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# Balancing seafarers' welfare and maritime security with biometrics

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**WORLD MARITIME UNIVERSITY**

Malmö, Sweden

**BALANCING SEAFARERS' WELFARE AND  
MARITIME SECURITY WITH BIOMETRICS**

By  
**NEERA MALHOTRA**  
India

A dissertation submitted to the World Maritime University in partial fulfilment of  
the requirements for the award of the degree of

**MASTER OF SCIENCE  
IN  
MARITIME AFFAIRS  
(MARITIME LAW AND POLICY)**

**2007**

## DECLARATION

I certify that all material in this dissertation that is not my work has been identified, and that no material is included for which a degree has previously been conferred on me.

The contents of this dissertation reflect my own personal views, and are not necessarily endorsed by the University.

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I express my foremost and deepest gratitude to the Almighty with the following hymn, which is a constant reminder of the various blessings that he has showered upon me:

### AMAZING GRACE

Amazing grace! How sweet the sound  
That saved a wretch like me!  
I once was lost, but now am found,  
Was blind, but now I see.

'T was grace that taught my heart to fear,  
And grace my fears relieved;  
How precious did that grace appear  
The hour I first believed!

Through many dangers, toils and snares,  
I have already come;  
'T grace hath brought me safe thus far,  
And grace will lead me home.

And when we've been there ten thousand years,  
Bright shinning as the sun,  
We'll have no less days to sing God's praise  
Then when we first begun.

By John Newton

I express my gratitude to my parents for being constantly by my side and giving me strength and encouragement to pursue my goals.

I owe a special debt of gratitude to Mrs. Indira Bhargava, Chairperson, and Mr.M.M.Das, Chief Commissioner, from the Ministry of Finance, Government of India, who supported my application and made it possible for me to join this course at WMU.

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I am grateful to the staff of the library, and in particular to Ms Susan Wangeci-Eklöw and Ms Cecilia Denne for going out of their way in locating books and articles for me.

*There is a tide in the affairs of men  
Which taken at the flood, leads on to fortune;  
Omitted, all the voyage of their life  
Is bound in shallows and in miseries.*

*William Shakespeare: Julius Caesar. Act iv. Sc. 3<sup>1</sup>*

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<sup>1</sup> As quoted in *Green Paper on a future Maritime Policy for the EU*.

## ABSTRACT

Title of dissertation: **Balancing seafarers' welfare and maritime security with biometrics**

Degree: **MSc**

Maritime security has gained a great deal of prominence in the post - 9/11 era. The emergence of new security regimes to meet the concerns of the affected states has led to a compromise of the cherished rights of seafarers to shore leave and the essential professional movements while joining or leaving a ship.

The dissertation seeks to discuss the concerns exhibited on this issue in the international fora, the introduction of the concept of 'human element' in the ISPS Code and the development of a biometric enabled Seafarers' Identity Document, and how despite these measures the plight of a seafarer has remained unchanged.

The study examines the various ILO, IMO and UN Conventions and Instruments addressing this issue and seeks to discuss the role of stake-holders while implementing these Conventions and the need for balancing the welfare of seafarers with maritime security.

Conclusions are drawn based on the results of the analyses and survey and the commitment from the international community to resolve the issue for the general betterment of maritime commerce.

**Key Words:** maritime security, seafarers, shore leave, fundamental rights, welfare, ILO, biometrics, seafarers' identity documents

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## LIST OF ABBREVIATIONS

9/11	The series of coordinated terrorist suicide attacks on United States of America on September 11, 2001
BIMCO	Baltic and International Maritime Council
CMC	crew member certificate
CTU	closed container transport unit
FAL	Convention on Facilitation of International Maritime Traffic, 1965, as amended
ICAO	International Civil Aviation Organization
ICS	International Chamber of Shipping
ILC	International Labour Conference
ILO	International Labour Organization
IMO	International Maritime Organization
INTERCARGO	International Association of Dry Cargo Shipowners
INTERTANKO	International Association of Independent Tanker Owners
ISF	International Shipping Federation
ISM Code	International Safety Management Code for the Safe Operations of Ships and for Pollution Prevention
ISO	International Organization for Standardization
ISPS Code	International Ship and Port Facility Code
ITF	International Transport Workers' Federation
JMC	Joint Maritime Commission of ILO
MLC	Maritime Labour Convention, 2006
MRTD	machine-readable travel document
MRZ	machine-readable zone
MSC	Maritime Safety Committee of IMO
NAMMA	North American Maritime Ministry Association
NSCU	National Chinese Seamen Union
NUMAST	National Union of Marine, Aviation and Shipping Transport Officers
OCR	optical character recognition
SID	seafarer's identity document
SOLAS	International Convention for Safety of Life at Sea, 1974, as amended
STCW 95	International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended
USA	United States of America
UNHCR	United Nations High Commissioner for Refugees
WCO	World Customs Organization

# CHAPTER 1

## INTRODUCTION

**Persons are necessarily the foundation, cause and end (of) all institutions.**

**U.S. Catholic Bishops <sup>2</sup>**

### 1.1 Background

On September 11<sup>th</sup> 2001 the world rudely woke up to the magnitude of a disaster that an organised terrorist activity can cause. The sense of complacency with which the developed world had lived with for many years was shattered overnight. The four simultaneous attacks carried out by well-equipped and trained people of a terrorist organisation made the superpower get up and realise that its territory is not as invincible as it had always believed. This resulted in adopting and devising a series of measures and counter measures to ensure that a disaster of the same nature is never repeated.

Though the attack concentrated on one single country, it had a rippling effect globally. Even today any semblance of peace and order that the world may have achieved in the pre-9/11 period has not been restored. There is doubt and disbelief every where. Be it at the ports or at the seaports or at any other public place, every country is fighting a battle to safe guard its territory and its citizens from any further threats of terrorist activities. This has caused a tremendous increase in surveillance and supervision of the security agencies globally. New technologies are being adopted to counter any threats from future attacks by these new well-organised and well-resourced extremist groups.

Globally, every sector has been affected, directly or indirectly, by these extremist activities. The maritime sector is not spared either. The free movement of billions of tons of containerised cargo on thousands of vessels operated by thousands of multi-national crew moving between thousands of ports is perceived to be an easy target for terrorist attacks and is causing the governments a great deal of worry. The maritime

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<sup>2</sup> As quoted by Paul K. Chapman in a paper presented titled *Seafarers and Their Problems* at the Conference on *The Legal Rights of Seafarers* sponsored by the Nautical Institute, 1985.

system is considered a vulnerable target for future terrorist attack as any terrorist can act as crew and manipulate the system for the purpose of extremist activities. The dangerous cargo being transported every day is being viewed seriously as the cargo itself, due to its flammable nature, can be used by the terrorist as a device for attack.

In order to address the obvious gaps existing in the area of maritime security a number of new initiatives have been taken by the International Maritime Organisation (IMO). The contracting governments at IMO successfully negotiated the adoption of International Ship and Port Facility Security Code (ISPS Code)<sup>3</sup> under Chapter XI-2 Safety of Life at Sea Convention (SOLAS). As SOLAS was the most widely ratified Convention it was easy to implement the ISPS code on the ships and at ports of all contracting member states. However, as shipping involves a large movement of crew there was a need to establish the positive identity of a genuine seafarer. As the United Nation's International Labour Organisation (ILO)<sup>4</sup> is the custodian of all matters relating to workers and has already an existing instrument relating to identity of seafarers: The Seafarers Identity Documents Convention, 1958 (No.108)<sup>5</sup>, the contracting nations at the IMO decided to give the mandate to ILO to bring in a new and more rigorous identification system for seafarers to provide an effective solution to protect them against terrorism.

At the summit of the G8 nations in 2003 in Evian, France, a declaration cited in the communiqué on transportation security referred to the urgent need "to develop a secure, verifiable seafarer identity document at the International Labour Organisation (ILO)."<sup>6</sup> While recognising the need for growing security the maritime world was

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<sup>3</sup> The objective of ISPS Code is to establish an international framework involving co-operation between Contracting Governments, Government agencies, local administrations and the shipping and port industries to detect/assess security threats and take preventive measure against security incidents affecting ships or port facilities used in international trade. *ISPS Code* 2003 Edition, IMO Publication, London.

<sup>4</sup> The ILO was founded in 1919 and became the first specialized agency of the United Nations in 1946. The ILO is the global body responsible for drawing up and overseeing international labour standards. The ILO is the 'only' tripartite United Nations agency in that it brings together representatives of governments, employers and workers to jointly shape policies and programmes. This unique arrangement gives the ILO an edge in incorporating 'real world' knowledge about employment and work. See [www.ilo.org](http://www.ilo.org). Accessed 22.08.2007.

<sup>5</sup> Convention No.108 is the most widely ratified ILO maritime Convention. It was adopted in the year 1958, came into force on 19.2.1961 and has 64 ratifications representing around 61 percent of world gross tonnage.

<sup>6</sup> Doumbia-Henry, Cleopatra, *Current Maritime Labour Law Issues - An Internationally Uniform Identity Document for Seafarers*, WMU Journal Of Maritime Affairs, 2003, VoL.2 No.2, 129-148, at

aware of the need to protect the rights and privileges of the seafarers for easy professional movements across state boundaries in pursuance of their profession and gaining access to shore-based facilities.

During the 91<sup>st</sup> International Labour Conference (ILC), 2003 the Seafarers' Identity Documents Convention, 2003 (No.185) was adopted unanimously.<sup>7</sup> This seafarer identity document (SID) is not a travel document. It is a social document to facilitate shore leave in ports and transit of seafarers across state boundaries to join the ships and to return home. The new convention provides for a mandatory requirement for a "biometric identifier" as part of the identity document. "A biometric is an electronic recording of a unique physical identifier allowing immigration authorities to automatically match the document and its bearer".<sup>8</sup> The biometric in SID is embedded in the form of a bar-code and uses fingerprint technology for capturing the positive identity of a seafarer in the bar-code. The Convention also requires member states to put in place an entire security infrastructure in order to have the minimum security requirement while processing and issuing the SID. In order to ensure the global verification of SID at various sea-ports, airports and other border control points and to have a globally-interoperable technology ILO developed international standards in cooperation with International Organization for Standardization (ISO)<sup>9</sup> to ensure inter-operability of the identity document. Further, ILO also established a list of vendors whose products were found to be in compliance with the established standards.

The objective of the Convention is to provide a standardized framework to member states in issuing the seafarers identity cards, and to incorporate the biometric technology in the card to ensure foolproof authentication of a bonafide seafarer and, thereby, provide a safe and secure environment for the maritime commerce. At the

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133 -G8 action plan to "Enhance transport security and control of man-portal air defence systems (MANPADS)".

<sup>7</sup> The Convention was adopted with 392 votes in favour, no votes against and 20 abstentions.

<sup>8</sup> See Doumbia-Henry, *supra*, note 6 at p.133. A recent ICAO definition states: "Biometrics is a means of identifying a person by biological features unique to the individual, using advanced computerized recognition techniques". Another of its technical documents states "Biometrics are the automated means of recognizing a living person through the measurement of distinguishing physiological or behavioural traits". The biometrics being considered by ICAO is facial recognition, fingerprints and iris scan.

<sup>9</sup> ISO normally endorses standards for biometrics.

same time, the Convention also aims to provide a globally acceptable identification to seafarers to move easily across state boundaries during the course of their jobs.

Convention 185 came into force on 9<sup>th</sup> February, 2005.<sup>10</sup> It is now more than 2 years since the Convention has entered into force. To date 11 member states of ILO have ratified the Convention<sup>11</sup>, but conspicuously absent in this list are major seafarer supplying nations such as China, Philippines, Indonesia and India. All through the exercise of development of this Convention and debates at the international forum the welfare of the seafarer appeared to be the prime concern of one and all. The entire maritime fraternity was seized by the fact that in the process of introducing the new security measures the seafarer should not lose his/her customary right to gain access to shore leave and easily join or leave the ship.

However, the reality on the ground was different. Post-9/11, world-wide, seafarers have been denied shore leave permits. This has resulted in a growing resentment among the seafarers and the industry at large. Further, growing instances of deportation of crew from foreign ports and their conviction is creating negative ripples. The requirement of individual visas by certain countries has placed a heavy financial burden on the seafarers as many shipping companies do not cover this cost for their seafarers. The treatment of seafarers as potential terrorists and placement of armed guards on board the vessel has caused uproar, with many sections of the industry calling it a breach of the fundamental rights of seafarers. Further, the hostile treatment meted out to seafarers in foreign ports is having a negative impact on the general well-being of seafarers, which may lead to endangering the safety of the vessel.

## **1.2 Objectives**

The adoption of Convention No.185 was seen as a huge step forward towards improving the working conditions of seafarers as it contained the essential provisions dealing with shore leave. Today, four years later the majority of the member states of ILO are still debating on the adequacy of the Convention in meeting the global

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<sup>10</sup> As per Article 12 of the Convention, the Convention will enter into force six months after that date on which the ratification of two Members has been registered with the Director General of the ILO.

<sup>11</sup> See <http://www.ilo.org/ilolex/cgi-lex/ratifce.pl?C185>. Accessed 22.08.2007.

security requirements. Against this background this dissertation analyzes the feasibility of introducing technology in the field of seafarers' welfare and how technology is applied in an attempt to strike a balance between the requirement of security by governments and preservation of the rights of seafarers. As seafarers are a marginalized set of people and lack political power, not much appears to have been done to alleviate their conditions despite rampant reports of injustice and misbehavior in the media and in the international fora. This dissertation aims to attract the attention of the global community on the long term economic and social implications of the unreasonable restrictions being placed on professional movements of seafarers and seeks to explore answers to the long-standing impasse with security agencies, especially in certain states, in unjustifiably denying and overlooking the importance of shore leave in the psychological and physical well-being of seafarers. It is hoped that the international community will take the necessary initiatives in this regard and will ensure that seafarers are accorded due recognition for their services in the development of global commerce.

In order to achieve the objectives of this dissertation detailed discussion is carried out on:

- the various international instruments which protect the fundamental rights of seafarers and the provisions relating to shore leave;
- how the security regimes have undergone drastic conceptual change after the 9/11 tragic episode and how they have affected the professional life of seafarer;
- evaluating the introduction of biometrics in the SID and its impact on implementation on the general well-being of seafarers;
- analyzing the views of respondents to the questionnaire circulated and the new definitions of security;
- recommendations on how the international maritime community can achieve a balance between security requirements and the welfare of seafarers.

One prominent feature of the dissertation is that though a detailed examination of Convention No.185 is carried out, this is not done with the objective of highlighting the short comings, if any, of the Convention. The author is aware that there are many



landmark achievements associated with this Convention, with its emphasis on facilitating easy access for seafarers to shore leave, while providing the necessary confidence to the receiving states<sup>12</sup>, by introducing biometric technology in SID, to accord permission to seafarers to enter their territories. This dissertation looks at Convention 185 as a unique Convention, that is, an ideal ‘model’ for analyzing the social consequences of technology on welfare of seafarers.

### **1.3 Materials and Methods**

In order to examine the above objectives the author solicited viewpoints from all the major stakeholders of the shipping industry: the maritime administrations, the shipowners’ organizations, seafarers’ unions, trade associations, media and non-governmental organizations. To ensure objectivity an electronically compliant questionnaire was designed and sent via e-mail.<sup>13</sup> The electronic questionnaire was prepared to ensure feasibility and greater compliance. The replies received were analyzed and conclusions were drawn.

Convention No. 185 entered into force in February, 2005. The inclusion of biometrics in SID has not gained much prominence and awareness in the maritime world. There is no book available on this subject. Further, the standard adopted for fingerprint based biometric embedded in a barcode is unique to SID, as ISO has clearly stated that the SID standards will not apply to the general standards for fingerprint minutiae-based biometric. Therefore, in the absence of any published literature on the topic of dissertation, reliance was placed on the replies received to the questionnaire issued and the literature derived from the web-based research for arriving at conclusions.

The literature regarding the SID document, the biometric technology embedded in a bar-code, shore leave provisions in various international conventions and the fundamental rights of the seafarers is extensively reviewed. Resources include the World Maritime Library, electronic library database, and web-based material. This dissertation reflects at appropriate places the usage of the literature gathered and in the analysis and development of conclusions at the end.

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<sup>12</sup> A receiving state is one in whose territory a seafarer requests for shore leave after the ship has reached along side in its port. Also, in order to join a ship, as part of employment contract, a seafarer requests for permission of entry to a state in whose territory the concerned ship has arrived.

<sup>13</sup> A sample questionnaire is placed at Appendix A.

Every chapter in this dissertation begins with an introduction and ends with a summary, as each chapter deals with a distinct aspect which it introduces to the reader and summarizes the relevance of the findings of the chapter in the overall context of the dissertation.

