

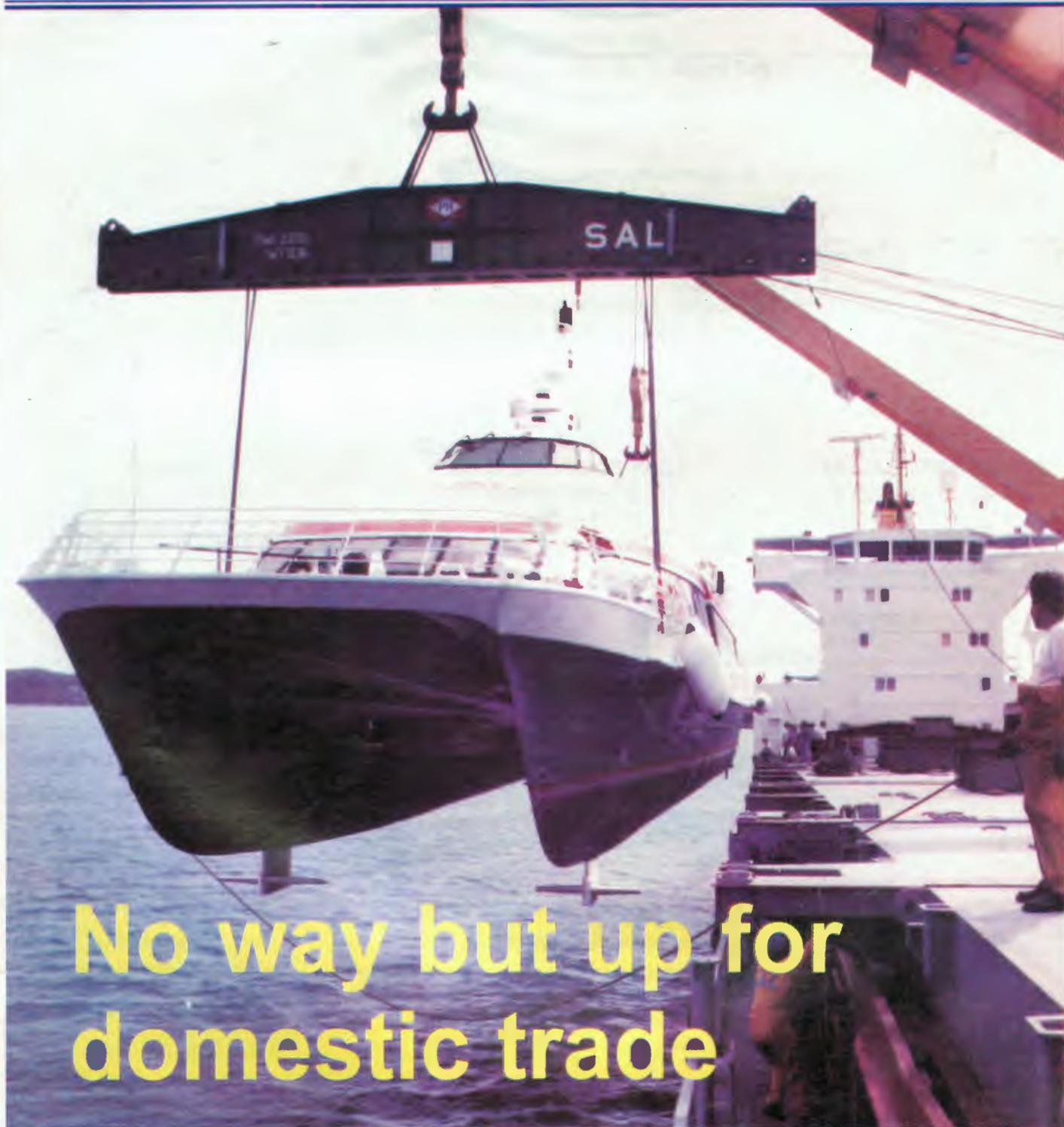
# Maritime

REVIEW



A PUBLICATION OF THE MARITIME LEAGUE

FEBRUARY 2002



No way but up for  
domestic trade

**D S A**



*sailing across barriers*

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FRONT COVER

A Nenaco fast craft is unloaded from a carrier

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## Chairman's Page

IN the Sep-Oct 2001 issue I mentioned SBMA Deputy Administrator Victor Mamon's unusual experience as a survivor of the World Trade Center tragedy last September 11. It further cited another incident involving the sinking of the destroyer RPS *Rajah Soliman* (D66), which occurred as a result of a severe typhoon that passed Manila Bay sometime in 1964. The D66 capsized, since it was top heavy as its boilers and main engines were ashore being overhauled. Well, I goofed in identifying Vic Mamon as a survivor of that sinking tragedy.

The one who lost everything he had on the D66 was Capt Peregrino L Casaquite PN (ret.), then an ensign on his first ship duty as a new graduate of the US Naval Academy at Annapolis.

It was Vic Mamon who corrected me when we talked about the incident while playing in the 8<sup>th</sup> Cunanan Cup, which the Maritime Golf Association (MGAP) conducted (and hosted by Salvtug) at the PN Golf Club in late September.

### Ships and Boats

I recently came across a lively discussion on the questions of why navy types are quite particular about the reference to ships vis-a-vis boats.

The matter of ships and boats is all about being macho. It's just that a boat is something you can hoist aboard a ship. A boat is like a staff car in the navy. The protocol is that the most senior officer enters (boards) last and alights (disembarks) first. It's the reverse on a ship.

The above argument holds, even though submarines, some now being

behemoths beyond the displacement of the largest destroyers, are called boats. The historical basis is that when the submarine was invented, it was really very small and was normally hoisted on ships during initial trials and even operation, at the turn of the last century. World War II subs were already large but the nukes (SSNs and SSBNs) are now even much larger. Thus in the US Navy even though they are "USS", submarines are still referred to as boats.

### Maritime Breakfast Forum

Ambassador Alberto Encomienda, head of the Marine and Ocean Affairs Center of the Department of Foreign Affairs and one of the stalwarts in the Maritime Breakfast Forum (MBF), proposed to me that the permanent venue of the MBF series should be at the National Defense College of the Philippines. I stated that while we have no objection to this, we would still leave it for the host agency to state where the venue would be. For instance, the PN and the PCG have various places, which they might wish to use for the meeting, at the same time allowing us to see what they have in terms of development and capability.

It has been suggested that the hosting be announced well in advance, so we have in possible order (since some agencies might wish to change dates): (1) DFA/MOAC; (2) AMOSUP; (3) PN; (4) MARINA; (5) PPA; (6) PCG; (7) PISA; (8) PRS/PHILSAR; (9) PAMI/FAME; (10) Philmar; (11) and (12) FSA/PSAA. Per agreement, DFA/MOAC always hosts the January meeting.

The host agency, by the way, may be featured in the following bi-monthly issue of the *Maritime Review*.

# Maritime Update

## NORTH HARBOR AS TEST BED FOR NEW RATE

THE Philippine Ports Authority (PPA) plans to test the application of a newly formulated set of charges on cargo handling at the country's largest domestic terminal Manila North Harbor before their implementation in ports nationwide. As an answer to the clamor for a rollback, a task force has been created and formulated a standard cost-based rate that will serve as the bases for international and domestic handling operations.

PPA general manager Alfonso Cusi said his agency could not just implement the rollback that shippers and ship owners are asking for until they come up with "something that would indicate exact and actual fees." The task force is about to wrap up its report on the new formula. The recent 10-15 per cent increase in container and bulk handling charges that the PPA approved early this year had been done without proper consultation. With only one public hearing conducted, members of the Coalition for Shipping and Ports Modernization are asking the PPA to have a transparent process in evaluating increases from port operators.

## HYUNDAI SETS 56-SHIP TARGET

HYUNDAI Heavy Industries (HHI) plans to build 56 ships in 2002, which would rake in revenue of \$3.1Bn. According to a statement, the world's largest shipbuilder is gearing to strike back after a disappointing 2001.

Until the end of November this year, the value of its orders stood at just \$1.37Bn, well short of its target of \$3.3Bn. HHI hinted that it would adopt an aggressive marketing strategy with the aim of securing "stable workload and improving profitability". Sales would focus on VLCCs, LNG carriers and offshore vessels.

Company estimates project a 16.1

per cent increase in turnover in 2002 at W8.4Trn (\$6.5Bn) and operating profits to touch W870Bn. HHI has plans to invest W107.8Bn in developing new technology, though the budget for upgrading facilities has been slashed by seven per cent to W350Bn.

## OWNERS WANT WHAT AIRLINES GET

DOMESTIC shipping operators in the Philippines are asking the same incentives the country's domestic airlines currently receive as part of a plan to undertake massive refueling of the interisland shipping industry. The incentives, which include tax exemption in the importation and lease or charter of ships, are vital in the first step that government can offer to enhance the environment for investments, according to the Domestic Shipowners Association (DSA).

DSA said domestic airlines have access to key incentives such as tax-free importation of aircraft, tax-free lease or charter of aircraft, and even a minimal six per cent tax to transfer the plane. In contrast, domestic owners have to pay 10 per cent tax on the importation of a vessel, 4.5 per cent for charter hire when bareboated and 10 per cent on transfer of ship.

DSA president Josephine Uranza said the condition makes it easier for airlines to refuel while domestic ship owners have not only been denied of the incentives but also required to serve the "missionary" routes. This makes no sense to operators because they are the ones serving the routes that are often not served by airline companies, Uranza said. DSA has presented the industry's plight to the Arroyo administration, but so far there has been no comprehensive plan yet that could be used as blue print for the development of the domestic shipping industry.

## GENSAN-BITUNG ROUTE GAINS

## HEADWAY

PLANS to open a regular direct shipping link between General Santos in Mindanao and Bitung, in North Sulawesi, Indonesia have taken off with the recent business delegation meeting of ship owners and cargo interests in General Santos. The proposed General Santos-Bitung feeder corridor, which is expected to enhance trade in the area, is said to be the shortest link between North Sulawesi and Southern Mindanao under the so-called East Asean Growth Area with countries include Brunei, Indonesia, Malaysia and the Philippines.

With an approximate 18 hours of sailing between General Santos and Bitung, a study on the route says container ship operators could minimise variable costs compared to the cost of feeding to North and East Asia and the US through Kaohsiung. While foreign lines are able to transport boxed cargoes directly from General Santos with bills of lading issued locally, North Sulawesi export has to be coursed through either Jakarta or Surabaya for loading on to foreign ships.

## COALITION BUCKS PPA RATE SETTING POWER

PORT users have called on government to scrap the rate setting power of the country's port authority. The Coalition of Shipping and Port Modernization (CSPM) says the absence of formal set of rules to implement them puts the PPA in no position to set cargo handling rates because "they do not possess a body of information to provide a sound basis for doing so." CSPM supply chain committee chairman Meneleo Carlos Jr points out that PPA has not been able to implement a uniform chart of cargo handling operators in ports nationwide to use in reporting their annual financial reports.

