

# Recruiting and Retaining Seafarers Security Restrictions, Criminal Prosecutions, and Abandonment,

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*Recruiting and retaining skilled and reliable seafarers is the biggest crisis facing the maritime industry today. Perceptions that seafarers endure more security restrictions, criminal prosecutions, and abandonments than landlubbers make shipboard careers especially unattractive. This paper will examine these issues and propose steps that can be taken to address them.*

## INTRODUCTION

This paper is based on conditions that existed at the time it was prepared. The current economic crisis is one of the realities of the cyclical nature of the shipping industry that has historically been characterized by booms and busts. However, throughout the history of shipping there has remained a constant requirement to recruit and retain skilled and reliable seafarers.

At the beginning of 2008 there were 44,553 ships (300 dwt and above) with 1.08 billion dwt in the world merchant fleet. Since 2004, the world's merchant vessel tonnage has grown at an average rate of 6.5% each year. New ships were being built at a record rate and old ships were not being scrapped. There were about 9,000 ships with 520 million dwt on order – about 48% of the current tonnage (from ISL's 2008 Shipping Statistics and Market Review).

According to the World Trade Organization, International trade increased at rates between 5.4% and 8.0 % each year from 2000-2006. About 90% of the world's goods are transported by ship. United States of America, for example, is heavily dependent on shipping. Almost everything consumed in the U.S. has traveled on a ship. The U.S. Department of Transportation projects that the volume of goods passing through United States ports will increase by more than 50% between 2001 and 2020 and the volume of international container traffic will more than double.

The current slump in shipping will end and growth will return because prosperity in today's and tomorrow's globalized economy depends upon merchant shipping. But, the future of shipping is threatened. The threat to shipping is not from terrorism or from high energy costs. Rather, the biggest long term crisis facing the maritime industry today is that of recruiting and retaining skilled and reliable mariners.

Ship managers and crewing agencies are finding it increasingly difficult to find and keep skilled and reliable seafarers. Some ships are being tied up because there are not enough qualified crew members to operate them.

Shipyards around the world have been working to capacity to build new ships. The LNG fleet is expected to double by the end of the decade. All of these ships are going to require skilled and reliable crews.

The crewing crisis has dominated every maritime industry meeting. Numerous factors are cited for the crisis, and discussions of all of the factors that affect seafarers' job satisfaction and seafarers' recruiting and retention could be the subject of several seminars and conferences. Despite all of the attention being given to recruiting and retention, decisions are being made or not made, and policies are being initiated or not initiated, that do not appear to take into account their effects on seafarers' job satisfaction. Ironically, the seafarers' recruiting and retention crisis does not appear to given the priority it demands by the maritime industry or governmental authorities. Three examples of factors affecting seafarers' recruiting and retention that illustrate low priorities being given to seafarers are security restrictions, criminal exposure, and abandonment. In all three areas, steps can be taken to make seafaring a more attractive career choice.

## SEAFARERS' RIGHTS

Seafarers have for centuries been protected by a wide range of legal protections. Ancient maritime codes accorded seafarers numerous rights that are still with us today. The first written maritime codes that appeared in the 11<sup>th</sup> to 13<sup>th</sup> centuries provided remarkable protections for ship's crews, even by current standards. These codes followed commercial practices

that had developed in Mediterranean shipping in the pre-Christian era. For example, the ancient codes' provisions for seafarers' medical care are still better than modern land workers' medical care rights. The codes guaranteed that ship's crews would be repatriated to their home at the end of their voyage. The codes also required that ship's crews be provided decent lodging and sustenance (by the standards of the day). The medieval Barcelona Code, for example, required that seafarers be provided bread every evening, meat three times a week and wine twice a day. Many of the seafarers' rights contained in the Maritime Labour Convention, 2006 have their origins in the ancient maritime codes.

Enlightened lawmakers did not enact these ancient seafarers' protections for charitable or human-rights reasons. The early maritime enterprise and early courts both recognized that maritime commerce depended on protecting the people who moved the goods, and it was in everyone's best interest that their rights were guaranteed.

## SECURITY RESTRICTIONS

Seafarers are essential members of effective maritime security teams. The concept of "domain awareness" relies on seafarers to be eyes and ears on merchant ships and in seaports, uniquely qualified to recognize suspicious situations, and to report them to the authorities. Seafarers are not terrorist risks. In the more than eight years of intense scrutiny following the September 11, 2001 attacks, seafarers have proven themselves to be trusted and reliable. Despite their exemplary record, seafarers are still not perceived as security assets. Rather, they are still perceived as potential terrorists. In many situations, the industry and the authorities are rebuffing seafarers' potential contributions to security by treating seafarers as if they were part of the problem, as if they were terrorism suspects. One example is denying seafarers' shore leave.

***Shore leave restrictions*** continue to be a major issue for seafarers in terms of recruiting and retention and in encouraging them to be enthusiastic security assets. Restricting seafarers' shore leave gives them the impression that they are security risks and not valued members of the security team.

The International Maritime Organization (IMO) Convention on Facilitation of International Maritime Traffic, ratified by ninety-two countries, including the United States of America, contains in Section 3.44, a modern codification of mariners' right to shore leave.

"Foreign crew members shall be allowed ashore by the public authorities while the ship on which they arrive is in port, provided that the formalities on arrival of the ship have been fulfilled and the public authorities have no reason to refuse permission to come ashore for reasons of public health, public safety or public order."

The International Ship and Port Facility Security Code (ISPS), which has been accepted by the United States, provides in Preamble paragraph 11:

"Recognizing that the Convention on the Facilitation of Maritime Traffic, 1965, as amended, provides that foreign crew members shall be allowed ashore by the public authorities while the ship on which they arrive is in port, provided that the formalities on arrival of the ship have been fulfilled and the public authorities have no reason to refuse permission to come ashore for reason of public health, public safety or public order, Contracting Governments, when approving ship and port facility security plans, should pay due cognizance to the fact that ship's personnel live and work on the vessel and need shore leave and access to shore-based seafarer welfare facilities, including medical care."

In MSC/Circ.1112 of 7 June 2004, the IMO reminded Contracting Governments of their responsibilities in implementing the ISPS to afford special protections to seafarers and of the critical importance of shore leave. The exhortations contained in the Circular are based on the principles that seafarers have primary security duties under the ISPS, and they should be viewed as partners in the new security regime rather than as potential threats to security.