## CHAPTER 2

### SEAFARERS' RIGHTS AND WELFARE

**Give to every other human being every right that you claim for yourself.**

**Robert Ingersoll<sup>14</sup>**

#### 2.1 Introduction

Every participant in the economic structure of society deserves to be treated with respect and dignity. This helps the individual realize his/her true potential. The uniqueness of merchant shipping had probably made the stakeholders of the industry recognize this principle as early as in medieval times. The isolation of seaboard employment had a major impact on the development of the legal systems. This led to the evolution of regulations. However, these regulations were less tangible as most of them were oral traditions which passed from ship to ship and came to be regarded as 'customs of the sea'.<sup>15</sup> Over the years, as and when new nations emerged and developed their legal systems, they took into account the unique character and history of the shipping industry and accorded special legal status to those who worked on board ships.

#### 2.2 Shore Leave

Seafarers are unique among industrial workers as they live at their place of work.<sup>16</sup> Most seafarers spend an average of nine months a year at sea. The ship is a confined environment and lacks most of the facilities which the workers ashore enjoy and take for granted. Therefore, shore leave is an exceptional facility granted to ships' crew to go ashore while the ship is in port. Confinement to ship has an adverse impact on seafarer's welfare, which may lead to fatigue and that in turn has safety implications for the seafarer and the ship. Therefore, shore leave is not an amenity, but a vital necessity<sup>17</sup>.

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<sup>14</sup> US Agnostic, agnostic apologist, lawyer, and orator (1833-1899), *Human Rights Quotes*, <http://www.quotegarden.com/h-rights.html>. Accessed 24.08.2007.

<sup>15</sup> Fitzpatrick, Deirdre & Anderson, Michael, *Seafarers' Rights*, Oxford University Press, 2005, at 8.

<sup>16</sup> See Doumbia-Henry, *supra*, note 6 at p.131.

<sup>17</sup> Alderton, T., Bloor, M., Kahveci, E., Lane, T., Simpson, H., Thomas, M., Winchester, N., Wu, B., and Zhao, M., *The Global Seafarer – Living and working conditions in a globalized industry* – Geneva, ILO Publications, 2004.

In order to facilitate trade the need to grant privileges and protection to seamen was recognised even in medieval times. Some documents even state that mariner's right to shore leave existed even before the earliest written codification of maritime law in the Middle Ages.<sup>18</sup> The twelfth century saw the codification of certain privileges to seamen, including facilities like shore leave, in order to ensure safe sea transport for the wine trade between France and England.<sup>19</sup> Shore leave has been the most time-honoured custom in the maritime industry and considered crucial for the well-being of seafarers. The *Rolls of Oleron* is the first recorded source of modern maritime law and foundation of all European maritime codes. It formed the *lex mercatoria* of the middle ages. The *Rolls of Oleron* contained provisions governing seafarers going ashore<sup>20</sup>. Similar provisions of shore leave are found in the fourteenth-century Hanse or Wisby sea laws.<sup>21</sup>

In a commentary on Article XX of the Code of Oleron, Alexander Justice explains:

[T]he reason [for Article XX] was to keep the Seamen in Health and Vigour: For by encouraging them to go ashore, two at a time, when their attendance was not necessary on board, The Master gave them an opportunity to refresh themselves at Land, which is the best Remedy in the World for the Scurvy, Contracted a Ship-board by living on Salt Meats and Dry Bisket and being crowded up in a close Place for a considerable Time: Their Eating Fresh Provisions, and Breathing the free Air at Land, makes 'em strong and better able to go thro' their business.<sup>22</sup>

After spending days on board a vessel sailing, with no land in sight, a seafarer looks forward to stepping on land when the ship reaches a port. This gives him/her an opportunity to go ashore and use the shore-based facilities for recreational, and also

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<sup>18</sup> Stevenson, Douglas B., *The Human Element And The Maritime Gap, Shore Leave :Visas And Seafarers' Identity Documents*, presentation at the Nautical Institute ,U.S. Gulf Branch, *Command Seminar, Bridging The Maritime Gap*, Houston, Texas. Accessed 24.08.2007  
<http://www.seamenschurch.org/CSR%20Website/scinauticahouston.htm>

<sup>19</sup> *Report VII (1) Improved Security of Seafarers' Identification*, International Labour Conference 91<sup>st</sup> Session 2003, International Labour Office, Geneva (2002) at 7.

<sup>20</sup> Mukherjee, Proshanto K., *Maritime Legislation*, WMU Publications, 2002, Malmö; Sweden, at 32

<sup>21</sup> *Supra*, note 19 at p. 7.

<sup>22</sup> Mukherjee, Proshanto K., and Mustafar, Azfar Mohammad, *The International Ship and Port Facility Security (ISPS) Code and human element issues*, Contemporary Issues in Maritime Security, WMU Publications , Malmö, Sweden, 2005, at 277.

for medical purposes. This is an essential facility to ensure the well-being of a seafarer and his/her ability to perform the job well.

Traditionally the granting of shore leave depended on the master's personal whim. With the laissez-faire culture dominating the common law courts in the 19<sup>th</sup> century, the Admiralty courts adopted an equity jurisdiction and liberal principles in dealing with matters relating to shipowners and seafarers. Justice Story in the case of *Harden v Gordon*<sup>23</sup> made a memorable opinion which was quoted in part 119 years later by the US Supreme Court in *Garrett v Moore-McCormack Co. Inc*<sup>24</sup> :

Every court should watch with jealousy an encroachment upon the rights of seamen, because they are unprotected and need counsel; because they are thoughtless and require indulgence; because they are credulous and complying; and are easily over reached. But courts of maritime law have been in the constant habit of extending towards them a peculiar protecting favour and guardianship. They are emphatically the wards of admiralty...If there is any undue inequality in the terms, any disproportion in the bargain, any sacrifice of rights on one side which are not compensated by extraordinary benefits on the other, the judicial interpretation of the transactions, is that the bargain is unjust and unreasonable, that advantage has been taken of the situation of the weaker party, and that pro tanto the bargain ought to be set aside as inequitable.

During this period the courts also took into account the fact that mariner's were disadvantaged as a class and needed special protection due to the great imbalance of power between them and the shipowners. Lord Stowell in 1825 while rendering the judgement in the *Minerva*<sup>25</sup> and speaking about merchants and seafarers said:

...on the side are gentlemen possessed of wealth and intent, I mean not unfairly, upon augmenting it, conversant in business and possessing the means of calling in the aides of practical and professional knowledge.

On the other side is a set of men, generally ignorant and illiterate, notoriously and verbally reckless and improvident, ill provided with the means of obtaining useful information and almost ready to sign any instrument that they may be proposed to them ; and on all accounts requiring protection, even against themselves.

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<sup>23</sup> See Fitzpatrick, *supra*, note 15 at p.18 -11 Fed Cas 480 (No. 6047) (C C D Me 1823).

<sup>24</sup> *Ibid* at 18 - 317 US 239, 247, AMC 1645 (1942).

<sup>25</sup> *Ibid* at 18 - 1 Hagg Adm 347.

The law, also, had for long recognized the vulnerability of seafarers:

The court of admiralty always sought to protect [seamen] against circumvention, oppression and injustice and even against misapprehension and error and was anxious that they should not be harassed with litigation and that the question of wages should be speedily settled.<sup>26</sup>

Justice Joseph Story in *Brown V. Lull*<sup>27</sup> described seafarers as “a class of persons remarkable for their rashness, thoughtlessness and improvidence. They are generally necessitous, ignorant of the nature and extent of their own rights and privileges, and for most part incapable of duly appreciating their value”. These attitudes of the courts clearly reflected the importance of merchant marine as an instrument of trade during peace and as a second line of defence to navy in time of war.

The law also recognised the necessity of shore leave for maintaining the well-being of a seafarer and providing him/her with decent living and working conditions. In a Supreme Court decision in United States in the case of *Aguilar v .Standard Oil Company* in 1943 it was held:

The assumption is hardly sound that the normal uses and purposes of shore leave are ‘exclusively personal’ and have no relation to the vessel’s business. Men cannot live for long cooped up aboard ship without substantial impairment of their efficiency, if not also serious danger to discipline. Relaxation beyond the confines of the ship is necessary if the work is to go on, more so that it may move smoothly. No master would take a crew to sea if he could not grant shore leave, and no crew would be taken if it could never obtain it. Even more for the seaman than for the landsman, therefore, “the superfluous is the necessary ... to make life livable” and to get work done. In short, shore leave is an elemental necessity in the sailing of ships, a part of the business as old as the art, not merely a personal diversion.<sup>28</sup>

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<sup>26</sup> Bowman Gilfillan Attorneys, *Seafarers vs. Shipowners .Finding a Balance*, quoting *Kay Shipmasters and Seamen* (1825) 330. Accessed 25.08.2007

<http://www.bowman.co.za/LawArticles/Law-Article.asp?id=1795644333>

<sup>27</sup> Li, K.X. and Ng, Jim Mi, *International Maritime Conventions: Seafarers’ Safety and Human Rights*, *Journal of Maritime Law & Commerce*, Vol. 33, No. 3, July, 2002, at 381- 401,citing the case: 4 F.Cas (C.C.Mass.1836) (No.1,836) at 382.

<sup>28</sup> See Stevenson, *supra*, note 18, quoting the case: 318 US 724,87 L Ed 1107, 63 S Ct 930, 143 AMC 451.

However, the law provides benefits to seafarers as objects of protection rather than right-bearing individuals having legitimate claims.

In 1955, in an article by the United Nations High Commissioner for Refugees published in the *International Labour Review*<sup>29</sup> the most extreme scenario resulting due to denial of shore leave was documented. The article referred to case records of refugee seafarers who had no papers, or had papers which had expired, and for more than three years did not leave their ship. The matter came to the attention of the Office of the United Nations High Commissioner for Refugees (UNHCR) and recognising the danger of prolonged confinement on board ship Article 9 of the 1957 Hague Agreement was drafted for the Refugee Seamen, which reads:

Article 9: “No refugee seaman shall be forced, as far as it is in power of the Contracting Parties, to stay on board a ship if his physical or mental health would thereby be seriously endangered.”

The problem of denial of shore leave to seamen was also recognised at ILO as early as 1936 while adopting The Seamen’s Welfare in Ports Recommendation, 1936. The recommendation emphasised the need for promoting welfare and safeguards for the health of seamen. The recommendation also emphasised promoting welfare facilities at ports for mitigating the basic requirements of seamen like medical treatment, entertainment, sports, excursion, establishing contact with family, remittance of wages to family, etc. Further, these facilities could be utilised by seafarers only on being permitted to avail shore leave.

Life at sea for many seafarers involves much abuse. Apart from the gruelling long hours of work and total disregard to the maintaining the hours of work and rest by the management and officers on board the vessel<sup>30</sup>, seafarers are also subjected to mental abuse arising out of isolation, cultural insensitivity and lack of amenities. Therefore,

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<sup>29</sup> See Report *supra*, note 19, Goedhart, G.J. Van Heuven, “Refugee Seamen”, *International Labour Review* (Geneva, ILO), 1955, Vol. LXXII, Nos. 2-3, at p.9.

<sup>30</sup> In 1995 the International Maritime Organization adopted a revised convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW Convention), which notably provides for :

- Minimum daily rest period of ten hours every 24 hours, which cannot be split into more than two periods, and including one consecutive six-hour period at least;
- Weekly rest time of at least 70 hours.

the facilitation of shore leave provides a respite from the rigours of life on board the vessel. While the situation of refugee seamen referred to above was of an exceptional and extreme nature, the dangerous situation of prolonged confinement on board ships continued to engage the attention of the international community in search for a global solution to the question of facilitation to seafarers.

Due to the harsh nature of the seafaring profession, since ancient times it has been accepted that international cooperation is a necessary aspect of all maritime ventures<sup>31</sup>. These ancient customs were later formalized in the nineteenth century by adopting international treaties and modern international law confirms such principles. The responsibility cast on states to provide facilities to ships in times of distress and on masters to render assistance to seafarers found in danger is enshrined in the United Nations Convention on the Law of the Sea.

### **2.3 Universal Declaration of Human Rights**

Every person is entitled to a set of fundamental and universal human rights. In 1944, delegates to the International Labour Conference adopted the Declaration of Philadelphia<sup>32</sup>, which contains the finest attempt at defining the relationship between people and their rights:

All human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity.

The UN General Assembly, after the Second World War, adopted the UN Universal Declaration of Human Rights, 1948, which proclaims the rights which workers, as human beings, are entitled to enjoy. The Article 25 of the UN Declaration affirms everyone's right to a standard of living adequate for his health and well-being and which include necessary social services. The UN General Assembly resolution 57/219, while recalling the UN resolution 48/141 of 20 December 1993, emphasised the responsibility for protecting and promoting effective enjoyment of all human rights. It

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<sup>31</sup> See Li & Ng, *Supra*, note 27 at p.386.

<sup>32</sup> The Declaration of Philadelphia constitutes the Charter of the aims and objectives of the International Labour Organization. The Declaration set a pattern for the United Nations Charter and Universal Declaration of Human Rights.



stressed the need to recognize the entitlement to all rights and freedom as provided in the UN Declaration of 1948 without any distinction of any kind on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The Vienna Declaration and Programme of Action, 1993 recognizing the indivisible rights as rights by virtue of being human states:

Human rights and fundamental freedoms are the birthright of all human beings; their protection and promotion is the first responsibility of Governments.

All peoples have the right of self-determination. By virtue of that right they freely determine their political status, and freely pursue their economic, social and cultural development.

Accordingly, given the nature of the profession and the essential role that shore leave plays in the physical and mental well-being of a seafarer, from early times shore leave was regarded as a basic human right and its denial by States as a contravention of these rights to the basic and necessary welfare facilities and services.

#### **2.4 Seafarers' Identity Documents Convention, 1958 (No.108)<sup>33</sup>**

In 1958 Convention No.108 of International Labour Organization was adopted which prescribed a new identity document for seafarers in order to facilitate them gaining shore leave by providing them with an identity for meeting the requirements of security of the members states in whose ports seafarers request such a facility. The primary purpose of the identity document was to provide member states with a reciprocally recognizable document while according temporary shore leave to seafarers. Recognising the unique status of seafarers due to the special nature of their calling, the Convention recognised the need for member states to provide temporary entry to seafarers into their territories. The long periods of confinement on board a ship, during the sea voyage, leads to severe hardship and privation, and denial of shore leave to seafarers, because of lack of proper travel documents, would lead to mental and physical ailments. Accordingly, the identity document provided under the Convention was to serve the exceptional need of seafarers to enter the port area, for

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<sup>33</sup> Convention No.108 was adopted in the year 1958. The Convention was closed for further ratification on 8<sup>th</sup> of February, 2005 as Seafarers' Identity Documents Convention (Revised), 2003 (No.185) came into force on 9<sup>th</sup> February, 2005.

the period when the ship calls at the port, and gain access to the facilities provided and available in the port. This aspiration is reflected under Article 6 of the Convention, which reads:

Each Member shall permit the entry into a territory for which this Convention is in force of a seafarer holding a valid seafarer's identity document, when entry is requested for temporary shore leave while the ship is in port.

At the same time, the member state enjoys the discretion in granting permission to an individual in gaining access to its territory. Article 6, Paragraph 4 of the Convention states, "Nothing in this article shall be construed as restricting the right of a Member to prevent any particular individual from entering or remaining in its territory".

The Convention codifies the customary international practice with no separate visa being required for this purpose and is the most widely ratified convention of ILO having 64 Member States as party to it. Every contracting Member State has prescribed its own identity documents for its seafarers in accordance with the general requirements prescribed under it. Accordingly, the document issued to a seafarer under this Convention has served as the sole identity card and landing card for this purpose.

### **2.5 Seafarers' Welfare Convention, 1987 (No.163) and the Seafarers' Welfare Recommendation, 1987 (No.173)**

The Seafarers' Welfare Convention, 1987 (No.163) and the Seafarers' Welfare Recommendation, 1987 (No.173) of ILO recognised the importance of shore leave for the psychological and physical health and well being of seafarers. Article 2.1 of the Convention No. 163 lays emphasis on providing welfare facilities and states:

Each Member shall ensure that the necessary arrangements are made for financing the welfare facilities and services provided in accordance with the provisions of this Convention.

Recommendation No.173, while reiterating the importance of welfare facilities for seafarers, under Article 3.1 states:

Measures should be taken by Members to ensure that adequate welfare facilities and services are provided for seafarers both in port and on board ship, and that adequate protection is provided to seafarers in the exercise of their calling.

However, these welfare facilities can be availed by seafarer's only on being granted shore leave.

## **2.6 Shore Leave - A right or a privilege?**

Under the UN Charter<sup>34</sup> the principle of non-interference in the domestic affairs of a sovereign state is recognised. Accordingly, nations have the right to adopt national laws independent and at variance with the provisions of international instruments, on justifiable grounds. Even Convention No. 108 of ILO clearly provides for the discretion of member states in granting permission to seafarers into their territories. Further, in the absence of treaty obligations the facilities, such as shore leave, granted by receiving states to foreigners are considered as privileges.

