

SUBMISSION TO ICONS FROM NUSI

1/ Employment of 'Passport Holders' As Seafarers

With long maritime history India has been supplying labour to international shipping for more than two centuries. Indian seamen have always been considered as a stable and qualified workforce by foreign shipowners. In order to provide formal and regularised training to Indian seamen, Government of independent India set up three pre-sea training institutions for ratings.

As a result Indian shipping as well as international shipping was assured of qualified and trained manpower on a continuous basis. As a result of lackadaisical attitude of the Immigration authorities a number of persons could be engaged by unscrupulous manning agents without going through the legal process or through the maritime administration or under the protection of the organised trade union. The only documents such a person carried was a passport - a travel document, not a seafarers document.

It is unfortunate that the guarantees which the Indian government built into the system during the past twenty years, to ensure that each seafarer was adequately trained, have been undermined by such clandestine engagement of untrained, unqualified, uncertificated and unorganised seafarers - sometimes with forged certificates. It is clandestine engagement because the shipowner or his agent or the master of his vessel does not approach the maritime administration, which he should under law or the union for engaging seamen. He does not do so because he knows the agreement he offers to engage the man on is deficient in all respects and, which in any case, he does not wish to abide by. It is clandestine engagement because the man who is not a bonafide seaman too knows that he would not go on ship if the shipowner approached the government or the union. Hence this hush-hush affair which remains good as long as it lasts; till of course the unscrupulous shipowner shows his true colours.

Another factor to be noted is that these 'passport holders' are nothing but self-appointed seamen as they do not possess a seaman's documents, and are often the most exploited workers.

Normally a recruiting agent collects a hefty sum (representing several months salary) in order to find them a job on board a ship. Many such persons, usually receive shockingly low wages, live in very poor onboard conditions, work long hours without overtime compensation or proper rest, and without wholesome food. They hardly get any shore leave or medical attention.

More often than not safety procedures and vessel maintenance are neglected. In many cases the ships are unseaworthy. In some of the worst cases, men are virtual prisoners on the ship, unable to earn enough for repatriation home which the company demands that they must pay. There is no guarantee of payment, but the recruiting fee paid will make it almost impossible for the seafarer to leave the employment of the shipowner for months in order to simply cover the cost of getting the job itself. These people should never leave India in the first place.

NUSI has for long requested that the government tighten up emigration procedures to ensure that Indian 'seamen', passport holders or genuine, do not leave the country without proper documentation. This would include a valid seaman's book, a contract of employment giving details of their wages, service conditions, repatriation and death and disability compensation. This kind of arrangement is already exercised by the Protector of Emigrants in the case of employment of Indian workers in the Arabian / Persian Gulf. There should also be a control to ensure that the crew who are sent from India are indeed qualified for the jobs which they hold.

In this context, NUSI has consistently urged the shipping authorities to register all crew-manning agents so as to ensure that only those who are qualified, trained and hold proper documents are engaged as seamen. Further it has also been emphasised that the agreement/contract must be registered with the shipping authorities and the agents must furnish bank guarantees to cover wages and repatriation of seamen in the event of their principals going bankrupt.

It is unfortunate that these efforts of NUSI have not been able to shake the tardy and lethargic maritime administration and immigration authorities and as a result, unscrupulous shipowners and their equally unscrupulous local manning agents have continued to recruit men to work as seamen and exploit them to the hilt.

It is under such circumstances that this matter is being raised before the Commission with the hope that a course of action would be initiated at the international level, which would save the innocent, gullible and unsuspecting persons from hardships and exploitation.

2/ The Problems Faced By National Shipping

India remains one of the world's largest shipping nations. The UNCTAD Review of Maritime Transport 1998 put India as 14th position in the world for deadweight tonnage. Unfortunately, the Indian fleet has been slowly shrinking for the last four years. In 1999, the Indian fleet at last showed some signs of expansion, around 2 % growth over the year measured in gross tonnage (Lloyds Register World fleet statistics). However, the fleet has still not returned to its 1997 size. One of the reasons of the decline in the Indian tonnage is due to the fact that the Indian government now allows Indian vessels to be registered outside India. This also leads to the fact that Indian shipowners who flag out have options to choose as to who will man their vessels. They can hire foreign nationals to man their vessels on low wages. This further aggravates the unemployment position.

Cabotage laws are required to protect the national merchant fleet from the forces of international shipping. It is practiced almost universally. Developed and developing maritime nations have their own laws regarding cabotage to safeguard their national interests. Though relaxation of Cabotage is detrimental to the interests of Indian shipping, it cannot be avoided.

The Indian fleet is made up mainly of tankers and bulk carriers, with a large number of smaller general cargo ships. The fleet lacks specialist tonnage, and needs a regime where Indian owners are prepared to raise the necessary investment for, as an example, gas carriers and container ships. To positively develop the Indian shipping industry we would like to see government assist in every possible way to get Indian shipowners to enter into these trades so that India does not need to operate with foreign flagged tonnage

3/ Non - Compliance of Contracts and CBAS for Indian Seamen

Indian seafarers are governed by two distinct agreements so far as national shipping is concerned. The Indian officers are governed by INSA/MUI Agreement, which is entered into by the Indian National Shipowners Association, a body representing the Indian shipowners and the Maritime Union of India. Indian seamen ratings are governed by the bi-partite National Maritime Board, India (NMB(I)) agreement between NUSI and Indian

shipowners, which covers seamen serving on board Indian flag vessels. For foreign flag vessels, NUSI and MUI enter into ITF approved Collective Bargaining Agreements with members of Maritime Employment Board, India (MEBI).

