ships. The study estimated the difference between sub-standard operations and “good practice” and concluded that:

“Given the present legal framework, penalties applied to sub-standard vessels are, if they exist at all, relatively low compared to the advantages obtained from non-observance of international rules and standards”.

The industry itself has long recognised the inherent dangers of sub-standard maritime operations and open registries. In May 1992 Shell International Marine published a report on the standards in the oil transportation industry which stated:

“With shipowners influence dominating Classification Societies and P&I clubs and the potential power of underwriters and national administrations neutralised by competition, the less scrupulous shipowner of today is able to pick and choose to such an extent that traditional standards are no longer effectively enforced”.

Ironically while public perceptions of sub-standard vessels have increased due to recent instances of environmental and human catastrophes, the FOC system has allowed shipowners on many occasions to fully disassociate themselves from both the operation of their ships and the resulting liability. In effect, vessels sailing under flags of convenience have become a form of private capital that is not subject to public scrutiny or social control — a role ordinarily exercised, *inter alia*, by trade unions.

The ITF believes that the first priority for governments and other interested bodies is to recognise that FOCs allow unscrupulous and irresponsible shipowners to operate ships in a dangerous manner, without paying due regard to the safety and welfare of their crews. Shipowners cost cutting exercises in shipping, together with severed links between the owner and crew, have engendered a whole industry which is all too often based on the exploitation of human beings. The ITF generally accepts that existing international safety standards, by and large, represent an adequate foundation for national legislation and that the key issue facing the industry is the lack of application and enforcement by many shipowners and their convenient flag states. FOC states have effectively sold their sovereignty to individual shipowners. The low cost of labour and the scandalous conditions on board sub-standard vessels has been well documented since the 1930s and, as such, it is clear that shipowners are incapable of maintaining standards on their own through self-regulation.

Unfortunately governments and the general public have consistently failed to attend to the warning signs, and the plight of seafarers under sub-standard regimes has never been a major political issue, despite the fact that the ITF has documented cases of malpractice and abuse by some shipowners which can only be described as modern day slavery. Examples of the malpractices by some shipowners are set out in other sections of this document. Shipowners have obligations to their employees. However, as the previously submitted ITF papers to the 1999 meeting of the joint IMO/ILO Ad Hoc Expert Working Group in Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Crew Members show, these are not always discharged.

THE FAILURE OF FLAG STATES

It is widely accepted that, although the primary responsibility for compliance with international minimum standards lies with the shipowner, the first line of defence rests with the flag state. Indeed UNCLOS and IMO and ILO instruments expressly set out the obligations of flag states to ensure effective compliance and the full implementation of the conventions they are party to on vessels which fly their flag. Therefore the primary responsibility for ensuring compliance with and enforcement of international minimum rules and standards lies with the flag state. However, the casualty and port state control deficiency data reveal huge differences in the performance of flag states. In its annual reports the Institute of London Underwriters (ILU) is damning in its criticism of some of the FOC registers, for example in:

- 1990 — *“The same flags as usual account for the lion’s share of casualties. Panama, Cyprus, Liberia, South Korea and the Philippines account for over a third of all ships lost and nearly two thirds of the tonnage”;*
- 1993 — it mentions Panama as having *“losses well above its share of world tonnage in percentage terms”* and St Vincent and Grenadines and Honduras as having *“two extremely poor results”;*
- 1994 — *“yet again, the same flags account for losses well above their share of world shipping, Panama, Malta, Cyprus, St Vincent and Grenadines being the most significant”;*
- 1995 — *“Honduras continues to maintain its position as the flag with the worst record...ten times worse than average. St Vincent and Grenadines and Cyprus are particularly prominent despite the latter’s efforts to improve its safety standards, while Liberia also accounts for a significant slice of the tonnage lost in 1995”;* and
- 1997 — *“Cyprus, Malta and St Vincent and Grenadines are the top three registries for losses as a proportion of fleet (in tonnage terms)”.*

Table 1 shows the flag State Administrations identified by the United States Coast Guard as having a detention ratio higher than the overall average and associated with more than one detention in 1999. The detention ratios are based on data from the previous three years (1997, 1998 and 1999). The 3-year overall average for the 2000 evaluation was 5.05%, down from 6.00% in 1999:

Table 1

Flag State	Detention Ratio	Flag State	Detention Ratio
Antigua & Barbuda	5.59%	Philippines*	5.14%
Belize	50.56%	Russia	5.83%
Cyprus	8.19%	Saint Vincent & the Grenadines	11.43%
Honduras	39.06%	Thailand*	7.23%
India*	8.94%	Turkey	11.41%
Malta	6.70%	Vanuatu	7.84%
Panama	6.92%	Venezuela	13.95%

* Countries that were not on the list in 1999.

Table 2 provides comparable figures from the Paris Memorandum of Understanding on Port State Control's Annual Report for 1998 on flag states exceeding the 3 year rolling average detention percentage.

Table 2

Flag	Individual ships 96-98	Detentions 96-98	Detention % 96-98	Excess of average %
Honduras	277	174	62.82	47.55
Belize	213	122	57.28	42.01
Syria	220	114	51.82	36.55
Lebanon	106	52	49.06	33.79
Morocco	103	45	43.69	28.42
Romania	252	102	40.48	25.21
Turkey	1079	430	39.85	24.58
Libyan	65	22	33.85	18.58
CAMBODIA	74	25	33.78	18.52
THAILAND	65	21	32.31	17.04
St. Vincent	965	308	31.92	16.65
Egypt	120	35	29.17	13.90
Algeria	125	35	28.00	12.73
Croatia	141	29	20.57	5.30
Iran	84	17	20.24	4.97
Malta	2242	443	19.76	4.49
Cyprus	2635	511	19.39	4.12
Malaysia	86	16	18.60	3.34
Bulgaria	181	33	18.23	2.96
Ukraine	579	105	18.13	2.87

Estonia	232	39	16.81	1.54
Russian Federation	2235	374	16.73	1.47
Panama	2865	470	16.40	1.14

The Paris MOU figures also reveal that the major categories with the highest percentages of deficiencies are life saving appliances, fire fighting equipment and safety in general.

While international law attaches great importance to the flag a vessel flies at it establishes the nationality and the state whose laws will govern the vessel, in reality the concept has become devalued by the growth of the FOC system. As there is no substantial connection between the vessel and the flag it is impossible for the flag state to exercise effective control over the vessel and, where required, to levy fines of adequate severity to ensure compliance. Of course most of the registers in question lack both the capacity and the political will to take such measures. Indeed the FOC states generally lack a maritime infrastructure and a suitably size maritime administration, especially given the number of vessels they have registered under their flag.

In the period since 1980 the number of registers which have been designated by the ITF as being an FOC has increased greatly. In 1980 there were 11 registries and now there are 27. In addition to these there have, in recent months, been a number of others which are coming on stream and hoping to attract customers. They are Mongolia, Equatorial Guinea and Bolivia.

It is fair to say that the registration business has produced two models, neither of which require the existence of a functioning maritime administration and, even if there is one, it is certainly not capable of controlling the number of ships it has registered. The first model is the state-owned money making business where the "flag state" collects the tonnage taxes and delegates most, if not all, the survey and certification functions to a recognised organisation. Examples include Cyprus and Malta. The other model is where the operation of the register, including the statutory functions, is franchised out to a commercial entity which is located outside the territory and jurisdiction of the flag state and which may be bought and sold. Examples include Liberia, Marshall Islands, St. Vincent and the Grenadines and Vanuatu.

The extent to which the concept of flag state sovereignty has been displaced by pure commercial interests is graphically illustrated by the Marshall Islands, which has recently offered free registration to shipowners for a certain period. They are not alone, as others frequently offer discounts and packages to secure a greater share of the market. Some registers issue provisional temporary registration certificates without any survey (in contravention of UNCLOS) against faxed documents and affidavits of ownership and class. The convenience of the shipowner is paramount; the safety of the ship and crew is not a serious consideration. In the case of FOCs it would be more accurate to refer to "pseudo flag" state sovereignty.

The flag of convenience system enables some shipowners to secure a short-term competitive advantage over their competitors by, inter alia:

- the avoidance of taxation and social security requirements;
- allowing the shipowner to determine the extent to which the requirements set out in applicable international instruments are complied with — including those related to fundamental human and trade union rights and to the safety of life at sea and the protection of the marine environment;

- reductions in manning scales to the point where it is impossible to undertake essential maintenance and flexibility in the choice of the nationality of the crew; and
- undercutting high standard registers.

While FOCs are well organised and comparatively efficient when it comes to the collection of registration fees, the same cannot be said when there are problems. There are few examples or cases where such states have intervened to assist abandoned crew members.

In recent years the pressures and frustration caused by the failure of such states to live up to their obligations has resulted in some action by some of the FOCs. However, instead of exercising effective control and preventing sub-standard ships from sailing, they have argued that the highest sanction is to delete problem ships from their registers, which in practice means that they merely export the problem elsewhere.

The problems caused by flags states which are unwilling or unable to exercise effective control over vessels which fly their flag has been extended to the fisheries sector, in this case by enabling fishing vessel owners to fish in an illegal and irresponsible manner which contravenes fisheries management measures and arrangements. It has reached a point where they are threatening the viability of certain stocks. It is the same flags states and it is worth noting that the International Commission for the Conservation of Atlantic Tunas (ICCAT) instituted trade related sanctions against Belize, Honduras, Panama and Equatorial Guinea.

