



Labour Compensation Strategies/Practices of Maritime Industry- Discussion on Critical Cases

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ABSTRACT

In July 25, 2020, a bulk carrier ran aground and there was an oil spill. *Mr. Perera, a Sri Lankan, was employed as an Able seaman with a Panama CDC (Continuous Discharge Certificates) onboard the vessel. He as well as most of the crew had been onboard the vessel over a period of 12 months in excess of their contracts, none of the mariners had access to communication to contact their families despite this been assured in their employment agreements. In addition many of the crew had not taken any shore leave since Sep 2019. Combined with the global pandemic that made the future of the seafarers uncertain. One of his fellow crew mates tried to jump overboard to escape the vessel and was seriously injured.

Following the grounding the Master of the vessel and Chief Officer were arrested on 18 Aug 2020 and were charged with endangering safe navigation. The pair had been detained in prison since their arrest and had not been released on bail. The remainder of the crew have been detained under "house arrest" in a local hotel.

The only organization that could help these seafarers would be their union who would stand by them in order to bring them home safely to their families and organize to get compensation for unjust treatment and violation of their rights.

This concept paper would present several relevant institutions, programs and scientific research with impact for increasing union efficiency. The author would follow *Mr. Perera's emails to the union and how the immediate response brought the crew home. The main conclusion of this paper highlights the importance of the union and the further programs, policies and strategies that should be adopted to keep the seafarers' lives safe.

**Names were changed to protect the identity of the parties concerned.*

Keywords : Maritime, Union Strategies, Compensation, Seafarers, Maritime Accidents

1.0 INTRODUCTION

The shipping industry is widely cited as an example of one of the most globalised of all contemporary industries according to Sampson, H. (2003) and for good reason. The industry is regulated, owned, managed, financed and supplied with labour on an international basis. A vessel may be owned in one country, technically managed in another, have its crew supplied by several others, trade internationally and be registered in any of the nations operating open registers. As per the 2019 data analysis, the world shipping trade's total value, annually calculated, has crossed 14 trillion US dollars. Some 11 billion tons of commodities are shipped every year and this tonnage is steadily growing. The transport through the seaways roughly accounts for 80% of the total international business as opposed to any other transportation mode as per UNCTAD (2020) this is the rationale for the selection of this industry for this concept paper as shipping is the biggest industry in the world. The shipments would not be possible without the efforts of approximately 2 million sea workers worldwide, who facilitates the shipping business around the world (Doumbia- Henry, 2020). Without those who work at sea, "half the world would freeze and the other half starve" (Efthimios Mitropoulos, 2005). But like Mr. Perera* in the study many seafarers have lost their lives, been injured, or suffered long-term physical or mental repercussions as a result of accidents onboard. According to the inaugural State of Maritime Safety report issued by IHS Markit, the number of reported seafarer deaths was 165 in 2015, fell down to 55 in 2016, but then rose again to 112 in 2019 (Figure 1 below).



Figure 1.0: Total number of seafarers recorded as killed and missing 2015-19

Source: <https://ihsmarkit.com/research-analysis/seafarer-fatalities-shows-shipping-must-do-more.html>

According to IHS Markit, 400,000 seafarers work on merchant cargo ships, 300,000 on passenger and cruise ships, and 200,000 mariners on other types of vessels. The numbers of ships in the world are around 53,000, registered in 150 nations (Ibid). The transport through the seaways roughly accounts for 80% of the total international business as opposed to any other transportation mode (UNCTAD, 2020). Sri Lankans who are active members of the Seafarers Union account for 24,200 of the totals (NUSS, 2021).

Despite shipping's increased attention on safety and environmental efficiency over the previous decade, the number of crew fatalities remains high. Seafarers receive specific protection under international law in the event of death or injury at sea. Labour compensation is one of the paramount well researched notions, with empirical studies still looking at it in behavioral research studies. According to Zhang et al, (2020), Seafarer's welfare on board a vessel and ashore plays an important role in maintaining their health and well-being, and it is also closely connected with their working performance. Over the past years, seafarers' welfare has been a fundamental matter for the maritime community being debated throughout the enactment and adoption of the Maritime Labour Convention (MLC, 2006). The Maritime Labour Convention 2006 (MLC) of the International Labour Organization (ILO) aims to safeguard seafarers from the financial implications of illness, accident, or death while on board ship. Under the MLC, shipowners must have financial assurance that they will be compensated in the case of an accident.