Thus the concerned seafarer has the protection of law, maritime administration and his respective union. For this reason, there is not much of any likelihood of non-compliance of these agreements with the unions. It may be added that the applicability of both the above types of agreements is industrywise and countrywide. There are still instances, though rare, that the seafarers covered by these agreements have not been paid wages or are abandoned.

In sharp contrast, Indians going on board vessels signing individual contracts have to face the vagaries of uncertainty. For example, the ITF has communicated to us instances where they have received complaints concerning non-compliance of contracts. These complaints cover the period between 1996 and 1999. They have complaints from 251 ships having Indian crew (usually only partly) on board. Of these ships, 217 were flag of convenience ships, 32 were national flags where Indian crew had been employed and only 2 ships were Indian flagged. 127 of these cases involved unpaid wages, and a total of USD 2.45 million was recovered for crew in these cases. 12 of them involved ships which had been abandoned by their owners. These figures, and our own experience, demonstrate the extent of the abuses of Indian seafarers engaged clandestinely on foreign flagged ships as against the relatively good conditions which have been negotiated with NUSI and MUI.

4/ Need to Secure Earnings of Seamen

It has been the experience of Indian seamen that on a number of occasion, their earnings and dues, that is, wages, gratuity and other entitlements have not been paid to them for years on end. This phenomenon is more prominent in case of liquidation of shipping companies and other unforeseen circumstances. A few years ago, two foreign shipping companies went into liquidation all of a sudden. The result was that the Indian seamen were deprived of all their entitlement as the agents were left with no funds for being disbursed to them.

In regard to Indian shipping companies, there are no provisions to meet this kind of unforeseen circumstance. This lacunae in law was exposed when a series of Indian companies, namely m/s Malabar Steamship Co. Ltd., M/s Parekh Ocean Carriers Ltd. and similar other companies went into liquidation. In these instances, seamen were not able to recover even their hard-earned wages even after ten or more years of waiting.

In view of the above, it is imperative that a suitable scheme of wage insurance for seamen should be instituted to guarantee payment of their earnings, dues and entitlements against any unforeseen circumstances where the shipowner fails to discharge his legal obligations and financial commitments. Such an insurance could be considered on the basis of third party insurance that is statutorily required to be taken while purchasing a motor car. Similarly, while registering a ship, it should be mandatory for the shipowner to take out a third party insurance to cover crew wages.

5/ Indiscriminate Issue of Continuous Discharge Certificates (CDC)

In 1930 the Royal Commission on Labour in India also went into the question of curbing corruption and the matter of recruitment of seamen. Seafarers had to pay whole month's wages by way of bribe to agents and other intermediaries who all had a finger in the pie of recruitment. The Commission in its report stated that though the graph of bribery might have come down, it was bound to be there so long as there was a large volume of unemployment amongst the seamen and as long as that situation remained, the temptation to offer bribe was not likely to be diminished. The Commission recommended amongst other things that fresh recruitment should

be stopped for a number of years without reducing the number below the reasonable requirements of the Industry. Continuous Discharge Certificates to be issued only to persons for whom posts are available.

The situation is very much the same even today. Despite the fact that job situation on ships is coming down, the Shipping Master is issuing CDCs to those who have not undergone pre-sea training. The situation will reach alarming proportions due to acute unemployment and holders of such CDCs will be willing to work in lower categories. There will be stiff competition amongst seafarers and it will be a law and order situation. Seafarers will be working on unseaworthy ships without any bonafide contracts and practically no protection of their rights and liberties.

6/ Registration of Manning Agents

It often comes to light that Indian "seamen" have not been paid their hard-earned wages or have been left to fend for themselves in foreign countries having been stranded there without payment of wages, food provisions, water, fuel for heating and lighting, and so on. These incidents mainly relate to untrained, unqualified and unorganised persons who are engaged clandestinely to work as seamen. Almost in all cases, such clandestine engagement takes place on "Flags of Convenience" (FOC) ships.

The FOC countries do not enforce minimum social or even safety standards nor do they have any trade union legislation. The countries from which the crew are recruited can do little to protect them, even if they wanted to, simply because the rules that apply on board are those of the country of registration. They are basically outside the purview of law. The local agent washes his hands off stating that the contract is with the Principal. The principal, in turn, is either illusive with only a nameplate somewhere and a letterhead, or elusive, as one can only correspond and correspond with no results.

The inevitable result always is that person clandestinely engaged - after having paid a hefty amount to the recruiting agent - has neither the protection of law nor the government nor the trade union.

Enacting law having stringent provisions could check this menace of clandestine engagement.

a) All crew-manning agents must register with the shipping authorities so as to ensure that only those seamen, who are qualified, trained and holding seafarer documents are engaged.

The agreement/contract under which bonfide seamen are engaged must be registered with the shipping authorities.

The agents must post a bond or furnish bank guarantee to cover wages and repatriation costs of seamen in the event of their Principal going bankrupt.

Penal provision for contravention of the above provisions.

