"Development of International Regulations on Seafarer Employment"

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Good morning! And welcome to Shenzhen!

It is usual that the speaker gives thanks to the organizers for inviting him to speak, but I am not sure that I should thank Gilbert for his choice of topic. In just a few words, he has managed to describe a few hours worth of information. It is probably best that I should try to keep this presentation short and logical, but, if I confuse you, I am always ready to try to answer any questions you might have.

Lets start with the International Labour Organisation (ILO).

The Maritime Labour Convention was adopted unanimously in 2006, and so far has 5 ratifications out of the required 30 (Liberia, Marshall Islands, Bahamas, Panama and Norway), but the total tonnage of those 5 ratifications well exceeds the second requirement of 33 percent of the world fleet. We know that some very hard work is taking place in many jurisdictions, and we fully expect the necessary ratification to take place by the end of 2011 for entry into force of the Convention sometime in 2012.

And in September 2008, the Guidelines for flag State inspections and the Guidelines for port State control officers carrying out inspections under the Maritime Labour Convention were adopted. These can be downloaded from the ILO website.

And, to further add to the circus surrounding the new Convention, Class societies have recognized the impending problem in certifying the world fleet in the two years from full ratification encouraged under the relevant resolution, and are holding seminars to encourage owners and managers to start to undertake 'gap analysis' to see where their operations would have to be upgraded in order to comply with the Convention requirements.

But this is not as easy as it seems. The Convention has been designed with in-built flexibility, so as to encourage wide spread ratification by governments with very different social security and welfare legislation. There are four areas of flexibility:

- Substantial equivalence. This is where the ILO member is permitted to give effect to the detailed requirements in Code Part A through substantial equivalence. Article VI of the Convention describes what is meant by

substantial equivalence, but essentially the provision can be implemented by other means so long as they are conducive to the full achievement of the general object or purpose of the provision.

- General flexibility. This is achieved by wording certain provisions of Part A in a general way, with recommendations for interpretation and application contained in Part B.
- Legal. This is where the specific provision may be implemented through 'other measures', not only through legal means.
- Specific provisions. The Convention has, in some areas, the possibility for adaptation to the special circumstances of the country involved.

So we have a difficult situation, where owners and managers are being encouraged to get on with gap analysis to see where their operations must be changed to comply with the Convention, but the provisions of the Convention are not known until the relevant flag State has decided how to apply the flexibility in the Convention. Some Class societies are getting over this problem by performing a gap analysis on the entire Convention, with the intention of making small changes to comply with the specific requirements of the flag State when these are known. What else can you do?

Before leaving the Maritime Labour Convention, I would just like to remind you of the requirements of Regulation 1.4, Recruitment and Placement. There are specific requirements for the labour supply State to meet in the regulation of recruitment and placement agencies before it can ratify the Convention.

But if the labour supply State has not ratified the Convention, then it is the shipowner's responsibility to prove to his flag State that these requirements have been met for the specific recruitment and placement agency. Please bear this in mind, and if you have doubts whether your labour supply State is able to ratify the Convention before entry into force, then ask your recruitment and placement agency to put in place procedures so that you can meet your obligations.

ILO Convention 185 is the Seafarers' Identity Documents Convention (revised) 2003, and we continue to press for its ratification by countries where we find it difficult to get shore leave for seafarers. But a new problem has emerged, in that although the biometrics within the Convention are based on and directly refer to standards developed by ISO and ICAO, it would seem that ISO and ICAO have now made those particular standards obsolete. The issue of acceptable biometrics is one that took a great deal of negotiation in the ILO, and if the Convention has to go back to a Conference to agree new biometrics, then we could be in for quite a difficult negotiation.

With that confident word, we now enter the realm of IMO.

A joint ad-hoc expert working group of the IMO and ILO has been working for some 10 years on developing into mandatory text the Guidelines on Provision of Financial Security in case of Abandonment of Seafarers (A 22/Res.930) and the Guidelines on Shipowners' Responsibilities in respect of Contractual Claims for Personal Injury to or Death of Seafarers (A 22/Res.931).