Figure 1.0: Total number of seafarers recorded as killed and missing 2015-19

Source: <https://ihsmarkit.com/research-analysis/seafarer-fatalities-shows-shipping-must-do-more.html>

Regardless of the protections set out in national and international law, there are unique aspects of the working lives of seafarers that place them at a great disadvantage in their ability to obtain proper compensation.

- According to Georgios I. Zekos, (2004), the National schemes for compensating injuries and death, for example, vary widely. Some countries

deal with the issue through social security schemes and/or workers compensation schemes; in other countries, this is covered by employment contracts or collective agreements negotiated by the unions; and in addition, national legislation in some countries provides for remedies in tort and for negligence. The value of a claim therefore can vary widely depending on the circumstance of the injury or death, and also depending on where a claim is pursued.

- According to O.W Pendleton, (1948), P & I insurers working on behalf of the ship owners can actively participate (through the use of representatives and lawyers worldwide) at an early stage to prevent claims being pursued, or they could attempt to settle claims at less than the legal entitlement of the claimant. If the seafarer is unable to afford a lawyer, or there is no longer any income because the seafarer is injured or deceased, such tactics might prevail.
- If a ship owner operates without insurance or other form of financial security, then given the structure of the ownership of most vessels, the prospect of recovering proper compensation is very limited.
- According to Syamantak Bhattacharya, (2012), it might become necessary for the seafarer or their dependents to resort to litigation to get compensation. The unique nature of their profession adds further complexity to this process. Any accident is likely to involve more than one jurisdiction – including the flag law, the law of the place of the accident, and/or the law governing the seafarer’s contract. The difficulties therefore of establishing where and when to sue, if necessary to do so, mean that access to justice can be denied by a series of legal doctrines and principles such as limited liability, periods of limitation, forum non convenience and other forms of declining jurisdiction.

This brings into importance of a transnational trade unions in order to look after the rights of the workers. According Nathan, L. (2005), the Flag of convenience (FOC) campaign structure has changed from driven by self-directed national unions forming a global coalition a loosely agreed political goals, to one of a tightly organized autonomous transnational network. NUSS(National Union of Seafarers Sri Lanka) affiliated with ITF (International Transport Federation) is one such trade Union.

2.0 PURPOSE OF THIS STUDY

Table 1.0 would have the rates of compensation that could be claimed by P&I insurance for compensation claims from shipping companies. These amounts converted to LKR (Today’s conversion 7th Feb 2021, 1USD = 202 LKR, Central bank). Sri Lanka has been a middle-income country where as per CEIC the Sri Lanka Annual Household Income per Capita reached 1,422.182 USD in Jun 2019. The amounts gained by the compensation would be a considerable amount to the persons concerned. According to the documents in the Union there are approximately 20-30 compensation cases per year covered by the union, this would provide a large loss of income to the employer. According to Alastair Couper, 2011, ship crews are now multinational and culturally diverse this would provide a challenge to the Unions to statistically unionize these workers.

Table 1.0: Rates of compensation in 2022

Degree of Disability	Rate of Compensation (USD)		
	Ratings	Junior Officers	Senior Officers
100	108,012	144,015	180,018
75	81,008	108,012	135,013
60	64,807	86,409	108,012
50	54,006	72,008	90,010
40	43,204	57,607	72,008
30	32,404	43,204	54,006
20	21,603	28,803	36,006
10	10,802	14,402	18,002

Source: Adapted from ITF Agreements with Unions, 2021

The following objectives were taken into consideration in this concept paper:

1. To assess the strategies taken by Unions to assist seafarers and their families in reaching out to correct parties for compensation.
2. To appraise the efficiency of these methods.

3. To determine the future recommendations to make Union work more strategic.

The purposes of this paper are basically two-fold; to evaluate the past strategies of compensation from Unions and appraise the effectiveness of the methods in which they use and determine the future recommendation when it comes to seafarers' maritime accidents so that they could engage in their work with better satisfaction with emotional safety as seafarers know that Union is there to look after their objectives. Followed by the given background, the researcher has organized the paper content with objectives, methodology along with theoretical reviews on the said cases under specific segments to provide clear discussions and finally it has provided a conclusion before presenting the propositions for future studies and practices.

2.1 INDUSTRY GAPS

According to the interview held in NUSS by the author and the data from emails sent by *Mr. Perera, some mariners underestimate the role and importance of the Seafarers Union because of lack of legal knowledge and information about activities of the Unions in the marine industry.