CLASSIFICATION SOCIETIES

The traditional role of classification societies as agents for the shipowner in the approval of the construction of the vessel, the testing of the material and periodic surveys to ensure that the condition of the vessel is within the acceptable limitations of the original design have been built upon by them also becoming recognised organisations for the flag state. That is the classification society is recognised by the flag state and authorised to issue the numerous statutory certificates a vessel must carry and to undertake the necessary surveys on behalf of the flag state. The adoption of the role of recognised organisation has allowed all flag states to reduce the number of flag state surveyors they employ and has, in the case of FOCs, enabled countries which do not have a functioning or adequate maritime administration to establish a shipping register. The IMO has sought to establish some form of control over the operation of recognised organisations through IMO Assembly Resolution A.739(18) on Guidelines for the Authorisation of Organisations Acting on Behalf of the Administration (which has been made mandatory under SOLAS Regulation XI/1) and Assembly Resolution A.789(10) on Specifications on the Survey and Certification Functions of Recognised Organisations Acting on Behalf of the Administration. A situation has arisen where a shipowner can choose a classification society which is then empowered to issue the statutory certificates on behalf of the flag state, which the owner has also selected.

The International Association of Classification Societies (IACS) has also sought to reduce the competitive pressures on the individual societies by adopting a Transfer of Class Agreement to prevent the phenomenon of class hopping, which permitted shipowners to swap classification societies and thereby avoid undertaking the corrective action they had been required to perform. However, a number of recent casualties which have involved a transfer of class suggest that the system is not as effective as previously suggested, a fact also recognised at the February 2000 IACS Extraordinary Council meeting, held in response to the political fallout resulting from the ERIKA disaster. IACS has also sought to harmonise the requirements to prevent competitive pressure causing the adoption of the lowest criteria. However, it is

widely accepted that there are still problems, which have their origin in competition between private commercial organisations, and which have resulted in the classification societies being unable to meet the standards they are required to meet. In too many cases the condition of the vessels has been found not to reflect the certificates which have been issued to them. Ships which have recently been through the enhanced survey programme and which had been subject to a classification survey have been found to be subject to unacceptable levels of corrosion. In some cases this has resulted in a catastrophic structural failure which has directly led to the loss of life or to pollution of the marine environment.

It is also the case that the growth in the business has caused classification societies some problems in being able to ensure that they have a suitable number of exclusive surveyors and many still use the services of non-exclusive surveyors. There have also been instances where surveyors have not performed the tasks they are assigned with due diligence. It is often said that had the classification societies done their job properly many of the bulk carriers which have been lost in recent years with the loss of many seafarers lives would not have occurred.

Classification societies are self-regulating and although they should be subject to regular audits by the flag states which delegate statutory tasks to them, many of the flag states in question also lack the capacity or the political will to exercise effective oversight of their recognised organisations. Classification societies are also, for historical reasons, able to limit their legal liability and this, together with the fact that they are self-regulating, can go some way to explaining why there are still discrepancies between the actual condition of the vessel and certificates which have been issued. Classification societies also have an inherent conflict of interest. They are selected by the shipowner, which in turn leads to them getting the lucrative business of issuing the statutory certificates and performing the statutory surveys on behalf of the flag state. It is questionable whether such a conflict of interest would be tolerated in other industries, especially within the financial services sector.

The fact that the condition of many vessels does not correspond to the certificates issued after a survey by a classification society surveyor has led to a proliferation of surveys as responsible charterers or cargo owners seek to ensure that the vessels they use are seaworthy. There is also the problem that the classification society is the agent of the shipowner, which ensures that too much data remains confidential, often on the basis of spurious claims of commercial confidentiality.

The failure of the classification society system and the inability to ensure that the condition of a vessel substantially corresponds to its certificates is an important component in the regulatory failure of the current system and needs to be urgently addressed.

MANNING AGENCIES

The international market for labour supply has expanded beyond the FOC system and the development of second registers has been part of that development, since they were created to permit the employment of seafarers at below “national” rates of pay. This phenomenon has now also been extended to many national first registers e.g. Greece, the Netherlands and the UK. It is commonly the case that the officers, especially the senior officers, have a much greater capacity to retain their jobs on both second register and national flag vessels. It is also the case that officers from the country of beneficial ownership are sometimes able to secure senior positions on FOC vessels.

The changes in the structure of the industry with the evolution of ship management companies and the development of manning agencies has resulted in a system where a seafarer may be employed on a vessel, typically for a year, after which he/she will thereafter be placed on other vessels and may never return to the same ship again or even those owned by the same company. The lack of any continuity of employment can cause a lack of familiarity with the vessel in question and leads to lower degrees of commitment between the seafarer and the shipowner, less interest in the performance of ship board maintenance and few, if any, company sponsored training opportunities. The manning agency system has resulted in a situation where the seafarer’s first contact is with the manning agency and it is to the manning agency that the seafarer inevitably looks for employment.

The globalisation of the labour market within the shipping industry has generally taken place in an unregulated environment. There are a few international instruments which are directly applicable and the most important ones are the ILO Placement of Seamen Convention, 1920, (which was fundamentally revised and became the Recruitment and Placement of Seafarers Convention, 1996 (No. 179)), the Continuity of Employment (Seafarers) Convention, 1976 (No. 145), the Seamen’s Articles of Agreement Convention, 1926 (No. 22) and the Employment of Seafarers (Technical Developments) Recommendation, 1970 (No. 139). The Recommendation links the labour market to training, the operation of an effective employment service and the aim of providing more regular employment and income for seafarers.

The ITF believes that the provision of continuous (or regular) employment for qualified seafarers is of paramount importance in respect of ensuring quality shipping, that seafarers are not treated as commodities and in the establishment of a safety culture on board ships. If the industry were to adhere to the principles established in ILO Convention 145 and Recommendation 139, we believe there would, for example, be greater levels of safety and better long-term manpower or career planning.

The development of the manning agency system and the emergence of an international labour supply industry have had many negative consequences from the trade union perspective. Shipowners are encouraged to disregard nationality and to hire crews from wherever they are cheapest. Seafarers, often desperate for employment, are obliged to accept a system where they have few, if any, rights. The manning agency system has also led to a casualisation of employment relations, driven down standards and training, encouraged the systematic cheating of seafarers and destroyed any possibility of long-term manpower or career planning. It has also facilitated the establishment of formal and informal systems for “blacklisting” seafarers, weakened trade union organisation and prevented the development of a safety culture on board ship.

In May 1993 the ITF received information on Mit-Ocean Shipping Ltd. which suggested that it was providing a mailing list to 3,904 shipowners, including well known manning agencies, offering a warning service that promised:

"owners and managers maximum possible protection from prospective ITF troublemakers...and other dangerous elements who have reneged on their contracts and who have used the ITF".

This particular company, based in Riga with offices in Cyprus, offered a "free service", in return for a small donation and any contributions i.e. names and photographs that could be added to their 'watch list of trouble-makers'. The ITF has also discovered similar companies and crewing agents offering such watch lists in the leading recruitment centres in Manila and Burma. For example, in December 1995 the crew of the Panama flag TRIDENT, while the vessel was in Argentina, complained of sub-standard living conditions on board and the unseaworthiness of the vessel. They contacted the local ITF inspector and, following discussions with the owners, the crew were signed off and repatriated. However, when they arrived home they discovered that a "watch list" with their personal details and photographs had been circulated to all the local crewing agents. The offence was "ITF involvement". The previously submitted ITF publications "*The Trade Union Rights of Chinese Seafarers*" which includes the Report of the ILO Committee of Experts, the 1995 ILO ruling about the oppression of Burmese seafarers and the 1998 ITF Report on the Blacklisting of Filipino Seafarers all show how manning agencies figure in the repression of seafarers and in the denial of their basic human and trade union rights.

Manning agencies also constitute another party which can cheat seafarers. The payment of bribes to manning agencies in return for a job is well documented, as are cases where they have cheated the crew, through either not paying the allotments which they have remitted to their families or through the use of grossly unfavourable exchange rates.

The ITF considers that the power of the manning agent must be examined with a view to reducing their influence and control over labour supply and to encourage permanent and sustainable employment practices by shipowners. It is also essential that the states concerned regulate their activities to prevent the illegal activities perpetrated against seafarers by some manning agencies, to remove the scourge of blacklisting and to end the system where bribes or other payments are required in order to secure a job.

CHARTERERS

The motor of the global shipping industry is economics and the need to make a profit. The OECD, in document DSTI/DOT/MTC(98)10/FINAL entitled *Safety and Environment Protection - Possible actions to combat sub-standard shipping by involving players other than the shipowner in the shipping market*, noted, on page 6, that it is the sub-standard operator and the shipper who is prepared to tolerate the operation of shipping in breach of international minimum rules and standards that sets the marginal freight rate. The marginal freight rate has, in some cases and in some sectors, been depressed to a rate which is below the level required for the market to operate without unfair competition and competitive distortion and in a sustainable manner. Even in good years the level of return for shipping operations is rather low when compared with the rate of return in other sectors.

The ITF believes that freight rates must be increased to a level which allows shipowners to make rational investments in new vessels and in the employment and training of seafarers. The cost of the sea transport leg in the overall transport chain is a fraction of the overall costs of the final commodity and the small savings are offset by the other costs society has to pay in terms of the protection of the safety of life at sea and the protection of the marine environment.