At the same time, the PPA has

continued to disregard the provision of due process in its conduct of public hearing for rate increases. The CSPM believes that the rate setting authority of the PPA is arbitrary, saying it only relies on petitioners' claims, though mostly unsubstantiated, as the only basis for granting rate increases. "This lack of basic information is made more onerous to port users because of PPA's pecuniary interest which is equivalent to at least 10 per cent," says Carlos.

### SUBIC TO BID FOR CRUISE HUB

DESPITE the current slowdown in cruise shipping, the Subic Bay Metropolitan Authority (SBMA) plans to market Subic Freeport as a leading destination of cruise lines in Asia. SBMA chairman Felicito Payumo, who recently met with a group of ship chandlers, noted that the cruise shipping industry is currently looking for new destinations to offer, making

number of cruise lines operators to Subic for them to see first hand the beauty and splendour of the area.

SBMA is also eyeing the forthcoming Sea Cruise Trade Convention in Miami, Florida next March as a venue for its marketing blitz with a theme focusing on ecotourism. One of the preparations being done is the development of a dedicated terminal that could accommodate any size of cruise ships.

### SECOND-HAND VLCC VALUES SLUMP

A FALL in freight rates has knocked back second-hand values of VLCC and Suezmax tankers to levels last seen two years ago. Gains made in 2000, when freight rates soared, have evaporated, said Oslo broker PF Bassoe. A 300,000 DWT VLCC was valued at \$68M at the end of 2001, compared with about \$77M in January and \$60M in January 2000. A single hull VLCC built in 1990 fell in value to \$32M in December from \$44M

### PHILIPPINES LNG STUDY LAUNCHED

THE Philippines government has asked US-based Chicago Bridge and Iron Co to undertake a feasibility study for a proposed LNG terminal in Bataan. The study, which is being funded by a grant of \$318,000 from the US Trade and Development Agency, is to pave the way for an option to pursue expansion of the market catering for natural gas.

The state-run Philippine National Oil Co (PNOC) is among those spearheading initiatives for the establishment of the LNG terminal, having planned several projects to promote LNG use. In another development, PNOC is reportedly planning to sign a natural gas supply agreement with Indonesian firm Pertamina for the feedstock requirement of its projected \$1Bn naphtha cracker plant and other natural gas projects.

### OWNERS MUST PAY MORE, SAYS P&I CLUB

SHIPOWNERS are not paying enough for their P&I insurance, according to Paul Jennings, underwriting director of the North of England P&I club. Speaking at the International P&I Conference in Piraeus last January 11, he said the weakness of global investment markets in recent years had highlighted rather than caused the need for significantly higher P&I premiums at this year's renewal.

"Poor investment returns are not the major problem facing the clubs," he said, adding that the real problem is the underwriting losses that are now being highlighted by current and future uncertainties in the investment markets. He pointed out that premium income for the International Group clubs has dropped by 17 per cent over four years to \$1.18Bn, despite an increase in tonnage entered, while costs have remained largely unchanged at \$1.66Bn.

Free reserves have fallen across the industry as a whole which has led to most clubs setting a general rate increase of around 25 per cent for the 2002/2003 policy year, he added.

A turbine VLCC carried a price tag of \$5M at the end of 2001



Subic as a more likely candidate due to the development of the area like its ecotourism facilities.

SBMA is about to sign a memo of agreement (MOA) with Ship Chandlers Philippines Inc (SPCI), a group that will aid in the promotion and marketing of Subic for its destination bid. Under the MOA SPCI will be inviting a

to \$45M the previous January, while in January 2000, it might have changed hands at \$34M. A turbine VLCC carried a price tag of \$5M at the end of 2001, sharply lower than the \$8M to \$10M such a vessel would have generated a year ago and virtually on the same level as two years ago, when its value was in the \$5M to \$5.5M bracket.

# Wage freeze receives backing

THE All Japan Seamen's Union (AJSU) has declared its support for a moratorium on the increase of seafarers' wage scale covered by the union's and its Filipino counterpart AMOSUP's collective bargaining agreement effective January 2002.

AJSU president Sakae Idemoto announced the support in a recent dinner hosted by the Associated Marine Officers' and Seamen's Union of the Philippines (Amosup) in Manila following a lobbying of Filipino ship managers and crewing agents to resist an ITF-led wage hike campaign. Idemoto also promised that he would personally discuss the issue in a forthcoming meeting with the Fair Practices Committee of the International Transport Workers Federation on April 2002.

Members of the Philippines manning industry led by Department of Labor secretary Patricia Sto Tomas hailed AJSU's stand, and has considered it a breakthrough in the on-going negotiations on seafarers' wage hike.

The union's support follows a similar backing from Japanese Shipowners' Association (JSA), who met the Filipino delegates on a ship manning mission last October.

JSA president Yasuhide Sakinaga has told the Philippine-Japan Manning Consultative Group chairman Eduardo Manese that JSA respects the position taken by the Filipino labor and management as the owners' group is "willing to provide support to all related activities developed by the responsible parties."

Sakinaga in his letter to Manese says: "At a time when the world economy is on the brink of possibly falling into a rather serious recession, following on the heels of the devastating terrorist attacks on New York and Washington, we consider it both timely and appropriate under the prevailing circumstances of the world today that both labor and management have jointly decided on such autonomy and that the Government stance is supportive."

An estimated 25,000 Filipino seafarers are employed on Japanese controlled vessels making Japan as one of the biggest employing nations of Filipino seamen.

Philippine manning industry leaders lobbied for a moratorium on wage hike because the current rate of an able-bodied Filipino seaman is already way above the salary being received by Chinese ship officers, considered the Filipinos closest competitors.

They believe the current benchmark of \$1,250 monthly wage for an able-bodied seaman under the ITF-Amosup TCC (total

crew cost concept) agreement, which has been slated to go up by another \$50 each year until 2004, threatens the marketability of Filipino seafarers.

Manese said that any increase would not only price out the Filipino crew in the market but it is also untimely as most owners have been hurt by ongoing global recession.

He stressed that the battle cry of most Filipino seafarers nowadays is "continuous employment, not a salary increase in these

very competitive and uncertain times."

Manese, who also visited Japan last month at the invitation of JSA, presented the Philippine crewing sector's united front for a freeze on wage hike.

Filipino seafarers have continually lose out to competition in international shipping with other nationalities such as the Chinese, other Asian neighbours and Eastern Europeans mainly because of the increase in wage cost.



**The battle cry of most Filipino seafarers nowadays is "continuous employment, not a salary increase"**

## Marine trust funds more training

THE International Maritime Training Trust (IMTT), the employer-employee institution established to administer fund and upgrade training, has funded about \$2 million to date involving more than 20 various institutions involved in seafarers education and training.

Donations of the Isle of Man-based IMTT, which was established by the International Maritime Employer's Committee (IMEC) and International Transport Workers Federation (ITF), have been in the form of equipment supply, books, videos and other training resources mostly to maritime schools and training centres in the Philippines. The training fund began in 1998 as part of a compliance effort to the IMO's STCW Convention.

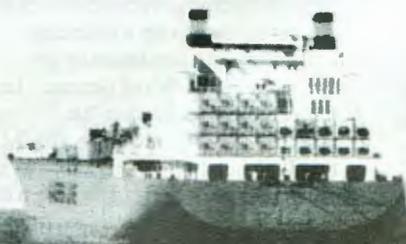
A reception held in Manila recently updated contributors to the trust and potential beneficiaries of IMTT led by Helmut Sallaba, trustee of the foundation that administers the Philippine concerns of IMTT. Sallaba said the trust is a "very good example of employers and unions together

achieving a result appreciated by everybody in shipping." Income of IMTT comes from the training levy of \$10 per seafarer onboard per month paid by employers under the AMOSUP-IMEC TCC (total crew cost concept) collective bargaining agreement.

Through the Philippine Maritime Education and Training Foundation (PMF), the counterpart of IMTT in the country, they welcome applications for grant from institutions or organizations offering education, training and upgrading to Filipino seafarers in accordance with the national and revised STCW requirements. The grant application proposed by the person or organization must meet the rules and criteria governing IMTT grants.

Vicente Aldanese, another trustee of PMF, said the foundation does "not apply hard and fast rules in the approval of grant applications at the PMF level. Our main criteria is that the application must be for the benefit and training of Filipino seafarers."

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# Certificate 'is not the sole answer'

THE international shipping industry should give more attention to neglected "unquantifiable" aspects of seafarers' personal and professional development, not just their skills and competence. This was the challenge lodged by Filipino Shipowners' Association president Carlos C. Salinas at the conclusion of the recent Asia-Pacific Manning & Training conference in Manila.

He said that while the industry largely focused on the outward manifestation of seafarers' qualities, other "unquantifiable factors" had a bearing on their employment. These included "personal attitudes, ability to relate to other people, adaptabil-

processes that they must undergo or the operational systems in which they are employed."

To date, according to Salinas, the industry's efforts have concentrated on "outward manifestations of the seafarers' particular qualities," saying this has become the reason "why we have devoted so much time to certificates, their recognition and validation and the need for them in order for the seafarer to be employed."

Because of this the implementation of the revised Standards of Training, Certification and Watchkeeping (STCW) Convention should not be the "end-all and be-all" of the system for ensuring compe-

# PMMA eyes German loan for upgrading

THE Philippine government is resuming an aborted deal to tap a financing agreement with Kreditanstalt für Wiederaufbau (KfW) of Germany for the improvement of the state-run Philippine Merchant Marine Academy (PMMA). A maritime industry official said that the government is willing to provide half of the amount as counterpart fund to the planned PhP1.7Bn (\$33.33M) upgrading project for the PMMA, once the country's leading maritime school.

KfW is said to be willing to have the fund available as soon as forwarding obligations for the soft loan have been given. The fund is also being processed as an official development assistance to boost the country's bid in retaining its leading position in the maritime labour supply market.

The PMMA, which has almost failed to comply with the standards set by CHED based on the revised STCW Convention due to years of neglect, was set to avail of the upgrading program through the German lender some years ago when the school's incumbent leadership declined to pursue the plan. With the declining teaching standards and report of corruption within the academy, policy makers have been pondering whether to retain the school or convert it into a naval academy.