There are a large number of seafarers who hold CDC (Continuous Discharge Certificates) of other countries instead of the country of their origin when these seafarers apply to go onboard through recruiting companies, they do so without registering with the Ministry of Merchant Shipping and therefore not covered under any law in Sri Lanka so when they get into any trouble onboard it would be difficult for them to claim compensation. In this case it is only the Union that could guide them to a suitable P&I company and help them in getting compensation.

According to the documentation in the Unions offices, the lack of understanding of contracts is quite common among seafarers therefore some misunderstanding happens due to the contracts even the unions will not be able to help as the seafarer has already signed the agreements.

2.2 RESERCH PRIORITIES

The main objective of the paper is to investigate theoretical and empirical review on strategies that unions utilize in protection of seafarers. Secondly, it attempts to build an argument to claim the future research direction referring to protection of seafarers in Sri Lanka as a notable context. Future research directions are encouraged in line with the empirical arguments and managerial implications noted.

3.0 METHODOLOGY

This paper follows realism paradigm as the research philosophy since it discusses the existing theoretical and empirical arguments. Thus, a deductive approach is followed to present the empirical relationships recommending future research propositions. It has used the secondary sources as the method in the selected research approach, and the author has offered propositions for highlighting the essence of the paper to be used as learning. Research tool was based on literature review and associated journal articles, book chapters and industry publications to review the theoretical and empirical justifications whilst revealing industry-related rationales. Case insights found on marketing practices of the industry were obtained through semi-structured interview held with professionals attached to the industry as an additional strategy to frame the study. Discussion content of the paper was supported by literature review and further research directions proposed by the previously held studies.

4.0 EMERICAL REVIEW: What is Maritime Trade Union Strategy?

In discussing Union Strategy the questions 'What is strategy?' and 'How is strategy formed?' do not receive a consistent answer in the business management literature (Whittington, 1993: 1-2). There is, however, strong support for the 'strategic choice' perspective which has important implications for how we understand both the content and process of strategic management. This perspective involves defining strategy as a framework of critical choices about the ends and means of an organization (Child, 1972; 1997). Choices are critical when they play a decisive role in the success or failure of the organization (see e.g. Johnson and Scholes, 1993; Pennings, 1985; Rumelt et al. 1994). Besides 'make-or-break' decisions, choices are also critical when they account for significant variations in the performance of basically viable organizations.

Such a definition means that strategy is distinguished from the process of formal strategic planning (Gardner, 1989). Strategy exists even when strategic planning does not. Research and debate in industrial relations often fails to make this important distinction. It is a mistake to assume that unions will be more effective if they adopt what are perceived as business-style strategic planning processes. Unions become more effective only if they devise and enact more effective strategies. (For the same argument in respect of firms, see Barney, 1991; Porter, 1996). Planning may play a role in this, but so too will politically debate and compromise (Child, 1972, 1997), both through and behind the official structure of union meetings, as well as the direct actions of officials and groups of members in their spheres of influence.

It is important to acknowledge that the extent of strategic choice is variable. In the management literature, it is accepted wisdom that firms in some industries and industry segments are much more constrained by the prevailing forces of industry competition than in the other industry sectors (Nelson, 1991; Porter, 1980, 1985). The same is true for trade unions. In those contexts where workers readily act in collective ways and where employers can, and will, reach accommodations, unions are best described as 'strategic actors' (Lange et al. 1982: 218), implying an extensive realm of strategic choice. Unions that fail in these circumstances are largely the architects of their own downfall and are likely to be replaced by other unions or new expressions of the work-force's latent collectivism. On the other hand, a union restricted to organizing workers in the secondary labour market among hostile employers faces a much less favorable environment. It may still be possible to survive, perhaps through efficient organization on a few large sites, but some objectives, such as organizing low-skilled, vulnerable groups of workers on small sites, may simply be unattainable in the absence of explicit state support.

A key part of Child's (1972: 13–16, 1997: 51) conception of strategic choice theory is the emphasis on the role of leading power-holders, the 'dominant coalition', in selecting courses of action. Much of the management literature focuses on how the chief executive develops a 'strategic agenda' in association with other key actors on the board and within the management hierarchy (see e.g., Kotter 1982: 60–7). The CEO is entrusted with special leadership responsibilities in relation to the process of strategic management. What Child (1997: 63) calls 'conditions of crisis' may destabilize a dominant coalition. The consistent failure of a CEO to ensure acceptable firm performance will typically lead to dismissal, a decision that may originate within the board or be forced by takeover or merger. Sackings of chief executives are commonplace and often signal a commitment to strategic change or 'organizational turnaround' (Whittington, 1993: 122).

