

The Regulation of International Shipping: International and Comparative Perspectives

Essays in Honor of Edgar Gold

Edited by Aldo Chircop
Norman Letalik
Ted L. McDorman
Susan J. Rolston

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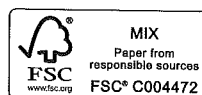
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Foreword

Like a polished diamond, Edgar Gold has facets: master mariner, lawyer, professor, and oceans policy guru. Contradictory though it may seem, each of these incarnations is the 'real' Edgar Gold. In each of these vocations he has demonstrated excellence. While each Edgar Gold persona may contribute to the others, none is subordinate. Despite the particularly challenging circumstances of his early life, in his adult years, through which I and most of the contributors here have known him, Edgar developed progressively into the oceans polymath which this book of essays celebrates.

I would argue that Edgar's development required catalysts of time and place. Without endeavouring to draw a fine line, I posit that the time was the 1970s and 1980s and the place was Dalhousie University in Halifax, Nova Scotia, Canada. There Edgar made the transition from the uni-dimensional but critical foundation building career of master mariner. There he studied, taught, began to research, helped create and made critical contributions to what became the Dalhousie Oceans Studies Programme (DOSP). It was from a base at Dalhousie that Edgar began to deploy his knowledge, practical skills and oceans policy thinking over a world wide spectrum.

Edgar's journey was not a lone one. At Dalhousie he had like-minded colleagues and both the university and the external Canadian environment were supportive. But hard and dedicated work usually requires some further ingredient. For Edgar and his colleagues an award from the Social Sciences and Humanities Research Council of Canada was that further ingredient. At the time, 1978, it was the largest research grant that had been awarded by the SSHRCC.

An earlier application had been made which was not successful. In 1977 Dalhousie was convinced that a fresh attempt should be made. Edgar and the late Douglas Johnston had worked on the first application. I joined them mid-year in 1977. Together with Arthur Hanson, we conceived and articulated a broad and comprehensive vision for study, research and teaching across two professional schools and several faculties at Dalhousie University. With the grant this vision began to be realized.

In the midst of this considerable effort on Edgar Gold's part and his full-time Law School teaching commitment, Edgar completed his doctoral studies

Seafarers' Welfare Development in Southeast Asia: A Commentary

Nien-Tsu Alfred Hu*

Introduction

Alastair Couper's contribution in this collection, "Perceptions and Attitudes of Seafarers Towards Maritime Regulations – An Historical Perspective," provides a good overview of the history not only of national and international legal developments respecting seafarers but also has a few comments on the early role of Christian charities, seafarer unions, and others organizations in seafarer's welfare in the 1800s.¹ These cultural and religious roots explain why seafarers' welfare services and work has primarily been provided by Christian faith-based institutions. There is some tradition of seafarer welfare organizations in Southeast Asia. While not necessarily the first seafarer welfare body in Southeast Asia, note can be made of the National Chinese Seamen's Union (中華海員總工會)(NCSU), which was founded in 1946 in Shang-Hai, mainland China and moved to Taiwan with the Republic of China government in 1949, and has long been an active organization in Taiwan on seafarer welfare.²

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¹ Alastair Couper, "Perceptions and Attitudes Towards Maritime Regulations – An Historical Perspective" in this volume, p. 429. See generally also: Roald Kverndal, *Seamen's Missions: Their Origin and Early Growth* (Pasadena, CA: William Carey Library, 1986).

² The Web site of the National Chinese Seamen's Union is at <http://www.ncsu.org.tw/> (in Chinese).

In more recent times, the Southeast Asia region is well-known as the origin of a disproportionately large number of seafarers serving onboard international shipping lines.³ The Philippines itself

is considered the "Ship Manning Capital" of the world supplying the largest number of seafarers for the international maritime sector. Estimates showed that Filipinos comprise some 28.5 percent of the total maritime population who are on board vessels worldwide.⁴

The Seafarers' Rights International (SRI) Web site provides a different perspective with the Philippines having only 6.17 per cent of seafarers behind both China and Turkey.⁵ Nevertheless, the countries of Southeast Asia together, according to the SRI Web site, contribute over 30 per cent of world seafarers.⁶

The most significant recent development in the welfare of seafarers has been the adoption by the International Labour Organization (ILO) in 2006 of the Maritime Labour Convention (MLC). Its primary focus is the enhancement of working conditions on vessels and better protection of the employment rights for seafarers.⁷

Putting the above two developments together, the International Committee on Seafarer's Welfare (ICSW),⁸ an international charity and a volunteer organization established for the purpose of bringing together appropriate interests in the field of seafarers' welfare, took the opportunity to pay some attention to the Southeast Asia region. Having undertaken several regional programs regarding seafarers' welfare in North and Central Latin America, the Commonwealth of Independent and Baltic States, the Indian Ocean and South East Africa, and West Africa,⁹ in 2007 the ICSW set out to develop

³ For a now dated review of seafarers in Southeast Asia, see: Mary R. Brooks, ed., *Seafarers in the ASEAN Region* (Singapore: Institute of Southeast Asian Studies, 1989).