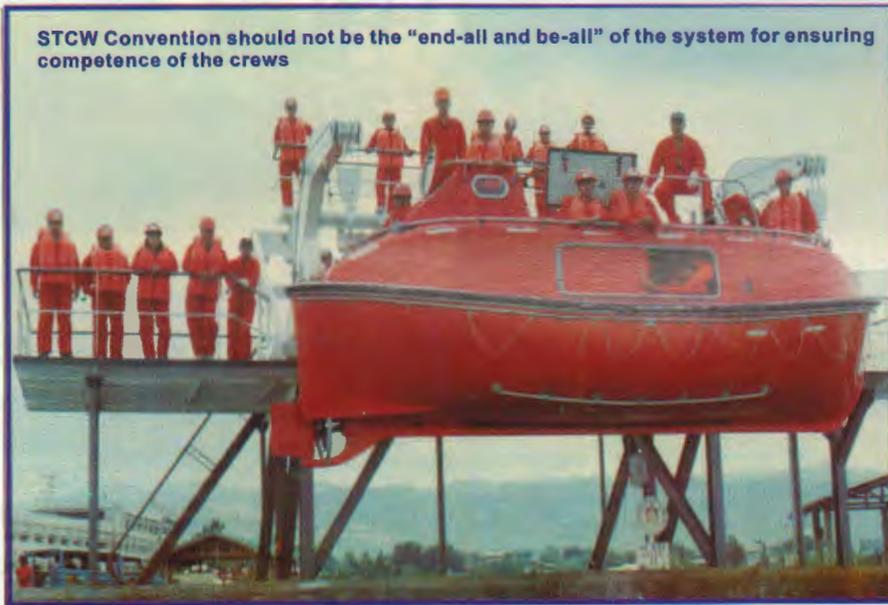
# Fraud certificates study is slammed

THE Philippine government has slammed a study conducted by Cardiff University in the UK portraying the country to be producing thousands of fraudulent certificates as if these were all seafarers' certificates of competency (COC).

A summary of responses from national administrations reporting fraudulent certificates, released by Cardiff's Seafarers International Research Centre, put the Philippines top with 11,808 cases.

Department of Labour and Employment secretary Patricia Sto Tomas questioned how the author of the research reached such figures since the cases reported were "birth certificates, marriage contracts, etc" as indicated by the author in meetings with Filipino delegates to the IMO maritime safety committee in December 2000.

STCW Convention should not be the "end-all and be-all" of the system for ensuring competence of the crews



ity, diligence, perseverance, devotion to career, and many other things that cannot always be inculcated through short training courses nor evidenced by periodic certificates."

Salinas said any number of documents could never truly do justice to factors of personal experience and innate talent that really make a good seafarer. Ship owners, managers and crewing agents alike recognize that the possession of certificates of competence will not really compel the engagement of a man if in their assessments, other factors such as work attitudes and emotional intelligence militate against employment on board a ship that stays at sea for months on end. "We must also make a priority area for change to the seafarers themselves, and not only the

tence of the crews. It must be seen as comprising only one stage in a long-term effort of developing a uniform, internationally-accepted and globally-standardized system for seafarers competency.

He reminds that the challenge for the industry is to "help our seafarers realize their pivotal role as one of the driving forces in the development and growth of the international shipping industry". He says that "shipping cannot continue without captains at the helm of our ships, and improvements in the industry cannot be possible without the wisdom of experience." Salinas added that the expected shortage in officers worldwide and oversupply of ratings, might be seen as a preview of the effects of failing to provide for professional and personal development of seafarers.

# Settling maritime labor disputes thru arbitration

VOLUNTARY Arbitration holds much promise in providing for a faster, less legalistic, and more efficient system of resolving differences between employers and employees, which will facilitate the creation of industrial peace and stability in the seafaring sector. It can help unclog the dockets and lighten the current burden of the government's quasi-judicial agencies, specially the NLRC, of resolving the thousands of labor cases filed each year. It can help reduce the currently overloaded officers and agencies of government to concentrate on the cases other than maritime labor disputes, and provide the avenue for the entry of experienced people from the maritime sector to directly settle disputes within the sector. And it can give the assurance to all parties, whether ship-owner, manning agent, or seafarer, that they are all interested in the fair and impartial resolution of any differences that may arise in the course of their dealings with each other.

## More effective machinery

The Filipino Shipowners' Association, however, also realizes that Voluntary Arbitration is not as simple concept to implement in the field of maritime employment. The special situation of the seafaring industry in the Philippines must be taken into account in designing any system of voluntary arbitration. In doing so special characteristics and conditions unique to overseas Filipino seafaring will not become the obstacles to the effective institutionalization and use of this mode of dispute-settlement for maritime labor disputes.

## Wanted: Highly qualified voluntary arbitrators

In voluntary arbitration, the parties choose their own arbitrator who will resolve the differences between them. This implies that for the process to be acceptable, the voluntary arbitrator must be a person who, from both sides of the dispute, is worthy of a certain measure of trust and confidence, and exhibits the kind of competence and independent-

mindedness that the parties feel essential to a fair resolution. Arbitrators, therefore, cannot be just anyone, but rather people who are known for integrity of character, fairness, and impartiality, and who have undergone the necessary orientation or training on their roles and duties as arbitrators.

Preparing the groundwork for a workable voluntary arbitration process therefore requires the Department of Labor to formulate a transparent procedure for selecting potential arbitrators based on certain personal criteria which would assure any prospective parties that the pool of voluntary arbitrators are a reliable and dependable group of people. These criteria could be based on their personal reputations within the closely-knit seafaring industry, or in their educational and professional backgrounds (e.g. retired judges or justices of the courts, academics). They must receive sufficient orientation and be familiar with the voluntary arbitration process as being a distinct alternative to the usual litigation procedures before the NLRC and the courts.

They need not be, and indeed should preferably not be, professional only. In fact, as much as possible their professional backgrounds should reflect the backgrounds that may be necessary in resolving the particular issues of the dispute they are asked to arbitrate. (e.g., doctor-arbitrators could be sought for medical claims cases, mariner-arbitrators could be brought in for cases relating to mariner's discipline on board). These "specialist" qualities would encourage to resort to voluntary arbitration because the parties could be more comfortable that their arguments and positions are being analyzed in a particularly-desired perspective.

A mechanism must also be provided which will help a foreign ship owner to make a meaningful and well-informed choice of arbitrator, if the ship-owner decides to submit to arbitration. Since the ship owner is based abroad, it is not likely to be familiar with the available arbitrators before whom the dispute will be submitted. There must be a way for them to either consult with or be represented by local counterparts or assess for themselves



the acceptability of the arbitrators, especially since the agreement of the parties to the choice of arbiter is one of the distinguishing features of the arbitration process.

## Clarifying the employer's side of the dispute

Normally, a dispute involves only two parties: the party who complains or files a claim, and the party against whom the complaint or claim is made. In labor cases, this is simply the employer and the employee. But in the special case of the Philippine maritime labor contracts, we must also contend with the fact that the manning agent is a third party who retains a separate personality for purposes of litigation, but is legally considered as a representative of the employer for purposes of enforcing liability.

This is why the manning agent possessed a separate entity together with the principal in a labor case; if it were merely a representative then there would be no necessity to implore it separately. A manning agent therefore cannot be presumed to also have the authority to represent the employer in the conduct of any litigation; similarly, it cannot be presumed that the manning agent has authority to represent the employer in any voluntary arbitration proceeding.

Though the current practice in maritime labor litigation complicates the participation of P&I Clubs in the litigation on behalf of the employer, thereby relegates the manning agent to a passive

role of witness providing documents and records (and yet remaining just as liable as the defendant-principal). If in the course of litigation, the vessel is enrolled with another manning agency, the simple device of requiring an Affidavit of Assumption of Responsibility for the previous agent's liabilities adds to the possibility that yet another entity may have to be considered as being on the employer's side of the dispute.

These issues of who represents and for what purposes, must be addressed in any prospective rules for voluntary arbitration of maritime disputes, because without the proper representation of the employer, there can be no valid agreement to arbitrate, and therefore the arbitration cannot legally proceed for lack of valid authorization. Moreover, it could pose problems to the orderly and efficient conduct of the arbitration proceedings.

The issue of representation of the employer is particularly relevant when we consider the possibility that a principal/ship-owner may transfer to another manning agent practically at any time, including during the pending of a voluntary arbitration proceeding. It would not be fair for the original manning agent who gets

involved in an voluntary arbitration proceeding, to be compelled to continue the arbitration process when it is no longer the authorized agent of the principal against whom the cases has actually been filed. Voluntary arbitration is unlike adjudication where one can file a cross-claim and compels the participation of another party who is an outsider to the arbitration agreement. What is needed here is for a new rule to provide the mechanism for succession of the new manning agent to the obligations to comply with the voluntary arbitration agreement executed by its predecessor. The rules must also seek to encourage continuity of the proceedings as well as continuance in office of the arbitrator as the person assigned to resolve the dispute, in order to prevent the change in enrollment from unduly impeding the voluntary arbitration process.

### Costs against benefits

For voluntary arbitration to become acceptable to the industry, there should be a cost-benefit equation which shows that arbitration is a preferable mode over the existing modes of labor dispute resolution. These costs and benefits should be

highlighted and communicated to all those in the seafaring sector, from the individual seafarer up to the corporate directors of multi-national shipping companies.

The benefits must be clearly discernible from the design of the rules and procedures. They may include such advantages as:

- (a) an expectation of speedier resolution of disputes due to a shorter and simpler arbitration procedure;
- (b) less reliance on technical rules of evidence and conduct of trial since the arbitrators need not be lawyers;
- (c) less expenses over the long-term, since the process is shorter, and once the arbitration award is given, there is no appeal and it is only in serious cases of fraud or abuse that the award can be declared null and void; and
- (d) access to a pool of arbitrators who may have experience and expertise in the field, so that the dispute can be resolved as fairly and equitably as possible in the mind of the parties.

The voluntary arbitration rules cannot merely be a reflection of the compulsory arbitration procedures; otherwise there would be little difference between the two



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modes and therefore few incentives to choose one over the other.

Aside from being manifested in the rules, these benefits of the arbitration mode must also be disseminated to all parties concerned so that they will be used. Every seafarer who sign an employment contract should be apprised of this option from the very start of his employment; every manning agent or principal who receives a demand letter from an aggrieved party should immediately offer this recourse if it is unable to accede to the claim. Even the government should always remind all sub-sectors in the industry that this option should be their preferred option for resolving claims, and the government process should be the last resort. There is a need to re-orient the attitudes of everyone in the sector, away from the idea that litigation before the NLRC or the court is the only means of securing or defending claims. Arbitration should be seen as a private-sector led and non-governmental initiative that provides an acceptable and efficient alternative.

### Preparations for institutionalization

For voluntary arbitration to become well-entrenched in our systems of resolving maritime labor disputes, there is a need to undertake a lot of groundwork. Setting up an entire system of dispute-settlement is not merely a matter of writing or re-writing the rules and promulgating procedures for voluntary arbitration. Attention must be given to making the surrounding facts and circumstances of our present system of resolving maritime labor disputes accommodate and reinforce the industry's use of voluntary arbitration.

One major step that could be undertaken is to expand the application of voluntary arbitration to all types of maritime labor disputes. Instead of being limited to disputes in connection with the interpretation or implementation of collective bargaining agreements following exhaustion of the grievance procedures under the CBA, or implementation or enforcement of company personnel policies. Seafarers who resort to the NLRC processes are frequently those who are not covered by CBA and precisely file their cases because they believe that there is no other recourse available to them. Making voluntary arbitration available to these non-unionized seafarers would therefore assist in increasing its use as a means of resolving maritime labor disputes and should be encouraged.



One major step that could be undertaken is to expand the application of voluntary arbitration to all types of maritime labor disputes.