Unless there is a serious incident which results in the pollution of developed countries' shore lines, the charterer whose cargo is being carried on a sub-standard vessel all too often is able to remain anonymous.

Social pressure and public relations disasters which have followed major oil pollution incidents have caused the oil majors, through their international organisation OCIMF, to set up a vetting system and the SIRE database. The chemical industry has, through CDI, also established a similar system. However, the data contained within these industry databases remains confidential and they do not inform anybody if they decide to not charter a ship because it is unseaworthy.

However, no such system has evolved within the dry bulk sector and all that exists is, at best, a number of rather weak and toothless codes of practice.

The culture of secrecy which permits the charterers, shippers and cargo generators not to be held accountable for their actions has not even been challenged by the port state control regimes. Although in recent years port state control data and the listings of ships which have been subject to detention have been published, no attempt has been made to seek to name and shame the cargo owners.

OTHER MARINE PLAYERS

The decisions of financial institutions are based on short-term commercial considerations and have considerable latent consequences for the rational functioning of the maritime industry. Financial institutions are increasingly determining which flag a vessel should fly which can mean, when they require that the vessel be registered in a flag of convenience register as a condition of a loan or mortgage, that the owner is then able to unilaterally determine the degree to which the vessel will comply with international minimum requirements. Such actions by financial institutions should be considered not only as being grossly irresponsible, but also as constituting a violation of international law, given that Article 91 of UNCLOS provides for a "genuine link" between the ship and the flag state.

The problems that such actions cause has been recognised in the fisheries sector and to this end Section 7.8 of the FAO Code of Conduct for Responsible Fisheries, under the heading "Financial Institutions", states:

"Without prejudice to relevant international agreements, States should encourage banks and financial institutions not to require, as a condition of a loan or mortgage, fishing vessels or fishing support vessels to be flagged in a jurisdiction other than that of the State of beneficial ownership where such a requirement would have the effect of increasing the likelihood of non-compliance with international conservation and management measures."

The system which allows shipowners to secure a mortgage for a second hand rust bucket needs to be examined. Banks and financial institutions make their lending decisions on commercial factors which fail to take into account any of the latent consequences which may flow from their decisions. As long as the scrap value of the vessel would be adequate to protect their financial exposure, they do not appear to be unduly concerned about the state of the vessel. They also appear to be indifferent to the fact that the current system under which the majority of ships are scrapped involves the export of toxins to developing countries, which may be in breach of the Basel Convention. The conditions under which ships are broken up is appalling and the developing countries are left to pay the environmental cost and the workers the social costs due to the total lack of a satisfactory level of occupational safety and health. As the OECD, in document DSTI/DOT/MTC(98)10/FINAL entitled *Safety and Environment Protection - Possible actions to combat sub-standard shipping by involving players other than the shipowner in the shipping market*, has noted, on page 9 under the sub-heading "financial institutions":

"A fully responsible lending policy could prevent the creation of companies that operate at the bottom end of the "safety scale"."

The ITF is of the view that it would be advantageous if the financial institutions themselves secured a comprehensive survey of the vessel. Although this could cause a further proliferation of the surveys vessels undergo, it is essential given that many current surveys, including those undertaken by IACS classifications societies, have demonstrably failed to identify serious structural problems and thereby ensure that they are remedied. The ITF strongly supports any moves which would result in financial institutions being held accountable for their decisions and believes that they too should have a role in ensuring that vessels are crewed and maintained in conformity with international minimum rules and standards. To this end the financial institutions should require that they have, and effectively exercise the right to inspect, all records.

The role of the P+I Clubs is problematic as their rules are still geared to the industry as it existed in the 19th Century and, as such, there is a total lack of transparency in their operation. The ITF strongly supports moves which would require the mandatory provision of third party insurance, the abolition of the pay to be paid rule and a right of direct access against them and has argued for such within the IMO Legal Committee. The other sections of the submission and the **Annex**, along with the previously submitted copies of the papers the ITF submitted to the 1999 meeting of the joint IMO/ILO Ad Hoc Expert Working Group in Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Crew Members, set out the real human costs.

The ITF also has experience of situations where the P+I Clubs and their agents deprive and even cheat seafarers and their next of kin and deny them their legal entitlements, even those established by their contracts of employment.

P+I clubs send their surveyors onto vessels and sometimes what they find causes them to remove the cover, a decision which they do not take lightly. However, they do not communicate such information to other interested parties and make no attempt to advise the unfortunate seafarers who happen to be on board the vessel that it no longer has insurance coverage.

THE HUMAN CONSEQUENCES OF THE REGULATORY FAILURE

The social costs of the failure of the current system severely impacts on seafarers as it is them and their next of kin who have to suffer the social and economic costs. It is the seafarers who are not paid the wages they are entitled to and they and their families suffer when the allotments which they require to sustain the family, to pay the rent, to send their children to school and to meet other basic needs are not received. The mental anguish the seafarers suffer in such cases is incalculable and will undoubtedly prejudice their ability to perform their job. As such, it will impact on the vessel and the ability to meet any safe management system which is in place and should lead to such vessels being detained for failure to comply with the ISM Code requirements. It is also questionable whether they will be able to adequately fulfil their watchkeeping duties.

This situation will be immeasurably worse when the seafarers are abandoned in a foreign port, without the money to get home and all too often reliant on the charity of people in the local port to meet their basic subsistence requirements.

The failure of the regulatory system causes vessels to sink and it is the seafarers that needlessly lose their lives. Even then the system does not ensure that the families or next of kin receive the compensation they are entitled to and still the system continues to try to cheat them. A number of well known cases are set out in the **Annex** and illustrate not only how the failure of the system has caused the loss of lives of seafarers but also how difficult it is for their next of kin to secure the compensation they are entitled to.

The plight of abandoned crew members and the problems in securing compensation are considered serious enough merit the attention of a joint IMO/ILO Ad Hoc Expert Working Group. The ITF has submitted papers to its meetings and they have already been submitted to the Commissioners. It is also worth noting that the issue is judged to be of sufficient severity to be reported in the 2000 Report of the Secretary General to the United Nations General Assembly on Oceans and the law of the sea (UN Document A/55/61, paragraphs 64-68 and 201-203).

THE ABUSE OF SEAFARERS

ITF inspectors routinely visit ships calling in their ports and report the results of their inspections to the ITF Secretariat in London using a standard reporting format. In 1995 a new database was established to record the inspections made and this enables the ITF to provide an assessment of the levels of abuse of crew and the types of abuse they suffer. It should, however, be clearly understood that this is by no means a definitive listing, either in terms of the level of abuse or the types of abuse. Seafarers may be more willing to report some types of abuse, for example sexual abuse, to port chaplains than they are to ITF inspector. A related aspect is the denial of the right to freedom of association. Seafarers from developing countries are intimidated to prevent them from joining bona fide trade unions and from complaining to sympathetic trade unions in the ports they call in. They are warned that if they contact any ITF affiliated union they will be blacklisted and thereafter unable to pursue a career at sea. In some instances they may be required to sign loyalty letters which, if the terms are broken, will financially penalise their families. In some cases they may on their return even face imprisonment etc. by their state of domicile's administrative apparatus. These unfortunate seafarers are therefore prevented from not only raising contractual problems but also their safety concerns about the vessels they are sailing in. These aspects are clearly demonstrated in the ITF publications "*The Trade Union Rights of Chinese Seafarers*" which includes the Report of the ILO Committee of Experts, the 1995 ILO ruling about the oppression of

Burmese seafarers and the 1998 ITF Report on the Blacklisting of Filipino Seafarers. Other governments use more covert methods. Countries like the Maldives, Vietnam, Sri Lanka, Sudan and Ghana will simply refuse to issue passports and identity papers to seafarers they deem as “inappropriate for export”, while crewing agencies in other countries such as Bulgaria, Ukraine and Russia operate “mafia style rings of corruption” which control the supply of submissive labour and neutralise organised labour unions. Therefore the information the ITF has been able to secure represents the tip of the iceberg and fails to fully describe the extent of the unacceptable practices found on many ships and the abuse all too many seafarers suffer on a daily basis.

It is also worth recalling that the Missions to Seamen, in its submission to the Donaldson Inquiry which followed the BRAER disaster (Liberian flagged), stated:

“Over the past decade our chaplains have expressed growing concern about what they are finding on board ships. They regularly report poor safety standards, inadequate training, unjust treatment of crews and increased stress and fatigue. In the past two years the frequency of these reports has more than doubled.”

A related issue is the abandonment of crews in foreign ports without the necessary means of subsistence, without the wages they are owed which they need to maintain their families and without any means of returning home. Copies of the papers the ITF submitted to the 1999 meeting of the joint IMO/ILO Ad Hoc Expert Working Group in Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Crew Members have already been submitted to the Commission and they provide an indicative assessment of the extent of the problem.

Table 3 provides some indication on the extent of the problem of crew abuse. Of the 20,433 ships visited by ITF inspectors in a four year period, crew problems were found in about half the inspections:

Table 3

Year	No. of ships inspected	No. of ships with crew abuses
1996	3,762	1,731
1997	4,854	2,280
1998	6,124	2,940
1999	5,693	2,721
TOTAL	20,433	9,672

Table 4 provides a breakdown of the non-payment of wages. This means that seafarers are not being paid the full wages which they are entitled to under their contract of employment or collective agreement.

