

# Maritime

## REVIEW



Vol. VII No.6

A PUBLICATION OF THE MARITIME LEAGUE

November-December 2000



### MARITIME TRAINING

IMO releases White List of countries that have complied to STCW Convention

### CREW SUPPLY

The advancement of an officer's career in future will largely depend on his computer literacy in seamanship and ship operations

### ASIAN SHIPPING

The Asian region is expected to account for 30% of total world trade in 2000



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## 8-11 MARITIME TRAINING

- After almost three years of preparations and bickering among state agencies involved in seafarers' administration, the Philippines finally made it to the draft IMO 'white list' of complying states.
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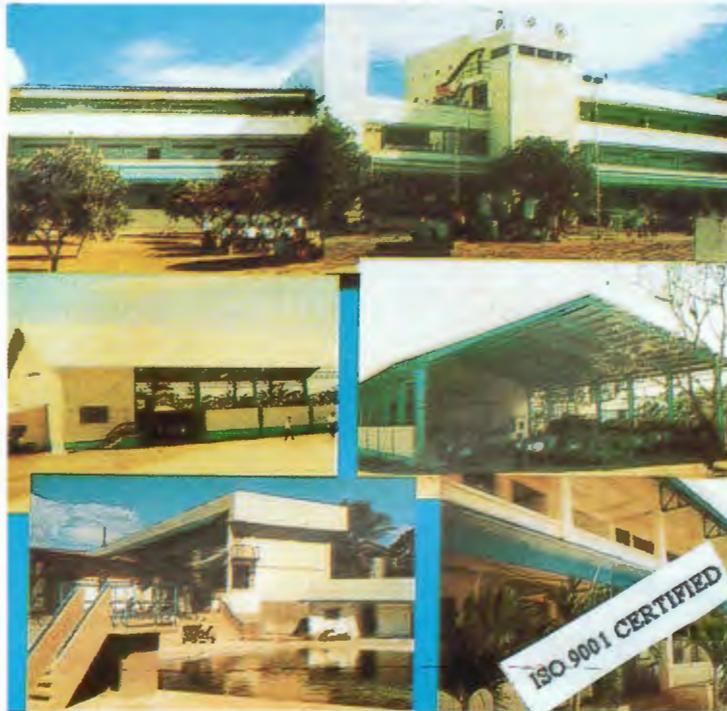


### FRONT COVER

Miguel Magsaysay 1923-2000 and TS Ho Ho

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# Chairman's Page

A DEAR friend of the maritime industry and a personal and respected friend and colleague Mike Magsaysay has joined his creator. Mike served as the President of the Magsaysay Group of Companies and Magsaysay Maritime Corporation as well as director in eleven other corporations whose activities include coal, cement, steel, investment management, property holdings, oil and mineral development, manpower training and shipping.

I first heard of Mike way back in the 70s, and finally got to meet him when I became Chief of Staff of the Philippine Coast Guard (PCG) in 1980. He was then Chairman of the Chamber of Maritime Industries of the Philippines, and as an occasional attendee to meetings of the International Maritime Organization in London he had made a firm commitment to help in the Coast Guard's role of managing the maritime safety affairs of our country. He had developed an unusually keen liking to a bright young man, then LCdr Lucio T. Ibañez, who at the time had shown himself to be a stalwart in the maritime safety field, who was designated as the PCG's Assistant Chief of Staff for Maritime Safety, then CG-7. Together, Mike and Lucio developed a brotherhood of two with determined efforts to show to the IMO that we can develop our country as a responsible shipping nation with a safety record second to none in South East Asia. Well, almost.

At that time CG-7 as Office for Maritime Affairs was respon-

sible for the four main Coast Guard functions in maritime affairs – vessel safety, marine environmental protection, navigational safety and merchant marine personnel. Hence, I figured that it was overloaded, so we decided to do a split: making the former CG-7 into four separate offices (CG7 to CG11) to take care of the four mentioned functions. Of course, LCdr Lucio Ibañez opposed it but had to accept the seeming demotion of his stature. Mike commiserated with Lucio but agreed with us that it was a proper move, and probably alleviated Lucio's disappointment.

After graduating from the National University in 1948 with a Mechanical Engineering BS degree, Mike went on to Cornell University at Ithaca, New York to take a masteral course in Mechanical Engineering, majoring in Heat Power. He gradu-

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**As an occasional attendee to meetings of the International Maritime Organization in London Magsaysay had made a firm commitment to help in the Coast Guard's role of managing the maritime safety affairs of our country.**

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ated in 1950, learning his engineering management during the *practicum* at York & Fairbanks Morse Co. of New York. Good thing he decided not to get integrated in the company. Instead he accepted a sales engineering position with Atlantic, Gulf and Pacific Co. in Manila, where he worked for 5 years, the last of which was concurrently already in shipping, as AVP & Treasurer of the United Philippine Lines. From 1962 he had taken over as vice

president and general manager of five of companies under the Magsaysay Group: Magsaysay Lines, Transocean Transport, A Magsaysay Inc., Magsaysay Securities Corporation and Mayon Ceramics. In 1966 he became president & CEO of A Magsaysay Inc, Magsaysay Lines and Transocean Transport and from 1967 president of the Magsaysay Group of Companies.

Mike was the first Filipino member of the Board of Governors of the World Maritime University, representing the Philippines initially. When I became commandant of the PCG in 1990, he stepped down but continued as governor of WMU, this time representing the Federation of ASEAN Shipowners Association (FASA). As a result we became regular participants to WMU meetings in Malmo, Sweden and at times in London. He was an Asian Board and Committee member of the American Bureau of Shipping and the Nippon Kaiji Kyokai.

One of the first few members of the Maritime League, Mike certainly had provided inspiration to many a member, albeit in the past few years, he had begged off participating in our activities "to give a chance to you younger guys".

He was cremated on December 8, survived by his wife, Cecilia De la Rama Hernaez and, would you believe, nine daughters: Marianne, Agnes, Irene, Louise (Hunnicut), Elizabeth, Angela (Baguio), Joan, Michelle and Claire.

To the Magsaysay family, which includes the indefatigable niece and CEO of the Magsaysay conglomerate, our dear friend and trustee, Doris Teresa Magsaysay Ho, our sincerest condolences.

# Maritime update

## NEW SHIPPING CLUB ACCEPTS MEMBERS

A NEW shipping association formed among East ASEAN Growth Area countries Brunei, Indonesia, Malaysia, and the Philippines (BIMP), is inviting membership. The BIMP-EAGA Shipping Association has been established to promote economic development through shipping linkages within the participating countries.

The association, which will at first be based in Davao, also aims to foster closer relationships and economic co-operation among companies in the shipping industry, and plans studies on the viability of new regular routes linking the four countries. It will also communicate with relevant bodies within the BIMP-EAGA governments on matters affecting members' interests.

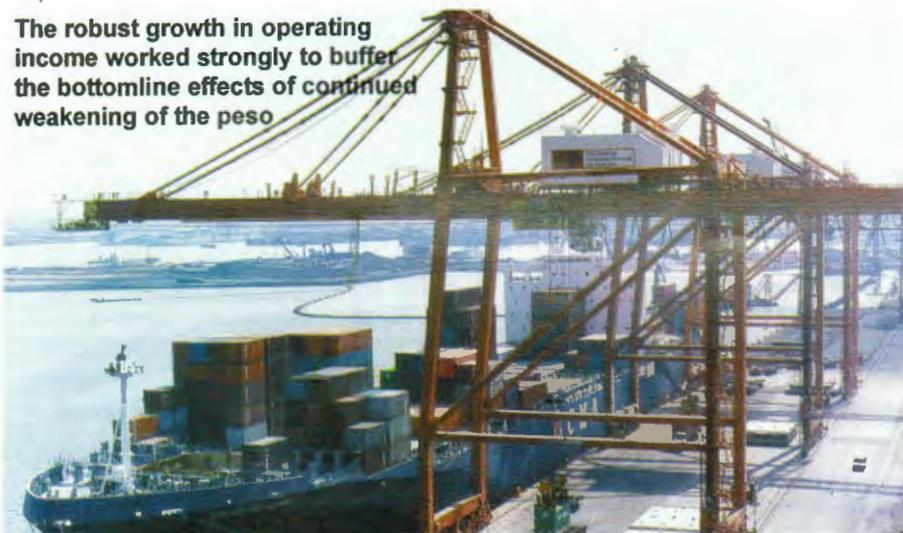
Membership in the BIMP-EAGA SA is open to entities of any nationality directly involved and economic development of the growth area through shipping. Commonly referred to as the "growth triangle", the BIMP-EAGA has been created primarily to increase investments and tourism in the participating countries.

Incorporators of the association include the Shipping Association of Brunei Darussalam, Indonesian National Shipping Association, Malaysian Shipowners Association and Domestic Shipowners Association of the Philippines.

## FOREX LOSSES HAMMER ICTSI

INTERNATIONAL Container Terminal Services, Inc. (ICTSI) reported strong

**The robust growth in operating income worked strongly to buffer the bottomline effects of continued weakening of the peso**



consolidated income from operations in the first nine months and in the third quarter of the year, largely a result of equally healthy results from all its operating terminals in the Philippines, Argentina, Mexico, Saudi Arabia, Pakistan and Tanzania.

The robust growth in operating income worked strongly to buffer the bottomline effects of continued weakening of the Philippine peso against the US dollar during the two periods in review. The shrinking value of the Philippine peso resulted in higher put premium accretion on the \$130 million convertible notes, higher peso equivalent on the outstanding \$153.4 million loans, and higher peso equivalent for Philippine Ports Authority fees.

The non-cash foreign exchange losses not previously recorded in 1999 translated to an 86 percent decline in its consolidated net income, from PhP406 million in 1999 to PhP59.4 million. On a quarterly basis, net income decline by 72 percent, from PhP155 million to PhP43.9 million. Non-cash losses in the first nine months totaled PhP500.2 million.

All other terminals operated by the company handled increased volumes during the first nine months of the year, except for Terminal 5 in Argentina. Group-wide volume increased by 18 percent, from 1,554,250 TEUs in 1999 to 1,829,530 TEUs this year. For the third quarter of the year, group wide volume grew by 16 percent, from 558,189 TEUs to 648,451 TEUs.

Primarily as a result of increased volumes, the company posted a hefty 59 percent increase in consolidated gross revenues in the first nine months of 2000,

from PhP5.5 billion in 1999 to PhP8.7 billion this year. On a quarterly basis, consolidated gross revenues increased by 58 percent, from PhP2 billion to PhP3.2 billion.

## PIRACY DEFINITION IN DISPUTE

ASIAN security representatives have expressed concern about the current definition of piracy attacks, in the face of growing numbers of incidents blighting local waters. At the end of a recent piracy conference in Kuala Lumpur, 40 experts from 13 countries said the "distortion" of piracy statistics undermines the good work of enforcement agencies and gives a negative picture of the region.

The meeting proposed that some crimes be categorised as armed robbery rather than piracy. However, the International Maritime Bureau (IMB), which currently collates piracy attack figures, declared its intention to stand by its present method of counting attacks.

The IMB's Piracy Centre in KL said it maintains its definition despite the opposition as it does not matter if the pirates board at anchor, at sea or while the vessel is under way. These pirates often board with knives and the threat of injury, violence and death is always there.

The IMB defines piracy as "an act of boarding or attempting to board any ship with the

intent to commit theft or any other crime and with the intent or capability to use force in the furtherance of that act."

## SUBIC FREEPORT GETS LOAN FOR ROAD PROJECTS

THE World Bank has agreed to provide a PhP640 million loan to Subic Bay Metropolitan Authority (SBMA) for the development of roads inside the Subic freeport zone. SBMA chair Felicito Payumo said the Subic roads would be widened in anticipation of the of increased road traffic between Subic and Clark due to the construction of the toll road and the Freeport container terminal.

SBMA said the road-widening project would start from the Subic Yacht Club to Binictican Bridge. A new bypass road would also be built leading to Tarlac road. All the new Subic Freeport road projects are expected completion by next year.

The SBMA earlier obtained a separate loan from Japan amounting to PhP6.8Bn soft

loan package for the development of Subic container terminal. The approval of the two funds follow the resolution of the injunction case filed against SBMA and two port operators for a contract to develop the container port.

## PANAMA RULES ON TORT CLAIM APPEAL

PANAMA'S maritime lawyers say a landmark Panama court decision provides a "short term resolution" to ship owners fighting controversial tort claims lodged in the country's maritime courts by Filipino seafarers.

Panamanian Maritime Law Association president, Juan Felipe Pitty, says the appellate level of the supreme court has recently recognised the validity of releases signed for Philippine seafarer employment contracts in the Philippines.

The appeal ruling found the release is valid for the totality of the claim, and therefore no new claim can be brought in Panama. Lawyers representing the Filipino seafarers had argued tort claims lodged in Panama fell outside the scope of the Philippine government-authorized contracts.

Pitty says another six cases are currently being appealed by shipowners. A total of 30 cases have so far been filed in Panama by Filipino seafarers that suffered illness, injury or death on board.

The Panama Maritime Authority says it is still deciding whether to sign the Philippine proposed treaty under which Panama would give up jurisdiction over these tort claims.