The second major step is to create and maintain a specialized program for training arbitrators in the maritime labor field. The training must focus on the role of the arbitrators and voluntary arbitration in the entire labor relations system of the country, and orienting them on how the maritime labor sector operates at both the national and international level. One of the purposes of the program should be to create a mixed pool of professional arbitrators drawing upon all the related fields (lawyers, doctors, ship captains, corporate executives, seamen, union officials, etc.) So that any complicated maritime labor issue can always be handled by an arbitrator or panel of arbitrators.

The third major step is to ensure that the existing procedures and processes in government agencies charged with addressing or adjudicating maritime labor disputes also encourage people to resort to the voluntary arbitration process. This could be done by making the failure of voluntary arbitration a condition precedent for the filing of certain types of cases, so that the case could be dismissed if the condition is not satisfied. This is especially applicable in cases covered by CBA or where the contract of employment specifies resort to voluntary arbitration. A similar rule has long been put in place in court litigation, where certain cases are required to have undergone *barangay* conciliation proceeding before they can be filed in court. Similar rules would help promote the use of voluntary arbitration as an alternative to the regular NLRC processes.

### Conclusion

These are only a few observation and suggestions that we have for the revision and

refinement of our existing system of voluntary arbitration. What we should explore jointly, between government and the private sector, is the possibility of seeking the assistance of international bodies in creating an acceptable and efficient system of voluntary arbitration to supplement the existing compulsory arbitration process. Voluntary arbitration has been put to good use in other countries to resolve different types of commercial disputes, at both national and international levels. In fact, the International Chamber of Commerce, which operates the International Maritime Bureau in Kuala Lumpur, also acts as an international arbitration institution for commercial disputes. Perhaps we can seek their assistance in re-designing our voluntary arbitration system and training people to man it.

Voluntary arbitration can be developed as a largely privatized mode of dispute-settlement, where the parties have the flexibility and freedom to resolve their disputes on their own without having to go through adjudication by government agencies. The government's role in such an arbitration system would only be to ensure enforcement of the decision or judgment which the parties had previously agreed to comply with when they entered into the arbitrated agreement, as well as to prevent abuses of the system. Assisting in the development of this system can be seen as the private sector's contribution to engendering industrial peace and stability and promoting the development of the Philippine seafaring industry.

*Excerpts from a paper delivered during a two-day conference on "Case Adjudication and Seafaring in the Global Setting" at the AMOSUP Seamen's Centre on 15-16 November 2001*

# No way but up

By Windsor John Genova

AS domestic trade slowed down in 2001 due to an overall dismal performance of the economy, local ship owners have shunned fleet expansion. Emerson Lorenzo, director of the Maritime Industry Authority's Domestic Shipping Office, best described the growth of the interisland shipping fleet: "you can count them by the fingers."

True enough, vessel acquisition was very minimal last year. Among the major lines, only Negros Navigation Co. Inc. (NN) managed to launch a cargo vessel in November 28 - the *m/v Nossa Senhora de Fatima*, which it acquired from Portugal. The biggest operator WG&A Philippines never acquired any ship. Its last new bottom was the SuperFerry 14, acquired in October 2000.

Actually, a reversal of expansion is happening, according to Lorenzo. "Shipping companies are rationalizing operations especially in the deployment of vessels. Some are disposing of their tonnages," he said. Both liners and trampers sold vessels because the demand for shipping services is less. WG&A disposed of its SuperFerry 3, 6 and 10. Despite the trade slowdown, shipping companies are coping. WG&A, Sulpicio Lines, Solid Shipping, Lorenzo Shipping remain as the dominant carriers.

Newcomer NMC Container Lines is also doing fine with its two vessels that carry 250 TEU each. "It could now compete neck to neck with the big players," Lorenzo said of NMC, which started plying the domestic trade in 1997. This year, Lorenzo expects shipping business to improve. "There is no way but up," he sums up his forecast. If there is any indication to prove his prediction, it would be NN.

Meanwhile, the publicly-listed shipping company plans to buy two more second hand vessels this year. "We are considering two additional cargo ships with the same capacity as the *Fatima*," revealed Seumas Gallacher, NN's chief adviser to the president. To go with the new bottoms are additional back-up equipment such as forklifts, prime movers, container vans and trucks, he said.

At present, NN complements two other ships with *Fatima* in the Manila-Visayas trade, including the *San Sebastian* and the *Connie II*, which can carry a combined 200 TEU. The *Fatima* can carry 160 TEUs.

Eight other cargo-passenger vessels give NN an 11-12 per cent share of the domestic cargo market. Gallacher said this share is an improvement from NN's 10-11 per cent market share in 2000. In the passenger market, NN commands a 38-40 per cent share. Gallacher explained that *Fatima* was acquired not only to boost NN's freight service but also to help enhance trade and industry in different parts of Visayas and Mindanao.

He added that NN plans to expand its cargo fleet because despite the global economic pressures, the company sees a positive growth in business this year. "We are here to take business that no one is giving," said Gallacher in explaining the cargo fleet expansion plan. "The growth is on the cargo side. There are tons of cargoes out there." Gallacher also paints a rosy picture for the company this year. He expects a profitable bottom line as a result of the improvement in operating finances.

The NN official noted that in 2000, the company has to borrow P200 million from its shareholders for operational expenses. However, NN did not borrow at all last year and used solely its revenues with still more left. Among the investments of NN in 2001 to upgrade passenger services were the renovation of its passenger terminal complex at Pier 2 in Manila North Harbor, the establishment of new booking offices and passenger ticketing outlets and the

computerization of its ticketing system. "We continue to look for innovations to upgrade our products and services. We've only just begun. Negros Navigation is on its way back to become absolutely the premier domestic shipping company," Gallacher declared.

Lorenzo said that another positive sign of the new year is the dismissal by the Court of Appeals of shippers' petition to scrap the deregulation policy of Marina. He said this development would now allow shipping companies to set the rates they feel are commensurate to their service. It will also allow greater competition among carriers to improve shipping services.

Last July, the Distribution Management Association of the Philippines petitioned the CA to nullify Executive Order (EO) 213 and Marina Memorandum Circular 153 to prevent shipping lines from unilaterally imposing a 20 per cent increase in freight rates. EO 213 deregulated freight rates for all commodities, except non-containerized basic commodities and any commodity shipped in a route operated by a sole operator. MC 153 reversed the burden of proof needed for a freight increase from the carrier to the shipper. It requires the cargo owner to prove that the rate increase was not justified, or that a lower rate increase was justified.



NN has to borrow P200 million from its shareholders for operational expenses

# Solution to substandard shipping

SEVERAL solutions have been recommended to lick the problem of substandard ships that has been plaguing the international maritime industry. Peter Morris, the chairman of the International Commission on Shipping (ICONS), has recommended that operators of quality shipping must be given recognition, reward and support.

He made the recommendations during the 4<sup>th</sup> LSM Asia Pacific Manning & Training Conference in Manila, stressing that quality shipping and their operators should lead the campaign for compliance to international conventions that would lead in isolating substandard operators including their ships and most importantly their customers. He said cutthroat, destructive competition in freight rates is the underlying cause of substandard shipping, crew exploitation and crew abuse. Morris stressed that substandard operators can avoid ship safety and crew competence requirements by shopping around among flag states, class societies, insurers, manning agencies and port State control authorities without being held into account.

Morris has proposed that beneficiaries of substandard shipping, particularly their customers, charterers and shippers must be identified and brought to account. Morris, whose ICONS conducted a worldwide inquiry into substandard shipping with its report

## PNOC aborts privatization

THE state-run Philippine National Oil Company (PNOC) has aborted the sale of its shipping arm, and instead planned to expand its operations. The company plans to acquire new tonnage that would boost the current fleet being operated by the subsidiary PNOC Shipping & Transport Corp (PSTC).

An official from the company said the PSTC board of directors has approved to buy a ship through a loan available from the state-owned Development Bank of the Philippines. PSTC began to phase out its ageing fleet in mid 1990s including those trading overseas by selling them, and



Cutthroat, destructive competition in freight rates is the underlying cause of substandard shipping, crew exploitation and crew abuse

presented last March at the APEC symposium in Sydney, has also suggested that port State control actions must be toughened and consistently applied.

There needs to be an urgency of action on the part of the international organizations involved in labor standards and regulations such as ILO and IMO and the respective industry organization, he suggested.

"Initiatives that take 5-10 to 15 years to achieve and implement are literally useless to a seafarer suffering at

sea today." Morris has turned to the ICONS report which has made 43 recommendations, which the commission believes to be "practical and achievable, most within 12 months and most of which require only a will on the part of individual administrations." Once implemented they will eradicate almost all substandard shipping and its associated practices, according to Morris.

The ICONS recommendations are in two main groups – one dealing with port State control and the other with crew related matter. They include action to assist the elimination of fraudulent certificates and action to ensure compliance with ILO Conventions, support for abandoned seafarers, prohibition of blacklisting, job-finding fees and transportation charges.

ICONS also further the regulation of manning agents and establishment of independent seafarer grievance agencies to provide accessible, fair, independent and speedy resolution of seafarer employment claims.

The ICONS chairman claims that worldwide response to the commission's report has been encouraging such as those from BIMCO and members of the Maritime Safety Committee of the IMO. The reaction of the Australian, US, Canadian and Singaporean governments has been positive, said Morris.

has vowed to leave ship owning once it disposed of the remaining domestic ships. At present, PSTC operates five tankers servicing the country's three oil majors – Caltex, Petron, and Pilipinas Shell – in the domestic trade.

PNOC president Thelmo Cunanan said the company's decision to resuscitate its shipping arm is part of their efforts to revive the commercial viability of all its subsidiaries. The two possible prospects of PSTC are the construction of LNG terminal in Bataan and the full commercial operation of the Malampaya gas project in Palawan in January in which PNOC maintains a 12 per cent share.

# Bareboat changes to boost flag

THE shrinking Philippine-flagged vessels trading overseas and the displacement of Filipino seafarers on board foreign-flagged ships have prompted the government to initiate changes in its ship register. It wants that the move to overhaul its bareboat chartering rules to provide an alternative to revive the fleet and create much needed employment. But relying on bareboat chartering as a mode to give the national flag a boost is a concern that has created a fuss after the Maritime Industry Authority (Marina)

lines have also claimed to reduce the cumbersome documentary requirements.

A leading point of contention, however, is the imposition of the ship-owning requirement, which many in the industry feels that is no longer necessary. "Since very few Filipino operators in the overseas trade own a ship now, the requirement has to be eliminated," says Capt Reynaldo Casareo, president of Cargo Safeway Corp. At the same time, he insists that Marina should not dictate on the

the ITF-interdiction issue to kowtow with a few charterers trying to preserve their monopolistic stance on the bareboat chartering program.