## **2.7 The Convention on Facilitation of International Maritime Traffic (FAL), 1965<sup>35</sup>**

Standard 3.44 of the FAL Convention embodies the mariners' right to shore leave by stating, "Foreign crew members shall be allowed ashore by the public authorities while the ship on which they arrive is in port, provided that the formalities on arrival of the ship have been fulfilled and the public authorities have no reason to refuse permission to come ashore for reasons of public health, public safety or public order". Further, the Standards 3.45 of the Convention prohibit the demand for a visa from a seafarer for shore leave by stating, "Crewmembers shall not be required to hold a visa for the purpose of shore leave". Also, Standard 3.47 states that, "Crew members shall not be required to have a special permit, e.g. a shore leave pass, for the purpose of shore leave".

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<sup>34</sup> The Charter of the United Nations was signed on 26 June 1945, in San Francisco, at the conclusion of the United Nations Conference on International Organization, and came into force on 24 October 1945.

<sup>35</sup> In order to facilitate international maritime traffic and to serve highest practicable degree of uniformity in formalities and other procedures the Convention on Facilitation of International Maritime Traffic (FAL) was adopted on 9<sup>th</sup> April, 1965.

Therefore, under Standard 3.47 of the Convention, States are required to grant shore leave to crew in accordance with the decision of the public authorities. The FAL Convention has been ratified by 113 countries. But, with specific reference to Standards 3.44, 3.45 and 3.47, ten countries have notified IMO of the difference between one or more of the standards vis-a vis their national practice, thereby, reserving their rights in not adopting the global standards.

Notwithstanding the reservations made under various international instruments honouring the sovereignty of states, shore leave has continued to be a cherished right – though not an absolute right<sup>36</sup>. Considering its vital necessity for the well-being of seafarers' and its importance in the ability of a seafarer to perform his work well, the international instruments have laid due emphasise on the requirement of Member States to respect this time-honoured tradition.

## **2.8 Transit and Transfer**

Recognising the unique nature of the seafaring profession States have, since time immemorial, accorded the facility of transit and transfer to seafarers. These are the professional movements undertaken by seafarers during the course of their work. While transit refers to the movement of seafarers across state boundaries to join the ships or to return home on completion of the duties; transfer is the process of movement of a seafarer transferring from one ship in one state to another ship in another state. In both cases, the immigration authorities of the concerned states are required to grant admission to seafarer into their territories, for a temporary period, to meet this professional requirement.

Under Article 6(2) of Convention No.108 the facilities of transit and transfer are to be granted by a state provided that the identity document contains space for appropriate entries for joining the ship or being relieved from the ship.<sup>37</sup> These entries also help

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<sup>36</sup> Stevenson, Douglas B., *Restrictions on Shore Leave: any movement on this issue?*. Accessed 24.08.2007 <http://www.marinelog.com/DOCS/PRINTMMV/MMVmarstev1.html>

<sup>37</sup> Article 6 (2) :If the seafarer's identity document contains space for appropriate entries, each member shall also permit the entry into a territory for which this Convention is in force of a seafarer holding a valid seafarer's identity document when entry is requested for the purpose of –

- (a) joining his ship or transferring to another ship
- (b) passing in transit to join his ship in another country or for repatriation, or
- (c) any other purpose Approved by the authorities of the Member concerned.

the immigration authorities in permitting seafarers to cross border controls in the course of pursuit of their profession.

Accordingly, transit and transfer are also facilitations accorded by receiving states to seafarers, along with the facility of shore leave, into their territories. Denial of these facilities by states leads to impediments in the professional pursuit of a seafarer.

## **2.9 Committee of Experts on Convention No. 108**

The Committee of Experts in its report submitted during the 87<sup>th</sup> Session of the International Labour Conference in 1999 on Convention No. 108 clearly brought out the essence of the identity document and the obligation that it casts on the receiving states to facilitate shore leave:

With regard to the purpose of the document and its use, the Committee considers that there are fundamental distinctions to be made between *entry*, *admission* and *travel*. Entry occurs once the ship is in the territorial waters of the state. When a merchant ship is in port, the crew has already entered the territory of the state, and is technically subject to its territorial jurisdiction. This principle is well established in international law although, in practice, as regards most situations on-board ship which do not directly affect the port State, it will refrain from exercising its jurisdiction over the vessel. Therefore, shore leave is more a conventional recognition of the principle of jurisdiction, according to which the seafarer is temporarily present in the territory, than a form of immigration admission. It is for this reason that the identity document need not have space for entry stamps or visas. The document in its essence is not intended for “admission” or “international travel”, but only for identification of the seafarer to facilitate temporary shore leave<sup>38</sup>.

The Committee also emphasised the importance of shore leave to a seafarer and the special recognition that States should accord to seafarers for this purpose:

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Article 6 (3) : Any member may, before permitting entry into its territory for one of the purposes specified in the preceding paragraph, require satisfactory evidence, including documentary evidence from the seafarer, the owner or agent concerned, or from the appropriate consul, of a seafarer’s intention and of his ability to carry out that intention. The Member may also limit the seafarer’s stay to a period considered reasonable for the purpose in question.

Article 6 (4): Nothing in this article shall be construed as restricting the right of a Member to prevent any particular individual from entering or remaining in its territory.

<sup>38</sup> *Supra*, note 19 at p.63- *Annex II – Comments by the Committee of Experts on the Application of Conventions and Recommendations on Convention No.108.*

The primary purpose of the document is to facilitate temporary shore leave for the seafarer by means of a reciprocally recognized identity document. This is the minimum undertaking of State parties. When the document is used for temporary shore leave, as provided in *Article 6(1) of the Convention*, it serves as an identity card and a landing card, and is the sole identity document required for this purpose. In many cases ships are at sea for long periods and denial of shore leave would result in severe hardship and intolerable privation for the seafarer who must remain on board when the ship is in port because he lacks the travel documents normally required for foreign visitors. Shore leave, therefore, should be regarded as a special form of temporary entry in recognition of the unique status granted to seafarers, due to the special nature of their calling. It is exceptional both temporally (limited to the brief call of the vessel in port) and spatially (often limited to movement within the area of the port)<sup>39</sup>.

## **2.10 Summary**

Until recently, the identity cards issued under Convention No.108 continued to facilitate seafarers globally in gaining access to shore-based facilities whenever their ships visited foreign ports. However, with the 9/11 incident the maritime world has started questioning the reliability of this identity card and its ability to provide protection against a potential threat to the safety and security of nations.

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<sup>39</sup> Ibid at p.61.

## CHAPTER 3

### NEW DEFINITIONS OF SECURITY IN THE WAKE OF 9 /11 - A CHANGED SCENARIO FOR SEAFARERS?

**We are now living in a world where we have competing but legitimate interests in security, the movement of maritime commerce, the well-being of these professional maritime workers and the facilitation of their professional movement. Urgent measures are clearly needed in order to balance these legitimate interests.**

**Juan Somavia, Director-General<sup>40</sup>  
International Labour Organization**

#### 3.1 Introduction

In the wake of the devastating tragic attack on the United States of America on 11<sup>th</sup> September 2001 the international community was faced with grave concerns about the vulnerability of ships and ports around the world. There was a need to respond to this challenge by taking new measures to protect the maritime transport sector against the threat of terrorism. The International Maritime Organization (IMO) quickly responded to this new challenge and at its 22<sup>nd</sup> Assembly Session (19-29 November 2001) adopted resolution A.924 (22) (November 2001): “Review of measures and procedures to prevent acts of terrorism which threaten the security of passengers and crews and the safety of ships”. The main aim of the resolution was:

... to review, with the intent to revise, existing international legal and technical measures, and to consider appropriate new measures, to prevent and suppress terrorism against ships and to improve security aboard and ashore, in order to reduce the risk to passengers, crews and port personnel on board ships and in port areas and to the vessels and their cargoes.

It instructed the competent bodies of IMO “to take account of the work of other international organizations competent in the development of standards for transport-related safety and security by land, air and sea, as well as industry organization”. The aim of this exercise was to avert shipping from becoming a target of international

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<sup>40</sup> At the 91<sup>st</sup> Session of International Labour Conference, Geneva.

terrorism. Accordingly, security in the maritime sector acquired a new and rigorous dimension.

### **3.2 International Ship and Port Facility Security Code, 2002 (ISPS CODE)**

Chapter XI of the Safety of Life at Sea (SOLAS), 1974 Convention was amended in order to include special measures for maritime security and the International Ship and Port Facility Security Code, 2002 (ISPS Code)<sup>41</sup> was developed under Chapter XI-2. This new SOLAS chapter XI-2 was developed to make the security of ships and port a ‘risk management activity’ – to make an assessment of risk in each and every case.<sup>42</sup> The Code provides for a standardized and consistent framework enabling governments to modify the security levels depending upon the levels of threats and the vulnerability of ships and port facilities to these threats.

### **3.3 New Resolutions at the Conference of Contracting Governments to the International Convention for the Safety of Life at Sea, 1974, December 2002**

Various initiatives were taken at IMO in order to meet these new security requirements. A resolution for co-operation with the World Customs Organisation (WCO) was adopted in order to enhance security in the international closed container transport unit (CTU) movements.<sup>43</sup>

Another resolution was adopted whereby ILO was invited to develop a new Seafarers’ Identity Document as a matter of urgency.<sup>44</sup> Due to heightened security issues a need arose for a verifiable security document for the professional purposes of seafarers.

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<sup>41</sup> The International Ship & Port Security Code and SOLAS Amendments were adopted on 12<sup>th</sup> December, 2002 by the Conference of Contracting Governments to the International Convention for the Safety of Life at Sea, 1974: 9 - 13 December 2002, London.

<sup>42</sup> Hesse, Harmut and Charalambous, Nicolaos L., *New Security Measures for the International Shipping Community*, WMU Journal of Maritime Affairs, 2004, Vol.3, No.2, 123-138.

<sup>43</sup> Conference of Contracting Governments to the International Convention for the Safety of Life at Sea, 1974: 9-13 December 2002 – Conference resolution 9 – (*Enhancement of security in co-operation with the World Customs Organization*) invites the WCO to consider urgently measures to enhance security throughout international closed CTU movements and requests the Secretary-General of IMO to contribute expertise relating to maritime traffic to the discussions at the WCO.

<sup>44</sup> Ibid. Conference resolution 8 – (*Enhancement of security in co-operation with the International Labour Organization*) invites the ILO to continue the development of a Seafarers’ Identity Document as a matter of urgency, which should cover, among other things, a document for professional purposes; a verifiable security document; and a certification information document, and invites IMO and the ILO to establish a joint ILO/IMO Working Group to undertake more detailed work on comprehensive port security requirements.



### **3.4 The Human Element**

A crucial decision taken at the Conference of Contracting Governments to the International Convention for the Safety of Life at Sea, in December 2002 (the Diplomatic Conference), was to accord special protection to seafarers and to take into account the critical importance of shore leave while implementing the new security provisions. In the preamble to the ISPS Code in paragraph 11 it is stated:

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

In order to lay due emphasis on it the Diplomatic Conference also adopted Resolution 11 which reads:

(Human element-related aspects and shore leave for seafarers) urges Governments to take the human element, the need to afford special protection to seafarers and the critical importance of shore leave into account when implementing the provisions of chapter XI-2 of the Convention and the International Ship and Port Facility (ISPS) Code. It also encourages Governments, Member States of IMO and non-governmental organizations with consultative status at the Organization to report to the Organization any instances where the human element has been adversely impacted by the implementation of the provisions of chapter XI-2 of the Convention or the Code. It also requests the IMO Secretary-General to bring to the attention of the Maritime Safety Committee and the Facilitation Committee of the Organization, any human element related problems, which have been communicated to the Organization as a result of the implementation of chapter XI-2 of the Convention or the Code.

The whole maritime community was seized by the fact that in the process of tightening of security provisions to prevent criminals and terrorists from gaining

access to ships by posing as seafarers, the innocent seafarers should not be unfairly penalized by being denied shore leave.

### **3.5 MSC Circular 1112 of 7 June 2004**

The IMO reminded the Contracting Governments of their responsibilities in ensuring that seafarers are accorded special protection and that the critical importance of shore leave is recognized by all and that seafarers should be considered as a partner in implementing the new security regimes, rather than as a potential threat to security. The importance of striking a proper balance between the implementation of a security regime strictly and robustly and protecting the human rights is clearly reflected in the following paragraph of the MSC Circular 1112:

In this regard, it was recognized that there may be conflicts between security and human rights, as well as between security and the efficient movement of ships and cargoes in international trade that is essential to the global economy. There must be a proper balance between the needs of security, the protection of the human rights of seafarers and port workers, and the requirement to maintain the safety and working efficiency of the ship by allowing access to ship support services such as the taking on of stores, repair and maintenance of essential equipment, and other vital activities that are appropriately undertaken while moored at port facilities.

### **3.6 Facilitation accorded by Convention No.108**

In 1954 the International Transport Workers' Federation (ITF) and the United Kingdom Navigators' and Engineer Officers' Union mooted the idea for an international identity document for seafarers. The rationale behind the proposal was to establish the bona fide position of a merchant seafarer in a foreign country.

Therefore, the need to establish the identity of a seafarer was recognised as early as 1954. A resolution adopted by the Navigators' and Engineer Officers' Union "conference", which was submitted to the 1955 session of the Joint Maritime Commission (JMC) of ILO referred to "the difficulties being experienced with immigration and security regulations in foreign countries". It called for an introduction of "an internationally recognized seafarer's passport or similar document

designed to establish a seafarer's identity as such" and " which would be recognized instantly by immigration officials" worldwide.

Accordingly, Convention No. 108 was adopted in 1958. However, this Convention does not create an international seafarers' identity document as it allows states to issue their own national documents. Further, even if a state is not a party to this Convention but has ratified the FAL Convention, the state can issue the identity document as per the criteria laid down in Convention No. 108.

Convention 108 certainly fell short of the expectations of its sponsors as it did not lay down uniform standards to be adhered to by all states. Every state prescribed its own format of the identity document and independently determined the particulars of the seafarers that the document should contain. This caused a lot of difficulties for the immigration authorities as it left them unsure whether the identity document presented before them was genuine or counterfeit. However, at the same time it is to be noted that Convention 108 is one of the most widely ratified ILO maritime labour Conventions. In 2002, when this Convention came up for a review before the Consultation Meeting on Improved Security of Seafarers' Identification in Geneva , 64 member states representing around 61 per cent of the world fleet had ratified it. The flexibility accorded by the Convention enabled majority of the states to ratify it and easily translate its provisions into their national laws. Therefore, the facilitation accorded by Convention No.108 to the maritime industry and to the seafarers for more than 40 years cannot be undermined or ignored.

### **3.7 Demand for better security – Seafarers' Identity Documents Convention (Revised), 2003 (No.185)**

Seafarers have a direct role to play in the international transport of goods as well as in the carriage of passengers. In the process they have access to ports, including the sensitive areas. The shipping industry employs 1.23 million seafarers of all nationalities. Most of these seafarers belong to the developing countries. 90 percent of world commerce is carried by sea. Therefore, during the preparatory discussions on the amendments to SOLAS in the 2002 Diplomatic Conference, which led to the adoption of ISPS Code, many member states demanded for a "positively verifiable identification" in order to grant special facilities to seafarers to carry out the

professional moves necessary for their work (to join a ship or transfer to another ship) and for their well-being (in particular, shore leave).<sup>45</sup> Following the terrorist attack on the USA the governments started reviewing their obligations towards foreign seafarers concerning the facilities granted to them and the identity of the seafarers they would be requiring in order to grant these facilities. The seafarers' movements were becoming more difficult with the increase in control by border security agencies. During the review of the transportation security policy and practice undertaken at IMO, the ILO was given the mandate to develop a "positive and verifiable identification" for seafarers which was considered crucial for improving the maritime security. "Positive" means that the document holder is the one to whom the document was issued and "verifiable" implies validation of the authenticity of the document with reference to a source.<sup>46</sup> The new document was to serve the purpose of facilitating the professional movements already set forth in Conventions No. 108 and FAL (shore leave, transit to/ from ship, repatriation) and to establish the seafarer's bona fide to gain access to shore-based welfare facilities and also while requesting consular access and consular assistance.<sup>47</sup>

Parallels' were drawn with the airline flight crew who embark and disembark on flights in foreign territories on the basis of their identity document - the Crew Member Certificate (CMC) - and the contracting States accept CMC for temporary admission and the crew do not require a passport or visa.<sup>48</sup>

Further, with the advancement in cargo-handling facilities and the ports working 24 hours/day, the "turnaround time" of ships (the time a ship spends in port) has reduced drastically. A 1998 report<sup>49</sup> of ILO estimated that 27% of ships spent less than 12 hours in port, 45% of ships spent 12-24 hours in port, 70% turned around within 24 hours, and only 4% of ships remained in port for more than 3 days. Accordingly, with the increase in speed of operations there is a dramatic decrease in ships' turn-around

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<sup>45</sup> See Doumbia-Henry, *supra*, note 6 at p.130.

<sup>46</sup> See, *supra*, note 19 at p.1.

<sup>47</sup> *The Vienna Convention on Consular Relations*, 1963, Article 5(1), defines the consular function as providing assistance to ships' crews.

<sup>48</sup> See, *supra*, note 19 at p. 8.