## LSC OFFERS Q SHIP PIRACY SOLUTION

THE Liberian Shipowners' Council has proposed a solution to piracy in South-east Asia: a "combat ready" ship to attract and then attack pirates plying waters in the South China Sea and Malacca Strait regions.

The council's general secretary, Richard Deely, says such a ship would act like the Q ships of World War II, which masqueraded as cargo ships but equipped to sink inquisitive enemy submarines. The modern-day Q ship could be funded by ship owners, would be well-armed, and have "adequate weapons" on board, Deely said.

His suggestion is borne out of frustration with the rising number of attacks and the inability of Chinese and Indonesian military to control their "rogue elements" often linked with them. "The idea [about Q ships] is a little out of the wild west and it probably won't happen but somebody's got to throw the idea out there."

Deely planted the Q ship seed in the Liberian Shipowners' Council's monthly bulletin, calling for shipowners to start talking the language that pirates understand.

## STEVEDORING BOSS JAILED

A CEBU city councilor, who also heads the local stevedoring company Cebu Integrated Arrastre, has been sentenced to just over four years in jail after being convicted of issuing grave threats and causing physical injury to an employee. The trial, which lasted two years, found Ernesto Elizondo guilty of punching and threatening to kill the employee.

Vicente Navares, after a berthing mistake at Pier 4 at Cebu on July 27 1998.

The incident occurred after a cargo ship was instructed to move off the pier to make way for another vessel, a docking change that was in violation of government rules. Elizondo is said to have 'clobbered' Navares, and threatened to kill him if he was seen in the port again.

Elizondo, the first member of Cebu City Council to be convicted of a criminal offence, was sentenced to four years for the threats and ten days for causing physical injury.

## ALL SHIPS TO CARRY 'BLACK BOXES'

MANDATORY regulations to require ships to carry voyage data recorders (VDRs) are to be adopted at next week's meeting of IMO's Maritime Safety Committee.

The committee has already agreed that VDRs should be fitted to all new ships and to existing ro-ro and passenger ships, but the requirement for existing cargo ships to carry 'black boxes' will be decided at the meeting. VDRs enable accident investigators to review procedures and instructions in the moments before an incident and help to identify the cause of an accident.

The proposed regulations are contained in a revised draft text of Chapter V (Safety of Navigation) of the International Convention for the Safety of Life at Sea (SOLAS).

Currently ships are recommended, but not required, to carry VDRs. It is anticipated the new chapter V of SOLAS will enter into force in 2002.

## BIMCO CLOSES SINGAPORE OFFICE

THE Baltic and International Maritime Council (Bimco) has shut down its Asian office in Singapore after a three-year tenure. But some staff are still working there, and a Bimco representative said that they have

been retained to facilitate the closure process.

"The Singapore office has succeeded in increasing Bimco's membership in Asia and in raising members' awareness of the information and other services available at Bimco," the council announced in a recent statement. "As members are making direct contact with Bimco for these services either in a traditional manner or via the Web, it has been decided to close the small service office in Singapore."

Contact will be "maintained and strengthened" through visits to members' offices in Asia and elsewhere.

## CONGESTION, INEFFICIENCY DOG MANILA PORTS

INTERNATIONAL lines calling the two ports of Manila have complained of congestion and inefficiency resulting in the high cost and delays of operations incurred by their ships. The Association of International Shipping Lines (AISL) says shipping lines have been skipping the Manila South Harbour and Manila International Container Terminal (MICT) by limiting the number of calls due to the deficiencies.

The AISL issued the complaints in reaction to a 31 per cent proposed hike submitted by South Harbour and MICT operators Asian Terminals Inc and International Container Terminal Services Inc, respectively. AISL argues that the two port operators should remedy their operational inadequacies before seeking another adjustment on their rates.

The association says that its member lines which normally have a berthing period of between 10-20 hours have been forced to stay for two to four days due to the slow operations at the ports. The congestion at the two ports has imposed unnecessary shut out, storage, stand-by and other charges that eventually affect the origin/destination ports where all feeder ships are missing connections.

Officials of ATI and ICTSI cited typhoons and labour problems at the ports as the cause of congestions. However, AISL clarified that congestion problems started as early as the beginning of this year. Even so, it says, the "performance of both contractors is way below standards, and the shipping lines and the economy are paying for it." The Philippine Ports Authority is said to be studying the 31 per cent petition of ATI and ICTSI for the rate increase.

# RP lands onto White List

AFTER almost three years of preparations and bickering among state agencies involved in seafarers' administration, the Philippines finally made it to the draft IMO 'white list' of complying states.

Department of Labor and Employment secretary Bienvenido Laguesma said the IMO Maritime Safety Committee (MSC) informed his department of the Philippines inclusion in a MSC circular in accordance with the revised Standards of Training Certification and Watchkeeping (STCW) Convention.

The draft circular will have to be validated, however, before it is formally adopted by the MSC. Laguesma said that out of the 82 countries that submitted their report to the IMO panel of competent persons, 72 have made it to the list.

Prior to the announcement, widespread doubts had gripped the world's largest supplier of seafarers if it could comply with requirements of the revised STCW Convention. It has been feared that the non-inclusion of the Philippines, which now supplies 200,000 seafarers or 20 per cent of the world's maritime labor market, would mean a shortage of manpower in international shipping.

The white list is made up of countries from which ship owners can source their supply of seafarers. Ships manned by seafarers from countries outside the white list run the risk of being detained by Port State Control authorities.

Laguesma said that though there were "some clarificatory" questions when the Philippines submitted its report in July 1998 to the IMO panel, those had been clarified in two separate meetings with the panel in 1999 in Singapore and in Japan in April this year.

The IMO has sent back the report of the Philippines three times already because of the question of what agency is in charge of certification.

One of the ticklish issues that have been resolved in the process of compliance includes the conflict of the Maritime Industry Authority (Marina) and the Professional Regulation Commission (PRC) in the function of issuance of STCW endorsement certificates. The other major issue includes the reduction of a number of maritime schools and training centers.

From more than a hundred schools offering maritime degree courses, most of which were mere diploma mills, the number of institutions has been cut to 30 that have met the standards. The Philippine report was evaluated by a panel of experts from Australia, Norway, Japan, the US and Singapore.

However, Laguesma said that inclusion in the white list does not assure the Philippines of a permanent status as an international supplier of seafarers. He added that annual assessment would be conducted to ensure that country's faithful compliance with international standards for seafarers.

## Parties included on the White List" on 6 December 2000

Argentina	Kiribati	Tonga
Australia	Latvia	Trinidad and Tobago
Bangladesh	Liberia	Tobago
Belgium	Luxembourg	Turkey
Brazil	Malaysia	Tuvalu
Bulgaria	Maldives	Ukraine
Canada	Malta	United Kingdom
Colombia	Marshall Islands	Croatia
Mexico	Uruguay	Cuba
Morocco	USA	Vanuatu
Cyprus	Netherlands	Venezuela
Chile	New Zealand	Vietnam
China	Norway	Hong Kong
Denmark*	Pakistan	Ghana
Egypt	Panama	
Estonia	Peru	
Finland	Philippines	
France	Poland	
Germany	Portugal	
Republic of Korea		
Greece	Romania	
Honduras	Russian Federation	
Iceland	Samoa	
India	Singapore	
Indonesia	South Africa	
Ireland	Spain	
Israel	Sri Lanka	
Italy	Sweden	
Jamaica	Thailand	

## No immediate impact

VIRTUALLY all major labor supply countries and flag states have been included in the "white list" of complying states. However, of the 82 countries that submitted reports to IMO before the deadline of August 1998, only 10 have been excluded from the list.

Except for Burma, most countries that failed to make it to the white list are small in terms of maritime labor supply and are located in Africa, the Middle East and Central America. Shipowners have considered that the white list has generally succeeded in its original purpose, which was to encourage governments to prepare for implementation of the competence standards before the end of the transitional period in 2002.

While representing a significant achievement on the part of the countries on the list, they said that it should be regarded only as a progress report. It does not mean that the states concerned have actually

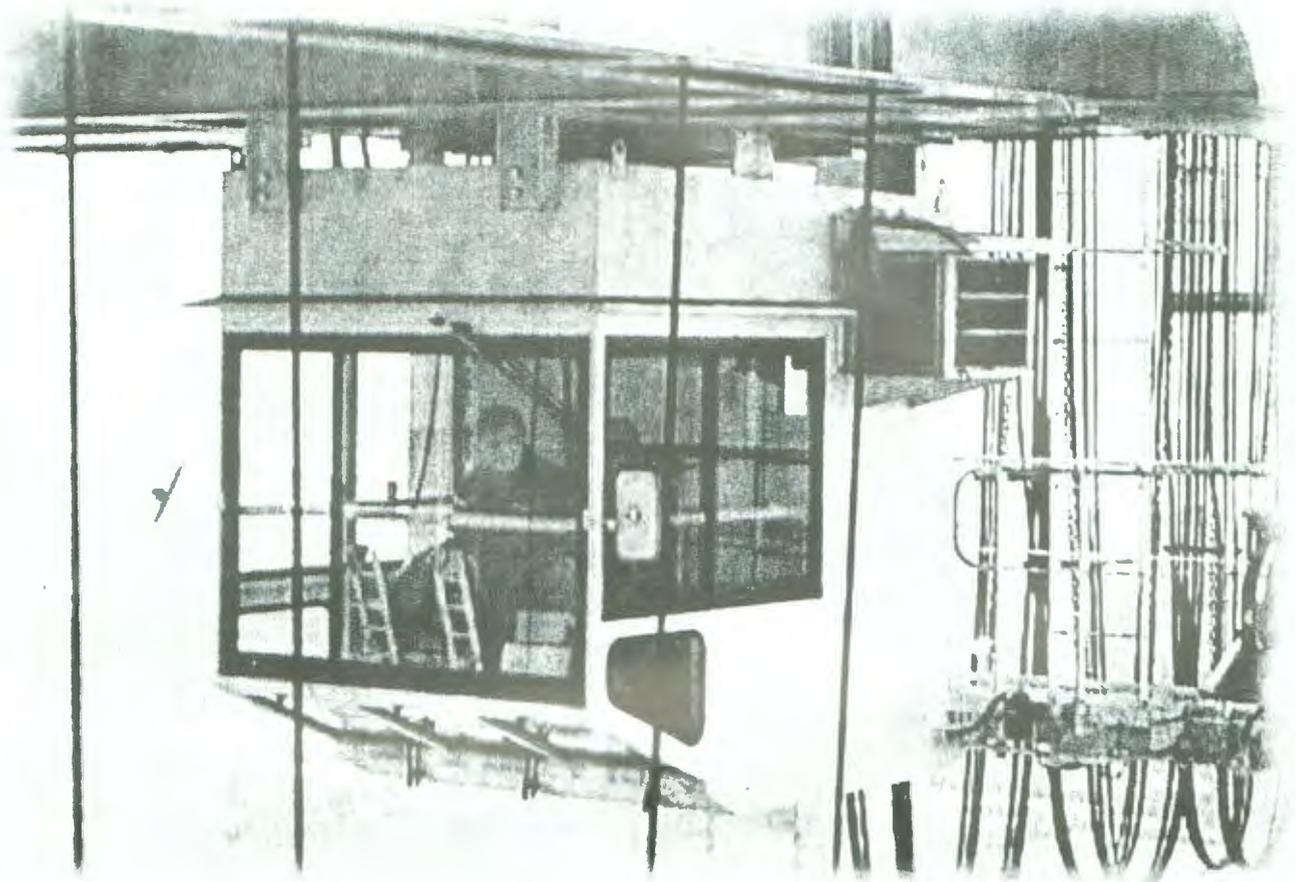
introduced all of the detailed practical improvements to training and certification required by STCW.

Flag states recognizing other nations' certificates are still required to make their own checks to satisfy themselves that STCW standards are being met in practice. Some flag states are expected to be thorough in this regard. In addition, all governments will be required to submit additional quality standard reports to IMO concerning STCW compliance before August 2002.

In the meantime, the publication of the white list should not necessarily have an immediate impact, as IMO has previously confirmed that seafarers certificated by countries that do not yet appear on the white list should not be penalized until 2002. Only after this date that seafarers should be required to hold flag state recognition endorsements, and ships manned by seafarers from non-white list countries be targeted by port state control.



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# IMO: Global effort to rid substandard ships

THE so-called "White List" of countries deemed to be giving "full and complete effect" to the revised STCW Convention (STCW 95) has been published by IMO. The 73rd session of the Organization's Maritime Safety Committee (MSC), meeting from 27 November to 6 December 2000, formally endorsed the findings of a working group established to examine a report made by the Secretary-General to the MSC, which revealed that 71 countries and one Associate Member of IMO had met the criteria for inclusion on the list.

The 1995 amendments to STCW (the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers) which entered into force on 1 February 1997, revised and updated the original 1978 Convention, setting out clearly defined minimum competency requirements for all seafarers and taking into account developments in technology since the 1978 Convention was adopted. A position on the White List entitles other Parties to accept, in principle that certificates issued by or on behalf of the parties on the list are in compliance with the Convention.

## Tighter PSC targeting expected

It is expected that Port State Control inspectors will increasingly target ships flying flags of countries that are not on the White List. A Flag state Party that is on the White List may, as a matter of policy, elect not to accept seafarers with certificates issued by non White List countries for service on its ships. If it does accept such seafarers, they will be required by 1 February 2002 also to have an endorsement, issued by the flag state, to show that their certificate is recognized by the flag state. By 1 February 2002, masters and officers should hold STCW 95 certificates or endorsements issued by the flag State. Certificates issued and endorsed under the provisions of the 1978 STCW Convention will be valid until their expiry date.