As a solution to the interdiction problem, some charterers have proposed to give the owners a certain option to choose their top officer by stipulating such option in the revised rules to be issued. Rodolfo Pamintuan, chairman and president of Ace Navigation Co, says giving the owners the privilege to choose, the master for instance, will balance the position of the flag from the parties involved. Pamintuan said: "There is nothing wrong if a registry being branded an FOC as long as you comply with all the standard requirements on board including the existence of collective agreement." He says the notion that FOC ships are substandard no longer holds water since there is the ISM and revised STCW to follow that every port state control must enforce. "An owner chooses to register the ships with that state because he thinks he will benefit from it regardless of whether the registry is an FOC, believing that should give him the peace of mind." Pamintuan added.

Capt Emmanuel Regio, president of International Maritime Association of the Philippines (Intermap) — a group of Filipino ship managers and charterers — agrees with Pamintuan. Regio believes that if the Marina is serious in marketing the Philippine flag to attract more ships it should try to be more flexible in crewing requirements like what Singapore has done. Under the current rules, Philippine-chartered ships require a complement of full Filipino crew. Singapore is said to be allowing foreign officers under its flag whenever necessary. But the bottom line is to improve administration of the bareboat chartering program. "We are looking at better way to administer the program", according to Marina overseas shipping director Brenda Pimentel. She says Marina wants to pursue a "more realistic" approach to the scheme in revising the rules, stressing that Marina wants to project the Philippine flag as an employment haven that would open up opportunities to more Filipino ship managers and office personnel.



As a solution to the interdiction problem, some charterers have proposed to give the owners a certain option to choose their top officer.

finally decided to amend its rules.

The recent series of consultation with industry players has greeted varied reactions ranging from the conservative of retaining the scheme to a radical change of total liberalisation. Under the proposed rules, a Filipino owned shipping company or at least 60 per cent of the outstanding capital stock that has at least one permanently registered ship flying Philippine flag can avail of the benefits of bareboat chartering. With the required capital of PhP7 million, Marina is to remove limitation on the slots a company can charter by allowing it to post a cash bond of P200,000 per ship. The bond is to answer for payment of the 4.5 per cent withholding tax, settlement of crew salaries and others in the event that the company failed to settle the same upon deletion of the ship from the register. The Marina proposed guide-

amount of capital to be infused since chartering is a "business decision" by the company. This is probably so because the Philippine charterer provides minimal role in the operation or management of the chartered vessel. Its main obligation involves manning such as deployment and repatriation of the crew including payment of the monthly tax on the charter hire. Casareo wants a total liberalization of the bareboat scheme.

While Marina attempts to market the flag to generate employment, Filipino ship managers and charterers want to get assurance that the government could protect bareboat vessels from ITF interdictions. Experienced has taught that when Philippine-flagged ships surged in late 1980s, ITF launched their predatory acts despite failure to support their claims that the registry is just a flag of convenience. Consequently, Marina then rode on

# No illegal dismissal if by 'mutual consent' of the parties

*Management has the right to expect good performance and adequate work and diligence from its employees. So long as this right is exercised in good faith to advance its interest and not for the purpose of defeating or circumventing the rights of employees under the laws or valid agreements, such exercise shall be upheld. Where there are valid grounds to pre-terminate a contract of employment and where it appears that complainant himself agreed to such pre-termination, then the discharge of the latter is legal and was in fact reached through mutual consent.*

Complainant was hired as chief officer on board the *MV Roustel*. Less than a month after he commenced work, he was served a notice of dismissal and repatriated after being paid one months' salary. Respondents allege that complainant's dismissal was due to his inefficiency and poor work performance. They claim that complainant showed lack of interest in his work and exhibited signs of physical frailty. The master warned him twice to no avail.

The necessity of pre-terminating his employment contract was discussed. Thus, through mutual consent, both parties agreed to such pre-termination. Complainant claims,

however, that his dismissal was without just and valid cause, and that he was not afforded due process. He maintains that he is competent for the work involved and that the pre-termination was not made through mutual consent.

The Labor Arbiter sustained seafarer's claim and declared that he had been illegally dismissed. **NLRC DECISION**

Genilo, T. F., Commissioner: Seafarer's claim has no basis. Respondents had valid grounds in pre-terminating complainant's contract of employment. The safety of the vessel, the crew, and of the officers is foremost and if the chief officer can no longer provide

such assurance because of his age and physical condition as in this case, the remedy is to pre-terminate the contract. In this case, complainant's contract was pre-terminated by the foreign principal predominantly on the grounds of safety.

It was observed that his physical condition was not "sufficient" to handle the heavy workload required of a chief officer. The observations of the foreign principal were affirmed by the master of the ship who noted complainant's lack of interest in his work and his physical frailty. Lastly, it appears that complainant did not make any objections to the pre-termination of his contract because he affixed his signature in the crew agreement, which stated that the reason for his discharge is by "mutual consent." This was also noted in his seaman's book. Complainant was therefore not dismissed illegally and his termination was reached through mutual consent.

**Estrabon vs. PACC Shipping Limited and/or Faversham Ships Limited, NLRC CASE OFW (M) 00-05-00298-30 (CA No. 027825-01), 27 August 2001**

## Claim for disability filed five years after denied

*Seafarer was repatriated five years earlier due to illness. He was treated and eventually found fit to work. For five years, he followed-up his redeployment until such time as his redeployment was finally denied due to "over age". He had himself medically examined and found to be suffering from hypertension and blockage. He filed for disability benefits. The National Labor Relation Commission ruled that he is not entitled to benefits as he was found fit to work for his previous illness and any claim filed at this time has pre-scribed as it was filed beyond the three-year period.*

The respondent hired the complainant as motorman on board the *M/V Medallon*. Several months later, he suffered a mild stroke while working on board said vessel. After being hospitalized for two days, he was discharged, with the attending physician's recommendation that he be repatriated back to the Philippines for further medication. He was subsequently repatriated back to the Philippines and upon his arrival he was brought to respondent's accredited clinic.

The attending physician, in his first and second medical evaluations, found complainant unfit for work. His third and final evaluation, however, pronounced complainant fit to work. Thereafter, complainant started following up his deployment abroad from respondent.

After five years of continuous follow-ups, he was finally



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## CASE DIGEST



informed that he could not be deployed because he was already over-aged. Subsequently, complainant consulted with a physician who declared that he was suffering from "Grade 5 Impediment" due to hypertension and right bundle branch block.

Thus, he filed a case against respondent for recovery of sickness allowance and disability benefits. The Labor Arbiter denied complainant's claim for the reason that his sickness

cannot be attributed to the respondent and because the claim has already prescribed having been filed after the three year reglementary period. NLRC

#### *Decision:*

It is unconvincing that after being pronounced fit for work five years earlier, a subsequent diagnosis that complainant is suffering from grade I impediment may still be attributed to the respondent. The health of an individual primarily lies on how he takes care of

himself and maintains his diet.

Five years after disembarkation, it is hard to point an accusing finger at respondent for any health deterioration on the part of the complainant. Complainant's failure to land a job on board any of the ships of respondent agency's client even though he was fit to work was well explained. Complainant was too old to board a ship. This is something beyond respondent's control, and for which it may not be held liable.

As to the issue of prescription, the allegation that complainant was promised employment, unless substantiated by evidence, cannot overturn the prescriptive period provided by law.

**Legaspi vs Denklav Maritime Agency, OFW-99-11-70-30 (CA No. 026192-00), 30 July 2001.**

*Ruben T. Del Rosario is managing director of Del Rosario Pandiphil Inc. He is former president of the Maritime Law Association of the Philippines and is president of the Philippine Maritime Voluntary Arbitrators Association Inc. Del Rosario is correspondent of several P & I Clubs.*

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# PPA awards Batangas phase 2

THE Philippine Ports Authority (PPA) is to resume its delayed bid to transform Batangas port into a premier port in Luzon with the implementation of Phase 2 of the port's development project this year. Following the recent approval of the P2.9-billion fund for the project by the Japanese Bank for International Cooperation and the Court of Appeals' September order for PPA to buy and take over private lands covered by the expansion project, PPA general manager Alfonso G. Cusi signed last December the notice to award the contract to the winning bidder Shimizu/FF Cruz joint venture.

Tomas B. Carlos, the project director, estimated that mobilization of workers would take place in the first quarter of 2002. The marine works for Phase 2 involves the reclamation of 64 hectares of foreshore area north of the Batangas port for the construction of an international container terminal. The terminal will have a berthing space of 450 meters, a depth of 13 meters, and a 12-hectare container yard. A seven-meter deep domestic general cargo facility will also be constructed with a berthing length of 470 meters. This will be established in a 2.8-hectare reclaimed land. Civil works involve the construction of a road network, cargo railway yard, pavement, main building, container freight station, ancillary facilities, water supply system, drainage system, electrical system, telecommunication system, sewerage system, waste/sanitary treatment system, navigation aids and weighing bridge.

The other component of Batangas port Phase 2 is the construction of an 892-meter port access road and 364-meter fly-over that would ensure the smooth and efficient flow of traffic to and from the port. The road and fly-over will also ease traffic congestion in the business center of Batangas City. The traffic is being blamed for the low cargo and passenger transportation efficiency at the Batangas port.

FF Cruz marine division vice president Juan C. Sta. Ana said the marine and civil works would take 1,080 days to finish or until 2005. The road and fly-over costing P145 million will take 540 calendar days to finish.

PPA corporate communications manager Val Vicente sees no more hindrance to the implementation of the project stressing that private landowners have agreed to sell their properties to PPA for P400 per square meter. PPA has allocated P500 million for payment of the land.

Phase 2 was stalled for almost three years



The Traffic is being blamed for the low cargo and passenger transportation efficiency at the Batangas port.

due to the legal dispute in the valuation of land covered by the project. The PPA valuation ranged from P319 to P400 per square meter while the landowners asked for a whopping P5,000 per square meter. The PPA found the price too high and the owners raised the issue to the Batangas Regional Trial Court. The court ruled in favor of the landowners by setting the price of the land to P5,500 per square meter but the PPA appealed the decision to the Court of Appeals (CA). On July 30, 2001, the CA set aside the decision of the lower court paving way for the hearing of the appropriate land valuation of the affected properties. In addition, the CA promulgated a resolution on August 27, 2001 directing the lower court to issue the writ of possession to enable the PPA to take over the land and proceed with the project. The writ was issued on September 11, 2001.

It was not the first time the PPA got delayed in implementing Batangas port. In

1993, homeowners in Barangay Sta. Clara opposed the Phase 1 of the port modernization project. It took PPA over a year to relocate and compensate the affected families before it was able to start rehabilitating the domestic port.

Phase I involved the expansion of berthing spaces and back-up areas of Batangas port. It also involved the construction of a passenger terminal building and elevated covered walkways, where passengers can pass through to get to the ferry without getting exposed from the heat and rain. The government even extended the South Luzon Expressway to connect Metro Manila to the Batangas port.

It took the PPA over a year before being able to start Phase 1 and completed it in 1998. With Phase 2 underway, PPA hopes to make the Batangas port an alternative to the congested Manila North Harbor and further spur economic activities in the Calabarzon area. *Windsor John C. Genova*

## Loopholes on productivity rate

INTERNATIONAL lines calling at Philippine ports may end up paying the 15 per cent increase in stevedoring rates even if the new standard productivity level, which was revised last year as a condition for the increase, is not met by port operators. The Philippine Ports Authority (PPA), which set a new procedure in computing productivity level at the Manila South Harbour and MICT, issued a memorandum allowing terminal operators to charge the hike if shipping lines failed to submit the amendments in discharge list before

loading closing time (LCT).