Table 4

YEAR	Owed wages under ITF CBA	Owed wages under non-ITF CBA	Owed wages under contract	Owed overtime	Total number of cases of unpaid wages	Backpay or compensation paid	US\$ total amount of backpay
1996	166	124	301	58	649	514	26,262,664
1997	240	175	344	99	858	537	25,873,168
1998	317	139	523	92	1,071	796	35,838,285
1999	224	133	262	76	695	542	22,373,620
Total	947	571	1,430	325	3,273	2,389	110,347,737

It can also be seen that wages are not recovered for the crew in every case. In about 30% of the cases where an ITF inspector is involved circumstances conspire to prevent recovery and this amounts to an average of US\$ 8 million per annum.

Certain nationalities of crew are particularly prone to being cheated out of their wages by their employers. These vary depending upon the employment situation in their own country and the human and trade union rights record of their government. Currently these include Ukrainians, Burmese and Chinese. These crews are not likely to complain to the ITF if they are not being fully paid. The figures provided in table 4 can therefore be taken as being a very conservative estimate of the amount of money swindled from crews.

Table 5 provides some indication of the extent of the unwillingness of some crews to complain about their situation. Of particular concern is the fact that this has increased from 4% of ships visited in 1996 to 8% in 1999.

Table 5

Year	Crew unwilling to complain	Unfair dismissal	Victimisation
1996	145	65	66
1997	327	81	54
1998	602	170	106
1999	464	89	38
Total	1,538	405	264

Unfair dismissal claims and complaints of victimisation significantly increased in 1998 but returned to their previous levels in 1999. These figures will often represent individual seafarers who have been unjustly treated on board their ship, whereas wage claims usually affect the whole crew. While the numbers are not large, the cases are examples of advantage being taken of those who are least able to defend themselves. It is worth noting that seafarers are reluctant to make such complaints as it will generally result in them leaving the vessels and therefore only the most desperate will complain to the ITF. Unfair dismissal will typically have an element of financial punishment (usually by withholding the return air fare which will usually represent between one to three months wages for the seafarer). Victimisation is usually physical by the time it comes to the attention of the ITF and the person concerned is desperate enough to complain.

The complaints listed in table 6 on living conditions, safety and inadequate food refer to some of the categories of abuses which are in breach of ILO and IMO instruments, where it is possible that at least some of them some may be remedied by port state control if the shipowner does not rectify them at the request of the ITF inspector.

The MORI Survey of Seafarers' Living Conditions in 1996 uncovered a greater proportion of cases of abuse than the number indicated by the reports of cases investigated by ITF inspectors. A quarter of all seafarers responding to the MORI questionnaire experienced (sometimes or frequently) unfair treatment because of their race or nationality in the year preceding the survey. 10% of all seafarers were physically abused in the year preceding the survey. 18% of seafarers also reported that they had suffered mental abuse in the year preceding the survey. 4% of seafarers worldwide reported that their families had sometimes or frequently been threatened. The percentage warned not to join a trade union was also high — 14% of all seafarers were warned not to join a union and 9% were encouraged by management to give up existing membership. The MORI survey also revealed that 11% of all seafarers had to pay a "fee" to a manning agency to secure their job, which is expressly prohibited by ILO Conventions No. 9 and No. 179 (the Placement of Seamen (1928) and the Recruitment and Placement of Seafarers (1996).

The difference between the levels of abuse uncovered by ITF inspectors and the number of seafarers who were prepared to respond anonymously to the MORI questionnaire is perhaps indicative of the levels of intimidation which are prevalent in general and especially amongst some nationalities of seafarers.

Table 6

Year	Living conditions	Medical attention required	Repatriation required	Safety	Inadequate food	Low wages
1996	80	33	176	107	67	272
1997	57	46	246	113	82	371
1998	146	52	377	184	147	576
1999	79	45	230	79	58	433
Total	362	176	1,029	483	354	1,652

The section on medical attention required usually means that there has been reluctance on the part of the master or owner to send a seafarer to a doctor when the ship is in the port, either because they have decided that the seafarer is not ill or sufficiently badly injured or they want to wait until they can get to a port where the medical attention will be cheaper.

The section on repatriation covers cases from a single individual wishing to leave the ship because the contract of employment has run its course to other cases where the whole crew leave the vessel following the payment of a backpay claim. The numbers in the table refer to ships. Delays in repatriation may take place to suit the employer rather than the seafarer and contracts of employment may be extended so that repatriation can be effected from another port so as to save costs. It should be clear that the criteria for repatriation is cost, regardless of the time taken to get home.

The section on low wages refers to those instances where wages are below ILO recommended levels.

SHORTAGE OF SUITABLY QUALIFIED SEAFARERS

The maritime industry of today is a globalised industry which also extends to the still evolving international maritime labour market. Seafarers are recruited from a number of labour supplying countries and the principal means of employing them is through the use of third party manning agents. The short-term profit ethos which is all too prevalent in today's shipping industry has had profound social implications and far reaching consequences for the future of the industry. The profession of seafarer has become casualised and cost cutting measures have worsened the conditions of employment. The loosening of the link between the shipowner and the seafarers has meant that many shipowners have no interest in training the crews who serve on their ships under short-term contracts, typically for ten months. Some management companies have established their own manning agencies so that they can maintain some continuity of employment through the use of a permanent labour pool and, as such, do invest in the training of their personnel. Many, however, do not and expect the manning agency to be able to provide them with suitably qualified and certificated seafarers for immediate dispatch to their vessels. The way this sector of the industry treats labour as a commodity goes some way to explaining the other unsavoury practices which permeate the whole of the industry.

The 1990, 1995 and 2000 ISF/BIMCO surveys have consistently revealed that there is a shortage of suitably qualified seafarers (especially officers), that the senior officers continue to get older and that insufficient numbers of suitably qualified personnel are being trained. Any shortage of suitably qualified seafarers or suggestions that the profession is no longer able to attract high calibre new entrants (which is also the case) has implications, not just for sustainable maritime transport but also for the protection of the marine environment.

One of the current problems in assessing the extent of the problem is that there is no accurate information on the nationalities of seafarers currently at sea. However, the Seafarers' International Research Centre (SIRC) is currently conducting a "census" through the use of crew lists which should provide a snap shot of numbers and nationalities employed in the international side of the shipping industry. It is unfortunately the case that most FOC states are unable to provide accurate information on the seafarers who are serving on the ships which fly their flags.

Seafarers also need to be trained and that costs money. Traditionally national administrations and companies had a role and, while many continue to do so, there is a sizeable section of the industry which expects the seafarers themselves or the labour supplying countries to meet these costs. This is a classic example of the poor subsidising the rich. Ensuring a sufficient supply of well-trained seafarers in the long-term is something which requires significant investment. Unfortunately this is something in which flag of convenience states (even those which claim to be at the quality end of the market) show no interest. They expect the seafarers themselves or the governments of the labour supply countries to meet the costs of

training. They do not create their own training infrastructures but instead live off the backs of others, endorsing foreign certificates or issuing their own based on foreign ones.

If the crisis is to be addressed it is not simply a question of providing suitable training facilities and cadetships. Seafarers must be recruited properly, well trained throughout their career, given decent pay and working conditions and reasonable working hours, given access to good recreation and welfare facilities at sea and in port and provided with a career path which encourages them to stay in the industry.

A related problem which has recently received a considerable amount of attention is the issue of fraudulent certificates. The January 2000 meeting of the IMO Sub-Committee of Standards of Training and Watchkeeping (STW) was given an interim report of a study SIRC is undertaking for the IMO on the issue of fraudulent certificates. The relevant section of the report indicates that they have so far identified a number of typical unlawful practices, including:

- seafarers holding certificates issued or endorsed by or on behalf of a maritime administration but not valid for the function(s) performed on board due to: expired certificates; valid certificates but not covering function(s) performed on board and limitations on certificate not observed (trading area, tonnage, engine power or medical);
- seafarers holding certificates issued or endorsed by or on behalf of a maritime administration but obtained on the basis of deceitful information, i.e. "laundered" certificates issued on the basis of a forged certificate or other forged evidence (this mode applies mainly to endorsements of recognition issued by a third party); certificates issued by an Administration but lacking underpinning competence and knowledge; certificates issued on the basis of lax examination and certification practices and certificates issued by corrupt officials within an Administration; and
- seafarers holding counterfeit certificates altered by the holder (seafarer) or provided by the shipowner or manning agency; certificates forged "in-house" or obtained on the black market or through organisations dedicated to certificate forging. These certificates were either stolen from a maritime administration or holder, or the whole certificate was produced by the organisation.

The report states:

"The research had uncovered evidence suggesting that the problem of fraudulent certification may be more extensive than initially thought. Another factor that had emerged was the extent to which employers, directly or indirectly, promoted unlawful practices associated with certificates of competence. Very few companies had the resources or the willingness to verify the authenticity of certificates held by the seafarers they employed. Some employers were directly implicated by issuing their employees with forged certificates. From the research to date, this was mainly the case with ancillary certificates. In this respect, it appears that unlawful practices were more widespread and perhaps more difficult to detect in the case of ancillary certificates. A good example was provided by GMDSS certificates which seemed to be readily available."