It was stressed at the meeting that giving "full and complete effect" to the revised Convention might not be the same for all Parties. Some may choose not to have any maritime training institutes at all and rely on recognition of certificates issued to seafarers by other states. Similarly, some Parties may only provide a limited scope of training, such as for ratings only.

The fact that a Party is not listed on the White List does not invalidate certificates or endorsements issued by that Party. Nothing in the STCW Convention prevents the employment of any seafarer who holds a valid certificate or endorsement issued by a Party to the Convention. Nevertheless, the White List will become one of several criteria, including the inspection of facilities and procedures that

It required not only reporting on national laws, training requirements, standards and systems in place, but also ensuring that all of those elements met the revised Convention requirements and could pass the scrutiny of persons with detailed knowledge of those requirements.

According to Mr. O'Neil, the publication of the White List is a clear demonstration that



**It is expected that Port State Control inspectors will increasingly target ships flying flags of countries that are not on the White List.**

can be applied in the selection of properly trained and qualified seafarers. Countries not initially included in the White List will be able to continue with the assessment process with a view to inclusion on the list at a later stage.

The publication of the list marks the end of the first stage of a groundbreaking verification procedure in which, for the first time, IMO has been given a direct role in the implementation of one of its instruments. Panels of experts have spent much of the past two years engaged in rigorous assessment of information presented to them by Parties to the Convention concerning their ability to meet the standards enshrined in STCW 95. Panel members were selected, as far as possible, to give a wide geographical spread and a broad coverage of the different facets of the Convention - deck and engineering knowledge, for example. These panels submitted their findings to IMO Secretary-General William O'Neil, who in turn reported to the MSC, which has now approved and issued the list.

## Challenging task

For most countries, preparation of the submissions to the Secretary-General represented a demanding and challenging task.

the global regulatory process for shipping is taking ever-greater account of the human element. He said, "The revised STCW Convention and the ISM Code, which takes full effect in 2002, are both aimed squarely at addressing human issues in shipping. Although technical matters will retain their importance, improving the standards of seafarers is a vital part of the safety equation. The White List shows that the human element is taking its proper place in the industry's priorities."

## Expanded role for IMO?

Mr O'Neil also said he believed the verification process pointed the way towards a new and expanded role for IMO in the future. "The fact that the authority for assessing implementation of STCW 1995 was delegated to IMO by Member States," he said, "indicates that the will to give the Organization a greater role in implementation does exist." He added, "If this approach can be extended into other areas where quality assurance needs to be reinforced and the name of IMO would lend credibility, then IMO is ready to respond."

It has been estimated that some 80 per cent of marine casualties are due in some part to human error.

# Magsaysay: A legacy to seafarers

HE had left a legacy of pioneering and sustained efforts in the maritime industry and in the training and development of Filipino seafarers. So proclaims the accomplishment of Miguel A. Magsaysay, the president and chairman of Magsaysay group of companies and former president of Filipino Shipowners' Association, in a newspaper's obituary page upon his death on 05 December at the age of 77.

Indeed, his pioneering efforts in Philippine maritime started in early 1960's, when Magsaysay Lines vessels obtained time charter contracts with major Japanese Lines in both Asian and US trades. From there, Magsaysay steered his group of shipping companies into one of the leading ship managers and owners in the Philippines.

The Magsaysay group organized its manning division in the late 70s, whose seafarers were developed under Magsaysay's practical approach that seafarers "have to rise from the bottom by learning and training all the way to the top both for the deck and engine departments." Apart from its manning division, which deploys thousands of seafarers and a recipient of POEA's 'Award of Distinction' for its exemplary performance in the employment of Filipino seafarers overseas, the Magsaysay group runs the Magsaysay Institute of

Shipping in Dasmariñas, Cavite.

The school, which was set up together with Fairmont Shipping and Mitsui OSK Lines in 1992, develops Filipino ship cadets into world class officers. The school offers a more comprehensive training programme for both seafarers in cargo ships and luxury liners.

When it comes to crew training, Magsaysay has further invested in a compact training vessel. Its *TS HO HO* provides deck trainees with hands-on bridge control and ARPA exercises. Engine trainees get hands-on engine and machinery training at the vessel's engine simulator.

Magsaysay was also the first company that put up a Family Center to care for crew families. Its goal has been to give the crew on board peace of mind about their families so that they, as Don Miguel would say, "can do a very good job" and "the need for (them) will always be there.

The Center, established in 1978,



## MAGSAYSAY: Commitment to development, training and welfare of seafarers

offers assistance and information to families regarding allotments, vessel position and schedule, sending messages or letters on board, counseling and verification of family problems. It also has an outreach program that operates a branch office in Cebu and conducts regular meetings with crew families in the various regions of the country.

Throughout its history, Magsaysay's commitment to the development, training and welfare of its Filipino seafarers has established a reputation as the "agency of choice" for highly qualified Filipino officers and crew. As the Magsaysay group of companies look to the future with enthusiasm, it acknowledges the significant role played by its former president in the group's growth and development.

As a former long-time president of FSA, Magsaysay was instrumental in the formation of the Federation of Asean Shipowners Association (FASA), which comprised owners' grouping of major countries in south-east Asia.

TS Ho Ho



# Ship managers re-organized

INTERNATIONAL Ship Managers Association (ISMA) has introduced a re-organisational structure to increase its participation in the industry. ISMA president Peter Cremers says the new set-up, which will be supported by a professional secretariat, takes effect on January 2001.

Cremers believes that ISMA has much to offer to the international shipping community. But with ISMA being headed by honorary executive officers, with the assistance of a professional secretariat, "we were all too aware that none of us really had the available time required to ensure the ISMA voice was heard on important industry issues," Cremers says.

Alan Ward, currently head of Quality, Safety and Environmental aspects for Hanseatic Shipping Company, has been appointed executive vice president of ISMA. This will be a permanent position with Ward brings with him a wealth of experience, particularly with the ISMA Code as he has been deeply involved in the creation of the code from the very start.

Ward commenced his career with the Blue Funnel Line in 1956, after a formal education in industrial business and commercial management, including quality control theory and practices. He has further been involved in civil engineering project management associated with ports and

harbour building and upgrading and eventually returned to international shipping, both at sea and ashore.

He has been involved, as a chief engineer, in container shipping, gas, oil and chemical tankers, as well as dry bulk trades with companies in the UK, Australia, Cyprus and Kuwait where he worked as general superintendent for Kuwait Oil Tankers until the Iraqi invasion. For the last 10 years he has been responsible for the development and management of the Quality, Safety and Environmental aspects for Hanseatic Shipping Company.

Cremers further explained that the ISMA Committee felt the need for a full time,

## Anglo-Eastern to market Chinese seafarers

ANGLO-EASTERN Ship Management Ltd and GMG Yinghua Crew Management Company have signed a memorandum of understanding for the establishment of a joint venture to market Crew Management Services to the international market. GMG Yinghua has an excellent reputation for crew recruitment in China and with the help of Anglo-Eastern, the new joint venture will offer professionally trained crews to the international manning market.

Anglo-Eastern has employed a few Chinese seafarers for quite a while, having two vessels fully manned by Chinese crews, along with having taken some Chinese cadets for training last year. These cadets have been working and learning on one of Anglo-Eastern's large gas carriers in *Zhuhai* and have acquainted themselves well. Based on their experience and on the comments of various European countries and owners, there seems to be a ready made acceptance of Chinese crews with professional training combined with adequate English language skills.

Anglo-Eastern has long been known for its dedication to professional and on-going training for their seafarers and will bring to the joint venture the expertise and experience of one of the leading maritime training companies in the industry. For their part, GMG Yinghua will bring a ready made pool of seafarers for the joint venture to choose from and to select seafarers best suited to further training for the international manning market.

Peter Cremers, Chairman of Anglo-Eastern says: "We are proud to be able to join forces with such a reputable company as GMG Yinghua. We have been employing

Chinese seafarers in the past and have found them to be well-qualified and with a very positive attitude towards learning.

"This joint venture provides us the option of offering another alternative of well-trained seafarers to our clients, to complement our large pool of Indian and Filipino seafarers," he says. For Anglo-Eastern, the joint venture will recruit seafarers not solely for ships in the Anglo-Eastern fleet, but will actively use their global network to market and obtain additional crew management contracts specifically for Chinese seafarers.

Mr Li Gai, director and vice general manager of Guangzhou Maritime Transport Co, the parent group of GMG Yinghua Crew Management, supported the joint venture by stating: "We are extremely pleased to join hands with such a reputable, international ship manager as Anglo-Eastern. We both believe in the same values of proper training and professionalism in

seafarers."

"GMG Yinghua is proud of its well-established training centre and has always believed in continuous education for its seafarers, who currently man many modern ships, including tankers, for the China Shipping Group. We are confident that our joint efforts will provide a large pool of Chinese seafarers who will be well trained according to the needs of international ship owners," Li says.

Anglo-Eastern's general manager for Quality Assurance and Training, Capt Pradeep Chawla gave some further insight into the future of the joint venture, explaining that alongside the recruitment procedures, there would also be a joint training program. "For Chinese seafarers seeking employment on foreign ships, we will combine some of our trainers with GMG's own personnel to run additional training programs for the crews, covering intensive English training and customised courses on safety, emergency response and commercial topics.

The joint training center will conduct courses with the assistance of Anglo-Eastern's existing training centers in India and the Philippines, he explained.

**Anglo-Eastern has employed a few Chinese seafarers for quite a while, having two vessels fully manned by Chinese crews.**



professional manager well versed in shipping issues who could represent ISMA to the industry at large on a regular, daily basis. As such Ward's responsibilities will include the marketing of ISMA to potential new members, the representation of the organisation at industry and government level and to increase ISMA's public profile through the media, according to Cremers.

"With the introduction of our new, upgraded Quality Code and ISMA's co-operation with Equasis, Alan will be quite busy from day 1 and we look forward to a strong year of growth for ISMA, in 2001," Cremers says.

Major points of the updated ISMA's already stringent code are the inclusion of ISO 9001:2000 and certain aspects of ISO 14001 relating primarily to creating an increase of environmental safety awareness – maintaining the industry's most impartial

and comprehensive verification system.

The Equasis database has ISMA's full support and on January 1st, 2001, an ISMA certification will be added to all its members' managed ships, although there are points still under discussion – such as why Collective Bargaining Agreements have been singled out for inclusion on the database. ISMA believes that either all CBAs existing with sovereign or Open Registries should be included, or none at all.

ISMA says it welcomes the initiative of International Association of Classification Societies (IACS) in which two surveyors will be involved in 15-year plus critical surveys, but notes that these surveyors will still come from the same classification society. Whereas ISMA's auditing and verification process involved three auditors, each one comes from a different classification society.

## ITF targets Chinese crews

THE ITF is holding meetings with Chinese authorities and seafarers' unions in response to China's growing significance in the international seafaring market. Stephen Cotton, secretary of the ITF's Special Seafarers Department, said during the recently held Lloyd's Manning & Training Conference in Mumbai that "Chinese Seafarers are increasingly taking to FoC vessels. Though it is not fast progressing, we are trying to do our level best in China by talking to the authorities and unions." So far, however, the ITF has made little progress in China.

According to Dr. Leo Barnes, general secretary of the Indian Seafarers Federation, Chinese are increasingly

eating into the markets of Philippines and India. he estimated that 70% of FoC vessels are out of ITF's purview," said Barnes.

India, on the other hand, is currently striving to improve its market share in the global market.

"The BIMCO-ISF study [in April 2000] has projected change in geographic patterns of supply, and India is all set to emerge as an alternative source," said R Ravichandran, formerly India's deputy director general of shipping.

## ISMA managed fleet increased

THE International Shipmanagers' Association (ISMA) recently reported that ships managed by members of the association had risen to 1,770 vessels, an increase of some 25 per cent over the past two years. The increase was seen as being largely a result of organic growth of members of the group.

ISMA is also changing its already stringent management code to include the requirements of ISO 9001: 2000 and certain aspects of ISO 14001. Customer satisfaction - value to human resources and value to the environment are being brought in and the new Code will be more prescriptive, yet still allowing for enough room for individual member's creativity.

Shipmanagers achieving ISMA certification will be required to have implemented the new additions by their first audit falling due in 2002.

On the inclusion of aspects of ISO 14001, ISMA's chairman Peter Cremers comments, "We have chosen certain aspects of ISO 14001, mainly related to creating an increase of environmental safety awareness.

"In this way, we will continue to build the best practice framework, pointing members towards the full certification of ISO 14001 in their own time frame. If we have to change the Code every time a new system comes on to the market we will bog ourselves down with administration which is not the aim of ISMA."

Cremers says the group will continue to be the standard bearer for the highest ship management quality in the industry, including the most impartial and comprehensive verification system."

As a further initiative, ISMA is giving its full support to the Equasis database and expects that from the 1st January 2001, an ISMA certification confirmation will be added to all ISMA members' managed ships. However, it also believes that certain aspects of Equasis could still be improved and is currently in discussions as to why ITF Collective Bargaining Agreements have been singled out for inclusion on the database. ISMA's viewpoint is that either all collective bargaining agreements that exist with sovereign or Open Registries should be included, or none at all.