The ninth meeting of the working group was held in March this year, and produced principles in the form of text amending the MLC, 2006, when it comes into force. These principles still have to pass by the IMO Legal Committee and the ILO Council and be drafted into full text before they are adopted as a formal amendment to the Convention.

I think you will agree that in these difficult market conditions, we are now in the 'danger zone' for abandonment, and whether we like the proposed text or not, we do need to ensure that seafarers are not put into the awful situation of being abandoned, without food or fuel and without the possibility of returning home.

In April 2006, the IMO and ILO jointly adopted the Guidelines on the Fair Treatment of Seafarers following a Maritime Accident. While there is great support for the Guidelines, it is clear that they are not exhaustive, in that a country's legal system takes precedence over the provisions in the Guidelines. We also have the odd view expressed by some that the Guidelines only apply in the event of an accident, and if it is felt that the incident was not an accident, then they do not apply!

We currently have several cases where the application of the Guidelines, in spirit if not in full, seems to be lacking. The two senior officers of the Hebei Spirit have been kept in detention in Korea since the accident in December 2007, found innocent by the court of first instance, guilty by an appeal court and are now awaiting the decision of the Supreme Court.

The European Court of Human Rights has found that the bail amount of Euros 3 million demanded by Spain for the release from detention of Captain Mangouras of the 'Prestige', was, although high, not disproportionate to the seriousness of the crime in question and the catastrophic consequences from both an environmental and economic point of view. The message that is being sent, is that the seriousness of the incident determines the bail amount, and also possibly the outcome of the trial, rather than the culpability of the seafarer. We are now trying to appeal this very odd and strange decision in the European Chamber of Human Rights.

There are many other such cases, and it is essential that the industry continues to lobby for these seafarers; for their release from detention if proper bail is provided and their fair trial in competent courts.

Of course, these blots on our copybook are sending a message to prospective seafarers that we might not want them to hear. Certainly, recruitment in India is affected, and there are likely to be many others who are reconsidering their wish to go to sea. The IMO has launched a 'Go To Sea' campaign, that has been taken up by the international and national associations. There is now a good supply of material on the web, some superb videos that do not try to make the story too unrealistic, and many publications that can be used to attract the talent we still need in our industry.

Finally, the Standards of Training, Certification and Watchkeeping ("STCW") review. The IMO Sub-committee on Standards of Training and Watchkeeping (STW) met in February this year to continue its work on the review of STCW. It is intended that further work will take place at the Sub-committee's next meeting in January 2010, with a view to adopting the amendments at a Diplomatic Conference of the STCW parties to be held in the Philippines in June 2010.

The changes are widespread, and affect most of the Convention. In particular, there will be new provisions for environmental awareness training, and provisions for the prevention of drug and alcohol abuse for watchkeeping seafarers as well as new provisions for bridge and engine room resource management. I have a copy of the report of STW 40 which contains a draft of the amendments, if anyone is interested.

One other area that our Association has taken a keen interest in, is the harmonization of the hours of work and rest with the ILO requirements, and the review of the Principles for Establishing the Safe Manning Levels of Ships (A.890(21)). These two are clearly interconnected, because it is the record of hours of work and rest that prove compliance with the Safe Manning document.

In this respect, I would like to remind you that in the United States, it is a criminal offence to present a record that has been fraudulently completed. The offence might not be the breaching of the particular regulation that the record addresses, especially if the breach occurred outside US waters, but the fraudulent entry made in the record. The breach of the particular regulation is the flag State responsibility to control, so clearly if you find yourself in a situation where the breach occurs, say so in the record and inform your flag State. Then the record is correct, and the flag State is empowered to take any action necessary.

As you can see, there is a lot going on, and many issues dealing with seafarer employment that need to be monitored and commented on. Could I please ask you to press for full engagement in this process – it is only through full and complete discussion, that takes into account all of the concerns of the industry, that workable regulations will be developed.

Thank you!

(Arthur Bowring is the Managing Director of Hong Kong Shipowners Association and Chairman of the Labour Affairs Committee of the International Shipping Federation. This paper is presented at the 2nd Joint Seafarers Managers Summit which was held in Shenzhen on Friday 24th April 2009)