Similarly, the International Labor Organization's Seafarers' Identity Documents Convention (Revised), 2003 (ILO-185), which will be discussed below, confirms seafarers' right to shore leave in its preamble:

"Being aware that seafarers work and live on ships involved in international trade and that access to shore facilities and shore leave are vital elements of seafarers' general well-being and, therefore, to the achievement of safer shipping and cleaner oceans,"

***Restrictions on signing off vessels.*** It used to be quite common for seafarers signing off ships in the United States to spend a few days in the United States before returning home. They would go sight-seeing, visit relatives, and go shopping. (They spent a lot of money shopping.) U.S law allows seafarers who sign off their ships in the United States to remain in the United States for up to 29 days. Customs and Border Protection (CBP) policy now prohibits any delays in repatriating signed-off seafarers. In an email to INTERTANKO, the Department of Homeland Security wrote:

"In the case of repatriation, CBP will want to see that a departure flight was already scheduled. The officer wants to see that the crewmember's intention is to leave the United States, and not to go sightseeing or visiting or spending time touring the US."

This is an example of a policy that does little to increase security, but has significant ramifications on seafarers' job satisfaction.

job satisfaction and recruiting and retention.

**Shore leave survey.** The Seamen's Church Institute of New York and New Jersey (SCI) has conducted annual surveys of seafarers' shore leave detentions and restrictions on seafarers' and chaplains' access through terminals in United States ports since 2002. During the week of 20 through 27 July 2008, seafarers' centers in thirty-four United States ports and one Canadian port participated in the survey. Twenty three ports detailed instances where seafarers were denied shore leave or terminals imposed restrictions on chaplains' or seafarers' access through the terminals.

The 20-27 July 2008 survey revealed that on approximately 20% of the ships visited, one or more seafarers were not allowed shore leave. Seafarers were denied shore leave because they didn't have visas, terminal restrictions, ship restrictions, and ship agents' actions. The report of the survey is attached as an appendix.

**Terminal restrictions** are examples of short-sighted decisions that do not enhance security but have a big effect on seafarers' job satisfaction. The International Ship and Port Facility Code (ISPS Code) in Part A 16.3.15 requires port facilities to include in their facility security plans "procedures for facilitating shore leave for ship's personnel. . ." The ISPS Code recognizes that seafarers have important security responsibilities as well as personal needs. When terminals view seafarers as potential threats to security rather than partners in security, maritime security and seafarers' job satisfaction suffers. The IMO reemphasized this important policy in MSC/Cir. 1112 of 7 June 2004 by stating that a "singular focus on the security of the port facility is contrary to the letter and spirit of the ISPS Code and will have serious consequences for the international maritime transportation system that is a vital component of the global economy."

The survey indicated that several terminals thwart the objectives of the ISPS by imposing exorbitant fees to escort seafarers and other visitors through their terminal. The fees are too expensive for seafarers to pay, and their employers refuse to pay the fees. The fees effectively deprive seafarers' access to shore leave. The fees also block port chaplains from access to ships in the terminals. One of the typical services provided by port chaplains to seafarers, especially to those seafarers who are restricted to their vessel, is providing them mobile telephones and telephone cards so that they can communicate with family and friends. Restricting chaplain's access to vessels creates even more hardships for seafarers who cannot go ashore.

A solution to this problem is contained in legislation pending in the United States Congress that would prohibit terminals in the United States from imposing fees to seafarers to transit their terminals for shore leave. Ship operators also have an opportunity address this problem. They could reexamine their decisions to use terminals that place obstacles on their crews' shore leave and they could review the costs of paying the fees imposed by terminals in considering their effect on seafarers'

**Ship restrictions** on shore leave, surprisingly, still persist. Ship operators have for centuries recognized that shore leave is necessary for their crewmembers health and for the safe and efficient operation of their vessels. Merchant mariners' right to shore leave existed in customary maritime law long before the right was recorded in the earliest written maritime codes dating from the Middle Ages. Traditionally, a ship's master can grant shore leave at his or her discretion. The decision to grant shore leave should not be at the personal whim of the master, nor should a master deny shore leave as a punishment. The United States Supreme Court described shore leave in the following manner:

"The assumption is hardly sound that the normal uses and purposes of shore leave are "exclusively personal" and have no relation to the vessel's business. Men cannot live for long cooped up aboard ship without substantial impairment of their efficiency, if not also serious danger to discipline. Relaxation beyond the confines of the ship is necessary if the work is to go on, more so that it may move smoothly. No master would take a crew to sea if he could not grant shore leave, and no crew would be taken if it could never obtain it. Even more for the seaman than for the landsman, therefore, "the superfluous is the necessary . . . to make life livable" and to get work done. In short, shore leave is an elemental necessity in the sailing of ships, a part of the business as old as the art, not merely a personal diversion." <sup>1</sup>

Although a ship's master may legitimately restrict shore leave to accomplish the ship's operational requirements or for health or safety reasons, the shore leave survey reports indicated other reasons for ships' restrictions: to prevent their crews from jumping ship. One ship operator prohibits all Burmese seafarers from taking shore leave in the United States. Other ship operators restrict their crews to their ships after one of the crew deserted. Such restrictions do not prevent seafarers who are intent upon deserting from doing so. If a seafarer wants to jump ship he or she will find a way to do so, irrespective of any restrictions on shore leave imposed by a vessel. The restrictions do, however, have an effect on recruiting and retention. Ship operators could deter seafarers from deserting by examining the conditions on board their vessel that make desertion an attractive alternative to shipboard work. Maximizing shore leave opportunities will go a long way toward improving seafarers' job satisfaction and retention.

**Agent Restrictions.** The survey indicated that shore leave was denied because of ship agent's actions or omissions. Agents represent shipowners' interests, so their actions or omissions are extensions of shipowners' responsibilities. Ship agents are responsible for informing U.S. Customs and Border Protection (CBP) a ship's arrival in a timely manner so that an immigration

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<sup>1</sup> Agular v. Standard Oil Company, 64 S.Ct. 930 (1943)

inspection can be conducted. They are also responsible for ensuring that proper immigration forms are prepared for the CBP inspection. When agents do not fulfill the requirements for an immigration inspection, seafarers are denied shore leave. A related issue is that in some terminals, agents must authorize port chaplains' visits to vessels. When agents do not make proper arrangements for chaplains to visit ships in terminals, crewmembers suffer. This potentially bars access to ships that need visits the most; ships where seafarers may be deprived of shore leave and the welfare services provided by chaplains. Ship operators' decisions on how agents represent their interests in ports, especially those that relate to seafarers well-being have a very significant impact on seafarers' job satisfaction.

**U.S. Visa** requirements remain the greatest obstacle to shore leave in the United States. The survey revealed that 76% of all shore leave restrictions were because seafarers did not have United States crewmember visas (D1, D2).

The United States requires foreign crews on visiting merchant vessels and aircraft to have a D-1 visa to apply for shore leave. 8 U.S.C. § 1101(a)(15)(D)(i). Crewmembers who sign-off from their ships in the United States and depart on conveyances other than the ships on which they arrived on are required to have D-2 visas, 8 U.S.C. § 1101(a)(15)(D)(i). Crewmembers who wish to enter the United States to join their ship in the United States must have a C-1 transit visa, 8 U.S.C. § 1101(a)(15)(C).