The ITF strongly supports the concept of sustainable development which has three integral pillars: the environmental, social and economic aspects. The global shipping industry needs to be run on a sustainable basis which would, inter alia, require the replacement of old tonnage and the lowering of the average age of the world fleet. It also requires the recruitment of suitably qualified new entrants to the industry and for there to be a career path which would help retain them. The 1995 IMO Diplomatic Conference which adopted the revised International Convention on Standards of Training, Certification and

Watchkeeping for Seafarers also adopted Conference Resolution No. 8 (Promotion of technical knowledge, skills and professionalism of seafarers) and in doing so stressed the need to encourage pride of service and professionalism among seafarers.

In short, the shipping industry of today is not viewed by many highly qualified young people as offering them a career. Instead, they have a very negative opinion of an industry which pollutes coasts, causes the death of seafarers, leaves seafarers abandoned in foreign ports without any means to return home and generally washes its hand when something goes wrong.

The demise of seafarers from traditional maritime countries also has profound implications for the industry as there has always been a high wastage rate as seafarers have been recruited to key shore based maritime positions. These include maritime pilots, port state control officers, the key personnel who run maritime administrations, marine surveyors, shipping company superintendents etc. Unless the decline of the seafarers from traditional maritime countries is addressed it will have profound implications for the maritime infrastructure of many countries and the shipping industry itself.

INTERNATIONAL INSTITUTIONS

A number of United Nations or other intergovernmental bodies have historically had either a regulatory or facilitative role within the maritime industry. These include the International Maritime Organization (IMO), the International Labour Organization, the United Nations Division for Ocean Affairs and the Law of the Sea (DOALOS), the United Nations Conference on Trade and Development (UNCTAD), the United Nations Commission on Sustainable Development (CSD), the World Health Organization (WHO), the International Telecommunications Union (ITU), the Organisation for Economic Co-operation and Development (OECD) and, perhaps shortly, the World Trade Organisation (WTO). It is within this context that the importance of UNCLOS as an umbrella or framework convention, which is further built upon by the applicable instruments and standards developed by the specialised United Nations agencies, becomes self evident. There have been attempts to co-ordinate the work of the various United Nations bodies, most notably through the Administrative Committee on Co-ordination (ACC). The United Nations General Assembly, through a General Assembly Resolution (A/RES/54/33), agreed to establish an open-ended informal consultative process in order to, inter alia, facilitate co-ordination and co-operation on oceans issues at the intergovernmental and inter-agency level. The United Nations open-ended informal consultative process on ocean affairs (UNICPO) is intended to carry out three inter-related tasks:

- to study developments in ocean affairs consistent with the legal framework provided by UNCLOS and the goals of chapter 17 of Agenda 21;
- against the backdrop of overall developments of all relevant ocean issues, to identify particular issues to be considered by the General Assembly; and
- while identifying such issues, to place emphasis on areas where co-ordination and co-operation at the intergovernmental and inter-agency levels should be enhanced.

In this regard it should be noted that DOALOS suggests:

"UNICPO is expected to apply an integrated approach to ocean issues. Such an approach involves an overview of various sectors related to the oceans and seas, consideration of transsectoral issues, and most importantly, an integration of various relevant aspects of oceans and seas, including political, legal, economic, social, environmental, scientific and technical aspects."

The problems of international co-ordination are not new, nor is the need to ensure that international instruments are in practice effectively enforced. Agenda 21, the Programme of Action for Sustainable Development which was adopted by the United Nations Conference on Environment and Development, held in Rio de Janeiro in 1992 provides, in Chapter 39 (which addresses international legal instruments and mechanisms):

“that Parties to international agreements should consider procedures and mechanisms to promote and review their effective, full and prompt implementation. To that effect, States could, inter alia:

- (a) Establish efficient and practical reporting systems on the effective, full and prompt implementation of international legal instruments;*
- (b) Consider appropriate ways in which relevant international bodies, such as UNEP, might contribute towards the further development of such implementation mechanisms.” (para. 39.8).*

The Ocean Our Future: The Report of the Independent World Commission on the Oceans, which was chaired by Mário Soares, stressed that greater efforts are required to build a more effective system of ocean governance which must start with the implementation of UNCLOS and the many other legal instruments existing in relation to the law of the sea. The Commission indicated that this will require that a stronger political will be demonstrated to ensure full compliance with existing ocean law and the adoption of effective measures to secure enforcement. Indeed the Report states:

“it follows that the first and most important item on the unfinished agenda of ocean law must be full compliance with existing treaty obligations. Concerted action by governments in this respect would be instrumental in defusing current widespread concern over: inadequate enforcement of international legal commitments; the development of appropriate instruments, including economic incentives; and the management of compliance.”

The changes in the maritime industry with the growth and proliferation of FOCs and the emergence of a largely unregulated global labour market have clearly indicated the weaknesses within the current regulatory regime and resulted in a democratic deficit. In terms of this submission, the IMO and the ILO are the two intergovernmental organisations which have a key role to play in addressing the current problems of the industry.

The March 2000 Singapore Seminar on Quality Shipping agreed that:

*“There was a strong response to the European Commission’s proposals of new measures to eliminate substandard shipping after the Erika incident. The clear view was expressed that regulations must not be introduced on a regional basis, but through the IMO. **The IMO should remain the only forum for establishing international standards for shipping.**”*

The IMO has been reluctant to embrace the full scope of its mandate, as set out in the purposes of the Organization and as provided for in the Convention of the IMO. Instead of dealing with the economic, commercial and political issues which are so important to safer seas and cleaner oceans, it has tried to remain a purely technical body which seeks to foster the highest possible practicable standards concerning maritime safety and marine pollution from ships. The IMO conventions assume that flag states will enforce the conventions that they are party to and therefore the control provisions require other states to accept

the certificates issued by a flag state unless there are clear grounds for believing that they do not substantially correspond to what they cover. The IMO has also accepted the role of “recognised organisations” and therefore both the IMO and the flag States which authorise them on their behalf have a responsibility for ensuring that they effectively discharge their assigned functions.

It is worth noting that the September 1998 meeting of the International Civil Aviation Organization (ICAO) Assembly endorsed a previous decision taken in November 1997 and, in addition to giving ICAO a number of new powers, agreed to give ICAO a mandate to undertake a safety oversight programme which means that ICAO can request a country to subject itself to an inspection/safety audit involving ICAO Inspection teams (i.e. it does not have to wait for volunteers to present themselves). The situation within the civil aviation industry provides a useful example and suggests a possible solution to the problems which beset the maritime industry as the United States evaluates entire aircraft registers and, if they are deemed unsafe, their aircraft are prohibited from using US airports. As the concept of “port state denial” has become established within the maritime industry as a mechanism to ensure compliance with the International Safety Management (ISM) Code, it may be possible to seek to utilise such a mechanism in the future to cure the fundamental and structural problems within the shipping sector and thereby to uphold the requirements proscribed by applicable international law. This will require the IMO to move beyond the voluntary “self-assessment of flag state performance”, as was recently adopted at the 21st IMO Assembly in Resolution A.881(21) and to be given tough oversight powers.

The ILO has a crucial role to play in reducing the current democratic deficit through capacity building. The previous system of tripartite democratic governance of seafarers’ labour which were confined to traditional maritime nations has been destabilised by the unregulated international labour market. Moreover the emergence of comparable systems in the new maritime nations and flag states has been impeded by the lack of an adequate and effective regulatory framework. The challenge for the ILO is to:

- redress the democratic deficit;
- ensure that the social dimension is taken fully into account as the international community seeks to address the “human element” problems;
- uphold the fundamental principles and rights at work in a full globalised sector; and
- secure greater enforcement powers.

THE TRADE UNION ROLE

The right to be able to join a trade union is a long established fundamental human right, as established in the United Nations Declaration of Human Rights and in ILO Conventions No. 87 and No. 98. For example, ILO Convention No. 98 (of 1949) on the Right to Organise and Collective Bargaining provides in Article 1 that:

“Workers shall have the right to enjoy adequate protection against acts of anti-union discrimination in respect of their employment.”

Article 4 provides that:

“Measures appropriate to national conditions shall be taken, where appropriate, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers’ organisations and workers’ organisations, with a view to the regulation of terms and conditions of employment by means of collective bargaining agreements.”

Its continuing relevance is illustrated by the fact that the 1998 ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up:

"Declares that all Members, even if they have not ratified the Conventions in question, have an obligation, arising from the very fact of membership in the Organization, to respect, to promote and to realise, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely:

- (a) freedom of association and the effective recognition of the right to collective bargaining;*
- (b) the elimination of all forms of forced or compulsory labour;*
- (c) the effective abolition of child labour; and*
- (d) the elimination of discrimination in respect of employment and occupation."*

Responsible shipowners view trade unions as partners, not obstacles to be avoided at all costs.

Out of the 18,000 or more vessels registered in countries designated by the ITF as FOCs, more than 30% are covered by ITF collective agreements securing trade union representation and trade union protection for some 100,000 seafarers serving on such ships. Trade unions in others sectors have suffered serious setbacks in the 1990s and, as a result of the process of globalisation, national trade unions in the maritime sector have seen a reduction in their capacity to influence events. This is especially the case where the shipowners have flagged the vessels out to FOCs. This has led to a progressive increase in the functions assigned to the ITF. The ITF has been able to exercise some influence over the minimum wages and conditions over a large section of the shipping industry and provides the only really effective international trade union solidarity network in the world that seeks to protect and empower seafarers. The ITF has also increased its representational activities in an attempt to reduce the democratic deficit previously alluded to.