<sup>49</sup> *Ibid* at p.8 - E. Kahveci: *Fast turnaround ships and their impact on crews* (Cardiff, SIRC Publications, 1999) cited in ILO: *The impact on seafarers' living and working conditions of changes in the structure of the shipping industry*, report for discussion at the 29<sup>th</sup> Session of the Joint Maritime Commission - [JMC/29/2001/3]. Geneva: ILO Publications, 2001, at.72.

time in ports which results in seafarers spending long periods at sea. Accordingly, shore leave has become an even greater necessity today.

It, therefore, became very important to find a solution to enable seafarers to take shore leave without undue delay and to facilitate their professional movements, while simultaneously addressing the security concerns of the governments.

### **3.7.1 91st Session of the International Labour Conference (ILC), 2003**

In response to the request of IMO to urgently develop a verifiable security identity document for seafarers an urgent item was placed on the agenda of the 91<sup>st</sup> Session of the International Labour Conference (ILC) to improve the security of the seafarers' identification. The discussions at the Conference resulted in the revision of Convention 108 and in its place adoption of Seafarers' Identity Documents Convention (Revised), 2003 on June 3, 2003 with the aim to address the "continuing threat to the security of passengers and crew and safety of ships" and at the same time ensuring that the mandate of ILO to promote decent work is maintained.

The Convention refers to the stricter demands of security on board ships and in ports and the need for a new and more secure ID cards for seafarer, which can be satisfied only by incorporating the biometric technology into the card. It requires the parties to the Convention to maintain an electronic database of all identity cards issued and make it accessible to the immigration or other competent authorities in ILO member states for cross-verification of the identity documents presented before them by seafarers for gaining access to shore-based facilities. The new card aims to simplify the movement of seafarers across boundaries during the course of their profession.

Under Article 6(5) shore leave shall be granted to a seafarer without a visa, while the ship is in port, unless the competent authorities have reason to refuse permission on grounds of public health, public safety, public order or national security. Seafarers can also enter the territory of a contracting member state for the purpose of joining or transferring to a ship, or passing in transit to join the ship in another country or for repatriation provided the seafarer is in possession of a valid identity document supplemented by a passport.

A resolution which accompanies the Convention requests the Director-General of ILO to take urgent measures for the development of “a global interoperable standard for the biometric, particularly in cooperation with the International Civil Aviation Organization”<sup>50</sup>.

### **3.7.2 International Civil Aviation Organisation (ICAO)**

The International Civil Aviation Organisation (ICAO) started its work on developing a new generation machine-readable travel documents (MRTD) in 1968. A Panel was established on Passport Cards which recommended the standardization of a passport book or card that would be machine-readable in order to facilitate quick clearance of passengers through passport controls. ICAO published ‘*A passport with machine-readable capability*’ (ICAO Document 9303) in 1980 which became the basis for Australia, Canada and the United States for the issuance of machine-readable passports.<sup>51</sup> International Organization for Standardization (ISO), which is the international reference for machine-readable travel documents, endorsed the ICAO technical specifications.

MRTD follow a standardized layout in order to ensure reading of data on a global basis both eye-readable and machine-readable means for ensuring global interoperability<sup>52</sup>. The passport is the most common MRTD. The identity card issued to air crew is in accordance with the Technical Specifications for a machine-readable Crew Member Certificate (CMC).

The baseline technology used by ICAO is the optical character recognition (OCR) machine-readable zone, which is mandatory for global interoperability. The standard OCR technology enables expansion to “coexist” with bar codes, magnetic strip, optical memory and/or integrated circuit in a plastic card. The encoded biometric can be used to confirm the holder’s identity or other data in order to verify the authenticity

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<sup>50</sup> *Provisional Record No.20, Part II*, International Labour Conference, 91<sup>st</sup> Session, Geneva: ILO, 2003, at.109.

<sup>51</sup> See, *supra*, note 19 at p.5 - ICAO: *Machine readable travel documents – Technical report – Selection of a globally interoperable biometric for machine-assisted identity confirmation with MRTDs* (2001), p.3.

<sup>52</sup> *Ibid* at p.8 - *Convention on International Civil Aviation (Chicago Convention), International Standards and Recommended Practices on Facilitation, Annex 9, Standard 3.24*. The CMC is required to be machine-readable, having a visual zone layout of the machine-readable CMC.

of the document. The machine-readable zone (MRZ) on the document is for the data for international use in conformity with international standards for MRTDs.<sup>53</sup>

### **3.7.3 Salient Features of Seafarers' Identity Document (SID)**

The International Labour Organization participated in the relevant meetings of IMO relating to the security issues and established a working group in February 2002 as per the decision taken in the IMO Assembly. In its 283<sup>rd</sup> Session held in March 2002, the Governing Body of ILO placed an urgent item on the agenda of the 91<sup>st</sup> session of International Labour Conference (ILC) for improving security of seafarers' identification. In the Consultation Meeting on Improved Security of Seafarers' Identification held in Geneva on 9-10 May 2002 discussions took place on the need for a special identity document for seafarers, the authority which should issue it and to whom, the purpose of the document, the information that it should contain, and the technical characteristics of the document.

As per discussions held in ILO Consultation meeting and IMO Maritime Safety Committee meetings it became clear that due to increased security requirements in many States conditions for admission of foreigners in general was becoming more restrictive. The discussions in IMO acknowledged the legitimate claims of seafarers to special facilities for their professional movements, which are based on their bona fides as seafarers. It also supported the view that it is appropriate for States to require an inclusion of security features when granting these facilities, that is, a substantial number of countries require "positive verifiable identification" before they will grant special facilities to enable seafarers to carry out the international professional movements necessary for their work and for their well being.

Prior to holding the Conference in 2003, ILO called for the view points from its member states, from the representative organisations of ship owners and seafarers and various other governmental and non-governmental organisations. Thereafter, in the 91<sup>st</sup> Session the International Labour Conference, June 2003, Seafarers' Identity

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<sup>53</sup> Ibid at p.22 - In a passport the machine-readable zone (MRZ) consists of two lines, 44 characters each using optical character recognition (OCR) text, header with standard three-letter code for issuing state/organization and nationality.

Documents Convention, 2003 (Revised) (No. 185) was adopted providing for an internationally uniform document which covers the security aspects of the basic infrastructure of the issuance and verification process for identity documents. It seeks to create an identity document in which countries will have real confidence and which will facilitate the maritime commerce too. The Convention took into account the need to balance three basic interests. The *first* interest was the security of seafarers, the ships and the working environment. The *second* related to facilitating the maritime commerce and the movement of ships and professional movements of seafarers. The *third* interest was to provide decent working and living conditions to seafarers: shore leave. The participants at the Conference reminded themselves to ensure that the new Convention does not place any undue burden on seafarers.

One of the primary security objectives<sup>54</sup> of the new identity document is to enable immigration, border control and other competent officials to easily verify, with maximum certainty, that the holder of a seafarers' identity document is the person identified on the document and is a seafarer. To achieve this objective an internationally uniform document is prescribed which conforms to the contents and specifications relating to size, design and other physical characteristics set out in the Annex to the Convention.<sup>55</sup> Therefore, the Convention prescribes for uniformity in both content and form of the identity document.

### 3.7.4 Biometrics

The inclusion of biometrics in the seafarers' identity document was one of the most controversial issues discussed and agreed upon. Biometrics is an electronic recording of a unique physical characteristic which enables the immigration authority to match

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<sup>54</sup> See Dombia-Henry, *supra*, note 6 at p.134 - For meeting the security objectives the following revisions to Convention No. 108 were identified :

- prescribing standard for positive and verifiable identification between document recipient and holder and the validation of authenticity by a source;
- achieving uniformity by means of a universal standard;
- achieve acceptability by using a convenient, user-friendly, cost effective and economically viable standard;
- achieve reliability by prescribing a practicable standard;
- ensuring security by means of a standard that is resistant to compromise; and
- to allow immediate access to member states make the data inter-operable so that information can be exchanged by using database technology.

<sup>55</sup> Full text of the Convention no. 185 is available at <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C185>. Accessed 22.08.2007.



the document and its bearer. There was opposition from the seafarers on the inclusion of the biometrics. However, as security concerns of the governments had to be considered the International Labour Conference decided to adopt a biometric based on a fingerprint printed as numbers in a bar code confirming to standards to be developed. This option was agreed as this would enable correct identification, while at the same time the production cost of the card would be low and will ensure the widest possible adherence to existing standards.

At the time, when the Convention was adopted no global interoperable standard was developed for the biometric chosen. ICAO was in the process of developing technical specification for a facial recognition biometric. ILO chose the fingerprint template due to considerations on transparency, reliability and production costs.

An important and indispensable objective of this Convention was to enhance the reliability of seafarers' identity document. Further, as per the discussions held in the Conference the reliability depended upon the security of the procedures for issue of the document. Member States supported and accepted the new document provided that the issuance process was properly designed to prevent error or fraud. Accordingly, the Convention provides for ensuring reliability. The infrastructure, document production and issuance processes, audit of production and issuance systems of SID are to adhere to the standards prescribed in the annex to the Convention, which also has procedures for review and evaluation by the ILO and publication of a list of countries meeting the requirements of the Convention. Further, the electronic national databases are to be made permanently accessible to immigration authorities for verifying a seafarers' identity document.

### **3.7.5 Rights of seafarers, facilities and human rights issues**

The issue of maintaining the facilities provided by Article 6 of the Convention No. 108 regarding shore leave and professional movements, and by Section 3.45 of the IMO's Convention on Facilitation of International Maritime Traffic, 1965 (FAL) for admission to shore leave without a visa, while strengthening the security, was the most controversial issue under the new Convention on which agreement had to be reached. The balance was achieved under the Convention by distinguishing between shore leave and transit or transfer. For the purpose of shore leave, under the new

Convention, an advance notice is required to be given prior to the arrival of the seafarers' identity document holder. At the same time, recognizing the laws of those states which need visa for shore leave, they will be required to issue a visa promptly and without charge to the holder of the document.

However, for transit or transfer the seafarers' identity document is to be supplemented by a passport. Before granting permission the Convention allows member states to require satisfactory evidence including documentary evidence of the seafarers' intention and ability to carry out that intention. The main purpose of the seafarers' identity document is to confirm that the bearer is a genuine seafarer unless there are clear grounds for doubting its authenticity.

While addressing the important security concerns, the Convention gave due consideration to fundamental rights such as privacy and freedom from discrimination. The Preamble to the Convention requires States to meet their obligations concerning international human rights and humanitarian law in accordance with the United Nations General Assembly Resolution concerning the protection of human rights and fundamental freedom while countering terrorism.<sup>56</sup> Under Article 3, paragraph 8 concerning the biometric, the Convention requires that biometric be captured without "any invasion of privacy of the person concerned, discomfort to them, and risk to their health or offence against their dignity". Paragraph 9 of the article enables seafarers to see all the data recorded on the identity document and states to provide the necessary facility for it.

Under Article 4, concerning national databases, a number of protective provisions are included to guarantee the human rights of seafarers. Paragraph 2 of the article requires the data included in the national database to be consistent with the seafarers' right to privacy and meet all applicable data protection requirements. Paragraph 3 of the article provides seafarer a right to examine and check the validity of all the data relating to him, which is held or stored in the database. Similarly, under paragraph 6 of the same article, in case of exchange of photographs of seafarers between

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<sup>56</sup> See Doumbia-Henry, *supra*, note 6 at p.143 - *United Nations General Assembly Resolution A/RES/57/219*. New York: United Nations, 18 December 2002.

designated and responsible agencies, a mechanism is to be put in place to ensure that applicable data protection and privacy standards are adhered to.

Accordingly, in its framework the Convention addresses various issues relating to rights, privacy and dignity of seafarers, which were apprehended to be invaded due to introduction of biometrics and other electronic devices in the production and verification of the seafarers' identity document. Also, the issues concerning shore leave and professional movements acquire a new dimension under this Convention, with the need to create a balance between the customary rights of seafarers and the security requirements of the receiving states in whose territories seafarers will seek these facilities.

### **3.8 A changed scenario for seafarers?**

At times, it seems that the perils of the sea which seafarers always have faced are nothing when compared to the perils of trying to go ashore in ports which historically were considered safe harbours.<sup>57</sup>

The members of the 2002 SOLAS Conference at the IMO were aware that fundamental human rights are likely to be affected by the imposition of a security regime on international shipping on a global basis in pursuance of the adoption of the SOLAS Chapter XI-2, the ISPS Code and associated conference resolutions. The global shipping community recognized the important role that seafarers will be playing in implementing the new security regimes for the ships. Concerns were expressed that with the emphasis on port security the seafarers may be viewed as potential threat to security rather than partners in the new security regime.

The conflict between security and human rights and between security and the efficient movement of ships and cargo, that is essential to the global economy, was recognised. Also, emphasis was laid on the need to maintain a balance between the need of security, the protection of the human rights of seafarers and port workers, and the need to allow ship support services like taking on stores, repair and maintenance of essential equipment, and other vital activities that are appropriately undertaken while

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<sup>57</sup> Kimball, John D., address to a forum sponsored by the North American Maritime Ministry Association (NAMMA), Washington D.C, on the issue of Seafarer's Rights on June 29, 2005, Accessed 24.08.2007 <http://www.blankrome.com/index.cfm?contentID=37&itemID=1048>.

the ship is at port facility in order to maintain the safety and working efficiency of the ship. Accordingly, in paragraph 11 of the preamble to the ISPS Code it is stated that the Code shall not be interpreted in a manner that is inconsistent with existing international instruments protecting the rights of seafarers and port workers. It also requires the Contracting Governments to be aware of the need for seafarer's shore leave and access to shore-based welfare facilities and medical care. Further, resolution 11 of the 2002 SOLAS Conference requires the reporting to IMO of instances where the human element has been adversely impacted by the implementation of the provisions of SOLAS Chapter XI-2 and the ISPS Code and that such instances should be brought to the attention of the Maritime Safety Committee and the Facilitation Committee.

However, despite the genuine aspirations of the Contracting Governments to protect the traditionally cherished rights of seafarers in the ISPS Code, the apprehension that the implementation of the Code could act against some seafarers by prohibiting them the essential shore leave that they are entitled to in other international convention came to be true. With the implementation of the code instances of unreasonable denial of shore leave multiplied. Several individuals, governmental and non-governmental organisations launched vehement protests against the injustices being heaped out on seafarers at certain ports. The industry representatives like the International Transport Workers' Federation (ITF)<sup>58</sup> and the Round Table of International Shipping Associations (BIMCO, ICS/ISF, INTERTANKO and INTERCARGO) submitted a joint report<sup>59</sup> to the Government of the United States of America highlighting the unjustified denials of shore leave to seafarers as a result of

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<sup>58</sup> ITF is the major international trade union in the industry. It is a federation of 681 unions in over 148 countries with membership of 4.5 million. Approximately three quarter of its members are engaged in seafaring and fishing activities. The federation operates world wide representing the employment and safety interests of government and industry levels, the ILO, IMO and the Commission on Sustainable Development. Accessed <http://www.itfglobal.org/about-us/moreabout.cfm>, 22.08.2007

<sup>59</sup> *Shipping Industry Appeals to Colin Powell on Seafarers' Shore Leave*, ICS & ISF Press Releases, 29 September 2004. The representation was submitted by International Transport Workers' Federation (ITF) and International Chamber of Shipping (ICS)/ International Shipping Federation (ISF) on behalf of the Round Table of international shipping associations. The International Shipping Federation (ISF) is the international employers' organization for ship operators. Membership comprises national shipowners' associations in 34 countries representing the majority of the world's merchant shipping tonnage. The ITF represents 604 trade unions in 137 countries. The Round Table of international shipping associations includes BIMCO (Baltic and International Maritime Council), ICS (The International Chamber of Shipping), INTERCARGO (The International Association of Dry Cargo Shipowners) and INTERTANKO (The International Association of Independent Tanker Owners). These organizations represent all segments of the industry including the owners and managers of all types of ships. Accessed 22.08.2007 <http://www.marisec.org/news/pressrel.htm#29%20Sept%2004>

the security measures implemented after the 9/11 episode. In the representations made the industry highlighted its concern as the denial of shore leave was seen as counter productive to security objectives, as it generates ill feeling amongst the seafarers who play such an important role in implementation of security on ships, in ports and in society at large. The representatives from the industry also requested the Secretary-General of IMO to remind the United States and other Governments that enhanced security measures will be achieved only by gaining cooperation from the seafarers. The situation was also aggravated when in the United States, in addition to the frequent denial of shore leave, some companies were required to hire armed guards to prevent foreign seafarers from leaving their ships. Tabloids like *Lloyd's List*<sup>60</sup> ran series of articles highlighting the important role that 1.25 million seafarers working on board merchant ships play in the service of international trade and the need for governments to recognize their service and respect their rights.

An article by Alsnosy Balbaa<sup>61</sup> on the implementation of ISPS presents glaring instances of gross violations being committed by public authorities in ports against seafarers in the name of security:

In one recent example the chief officer of a tanker was deported from the USA and banned for ten years for going down the gangplank to take a draft reading. In another, a Russian officer, whose visa was in order but had not been checked by port officials, spent a night in jail before being deported for going ashore to make a call from a public phone only meters from his ship. In some countries, they ask for individual visas; seafarers have to pay more costs to apply for visas and other related costs, although many seafarers do not know whether they will visit such countries asking for that kind of visa during their period of service onboard.