Individual D-1 visas must be obtained at a United States consulate at a cost of \$131.00. They are multi-entry visas valid for up to ten years. Because of reciprocity, most are valid for five years. Merchant mariners customarily must pay for their own D-1 visas.

**Visa Waivers and Paroles:** 8 U.S.C 1282(a) Authorizes the Secretary of the Department of Homeland Security to promulgate regulations authorizing CBP officers to waive visas. There are existing regulations in 8 C.F.R. 252.1(d) that authorize waivers for all or part of a crew. Neither the statutory or regulatory authority provide any criteria for granting visa waivers, but past waivers include instances where ships could not obtain a visa because there was no American consulate at its last foreign port, or because the ship received orders while at sea to sail to a United States port.

Parole provides another option for a seafarer to go ashore in the United States without a visa. A CBP parole allows a crewmember detained on board a vessel to temporarily go ashore for specific purposes, such as to conduct necessary ship's business or to obtain medical care 8 U.S.C. 1182(d)(5); 8 C.F.R. 253.1.

**Pre-arrival notices.** The U.S. Coast Guard (USCG) requires vessels to provide 96-hour advance notice of arrival before calling at a United States port. The Notice of Arrival information included lists of every person on board the vessel. The USCG provides the crew lists to CBP where names are run through the Interagency Border Information System (IBIS) containing

"lookout" databases maintained by the U.S. Customs Service, the U.S. State Department, the U.S. Bureau of Alcohol, Tobacco and Firearms, the U.S. Drug Enforcement Agency, the Royal Canadian Mounted Police and other law enforcement agencies. IBIS also includes data on arrests and warrants in the Federal Bureau of Investigation's National Crime Information Center (NCIC) database and lookouts posted in the CBP's National Automated Immigration Lookout System (NAILS).

**Border entry formalities.** When a vessel arrives in a United States port, a CBP officer boards the ship and personally inspects each crewmember and his or her documentation, including passport or seamen's book and visa. The immigration officer has discretion to grant or deny shore leave. If shore leave is granted, the crewmember is provided with a Crewman's Landing Permit (Form I-95) authorizing entry into the United States for up to 29 days. The Crewman's Landing Permit is a simple paper form that does not contain a photograph. If CBP does not approve a crewmember's shore leave, the crewmember is detained on board and not allowed to leave the ship. The ship's master normally holds the crewmembers' passports in the ship's safe while the vessel is in port. Foreign crewmembers, therefore, often do not have a photo identification card while on shore leave. On January 18, 2005 the USCG determined that when crew passports are required to be kept on the vessel and no other form of identification is available for the mariners, a photo ID meeting the requirements of 33 CFR 101.55 must be provided by the vessel's owner or operator for the purpose of facilitating shore leave in the United States.

**Difficulties in obtaining visas.** Since 9/11, foreign mariners have encountered a variety of logistical problems in obtaining visas. Many foreign mariners work on ten to twelve month contracts with only one or two months vacation between contracts. In some countries, United States consulates have such lengthy backlogs for visa application appointments that they cannot accommodate seafarers' brief home leave schedules. Other consulates have required a letter from the mariner's employer stating that their ship will visit the United States. Because many vessels operate from charter to charter, the employer often does not know at the time of hiring whether the ship will visit the United States during the course of the mariner's employment. Once the mariner ships out, it is almost impossible to get an appointment for a visa interview at a United States consulate during their brief port calls. Furthermore, the \$131.00 visa fee is a significant expense for mariners. In July 2003, in anticipation of eliminating crew-list visas, the U.S. State Department instructed all Embassies and Consulates to give priority to seafarers seeking crewmember visas. Presumably, seafarers should continue to be given priority treatment.

**Visa prohibitions.** International Conventions codify customary international maritime practices that ship's crews should not be required to have a visa for temporary shore leave. The IMO's Facilitation of International Maritime Traffic convention specifically prohibits member states from requiring seafarers to obtain a visa for shore leave. The United States is one of the few countries in the world (Australia being another) that violates the Convention on Facilitation International of

Maritime Traffic by requiring ships' crewmembers to have a visa for shore leave.

The International Labour Organization's (ILO) Seafarers' Identity Document Convention, 2003 (Revised) (ILO-185) provides a solution to this problem by providing an alternative to seafarers having to obtain multiple visas for the various countries that might require them. ILO-185 would also dramatically increase maritime security by providing mechanism for positively identifying, thorough biometrics, the world's professional merchant mariners. Furthermore, it would provide a way to enhance seafarers' status by recognizing them as professional merchant mariners.

ILO-185 was adopted in response to a United States initiative following the September 11, 2001 attacks. ILO-185 was adopted by the ILO on 20 June 2003. ILO-185 establishes an international system of biometric seafarers' identity documents that satisfies contemporary security concerns, maintains necessary facilitation of shipping, and recognizes the needs of seafarers. Features of ILO-185 include:

- Establishes international standards for seafarers identity documents (SIDs);
- SIDs are issued by the seafarer's country of citizenship of permanent residence, not by the flag state;
- SIDs employ fingerprint biometric standards using internationally recognized and proven ICAO standards that are used in the international aviation industry (including well-tested readers);
- SIDs are identity documents only, they are not travel documents;
- SIDs do not require background checks or security clearances, they only establish identity so that background checks and security assessments can be made from them.
- SIDs would remain in seafarers' possession, even while ashore (passports with United States visas are normally kept locked up in the ship's safe.)

Unfortunately, the United States has not ratified the convention, and this, in turn, has discouraged other countries from doing so. As of September 11, 2008, thirteen countries have ratified ILO-185 (Albania, Azerbaijan, Bahamas, France, Hungary, Indonesia, Jordan, Republic of Korea, Madagascar, Republic of Moldova, Nigeria, Pakistan, and Vanuatu). Some other countries have indicated a reluctance to ratify ILO-185 and undertake the expense of setting up a seafarers' identity document system when the United States has not done so.

The United States hasn't ratified the ILO-185 because Article 6 of the Convention would require the United States to accept a SID as a substitute for a visa for the purpose of shore leave. The United States' reliance on its visa system that covers only foreign seafarers who want shore leave in the United States is preventing far greater protections throughout the maritime world that would be realized through widespread implementation of

ILO-185. Three significant maritime and port security improvements over D-1 visas that would be realized through ILO-185 are:

- Visas are required only for those foreign seafarers requesting shore leave in the United States. Seafarers on ships in United States ports and waters are not required to have visas. ILO-185 would provide a mechanism for establishing the identity of all seafarers on all ships wherever they are.
- Passports with visas are kept locked up in ships' safes when in United States ports. ILO-185 SIDs would be carried by foreign seafarers when ashore, providing them with secure biometric identification while ashore.
- Potentially, all of the world's seafarers could have biometric IDs.

One possible solution to the problem is for the Department of Homeland Security to promulgate regulations that would allow CBP officers to waive visas for merchant mariners holding valid ILO-185 SIDs.