In contrast, the locus of leadership is more difficult to identify in a union. While unions emerged as voluntary associations of workers who saw some benefit in acting collectively, their historical successes, and consequent institutionalization, have brought about a complicated leadership situation. In Child et al.'s (1973: 77) terms, unions often exhibit conflict between the 'administrative rationality' of an efficient bureaucracy and the 'representative rationality' of an organization of volunteers. As they grow in size, unions inevitably develop an administrative structure and, thus, experience an ongoing tension between democratic decision-making, to which they are constitutionally committed, and hierarchical control, to which they are practically disposed. Some unions, most of the time, and most unions, some of the time, appear as officialized organizations in which members consume a standard diet of services in exchange for their subscriptions. According to Peter, G (1988) the dimensions of Union Strategies can be shown in the table 2.0. This table summarizes the Union techniques that enable the unions to work successfully.

Table 2.0: Dimensions of Union Strategies

Method	Unilateral Regulation	Collective Bargaining	Arbitration	Political Action
Objectives	Control of labour supply	Bargaining Rights	Organizational and jurisdictional protection	Social change and product market control
	Recognition, wages, conditions, employment, job control, job security, procedural fairness, participation, membership, union security, etc.			
Tactics	House of call, mutual insurance, apprenticeship controls, etc. Work bans, rank & file action, workplace meetings etc	Bargaining and negotiating	Registration, Advocacy, legal tactics and resources etc.	Lobbying, demonstrations, political affiliation, concentration etc.
	Strikes, Stop work meetings, publicity campaigns, appeals & demonstrations, coalitions with other groups/actors etc			

Source: Adapted from Peter Gahan, Union Strategy: A Conceptual Framework (1998)

5.0 DIFFERENT CASES HANDLED BY UNIONS REVIEW

According to Andrea, B. (2019), There is evidently a need for more in-depth investigation, in particular into the labour regimes and arrangements along the maritime-logistics chain. In further discussion of this case according to the IMO.org (2021), the COVID-19 pandemic has put seafarers around the world in precarious situations. As of July 2021, it is estimated that 250,000 seafarers are currently stranded on ships beyond the end of their original contracts and unable to be repatriated, due to COVID-related travel restrictions. A similar number of seafarers are stuck at home, unable to join ships and provide for their families.

In the case of *Mr.Perera, that was taken into consideration in this concept paper, because of the Union intervention he was able to go back to his home country according to the Union emails provided for this case study. There are other organisations that could help seafarers in this situation and Unions make access to these organisations easier as in another case a fiancé, who had not seen her betrothed for over 14 months due to the COVID-19 pandemic, emailed the Union and then through the Union, the IMO's Seafarer Crisis Action Team (SCAT) on November 2020. She explained that while port State policy had initially prevented him from signing-off his ship, since August 2020 opaque company procedures had contributed to numerous unsuccessful attempts to repatriate him. Consular and trade union attempts to expedite the process had received similar non-committal responses as those given to the seafarer and his fiancé. The seafarer raised concerns about his ability to undertake his duties effectively and safely, due to the length of time he had served on board his ship. He also submitted several reports to his company recounting symptoms such as fatigue, depression, inability to concentrate and panic attacks. Increasingly fearful for her fiancé's mental condition and physical health, and concerned that his state of mind endangered not only him but the entire crew, she contacted SCAT and pleaded for help to get a definitive timeline for his repatriation. Within two days of receiving the request, SCAT responded to the fiancé and provided the latest guidance on repatriation. It also requested flag, port, and seafarer States, and NGOs in consultative status with IMO, to provide urgent assistance to repatriate the seafarer. A truly international effort ensued, involving excellent coordination and cooperation between multiple agencies in China, Georgia, Indonesia (one for its airport would be used as a stop-over for the multi-leg repatriation flight) and Singapore. In early December 2020, SCAT received the heartening confirmation that the seafarer, after completing a mandatory quarantine period in the port State, had departed on a repatriation flight.