Shipowners are seldom willing to confront the ITF or its affiliated unions directly. Instead, they concentrate their efforts on the weakest party, the seafarer. As previously shown, blacklisting is a common penalty for those who have dared to turn to the ITF for protection and assistance. Partly in response to this sort of unacceptable outrageous practices the ITF has launched its own "blacklist" of sub-standard shipowners and manning agents.

Unfortunately union activities are commonly defined in contracts of employment as major offences and reason enough for immediate dismissal. Shipowners and their manning agents have sought to circumnavigate ILO conventions and troublesome unions by forcing seafarers to sign individual contracts of employment and articles of agreement that include clauses prohibiting contact with the ITF or its affiliated trade unions. For example, seafarers recruited by the Eurasian Maritime Corporation of Manila were forced or "advised" on joining a vessel to sign affidavits, which specified that:

"I will not seek any assistance from the International Transport Federation or any of its affiliates while I am on board the vessel or in any port".

Even when seafarers have been successful in contacting the ITF, they will be required to sign contracts and documents similar to the following example taken from an affidavit signed by an Arab seafarer (the document was in English):

"I further declare that should the Master of the vessel be forced to effect any backpay to me as exported by ITF through intimidation or blackmail, or whatever form, I, the undersigned seaman, commit myself by signing this confirmation that I shall return this money promptly..."

However, perhaps the most disturbing "agreement" recorded by the ITF is the contract between the Hong Kong Ming Hua Shipping Co. Ltd. (referred to as party "A") and the Guang Zhou Hai Sun Shipping Co Ltd (party "B"), who were responsible for recruiting Chinese nationals. This contract is considerably longer (seven pages) and more detailed than most of those seen by the ITF (it manages to cover, employment, signing on procedures, duration of employment, insurance, transfers and repatriation). It also specifies that:

"when a ship is in a Chinese harbour, party "B" must come to the vessel and deal with the seafarer's problems particularly to give them Thought Education."

The contract also notes that a seafarer from party "B" must always obey party "A"'s "leadership and direction" at all times and goes on to advise seafarers that they must:

"try to on-load and off-load materials as quickly as possible and run when possible to save extra time spent by the ship in port".

In the event of any disagreements the contract clearly further specifies that:

"During the contract period, if there are any problems or arguments, both party "A" and party "B" should negotiate and solve the problem and during the period of stay at a foreign harbour or Hong Kong, it is party "A"'s responsibility to manage and re-educate seafarers."

Despite the legal language and contractual rhetoric used in the agreement, it is clearly designed to both threaten and bully seafarers into political submission. The ominous threat of "thought education" has its specific cultural overtones for Chinese seafarers and is a clear indication that any contact with outsiders such as the ITF will be dealt with swiftly. Of course at seven pages this particular contract is not typical — most contracts, affidavits and agreements of this nature seldom cover more than a single sheet of A4 paper. The contract between Mai Lin Shipping Company and its seafarers is closer to the norm. It contains less detail, is considerably shorter and it neatly concludes as follows:

"Do not make trouble with groups of people. Do not go on strike. Do not fight, drink or gamble."

The use of physical violence is not uncommon in trying to prevent maltreated seafarers from contacting the ITF and the following two cases aptly illustrate the degree of violence used.

In November 1996 the Indonesian crew of the Panamanian flagged GLORY CAPE contacted the ITF. The ship was at anchor and had been detained by Australian port state control. The Korean and Chinese crew tried to prevent further contact with the ITF by assaulting the Indonesian crewmembers. To avoid the beatings, the Indonesian seafarers were forced to jump over board and the Indonesian Radio Officer later died in the water. In October 1995, the crew of the Cyprus flagged PIERROS went on strike at Bilbao, Spain, due to the underpayment of wages in accordance with the collective agreements covering their conditions of employment. The company attempted to "starve them off" and contacted the police to force them off the ship. After intervention by the Civil Governor, the company was forced to negotiate. A complement of strikebreakers was duly dispatched to the ship to "negotiate" on behalf of the company.

By including the above examples of the blatant abuse of seafarers, we merely seek to illustrate the need for strong and effective trade unions at both the national and international levels. Individual seafarers or, sometimes, individual trade unions are often powerless against shipowners when faced with the realities of the global shipping industry. The underdeveloped international legal system and weakness of the system of the enforcement of global standards leaves seafarers and their national unions facing an uphill struggle for justice.

The ITF believes that support from governments and responsible shipowners for trade unionism and trade union membership by seafarers is one way of securing a voice for seafarers, that is securing for them the right to be heard and for their views and concerns (for example on the safety of their vessels) to be taken into account. In this regard, it is worth noting that ITF approved collective agreements seek to promote the establishment of a safety and health committee on board the vessel.

Trade unionism is essential as it seeks to re-assert an acceptable balance of power between employers and employees.

CONCLUSIONS

It is commonly acknowledged and expressly stated within international law that the flag state is primarily responsible for ensuring compliance with international minimum standards. Indeed Article 94 of UNCLOS establishes the fundamental principles and thereby makes clear that having a shipping register is not an unfettered right of a sovereign state but one which is qualified as a result of the obligations imposed on the state, especially with regard to ensuring compliance with international minimum safety, pollution prevention and social standards. Similarly, Article 217 of UNCLOS sets out the obligation on flag states to effectively enforce international rules, standards and regulations, irrespective of where a violation occurs.

Article 91 of UNCLOS provides for a “genuine link” between the ship and the flag state. Although, the “genuine link” is not expressly defined in UNCLOS, other Articles, especially Articles 94 and 217, implicitly point to the requirement for at least an “economic link”. This means that there should exist within the flag state a substantial entity which can be made responsible for the actions of the ship and on which penalties of adequate severity can be levied so as to discourage violations of applicable international minimum rules and standards, wherever they occur. Common sense and the inherent problems there are in enforcing administrative penalties in another jurisdiction or in securing the extradition of key personnel within the shipping company indicate that in the absence of a “genuine link” the flag State will not be able to exercise effective control over vessels which fly its flag.

As maritime transport is essential to the global economy of today, the sustainable development of the shipping industry is crucial not just to world trade but also to addressing the degradation of the marine environment and it is essential that it be run in a sustainable manner in terms of:

- an effective regulatory regime and a rational structure;
- the enforcement of international minimum standards;
- the adoption of a precautionary approach to the protection of the safety of life at sea and to the protection of the marine environment;
- quality is rewarded and sub-standard shipping is unable to trade through the removal of the mechanisms which allow it to exist;
- an effective chain of responsibility and all parties actively play a role;
- all parties are committed to a culture which fosters continuous improvements in all aspects of the maritime industry;
- the world fleet is sustainable in terms of its age structure;
- an effective global manpower policy, through national flag states, which ensures that there is an adequate supply of suitable trained and qualified seafarers;
- seafarers are considered as valued professionals;
- free and fair competition is maintained; and
- the current culture of secrecy must be replaced by complete transparency and a culture which is prepared to name and shame transgressors.

As previously stated, the ITF considers that there is a fundamental and structural crisis within the maritime sector. The crisis is manifested by the projected shortage of suitably skilled and qualified seafarers, the growing age of the world fleet, the large number of lives lost at sea, the lack of flag state implementation

and the spiralling increase in the number of port state control detentions. In our view the principal cause of the crisis is the failure to ensure that sufficient environmental, safety and social standards are implemented as a result of unfair competition and the competitive distortion caused by the existence of the flag of convenience (FOC) system.

If the fundamental and structural crisis within the maritime industry is to be cured it will require both a strong will and bold actions on the part of governments, as well as a willingness to address the causes, rather than merely seeking to treat the symptoms. As has previously been stated, having a shipping register is not an unfettered right of a sovereign state but one which is qualified as a result of the obligations imposed on that state.

SPECIFIC RECOMMENDATIONS

The ITF has analysed the issue and identified some of the key problems and wishes to make a number of constructive proposals which we believe will, taken together, ameliorate the present situation. In addition to the abolition of the FOC system we would suggest the following:

- Flag states must meet all their international obligations or be debarred from competing with those which do;
- Flag states must fully investigate all casualties, incidents and complaints and publish their findings as soon as practicable;
- The one ship company must be replaced by a company structure which reflects the real ownership of the vessel. Shipowners suggest that shell companies are necessary to limit their liability and this is indicative of the culture of evasion which permeates the industry. Moreover, the shell company system has been identified as an essential mechanism for money laundering and for the operation of transnational criminal gangs, therefore the overwhelming public interest is for such fronts to be eliminated;
- A port state detention should result in the imposition of appropriate punitive fines and in the cargo not being unloaded until remedial action has been taken and the vessel has been found to be in full compliance with international requirements;
- The port state control system must pay more attention to the human element aspects and rigorously enforce ILO Convention 147, the ILO Declaration on Fundamental Principles and Rights at Work (1998) and other widely ratified human rights instruments;
- The port state control system should publicly identify charterers and all other entities connected with a detained vessel;
- In order to avoid conflicts of interest a “classification society” should not be able to act at the same time as an agent of the shipowner and as a recognised organisation for the flag state;
- Classification societies and flag states should ensure that all survey data is publicly available;
- Classification societies should be legally liable, including vicariously liable for their surveyors or agents, and for any failure to exercise due diligence;