Pointing out the impact of the security measures on seafarers, Douglas B. Stevenson says<sup>62</sup>, “Since 9/11, security measures have undergone a constant process of

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<sup>60</sup> *Lloyd's List* took birth in Edward Lloyd's London coffee shop in 1734. It is the flagship of the Maritime and Transport division of London-listed Informa plc, a leading international provider of specialist information services to the professional, commercial, academic and scientific business communities.

<sup>61</sup> Balbaa, Alsnosy, *Protecting seafarer's rights – The need to review the implementation of the ISPS code*, p. 245-252 in Nielsen, Detlef (ed.), *Maritime Security and MET*, Southampton, UK: WIT Press, 2005.

<sup>62</sup> Stevenson, Douglas B., *The burden that 9/11 imposed on seafarers*, *Tulane Law Review*, June 2003.

evolution and refinement, with the general effect of increasing mariners' security responsibilities while eroding their liberty and quality of life".

Mr. Efthimios Mitropoulos, the Secretary-General of the IMO, in a keynote address during a Conference<sup>63</sup> in London, stated that shipping relies heavily on the co-operation and constant vigilance of seafarers to prevent breaches in maritime security. Further, in the interest of the safety and efficiency of the ships, as well as for the security, seafarers are required to be provided adequate opportunities to relax and recover before they take the ships out to sea in pursuit of their peaceful objectives in the service of world trade.

### **3.9 How distressed are seafarers in this era of a new security regime?**

The deprivation of seafarers' basic human and welfare rights in the interest of security of international trade has come to be acceptable as the seafarers as a community are a deprived lot and do not have any political or economic power to protest against their maltreatment. During the drafting of ISPS Code the maritime unions had apprehended that the code could have a negative impact on the seafarers. Accordingly, ITF commissioned a survey to gauge the situation. On the basis of the feedback received<sup>64</sup> a report was prepared entitled *Access Denied*<sup>65</sup>. The survey found that most seafarers are worse off since the introduction of the new code on maritime security. Apart from being saddled with extra work and responsibility for which no extra pay or training is being given, the Code has also created problems with shore leave, with particular difficulties the crew are experiencing in US ports or while seeking US visas.<sup>66</sup> One of the most striking findings of the survey is that an overwhelming majority of the respondents stated that the Code has resulted in extra work for the crew and has adversely affected their performance. One of the conclusions of *Access Denied* states:

The implementation of the ISPS Code has, broadly, increased the workload for seafarers and introduced additional procedures that have negative cost and time

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<sup>63</sup> International Shipping Federation Manning and Training Conference, London. Accessed 24.08.2007 [http://www.imo.org/Safety/mainframe.asp?topic\\_id=847&doc\\_id=4360](http://www.imo.org/Safety/mainframe.asp?topic_id=847&doc_id=4360).

<sup>64</sup> The survey was conducted by means of a questionnaire circulated to more than 120 ITF Inspectors in ports around the world and to 230 affiliated seafarers' unions. The replies were prepared on the basis of the discussions held by inspectors and union officials with crews and their members.

<sup>65</sup> Ibid. The report is published in 2005.

<sup>66</sup> *Coming Ashore - Why new security code has made things worse*, ITF Seafarers' Bulletin 2006, at 25-27.

implications. It has significantly added to the stresses of life at sea - most obviously in the form of tighter restrictions inhibiting rest and relaxation. The additional responsibilities and extra tasks to be carried out at busy times - such as loading and unloading in port - raises serious concerns on such issues as health and safety/working time/fatigue and stress, particularly as a result of conflicting and competing duties.”

Many seafarers voiced concern about the extra workload having an adverse impact on health, levels of fatigue and stress. Added to this is the attitude of the public authorities in the ports. As one respondent stated, seafarers are now looked upon as a threat and treated “more or less like a terrorist suspect”. In some parts of the world seafarers were subjected to restrictions that amounted to a breach of basic human rights. The ITF inspectors mentioned particular problems they faced in gaining access to the vessels and the crew. One respondent stated:

Seafarers say that in US ports they fear becoming ill and needing to go and get medical assistance at a clinic or hospital, and perhaps not being allowed to leave the vessel.

The questionnaire issued by ITF was used by the Associated Marine Officers’ and Seamen’s Union of the Philippines to carry out an informal survey of its members and a majority of the members stated that they had been denied shore leave and “most of those who answered in the affirmative cited US ports as the most problematic”.

There are many stories of seafarers and shipping companies having to pay excessive fees to have access to shore leave, an attempt by the authorities to bring about a *de facto* denial of shore leave even if *de jure* shore leave is allowed, as they know many companies will not be willing to bear this extra cost. One shipping company noted that it was being charged \$3,000 per port call by a Louisiana facility for the transportation of their US crew members from the ship to the gate.

The ITF report *Access Denied* relates a conversation with a master about the Port of Baltimore:

Transportation:

After a long voyage at sea, the crew requested some shore leave. No problem for the Captain. But, for the transport from the berth to the gate it cost 65 USD, one way, number of persons not important... then the seafarer still has to pay for a cab to get to the city....

Call home:

When a Seafarer wants to use the telephone on the shore [50 meters from the ship] he has to wait for somebody from the shore to accompany [guard] him.....

32 vs 16:

For a crew of 16 people it takes 32 men from the harbour police/immigration or whatever with big guns to check that the crew are not terrorists.....First come the “troops” to clear the vessel [drive all crew together] and afterwards, officers come on board.....First question to the Captain: Why there is not a gangway watch???

The majority of seafarers who responded to the questionnaire appeared to have reservations about the implementation of the ISPS Code as in the name of the security seafarers were being subjected to discriminatory and even abusive treatment. Some of the respondents cited instances of some seafarers leaving shipboard employment on account of the new security regime.

With reference to the new requirement of individual visas by the USA, the National Chinese Seamen Union (NCSU) stated, “Our members have to apply for an individual visa in person under a strict United States regulation, and if they have been given an interview they have to face stern words and of course be fingerprinted”. The respondent from the NCSU added that, “In recent years some members have left the sea to get away from the matters which are getting multiplied, complicated by the conventions (eg. ISM Code, STCW 95, ISPS Code). I reckon the ISPS Code will be becoming an unbearable load to make more seafarers leave”. The abnormal emphasis



on security was clearly brought out by NUMAST<sup>67</sup> when in the reply to the questionnaire it stated, “Concern over security taking first place to safety. Eg: Locks on doors/securing of escape hatches etc”.

The ITF report brings a psychological aspect to the situation. On the one hand, in the name of international security, the seafarers are made to do additional work without any financial compensation, and, on the other, they are made to face new procedures and restrictions. They are expected to embrace the role of security guard while being treated as potential terrorists. The survey responses reveal a prevailing sense among seafarers that the new security regulations are implemented to protect the interest of certain country(s) and that there is no consideration given to the impact that these regulations have on the seafarers. As stated by Professor Proshanto K. Mukherjee:

In recent times, certain states have imposed visa requirements on seafarers of certain nationalities requiring them to stay on board. These nationalities are supposedly security risks. The anomaly is that the ship itself is not a security risk because it is granted clearance to enter the port, but individuals of certain nationalities are. Granted that it is the sovereign right of each state to permit or prohibit the entry of foreigners into their country, is such action consonant with the principle of equality before the law? Denial of shore leave to seafarers who have spent weeks and sometimes months at sea is by any standard a violation of basic human rights and dignity. All too often, those who deny seafarers shore leave under one pretext or another are the so-called champions of human rights and democracy<sup>68</sup>.

He further points to an article by Captain Chowdhury<sup>69</sup> where in the impracticality of obtaining prior visas by a seafarer from his own country is pointed out.

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<sup>67</sup> Until 2nd October 2006 the National Union of Marine, Aviation and Shipping Transport Officers (NUMAST) was a British Trade Union. In 2006 the Union became a partner with the Dutch Union FWZ (Federatie van Werknemers in de Zeevaart), and on 2nd October 2006 changed its name to Nautilus UK, at the same time FWZ became Nautilus NL. Together these Unions form the *Nautilus Federation*. When they amalgamate in 2008 the two parts of the federation will merge to become *Nautilus*.

<sup>68</sup> Mukherjee, Proshanto K., *Criminalisation and Unfair Treatment: the Seafarers Perspective*, CMI Year Book 2005-2006 at 283-297, citing from an unpublished paper of F.R. Chowdhury *Seafarer's Rights and Privileges*.

<sup>69</sup> *Ibid.*

Not every crew-supply country has foreign diplomatic missions of the states who require visas. Sometimes poor seafarers are grossly disadvantaged by having to travel long distances and undertake onerous financial expenditure to obtain a visa. In instances where crew members are prohibited by the port state authorities from going ashore, shipowners are forced to employ armed guards on the ship. This, of course, is utterly degrading and humiliating. Apart from that, seafarers of these “prohibited” nationalities are being deprived of making a living from seafaring because shipowners are reluctant to recruit them due to the extra costs involved in hiring armed guards, which of course, is of financial benefit to the port state that imposed the requirement.

Citing instances of harassment to crew, Professor Mukherjee<sup>70</sup> further adds:

At a different threshold of unfairness in this regard, harassment of third world crews in certain developed countries has become notoriously deplorable. In one instance, the owners of a ship whose crew were under shipboard confinement due to lack of visas, were hammered with an enormous fine because the crew stepped off the gangway to collect perishable food supplies which had been dumped on the wharf and the carpenter had gone down to connect the hose to take in fresh water. The offence so committed by the crew had potentially “exposed the population of a global superpower to terrifying risk from visa-less alien seafarers”<sup>71</sup>. In another incident, 200 armed navy personnel boarded a ship and held the crew at gunpoint when it was about to depart; this despite the fact that the local court had ruled that the navy should escort the ship out of the port. The case involved a dispute where local officials had alleged that the ship had used improper travel documents and the court had ruled in favour of the shipping company.

### **3.10 Summary**

The tighter restrictions placed on the movements of seafarers by certain governments has continued to be an unresolved problem. The new security regimes imposed on seafarers in different parts of the world have added to the mounting pressures being faced by seafarers in executing their jobs due to the new requirements imposed on them by new regulations like ISPS Code. In view of this a doubt confronts the world today that has the international anxiety over the threat of terrorist activities, combined

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<sup>70</sup> Ibid.

<sup>71</sup> Ibid. Citing an article of Michael Grey, *The aliens are about to land*, Lloyd’s List, 30 August 2005, at 8-9.

with the pressure from the United States, has led to an unduly “fast track” adoption of new security regulations like the ISPS Code, and Convention No.185 in the generally slow world of international law<sup>72</sup>.

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<sup>72</sup> *Yes to Security - but not at the expense of our freedoms*, Seafarers’ Bulletin 2003, at 20-21.

## CHAPTER 4

### BALANCING SECURITY AND WELFARE WITH BIOMETRICS

**I think that debate on the cost-benefit of security measures and on the balance between security and freedom will just be a part of our lives now for a good time to come.**

Lee Hamilton<sup>73</sup>

#### 4.1 Introduction

Over past years much international effort has gone into making ships safe with significant improvements in ship structures and standards of equipment. However, compared to the improvements in construction, equipment and environmental ship standards, there has not been much improvement in the injustices and inhuman treatment seafarers have been subjected to for a very long time. Not much appears to have changed over the centuries with regard to the seafarer's status. An anecdote<sup>74</sup> reported in the book *Voyages of Seafarers* reads:

In 1853 Revd John Ashley- who subsequently founded the Missions to Seamen- ventured out to ships lying for weeks off Cardiff. He asked the Captain of one vessel if they were ever visited: 'With a look of sovereign contempt the captain answered "Visit us sir? No sir, as long as they can get anything by us poor seamen, I believe they will leave us to perish like dogs."

It is noteworthy to compare the above statement of the seafarer in 1853 with the statement made by a crew in 2003 in an article<sup>75</sup> in the *Seafarers' Bulletin 2003*, 150 years later, "Changes in the regime for seafarers visiting ports has resulted in cancellation of shore leave. As a result many seafarers have been imprisoned on their vessels..."

The importance of providing adequate rest to crew is clearly reflected in the following statement in the book *Inquiry into Ship Safety: Ships, Slaves and Competition* for ensuring safer ships and well-motivated crew. Access to recreational facilities on

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<sup>73</sup> Co-chair, 9/11 Commission. Accessed 24.08.2007

[http://www.townhall.com/columnists/BillSteigerwald/2007/01/02/the\\_quotes\\_of\\_2006](http://www.townhall.com/columnists/BillSteigerwald/2007/01/02/the_quotes_of_2006).

<sup>74</sup> Couper, A.D., with Walsh, C.J., Stanberry, B.A., and Boerne, G.L., *Voyages of Abuse-Seafarers, Human Rights and International Shipping*, Pluto Press, London, 1999, at 1.

<sup>75</sup> *Supra*, note 72, at p.21.

board the vessel and in ports goes a long way in generating a feeling of well-being in the minds of seafarers, “A competent, rested and well-motivated crew is an essential factor in reducing operational costs by increasing efficiency, safe operations and protecting the owner’s investment in expensive vessels and equipment”<sup>76</sup>.

Recognising the importance of shore leave the drafters of the ISPS Code laid due emphasis on it and impressed upon the Contracting Governments to accord prominence while preparing the port security plan. Further, the Convention No. 185 of ILO dealing with Seafarers’ Identity Documents was adopted to further facilitate seafarers in gaining access to shore, while providing the necessary confidence to the receiving states to grant permission on the basis of a fool- proof document, that is the biometric enabled SID.

The over-anxiety and pre-occupation of the authorities with security resulted in the despondency of the seafarers. The public authorities, especially in certain ports, on unjustifiable grounds, started denying permission for shore leave.

#### **4.2 Development of technology at the ILO**

Convention No. 185, which was brought about under an accelerated procedure of the ILO and was adopted in June, 2003, still has teething problems as the standards for biometrics were not finalised until 2005. Even, after the standards were adopted<sup>77</sup>, the technology has not been widely available. To ensure the global interoperability of the data containing the image of two fingerprints of the seafarer and his/her personal particulars, as required under Convention No.185, which are embedded in the bar code, the ILO, in cooperation with ISO, developed standards for both the hardware to be used for reading the barcode on the SID cards at different port terminals and border check- points, and also the system software required to read the data embedded in the barcode.

To ensure the compatibility of the aforesaid hardware and software ILO invited vendors from across the world to participate in a test to verify the interoperability of

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<sup>76</sup> International Commission on Shipping, *Inquiry into Ship Safety: Ships, slaves and Competition* (2000), at 37.

<sup>77</sup> The international biometric standard for SID is ILO-SID-0002 Finger Minutiae-Based Biometric Profile for Seafarers’ Identity Documents.

their hardware and system software with the global standards developed for SID. The test results declared only three vendors' products to be compatible with ILO standards: *Hyundai* from Korea, *Steria* from Norway and *Sagem* from France. This created difficulties as the technology adopted is not widely available and is not clearly understood. The biometric technology, per se, is being used in almost every country today. However, the specific configuration of the hardware used for reading the barcode on SID and the accompanying software is available only with these three vendors. The details of the total cost involved in the implementation of the entire infrastructure for producing and issuing SID, and the price at which the three vendors will sell the hardware and the system software, which has to be installed at all centres for issuing the SID Cards, at port terminals and border check points, as per the internal requirements of each government, depends on the individual negotiations by each government with these vendors. It is crucial at this juncture to understand that the non-availability of indigenous technology with the government authorities for implementing the SID, and the lack of awareness and understanding of the new standards developed by ILO for SID and the reasonable cost at which it can be procured, has created anxiety and uncertainty for the governments. Coupled with this is the open rejection by the USA to ratify the Convention, which could be one of the reasons why major seafarer supplying nations like China, India, Indonesia and the Philippines are not a party to it yet.

The International Civil Aviation Organisation (ICAO) has embarked on the project of introducing biometric technology in passports. Unlike the SID card, ICAO has decided to incorporate *facial recognition* as a biometric in its passports. However, to date the Contracting Governments of ICAO have not arrived at a consensus on a global standard to be adopted for the *facial recognition* biometric.

It must also be borne in mind that the International Organization for Standardization (ISO) has not yet adopted any global standard for finger print minutiae-based technology. In fact, ISO has clarified that the global standards developed for the fingerprint minutiae-based biometric for SID Card is only relevant for Convention No. 185, and is not a general global standard of ISO for fingerprint-based biometric.

While ILO deserves all the compliments for rising to the demands of the global maritime community in providing a resilient technology through the SID to facilitate seafarers and governments, the uncertainty in the acceptance of the newly developed SID has resulted in the delay of governments ratifying and implementing it. Added to this is the open rejection by the United States of SID to recognize it for granting shore leave. The US authorities in unequivocal terms have stated that seafarers' will continue to be required to obtain a visa if they desire to access US waters and gain shore leave. This has been a major setback to the Convention and has also discouraged governments from considering its ratification.