In another case on 14 July 2020, IMO was contacted by the distraught daughter of a Second Engineer serving onboard a crude oil tanker. Her father was unable to disembark due to the COVID-19 Pandemic and the associated challenges encountered by the ship's management company of sending a relief. In her email, she explained that her father had already served almost eight months at sea even though he was originally "supposed to sign off at the end of February 2020". She was concerned that her father "is in very low mental and physical condition" and that he had just been hospitalized "due to problems with his back". She feared his health would continue to deteriorate which could "lead to accident or tragedy", particularly as he no longer had a valid medical Certificate because his employment contract had expired. The email was forwarded to IMO's Seafarer Crisis Action Team (SCAT). The SCAT immediately contacted the seafarer's trade union organization and the maritime authorities of the flag, port and seafarer States concerned. The trade union, in turn, contacted the ship's management company and liaised with the port State's maritime authority, in this case the Chilean Maritime Authority, to resolve the matter. These incidents highlight the importance of Unions in the maritime labour force.

According to Capt. Deepak Mantoju, (2021), the international maritime industry is one of the primeval and most globalized sectors, with the beneficial ownership of ship and vessel operational jurisdiction often based in different states, referred to as the flag state and the crew onboard are recruited from various countries worldwide. Thus, the jurisdiction problem that is created and the paramount concern of ascertaining flag state responsibilities have been the matter of contention for the maritime industry since the 1950s, "Dolumbia-Henry et al., 2006". As per MLC2006, no seafarer should have to pay to get employment, seafarers should as far as possible, be recruited through a manning agency or RPS, through union or part of CBA. The MLC2006 gives the seafarers rights regarding recruitment, under the MLC 2006, RPS must not charge seafarers for employment, the RPS must be licensed or operated in a way that promotes seafarers employment rights. The only costs that can be charged to seafarers are for national seaman book, passport or any travel document. The charges adhered to visas or related documentation must be borne by the ship-owners, but in reality, this is not happening according to the Union documentation as many seafarers join vessels after paying certain amounts to Shipping companies who accept these types of payment and this causes majority of the problems onboard. *MrPerera who also holds a Panama CDC and therefore not under the country of his nationality is liable to undergo a number of complications in contracts because of this as which had happened in this case as per Union documents.

5.1 CASE DISCUSSION AND UNION STRATEGY

As per the narratives described, Unions have utilized the following strategies in order to assist seafarers and their families in reaching out to correct parties for compensation.

1. **Collective Bargaining:** Collective bargaining is the process in which working people, through their unions, negotiate contracts with their employers to determine their terms of employment, including pay, benefits, hours, leave, job health and safety policies, ways to balance work and family, and more. Collective bargaining is a way to solve workplace problems. As in the case of Mr. Perera, the union had to utilize this method in order to bring him home. Indeed, through collective bargaining, working people in unions have higher wages, better benefits and safer workplaces.
2. **Arbitration:** Arbitration is a form of dispute resolution. Unlike mediation or conciliation, for which a third party helps disputing parties find common ground, arbitration involves ending a dispute through a binding decision. In arbitration, the parties' hand over the power to decide the issues to the arbitrator. The parties involved in a dispute agree with the arbitrator's ruling. In a unionized workplace, arbitration means resolving disputes that occur in the interpretation or application of a collective bargaining agreement between a union and an employer. In the absence of a union, however, employers may use arbitration to resolve workplace disputes through the drafting of a contract, handbook, or policy and in this the MLC 2006 is the document that is utilized. In all the narratives finally, this method had to be utilized to bring into

attention to the parties concerned.

According to the documents in the NUSS the effectiveness of the Union work remains at 70% with more than 20-30 different cases handled every year.

6.0 CONCLUSION

This paper reveals empirical and theoretical contents related Union Strategies. Despite the immense volume of the industrial relations literature, progress has been slow on the conceptualization of strategic management in trade unions. The literature generally fails to make the basic distinction between strategy and strategic planning and to identify those aspects of union management that are (a) fundamental to survival, and (b) predictive of greater success. The strategic choice perspective can be used to place the emphasis where it belongs: on those critical, enacted decisions that have major consequences for union effectiveness. Formal processes for strategic review may play a role in the making of these choices, but much union strategy is 'emergent' (Mintzberg, 1973), informally and forcefully shaped by the direct actions of union actors: members, officials or some coalition of the two. Modifications should be made filling the current existing gaps in the laws to provide a safer environment to the maritime sector.

The future research that could be carried out in this might include the importance of Unions taught at Maritime schools to create awareness and proper information about Union work in social media. Another method for creating awareness among seafarers would be to provide a Union Guidebook for the seafarers having information on how compensation would be covered. The positive outcome to the seafarers should be provided. This would enable better and more efficient Union work being carried out.

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