- Comprehensive criteria should be developed which will in practice prevent class or flag hopping;
- International shipowner organisations should expel sub-standard operators from their membership. This should also apply to national shipowner organisations if they permit sub-standard operators to retain membership;
- P+I clubs should be made to be more transparent in their operations, should be required to provide accessible third party liability for seafarers' claims and should be required to maintain their insurance coverage until any removal has been made public and conveyed to all interested parties;
- That there be put in place a system of financial security, together with a forum such as an international seafarers' court, to which seafarers can have ready and easy access to guarantee payment of wages which are due and owing and to guarantee payment of compensation where seafarers are injured or killed in work related incidents;
- Cargo owners should be made to exercise due diligence in the selection of vessels and should be liable for any failure to exercise due diligence, including in the worst cases by the confiscation of their cargo;
- Banks and financial institutions should be required to abide by international law and not require an owner/operator to fly the flag of a country where they do not have established a substantial economic entity as a condition of a loan or mortgage;
- Banks and financial institutions should be required to exercise due diligence over the companies they give ship mortgages to and, in those cases where they fail to do so, they should be afforded the lowest priority in the list of secured and unsecured creditors;
- Sub-standard tonnage must be scrapped in an environmentally and socially acceptable manner and be replaced by new buildings;
- Codes of best practice or voluntary initiatives and agreements should complement regulatory frameworks and other policy instruments (rather than seek to replace them) and should seek to foster continuous improvement;
- Seafarers must be considered as valued professionals, afforded suitable employment security and continuous training and be adequately protected, in the exercise of their professional judgement, from unfair commercial pressures;
- A "genuine link" must exist between the ownership of a vessel and the flag it flies through the establishment of a substantial economic entity within the flag state;
- The ISM "designated person" must reside within the flag state;
- Shipowners/operators must be issued with "a licence to operate" by their national administrations which meets internationally agreed standards and which can be removed if necessary. The licensing system and criteria for its issuance should be evaluated by the IMO

and subjected to three yearly audits, which are communicated and re-evaluated by the Organisation;

- The IMO has established a regime which requires port states to accept the documents and certificates issued by a flag state and therefore the IMO should take all necessary measures to ensure that those certificates are genuine and fully correspond to what they cover. The IMO should establish an oversight system of flag states and produce a blacklist of those deemed not to be meeting their international obligations, with vessels flying the flags of such states being subject to an appropriate sanction, for example, port state denial by flag;
- The IMO should seek to fulfil its mandate and intervene in the economic aspects of shipping;
- The port state control regime must be supplemented by a port state denial system for sub-standard operators and for sub-standard flag states;
- The IMO has accepted the role of “recognised organisations” and therefore both the IMO and the flag states which authorise them on their behalf have a responsibility for ensuring that they effectively discharge their assigned functions. The IMO should supplement the audits by the flag state with its own comprehensive assessment, after which they should be issued with “a licence to operate” which is valid for no more than three years;
- Flag states which do not make an adequate financial contribution to the training of seafarers should be subject to an international training levy to be operated by the IMO; and
- Free and fair competition must be underpinned by a set of norms which prevent inadequate manning levels, unfair or sub-standard employment policies, the avoidance of training by shipowners/operators and adequate remuneration based on the concept of equal pay for work of equal value, irrespective of nationality or country of residence.

Annex to ITF submission

ALBION TWO

The Panamanian registered general cargo ship ALBION TWO sank with all hands (25 seafarers) in the Bay of Biscay when bound for Kingston, Jamaica. The vessel was loaded with steel products and general cargo, including hazardous cargo, after part loading at Gdansk, Hamburg and Antwerp. The vessel sailed from Antwerp on 17 December 1997. The actual time and date of the sinking is not certain but is estimated to be 17 December 1997, when the vessel's structure underwent catastrophic failure and sank, some 40 miles west of Ushant. She sank in seconds before the crew had a chance to put out a mayday message. There were no life-rafts in the vicinity of the sinking which may indicate that the hydrostatic releasing system failed to operate, and the crew had no time to manually launch the rafts.

The owners only raised the alarm some two weeks after the sinking when the vessel was reported overdue by cargo receivers in Jamaica. It appears the absence of any communication from the vessel to the owners or managers during the intended voyage did not cause any concern.

General information and specifications

- Flag/class: Panama/ABS
- Flag History: Greece, Panama, Cyprus
- P+I Insurance: Sphere Drake/Odyssey Re (London)
- Beneficial owners: Oinousse Navigation Co.
- Ship Managers: Doctorlemos Shipping Co.
- Crew Nationality: Indonesian
- GRT: 16,278
- Year built: 1976
- ITF Agreement: No

Contractual compensation

The owners refused to pay contractual compensation to the 14 Indonesian families represented by the ITF. The owners and their P+I club insisted that the families sign "quit claims" and confirm that they were not intending to take a negligence case against them. The widows and dependants of the other dead seafarers accepted the wholly inadequate contractual settlements in exchange for signed quit claims.

Surveys and reports

Major structural defects were discovered in the bow area and fore peak tank after survey by the class surveyor. Later the ALBION TWO underwent repairs in Durban in 1996. Major structural repairs to the bow and fore peak* tank area were carried out without a class survey or class approval.

***Note:** This section was found missing from the wreck.

The vessel passed her special survey in 1996 under the supervision of ABS.

The Belgium government through the Antwerp Commercial Court (Nautical Division) completed a report on the sinking of the ALBION TWO in February 1999. The report implicitly lays blame for the tragedy with the single ship owning company — Oinoussé Navigation of Cyprus. The owner's argument that the loss was due to exceptional weather was dismissed by the Court. Other findings of the report included:

- The sinking of the 26, 976 dwt bulk carrier could not be attributable to exceptional weather, *"because the weather and sea conditions should not be considered exceptional during that winter at the westerly end of the English Channel"*.
- The hull of the ALBION TWO was in a serious condition of neglect — *"Albion Two was affected by very serious corrosion problems, whereas the last owners restricted the ship's maintenance to the strict minimum i.e. minimum steel renewal based on minimum measurements of the important parts of the ship's structure"*.

Further investigations

The investigations carried out by the ITF's marine experts revealed that the cause of the sinking was due to structural failure caused by serious corrosion as a result of inadequate repair and maintenance. The serious corrosion did not cause any of the surveyors from her classification society (ABS) to recommend that the vessel be detained or demand that suitable and safe repairs be carried out.

There were two ROV - underwater surveys completed on the wreck of the ALBION TWO. The first one was by the French Navy, which was completed to essentially identify the wreck and examine any obvious signs of structural failure. The second survey was more detailed. An important finding of the second underwater survey was that there were no signs or evidence of an explosion. The owners had argued that the hazardous cargo consisting of calcium carbide in drums exploded and due to the bad weather caused the ship to sink rapidly. This, of course, was a further attempt to distance themselves from responsibility including obligation to pay fair compensation to the seafarers' dependants.

Status of legal action

- Legal proceedings commenced in Cyprus in December 1997.

CORDIGLIERA

The general cargo ship CORDIGLIERA sank rapidly off the south-east coast of Africa on 13 November 1996, with all hands (29 Indians and 1 South African) — there were no survivors. The weather at the time of the sinking was moderate to gale force, which was well within the sea-keeping ability of a ship the size of the CORDIGLIERA. The vessel was loaded with an assortment of cargo, including a deck cargo of bricks located on the foredeck immediately abaft the forecastle and on each side of no.1 hatch. The ship loaded in Durban and set sail (13 November 1996) bound for Cape Town. Rescue ships found empty lifeboats, life-rafts and some floating wreckage, but no survivors were found.

General information and specifications

- Flag/class: Panama/ Lloyds
- P+I Insurance: Ocean Marine
- Reg./Beneficial owners: Berne Shipping Inc. Panama
- Manning Agency: Sinha Shipping Pvt Ltd., India
- Crew Nationality: India
- GRT: 12,025
- Year built: 1979
- ITF Agreement: No

Contractual compensation

The owners refused to pay contractual compensation to any of the dependent families. Their insurers offered a paltry \$12,000 to the widows or parents of each lost seafarer, in exchange for signed "quit claims" and confirmation that they were not intending to take a negligence case against them. The owner argued that seafarers from less developed countries should not be compensated at a level which is normally paid for the loss of life or injury to European seafarers, effectively saying that the life of an Indian is worth considerably less than a European or that the latter needs less training, safety procedures and protection from injury or death. To date the dependants have received no compensation from the owners or their insurers.

Investigations

- The owners commissioned a dive survey shortly after the loss of the CORDIGLIERA and concluded that the sinking was caused by a freak wave. Using this conclusion, the owners and their P+I Club attempted to avoid paying full compensation arguing that the loss was due to an "Act of God".
- At the ITF's and Government of South Africa's expense, another dive survey was completed, 23 January 1998. This survey produced conclusive evidence that the ship was not sunk by a freak wave. Further investigations and analysis carried out by the ITF's marine experts, including the results of the underwater survey, revealed that the cause of the sinking was due to structural failure as a result of massive structural corrosion, inadequate maintenance of hatch covers and improper stowage of deck cargo.

Status of legal action

A protracted and difficult legal action continues in order to determine jurisdiction and secure security. The owners (Mr. Sinha) and their lawyers continue to insist that the dependants of the deceased seafarers should be satisfied with the \$12,000 offered to them. Numerous attempts have been made to legally give notice of proceedings to Mr. Sinha who lives a jet-setting life style.