The United States should be encouraged to reconsider ratifying ILO-185 taking into account the increased security and the improvements in seafarers' job satisfaction that the convention would provide.

## CRIMINAL EXPOSURE

Seafarers' work is difficult and dangerous. They endure long periods of separation from home, family and friends, and they live and work in a very hazardous environment. Seafarers have always been exposed to the perils of winds, seas, and shoals. Because of this, maritime nations enacted special protections for seafarers to induce them to pursue their dangerous and lonely work. Coastal countries, however, appear in recent years to have ignored the contributions that shipping and seafarers make to their prosperity. Rather than protecting seafarers by law, some countries have used the law to single out seafarers for criminal prosecutions when things go wrong in their ports. As a result, the perceptions that seafarers are subject to greater risks of criminal prosecutions than persons pursuing other occupations are deterring skilled people from seagoing careers. Several recent cases illustrate that seafarers' unfair exposure to criminal prosecutions is real.

***MT Hebei Spirit.*** While at anchor in Daesan Harbor, South Korea early in the morning of December 7, 2007 the VLCC Hebei Spirit under the command of Captain Jasprit Chawla was struck by a runaway crane barge. The barge was floating free after it broke away from its tug in rough seas. The collision punctured three tanks on the Hebei Spirit causing the largest oil spill in South Korean history. The spill occurred near one of South Korea's most beautiful beaches and affected wetland areas, wildlife, and aquaculture farms. Although credited with taking actions that limited some of the damages, Captain Chawla and Chief Officer Syam Chetan were criminally prosecuted by South Korean prosecutors. On June 23, 2008 both Captain Chawla and

Chief Officer Chetan were cleared of all charges by the district court. However, they continue to be detained in South Korea pending an appeal of the case by Korean prosecutors to a high court.

***MT Tasman Spirit.*** On July 23, 2003 the MT Tasman Spirit ran aground while entering Karachi harbor causing the worst oil spill in Pakistan's history. Six weeks after the accident the ship's master Captain Karystinos Demetrios, six of its crew, plus the salvage master who arrived after the spill, were arrested and charged with criminal negligence. The case became cause célèbre for the "Karachi Eight" because of their long detention in Pakistan. The men were released on bail after eight months of detention. The Pakistan Merchant Navy Officers Association has since claimed that the principal cause of the accident was improper channel maintenance by Karachi Port Trust.

***MT Prestige.*** In November 2002, the MT Prestige, under the command of Captain Apostolos Mangouras, suffered structural damage in heavy weather off Cape Finisterre. Captain Mangouras's requests to enter a safe haven were refused by Spanish, French and Portuguese authorities. After being buffeted by rough winds and seas, the MT Prestige broke in tow, spilling about 20 million gallons of oil into the sea. Captain Mangouras was the last person to be evacuated by helicopter from the sinking vessel. When he landed in Spain, Captain Mangouras was arrested as soon as he arrived in Spain and criminally charged by Spanish authorities of not cooperating with salvage crews and harming the environment. The Bahamian flag authority's casualty investigation did not attribute any fault to Captain Mangouras. Rather it commended his skill, seamanship and bravery for preserving the lives of his shipmates. Captain Mangouras spent three months in a Spanish prison before being released on bail and placed in house arrest in Spain where he still awaits trial. A trial could commence as early as the end of 2008.

***MV B Atlantic.*** On August 13, 2007 Venezuelan National Guard arrested Captain Volodymyr Ustymenko and Second Officer Yuriy Datchenko after they discovered a package of cocaine attached to the outside hull below the waterline of the MV B Atlantic while in Lake Maracaibo. Despite having no evidence of the seafarers' involvement and their obvious innocence, the men remain under house arrest in Venezuela awaiting trial. Trial is expected to commence in late 2008. At least three similar cases have occurred in the same port over the past two years.

***MV Coral Sea.*** In mid-July 2007, Captain Kristos Laptalo, First Mate Konstantin Metelev, and Bosun Narciso Carcia of the M/V Coral Sea were arrested and charged with smuggling 52 kilos of cocaine into Greece. The cocaine was discovered by the ship's agent during a routine quality check hidden in two of the 27,000 boxes of bananas that had been unloaded in Patras, Greece. (The Coral Sea's total cargo was 187,000 boxes of bananas.) The seafarers did not have access to the cargo of

bananas during loading in Ecuador or during the voyage to Europe. After being held in prison for one year, the seafarers' trial was held in July 2008. No evidence was produced at trial that established any connection between the seafarers and the cocaine. To the contrary, one prosecution witness testified that he didn't believe that the seafarers knew that cocaine was on their vessel. The court acquitted First Officer Metelev and Bosun Carcia, but convicted Captain Laptalo and sentenced him to fourteen years in prison and a € 200,000 fine. The judges' rationale for convicting Captain Laptalo was that as Captain he should have known what was on his ship and be responsible for it. In late November 2008, the Greek appeals court acquitted Captain Laptalo and released him after seventeen months of incarceration.

***Zim Mexico III.*** On March 2, 2006 while the MV Zim Mexico III, under the command of Captain Wolfgang Schröder and assisted by a harbor pilot, was maneuvering from its berth in Mobile, Alabama, struck the pier and the overhang of its bow knocked over a container crane. Tragically, when the crane collapsed it fell on an electrician who was working on the crane contrary to safety procedures and killed him. Captain Schröder was arrested on April 17, 2006 and charged with a felony under the United States Seamen's Manslaughter Act. On October 12, 2006 a Mobile, Alabama jury determined that Shawn Jacob's death was caused in part Captain Schröder's negligence, and they convicted him of the manslaughter charge. At Captain Schröder's sentencing hearing on February 7, 2007, the trial judge sentenced him to the four months he had already served in jail noting that Captain Schröder had been found guilty of only simple negligence, and that such acts are normally handled in civil courts, not criminal courts.

These cases, as well as several others, have suggested a general trend to use criminal laws to respond to maritime accidents and other maritime incidents. They have created a justified perception that seafarers are subject to criminal prosecutions for actions that would not be crimes in other occupations. Seafarers should be held responsible for intentional criminal acts and not singled out for unfair criminal procedures because of their status as seafarers. Criminal laws are important tools of society to deter intentional crimes. Seafarers themselves need to be protected from intentional misconduct that harms them and their environment.

The problem for recruiting and retaining skilled and reliable seafarers is the perception seafarers are unfairly prosecuted for unintentional crimes or are unfairly made scapegoats when accidents occur. Whether this perception is justified or not is irrelevant, because when attempting to recruit or retain seafarers, perception is reality. Seafarers are acutely aware of the criminal prosecutions of their colleagues, and they are worried about their criminal exposure. This risk affects their career choices. The maritime industry's recruiting and retention crisis will get worse unless the maritime industry unites to protect seafarers from unreasonable prosecutions.