⁴ See the first paragraph of the Country Report of the Philippines presented to the First Regional Seafarers' Welfare Committee Meeting of the International Committee on Seafarers' Welfare (ICSW) South East Asia Programme held 19–20 June 2008 in Singapore by Atty. Dennis R. Gorecho, Legal Counsel, Apostleship of the Sea – Philippines. This report can be found on the ICSW Web site, South East Asia Regional Programme page, [http://www.seafarerswelfare.org/pdf_documents/Ph_Country_Report_Presentation_-_1st_SEA_RWC_Meeting_in_Singapore_\(19th_-_20th_Jun_08\).pdf](http://www.seafarerswelfare.org/pdf_documents/Ph_Country_Report_Presentation_-_1st_SEA_RWC_Meeting_in_Singapore_(19th_-_20th_Jun_08).pdf) (accessed 12 April 2011).

⁵ Seafarer's Rights Organization, "World Supply of Seafarers." <http://www.seafarersrights.org/seafarers-subjects/industry-statistics> (accessed 14 October 2011).

⁶ *Ibid.*

⁷ The Maritime Labour Convention is available on the ILO Web site at <http://www.ilo.org>. See generally: M. McConnell, D. Devlin, and C. Doumbia-Henry, *The Maritime Labour Convention, 2006: A Legal Primer to an Emerging Legal Regime* (Leiden: Martinus Nijhoff, 2011).

⁸ See: ICSW, "About us." http://www.seafarerswelfare.org/index.php?option=com_content&task=view&id=13&Itemid=26 (accessed 8 April 2011).

⁹ *Ibid.*

a similar regional program for Southeast Asia commencing with a Sub-Regional Seminar held in Singapore in September 2007. The objective of the seminar, and more generally, the regional program was to "provide a forum for all parties involved in seafarer care from Cambodia, Indonesia, Malaysia, the Philippines, Singapore, Taiwan, Thailand and Vietnam to discuss the issues relating to seafarer's welfare in South East Asia."¹⁰ More specifically the four objectives of the regional program were to:

1. Promote seafarers' welfare and in particular ILO Convention 163, Recommendation 173, and [the Maritime Labour Convention] the main ILO instruments on seafarer's welfare;
2. Assess the level and efficiency of current activities;
3. Encourage organisations from this sub-region to consider programmes strengthening links with organisations outside South East Asia; and
4. Develop a regional programme to strengthen seafarers' welfare structure and services in South East Asia.¹¹

The participants at the 2007 seminar agreed to establish a regional work program from March 2008 to December 2011¹² and, as a result of this, the South East Asia Regional Welfare Committee (SEA RWC) held its inaugural meeting in Singapore in June 2008. The 2008 meeting was attended by representatives from the seven participating parties in the ICSW 2007 Singapore seminar – Indonesia, Malaysia, the Philippines, Singapore, Taiwan, Thailand and Vietnam – and representatives from the London headquarters of the ICSW and the International Transport Workers' Federation Seafarers' Trust (ITF-ST).¹³ The June 2008 meeting marked the beginning of the ICSW's efforts to promote the welfare of seafarers in the Southeast Asia region.

¹⁰ See the opening paragraph text in the invitation letter dated 16 July 2007 from the ICSW addressed to the author. The invitation letter is on file with the author.

¹¹ *Ibid.* *Convention concerning Seafarers' Welfare at Sea and in Port* (C163), Geneva, 8 October 1987 (into force 3 October 1990) (The Convention was revised in 2006 by the Maritime Labour Convention (MLC), *supra* note 7), and Recommendation Concerning Seafarers' Welfare at Sea and in Port (R173), Geneva, 8 October 1987.

¹² See: ICSW, "SE Asia Welfare Project Gets Green Light," Press Release 2, 20 September 2007, in which it is indicated that: "The programme will be funded by the International Transport Workers' Federation Seafarers' Trust (subject to final approval) and monitored by the ICSW." The Press Release is available in *ICSW Seminar 2007 Seafarers' Welfare in South East Asia, Final Report*, 54, http://www.seafarerswelfare.org/pdf_documents/50083_ICSW_Seminar_Report_2007.pdf (accessed 17 April 2011).

¹³ For a short narration of the First SEA RWC Meeting, see: http://www.seafarerswelfare.org/pdf_documents/South_East_Asia_Regional_Welfare_Committee_Meeting_19.pdf (accessed 12 April 2011). The minutes of the meeting are on file with the author.

The purpose of this contribution is to provide a brief commentary on the efforts of the ICSW to promote the development of seafarers' welfare through the SEA RWC process.