LEROS STRENGTH

The bulk carrier LEROS STRENGTH sank rapidly 23 miles off the Norwegian coast on 8 February 1997, with all hands (crew of 20) — there were no survivors. The vessel was bound for Poland after loading iron ore in Murmansk.

General information and specifications

- Flag/class: Cyprus/ABS*/RINA
- P+I Insurance: Liverpool and London**
- Beneficial owners: Lamda Sea Shipping Company
- Ship Managers: Leros Management, Piraeus
- Crew Nationality: Polish
- GRT: 12,693
- Year built: 1976
- ITF Agreement: No

* Class hopping —transfer of class from ABS to RINA. Improper procedures were followed by RINA, i.e. inadequate surveys and the issue of invalid certificates.

** Major structural defects discovered by the UK P+I Club after condition survey resulted in the withdrawal of cover by them — 3 years before the vessel sank.

Contractual compensation

The owners refused to pay contractual compensation to 12 dependent Polish families represented by the ITF. The owners and their P+I club have insisted that they sign “quit claims” and confirm that they are not intending to take a negligence case against them. Other dependants settled their claims against the owners for \$40,000, after signing quit claims.

Investigations

- The investigations carried out by the ITF’s marine experts revealed that the cause of the sinking was due to structural failure, as a result of inadequate repair and maintenance. The evidence indicates that the initial cause of the tragedy was due to the flooding of no. 1 hold and the subsequent structural failure in the way of the collision bulkhead and forecastle compartments including the fore-peak tank.
- Reports from previous LEROS STRENGTH crewmembers confirmed that the vessel was structurally unsound, i.e. the hatch covers were not watertight, even after repairs, including no.1 hatch cover, although it had been inspected and passed by RINA. Photographs taken shortly before the LEROS STRENGTH’s last voyage confirmed the problems of leaking hatch covers, particularly at no. 1, where the photograph showed tarpaulins temporarily secured across no. 1 hatch cover to prevent water ingress.

- The owners persistently refused to co-operate with the ROV - underwater surveys of the LEROS STRENGTH wreck and attempted to obstruct the survey taking place at every turn. The surveys, paid for by the Norwegian Maritime Administration, the ITF and the Norwegian maritime unions, confirmed a massive structural failure forward of no.1 hatch. Observation of the stem area refuted the owner's contention that the vessel sank as a result of bad weather. The stem showed no signs of severe impact which would most likely have occurred if the vessel had foundered intact, i.e. with foreward end attached.
- In 1996 the LEROS STRENGTH was detained in Rotterdam because of serious faults involving her safety systems, which were in very poor condition or missing. The survey, which was not followed up by effective refurbishment or replacement of defective equipment, included a report on the poor condition of the hatch covers.

Note: The detention above occurred only 3 weeks after RINA completed a Periodic Load Line Survey.

- Defects discovered at all recent surveys appear not to have been rectified. Examination of reports strongly suggest that the LEROS STRENGTH had completed a number of surveys where serious deficiencies involving the integrity of the hull had been identified.

Status of legal action

- The PROGRESS, an associated ship of the LEROS STRENGTH was arrested in South Africa, despite protests from Leros Management (ship managers for both vessels), that the PROGRESS and LEROS STRENGTH were not associated.
- The owners and their P+I Club argued that they do not have to pay full compensation because sinking was due to an "Act of God" etc. Extensive investigations carried out by the ITF's marine experts, including an underwater survey of the wreck (22 January 1998), revealed that the cause of the sinking was due to structural failure as a result of extensive corrosion and inadequate survey and maintenance.
- The legal battle continues. Lawyers representing the ITF continue to investigate appropriate jurisdiction for court proceedings. The owners argue that Cyprus, the flag state of the LEROS STRENGTH, is more appropriate.

Meanwhile dependants are still without compensation.

FLARE

The Cyprus registered bulk carrier FLARE broke in two and sunk in the Gulf of St. Lawrence on 16 January 1998, with the loss of 21 crew (four survivors). The vessel was bound from Rotterdam to Montreal in ballast.

General information and specifications

- Flag/class: Cyprus/Lloyds
- Flag history: Greece, Cyprus
- P+I Insurance: Liverpool and London
- Beneficial owners: Abta Shipping Co.
- Ship Managers: Trade Fortune Inc.
- Crew Nationality: Filipino
- GRT: 16,947
- Year built: 1972
- ITF Agreement: No

Contractual compensation

The owners refused to pay contractual compensation to the survivors and dependent families of the dead seafarers, which are represented by ITF. The owners and their P+I club insist that they sign “quit claims” and confirm that they are not intending to take a negligence case against them.

Investigations

Preliminary investigations carried out by the ITF’s marine experts revealed that the cause of the sinking was due to structural failure, as a result of unapproved repairs to the maindeck. Also major structural defects were confirmed in topsides of wing tanks after alleged steel renewal work at Enhanced Survey Programme (ESP).

ITF investigations have established that ongoing major structural repairs were made by crew members without a class survey or class approval. The repairs included welding strengthening pieces to critical areas of the maindeck by unqualified welders. The ITF investigation also determined that the vessel used an inadequate ballasting procedure, which over an extended period of time caused excessive pounding and slamming, shock loads and possible failure to the hull girder.

The Canadian Transport Safety Board (TSB) is due to issue its report on the sinking of the FLARE soon. It has completed a dive survey and its observations will be used to develop the main accident report.

Status of legal action

Proceedings on behalf of the victims were started in March 1998, assisted by the ITF in Canada, the jurisdiction which has the closest connection to the claim. The owners and their insurers challenged this, claiming that Cyprus, as the flag state, was more appropriate. The battle over jurisdiction took 5 months to resolve, with the Canadian Court finally deciding firmly in favour of the victims pursuing their claims in Canada. The owners had tried to show that Cyprus had some connection with the case. Evidence

prepared by the ITF legal team showed conclusively that the owners had no real connection to Cyprus after all, and were in fact located in Greece.

Preliminary legal investigations and inquiries continue.

ATHENIAN FIDELITY

The general purpose tanker ATHENIAN FIDELITY suffered an explosion in no. 2 centre tank, killing four crew and critically injuring one other. The weather was excellent when the explosion occurred 123 miles south of the west point of Puerto Rico on 11 January 1999. The vessel was in ballast, bound for Venezuela, after discharging its cargo at New York, when the explosion occurred. Immediately prior to the explosion the crew were engaged in general deck maintenance which involved "hot work", including the removal and renewal of tank lid gaskets. When the explosion occurred, large sections of the deck were blown out and flipped over onto the main deck in the vicinity of no. 2 centre tank. After Santo Domingo the vessel proceeded to Curaçao for temporary repairs, then she proceeded to Constanta, Romania, for additional repairs.

The ATHENIAN FIDELITY had a current ISM Document of Compliance and Safety Management Certificate at the time of the explosion.

General information and specifications

- Flag/class: Cyprus/Lloyds
- P+I Insurance: North of England
- Beneficial owners: Blue Macedonian Carriers Ltd.
- Ship Managers: Athenian Sea Carriers Ltd, Athens
- Crew Nationality: Polish
- GRT: 17,996
- Year built: 1985
- ITF Agreement: No

Contractual compensation

The owners refused to pay contractual compensation to the families of three dead crew members and one injured survivor represented by the ITF. The owners and their P+I club have insisted that they sign "quit claims" and confirm that they are not intending to take a negligence case against them. Two other widows agreed to accept a contractual settlement in exchange for a signed "quit claim".

Investigations

- Investigations carried out by the ITF's marine experts revealed that the cause of the explosion was due to the ignition of cargo vapours in tanks 1 and 2 centres. These tanks had been waterwashed (tank cleaned) but were not safely gas freed. The men were killed and injured after they had commenced repairs to the tank lids using spark producing chipping hammers and other cleaning implements.
- The investigation also revealed that there was no safety procedures including checklists for tank washing, purging, ventilating and gas freeing the tanks, the most critical of operations on an oil tanker.

- The ATHENIAN FIDELITY had no safe working procedures including a permit to work (hot work) procedures, which are required under any marine safety regime including the ISM Code.
- Initially, after the explosion, the master reported he was proceeding to San Juan where competent Marine Safety inspectors (US/MSA) were located. The Port Captain at San Juan planned to board the vessel immediately on arrival and commence inspection of the tanks etc. The master later decided to proceed to Santo Domingo, where there are no competent inspectors. The Port Captain at San Juan suspected that the Cypriot flag authorities had instructed the master to proceed to Santo Domingo to avoid the scrutiny of the US/MSA, and avoid any bad publicity.
- The injured crew members were airlifted to hospital in San Juan. In San Juan the injured men were moved from hotel to hotel on a daily basis to avoid the press.
- The vessel had completed an intermediate survey in December 1997 and no serious defects were reported. After the survey the ATHENIAN FIDELITY was chartered by Shell and Mobil, which says very little for the oil company's pre-charter checks, often quoted by them as the ultimate safe guard.

Status of legal action

The location of the ATHENIAN FIDELITY and other ships of the company are being watched. It is the intention of the ITF legal team to arrest the vessel in a suitable jurisdiction and gain an injunction against the vessel's insurance to compensate the families of the dead and the injured seafarers.

Legal proceedings continue.