The Association of International Shipping Lines (AISL) said that if amendments are submitted after LCT the actual time lost should be deducted. AISL general manager Julio Garcia said the PPA memorandum is "totally unacceptable and has created more problems than it has resolved."

PPA issued the memo to set a formula for computation, which will serve as basis for the 15 per cent increase in stevedoring charges granted to Asian Terminal Inc and ICTSI.

# N. Harbor modernization gains headway

By Windsor John C. Genova

THE modernization of the Manila North Harbor is expected to finally push through this year simultaneous with the equally delayed development of an international port in Batangas, phase 2 of the project.

The PPA expects to bid out the North Harbor modernization in the first quarter, when the Coordinating Council for Private Sector Participation (CCPSP) completes the terms of reference (TOR) for the said project. The PPA and the

systems to handle newer and larger ships.

The project does not include the relocation of thousands of squatter families and will be implemented in three phases to minimize disruption in cargo handling operations and passenger movement. Phase 1 will cover the Marine Slipway, Piers 14 and 16, and Slips 13 and 15. Phase 2 covers Slips 5, 7, 9 and 11 plus Piers 6, 8, 10 and 12. Phase 3 covers Pier 2 and 4 and Slip 3.

ger and cargo terminal at par with international standards. The EO allows one contractor to modernize and operate major domestic ports.

The consortium, led by Manila International Container Terminal operator International Container Terminal Services Inc., submitted to PPA an unsolicited proposal to undertake the project. However, PPA rejected the proposal as government policy preferred solicited bids. The Coalition for Ports Modernization and the Philippine Chamber of Commerce and Industry also opposed the EO on fears that port services would be monopolized.

EO 59 was replaced by EO 308 in October 2000. EO 308 allows two operators for North Harbor. It divides the port into two terminals. One operator will run Slip 0 and Piers 2 to 12 while the other will run Pier 14 and 16 and the Veterans Shipyard.

To settle the issue on the appropriate number of operator that should run North Harbor, the PPA commissioned last year British consultant-firm Halcrow Group Ltd. to review the modernization and privatization process and develop a viable operational design, which met the goal for competition within the port. The consultant recommended one operator because it is more viable than two operators. Halcrow believes that two operators will result in higher investment costs and disparate returns on investments.

Likewise, it reported that one operator would ensure over all control, better utilization of facilities and more efficient use of capital while two operators will lead to duplication of assets and resources, inefficient use of land and problems during rehabilitation phase.

Finally, PPA decided to have three operators running the port. The North Harbor project traces its beginnings in 1993 when the PPA issued bid documents for the privatization of the port. The PPA introduced the project to port users, port workers and cargo handlers but it was met with opposition. Port workers staged strikes and secured a court order deferring the privatization. The project has not moved since.



Streamlined procedures and automated systems to handle newer and larger ships

CCPSP signed last November an agreement for the preparation of the TOR.

The Council is a special government agency under the Office of the President. It assists government agencies in identifying, preparing and evaluating projects to be supported by the private sector. The project will be undertaken on a build-operate-transfer (BOT) scheme. It involves a series of reclamation, improvements, merging of piers, construction of a new quay, passenger terminal buildings, reinforcement/repair works and rehabilitation of existing facilities. An estimated 3.1 million cubic meters of silt will be dredged to increase draft. Other components of the project are the installation of new and modern cargo handling equipment, as well as streamlined procedures and automated

The project, which aims to improve services to nine million passengers and 16 million tons of cargo that pass annually through the North Harbor, is expected to take about three years to complete and three operators will be allowed to run the port thereafter.

Previously, the PPA considered one and two contractors to develop and manage the North Harbor in place of the three existing cargo handlers. The Authority planned to award the project to North Harbor Consortium without public bidding in accordance with Executive Order No. 59 that Malacañang issued in December 1999. The consortium composed of North Harbor cargo handlers, labor, shipping lines and terminal operators was supposed to raise funds to manage, operate and transform the North Harbor into a modern passen-

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# How safe is sea travel in Philippine waters?

TO answer this question, let us first consider major sea accidents and their statistics. In 1986, the worst peacetime sea disaster since the sinking of the Titanic happened when *MV Doña Paz* collided with *MT Vector* with at least 2,903 persons dead or missing brought about the raging fire when *MT Vector* spilled 8,800 barrels of oil off Tabas Strait. The Guinness Book of Records even considered this incident as the worst disaster surpassing Titanic and giving an estimate of 4,500 dead or missing. In 1994, *MV Kota Suria* collided with *MV Cebu City* off Manila Bay with around 150 people dead or missing. In 1998, *MV Princess of the Orient* sank during an inclement weather with an estimated 150 persons dead or missing.

Based on Coast Guard statistics, the following recorded sea accidents comprising of large passenger/ cargo vessels, fishing vessels, fishing bancas and motorboats, took place from 1996 to 2000:

In answering the question of "How safe is sea travel in Philippine waters?," the statistics speaks for itself. An average of one accident occurs every two days. This may not be too bad compared to road accident statistics. However, the numbers of casualties are alarmingly high. In 2000, for example, a total of 3,050 persons figured in 161 sea accidents. This means that in every accident, an average of 19 persons either crew or passenger, are involved. Considering the rescue percentage, an average 90 per cent of

	1996	1997	1998	1999	2000
Number of Accidents	119	59	210	263	161
Casualties/Missing Persons	120	68	335	350	279
Persons Rescued	1,434	347	1,389	3,828	2,771

persons in sea accidents are rescued and 10 per cent are casualties or missing. Of the average 19 persons per incident, two persons on the average are declared dead or miss-

ing. The only statistics worth appreciating in the above data is that the rescue rate of 90 per cent proves the efficiency of search and rescue. As of May 2001, the Philippine Coast Guard (PCG) conducted 25 search and rescue missions, rescuing 376 persons with 94 dead or missing.

## Maritime safety concerns

Sea safety is the concern not only of government agencies involved in marine safety such as the PCG and Marina, but also by the ship owner, the crew, class society (if classed) or the private surveyor,

and the riding public.

Most of the vessels engaged in domestic trade are bought second-hand in Japan. These vessels average from 15 to 20 years old. It is no wonder that the perennial notion that the Philippines imports second hand vessels (and even vehicles - those unsafe buses and trucks plying EDSA comes to mind) from other countries gives credence to the term "floating coffins" when speaking of marine transport in the Philippines. It is a pity that ship owners and other in-

vestors are not given the incentive to import new vessels and make domestic marine transport a worthwhile economic business.

While government provides for regulations to ensure the safety of these vessels, ship owners have the primary responsibility to follow these regulations. Scheduled drydockings, for example, ensure maintenance of the ship's hull. Authorized capacity of passengers ensures that each passenger has access to the number of lifesaving equipment (i.e. lifejackets, lifecraft, buoyant devices) aboard a vessel. Type-approval and accreditation of lifesaving and fire-fighting appliances by the coast guard ensures that his safety equipment will indeed save the lives of persons during sea accidents.

Though overcrowding of passengers or excess of authorized capacity may not be a primary reason for the occurrence of sea accidents, it has contributed to the number of casualties. This is because a vessel cannot provide the number of lifesaving devices for passengers in excess. The blame falls with the ship owner for allowing such a practice and in part, with the riding public. Last-minute passengers buy tickets aboard the vessel or from scalpers. Persistent passengers beg ship operators to allow them to board the ship even when it is full. These types of passengers do not appear on the ship's manifest and are not qualified for insurance benefits when an accident occurs. It is for this reason that DOTC DO 2000-25 provides for guide-



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There have been instances when small vessels are used to carry passengers even though such vessels are only authorized for carrying cargo



lines for checking unauthorized passengers onboard domestic vessels.

Further, there have been instances when small vessels are used to carry passengers even though such vessels are only authorized for carrying cargo or for fishing. This year, the Philippine Coast Guard embarked on a campaign to register motorboats three gross tons and below. PCG Commandant, Rear Admiral Reuben S. Lista, has directed all District Commanders to comply within six months the registration of all undocumented vessels in their area of responsibility. In addition to this, all motorboats will be required to be marked accordingly (i.e. "F" for fishing, "P" for passengers) to ensure that the riding public will know whether the vessel he or she is boarding is indeed authorized to carry passengers.

Based on investigation conducted by the PCG, most accidents are caused either by "human error" or "force majeure". Competency of seafarers is therefore a contributory factor in minimizing sea accidents. During adverse weather conditions, the PCG has provided for guidelines on movements of vessels during heavy weather (Memo Circular 04-96).

### Government responsibility

Government agencies involved in maritime safety have equal responsibility of providing for regulations and guidelines that will ensure the safety of the ship, the crew, the cargo and the riding public. In 1998, after the sinking of MV Princess of the Orient, the Department of Transportation and Communications, in response to the Senate

Blue Ribbon Committee hearing being conducted, issued Department Order 1180 providing for the deputizing of the Coast Guard by MARINA, specifically on the registration of all domestic vessels. Because of this, the PCG is now registering all domestic vessels. This, however, proved inadequate in providing for a safer marine transport environment. Problems cropped up with PCG not being able to regulate any changes in existing regulations as this is not provided for by the Department Order, on finding faults to regulations that the PCG did not formulate in the first place.

The issues include interpretation of regulations between the two agencies, prioritizing PCG functions rather than deputized functions because of limited budget, overlapping functions and numerous other problems that tend to crop up from perceived short-term solution in addressing organizational lapses divulged during the

Senate hearings. This organizational problem, if left unresolved, will hamper government's ability to address the issue of maritime safety effectively.

Despite the shortcomings, the PCG tries its best and comes up with regulations to further enhance the enforcement activities on maritime safety. As mentioned, innovations are made such as the creation of coastal teams that would scour the outlying coastal areas and register undocumented motorboats within six months. This tactic brings public service direct to the homes of the people rather than exempt the marginalized motorboats owners to come to the PCG for the needed registration of their craft.

Is sea transport safe? It may be safer than land transportation, but safety cannot be measured by having less casualty statistics. It is measured by the degree of safety nets and safety consciousness of all the key players (government agencies, ship owners/operators, surveyors, vessel crew and the riding public) involved in the maritime industry. Sea transport will be safe when all those concerned on maritime safety get their acts together and cooperate to pursue the PCG's goal of "zero accidents" in Philippine waters. *From the Philippine Coast Guard*



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# Philippines re-elected to IMO Council

FOR the third consecutive time, the Philippines has been re-elected to the 32-seat Council of the International Maritime Organisation (IMO), the London-based UN agency responsible for the world's shipping industry and marine environment. The successful bid of the Philippines at the election held on November 23 marked the culmination of a year-long campaign undertaken by the Department of Foreign Affairs' Office of the UN and International Organisations, the Philippines diplomatic mission in New York and Geneva, and Philippine embassies, including the London mission headed by Ambassador Cesar B. Bautista.