The ICSW Regional Program: Structure and Process

A key to understanding the ICSW regional program is how the ICSW is constituted, funded, and operates. The ICSW is a United Kingdom-based, international umbrella organization. It undertakes and coordinates activities in support of its 38 members, all of which are 'front line' service providers or agencies with an active interest in the care of seafarers.¹⁴ The International Shipping Federation, the International Transport Workers' Federation (ITF), and the International Christian Maritime Association (ICMA) are the three permanent members on the Board of Trustees of the ICWS and there are five elected members.¹⁵ Not surprisingly given the locus and history of seafarer's welfare initiatives, the members of the ICSW are Christian faith-based societies and churches, notably the ICMA and its own members worldwide, governmental service agencies for seamen (e.g., the Danish and Swedish Government Seamen's Services), seafarers' unions, non-governmental seafarers' welfare providers (e.g., the United Seamen's Service in New York), and seafarers training institutions such as the Maritime Training Institute in Mumbai.

The operations of the ICWS, especially its regional programs, are primarily funded by ITF-ST. As the primary funder, the ITF-ST takes an active role in the operations and mission of the ICWS. Moreover, through the regional programs come applications for national seafarers' welfare projects to be funded by the ITF-ST. Thus, the ITF-ST is the real player in the regional programs rather than the ICWS.

The SEA RWC is by its nature an international non-governmental organization. As noted above, it commenced in 2008 with seven participating Southeast Asia countries as members, each of which was to be represented by several 'national representatives' to be drawn from "organizations of ship owners, seafarers; the competent national government authorities; and, where appropriate, voluntary organizations and social bodies."¹⁶ The idea was to reflect the operational spirit and modality of the ILO – tripartism

¹⁴ See: "About the International Committee on Seafarers' Welfare," in *Seminar 2007 Final Report*, *supra* note 12, 2.

¹⁵ *Ibid.*

¹⁶ See Point 2 C of the "ICSW Seminar 2007 Summary of Conclusions," in *Seminar 2007 Final Report*, *supra* note 12, 44–45.

and social dialogue.¹⁷ The representatives from shipping industries, seafarers, seafarer welfare providers, as well as government agencies were to form the national delegations to the SEA RWC. It was acknowledged that the "countries can decide their own representatives of organisations on the Regional Welfare Committee (RWC)," but that the "[r]epresentatives should not be drawn from the same 'sector'..."¹⁸

A series of meetings of the SEA RWC were held from 2008–2011. The 2008 Singapore meeting discussed the modalities of establishing National Seafarers' Welfare Boards (NSWB) and Port Welfare Committees (PWC) and agreed that the first step to establishing these fundamental structures in the region should be taken as quickly as possible. It was also agreed that a full audit of existing seafarers' welfare facilities and services would be undertaken to enable the RWC to develop a prioritized list of projects for possible funding by the ITF-ST Board of Trustees. The RWC also agreed to develop a prioritized list of training requirements for welfare workers throughout the region.¹⁹

The most recent meeting was held in Sihanouk City, Cambodia²⁰ in April 2011. The opening of the meeting was highlighted by the inauguration of a new seafarers center in the Sihanoukville Autonomous Port with a building provided by the Port Authority and a grant of USD 55,000 from the ITF-ST.²¹ The future of SEA Regional Program was discussed with it being "concluded that after the termination [of the regional] project in year 2012 all delegates

¹⁷ See: ILO, "Tripartism and Social Dialogue," <http://www.ilo.org/global/about-the-ilo/how-the-ilo-works/lang--en/index.htm> (accessed 17 April 2011). The ILO describes 'tripartism and social dialogue' in the following manner:

Underlying the ILO's work is the importance of cooperation between governments and employers' and workers' organizations in fostering social and economic progress.

The ILO aims to ensure that it serves the needs of working women and men by bringing together governments, employers and workers to set labour standards, develop policies and devise programmes. The very structure of the ILO, where workers and employers together have an equal voice with governments in its deliberations, shows social dialogue in action. It ensures that the views of the social partners are closely reflected in ILO labour standards, policies and programmes.

The ILO encourages this tripartism within its constituents and member States by promoting a social dialogue between trade unions and employers in formulating, and where appropriate, implementing national policy on social, economic, and many other issues.

¹⁸ See Point 2 D of the "ICSW Seminar 2007 Summary of Conclusions," in *Seminar 2007 Final Report*, *supra* note 12, 45.

¹⁹ See First SEA RWC Meeting, *supra* note 13.

²⁰ Sihanouk City is the newest Cambodian city and was founded in 1960 after independence from France. The Sihanoukville Autonomous Port (PAS) is the sole international and commercial deep seaport in Cambodia. See: "Introduction," <http://www.pas.gov.kh/introduction.html>, (accessed 29 May 2011).