A good starting place for the industry to unite to protect seafarers

is in the United States. As the Captain Schröder case demonstrated, there is a special manslaughter statute, the Seamen's Manslaughter Act, 18 USC 1115, which provides criminal penalties for maritime fatalities caused by only simple negligence. This act, by its very presence on the books, says to seafarers that they are being treated differently from other workers in a very negative way.

The law applies only when a maritime incident results in death. A conviction under the Act requires only proof of any degree of negligence, including simple negligence. Persons working on other conveyances, such as trains, airplanes, trucks, or buses do not face criminal conviction for deaths caused by their simple negligence or unintentional acts. (A different manslaughter crime applies to those persons and others, including mariners, within United States federal jurisdiction. This crime, 18 U.S.C. 1112, like most other manslaughter crimes, requires proof that the accused caused a death with criminal intent or by criminal negligence.)

The Seamen's Manslaughter Act runs counter to modern maritime safety principles by preventing a casualty investigation from determining the cause of a casualty. If a maritime accident causes a death, the entire ship's crew and the ship's managers are in jeopardy of criminal prosecution. As a result, they have the right to refuse to answer an investigator's questions about the circumstances surrounding the casualty, thereby making it very difficult for an investigator to determine the casualty's cause and to make recommendations for prevention.

An additional negative impact of the archaic act lies with its potential to deter mariners from joining or staying in shipboard occupations. Criminally prosecuting mariners for unintentional acts or acts of neglect, not crimes in other sectors, effectively deters people from becoming or remaining mariners.

When bad things happen in ports, prosecuting a transient mariner becomes a convenient way for local prosecutors to appease their constituents. Such short-sighted prosecutions may well work against local interests by hampering casualty investigations and by deterring ships from calling at ports where mariners face unfair exposure to criminal prosecutions.

The United States Seamen's Manslaughter Act is a relic of the past. It should be repealed, leaving 18 U.S.C. 1112, available for prosecuting mariners or ship operators who cause the death of another through criminal intent or criminal negligence.

In other cases involving maritime incidents, local prosecutors and citizens need to be informed of the importance that shipping and seafarers have to their economic prosperity. Seafarers do not vote in the ports they visit. They are not constituents of any local politicians or prosecutors. They are often considered suspicious foreigners by local residents. They are therefore convenient scapegoats for local politicians and prosecutors when things go wrong in their ports. Unfairly singling out seafarers or using them for a scapegoat is counter-productive and probably a greater threat to society than the wrong for which they might be

prosecuted. Local prosecutors and citizens of port states need to understand that their actions in unfairly prosecuting seafarers have a great impact on recruiting and retaining seafarers so that they can make informed prosecutorial decisions.

## ABANDONMENT

Surprisingly, even during shipping's boom times, seafarers continued to be abandoned in foreign posts without their pay, food, water, or the means to return home. The risk of being abandoned even in periods of shipping prosperity is a serious disincentive to enter and remain in seagoing careers. Even more surprising is that there is a simple and inexpensive solution to this risk that is being blocked by shipowners who so desperately need to attract seafarers to crew their vessels.

One thousand ships with 150,000 crew members were reported abandoned between 1990 and 2006. Since the ILO and IMO began keeping data on abandonment in 2004, more than fifty cases have been reported. The actual number of incidents is widely believed to be substantially underreported. In today's economic downturn, we can expect that more ships and their crews will be abandoned by their shipowners.

Abandonments usually occur when shipowners run into financial difficulties and simply make a calculated decision to walk away from their ships and debts. Their debts almost always include many months of unpaid crew wages. When this happens, seafarers are left to fend for themselves, without any food, water, fuel or money for repatriation. Ports states are usually not equipped to handle the humanitarian situation, and in most cases there is no insurance cover because the shipowner has stopped paying premiums. Although there are often facilities for repatriating abandoned seafarers, seafarers usually refuse to leave their vessel without their unpaid wages. Their ability to take advantage of legal remedies is extremely limited because abandoned seafarers cannot afford litigation expenses. Furthermore, legal procedures can take a long time and there is often little value left in abandoned vessels to pay for their debts. Being abandoned is highly demoralizing for highly trained, hard working, and proud seafarers reduced to relying on charity for their survival.

The vast majority of ship operators are responsible businesses that properly care for their ships' crews. International maritime law provides a variety of protections to merchant mariners that are far superior to those given to land-based workers. But existing layers of insurance coverage, flag-state and port-state laws providing for seafarers' welfare are inadequate to prevent seafarers from being abandoned or to protect them if they become abandoned. Ships and their crews continue to be abandoned because of lax or non-existent laws regarding minimum standards of financial responsibility for ship operators and because indigent, abandoned mariners cannot afford access to justice.

The United States has taken the lead in finding a worldwide

solution to the problem of abandoning seafarers by proposing to the IMO and ILO mandatory standards of ship operators' financial responsibility to fulfill their legal obligations to repatriate and pay their crews.

The current Guidelines on Provision of Financial Security in Case of Abandonment of Seafarers that were approved by the joint IMO/ILO ad hoc Expert Working Group on Liability and Compensation Regarding Claims for Death, Personal Injury in 2002 have not been effective. The United States proposed that features contained in the guidelines should become mandatory. Its proposal allows for maximum flexibility in how States create a system of financial responsibility that would permit States to ratify such an instrument, encourage creative solutions, and accommodate existing effective regimes. The proposal would require flag States to ensure that their ships have an adequate financial security system in place. It would also obligate port States to ensure the same for ships entering or leaving their ports and offshore facilities. This mechanism of interlocking conditions of port entry has the potential of ensuring widespread compliance with the financial security system requirements, even by vessels of non-State parties.

The proposal received broad support at the 7<sup>th</sup> and 8<sup>th</sup> meetings of the IMO/ILO Working Group from governments and trade unions. Surprising, the proposal met resistance from shipowner representatives. They stated that they were unwilling to agree to a scheme that would require them to provide proof of financial security for wages and other legal obligations other than repatriation.

Apparently, responsible ship operators are reluctant to agree to a solution that would require them to bail out their irresponsible competition. According to statements made at the Working Group meetings, P&I insurance could add the risks of covering repatriation and wages at little or no costs for responsible shipowners. It is surprising that shipowners are not taking the lead by implementing a solution to the abandonment problem as part of their recruiting or public relations budgets. The costs

would be low and the rewards of demonstrating that shipowners are uniting to make seagoing careers more attractive would be immense.