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# Government apathy and the resolute Filipino seafarer

By Michael B. Cuanzon

FOR four decades the Filipino Seafarer has been the "milking cow" of the government, a source of foreign exchange, source of fees by the many agencies regulating their profession and their employment. In the bureaucracy we have the following agencies earning benefits out of seafaring. These are the OWWA, POEA, MTC, MARINA, CHED, TESDA, NBI, PNP, PRC, the bigger bulk of this is the foreign exchange earnings (80 per cent of the basic pay) which goes to the Bangko Sentral ng Pilipinas.

Other institutions earning out of the Filipino Seafarer are the manning companies and their associations, the maritime training centers and their associations, the maritime schools and their associations, the maritime labor unions, maritime professional associations, not to mention the banks who are recipients of the remittances from the seafarers.

It is a miracle that after dealing with the above institutions the Filipino Seafarer can still support their family, send their children to school, go to the many

training required by STCW 78 as amended and survive the economic crisis gripping the country today.

The Filipino Seafarer is a fragmented lot, controlled and exploited, sometimes, unscrupulously, by their own brothers in the profession, the businessmen in the manning sector, the ship owners in the shipping companies, the lawyers when they have cases, the unions at every end of the month, the professional associations at the end of the year, the Internal Revenue at the end of the year, the gov-

ernment agencies when getting clearances, when securing contracts for employment, when requiring certification, always has to fork over his hard earned dollar to survive. Yet survive he does by sheer diligence and compliance to obtaining regulations and conventions.

What has government so far done to alleviate this degrading disparate situation? Nothing concrete.... nothing workable except palliatives based on Executive Orders produced by knee-jerk reactions. Draft Bills in Congress, Bills submitted or recommended by well meaning groups and associations could fill the graves of victims of maritime disasters in the country. But gathers, cobwebs every session and dies a natural death after spending thousands of people's money in committee hearings.

Why do the seafarers clamor, nay... demand for objective laws correlative to the maritime conventions ratified by the country? Analyze if you may the vari-

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*Globalization for the Philippine shipping industry should be interpreted as Filipino shipowners with high standards of safety, competing regionally and worldwide.*

**Member Associations:** Domestic Shipowners Association (DSA), Lighterage Association of the Philippines (LAP), Philippine Petroleum Sea Transport Association (PHILPESTA), Visayan Association of Ferryboat and Coastwise Services Operators (VAFCSO)

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ous rules and regulations, not to mention the issuances of the myriads of government agencies regulating the seafaring profession. They are as numerous as the stars in the heavens...but oppressive and most often ridiculous to the trained eye of the seafarer in his profession. The sanctions, take the case of a Marina Circular that fines a seafarer for having been promoted as a result of efficient service onboard. And a corresponding fine imposed upon the manning agency for being a party to the promotion, what a ridiculous piece of circular, yet it exists.

For decades the seafarer has been placed at the bottom of government attention. In the past seafaring is but a parcel and portion of sea transportation called shipping. Now seafaring, in the country is earning for the government more than what shipping is, in terms of foreign exchange. At the same time serving the fleets of the world and energizing international sea transportation. *Seafaring is now an industry.* We only have ships for the domestic trade, but our overseas trade do not earn a single dollar. Of course if you take into account the "flag of convenience" (bareboat chartered) bottoms, they still exist but only to fill the coffers of the local bareboat charterer, not withstanding the fact that the government at the end of the day has to pay for the tonnage assessed by IMO for membership on tonnage not truly Filipino but foreign.

Our Filipino Seafarer needs the attention from government that they deserve. We have to have laws supportive of the conventions we have ratified and in so doing protect the well being of our seafarers, when training, when going for certification, when documenting for employment and even when being employed abroad. Government must come up with a law purely for the regulation of the seafaring industry. Not the obtaining hazy and deceiving E.O's and L.O.I's but dedicated and objective laws to correct the inequities suffered by the Filipino Seafarer.

When we say government, we mean Congress, not "Tongress" as people would opt to call it. Not the "Circus" disparaged by the press and the person of the street but Congress, of honorable men, whose interest lies beyond self, family and province but for country; Men, whose names may be written in the sands of time with that of our patriots of old. Men, who can look themselves squarely at the mirror in the morning and say... "stands here an upright and honest produce of God!"

## Future belongs to e-officers

**A FILIPINO master who has developed computer software for ship officers has emphasized that the advancement of an officer's career in future will largely depend on his computer literacy in seamanship and ship operations. Capt. Level Oseña, president and chief executive officer of Omarsoft, says that in two years time all oceangoing vessels will be connected to Internet once the required satellite system is completely set up.**

This means that ship owners and managers, he says, will largely prefer employing officers who are "keen to make their ships more efficient using those computer software that would make the fleet sailing smoothly as possible." Oseña, who spoke before the recent opening of a new Omarsoft office together with an Internet Café in Manila, says the aim of the firm's software is to make the job of ship officers "more easily and efficiently which spell lesser crew, higher retention rates for personnel and more safety for the ships."

The software Omarsoft has developed provides a comprehensive program in vessel and voyage management and marine engineering. Through the Internet, an officer can access its specific program for any computing task onboard any type of vessel whether at port or in the high seas. The first Filipino marine computing company that has developed such a system for navigational and operating system, the company's Omarsoft carries the widest array of shipboard

applications with modular tasks that include voyage management, trim and stability, draft survey, hydrostatic table, stational and grain stability, shear force and bending moments, among others. The programmes, which run on Windows 98 Compatible and are completely independent from any other programme, encompass the broadest possible application requirement demanded on board – making it one of the most powerful and versatile software technology in the international marine computing market.

Oseña says there are now some 2,500



**OSEÑA: They are like glasses for officers, without them their eyes would get tired and make navigation unmanageable.**

Filipino ship officers who use the Omarsoft software. These officers are onboard various types of vessels such as cargo, yachts, oil tankers, cruiseships and catamarans. "They are like glasses for officers, without them their eyes would get tired and make navigation unmanageable," describes Oseña of the importance of his software in navigation and marine engineering. Omarsoft was established in the Philippines in 1994 and aggressively pursued research and development of computerised techniques in seamanship and navigation, venturing consistently in the development of friendly programmes for seafarers tasks onboard and ashore.

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**The software Omarsoft has developed provides a comprehensive program in vessel and voyage management and marine engineering.**

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# Working group hammers claims deal

A WORKING group of the International Maritime Organisation and International Labour Organisation has developed two separate resolutions and annexed guidelines dealing with abandonment and contractual claims and disability compensation to seafarers.

Recognising that abandonment of seafarers is a serious problem, which involves human and social dimension, a second meeting of the IMO/ILO working group recently urged member states to establish an effective guarantee mechanism to protect seafarers in the event that they are abandoned.

Seafarers have always been left to fend for themselves after saving precious lives from shipwreck or abandonment of the ship by its owners due to bankruptcy or corporate disputes. The problems resulting from abandonment include repatriation, support or maintenance of the crewmembers while stranded, immigration status and the question of the payment of outstanding remuneration. On contractual claims, the resolution considers that previous IMO resolution did not directly address contractual claims for personal injury and death of seafarers but was only concerned to ensure that ship owners have effective insurance cover or financial security for maritime claims.

The draft guidelines says the cost of repatriation remains the responsibility of the ship owner through "appropriate expeditious means" and other necessities like food and accommodation from

leaving the ship until arrival at the repatriation destination, medical care, passage and transport of personal effects. In the event the ship owner fails to fulfill these obligations, it says it is the responsibility of the competent authority of the

**The draft guidelines says the cost of repatriation remains the responsibility of the ship owner through "appropriate expeditious means" and other necessities like food and accommodation from leaving the ship until arrival.**

flag state to organise and advance expenses for repatriation. In the event the ship owner and the flag state fail in their obligation to repatriate, the consular authority of the state of which the seafarer is a national (or the port state) should arrange for repatriation, says the draft guidelines.

Support for (maintenance of) crewmembers while stranded is understood to include food, clothing, accommodation, medical care and other necessities. Recovery of the

payment of these expenses should be secured through the coverage provided by the draft guidelines. It has been adopted that flag states "should ensure that ships flying their flags are in a position to provide at all times a certificate as prima facie evidence of the existence of an (adequate) guarantee to protect seafarers in the event of abandonment."

The outcome of the IMO/ILO Working Group meeting will be reported to the ILO Jont Maritime Commission meeting next January.

The IMO/ILO guidelines says the draft represent a "valuable contribution" to the UN agencies' objective of discouraging the operation of substandard and inadequately insured ships. It adds that "if ship owners do not have effective insurance cover, or another effective form of financial security, seafarers may not obtain prompt and adequate compensation."

## USCG proposes new quality body

THE US Coast Guard has called for an autonomous organisation under the aegis of IMO to administer the IMO quality programme. Speaking at a meeting of the Hong Kong Shipowners Association in Hong Kong recently.

Rear-Admiral Jim McClelland, suggested that the agency be called Quality Ship Registration or QSA. "The QSA would have a dual role; the first being to produce a set of standards that would remove ambiguities from IMO conventions, and then to measure compliance with those standards," he said. McClelland stressed the need for a uniform set of requirements for quality regardless of flag state or other entity requirements.



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# Fees vs Taxes

BY ATTY. VERGEL DE DIOS

PEOPLE have always complained about high fees that they have to pay government agencies to get the service requested of them. If you feel helpless about it, here are tips on how to have those fees reduced or even voided.

There is a whole world of difference between a tax and a regulatory fee. As to purpose, a tax is imposed primarily to raise revenue for the government whereas a fee is imposed primarily to regulate a certain activity. As to amount, a tax may be high or low depending on the taxpayer's ability to pay. On the other hand, a fee should only be enough to cover the expenses of regulation because it is not based on ability to pay but on costs of services rendered. As to who can impose the burden, a tax can only be imposed by Congress while a regulatory fee may be imposed by any government

agency with delegated authority to impose such fees.

Examples of taxes are the taxes and duties collected by the Bureau of Internal Revenue and the Bureau of Customs, respectively. Examples of regulatory fees are those collected by the Maritime Industry Authority (MARINA) and the Land Transportation and Franchising Regulatory Board (LTFRB).

Based on the principle that there can be "no taxation without representation", taxes may only be imposed by the representatives of the people, i.e., by Congress. And, even in Congress, tax measures/bills can only be initiated by the House of Representatives. Not even the Senate can introduce a revenue bill!

On the other hand, since the amount of regulatory fees should only be enough to cover the expenses of regulation, any upward adjustment of rates has to follow the procedure outlined in the Department of Finance guidelines. Thus, a Revision Committee has to be created in



each government agency whose main function is to propose to the Department Head concerned the adjustment to be made on existing fees. In determining the rate of fees to be recommended for adoption, the Revision Committee is mandated to take into consideration the following:

- a) the direct cost of rendering the service which shall include the cost of supplies and materials; salaries and wages of personnel directly involved in the service; and overhead costs;
- b) the actual expenditures involved in rendering such service in the immediately preceding year as well as the amount appropriated for the rendition of such services in the current year;
- c) the fees and charges charged by other national government bureaus, agencies, offices or government-owned or controlled corporations for similar or comparable services rendered.



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**FSA induction.** Maritime Industry Authority administrator Oscar Sevilla (left) swears in to office the new set of officers and directors of the Filipino Shipowners' Association (FSA). They include (from left) Carlos C. Salinas, chairman and president; Josephine Francisco, vice president; Doris Magsaysay Ho, director; Capt. Amado Romillo, secretary; Roy Alampay, treasurer; Capt. Vic Brillantes, director; Bong Reynoso IV, director; Jesus Avecilla, director; Edgar Ramirez, director; Jose Mari Moraza, director; and Philip Tuazon, director. Other directors not in photo are Michael Estaniel, Susana M. Eduque and Manuel Felix

# Logistics, grains business boost ATI's 9-month performance

THE benefits of synergy and diversification are taking hold at port operator Asian Terminals Inc. (ATI). Traditionally driven by cargo-handling revenues from Manila's South Harbor, ATI rode on the steady growth of its grains terminal, third-party logistics and Batangas port operations during the first nine months of 2000.

Amid threats of a foreign trade slowdown arising from the Philippines' exchange rate woes, ATI expects to further boost its less-volatile food grains handling and logistics concerns, which combined now contribute about 38 per cent of the company's earnings.

"In this environment, our ports cannot remain as simple transfer points between land and sea transportation," ATI chief executive officer Richard Barclay says. "We must continue to offer value-added services to shippers, and one way is by helping them manage their supply chain in synergy with our cargo-handling expertise."

ATI Logistics continued to attract new clients for commercial warehousing, inland container clearance & storage, inventory management, just-in-time delivery of goods, and other supply chain solutions that it offers companies that prefer to outsource these services. Car manufacturers and multinational consumer goods firms comprise the bulk of ATI's logistics clientele. Last May, ATI was appointed to manage the logistics and supply base of the \$4-billion Malampaya offshore gas-to-power project, the biggest foreign investment in the Philippines.