The entire effort made by the Contracting Governments of ILO in adopting the Convention No. 185 at an accelerated pace was a specific demand placed by the USA before IMO to provide a fool-proof document in place of the existing ones being issued under Convention No.108 of ILO. However, despite all the efforts made and providing a solution, the USA refused to ratify this Convention. Which brings us back to the question: Where does this leave the seafarer? How will his/her conditions be alleviated? Will s/he continue to accept degradation and humiliation at the hands of public authorities at ports for carrying out his/her professional duties? It is imperative that those who run the ships, and are vested with the responsibility of ensuring safety of ships and security at ports, are also provided with sufficient dignity and that the protection of their rights is ensured.

### **4.3 Methods employed in the research**

In order to ascertain the reason for this hesitation towards the newly developed biometric-enabled SID a questionnaire was prepared to enquire from all the stakeholders in the maritime world: governments, shipowners and operators, seafarers, non-governmental organisations and the media. Their opinions were solicited on the resilience of biometric technology, acceptability of the newly developed SID card and also the global attitude towards seafarers, which has taken a tremendous beating in the post-9/11 world, with seafarers being considered as potential terrorists, certainly at certain ports.

The questionnaire was sent only by electronic means. The questionnaire was electronically enabled in order to facilitate the respondents to reply on line and resend

it electronically. Of course, for those who are not comfortable with replying electronically, a provision was made to send the reply by post. However, all the respondents, barring one, chose the electronic medium. In fact, as the questionnaire was electronically enabled, it encouraged the respondents to reply quickly.

The questions in the questionnaire included multiple-choices, where options were provided for selection; and also open-ended questions, in order to gather individual opinions from the respondents on certain sensitive issues. The open-ended questions were deliberately employed as a tool of research in this dissertation in order to give freedom of expression to the respondents. The issue under consideration is welfare, and is a subject close to the heart of the entire maritime community. Therefore, in order to ensure that the respondents were not influenced or limited to the opinion of the researcher, which is often the case in multiple-choice questions, a judicious mix of both types of questions was included in the questionnaire. Moreover, even in multiple-choice questions a column was provided to enable respondents to give additional comments to elaborate reasons for selecting a particular option provided.

#### **4.3.1 Response**

The response is received from a wide spectrum which constitutes the maritime community: seafarers' organisation, shipowners' organisation, maritime administrations, media and non-governmental organisation.

As per practice adopted in research, an option was provided to the respondents to indicate whether they would like to be quoted in the dissertation. There was a mixed response. Accordingly, those who accorded specific permission are being quoted. The response of others is being reflected as part of the global research. Respecting the privacy and maintaining the confidentiality of those who desired not to be quoted no consolidated detail of the respondents is provided in this work.

#### **4.3.2 Constraints experienced in carrying out the research**

During the course of research the author faced a number of constraints. To begin with, the main topic under consideration was the rights of seafarers, with particular emphasis on the right to shore-leave, which is not accepted as a qualified right. Even today shore leave is considered only as a cherished right of the seafarer.



Further, despite the hue and cry raised in the media, in IMO, ILO and other platforms on the adverse impact of denial of shore leave on seafarers, in particular, and on maritime commerce as a whole, there is no authority which is capturing and evaluating the instances of breaches which are taking place. In addition, there was a constraint of time and resources for carrying out the research, which are generally associated with a dissertation at the master's level.

The issue of shore leave continues to be a very sensitive political issue and there was an apparent and legitimate hesitation on the part of some respondents to reveal their identities. The decision relating to ratification or otherwise of international treaties is taken at very high levels in every government and it is difficult to get comments on a sensitive convention like Convention No. 185 in the normal course. As already explained above, the non-familiarity with the technology adopted in the SID card and the open rejection by the United States in accepting SID as a document for gaining access to US shores has made many governments rethink the prospects of ratifying the Convention, especially bearing in mind the cost involved in its implementation. Therefore, many government respondents chose not to reply to the questionnaire. In fact, two maritime administrations in their replies stated that their governments have not taken any decision on ratifying the convention and, therefore, they are not in a position to fill in the questionnaire.

#### **4.3.3 Analysis of the data**

When a sample survey is carried out it is required to be wide and representative enough to reflect the view points of all concerned in order to arrive at valid conclusions. However, in view of the constraints referred above, the responses received were not many quantitatively, but were adequate for the study undertaken<sup>78</sup>. Responses were from those organizations which are true representatives of their members and participate in the meetings of IMO, ILO and other international fora and have the authority to present the reflections of their members in these fora. Accordingly, the data presented in the responses received truly projects the views of their members.

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<sup>78</sup> Response rate =  $\frac{\text{Number returned}}{\text{N in sample} - (\text{ineligible} + \text{unreachable})} \times 100$

See Vaus, David De, *Sample In Social Research*, at 127.

The responses received from seafarers' associations reflect the opinions of a majority of the 1.23 million seafarers who are active and sailing globally on board ships. Similarly, the response received from the shipowners' associations and other trade associations indicate the opinion of a majority of the owners on the subject under consideration. The response from Centre of Seafarers, also, reflects the opinion of the 1.23 million global seafaring communities. The replies received from maritime administrations include the major ship-owning nations and seafarer supplying nations.

Therefore, the respondents are representatives of those organisations which constitute the majority of the seafaring community and the responses received are sufficiently representative of the major stakeholders in the maritime world to arrive at certain specific conclusions.

#### **4.4 Replies to the questionnaire**

An analysis of the replies received result in the following key issues:

- Security seems to be the priority, rather than the protection of seafarers.
- Security seems to have taken precedence over safety.
- No instance to date to suspect seafarers as potential terrorists.
- Seafarers are being considered to be potential terrorists.
- Biometric technology in SID is not widely understood.
- Biometrics in SID has not generated confidence among the stakeholders.
- No reliability in foreign-issued biometric cards.
- Convention No. 185 will enhance security.

##### **4.4.1 'Biometrics' in the Seafarers' Identity Document (SID)**

The respondents were asked to give their views on whether 'biometrics' is widely understood to provide a positively verifiable identity document to a bonafide seafarer. The majority answered affirmatively. However, those who replied negatively were of the opinion that it is not widely understood and the global standard adopted is not capable of providing a verifiable identity document. One respondent succinctly gave his opinion in the following words:

A lot of people have heard about biometrics and have some idea of what it is. However, I do not consider that many people fully understand its uses and limitations, the various types of technology possible, the advantages and disadvantages of each type of technology, issues such as false acceptance and false rejection etc. Some people view it as a foolproof system of identification, which it is not, and others are totally sceptical about its use, which is also untrue. The ILO standard is different to many other biometric initiatives being used elsewhere.

In order to derive a specific opinion on SID the respondents were asked to comment on whether the stake holders in the industry have confidence in the new SID as a fool-proof document, and, it was very interesting to note that even though many respondents replied in favour of biometrics as a technology, the majority were not confident that the biometrics used in SID provide a fool-proof document. The respondents went a step further and stated that the lack of confidence is also on the country issuing these documents. Douglas Stevenson, Director, Centre of Seafarers' Rights<sup>79</sup>, New York stated as follows:

I am not sure that biometrics are fully understood, but the bigger concern in the United States is the issue of reliability of foreign issued biometric cards. Foreign issued documents are treated with suspicion by many.

Another respondent stated, "Experience in US has highlighted difficulty of satisfying all parties". Commenting on the unreliability of the fingerprint based biometric used in SID, another respondent stated:

The system required in the ILO 185, fingerprint, is not sufficient for the US, and the EU request that all EU/EEA passport and visa for entry to EU /Schengen must also contain face recognition or eye biometrics. It might consequently have been better if the ILO 185 had provided requirement for a stronger biometric system than fingerprints.

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<sup>79</sup> Centre for Seafarers' Rights along with other organizations like Missions to seafarers, The Apostleship of the Sea, Stella Maris, Casa Del Marino, the International Sailors Society provides support and services to the international seafarers. Their primary role is of Chaplaincy however they also provide services for dispensation of toiletries, food, and access to a telephone, a friendly voice, counselling, legal advice and guidance with a wage or money problem.

In order to understand the view points of those respondents who stated that the fingerprint biometric being adopted in SID is not fool-proof technology, the respondents were invited to cite reasons. Some probable reasons were given in the questionnaire: a relatively new technology, not enough empirical evidence of it being fool-proof and features of technology and its operation are not clearly understood. About 73% of the respondents agreed with one or more of the reasons stated above. One of the respondents, while agreeing with all the three reasons given above, further added that, “The United States does not have the confidence in the ability of countries ratifying the SID convention to provide fool-proof information on seafarers and the ability not to allow the SID document to be compromised”. Another respondent was of the opinion that:

Lack of consensus on what the biometrics should be, new technology, complications arising from the necessary card/document reader infrastructure, expense, reservations amongst workers, lack of alignment within government agencies responsible for issuing seafarer credential and agencies responsible for border security and travel/entry documents’ are the various reasons for not considering biometrics capable of generating a fool-proof document.

#### **4.4.2 Shore leave and transit across state boundaries**

With the enhancement in security measures globally in the post-9/11 period there was apprehension among the representatives of the seafarers’ union that the customary rights of seafarers’ to gain shore leave and their need to transit state boundaries in pursuit of their profession would be adversely affected if they did not possess appropriate identification documents to establish their bonafide. The United States had already indicated that the identity documents issued by states to seafarers under Convention No.108 do not meet the required standards of security. The IMO requested ILO to undertake the revision of Convention 108. The Contracting Governments of ILO, accordingly, adopted the revised Convention No. 185 in June 2003.

In the survey the respondents were asked to comment upon the acceptability of the Convention No. 185 by Governments in granting shore leave to seafarers to transit state boundaries to join ships or for repatriation home after completion of their contracts. More than half of the respondents were pessimistic of Convention No.185’s

capability to address this problem. As Captain Pieter Sprangers, advisor to the Swedish Shipowners' Employers Association stated, "Documentation most likely not sufficient, USA will not waiver visa requirements".

In order to maintain the customary rights that seafarers' enjoyed for centuries, Convention No. 185 was adopted as a 'stand-alone' document. That is, a seafarer in possession of the SID issued under Convention No. 185 does not require any other document such as a visa to gain access to shore leave. In the growing global anxiety over security some respondents were of the opinion that states may not be willing to accept SID as a 'stand-alone' document, and in the words of one of the respondents:

... i do not think that the SID will (be) satisfy the US and its need for control. However, EU may accept SID as sufficient in relation to ISPS code and for transfer and shore leave for seafarers. But also several EU states seem reluctant to accept SID. If the SID had permitted also face recognition, and if it had been possible to have the SID arrangement as part of the seafarer's passport, not only as a stand alone document, it might have worked better in Europe and USA.

Another respondent, reflecting on the above opinion, states that, "At least not in the short term. The SID may play a part in shore leave and transit, but it is unlikely to be accepted on its own by many countries i.e. with a passport and/or visa".

#### **4.4.3 The impact of global security initiatives on seafarers**

The majority of respondents felt that the new security measures introduced by various states have had an overall negative impact on seafarers. In the words of various respondents the post 9/11 security measures have had the following impact on seafarers:

- 'The life of a seafarer has become more restrictive due to the mobility restrictions imposed after 9/11'.
- 'There have been unacceptable treatments of seafarers which have been attributed to unjustified concerns regarding security'.
- 'Many seafarers have lost employment opportunities as the selection of seafarers by major shipowners has been based on religious affiliation especially immediately after the 9/11 events. Some have discreetly

implemented this kind of selection mechanism for fear that the Principals will not allow their seafarers to go on board vessels’.

- The post 9/11 security measures ‘may well become a recruitment show-stopper for all we know today’.
- ‘It adds to the general “blues of the seafarers” in harbour’.
- ‘..... I have no empirical data to support this, but I think life for seafarers, like all travelers, has become much more complicated and difficult’.

There were growing concerns on the treatment meted out to seafarers in certain states. In fact, there was a global apprehension that certain states, in the process of security verifications, were treating seafarers as potential terrorists and denying them basic dignity. Various instances of discrimination and abusive treatment were reported in the media from time to time. In the survey, information was sought from the respondents whether they were aware of seafarers being subjected to such unacceptable behavior in certain states, and the overwhelming majority gave an affirmative reply. As Lunecito Delos Santos from Maritime Industry Authority, Philippines stated:

Everyone can be a terrorism suspect in whatever mode of transportation and everybody on board a vessel, regardless whether a seafarer or a passenger, can be a potential terrorist. However, treating ship's crew as potential terrorism suspects is unfair and will just invite discrimination among seafarers, as issue of religious affiliation and country of origin comes into the picture.

Agreeing with the statement that security agencies in certain states have treated seafarers as if they are terrorist, Gunnar Knudsen, Regional Manager for Germany and Norway, from INTERTANKO<sup>80</sup> stated<sup>81</sup>, ‘Despite the fact that maritime security largely has become part of “business as usual” we do unfortunately agree with the

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<sup>80</sup> INTERTANKO is the International Association of Independent Tanker Owners. As of January 2007; the organization has 250 members, whose combined fleet comprises more than 2,500 tankers totaling 210 million dwt, which is 70% of the world's independent tanker fleet. INTERTANKO's associate membership stands at some 300 companies with an interest in shipping of oil and chemicals. Accessed 24.08.2007 <http://www.intertanko.com/templates/Page.aspx?id=1086>.

<sup>81</sup> Gunnar Knudsen’s answers are a mixture of INTERTANKO’s views/position and his personal views.

above observation'. Another respondent, echoing the sentiments of the majority in the maritime industry stated:

Certainly some countries are acting in this way. This "fear" is probably exaggerated and seafarers are being detained on board ship unnecessarily. It is right that countries that take necessary precautions to check all immigrants, including seafarers, but prohibiting all shore leave is not necessary.

While the unfair restrictions on the movements was growing the seafarers, by and large, were feeling marginalized. It undermined their faith in their profession. In order to gauge the prevalence of such sentiments among the seafarers the views of the respondents was sought. 73% of respondents agreed with the statement. One respondent presented his viewpoint in the following way:

Seafarers working in some countries, especially in and around America are often time subjected to rigorous, dehumanising and some times frustrating procedures by immigration and over zealous security operatives. They are clearly treated like potential terrorists until proven other wise, consequently even innocent seafarers keep away from such countries.

Another respondent was of the view that, 'At least the seafarers' organizations feel that their members are being treated unfairly and they are leaving the business because of that'. While agreeing with the negative impact on the seafarers created due to ill treatment by the security agencies, another respondent stated:

Their being subjected to serious scrutiny and extra visa requirements can be demoralizing.

The survey results on the above issue can be summed up in the words of one of the respondents:

And at the same time they expect seafarers to be at the fore front of the new maritime security regime.

#### **4.4.4 The way forward**

While Convention No. 185 was being developed certain countries objected to the inclusion of biometrics as it was in conflict with their domestic regulations and if such a requirement were imposed on seafarers there could be lawsuits alleging discrimination that may lead to difficulties in ratification. However, with the development in technology in all fields, biometrics in some form or the other is being adopted by different organisations as part of their internal security requirements. As, Douglas Stevenson from Centre For Seafarers' Rights said, all foreigners applying for entry in the United States are fingerprinted as part of the US Visit program. Also, all US seafarers are fingerprinted for their national identity card. Therefore, biometrics is no longer considered to be 'intrusive' and violating any basic human right or dignity. This was also reflected in the reply of another respondent:

New passport requirements in the EU/Schengen area provide that all EEA nationals are covered by biometric requirements (both fingerprint and face recognitions). Similarly new EU/Schengen requirement for foreigners that need a visa to enter EEA/Schengen, must accept biometrics such as fingerprint and face recognition. These rules are the same for everybody and are not limited to seafarers. These rules have consequently no discriminatory effect.

Even if 9/11 happened in 2001, and the SID was agreed in 2003, it seems that the attitude to security measures is different to day than in 2001 and 2003. It seems that people accept now a days that a stricter control than what could be visualized several years ago.

With this background biometrics was adopted as an integral part of Convention No.185. The respondents were invited to give their opinion on an alternative method or technology for SID which can provide greater confidence among member states and accept it as a secure document. The responses are summarised below:

- Although, 73% of respondents expressed doubts about the resilience of the biometrics based on fingerprinting, embedded in a bar code in the SID as a sufficiently fool proof technology in generating a positively verifiable document, 59% of the respondents, while being asked to offer alternatives, stated that there is no need to change the technology in SID. A proper



education of the authorities implementing the Convention and a good campaign of Convention No. 185 can lead to generating sufficient confidence in member states to accept SID as a secure document. Only a proper understanding and appreciation of this technology will lead to the implementation of the Seafarers' Identity Documents Convention by the Contracting Governments.

- The majority of the respondents agreed that some technology is necessary for making the document fool-proof in this world of growing need for security.
- Some respondents expressed that the United States of America must ratify Convention No.185. However, many felt that the USA has no confidence in foreign issued biometric cards.
- The majority agreed that there is no instance to date to suspect seafarers' as potential terrorists.
- Also, a great number of respondents believed that Convention No. 185 is the answer to the enhanced requirement of security, but not in its present form as it needs to be coupled with a passport or other biometrics like facial recognition.