The Philippines received 102 votes out of 123 ballots, landing on sixth spot in the list of 16 IMO-member states elected to the council. The impressive showing of the Philippines was seen as a recognition by other IMO member states of the country's importance in the world shipping industry, being the supplier of the largest number of qualified seafarers to the world's merchant fleet.

The IMO Council is mainly responsible for considering the draft work program and budget estimates prepared by the Secretary General, and reviewing the reports of the various committees and sub-committees related to the general interest and priorities of the IMO. In his statement introducing the Philippine candidature for re-election, Amb. Bautista

stressed that the focus and concern of the Philippines would be enhancing the quality of training, welfare and safe working conditions of seafarers of all nationalities. He said this central agenda of the Philippines during its term in the council is consistent with the theme of the forthcoming World Maritime Day 2002 — 'IMO: Safer Shipping Demands a Safety Culture' — and will promote the more than 200,000 Filipino seafarers working on board Philippine and foreign-flagged merchant ships.

The recent IMO event in London gave also an opportunity for the Philippines to turn over to Seafarers Memorial Trust Fund the second donation of \$5,000 from the Philippine shipping industry. Bautista and the Manila delegation called on IMO secretary general Wilian O'Neil to present the donation.

Apart from Bautista, the delegation to the IMO Council elections consisted of Gilberto Asuque, deputy permanent representative; Reps. Antonio Floirendo and Rodolfo Plaza; Marina administrator Oscar Sevilla; PPA general manager Alfonso Cusi; Ernest Villareal, chairman of Public Estates Authority; First Secretary Leo Herrera-Lim and Third Secretary Evangeline Ong-Jimenez of the Embassy; Capt. Emmanuel Regio, president of the International Maritime Association of the Philippines; Atty. Josephine Uranza, president of the Domestic Shipowners Association.

## RP assumes lead role in APEC transport working group

THE Philippines has officially assumed the role of lead shepherd economy of the APEC Transportation Working Group (TPT-WG) for two years beginning January this year to December 2003. The Philippines is to be assisted by the US as deputy and three steering committee coordinators, composed of the US for safe and environment-friendly transport systems, Australia - steering committee on more competitive transportation industry including new technologies, and Korea - for steering committee on human resources and development.

Korea, which had served for two years, has expressed intention to step down in favour of Brunei.

As lead shepherd, the Philippines is to communicate major decisions of the various APEC fora to the TPT and provide advice and support to various project/expert group chairs and steering committees. It will also oversee the development of activities in response to the directives of ministers and leaders, and act as spokesperson for the TPT.

Department of Transportation and Communications secretary Pantaleon Alvarez will serve as the lead minister among APEC transport ministers for the next two years. Two TPT meetings are scheduled to be held this year. The first will be held in Manila on March 4-8 and in Brisbane, Australia on between September and October 2002. Peru is said to be considering to push through the hosting of the 3<sup>rd</sup> APEC Transportation Ministerial Meeting in Peru in June/July this year.



IMO Secretary General William O'Neil receives from the Philippines delegation the amount of US\$5000, representing the second donation of the Philippines shipping industry to the IMO's Seafarers Memorial Trust Fund. In photo are (left to right) Congressman Antonio Floirendo, Congressman Rodolfo Plaza, Ambassador Cesar Bautista, Mr. O'Neil, Atty. Oscar Sevilla, Ernest Villareal, Alfonso Cusi, and Capt. Emmanuel Regio



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# Follow up on aqua-culture

DURING That session at DND I cited in the last (Sep-Oct 2001) issue I mentioned that Prof. Ernesto Gonzales, Director of the UST Research Center discussed his paper, "The Paradigm Shift of Philippine Development: Aquatic/Archipelagic Development in the 21st Century". Prof. Gonzales deplored the fact that "the dichotomy between progress and poverty is caused by a continental framework of development to a country that is largely aquatic" and seeks to shift development efforts from predominantly land-based to aquatic.

Prof. Gonzales' presentation was augmented by Don Enrique Zobel's experience in using former naval personnel in developing seaweed culture in Calatagan, Batangas, which example Ambassador Alex Melchor stated to have been developed and used in Tawi Tawi during the MNLF rebellion in the '70s, and helped in checking the mobility of the MNLF.

Since that moment, I had become somewhat more intent in listening more closely to facts and opinion concerning marine culture. Increasing world population, decreasing arable land areas and continuous environmental degradation all point to the need to look for alternative sources of food or food production means. Looking at the sea and coastal areas in a slightly different way, already established in the last century but by and large not harnessed, it is certainly now open as a challenge as well as an opportunity.

The Bureau of Fisheries and Aquatic Resources has reportedly developed a pilot project in Samal Island in the Davao Gulf. As I was in the area on 9-11 November, I requested the Eighth Coast Guard District in Davao to show me the reported marine culture farm not too far from the famous Pearl Farm Resort – to no avail. We did not find it; could it be merely hype?

Fortunately, I still had the Philippine Coast Guard Auxiliary's Grand Ole Commander, PCGA VADM Matias "Bombi" Aznar, Chairman of Cebu's Southwestern University and an experienced mariculturist (and one of the original Trustees of the League). During the PCG Anniversary celebration in October we agreed that he would show me his layout in Bohol. Thus from Davao we flew on 12 November to Cebu, arriving about noontime (By the way, Bombi's ex-U.S. marine son operates a superb new restaurant called "Papa's", where he invited us for dinner. There's plenty of

fresh seafood in several small ponds in the one-hectare site downtown. Everyone should try it).

We got to visit the Aznar Bohol marine culture project on 12 November.

Speaking of Bombi Aznar, we wish Bombi, one of the original incorporators of the Maritime League, good health and long life, after successfully hurdling a triple bypass operation last December. He missed the final leg of the golf tour I mentioned as a result, but I'm sure he will be participating in the next tour later this year.

## Tourism in Jeopardy?

During our visit to Davao, we stayed at the nice new Marco Polo Hotel. The staff lacks experience and the coffee was bad

(and I gave my written opinion to management on my departure) but I recommend the hotel, which brings me to the unfortunate negative advisory of the U.S. and Japan embassies for their traveling citizens.

The Japanese and Americans with us on the Sta. Lucia golf tour will agree that the advisories were uncalled for, at least with respect to Davao. I could not find anyone, guest or resident, who expressed agreement with the advisories.

I would endorse any effort on the part of the Department of Tourism, the restaurant and hotel associations, the travel agencies associations and the local governments concerned for a reversal of the said advisories for travel anywhere in the Philippines except the ARMM areas.

## MAILBOAT

### Travel advisories unwarranted

RECENTLY the Japanese foreign ministry issued an advisory prohibiting the travel of its citizens to Mindanao and discouraging the same for the entire country. Apparently this follows the US advisory, which primarily affected travel to Mindanao because of the kidnapping of Americans by the Abu Sayyaf but which was later extended to a warning for all American citizens and business establishments in view of the announced Al-Qaeda threat against them.

The Sta. Lucia Group has just completed the third leg of its Second Annual Sta. Lucia Golf Tour, which was held at its Ranchos Palos Verdes Golf and Country Club at Davao City on 9-11 November 2001. Initially some of our colleagues from Alta Vista Golf and Country Club (Cebu), as well as the other participating clubs (Orchard Golf and Country Club of Manila located in Dasmariñas, Cavite and the Eagle Ridge Golf Club of General Trias, Cavite) wondered whether there would be some basis for the advisories, but what we

found was different.

We never saw or heard anything that indicates that Davao could be dangerous for tourists. In fact the new Marco Polo Hotel where we stayed was quite busy because of the tour and the area where it is located is extremely safe.

As for Cebu, where we are from, we know for a fact that this Queen City of the South is as safe as any city in Asia.

I hope the authorities will do something to have the travel bans reversed.

*Matias Aznar*  
Cebu City

### Thanks from Gringo

I wish to thank you for furnishing us with a copy of the Maritime Review, November-December 2001 issue. We are optimistic that the said publication will provide us with the necessary data relevant to its specialized field.

We hope that you will continue to support us in our efforts to work together for the benefit of the Filipino people. Thank you and best regards.

*Sen. Gregorio B. Honasan*

## Extent of carrier's liability

ON or about March 17, 1979, the vessel Cardigan Bay/Strait Enterprises loaded on board at Southampton, England to Manila, 180 Filbrite cartons of mixed British manufactured cigarettes called Dunhill International filter and Dunhill International Menthol. The shipment arrived at the Port of Manila on April 18, 1979 in container van. E. Razon Inc, the stevedoring operator received the container van.

On April 30, 1979, the container van, which contained two shipments, was stripped. One shipment was delivered and the other shipment consisting of the imported British manufactured cigarettes was palletized. Due to lack of space at the Special Cargo Coral, the aforesaid cigarettes were placed in two containers with two pallets in container no. BENU 204850-9, the original container, and four pallets in container No. BENU 201009-0, with both containers duly padlocked and sealed by the representative of the carrier.

In the morning of May 1, 1979, the carrier's head checker discovered that container van No. BENU 201009-9 had a different padlock and the seal was tampered with. The matter was reported to the Pier Superintendent and upon verification, it was

found that 90 cases of imported British manufactured cigarettes were missing. Per investigation conducted by the stevedoring operator, it was revealed that the cargo in question was not formally turned over to it by the carrier but was kept inside container van No. BENU 201009-9, padlocked and sealed by the representative for the carrier without any participation of the port operator.

When the consignee learned that 90 cases were missing, it filed a normal claim with the carrier, demanding payment of PhP315,000 representing the market value of the missing cargoes. The carrier, in its reply letter, admitted the loss but alleged that the same occurred at Pier 13, an area absolutely under the control of E Razon. In view thereof, the consignee filed a formal claim with the stevedore demanding payment of the value of the goods but said claim was denied.

After trial, the lower court rendered a decision exonerating E Razon of any liability on the ground that the subject container van was not formally turned over to its custody, and adjudging the carrier liable for the principal amount of P312,480 representing the market value of the lost



shipment, and the sum of P30,000 for attorney's fees and the costs of suit.

The Court of Appeals affirmed the decision of the trial court but deleted the award of attorney's fees and costs of suit.

The primary issue before the Supreme Court is whether the loss occurred while the cargo in question was in the custody of the port operator or of the carrier.

Since the issue is factual, the Supreme Court relied on the actual findings of the Court of Appeals that based on the evidence presented, the subject cargo placed in the container van, padlocked and sealed by the carrier, was still in its possession and control when the loss occurred. And there having been no formal turnover of the cargo to the port operator.

Common carriers, from the nature of  
*Turn to next page*

## M League holds golf tour

THE Maritime League recently held its golf sponsors' team tournament at the Eagle Ridge Golf & Country Club with former president Fidel Ramos joining the ceremonial tee off together with PPA general manager Alfonso G. Cusi and MARINA administrator Atty. Oscar M. Sevilla. At first heavy rains and winds forced the tournament committee to reschedule the event after majority of those in the first flights abandoned the game. The rescheduled tournament was equally successful and enjoyable with majority of the players of the 20th October 2001 joined in the 23rd November 2001 competition.