ATI is in a good position to expand the business rapidly, according to ATI Logistics VP & general manager Howard Roxas. "Supply chain activities globally will be worth \$1 trillion this year and third-party logistics is expected to be worth about \$80 billion. In the Philippines the potential is huge," Roxas added. "While in developed economies sophisticated logistics systems are taken for granted, in Asia the industry is in its infancy – and that spells big opportunities for growth."

Even bad times hold no fears for the logistics industry. "Negative conditions can actually be a blessing for us," Roxas explained. "They create opportunities as companies look for ways to cut costs and save money. Third-party logistics, after all, came to the fore when companies decided that one of the best ways to trim extra fat was to outsource their non-core operations."

## Even bad times hold no fears for the logistics industry



Mariveles Grain Terminal (MGT) handled 1.803 million metric tons from January to September 2000, up 28.8 per cent from 1.40 million MT, as most imported food grains passed through the ATI-built facility. MGT provides critical infrastructure for a country entirely dependent on imported wheat and prone to shortfalls in rice and corn. Flour millers and livestock growers have achieved economies of scale as MGT can handle bigger grain vessels and turn them around in three to five days (compared to 20 days or more in the old handling system) using modern conveyors and vast storage areas.

Port of Batangas non-containerized cargo rose by 66.1 per cent to 341,176 MT in the first nine months from 205,352 MT in the same period last year, boosted by structural steel materials intended for power plant projects. Vessel calls in Batangas port increased due to the regular arrival of supplies and materials headed for the Malampaya offshore facilities. Other Calabarzon-based firms now recognize the advantages of shipping via Batangas port, which is operated by ATI subsidiary Aries Arrastre Service. The port's distinct benefits—including the absence of a truck ban and the laying of a new highway, the Southern Tagalog Access Road which leads to the port itself—translate to better efficiency in transporting raw materials and finished goods.

During the same period, the ATI-run Batangas Passenger Terminal recorded 1,486,635 passengers, reflecting an 8 per cent rise over 1,374,635 passengers from January to September last year.

In South Harbor, traditional imports continued to arrive as manufacturers prepared to fulfill orders for the coming holiday season. ATI handled 434,456 TEU of containers in the premier Manila port during the first nine months this year, gaining 12.1% from 387,627 TEUs recorded over the same period in 1999. Non-containerized cargo volume, on the other hand, dropped 6.5 per cent to 3.64 million metric tons from 3.89 million MT. Although importation of steel and completely built automotive vehicles continued to surge on high demand, there was a fall-off in other traditional cargoes. This together with increases in operating expenses impacted on South Harbor results.

ATI has ongoing productivity improvements in South Harbor, including the deployment of better facilities and information technology. Last August it launched an online information service, ATI WebTrack, which enables clients to monitor vessel status and cargo movements via the Internet. WebTrack. It complements the existing On Line Release System (OLRS) for computer-to-computer clearance of cargoes, which has automated over 80% of old manual procedures. ATI will also accelerate the expansion of South Harbor's container yards within the year in order to efficiently handle peak-level demand.

ATI gross revenues increased by 16.4 per cent to PhP2.68 billion for the nine months ended September 30 from PhP2.302 billion in the same period last year. Consolidated net income of PhP388.1 million for the period was 25.9 per cent higher than last year's PhP308.3 million.

# Further delay awaits harbor tender

BY TERESA VISITA

**THE much-needed modernization of the North Harbor is expected to be delayed further with the Philippine Ports Authority still need to come up with a new set of terms of reference for its privatization process.**

**Even with PPA general manager Juan Peña's hopeful projections to turn over North Harbor to new operators before 2002, industry sources said it would all depend on the people sitting in power and economic conditions. Earlier the PPA planned to start the bidding for the North Harbor by January 2001 and award the contract in March of the same year to the winning bidder.**

THE PPA has tapped the British firm Halcrow Maritime to conduct a feasibility study on the North Harbor on how the port should be viably run. The Economic Coordinating Council instructed the PPA to finish the study in 60 days faster than the earlier plan of 90 days or three months to see the viability of the North Harbor under more than one operator. Perfecto Doroja, executive assistant of the PPA says that the ECC also asked the port agency to start the bidding process by February 2001 to speed up the long-delayed modernization of the country's major domestic port.

"The number of operators that will manage the North Harbor will depend on the result of the (Halcrow) study," according to Doroja. The study, which started in December, will no longer be a PPA decision with regards to the number of operators needed to manage the port, says Doroja. The main emphasis of the study is to see if the North Harbor will still be viable with more than one operator, he added.

Peña insists that Executive Order 308, which allows two operators for the North Harbor following opposition from port

users, could not be considered a law because it was not officially published.

Privatization plan for North Harbor started in the late 1980s during the Aquino administration. However, every transition of power caused overhaul and changes in the scheme of the privatization process. Under the Estrada administration, the PPA has twice revised the terms of reference of the tender that has discouraged and created confusion among interested parties. International Container Terminal Services Inc (ICTSI) has announced its withdrawal from the race to bid for the port privatization. As the leading partner of its rival operator Asian Terminals Inc in the North Harbor Consortium, ICTSI pulled backed out right after the PPA informed them of a decision that the port will be auctioned off to at least two operators.

Though ICTSI executive vice president Edgardo Abesamis said they are just waiting for the dust to settle in the controversy, he implied that the company is still interested in the North Harbor. ATI senior vice president Paul Hough agreed that ICTSI might still be interested, saying that the consortium is

not totally closing its door for the bidding.

In the middle of the political crisis of the administration, President Joseph Estrada revoked EO 59, the unified operator concept of port privatization, and replaced it with EO 308 to do away with cronyism and the prospect of a monopoly in the privatization of the port. EO 308 split the North Harbor into two packages, the first package includes Slip O, Piers 2 to 12, while the second package consists of Piers 14, 16 and the already privately-managed Veterans Shipyard.

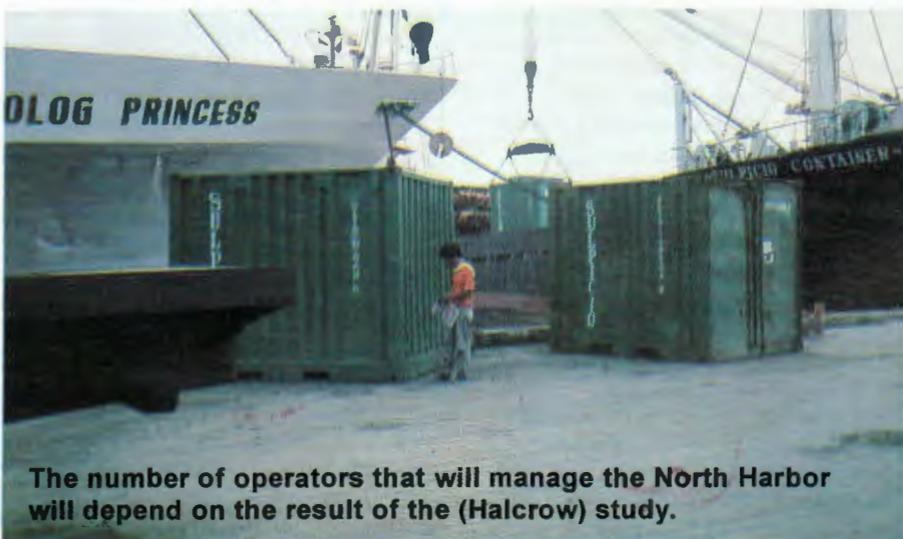
At the beginning of his term, President Estrada signed EO 59, which allows a single terminal operator concept and paved the way for a quick privatization process through negotiated contract of the North Harbor. This has led to the formation of the ATI-ICTSI-North Harbor Consortium, which has other major domestic lines as partners.

While proposals commenced for the single operator concept of the port, various sectors in the shipping industry objected to the idea. The Philippine Chamber of Commerce and Industry and Coalition for Port Modernization emphasized that a single operator for the North harbor will result to a monopoly which is expected to raise port fees arbitrarily.

On the other hand, EO 308 aroused suspicions, when an "independent group" proposed that the neglected first package of the North Harbor should be offered for tender and the more lucrative second package be managed by the PCCI. PCCI vice president Donald G. Dee admitted the existence of the said proposal though denied it came from them.

Earlier the PPA was determined to auction off the said port to only one operator to avoid any conflict in the set up of management. Industry sources said at this time the PPA is leaning to award the said port to the consortium headed by International Container Terminal Services, Inc. and Asian Terminal Inc.

Domestic Shipowners Association acting president Josephine Uianza said the most important thing is the immediate development of the North Harbor regardless of whether it will be handled by a single or multiple operators.



**The number of operators that will manage the North Harbor will depend on the result of the (Halcrow) study.**

# Benefits from Chinese market

China's entry to the World Trade Organization and the reforms undertaken in its domestic economy have presented a lot of opportunities in Asian trade and shipping ventures as well. A paper presented to the Sixth Asian Shipping Forum held in Manila shows how these opportunities could be tapped

WHILE the rapid growth of China's economy has created market demands for foreign trade, the development of the shipping industry has provided supporting systems for transport services like shipping. Some 90 per cent of China's foreign cargoes are transported by sea. It is of great importance for the development of China's economy to develop perfect port infrastructures and build an efficient and competitive international maritime fleet, which the Chinese government attaches great importance in their planning and construction.

## Port development

By the end of 1999, China has opened more than 130 ports for foreign trade, at which some 40,000 vessels from over 100 countries and regions are calling each year. In 1999 the cargo throughput of major Chinese ports was nearly 1.4 billion tons, among which the throughput of foreign trade cargo was 400 million tons. The throughput of Shanghai port and that of Guangzhou port exceed 100 million tons each.

The container throughput of the coastal ports in China had maintained a growth rate of 25% for 12 consecutive years. The throughput in 1999 was 16 million TEU, increasing 30 per cent than the previous year. The ports of Shanghai, Shenzhen, Qingdao, Tianjin and Guangzhou have been among the top 50 container terminals in the world. It is estimated that the container throughput of Chinese ports will exceed 20 million TEU this year.

Port construction is one of the focused areas in strengthening infrastructure investment by the Chinese government. The planning of ports is very important to making full use of port resources, and it should also meet the need of national economy, foreign trade and shipping development. One of the major responsibilities of the Ministry of Communications is to coordinate port constructions, avoid repetitions of construction and prevent excessive competitions.

The Chinese government encourages the Sino-foreign joint venture investment in

building and operating public terminals. In such a joint venture investment the Chinese investment shall be no less than 51 per cent



**So far vessels of more than 70 foreign container lines have been calling at Chinese ports, and the market share of foreign carriers has been above 65 per cent.**

or the Chinese side shall have majority shares. Foreign investors have been attracted to invest in port infrastructures in China because of its market potentials. Foreign investments have been made in container terminals of those major ports of China, such as Shanghai, Qingdao, Shenzhen, Dalian and Tianjin. By the end of 1999, the total foreign capitals utilized in port construction of China amounted to some \$3.5 billion.

## Reform of shipping enterprises

By the end of 1999, the international maritime transport fleet of China possessed a capacity of 36 million DWT (about half of the vessels fly flags of convenience), which ranks fifth in the world. After the market economy system was adopted in China, the Chinese government has stopped to render any financial subsidies to the state-owned shipping enterprises, and cargo shares of any kind as arranged by the government have also disappeared.

The state-owned shipping enterprises of China are established in accordance with the Corporate Law of the People's Republic of

China. Some shipping companies adopt the share holding system, and are listed in the stock exchanges at home or abroad. The shipping enterprises of China have no longer had a relationship of administrative affiliation with the government administration bodies. They have started to operate on their own and independently conduct commercial activities under market economy regime.

Chinese policies and legislation treat

Chinese and foreign shipping enterprises in the same manner and excise no discriminations. Therefore, the sector demands what while doing business abroad, Chinese carriers in terms of fair competition, market conditions, and any discriminatory actions should be eliminated as early as possible.

## Market opens up

So far vessels of more than 70 foreign container lines have been calling at Chinese ports, and the market share of foreign carriers has been above 65 per cent. The degree of opening-up of the international maritime transport market of China is approaching that of the developed countries of market economy.

Under the principle of equality and mutual benefit and in accordance with the governmental bilateral maritime agreements between the maritime authorities, foreign shipping companies may establish wholly owned shipping companies in the territory of China after being approved. They may engage in activities, for vessels owned or operated by their parents companies, like soliciting

# Asia "to take 30% of sea trade"

THE Asian region is expected to account for more than 3.2 billion tons of import/export volume, or 30 per cent of total world trade this year, according to a paper presented at the recent 6th Asian Shipping Forum in Manila.

The paper by Korean delegates says Asia has been a prime mover in the world shipping market since 1970 and has since tripled its volume from 954.8 million tons to 3.025 billion tons in 1998.

Total container cargo volume handled at ten Asian ports in 1998 was recorded at 78.4 million tons, representing 45.7 per cent of the world total. The regional container cargo volume increased by an annual average of 13 per cent since 1985.

As a result, the paper says, the Asian market share in the world liner trade surged from 28.5 per cent in 1985 to 45.7 per cent in 1998. By the end of 1998, vessel capacity registered in 19 Asian countries amounted to 146 million DWT, representing 18.5 per cent of the world's total of 788.7 million DWT.

By type of vessels, tanker accounts for 14 per cent, cargo ship 22.6 per cent, and bulk ship 22.1 per cent.