## CONCLUSION

Today's globalized economy is critically dependent upon merchant shipping. Merchant shipping is threatened by shortages of qualified seafarers to operate today's and future merchant fleets. Recruiting and retaining seafarers is the maritime industry's gravest long term crisis. The crisis doesn't affect only shipowners. It has grave consequences for the world's economic prosperity that is so critically dependant on merchant shipping. The seafarers' recruiting and retention crisis therefore cannot be solved by ship operators alone. It is a problem that affects everyone. Governments, the shipping industry, and anyone that makes a decision affecting seafarers' lives and work are part of the solution. What is required is a fundamental change in how seafarers are perceived. Rather than thinking of seafarers as potential terrorists, scapegoats, or objects of charity, seafarers must be elevated in stature commensurate to their contributions to the world's economies. Whenever decisions are made by shipowners, public authorities, prosecutors, or businesses that potentially affect seafarers, the decision makers must consider their decision's effect on recruiting and retaining seafarers.

The time is overdue for the maritime industry and governments to invest more resources in raising public awareness of the importance of shipping and the seafarers' contributions to their prosperity and security.

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## **JULY 20-27, 2008 SHORE LEAVE SURVEY**

The Seamen's Church Institute of New York and New Jersey (SCI) has conducted annual surveys of seafarers' shore leave detentions and restrictions on seafarers' and chaplains' access through terminals in United States ports since 2002. During the week of 20 through 27 July 2008, seafarers' centers in thirty-four United States ports and one Canadian port participated in the survey, with twenty three ports detailing instances of shore leave denial or terminals imposed restrictions on chaplains' or seafarers' access through the terminals.

The 20-27 July 2008 survey revealed that on approximately 20% of the ships visited, one or more seafarers were not allowed shore leave. U.S. visa requirements remain the greatest obstacle to shore leave in the United States. Some reports indicated that time and travel constraints limited some seafarers' ability to obtain required visas. Other cited reasons for shore leave denials included high fees charged by terminals for transportation or escort through the terminals, and restrictions imposed by vessel operators. Terminals that impose conditions on access, such as exorbitant security or escort fees, effectively deny seafarers and chaplains access through the terminals. Further, in several ports, chaplains depend upon ships' agents to provide them authorization to access ships. This potentially bars access to ships that need visits the most – 'problem ships' operated by those seek to limit any outside intervention.

Analysis of the survey data (attached) attempts to discern relationships between denial of shore leave and the types of vessels with detained crewmembers, nationalities of detained seafarers, and reasons why shore leave was denied.

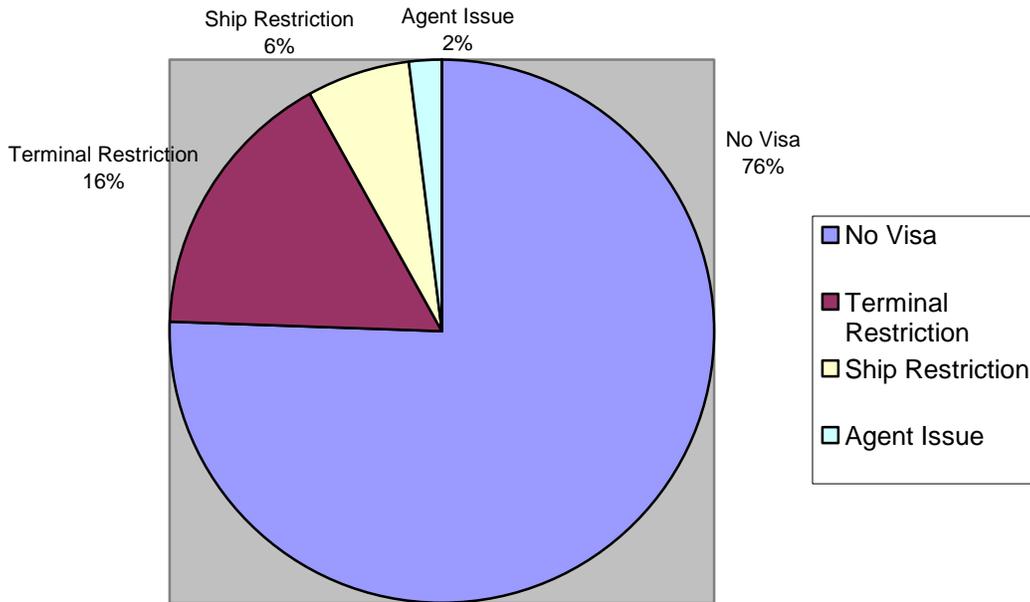
TABLE A – REPORTED STATISTICS AND COMMENTS

PORT	SHIPS VISITED	SHIPS WITH DETAINED CREW	TYPE OF SHIPS WITH DETAINED CREW	COMMENTS *See Table B
Baltimore, MD	25	4 (Approximately 27 Seafarers)	Tanker (1 ship) Bulk Cargo (2 ships) General Cargo (1 ship)	No visas (3 ships) Ship Restrictions (1 ship)
Beaumont, TX		6 (approx. 115 seafarers)	Bulk Cargo (3 ships) General Cargo (1 ship)	No visas.
Boston, MA	8	1 (26 seafarers)	General Cargo	Terminal Restrictions*
Brunswick, GA	11	3 (26 Seafarers)	General Cargo (1 ship) Vehicle Carrier (2 ships)	No visas (3 ships) Ship Restrictions (1 ship)
Burns Harbor, IN	12	0		No access issues
Charleston, SC	15	0		No access issues
Claymont, DE	0	0		No access issues
Corpus Christi, TX	3	1 (9 Seafarers)	Tanker	No visas
Duluth/Superior, MN	1	0		No access issues
Galveston, TX	8	2 (26 Seafarers)	Bulk Cargo	No visas
Green Bay, WI	3	2		Terminal Restrictions (2 ships) *
Gulfport, MS		0		No access issues
Hamilton, ON		0		No access issues
Houston, TX	149	27		No visas
Lake Charles, LA	12	4 (62 Seafarers)	Tanker (1 ship) Bulk Cargo (2 ships)	No visas
LA/Long Beach, CA		0		No access issues
Manatee, FL	6	1 (16 Seafarers)	Tanker	No visa
New Haven, CT	4	3 (47 Seafarers)	Tanker	Terminal Restrictions *
New Orleans, LA	2	1 (2 Seafarers)	Tanker	Agent issue*
Port Newark/ Port Elizabeth, NJ	57	14(Approximately 316 Seafarers)	Tanker (7 ships) Container Ship (1 ship) Cruise Ship (1 ship)	No visas (4 ships) Terminal Restrictions (9 ships)* Ship Restrictions (1 ship)
Oakland/Richmond, CA	21	5	Bulk Cargo (1 ship) Container Ship (3 ships)	No visas (4 ships) Terminal Restrictions (1 ship)*
Pascagoula, MS	7	1 (12 Seafarers)	General Cargo	No visas
Philadelphia	42	10 (112 Seafarers)	Tanker (5 ships) Bulk Cargo (3 ships) General Cargo (1 ship) Container Ship (1 ship)	No visas (9 ships) Ship restrictions (1 ship)
Port Hueneme, CA	3	0		No access issues
Portland, ME	3	3 (63 Seafarers)	Tanker (2 ships) Bulk Cargo (1 ship)	No visas (1 ship) Terminal Restrictions (2 ships)*
Portsmouth, NH	5	1 (5 Seafarers)	Bulk Cargo (1 ship)	No visas
San Diego, CA	5	3 (38 Seafarers)	General Cargo (2ship) Vehicle Carrier (1 ship)	No visas
San Juan Bay, PR	12	0		No access issues
Savannah, GA	21	5 (48 Seafarers)	Bulk Cargo (2 ships) Container Ship (2 ships)	No visas (3 ships) Ship Restrictions (2 ship)
Seattle, WA	40	7 (95 Seafarers)	Bulk Cargo (2 ships) General Cargo (1 ship)	No visas
Tampa, FL	15	1	Tanker	Agent issue*
Texas City, TX	8	0		No access issues
Valero-Delaware, DE	2	0		No access issues
Vancouver, WA	11	1		No visas
Wilmington, DE	6	3 (Approximately 9 Seafarers)	General Cargo (2 ships)	No visas