The League's Tournament Committee would like to express its appreciation and gratitude to the following: Hole Sponsors - International Container Terminal Services Inc.; Asian Terminals Inc.; Sulpicio Lines Inc.; PHILTRANCO; Philippine Mer-

chant Marine School-Las Piñas City; Oriental Port & Allied Services Corp.; Philippine Register of Shipping; Northstar Port Development Corp.; Golden City Engineering & Construction; Taurus Arrastre & Stevedoring Services Corp.; Tactica Consultancy Group; Dutch Boy; Vision Shipping Co. Inc.; HERMA Group of Companies, Hanjin Heavy Industries & Construction Co. Ltd.; WG&A; Harbour Centre Port Terminal Inc.; F.F. Cruz & Co. Inc./F.F. Marine; Green Circle Properties; MARRA Construction, Inc.; Manila Pilots Association and Domestic Shipowners Association.

Two-man team sponsors include Stradcom Corporation; Pacific Consultants International; Parsons International Ltd.; R-I Consortium; PNOC Shipping & Transport Corp.; Pilipinas Shell and Sandoval Shipyards Inc. DONORS - Philippine Charity Sweepstakes Office; Philippine

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The tournament committee says that without the support of the Hole Sponsors, Two-Man Team Sponsors and Donors the golf tournament would not have led success. Our sincerest thanks to all.

their business and for reasons of public policy, are bound to observe extraordinary diligence in the vigilance over the goods and for the safety of the passengers transported by them, according to all circumstances of the case. If the goods are lost, destroyed or deteriorated, common carriers are presumed to have been at fault or to have acted negligently, unless they prove that they observed extraordinary diligence. The duty of the consignee is to prove merely that the goods were lost. Thereafter, the burden is shifted to the carrier to prove that it has exercised extraordinary diligence required by law. And, its extraordinary responsibility lasts from the time the goods are unconditionally placed in the possession of, and received by the carrier for transportation until the same are delivered, actually or constructively, by the carrier to the consignee or to the person who has the right to receive them.

Considering, therefore, that the subject shipment was lost while it was still in the custody of the carrier, and considering further that it failed to prove that the loss was occasioned by an expected cause, the inescapable conclusion is that the carrier was negligent and should be held liable.

*Word from page 30*  
**Confronting inequities  
of the global order**

Like many other developing countries supportive of the global coalition's cause, we of the Philippines believe the global community must look beyond the war on terrorism — and deal once and for all with the deepening inequities in the global order. The fact is that the basic premises and operating rules that have governed the global environment for the past 150 years no longer apply. We need new approaches and paradigms for the relationships among the "haves" and the "have-nots", meaning the rich and poor economies, as well as the rich and poor sectors within each country.

What are the most pressing of these problems? In my view, these include leveling the field in international trade — to open rich-country markets wider to agricultural exports from the developing countries; to reform the market system so that it begins to have a care for those whom development leaves behind; and to intensify the global effort to ease mass poverty. Poorer countries have become the

breeding grounds for injustice, envy and fanaticism, and therefore the likely sources of terrorism. While the recent WTO ministerial meeting in Doha, Qatar should be credited for taking some positive steps, the United States and the European union have yet to deliver on the market-access promises they made in the Uruguay round of GATT — which ended all of seven years ago when the WTO was established.

Although world trade has risen faster than GDP since then, the proportionate share of poor countries' has deteriorated — partly because of continuing protectionism — actual or perceived — in the richer economies. In many parts of the world, Islamism is a rebellion of the excluded — feeding on the frustrations of impoverished peoples living on the margins of an unattainable consumerist world. The global coalition must do all it can to help remove poverty as a source of conflict — by ensuring the world's poorest peoples take part in humankind's quest for development. This, to me is its concurrent and equally important mission in addition to uprooting international terrorism.



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**Nurturing our country's competitiveness**

For East Asia, the shrinking of global markets is being complicated by China's accession to the WTO — which will give it better access through lower tariffs to its export markets. From painful, day-to-day experience, China's labor costs are the lowest in the region — outside of Indonesia. Already, cheap Chinese exports like garments and motorcycles are strangling domestic manufacturing in Vietnam and elsewhere. In 1999, China's exports to the US rose to over 24 per cent of all East Asia's exports, up from 22 per cent in 1997. Meanwhile, Asean's own share fell from 23-20 per cent.

The only long-term salvation for China's competitors is to move up the high-technology ladder — ahead of China's lower-value manufacturing. The only way East Asia's smaller economies, like ours, can protect themselves from being swamped by Chinese competition is to find — and then nurture, maintain and enhance — their niches in the global division of labor.

A country's competitiveness is based

on its cost advantage — meaning its ability to deliver on time and to meet specific industry requirements — plus its ability to overcome export quotas set by trade agreements. And the factors that add up to a country's competitiveness are always changing. In fact, the whole point of successful economic development is to forego competitiveness in low-value industries and to keep moving up the value-added ladder of products and services. So, at any give time, a country like our own — or like Thailand or Singapore — may be losing its market position in some industry or product line — whether it be textiles or disk drives — as other cheap-labor players come into the picture.

The more important factor is whether a country is, at the same time, gaining competitiveness in higher value-added areas. And this is the constant question our political, economic and business leaders should be asking themselves.

**Conclusion**

What are we to do — as a country and as an economy? I do believe we must quickly make a strategic shift from external to internal sources of growth — to focus once more on our huge domestic mar-

ket of 76 million people. Success will lie in Philippine products and services that are clearly different and more cost-effective from those products other countries and other industries have to offer. Success will lie in the distinctiveness of — and the value we add to — Philippine products.

Certainly, our decision-makers — both in government and in the private sector — will need to exercise leadership skills, which I believe we have an abundance of, to keep our enterprises competitive — to lead them in weathering the storm — and to move on to the rewards that await us beyond this crisis. Obviously we must keep up morale — and uplift our core workpeople through the hard times. And most important, our leaders at each level must be prepared to accept and assume their share of the burden of responsibility — so that the Philippines will be ready to hit maximum growth as soon as things improve.

*Excerpts from the speech of former President Fidel V. Ramos on the "Impact of the World Trade Organization Ministerial Meeting: Preparing for the World Economic Recovery" held at the Asian Institute of Management on 14 January 2002*

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# Structural reforms for recovery and sustainability

CAN the political reforms we envision be done? Yes, they can. But there are obstinate forces that stand in the way of their quick achievement.

First among the problems is the intimate but unfortunately, perverse link between business and politics in our country. We Filipinos like to say the private sector is the engine of growth — but that engine, all too often, is fueled by political power. Throughout our history, some wealthy and powerful groups have been able to use public authority for their private benefit. The reason for this is because the concentration of corporate ownership in our economy is it is in the hands of just a few people. According to a World Bank report issued in mid-2000, the top 15 families in the Philippines own 55% of all its corporations.

Compare this figure with Japan, where the top 15 families own only three per cent of all corporations; with Taiwan, where they own only 20 per cent; and in Korea, 38 per cent. And 39 family-owned corporate groups in this country (Philippines) own 216 of the 1,000 largest corporations — which represent about a third of the sales of these largest corporations.

Very much like the Korean and Japanese conglomerates, the Filipino *zaibatsus* have diversified sectoral interests (including banking); and receive preferential treatment from government because of their inherent political clout. World bank reports also say the concentration of wealth among family conglomerates tend to result in virtual monopolies in much of national industry, selective bank lending, weak corporate governance, and even weaker corporate social responsibility. What is worse, the World Bank reveals that these conglomerates have increased their influence and strength in recent years — because they have been the prime beneficiaries of the privatization of public corporations.

Obviously, government must begin to use the privatization process as an instrument to disperse the ownership of enterprises being sold off by the state. Privatized as-

sets should not continue ending up in very few hands or with the same acquisitive families. This long-standing oligarchy has used the powers of the state to create opportunities for themselves to make even more money — without having to create economic values and social benefits for our people as a whole. We should extricate ourselves from this vicious cycle so that government should begin to represent and be an instrument that will promote the interest of the people — and not just private interest groups. I think it is also time we stop overloading government with more tasks than it could carry out competently.

Our foremost economic principle should be to reduce government's power to decide winners and losers in business by curtailing its authority to award or withhold incentives, concessions, franchises, and monopolies. Government's proper role is to provide the framework of political stability, the rule of law, the sound macroeconomic policies, the financial backbone, and the physical infrastructure within which enterprise can flourish. All the rest should be up to individual and corporate effort. In every thing we do, we should see to it the economy is run efficiently — for the majority and not for the few.

The other heavy drag on the economy is corruption. We need particularly to increase public oversight of government by expanding the information made available to and the role of ordinary people in regard to public programs. Like many of our neighboring peoples, we Filipinos are only now beginning to realize that while democracy's trappings — elections, peoples' assemblies, media freedom, independent judiciaries — are easy enough to assemble, making them work properly for common people. It requires a long learning process, for which leaders and citizens themselves often have little patience.

All of the above prescriptions can be summed up in what I called the "5 d's of governance" — devolution, decentralization, deregulation, democratization (of opportunity), and development (of a sustainable kind). Our immediate task, of course, is to survive the downturn. So our enterprises and corporations should take this opportunity to reduce, keep fit — to be slimmer and meaner — and thus, become fully prepared

to grow once again as soon as the situation improves.

## Effects of the new terrorism

While the new terrorism threatens the rich countries most directly, it has inflicted the worst collateral damage on the export-oriented developing countries. In the aftermath of September 11th, several east Asian stock exchanges — the Philippines among them — dropped to their lowest levels in ten years. By further damaging consumer and investor confidence which were already deteriorating before 9-11, the attacks have hurt east Asia's outward-looking economies most of all. How this unprecedented threat to the global order *Al-Qaeda* poses is resolved depends on what we, together with the global community, do in the military, socio-cultural, economic and political spheres.

On the positive side, September 11th has generated a keener sense of our shared interests and common vulnerabilities. It has also made the affluent countries realize how poverty — together with perceived injustice — can breed global instabilities. Certainly, 9-11 and its after-effects helped push the World Trade Organization (WTO) meeting in Doha to agree on a new round of talks in order to bring down the remaining barriers to freer global trade.

By showing how easily terrorism can overleap frontiers, Osama Bin Laden and his *Al-Qaeda* network have taught governments how much their national security interests nowadays depend on extensive international consultation and cooperation. This is why much of east Asia has declared its support for the anti-terrorist coalition as manifested during the Apec leaders' summit in Shanghai last year. Indeed, even Russia is taking advantage of the "we-are-all-in-this-together" atmosphere to negotiate a new framework for its security relationships with the United States. Even Taipei has moved to further integrate its economy with that of China's — by removing its ceiling on investments in the mainland. Meanwhile, the 10 Asean states and China have set a date — "Xfrom now" — for their own expanded free-trade area, a welcome move which should prove equally attractive to both Japan and South Korea.

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