The Asian Shipping Forum is an annual gathering of key government officials in the maritime sector in the region that aims to exchange ideas and recommend measures on how to address common issues and

concerns. Delegates from the 10 countries who attended include Brunei, China, Hongkong, Indonesia, Japan, Korea, Malaysia, Singapore, Thailand and Vietnam.

As the major source of shipping in the region, it says, the future outlook of water transport for developing nations in Asia is "very bright."

The developing countries provide 65.2 per cent of tankers, 66.7 per cent of bulk vessels, 53 per cent of general cargo vessels and 73 per cent of container ships in the region.

As most of growth areas in the region are situated less than 300 kms. from the coastline, they have high dependence on oceangoing transport for their cargoes. This is one of the important factors of growth cited by the paper in the Asian shipping market.

However, the paper stresses that the current structure of the region's shipping market "considerably restricts itself from being efficient due to lack of bilateral cooperative system, inadequate liberalization (of the industry), delayed improvement in infrastructure," among others.

Thus, it suggests that the efforts to create fair and free competition should continue to be done as liberalization and deregulation in shipping should be further promoted for the continued development of the industry in the region.

cargoes, issuing bills of lading, settling freight charges and concluding service contracts.

There have been 21 wholly-owned shipping companies established in China by foreign shipping companies from countries including the US, Britain, France, Germany, the Netherlands, Norway, Denmark, Israel, Japan, Korea, Singapore and Thailand. More than 60 branch companies have also been set up in the ports of major coastal cities. There have also been over 500 resident representatives offices established in China by foreign shipping companies.

In addition, the Chinese government allows foreign shipping companies to engage in container multimodal transport business in China. The engagement of these business activities reflects that the involvement of foreign shipping companies in the Chinese shipping market has been extending further into the inland areas.

The Chinese government has so far concluded 56 bilateral maritime agreements with foreign governments. The Chinese maritime competent authorities handle relevant bilateral maritime affairs in accordance with the bilateral maritime agreements and related Chinese laws and regulations. Maritime relations and co-operations between China and Japan and between China and Korea have been well developed. Bilateral maritime affairs are discussed and consulted with each other at regular annual meetings.

## Shipping market rebound

With globalization of world economy, trade liberalization and development of computer networks and e-commerce, the economic development of different countries are not only complimentary but also competitive with each other, which has

promoted the steady growth of world trade. This has created both opportunities and challenges for international shipping business, being supporting pillars for world trade. Strategies of shipping operation have evolved to global carriers, multimodal transport and modern logistics services, leading to the provisions of efficient, safe and door-to-door transport solutions for trade development.

Asia has been one of the most dynamic regions in terms of world trade and maritime transport. The merchant fleet capacity, maritime transport volume and container port throughput and the tonnage of new building of ships in the Asian region have all ranked on top in the world. In the coming five years, Asian economy will maintain a steady growth.

The increased volume of maritime transport within the Asian region will still be higher than the world average, the growth rate being expected to be 5-7 per cent, and the growth rate of maritime container transport will be 8-10%. Influenced by the economic resurgence in Europe and America, the volume of container transport on the Asia, Europe trade and on the Pacific trade will increase steadily, with the freight rate going up but the competitions among the shipping companies being further intensified. As for Asian ship owners, challenges and opportunities are co-existing.

## Strengthening international co-operation

Maritime transport is still the most important and efficient way to move international cargo. Since international maritime fleet frequently sails among different countries, maritime policies, legislation and economic and social development status of each country will have impact on fleets of other countries. International co-ordination and co-operation are thus of ultimate importance.

In ensuring safe navigation of ships and preventing pollution of ships to the marine environment, the role of the Port State Control (PSC) has become more and more important. So far competent authorities of most port states have implemented the PSC. China undertakes to fulfill the obligations and rights of the PSC based on agreements of PSC to which China accedes. The maritime competent authorities of all countries shall strengthen their co-operations in jointly suppressing piracy and maritime fraud.

## Development of Chinese economy

The development of Chinese economy

will further promote the increase of trade volume of China, Asia and other countries of the world, which will also boost the demand for transport, and play a role in promoting the development of international shipping business.

In the coming five to 10 years, the Chinese economy will maintain a rapid growth. With a view to promoting a coordinated development of economy between the eastern coastal areas and the western areas and diminishing the differences between the west and the east, China is now implementing the strategy of developing the west. With most places being mountainous and plateau areas, the western regions include 12 provinces of China, the area of which is 70 per cent of the country. The focused part of the western development strategy is the construction of infrastructures of transport and energy, and a further improvement of ecological environment.

In keeping pace with the western development strategy, the Ministry of Communications has decided the construction of transport infrastructures in the western regions that will focus on the Chinese domestic market and foreign trade. It is estimated that only the import of commodity and service by that time will amount to \$3000 billion. The development of China will provide all other countries in the world, including those and technologi-




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**After entry into the WTO, China will undertake relevant obligations and earnestly fulfill its commitments in further opening its markets of shipping and auxiliary services.**

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cal co-operations. The demand for shipping market will also be boosted considerably.

China's accession to WTO will have positive impact upon world economy. So far China has completed the bilateral negotiations on its entry into WTO with major trading countries including the US, the European Union, Japan and some others. The US congress has passed the bill on China's PNTR status after voting. China has almost finished the bilateral negotiations on its WTO accession, and is expected to accede to WTO in the near future.

After entry into the WTO, China will undertake relevant obligations and earnestly fulfill its commitments in further opening its markets of shipping and auxiliary services, raising the degree of

transparency of shipping policy and administration, safeguarding rights and interests of foreign shipping companies and constantly improving investment and operation environment. In the meantime China shall also enjoy the deserved rights in the WTO. The opening of markets should be in both directions and for mutual benefits.

After its accession to WTO, the customs duty and non-customs duty measures of China will be reduced dramatically, and more foreign products will enter into the Chinese market. According to estimation of foreign trade departments of China, it shall be encouraged in China to increase import reasonably, in particular to increase the introduction of advanced applicable technology and key equipment.

In the next six years up to 2005, the total value of import of China will exceed \$1,300 billion, with the average annual growth rate being more than 8%. By 2005 the import trade value of China is expected to be close to No. 5 in the world. At present the status of income and payment of foreign exchanges of China amounted to \$155 billion, which has been a forceful support for China's expanding of its import scale.

**Development of Chinese shipping policies**

The basic principles of the Chinese

government in developing shipping business are as follows: Firstly, it should meet requirements of market economy. Secondly, it should be in conformity with international common practice, and learn from the successful experience of other countries. Thirdly, a legislation system of laws and regulations reflecting characteristics of shipping operations should be established in order to exercise administration based on law. We are ready to learn from and borrow the administration experience of all successful countries in Asia and the world, and make joint efforts to maintain a good order for the development of shipping industry.

After accession to WTO, China will further open its shipping market in accordance with international rules, and foreign shipping enterprises will get more economic benefits in China. Under the market economy regime the competitiveness of Chinese shipping enterprises will be greatly enhanced. The Chinese government will strengthen to oversight and control over the competition order of markets so as to maintain a fair competition market environment.

We sincerely hope that maritime competent authorities of all Asian nations will further strengthen international co-operations and dialogues, make joint efforts to promote the prosperity and development of maritime transport business, and to usher into the 21<sup>st</sup> century the healthily developed maritime transport industry.

# Conflicting medical opinions

ALBERTO J. de Leon worked on board several vessels manned by NFD International Manning Agents, Inc. since 1985 for its principal Barbership Management Limited. At the initiative of NFD International, prior to the execution of de Leon's December 1995 contract, underwent a pre-employment physical examination where a doctor found him "fit to work".

Baliwag Navigation Inc. took over the local manning operations of the vessel M/V Polar Star on 26 June 1996. On or about 7 July 1996, de Leon, while working on board the vessel, suffered a severe headache and dizziness accompanied by a blurring vision. He then lost consciousness and bumped his head on the floor.

De Leon underwent a CT scan at the Kasuga Hospital in Japan and was found to be suffering from brain bleeding and edema at the left temporal region. He was recommended "unfit for duty, needs hospitalization for further medical treatment continuously".

After being discharged from the hospital and repatriated to the Philippines from Narita, Japan, de Leon was immediately referred to St. Luke's Medical Center. De Leon then underwent carotid angiography that showed a saccular aneurysm of the left-middle cerebral artery. Clipping of the aneurysm was recommended to prevent its

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## The conflicting medical opinions of Dr. Cruz and Dr. Varwig could only be given credence had these been corroborated by de Leon's own attending physicians.

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rupture. A couple of weeks after undergoing the surgical procedure, de Leon was discharged from the hospital.

On 7 November 1996, several months after his discharge, de Leon was referred to a medical center under the care of the company-designated physician, Dr. Nicomedes G. Cruz for his continuous

medical treatment. De Leon was declared "fit to work" effective 20 December 1996. The medical certificate issued by Dr. Cruz declared that "*the patient is presently asymptomatic. Blood pressure is 110/70.*" The patient was seen and examined by Dr. Bienvenido B. Aldenese (Neuro-surgeon who operated the patient). The patient was given neuro clearances with full recovery."

In March 1998, de Leon was referred to Dr. Heinz Varwig for assessment of his disability. Dr. Varwig through Dr. H.D. Bunuan opined that "Mr. De Leon's disability according to the POEA Schedule of Disability Impediment is equivalent to Grade 10."

Labor Arbiter Felipe P. Pati ordered respondents jointly and severally liable to pay de Leon his disability benefit because even after he had been discharged from the St. Lukes's, he was still suffering from right hemiparesis (partial paralysis).

Respondents sought the reversal of this decision and alleged that the findings of Dr. Varwig should not be given credence as it was issued after one (1) year and three (3) months since Lopez was declared fit to work by the company-designated physician. Moreover, under the POEA Standard Employment Contract, it should be the company-designated physician who should determine the degree of disability sustained by the seafarer.

NLRC through Commissioner Raul Aquino dismissed the appeal and upheld the Decision of the Labor Arbiter. It held that the declaration made by the company-designated physician, Dr. Cruz, was predicated on the alleged neuro clearances issued by the neuro-surgeon, Dr. Bienvenido B. Aldenese who was not even adduced in evidence by the respondents. De Leon's own attending physician at St. Luke's was not even consulted or his medical opinion sought before de Leon was declared fit to work by the company-designated physician.

The conflicting medical opinions of Dr. Cruz and Dr. Varwig could only be given credence had these been corroborated by de Leon's own attending physicians. In the premises where doubt is raised by such conflicting medical opinions, the only logical course to take is to resolve the doubt in favor of the complainant.

**Alberto J. De Leon vs. Baliwag Navigation Inc./San Andres Shipping Corp., OFW (M) 98-07-0747 (CA No. 020189-99), June 30, 2000**

## Validity of resignation letter

COMPLAINANT Carlito Ilagan alleged that he was hired as "Master Mariner" by German Marine Agencies for its principal CAP Fortune Limited in Hong Kong for a period of four months with a total monthly compensation of \$2,540. On September 7, 1998, he departed for Hong Kong to assume his work. But there, he was asked to work as a "Chief Mate", with a total monthly salary of \$2,000. He claimed that he refused to accept the same. Thereafter, he was made to sign a blank paper upon advised that the same would be used for securing a visa in China, where his vessel assignment was located. In the afternoon of the same day, Ilagan was repatriated to the Philippines.

The version of respondents was different. They argued that complainant was not qualified for the position of a "Master Mariner." According to the respondents, complainant "failed to coherently express himself in English and could not give any explanation or description of his responsibilities and job as a master of an anchor handling vessel." To hide his incompetence for the job, complainant just made a letter of

resignation stating that he would no longer join the vessel and that the contract of employment between him and respondents was null and void.

The Labor Arbiter sustained the validity of the letter of resignation inasmuch as complainant failed to show any "reasonably sufficient corroborative evidence" to substantiate his allegation of deception by his principal and lack of volition on his part in signing the said letter.

In affirming the decision of the Labor Arbiter, the NLRC ruled that it "is not convinced that the complainant was deceived in affixing his signature on a 'blank paper' for the purpose of getting a visa in China, he being a well traveled and knowledgeable person in matters of visa requirements."

**Carlito A. Ilagan vs. German Marine Agencies, Inc., NLRC RAB-IV OCW Case No., 9-1160-98-B, NLRC NCR CA No. 022849-00, 31 August 2000**

*Ruben T. Del Rosario is managing partner of Del Rosario & Del Rosario Law Offices and of its Pandiphil Claims Department.*

*Greetings from:*



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# Liability and compensation for oil spills from tankers

By ITOPF, the International Tanker Owners Pollution Federation

COMPENSATION for damage caused by spills of persistent oil from tankers is governed by an international regime, the framework of which was originally the 1969 International Convention on Civil Liability for Oil Pollution Damage and the 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage. This "old" regime was amended in 1992 by two protocols, which increased the compensation limits and broadened the scope of the original conventions. The amended conventions, which entered into force on 30<sup>th</sup> May 1996, are referred to in this note as the 1992 CLC and 1992 Fund Convention. As at 10<sup>th</sup> March 2000, 54 States had ratified both 1992 Conventions and more are likely to do so in the near future. The 1992 Fund Convention is administered by the International Oil Pollution Compensation Fund 1992 (1992 Fund), the secretariat of which is located in London.