²¹ See: Minutes of the Seventh SEA RWC meeting, 2–3 and 16–17, on file with the author.

intended to continue the SEA program at least two years and they promised to seriously support ICSW/committee in dealing with 'higher-rank', the government side."²² It was agreed that a formal letter would be submitted to the ICSW requesting an extension of the SEA RWC Program for 2012–2014.²³

SEA-RWC: Evaluation and Comments

The fact that the seven participants, with Cambodia added in 2009, have gathered together to form the SEA RWC and in solidarity agreed upon the goal of enhancing seafarers' welfare in the region is itself an achievement. More tangibly, the number of established National Seafarers' Welfare Boards (NSWB) has increased from three in 2007 (Singapore, Malaysia, and the Philippines) to five (Indonesia and Taiwan) in 2010, leaving only Cambodia, Thailand, and Vietnam without a NSWB. Vietnam is the only one of the eight participants with no seafarers' center, while Singapore is the only country reported to have a Port Welfare Committee. This progress, while real, needs to be tempered as there are questions about the functioning, composition, and effectiveness of the NSWBs and the seafarer's centers. For example, while the progress report shows that Taiwan has five seafarers' centers, the national report made by Taiwan at the April 2011 SEA RWC meeting indicates that three of the five centers are "awaiting for funding to equip it"; "[t]he [port] authorities are willing to provide a small place for a drop-in center"; or "[t]hey were waiting for the particulars, like equipment[s] for their center, training of volunteers, etc."²⁴ One success in Taiwan has been the memorandum of understanding signed by the NCSU with the Diocese of Taichung and ITF-ST for the use of the NCSU's facilities, vehicles and equipment for the Apostleship of the Sea's Pastoral Care Program for Merchant Seafarers and Foreign Fishermen in Taichung Port. The two floors of the NCSU's International Seamen's Club in Taichung are now the Stella Maris Seafarers' Center following refurbishment with funding from ITF-ST.²⁵

One of the objectives of ICSW's regional programs is to "encourage national authorities and welfare organisations to establish a proper structure for the coordination of welfare services."²⁶ Based on their experience elsewhere, the ICSW and the ITF-ST have issued a document entitled "Terms

of Reference for National Seafarers Welfare Board (NSWB)" that sets out the key objectives, membership, meetings (including frequency, location, quorum, absence, secretariat), appointment of chairs and vice-chairs, and duties of a NSWB. The pre-set model has not yet been endorsed in Southeast Asia as is evident from the modest role of government participants, a key component of a NSWB, in the SEA-RWC meetings and the NSWBs. For example, at the October 2010 SEA-RWC meeting not only was Vietnam not represented, almost all of delegates were from the seafarers' unions and seafarers' welfare service institutions. At the 2011 meeting, as noted above, the participants 'promised' greater efforts and engagement with government authorities. This indicates that, thus far, the SEA RWC process has failed to attract the support of the relevant national government authorities. The 'pre-set NSWB model' for seafarer's welfare proposed by the ICSW and the ITF-ST, whatever its success elsewhere, may require a degree of adjustment in Southeast Asia in order to entice the third player, government, to be an active participant.

Not helping the situation has been the working approach within the SEA-RWC, where the Regional Coordinator (the principal secretary of the body respecting agenda-setting) is appointed and accountable to the ITF-ST rather than the regional delegates. This creates perceptions of a 'top-down' approach rather than a more organic regional approach to developing and improving the welfare of seafarers.

There is no question that, while the Maritime Labour Convention should result in better working conditions and protection of legal rights for seafarers, more needs to be done respecting seafarer's welfare beyond the ship in Southeast Asia. The efforts of the SEA RWC, ICSW, and ITF-ST in the region are designed to help in this regard. In October 2011 it was reported that the ITF-ST is going to provide 1.4 million pound sterling over four years to continue the work of the SEA RWC and selected seafarer projects in the participating States.²⁷ Despite the willingness of the ITF-ST to financially support the continued operation of the SEA RWC, it remains uncertain whether the existing SEA RWC structure and approach can achieve the original goals for which it was established.

²² *Ibid.*, 12–13.

²³ *Ibid.*, 13–14.

²⁴ *Ibid.*, 8.

²⁵ See: ITF Seafarers' Trust Blog, "Opening of Taichung Seafarers Centre in Taiwan," 30 January 2011. <http://www.itfglobal.org/seafarerstrustblog/?p=112> (accessed 28 May 2011).

²⁶ See: "General Objective" in *Seminar 2007 Final Report*, *supra* note 12, 5.

²⁷ ITF Seafarers, "Project Funding in South-East Asia Brings Benefits to Seafarers," *Maritime News*, 7 October 2011. http://www.itfseafarers.org/maritime_news.cfm/newsdetail/6509 (accessed 10 November 2011).