#### **4.4.5 How to balance welfare and security with technology?**

In order to build a practical and effective security regime it is essential that there is an international partnership among the stakeholders in the maritime industry and between the maritime industry and governments. Those who drafted the ISPS Code emphasized in the code's preamble the need to implement the provisions of the code ensuring that the fundamental human rights of maritime workers are fully respected, as they anticipated a conflict between security and human rights. Paragraph 10 of the preamble of the Code reads:

10. Nothing in this Code shall be interpreted or applied in a manner inconsistent with the proper respect of fundamental rights and freedoms as set out in international instruments, particularly those relating to maritime workers and refugees, including the International Labor Organization Declaration of Fundamental Principles and Rights at Work, as well as international standards concerning maritime and port workers.

Mr. Efthimios Mitropoulos, the Secretary-General of the IMO, while addressing<sup>82</sup> a Conference in London stressed the need to adopt a balanced approach and emphasized that:

Throughout the whole process of developing and implementing the new security measures, I have frequently stressed the need for a balanced approach, and this is particularly important when it comes to how the ISPS Code impacts on seafarers. There is a need to balance the importance of tightening security provisions so that criminals and terrorists cannot gain access to ships and ports by posing as seafarers, while ensuring that innocent seafarers are not themselves unfairly penalized as a result - for example, by denying them shore leave.

However, striking this balance proved to be a challenge as the very nature of a security regime fosters a climate of paranoia, suspicion and mistrust. The unbalanced and improper application of the ISPS Code is resulting in seafarers being denied, what many believe to be, and has been so for centuries, a fundamental human right. This is resulting in the alienation of seafarers.

As per clause 16 in the ISPS Code dealing with the Port Facility Security Plan, the plan is to be approved by the Contracting Government in whose territory the port facility is located and shall have procedures for facilitating shore leave for ship's personnel or personnel changes, as well as access of visitors to the ship including representatives of seafarers' welfare and labour organizations. However, some ports have turned their purported attempts to increase security into a profit centre. They are charging seafarers hundreds of dollars for providing escort services to enable the seafarer to go from the gangway to the terminal gate. They are charging ships exorbitant amounts as security fees for allowing the ship to receive a bunker barge alongside or take on essential stores while they are at berth. These practices are negating the spirit of the Code and are defying the mandatory provisions of the code to apply security measures in a manner that causes minimum interference with the ship, its personnel or services.

There is a need to view seafarers and port workers as partners in security rather than as potential terrorists. Of those who responded to the survey 64% agreed that seafarers

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<sup>82</sup> *Supra*, note 63.

are being treated as potential terrorists. 36% stated that maritime security implementers should be realistic while implementing the security measures so that a proper balance is struck between implementing security and treating the seafarers with respect. Lawrence Dempsey, National President, Canadian Maritime Union representing Ships Officer on Canadian domestic ships agreeing that security measures cannot be implemented without the active participation of seafarers, commented:

It cannot be done without the seafarer's assistance. In fact if they continue to treat a seafarer as a terrorist they might run the risk of creating a terrorist.

Commenting on the need for achieving a balance between the requirements of security and protection of human rights of maritime workers, he said:

On a scale of one to ten seafarers rate no higher than a one with some companies and maybe a two with others. Employers and countries need to begin a process of understanding that ships and the people who work on them are important part of the entire equation that allows the transfer of products around the globe. They are a defense against terrorism. Seafarers should be treated with the respect that is due them and it must be understood that the ship is not a jail to incarcerate people but rather their home during the period that they are away from their families and friends. They provide a valuable service to their employer and the country for which they work.

In the words of Dempsey the maritime industry needs to get over the paranoia and inculcate trust in those who run the entire show for them: seafarers and:

They can speak in one voice on behalf of the seafarer and treat the seafarer as the first line of defense against terrorism rather than a terrorist.

#### **4.5 Summary**

The majority of respondents who answered the questionnaire appear to have serious concern about the denial of shore leave to seafarers and the discrimination and abusive treatment at the hands of security agencies in certain ports. The survey response also indicates that the new security measures at IMO and ILO of the ISPS Code and Convention No. 185 have been brought in hastily to assuage the panic in United States without much reflection on the impact they are going to have on

seafarers. A great deal of psychological damage has been caused to seafarers by them being 'branded' as potential terrorists. There is no history of foreign seafarers committing terrorist attacks in ports. Rather than acting on the presumption that every seafarer is a potential terrorist, governments are required to carry out a threat assessment to arrive at such a conclusion. Even today seafarers are routinely being restricted to ships in port and denied fundamental human rights. This can only be viewed as a failure in the way security regimes are being implemented.

The safeguards in the form of the ISPS Code and Convention No. 185 can guarantee very little success. Even if a new and fool-proof SID is designed, it can do very little to prevent a terrorist attack. It is only through partnership that a safer and cleaner maritime industry can be achieved. However, an effective partnership requires commitment. Therefore, there is a need to adhere to a continued commitment to arriving at well-developed international standards of security measures to bring success in this new era of globalization. A continuous process of review of the existing security measures will enable the industry to arrive at accurate solutions that might actually thwart terrorism, and will also help in preserving the fundamental rights of seafarers.

## CHAPTER 5

### CONCLUSION

**Without their (seafarers) contribution, half the world would freeze and the other half starve.**

**Efthimios Mitropoulos<sup>83</sup>  
Secretary-General,  
International Maritime Organization**

#### 5.1 Conclusions

Throughout the process of intensifying and promulgating the new security measures all the stakeholders of maritime commerce cautioned each other to ensure that the enhanced security measures do not cause any impediments to the work of the seafarer and that s/he is not subjected to undue pressures. In fact, during the May 2002 session of the Maritime Safety Committee, Australia and New Zealand submitted a joint statement warning that:

Consideration should also be given to the welfare implications for seafarers of enhanced security arrangements in ports. If seafarers are unable to meet the port state's requirements for appropriate identity documentation, it is possible that such seafarer will not be permitted to go ashore for recreation or other purposes such as medical treatment. Confinement to ship or an isolated port facility for long periods will have adverse effects on seafarer welfare and may add to fatigue problems in the long run, with obvious safety implications.<sup>84</sup>

After the 9/11 incident the United Nations and its specialized agencies were required to re-examine all security-related issues. Accordingly, in the ILO discussions were held on undertaking the improvement of security in the seafarers' identity document to meet the new needs of security. During these discussions compatibility was being struck between the facilities granted by receiving states with national security requirements. The international community was aware that a balance has to be struck between facilitating trade and ensuring security so that the economic and social foundations of society do not get irreparably undermined. Accordingly, the role of shore leave in the life of a seafarer and its importance for the general well-being of society was duly taken cognizance of. The clause in the ISPS Code to grant seafarers

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<sup>83</sup> *Putting the Seafarer first*, ITF Seafarers' Bulletin, 2005, at 29-31.

<sup>84</sup> See Report, *supra*, note 19 at p. 9.

access to shore based facilities, and the reiteration by the FAL Committee to member states to duly recognize the needs of seafarers for shore leave, was considered adequate to meet the concerns of seafarers of undue harassment in a world seized by the demands for tighter security.

At the ILO the concerns of seafarers of impediments in their professional movements due to the enhancement of security, and the concerns of the member states of positive identification of seafarers before they are allowed into their territories, and protection of their country against security threats, were resolved by the introduction of 'biometrics'<sup>85</sup> into the seafarers' identity document. Accordingly, with the positive identification enabled by the 'biometrics' the international community felt that a balance had been struck between the security requirements of the states and the facilitation requirements of the seafarers.

The feedback received from the survey carried out during the course of writing this dissertation clearly shows that despite the world not considering seafarers as potential terrorists, when the issue of granting them shore leave and permission to transit through state borders for their professional pursuit arises, every one takes a step back. Why is there a hesitation in accepting the needs of seafarers? Only because the ill treatment meted out to seafarers does not in any manner affect the transportation and day-to-day movement of cargo. The seafarers are a small group of people lacking a collective voice and influencing the policy makers to understand their plight. Accordingly, the following conclusions are arrived at:

- Seafarers are least resilient in the maritime world to such drastic changes in the policies at the international and national levels. They are most vulnerable due to their remoteness from the law and legal systems which operate in different countries. As a direct consequence of their professional requirements seafarers are uncertain of their relationship with the different legal regimes that they get exposed to, which renders them even more vulnerable to prosecution under foreign legal systems for no apparent mistake. The new

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<sup>85</sup> The adoption of Seafarers' Identity Documents Convention, 2003 was considered as the answer to this question of facilitation and security. The Convention came into force on 9<sup>th</sup> of February, 2005.

security measures have resulted in the further marginalization of seafarers as a community.

- Seafarers have been subject to undesirable treatment for many centuries. The International Commission on Shipping very accurately observed that, “Seafarers are considered and treated by some port States as potential criminals or undesirables rather than respected professionals”.<sup>86</sup> The treatment has deteriorated further due to enhanced security measures.
- Convention No.185, which was considered to be an answer for ameliorating the conditions of seafarers’, has not had the desired effect. Most governments have not ratified it as the USA, at whose instance the Convention was adopted in an accelerated mode, has refused to ratify it.
- An international treaty and the accompanying resolutions are always adopted in the true and genuine spirit of collectivism and acceptability. However, the failure of governments in implementation is due to the failure in attaching due importance to the issues relating to seafarers. Therefore, when it came to implementing the aspirations contained in the ISPS Code of taking due care to ensure that seafarers enjoy their traditional right of shore leave, most nations overlooked this aspect, as their greatest preoccupation appeared to be to prove to their citizens and the rest of the world that they have protected their borders from any perceived threats. While it is justifiable that every sovereign nation will make all attempts to protect its borders and its citizens, the analysis of the threat and risk assessment should be based on real facts and conditions. Further, all elements should be taken into account while implementing policies. Two wrongs do not make one right. A wrong assessment of risk and the marginalization of seafarers do not make countries appear right in implementing unreasonable security policies
- It is really difficult to understand why when security policies are supposed to be based on threat assessment, there is so much difficulty in coming to grips with the issues of shore leave<sup>87</sup>.
- So, who is responsible for generation of so much ill will in the industry? Of course, the industry. Its preoccupation with running ships and generating

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<sup>86</sup> See *supra*, note 76 at p.28.

<sup>87</sup> Brown, Timothy A., *A Seafarer’s Perspective on Ship and Port Security*, Propeller Club Quarterly, Summer Quarter 2006, at p.8.

profits long over took the desire to maintain the dignity of this profession. There is clearly a lack of will to bring back to the profession its lost glory.

- A random check with any seafarer on the first choice of profession for his/her child will indicate that the majority of seafarers do not desire to have their children follow them into this profession. One major reason being the profession has lost its nobility that it once enjoyed.

The problem of not being able to find a solution to meet the requirements of seafarers for shore leave and transfer and transit is not with the drafting of ISPS Code or the biometric technology adopted in Convention No.185 The fault lies with the entire maritime community in not recognizing the issue of seafarers' rights to be of prime importance and one which needs an immediate attention and resolution. Therefore, the entire problem lies with attitude.

#### **5.1.1 The seafarer - an essential partner in the implementation of a maritime security regime**

All stakeholders in the maritime world recognize the fact that security on board ships and in ports cannot be implemented without the cooperation and assistance of seafarers. Accordingly, seafarers are necessary partners in the implementation of new and enhanced security regulations. In the immediate aftermath of the 9/11 tragedy the excessive reactions shown by security agencies globally by creating obstacles for seafarers from executing their jobs may be considered legitimate in the then prevailing circumstances. However, today, six years after the episode, when almost all countries have implemented adequate safeguards, the stakeholders and the international organisations like IMO and ILO need to take a second look at the security arrangements and ensure that seafarers are accorded their legitimate place and importance in the industry and their professional requirements are given due cognizance.

It will be prudent on the part of the employers and operators of the vessels and other stakeholders in maritime commerce to grasp the fact that crew well-being is a vital ingredient in ensuring long-term commitment from seafarers , and subsequent profitable growth.



### **5.1.2 Consolidation of comprehensive rights under the Maritime Labour Convention (MLC), 2006**

The new ILO Consolidated Maritime Labour Convention (MLC)<sup>88</sup> provides seafarers with a comprehensive set of rights and protection at work. It covers a wide range of rights to decent working conditions and covers subjects including conditions of employment, health, training, recruitment, safety, and other issues which have an impact on seafarers' lives.

The Convention also affirms the seafarers' right to shore-leave. Under Standard A 4.4.1 the Convention requires every Contracting Member State to ensure that shore-based facilities are accessible to seafarers.

Standard A 4.4 - Access to shore-based welfare facilities

1. Each Member shall require, where welfare facilities exist on its territory, that they are available for the use of all seafarers, irrespective of nationality, race, colour, sex, religion, political opinion or social origin and irrespective of the flag State of the ship on which they are employed or engaged or work.

The Convention also prescribes guidelines to member states to facilitate shore leave:

Guideline 4.4.6

Every effort should be made by those responsible in port and on board a ship to facilitate shore leave for seafarers as soon as possible after a ship's arrival in port.

Recognizing the importance of the well-being of seafarers the Convention prescribes that the member states to seafarers to go ashore to access medical facilities:

Regulation 2.4.2

Seafarers shall be granted shore leave to benefit their health and well-being and with the operational requirements of their positions.

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<sup>88</sup> The Convention was adopted in the 94<sup>th</sup> Session of International Labour Conference, Geneva, in February; 2006. The Convention has received one ratification. To enter into force the Convention requires ratification by at least 30 Members with a total share in the world gross tonnage of ships of 33 per cent. Accessed 25.08.2007 <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C186>.

Taking into account the numerous instances of violation of rights of seafarers globally the new convention has incorporated adequate safeguards to protect these rights. As and when this Convention enters into force it will be a milestone achievement in recognizing seafarers' rights on a global scale.

### 5.1.3 Shipping - a career at cross roads

The quality of the industry ultimately depends on the quality of the people in it. It is increasingly difficult to draw the right calibre of entrants into the industry, both for shipboard and shore jobs. We need to improve the condition and the image of the industry so that those who serve in it have a safe, rewarding and fulfilling career.<sup>89</sup>

The reality on board ships is far removed from the romantic image conveyed by most novels and films. The work of a seaman involves great skill, practical experience and the readiness to take responsibility and quick decisions in different situations. On board a vessel a seaman is simultaneously confronted with many problems such as heat, vibration, noise, and air pollution<sup>90</sup>. Further, with the development in technology, though the tonnage and speed has increased, it has resulted in fewer crews on board the ship and has caused additional problems of social isolation in small groups. The effect of the difficulties and stresses associated with them has led to an increase in accidents on board vessels. There is also higher incidence of sickness, higher mortality, and a higher suicide rate at sea.<sup>91</sup>

Shipping no longer retains the image of a glamorous and attractive career. The ill-treatment meted out to seafarers has contributed to the adverse image of the industry due to which it is becoming increasingly difficult, especially at the officer level, to attract competent youth to join this profession. Further, a report of the International Commission on Shipping states this is largely due to, "the pressure from excessive regulation, multiple inspections and short port stays which increase fatigue and stress,

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<sup>89</sup> *Supra*, note 76 at p.37.

<sup>90</sup> Anderson, Donald, Istance, Howell and Spencer, John (Eds.), *Proceedings of the First International Conference on Human Factors in the Design and Operation of Ships (1977) - Human Factors in the Design And Operation Of Ships*, published by Conference Organizing Committee, Ergonomilaboratoriet, Sweden.

<sup>91</sup> *Ibid.* At 16.

and a general decline in the levels of respect for the seafaring profession from all parties, including shipping company management”<sup>92</sup>. It is no wonder that potential recruits are spurning a seagoing career when they see crew members are increasingly treated as scapegoats and criminals when accidents occur.<sup>93</sup> Dr.Samuel Johnson’s aphorism<sup>94</sup> in 18<sup>th</sup> century is apt even today, “No man will be a sailor who has contrivance enough to get himself into a jail; for being in a ship is being in a jail, with the chance of being drowned”.

The former Secretary –General of IMO, Mr. William O’ Neil suggests<sup>95</sup> that the shipping industry “has to find a way to demonstrate that it has embraced the new security culture which is demanded of it while retaining the essential nature of seafaring which has traditionally made it such an attractive vocation for so many people over hundreds of years”.

Michael Grey very aptly rounds up on the effect of the attitude of the industry towards seafarers, when he says<sup>96</sup>, “ if we continue to treat seafarers as creatures from outer space, making life beastly for them, very soon, only primitive life forms without feelings or sensitivities will be prepared to serve at sea”.

There is a widely reported shortage of seafarers in the officer category. The BIMCO/ISF<sup>97</sup> study reports a shortage of some 10,000 officers worldwide, but some specialized ships and ranks are experiencing severe shortage. Moreover, with the continuing growth of the world fleet and increase in work load, the demand for qualified crew is going to continue to increase in the next decade.

Therefore, the time has come for the industry to take some concrete decisions in order to ensure that this profession attracts the best of the lot from society. This is possible only if the industry takes measures in staunchly preserving the traditional rights of

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<sup>92</sup> *Supra*, note 76 at p.28.