Since the mid-1970's when the conventions first entered into force, compensation

equivalent to many hundreds of millions of US dollars has been paid to the victims of oil spills in the states that have ratified them, without the need in the vast majority of cases for recourse to litigation. The system is therefore highly successful.

Serious questions about the adequacy of the existing system of compensation provided by the 1992 CLC and Fund Convention, however, have been raised as a result of the Erika incident last December 1999 off the coast of France. Of major concern is whether the current limits will be sufficient to satisfy in full all legitimate claims in this particular incident (and others that may follow), even taking into account the offer of charterer TotalFina and the French government to stand last and second last in line of the claimants. This note briefly explores this and other issues.

## Increasingly the limits of Liability

The 1992 CLC and Fund Convention in-

corporate a mechanism whereby the limits of liability under both conventions can be increased up to a maximum of six percent per annum calculated on a compound basis since 15<sup>th</sup> January 1993 (the date on which the International Maritime Organization opened the 1992 Protocols for signature by States). The maximum possible increase of the combined 1992 CLC/Fund limit (currently about US\$185 million) permitted by this mechanism, as at 10<sup>th</sup> March 2000, would be a little over fifty percent (\$ 278 million).

Any proposal to amend the limits in this way would require the support

of one quarter of the contracting states to the respective conventions before it could be considered by IMO's Legal Committee. Adoption of the proposal would require a two-thirds majority of the contracting states present and voting in the Legal Committee. All contracting states would then have to be notified of the amendment, which would be deemed to have been accepted 18 months later unless by that time not less than one quarter of the contracting states had informed the IMO that they did not accept the amendment. So long as this did not happen, the increased limits would automatically enter into force in all contracting states in a further 18 months time.

The UK delegation at the 1992 Fund Executive Committee meeting in February 2000 gave notice that it intended to propose raising the limits at the next 1992 Fund meeting in April. The delegation pointed out that the present limits had originally been agreed in 1984 and so, notwithstanding the experience of the Erika disaster, were in need of revision. The decision to hold an extraordinary 1992 Fund Assembly meeting in April will potentially speed up the process, although it would appear from the procedure outlined in paragraph 5 above that it would be at least three and a half years before increased limits could enter into force. Any incident that occurred during this period would still be subject to the old limits. There are indications that the government of France and the European Commission regard this as mechanism, either on an interim or permanent basis (see paragraphs 18-23).

## Sharing of the Financial Burden

The international compensation Conventions and, when they were in existence the voluntary agreements of TOVALOP and CRISTAL, have always been based on a two-tier structure, with the tanker owner and his third party liability insurer (P&I Club) being strictly liable for the payment of compensation under the first tier, and oil companies and other entities (as oil receivers) in Fund-Member States being responsible for contributing to the funds that constitute the second tier. The precise balance of financial exposure has been a matter of keen debate (sometimes leading to confrontation) between tanker owners/P&I Clubs and oil companies since the late 1960s when the regimes were first developed. This debate has re-surfaced at intervals, especially in the lead up to the formulation of the 1984



### THE PHILIPPINE REGISTER OF SHIPPING, INC.

*A Filipino Classification Society*

#### Its Mission:

- PRS is engaged in conducting studies, developing and establishing rules and standards for classification, certification and survey of vessels. It is the private sector's response to the ever-pressing need for higher but realistic standards for promotion of safety of life and property at sea and the protection of the maritime environment.
- It seeks to support the government's efforts in ensuring the structural integrity of vessels, reliability of their machinery and equipment and the protection of the marine environment.
- Being a non-profit organization, it seeks to develop projects that will benefit the maritime industry as a whole and to provide a total development training program with the aim of upgrading the skills and competence of local merchant marine personnel and maritime technicians.
- With its present resources and competent surveyors and technical staff, it will vigorously continue to endeavor, disseminate and implement its maritime safety programs in the shipping industry sector in close coordination with the government.
- Finally, it will always abide by the maritime industry's highest standards of professionalism and ethics.

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PRS shall always endeavor to work in bringing sea-safety consciousness among the shipping community through its:

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Protocols to the 1969 CLC and 1971 Fund Convention (which became 1992 Protocols).

One highly relevant issue within this debate is the right of tanker owners and their insurers to limit their liabilities under the 1992 CLC to an amount based on the size (gross tonnage) of the tanker from which the spill originated. This right of limitation, which is very common in maritime conventions, can only be broken in exceptional circumstances, notwithstanding the fact that a tanker owner will normally have oil pollution insurance cover for a considerably higher amount than his CLC liability.

This is an example of the finely-balanced structure of the 1992 CLC/Fund that was negotiated by governments within the IMO over a number of years. Thus, in return for this legal right of limitation, tanker owners have historically agreed to accept strict liability (as opposed to liability based on a demonstration of fault) and to adhere to compulsory insurance requirements. More importantly, the P&I Clubs have agreed to direct action being taken against themselves (rather than merely indemnifying owners for the amounts they have paid), thereby making it easier for claimants to present their claims and receive prompt settlements. Without this last feature claimants would be faced with the potentially difficult tasks of having to identify and locate the registered owner of the tanker from which the spill occurred. It is worth recalling that the P&I Clubs steadfastly refused to agree to direct action in the USA under the Oil Pollution Act of 1990 (OPA '90), largely because of the low probability of a tanker owner being able to limit his liability under that regime.

In the case of the Erika the owners and P&I Club are exposed to a liability of approximately \$12 million whereas the oil companies and other contributors to the 1992 Fund are required to pay the balance of \$173 million (if claims reach the maximum). This split equates to about 6.5% of the clean-up and damage costs being paid by the tanker owner/P&I Club and the remaining 93.5% being paid by the oil companies and other crude and heavy fuel oil importers in 1992 Fund-Member States. However, in reviewing this apparently inequitable situation it can be highly misleading to consider only one or two major incidents, rather than looking at the totality of the claims pattern over past years. Thus, the vast majority of oil spill incidents have historically never exceeded the CLC limit and so have been paid exclusively by tanker owners and their P&I Clubs. This is likely to be even more the case with the higher 1992 CLC limits, except where there are factors such as the nature of the cargo or the particular sensitivity of the coastline which make the spill especially expensive (see paragraphs 15-17). It is equally relevant to note that the total value of settled oil pollution



claims in only three or four incidents outside of the USA would ever have exceeded the 1992 CLC/Fund limit, even when the figures are inflated to present day values.

Possible dangers of opening a debate on changing the sharing of the financial Burden

Any re-allocation of the current sharing of liability between tanker owners/P&I Clubs, and oil receiving interests would require Protocols to both the 1992 CLC and Fund Convention, or a totally new arrangement. This would inevitably open up the whole debate on issues such as the current "test" of the right of tanker owners to limit their liability, the maximum amount of compensation that should be available and the definition of pollution damage, especially as regards impairment of the environment.

There was very detailed debate of this last issue when the 1984 Protocols to the 1969 CLC and 1971 Fund Convention were formulated. Re-opening of the debate was resisted in 1992 when the entry-into-force provisions of the Protocols were revised. Since then there has been significant developments as regards environmental liabilities, although many of the fundamental concerns remain about the validity of the scientific assumptions and valuation methods, especially among those liable for paying the claims. However, in the current climate it would seem probable that there would be considerable political support for the introduction of US-style Natural Resource Damage Assessment (NRDA) provisions. Italy and Venezuela are among the CLC/Fund countries that have already sought, or are seeking, compensation for environmental damages in recent major incidents. Various Arab States have also consistently formulated NRDA type claims in CLC cases have publicity stated that it is their desire to see the extension of the Fund Convention to cover such damages. It is also prob-

able that Canada would be in favour of such an extension (influenced by their neighbour to the South). Even the UK may be prepared to go along with a move in this direction (c.f. the SEEEC study and recommendations following the Sea Empress accident).

Finally in this regard, it should be noted that the European Commission has for some years been developing its policy on Environmental Liability (for land, sea and freshwater) and the long-awaited White Paper on the subject was published on 9<sup>th</sup> February 2000. Not Surprisingly, the proposed approach has many similarities to the US NRDA regulations and other North American concepts. What is also significant is that recent amendments have been made to the text of the White Paper to include references to the Erika and the possibility of a "complementary EC regime on liability for oil spills".

If there were to be a fundamental review of the current liability and compensation arrangements for tanker spills it would also seem certain that there would be calls for the total amount of compensation to be greatly increased, beyond what is already provided for under the 1992 CLC and Fund Convention. Reference would inevitably be made in support of such calls to the experience of the Nakhodka and Erika, and to the fact that the funds available in the USA under OPA '90 exceed \$1 billion. Such a massive increase would clearly have major implications for all parties.

### Technical Considerations

In discussing the potential for costly spills to be generated by small tankers it is important to recognize that the problem is not primarily related to the size of the tankers or to the size of the spills but to the characteristics

of the oil that is spilled. The vast majority of the spills from small ships that exceed the owner's CLC limit involve heavy fuel oil. Statistics are available to support this statement but it can be discerned from simply looking at the cases with which the 1971 Fund has dealt over the years, especially in Japan and Korea.

ITOPF has repeatedly pointed out that heavy fuel oil can pose enormous difficulties because of its highly persistent nature. This means that such oil are resistant to natural clean-up and are difficult to remove from the sea surfaced by booms and skimmers or chemical dispersants. Spills of heavy fuel oil therefore have the potential to cause widespread contamination of coastlines and sensitive resources (especially if the oil is spill a long way out at sea, as in the case of both the Erika and Nakhodka). These same factors are the reasons why, in ITOPF's experience, the clean-up of heavy fuel oil spills can cost up to ten times more than for a similar size spill of a light or medium crude oil. It is no coincidence, therefore, that the total value of the compensation claims arising from the Erika and Nakhodka incidents may approach or even exceed the maximum amount available under the 1992 CLC/Fund.

If the Erika had been carrying a light or even a medium crude oil, it is highly probable that the vast majority of the spilled oil would have disappeared from the sea surface through evaporation and natural dispersion in the severe weather conditions prevailing at the time and that virtually no oil would have come ashore (as in the case of the Braer in Shetland in 1993). Little or none of the current debate would then be taking place.

### Possibility of a European approach

Initial enthusiasm for a European OPA '90 appears to have waned, partly because of recognition that the situation in Europe is different to that in the USA, especially as regards the threat posed by passing tankers (through the Baltic, from the Black Sea and in the Mediterranean). Attention now seems to have shifted within the EU to the possible provision of a supplementary layer of compensation, above that provided by the 1992 CLC and Fund Convention.

The main justification for such an additional layer of compensation (third layer) would seem to be that insufficient compensation is available under the current system. In addition, there may be an argument that the third layer could provide a mechanism for paying claims that are not covered by the 1992 CLC and Fund Convention (e.g. 'pure'

environmental damage). It may also be viewed by some as providing the opportunity to penalize certain interest.

There does not appear to be any clear view at present as to how this third layer would be funded, except that it should not come from the public purse. Among the ideas that have been mentioned in the press and elsewhere are a voluntary scheme, one based on penalties, of a levy on charterers, on port/ship movements and/or oil importers, and the introduction of a Certificate of Financial Responsibility (COFR) type system as in the USA. Whether any such European third layer would be permanent or simply temporary until the increased limits of the 1992 CLC and Fund Convention came into effect (see paragraphs 4-6) is also uncertain at this time.

There would also not appear to be any clear idea at present as to who would administer the third layer of compensation and how it would operate. In particular, would the 1992 Fund's claim that were not eligible

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**Upsetting the delicate balance established over many years regards the amounts of compensation paid by tanker owners/P&I Clubs and oil receivers in Fund-Member States through the creation of a third layer could destroy the existing, highly effective international liability and compensation system.**

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under the 1992 CLC/Fund system (e.g. 'pure' environmental damages) could be paid? Given that a European fund would probably be subject to considerable political pressures it could not end up having to pay 'unreasonable' claims from various quarters, especially as there is a tendency for the value of claims to expand to match the maximum amount of money available. This would inevitably undermine the uniform claims admissibility policies of the 1992 Fund. Another practical question would be whether the third layer would pay claims quickly and act like a bank, or be a fund of last resort and only come into play when, after many years, the tanker owner/P&I Club and 1992 Fund had settled all claims up to their respective limits. Depending on the decisions on issues such as these there could be immense practical difficulties and confusion amongst claimants and all other parties.

Upsetting the delicate balance established over many years regards the amounts of compensation paid by tanker owners/P&I Clubs and oil receivers in Fund-Member States through the creation of a third layer could destroy the existing, highly ef-

fective international liability and compensation system. Indonesia's denunciation of the 1971 Fund Convention on the grounds that it was not cost-effective for the country is an indication of the sensitivity of the current funding arrangements (the argument in this case being that most compensation goes to pay for expensive clean-up in Europe).

It is important to recognize in any discussion of this of this topic that the present 1992 CLC/Fund system is entirely consistent with the 'polluter pays' principle. More significantly, the contribution arrangements for the 1992 Fund are socially responsible since oil importing companies in 'rich' nations like France, Germany, Italy, Japan, Korea, Netherlands, and UK pay the majority of the compensation, irrespective of where the spill occurs. Developing countries that export oil or which do not import significant quantities of crude or heavy fuel oil can have access to the full CLC/Fund compensation in the event of an oil spill (e.g.

from a passing tanker) with minimal or no contribution to the system. If the 1992 CLC/Fund system were destroyed these countries would be the main losers since, unlike Europe, they would not be able to put in a place a viable alternative. Even if the system survived, a third layer for the rich 'club' of Europe would send a very unfortunate message to the developing world, which would not be able to access the extra funds. Remember the furore that OPA '90 caused when the US decided to look after its own interests rather than ratify the 1984 Protocols which would have benefited the rest of the world.