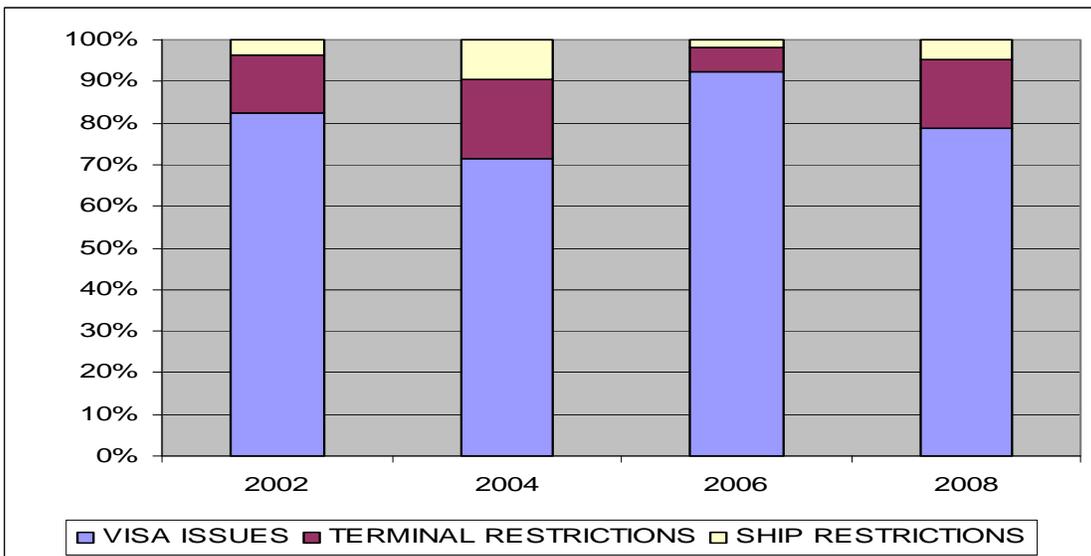
**\*TABLE B – PORTS REPORTING TERMINAL RESTRICTIONS**

TERMINAL NAME & LOCATION	DESCRIPTION OF TERMINAL RESTRICTIONS
Westway Terminal North Locust Point, MD	Seafarers with shore leave may only enter and exit terminal with Chaplains present.
Scrap iron Terminal Boston, MA	All ships' crew routinely denied shore access. Reason given is safety of seafarers and liability for terminal. Ship's owner has the option of hiring a water taxi at owner's expense.
C. Reiss Coal Green Bay, WI	Manager refuses to let any chaplains past security (does not put chaplains' names on security list).
Hess Terminal Groton, CT	Denies all chaplains access.
Magellan Terminal New Haven, CT	Chaplains are denied access unless they pay \$300 to be escorted by port security.
Motiva Terminal Bridgeport, CT	Chaplains are denied access unless they pay \$300 to be escorted by port security.
Motiva Terminal New Haven, CT	Chaplains are denied access unless they pay \$300 to be escorted by port security.
NU Star Linden, NJ	No one is permitted to leave the ship.
KMI Carteret, NJ	Management charges \$400 fee to escort seafarers through terminal.
KMI Staten Island, NJ	Management charges \$400 fee to escort seafarers through terminal.
Unidentified Terminal Portland, ME	Terminal requires ship to pay for security guard before shore leave can be cleared.
Volpak Asphalt Savannah, GA	Chaplain denied access to vessel by terminal security.
Unidentified T Tampa, FL	Chaplain denied access by Agent (Eller & Co.), which does not provide names to security to allow ship access.