<sup>93</sup> *Seafarers on the brink*, Fairplay, 15 January 2004.

<sup>94</sup> *Supra*, note 15 at p. 3.

<sup>95</sup> Grey, Michael, *Speaking up for the shipping industry*, Lloyd’s List, 25 July 2005.

<sup>96</sup> Grey, Michael, *The aliens are about to Land*, 30 August 2005.

<sup>97</sup> BIMCO/ISF Manpower Update 2005, Institute for Employment Research, University of Warwick, United Kingdom. See Appendix C in the dissertation.

seafarers and sends a strong message to mariners to make them understand that they are valued and respected for their contributions to the enterprise.

#### **5.1.4. The human element**

IMO has placed the human element at the very centre of its current work agenda. Issues relating to stress, fatigue, workload and training standards are given due importance. In recognition of the fact that seafarers play a vital role in the global economy and as the whole future of the shipping industry depends on cultivating capable and effective manpower resource, the ISM Code<sup>98</sup> and the revised STCW Convention<sup>99</sup> were designed to influence and shape the human element in shipping.<sup>100</sup> The ISPS Code lays emphasis on a balanced approach in its implementation to ensure that the tightening of security measures ensure that criminals and terrorists do not gain access to ships and ports; and ensure that innocent seafarers are not unfairly penalised by denying them shore leave. The importance laid on this very crucial aspect will ensure that a motivated and well-trained seafarer will carry out his/her task professionally and will prove to be a valuable asset to the industry. It is imperative that IMO monitors the implementation of the Conventions by Contracting Governments and ensures that due cognizance is given by states to the aspects of the human element while drafting and implementing national legislations. Improvement in seafarer welfare hinges on ensuring that crew members are being given “an understanding of being part of something bigger than the actual ship they are serving on”.<sup>101</sup>

#### **5.1.5 International Treaty**

ILO and IMO are required to play a lead role and should collect details of instances of violations of seafarers’ rights to send the message that the international bodies are serious on this issue and impress upon the international community to understand the important role that seafarers play in the pursuit of their business.

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<sup>98</sup> International Safety Management Code (ISM Code).

<sup>99</sup> The 1978 adopted International Convention on Standards of Training, Certification and Watchkeeping (STCW) was revised in 1985 and it entered into force in 1987.

<sup>100</sup> O’Neil, William A., *The Human Element in Shipping*, WMU Journal of Maritime Affairs, 203, Vol.2, No.2, 95-97.

<sup>101</sup> *Clamour for comprehensive rights*, Lloyd’s Ship Manager, June 2005, at12-13.

The law should be finally established through treaties so that there is no guess work. As far as the sovereignty of a nation is concerned, any international treaty instrument in some way or other translates into a State sacrificing a part of its sovereignty for gaining something in return i.e. uniformity and stability of the fragmented and inconsistent laws, which are manifestly unfair for ships and seafarers. This sacrifice every trading nation should make and should be able to see its advantage. Trade is the life blood of every nation, and in particular for those highly developed trading nations whose trade would come to a grinding halt but for the commitment and dedication of the world's seafarers. It becomes imperative for these states to take the lead to protect those who toil their lives ensuring the safety of their properties and generating profits for them.

While Convention no. 185 provides an excellent opportunity to the maritime world in achieving this goal, the majority of those who answered the questionnaire appear to have apprehensions about the resilience of the fingerprint minutiae-based biometrics in SID in meeting the security requirements of the day. While, the ILO, in co-operation with ISO, has made laudable efforts in developing global standards for SID, it is clear that much greater efforts need to be made by the ILO to instil the confidence in the stakeholders of the maritime industry to accept it.

The member states of the ILO, also, need to place the ratification and implementation of the Convention at the forefront of their agenda and ensure that it does not become a victim of political apathy. The United States, in particular, at whose instance the entire world had united to develop this internationally verifiable biometric identification for seafarers, needs to take the lead and ensure that seafarers' rights to shore leave is not compromised and the business of shipping is carried on without any damage to global economy and international relations.

The key can be found through agreement between governments and all stakeholders of the maritime industry coming together and finding a permanent solution by adopting an international treaty to ensure that the traditional rights of seafarers of shore leave and transit, in the course of their professional pursuits, are given the true prominence that they have enjoyed for centuries and to ensure that they become the legitimate rights of seafarers.

The security implications today are global in nature. Accordingly, it becomes the responsibility of the entire maritime community to ensure that all the participants are adequately protected so that international maritime commerce is carried out in a smooth and safe environment which ensures *Safer Seas and Well Protected Seafarers*.

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## APPENDIX A

### SAMPLE QUESTIONNAIRE

Dear Sir/Madam,

I solicit your support for completing the attached questionnaire. The questionnaire is a part of the research being carried out at the World Maritime University, Malmö, Sweden as part of a dissertation and aims to understand the relevance of technology in the field of 'seafarers rights' with specific relevance to role of 'biometrics' in Seafarers' Identity Document (SID) under the Seafarers' Identity Documents Convention (Revised), 2003 (No.185) and how the convention balances the technology with the rights of seafarers to gain access to shore-based facilities and move across state boundaries to join ships or while returning home after completion of duty.

Considering your close involvement with the development of Convention No.185 and your vast experience in this field the questionnaire is sent to you for gaining your inputs which will benefit the research work tremendously.

Please indicate your *preference* regarding being quoted in the dissertation by opting for one of the following:

To being quoted . . .

I object       I have no objection

To my institution being mentioned specifically . . .

I object       I have no objection

Your answers will be kept strictly confidential and you or your institution will not be identified specifically if you have so requested. The data will be presented only as part of global research.

The questionnaire may kindly be answered by selecting one of the boxes. Where more than one option is applicable, please select all applicable boxes. Every question also provides for your individual comments, which may kindly be filled in.

If you use the electronic version, kindly 'save' the attachment first and then 'open' it and fill in the questionnaire. You can 'click' on the appropriate box and mark it, and type the text in the 'box' provided.

Your time and effort in answering the questions is very much appreciated and I thank you for your cooperation.

### RETURN OF QUESTIONNAIRES

Please send your completed questionnaire to this address by **12<sup>th</sup> of June 2007**

Neera Malhotra  
WMU Student  
P.O. Box 500, S-20124,  
Malmö, Sweden.

Email: [s07109@wmu.se](mailto:s07109@wmu.se)(for electronic version of questionnaire)

Name :

Your Phone No.:

Your Email ID:

Description of organization :

Your designation :

## QUESTIONNAIRE

### **I. RELEVANCE OF 'BIOMETRICS' IN SEAFARERS' IDENTITY DOCUMENT(SID)**

**Please select the appropriate answer. It would be appreciated if you could substantiate your reply with comments**

1. Is 'biometrics' widely understood as capable of providing a positively verifiable identity document of a bonafide seafarer?

Yes     No

Any other comment

2. Has it generated the required confidence among all the stake holders in the maritime industry for a fool proof document?

Yes     No

Any other comment

3. If your answer to Question No.2 is 'No', kindly cite the reasons. Some probable answers are given below :

- A relatively new technology
- Not enough empirical evidence of being fool proof
- The features of technology and its operation are not clearly understood

Any other reason, please specify

4. Do you think the 'biometrics' in SID will be able to re-establish the customary rights of seafarers to shore-leave and to transit across state boundaries during the course of their profession?

- Yes     No

Any other comment

5. Do you think 'biometrics' has the potential to foster a balance between the seafarers' right to shore-leave and to transit state boundaries and the global requirement of security?

- Yes     No

Any other comment



## II. ROLE OF SEAFARERS IN GLOBAL SECURITY INITIATIVE

Please select the appropriate answer. It would be appreciated if you could substantiate your reply with comments

1. “In many countries the overwhelming fear of maritime terrorism has resulted in ship’s crew being treated as potential terrorist.”

Do you agree with this portrayal of seafarer?

Yes     No

Any other comment

2. Do you think the rigid security measures post-9/11 in certain states have undermined the faith of seafarers in their profession?

Yes     No

Any other comment

3. Do you think that ‘biometrics’ has become a pre-qualification for a seafarer to claim his rights to shore-based facilities and decent working and living conditions?

Yes     No

Any other comment

### **III. YOUR OPINION**

1. Some sectors in the industry expressed their doubt on the selection of 'biometrics' in SID and one such statement was "if such a national immigration control law singled out seafarers for fingerprinting, then (some sectors) would protest its ratification on the grounds the law was discriminatory"?

(a) What is your opinion?

(b) What other alternatives/ measures could be considered to make SID globally acceptable and feasible?

2. What measures can the stake holders in the shipping industry take to re-inculcate the feeling of trust and faith in seafarers towards their profession, which has been undermined by the overzealous actions of some security agencies around the world?

3. In order to effectively implement any security plans the shipping industry needs cooperation from the seafarers, as they are in charge of the ships and in control of all its operations. So, how this cooperation be fostered when the same industry perceives them as potential terrorist?

4. Have you any other thoughts regarding how a balance can be achieved between the need for security by member states and the protection of human rights of seafarers?

**IV. Do you wish to make further comments?**

**THANK YOU FOR YOUR PARTICIPATION**

## APPENDIX B

### LIST OF RATIFICATIONS OF CONVENTIONS NOS. 108<sup>102</sup> & 185<sup>103</sup> OF ILO AND FAL CONVENTION<sup>104</sup> OF IMO

Flag	Convention No.108, 1958	FAL Convention,1965	Convention No.185, 2003
Albania		X	
Algeria	X	X	
Angola	X		
Antigua & Barbuda	X		
Argentina		X	
Australia		X	
Austria		X	
Azerbaijan		X	X
Bahamas		X	X
Bangladesh		X	
Barbados	X	X	
Belarus	X		
Belgium		X	
Belize	X		
Benin		X	
Brazil	X	X	
Bulgaria	X	X	
Burundi		X	
Cameroon	X	X	
Canada	X	X	
Cape Verde		X	
Chile		X	
China		X	
Colombia		X	
Congo		X	
Cote d'Ivoire		X	
Croatia		X	
Cuba	X	X	
Cyprus		X	
Czech Republic	X	X	
Dem. People's Rep. Korea		X	
Denmark	X	X	
Djibouti	X		
Dominica	X	X	
Dominican Republic		X	
Ecuador		X	

<sup>102</sup> Seafarers' Identity Documents Convention, 1958 (No.108)

<sup>103</sup> Seafarers' Identity Documents Convention (Revised), 2003 (No.185)

<sup>104</sup> Facilitation Convention, 1965

<b>Flag</b>	<b>Convention No. 108, 1958</b>	<b>FAL Convention,1965</b>	<b>Convention No.185, 2003</b>
Egypt		<b>X</b>	
El Salvador		<b>X</b>	
Estonia	<b>X</b>	<b>X</b>	
Fiji	<b>X</b>	<b>X</b>	
Finland	<b>X</b>	<b>X</b>	
France		<b>X</b>	<b>X</b>
Gabon		<b>X</b>	
Gambia		<b>X</b>	
Georgia		<b>X</b>	
Germany		<b>X</b>	
Ghana	<b>X</b>	<b>X</b>	
Greece	<b>X</b>	<b>X</b>	
Grenada	<b>X</b>		
Guatemala	<b>X</b>		
Guinea		<b>X</b>	
Guinea-Bissau	<b>X</b>		
Guyana	<b>X</b>	<b>X</b>	
Honduras	<b>X</b>	<b>X</b>	
Hungary		<b>X</b>	<b>X</b>
Iceland	<b>X</b>	<b>X</b>	
India	<b>X</b>	<b>X</b>	
Indonesia		<b>X</b>	
Iran(Islamic Republic of Iran)	<b>X</b>	<b>X</b>	
Iraq	<b>X</b>	<b>X</b>	
Ireland	<b>X</b>	<b>X</b>	
Israel		<b>X</b>	
Italy	<b>X</b>	<b>X</b>	
Japan		<b>X</b>	
Jordan		<b>X</b>	<b>X</b>
Kenya		<b>X</b>	
Kyrgyzstan	<b>X</b>		
Latvia	<b>X</b>	<b>X</b>	
Lebanon		<b>X</b>	
Liberia	<b>X</b>	<b>X</b>	
Libyan Arab Jamahiriya		<b>X</b>	
Liechtenstein		<b>X</b>	
Lithuania	<b>X</b>	<b>X</b>	<b>X</b>
Luxembourg	<b>X</b>	<b>X</b>	
Madagascar		<b>X</b>	<b>X</b>
Mali		<b>X</b>	
Malta	<b>X</b>	<b>X</b>	
Marshall Islands		<b>X</b>	
Mauritius	<b>X</b>	<b>X</b>	
Mexico	<b>X</b>	<b>X</b>	
Moldova			<b>X</b>

<b>Flag</b>	<b>Convention No.108, 1958</b>	<b>FAL Convention,1965</b>	<b>Convention No.185 2003</b>
Monaco		<b>X</b>	
Montenegro		<b>X</b>	
Morocco	<b>X</b>		
Netherlands		<b>X</b>	
New Zealand		<b>X</b>	
Nigeria		<b>X</b>	<b>X</b>
Norway	<b>X</b>	<b>X</b>	
Pakistan			<b>X</b>
Panama	<b>X</b>		
Peru		<b>X</b>	
Poland	<b>X</b>	<b>X</b>	
Portugal	<b>X</b>	<b>X</b>	
Republic of Korea		<b>X</b>	<b>X</b>
Romania	<b>X</b>	<b>X</b>	
Russian Federation	<b>X</b>	<b>X</b>	
Saint Kitts and Nevis		<b>X</b>	
Saint Lucia	<b>X</b>	<b>X</b>	
St. Vincent & Grenadines	<b>X</b>		
Samoa		<b>X</b>	
Senegal		<b>X</b>	
Serbia		<b>X</b>	
Seychelles	<b>X</b>	<b>X</b>	
Singapore		<b>X</b>	
Slovakia		<b>X</b>	
Slovenia	<b>X</b>	<b>X</b>	
Solomon Islands	<b>X</b>		
Spain	<b>X</b>	<b>X</b>	
Sri Lanka	<b>X</b>	<b>X</b>	
Suriname		<b>X</b>	
Sweden	<b>X</b>	<b>X</b>	
Switzerland		<b>X</b>	
Syrian Arab Republic		<b>X</b>	
Tajikistan	<b>X</b>		
Tanganyika	<b>X</b>		
Thailand		<b>X</b>	
Tonga		<b>X</b>	
Trinidad & Tobago		<b>X</b>	
Tunisia	<b>X</b>	<b>X</b>	
Turkey	<b>X</b>	<b>X</b>	
Ukraine	<b>X</b>		
United Kingdom	<b>X</b>	<b>X</b>	
United States		<b>X</b>	
Uruguay	<b>X</b>	<b>X</b>	
Vanuatu		<b>X</b>	<b>X</b>
Venezuela		<b>X</b>	
Viet Nam		<b>X</b>	

<b>Flag</b>	<b>Convention No. 108, 1958</b>	<b>FAL Convention,1965</b>	<b>Convention No.185, 2003</b>
Yemen		<b>X</b>	
Zambia		<b>X</b>	
Hong Kong, China		<b>X</b>	
Macao, China		<b>X</b>	
Faroe Islands		<b>X</b>	

## APPENDIX C

### The worldwide demand for and supply of seafarers<sup>105</sup>

December 2005

Warwick Institute for Employment Research

#### Supply and Demand differences by Broad National Group for 2015

Flag	Supply: 2005 stock less net inflow		Demand forecast		(Supply-Demand) difference	
	Officers	Ratings	Officers	Ratings	Officers	Ratings
OECD Countries	102	136	176	227	-75	-90
Eastern Europe	95	148	31	30	64	118
Africa/Latin America	47	126	151	169	-104	-43
Far East	145	196	122	156	22	40
Indian Sub – Continent	83	167	18	24	65	142
All national groups	472	774	499	607	-27	167

**Source:** BIMCO/ISF estimates based on computer model.

**Notes:** The difference between Supply and Demand for an individual region needs careful interpretation. The demand has been calculated on the basis of manning and back-up requirements for all ships registered in the region, including open registers, which in most cases are not significant labour supplying countries. Liberia, Panama and other open registers are included in the Africa/Latin America Region and make a major contribution to the Supply/Demand imbalance which is indicated. Equally, an apparent surplus in regions, such as the Indian Sub-Continent and the Far East, simply reflects the fact that a significant number of seafarers are employed on ships registered in other regions.

The BIMCO/ ISF 2005 Update concludes projecting a global shortage of seafarers and states<sup>106</sup> as follows:

The *2005 Update* suggests that there is a modest shortage of officers worldwide and a continuing surplus of ratings. While shortfall of officers is smaller than estimated in 2000, certain sectors of the industry have experienced very severe shortages, and the continuing growth of the world fleet, combined with work pressures on crews, indicate that demand for qualified seafarers will continue to increase over the next decade. This demand will only be met if the increase in levels of recruitment and training is maintained and if wastage rates are reduced.

<sup>105</sup> BIMCO/ISF MANPOWER 2005 UPDATE

<sup>106</sup> Ibid, at 36.