### Conclusions

ITOPF's informal view is that it would be highly detrimental to tanker, P&I and oil company interests, as well as to potential claimants and governments, to do anything that could result in the present highly successful international liability and compensation regime for tanker spills being undermined. All industry groups should therefore work together to:

a) support the present, highly successful international liability and compensation system;

b) support any proposal by Contracting Parties within the 1992 Fund and thereafter in the IMO Legal Committee to increase the present limits of compensation within the terms of the existing Conventions, and

c) endeavour to ensure that the efforts of Governments and bodies like the European Commission are concentrated on measures that might be taken (preferably within IMO) to prevent, or minimize the likelihood of, accidents such as the ERIKA happening again.

# Crew agency deplores claims handling

A LEADING crewing agency in the Philippines is protesting against the unethical handling of money claims by a P&I club correspondent, prompting the agency to question the "mechanics" and "methods" being used by the club in answering for their liabilities. Inter-Orient Maritime Enterprises, which deploys thousands of Filipino seafarers overseas, has also threatened to sue Pandiman Philippines Inc. and the latter's principal, the Liverpool and London P&I Club, for allegedly running away from their liabilities.

The claims in question involves the award of total disability benefits amounting to \$60,000 to a ship officer whose case Pandiman gave up while the claims suit before the National Labor Relations Commission (NLRC) was in progress. Third Mate Nicholas Flores, who worked on the ship mt Kappa Wave after serving 14 months, left the vessel on November 1998 due to sickness. He was diagnosed with hepatic cirrhosis of the liver in Indonesia. After hospitalization in Indonesia, he was repatriated to Manila and immediately referred by Inter-Orient Maritime to its accredited clinic. He was then found seriously ill.

Based on instruction of its P&I club, where the ship was enrolled, Pandiman took custody of the seaman and referred him to Pandiman's accredited clinic. Inter-Orient said Pandiman informed the Liverpool and London P&I of all the developments, while Inter-Orient had been kept out of "any further direct involvement, except by asking us to pay (hospital) bills." On June 29, 1999 Pandiman advised Inter-Orient that based on Pandiman's doctor opinion, the seaman must be declared as having permanent disability and be compensated of \$60,000 as provided by the rules of the Philippine Overseas Employment Administration. By then the seaman had continued having

medical attendance through Pandiman doctors.

Fearing about the loss of his claims, the ship officer rendered the services of a law office, and in May 2000 he filed a complaint at the NLRC against Inter-Orient and the ship owner, claiming payment of his disability benefits. Endorsed to Pandiman lawyers to handle the case, they kept the owners and P&I club fully informed of all the developments of the case. However, the ship owner Kappa Shipping of Greece started to sell all its ships at the time and ceased contact with Inter-Orient.



Meantime, Pandiman lawyers continued attending the hearings and keeping Inter-Orient and the P&I club on the progress of the case. Consequently, Inter-Orient was notified that Pandiman had to withdraw from the case filed at NLRC on the instruction of the P&I club. At that stage, Inter-Orient said the case had been submitted for decision and the manning agency had been left with no other recourse to defend the claims suit.

The NLRC now had decided in favour of the seaman, instructing Inter-Orient to pay him the \$60,000 full disability benefits, sick wages and legal cost. Inter-Orient said that they had been informed by Pandiman that the reason the P&I club withdrew from the case was merely

because the ship owner had not paid its P&I calls for the ship. Inter-Orient said that by the time its officer fell ill, the ship was fully updated on its calls with the P&I club. It insists that the responsibility of the club has been clearly established through its continuous involvement and its correspondent. It says that by being in exclusive control in handling of the claims suit, Pandiman left the manning agency with no room to handle or negotiate for an amicable settlement or compromise. "The general impression to us (Inter-Orient) was that the Club is 100 per cent behind the

case through its local correspondents... no doubt that they have the intention to withdraw at later stage" it said.

"The fact that the owner disappeared at the late stage of the case, does not relieve the Club from its undertaken obligations," Inter-Orient pointed out, saying that in the case wherein the club is exclusively handling a case through its correspondents could not "vanish overnight on the simple explanation

that they have cancelled owners entry with the Club." The manning agency now asks: "Does it mean that Pandiman or whoever correspondent can cause a loss to the other party through its actions and be left untouched on the grounds that he is merely acting as agent of the club?"

Inter-Orient management believes that the same way a manning agent is "jointly and solidarily responsible for its actions on behalf of the ship owning principal, the same way the appointed 'agent' of the P&I Club must be held liable in Philippine courts for its actions." Inter-Orient says it will file a lawsuit against Pandiman for the "unethical and against the good faith" in handling the claims suit filed by the seafarer.

# Oscar M. Sevilla, MARINA administrator, recalls with Gigi Orbe how he started his career at the waterfront to his current post

AS a boss, his staff describes him best as someone who is not so particular with ceremonial procedures when at work at the office. However, he expects everyone to be effective at all times especially where and when getting the expected results are concerned.—

Sworn into office for his first job in government just in February 2000, the post of administrator of the Maritime Industry Authority (MARINA) did not come as a job alien to Oscar M. Sevilla. Prior to his appointment at the Marina, Sevilla has carved a niche for a career in waterfront through his involvement in customs brokerage. He has established his leadership prowess as president of both the Port Users Confederation and the Federation of Customs Brokerage Companies of the Philippines. He was also legal adviser of the Confederation of Truckers Association of the Philippines in 1991. At about the same year, he represented the private sector as he assumed the position as secretary general of the Customs Industry Consultative Council until 1997.

The first lawyer to become Marina's Administrator, Sevilla envisions the creation of one agency that will be tasked to undertake policy-making and implements these policies that will govern the industry. Under existing laws of the Department of Transportation and Communications (DOTC) Order 98-1180

dated October 1998, MARINA's basic mandate involves the formulation of maritime policies, plans, rules and regulations while the Philippine Coast Guard (PCG) implements these underlying policies. Although he strongly believes in the capacity of other regulatory agencies such as the PCG and Philippine Ports Authority as MARINA's partner and ally in shaping up the maritime industry, he still desires to see the unification of these agencies into one directorate general for maritime affairs within the DOTC.

Born on November 21, 1940, Sevilla



**SEVILLA**

spent most of his formative and growing years in Malolos, Bulacan. The youngest among four sons, he went to Manila to continue his education with no hint whatsoever that he would one day be the man at the helm in the creation and implementation of safety of lives and vessels on Philippine waters. It would seem that his private practice in the maritime-related businesses coupled by his legal expertise have groomed him to be the man to suit him for the Marina position.

The five-foot-eleven Bulakeno finished his Bachelor of Arts major in English with honors at the Colegio de San Juan de Letran in 1961. When asked how he ended up as a lawyer, he happily recalls that originally he wanted to be a doctor. He

enrolled at the University of Sto. Tomas College of Medicine but was placed in a wait-list. Not wanting to be idle, he temporarily enrolled at the Ateneo de Manila University College of Law. Strongly influenced by his father (who is a frustrated lawyer) and an older brother who is also a lawyer, he soon forgot his ambition to become a doctor and pursued his studies to become a full-pledged lawyer. He completed his Law in 1966.

As a member of the Philippine delegation to the APEC Sub-Committee on Customs Matters Conference he

visited Osaka, Japan in November 1995. On the same year, he also went to Honolulu as a member of the Philippine Delegation to the International Federation of Customs Brokers Association Meeting.

For the record, he also holds various executive positions in at least four private firms: as Senior Partner for Sevilla and Sevilla Law Office, Executive Vice-President for A. Sevilla Brokerage Corporation, Executive Vice-President/Director for Allivesons, Inc. and Vice-President/Director for Sevilla Development Corporation.

Last September 28, 2000 MARINA Administrator Atty. Sevilla represented the government in the first national shipping congress organized by two of the biggest association in the shipping industry- Philippine Interisland Ship-owners Association (PISA). The shipping congress marks the first time these two organizations joined hands in a worthy project. It was also the first time MARINA ever participated in an undertaking originally led by the private sector. During the three-day event held at the Grand Ballroom of the Century Park Hotel, Sevilla echoed his optimism with regards to the status of the Philippine maritime industry.

He said that as a result of the tearing down of trade barriers among nations and partly due to the improved technology of the banking and communications sector, he foresees the upward movements in the exchange of goods as well as in people mobility. He also pointed out the growing appreciation of the government/private sector and the general public for the maritime industry as a major economic tool. He noted as an example the shipping congress, a joint effort between both the government and private sector.

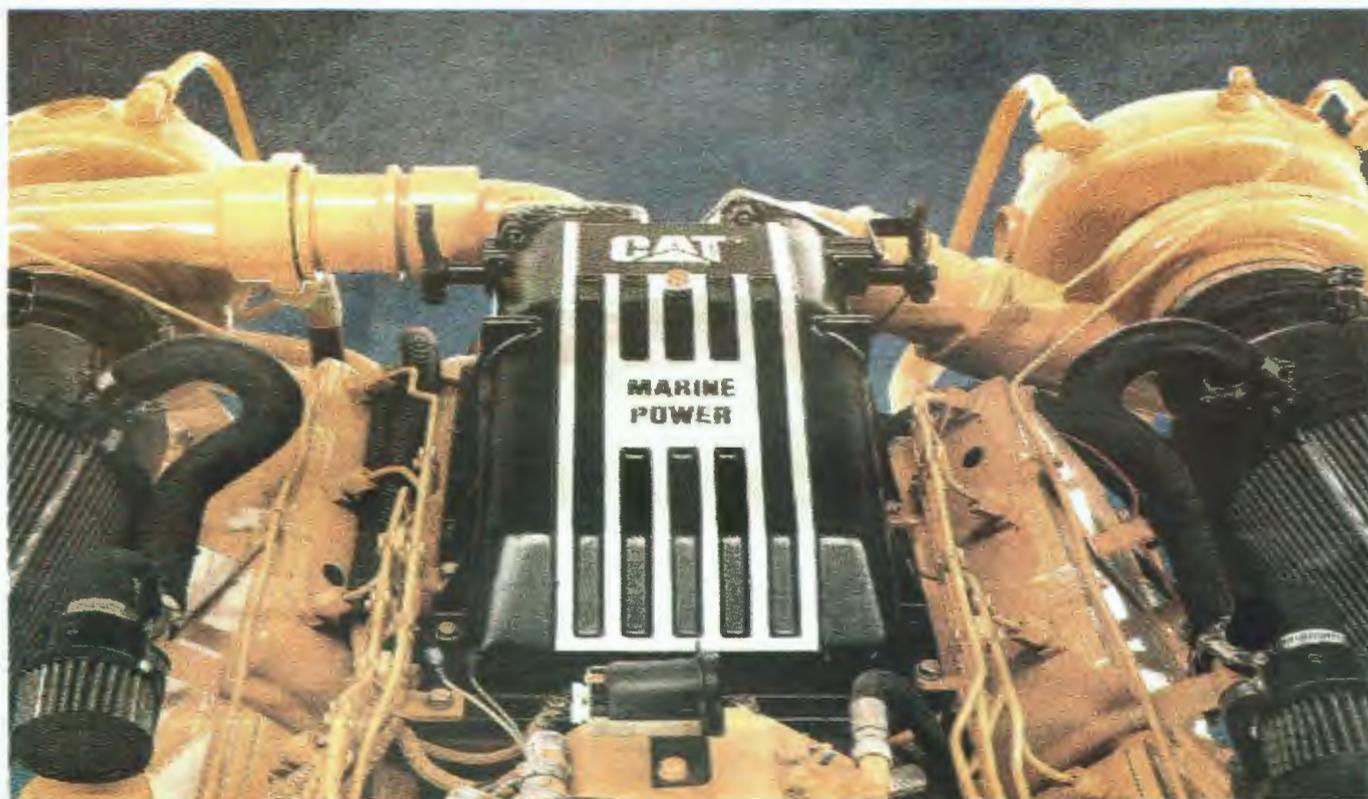
Sevilla is married to Maria Cristina Garcia of Cavite. He and his wife has four children, three daughters and an only son. This Scorpio-born leader is also a sportsman. He plays bowling, chess and golf. He bagged the championship during the Philippine International Open Ten-pin Bowling championship in 1978 and finished 5<sup>th</sup> in the Executive Chess Tournament sponsored by the Philippine Chess Federation in 1976.

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**Sevilla envisions the creation of one agency that will be tasked to undertake policy-making and implements these policies that will govern the industry.**

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**ON THE WAVES OF THE FUTURE**



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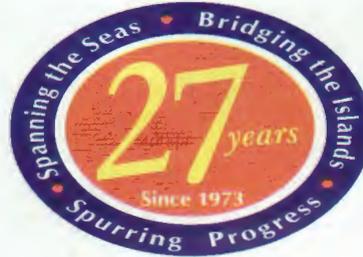


**Don Sulpicio Go**



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- Mr. Carlos Go  
Executive Vice President  
and Chief Executive Officer