**TABLE C - REASONS FOR DENYING SHORE LEAVE (BY SHIP)**

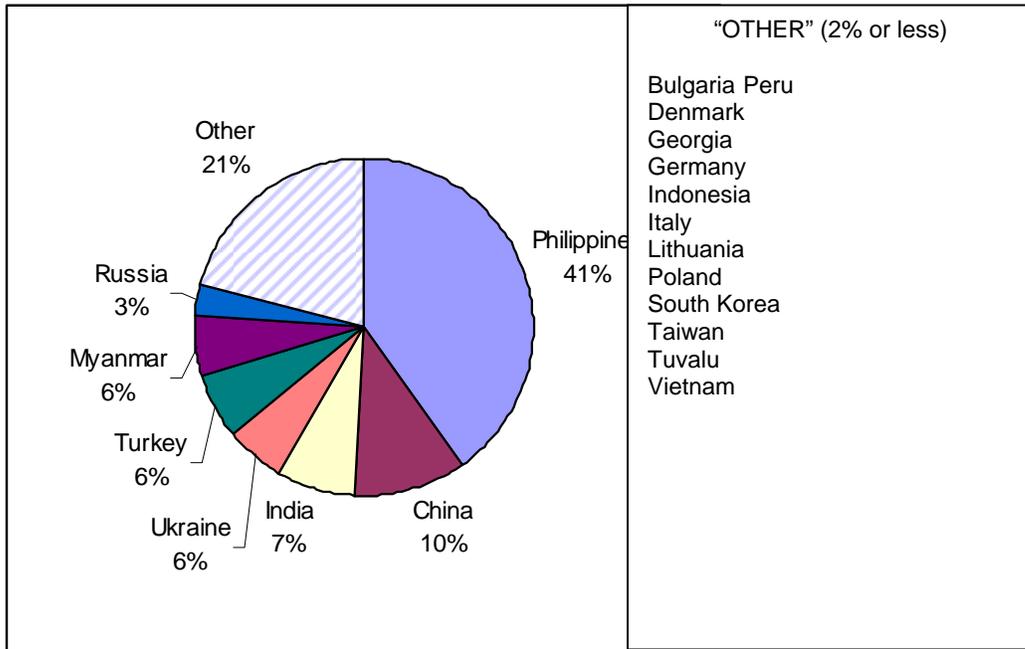


**TABLE D - REASONS FOR CREW DETENTIONS (YEARLY PROPORTIONS)**



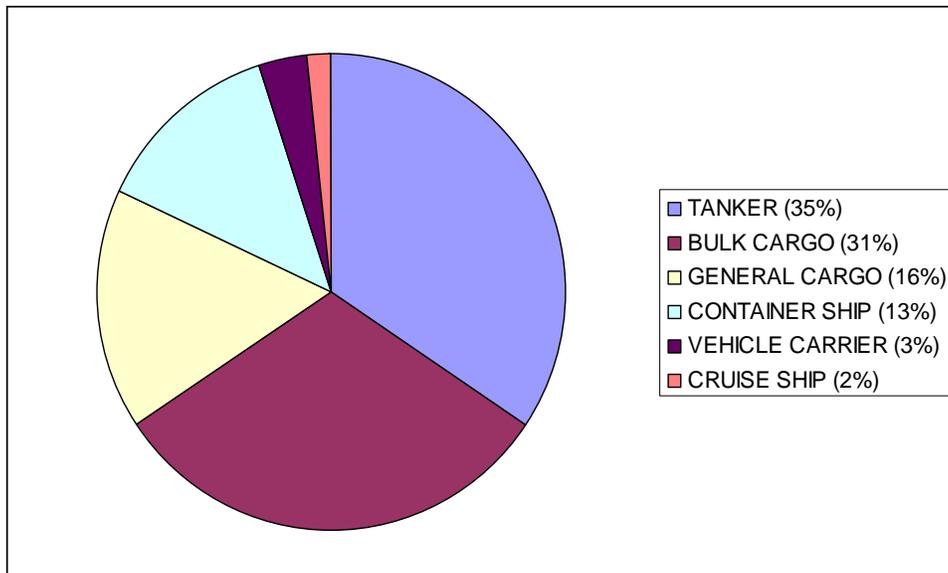
*Due to incomplete data on the precise number of seafarers detained on each ship, Tables C and D reflect one instance of detention any time one or more crew members were detained aboard the same ship for the same stated reason. For example, detaining 10 crew members for visa issues and 2 crew members due to terminal restrictions were counted equally.*

**TABLE E - NATIONALITIES OF SEAFARERS DETAINED DUE TO VISA ISSUES**

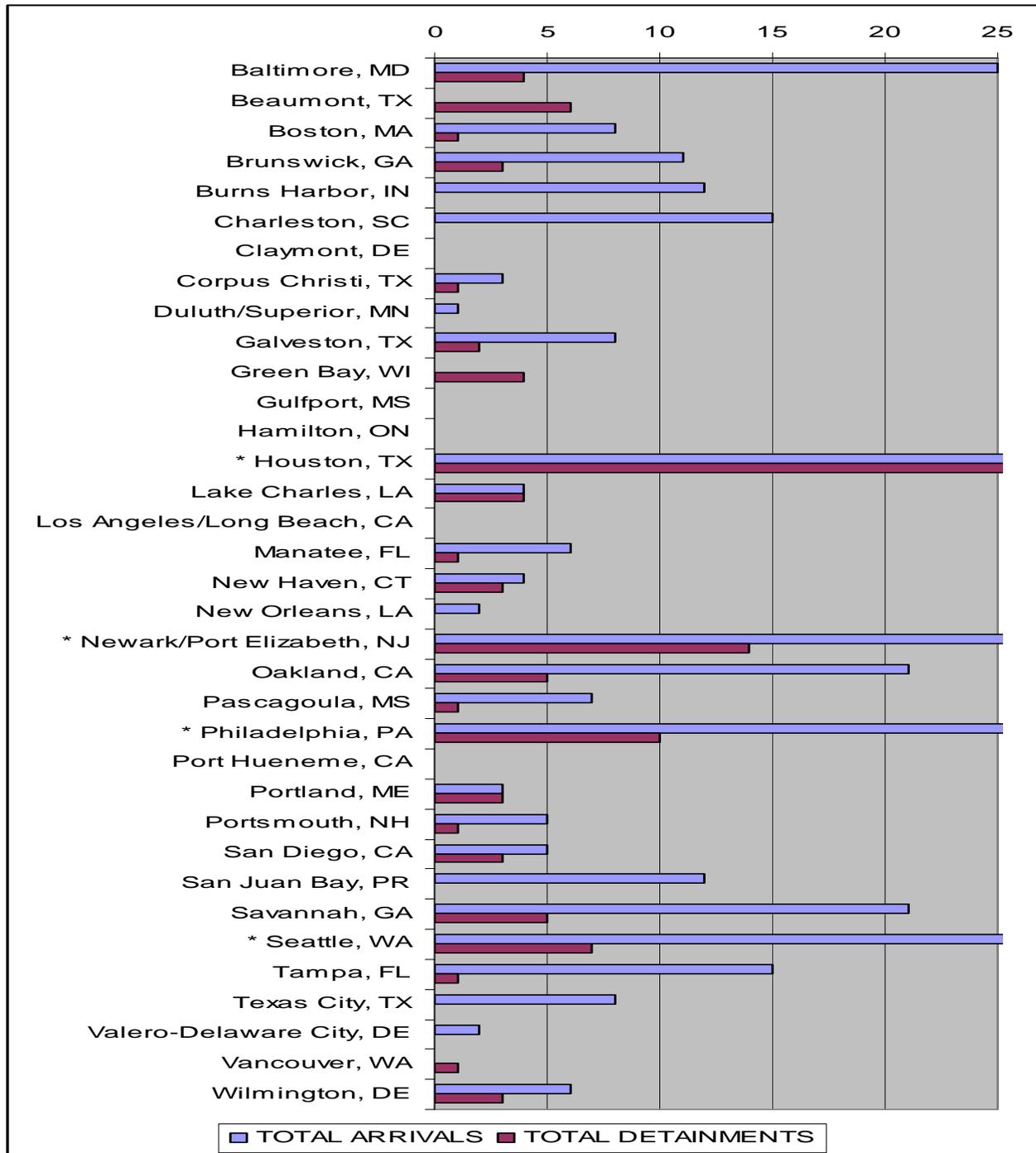


*Due to incomplete data on the precise number of seafarers from each nation, Table E reflects only one instance of detention aboard each ship (by nationality). For example, detaining 10 Filipino, 5 Chinese and an unknown number of Indian crew members aboard the same ship were counted as one instance of detention for each nationality.*

**TABLE F – DETENTIONS BY VESSEL TYPE**



**TABLE G - NUMBER OF SHIPS WHERE SEAFARERS WERE DETAINED DUE TO VISA ISSUES**



\* **Houston** = 149 Ship visits, 27 Detentions  
**Newark** = 57 Ship visits  
**Philadelphia** = 42 Ship visits  
**Seattle** = 40 Ship visits

*Table G provides quick notation for each responding port's ship visits and suggests the varying rates at which seafarers are detained from port to port.*