

**“nangangamuhan”:
An analysis of the standard employment contract
(POEA-SEC) for Filipino seafarers**

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Abstract

This thesis explores the terms and conditions of the standard employment contract (POEA-SEC) for overseas Filipino seafarers. The contract, and the workers' experience of it, is studied as an institutional arrangement prescribed by the Philippine government for the deployment of seafarers as contractual workers in the global labour market. This study aims to answer questions posed at the outset of this research on the enforcement and implementation of the POEA-SEC and its effectiveness in protecting the welfare and well-being of seafarers. This research examined the views, perceptions and experiences of seafarers and other major stakeholders in relation to their use of the POEA-SEC.

The process of approval of the POEA-SEC was used as a case study to generate qualitative data. Multiple approaches such as legal analysis, semi-structured interviews, site observation, and focus groups were employed to gather evidence. Participants all came from the Philippines, a developing country in Southeast Asia.

The thesis argues that the POEA-SEC is essentially an economic arrangement, which is fundamentally constructed to capture the remittance of workers. The contract is insufficient to address the problems associated with the vulnerability of the working conditions currently experienced by Filipino seafarers. Deploying the seafarers as short-term, contractual and cheap labour under the POEA-SEC undermines long established labour protection legislation, which is designed to protect the rights of workers to, for example, security of tenure and competitive rates of employment.

The experience of the seafarers on-board the ship suggests that the contract cannot intercede in a beneficial way and falls short as a legal document to protect Filipino seafarers. The contract is remote from seafarers, merely symbolic and systematically fails to address seafarer issues, such as fatigue, stress and anxiety which affect their health and well-being. What is reflected in the inadequacy of the contract is the inability (and, it might be argued, collusion) of the Philippine state (and others, e.g. trade unions) to protect its citizens (as migrant labour) from the sometimes onerous demands of seafaring and the worst excesses of capital (shipowners and their proxies i.e. crewing agencies).

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Chapter 1

Introduction

1.1 Introduction

This study looks into state arrangements for regulating labour employment in the Philippine maritime industry. It focuses on studying one such institutional arrangement – the standard employment contract (henceforth referred to as POEA-SEC) prescribed by the Philippine Overseas Employment Administration¹. Using the experience of overseas Filipino seafarers and other major stakeholders in the maritime industry, this thesis explores the POEA-SEC as a legal and institutional strategy of a labour-supply country. The Philippine state, vis-à-vis the contract aims to protect its vulnerable contractual workers who are mobilized by way of temporary employment agencies in the global labour market. This thesis examines its efficacy in this respect.

My principal focus is the labour employment process towards the approval of the seafarers' standard employment contract. In effect, the contract forms a case study to understand the way the wider global political economy shapes the policy intervention of the state (on employment protection and promotion). A range of different qualitative methods were used for the study of the POEA-

¹ In the Philippines, a Filipino seafarer deployed on overseas trading ships, whether hired by a domestic or foreign employer, must be covered by a POEA-approved Standard Employment Contract or what is officially known as the 'Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels' or 'POEA Standard Employment Contract' or the 'POEA-SEC', for brevity. The POEA-SEC refers to a "written government-approved employment contract stipulating a specific period of employment and formulated through tripartite consultation, individually adopted and agreed upon by the principal/employer and the seafarer" (POEA, 2003). It is attached as APPENDIX "A".

SEC. An analysis of the POEA-SEC as a legal document provides context for semi-structured interviews, and focus groups with seafarers and other stakeholders, to explore their perspectives on the contract. Observation was also conducted on the labour employment process. Giving prominence to the POEA-SEC enables this study to show how government policy functions in relation to the improvement of the working conditions of Filipino seafarers.

This introductory chapter provides the main research question and subsidiary questions, as well as an overall background to the study and its motivations and aims towards understanding Filipino seafarers' experiences of the implementation of the POEA-SEC. Finally, the chapter presents the structure of the thesis, and how it is organised.

1.2 Background of the study

Exploring employment contracts has never been more important and relevant in view of the global labour demand for flexible, short-term, contractual and extremely mobile labour force (Rodriguez 2010). Short fixed-term contracts, with a duration of less than twelve (12) months, constitute a pattern of work that falls outside the paradigm of permanent, full-time employment (Standing 1997; Johnstone et al. 2005; Standing 2009; Quinlan 2012). Given this scenario, contingent workers are reported as feeling insecure and in constant fear of being made redundant (Bohle and Quinlan 2000a, b; Quinlan et al. 2001; Johnstone et al. 2005; Walters et al. 2011b; Quinlan 2012). It has been further suggested that workers on these contracts are less likely to exercise basic participatory mechanisms such as reporting occupational health and safety (OHS) concerns to their employer or the regulatory agency, to raise issues with employers, and to refuse dangerous work (Johnstone et al. 2005, pp. 104-105). In seafaring specifically, the degree of labour intensity and vulnerability of seafarers as confirmed by this research is significant and well-documented (Hetherington et al. 2006). The reputation of seafaring as a hazardous

occupation and shipping as a dangerous industry has been established by numerous studies (Chapman 1992; Couper et al. 1999; ICONS 2000; Fitzpatrick and Anderson 2005; IMO 2011).

As a point of comparison for sea-based employment arrangements, contractualisation² schemes are among the most widespread employment strategies for land-based work cutting across all sectors and industries in the Philippines (Bernabe et al. 2014b, a). From the perspective of investors, hiring contractual workers is cost-efficient. In general, contractual workers are paid less and are not given the same benefits package as their regular counterparts (Bernabe et al. 2014b). Such workers are also deprived of their entitlement to statutory employment rights (Druker and White 2013). In essence, this arrangement affords companies greater flexibility to hire and fire workers. From the perspective of individual workers, particularly given the high incidence of poverty in the Philippines, contractual work provides a livelihood for the unemployed, especially for low-skilled workers within the lowest social classes. The overall effect, however, is claimed to lead to the lowering of labour standards and worsens inequality in the Philippines (Bernabe et al. 2014b).

This research focuses on the experience of Filipino seafarers since they are, as a general rule, treated as contractual employees, employed for a short duration of time usually lasting up to nine months (Castillon-Lora 2003; Samson 2004; Castillon-Lora 2010). Since 1975, the growth in Filipino seafarers deployed overseas has been phenomenal (BIMCO and ISF 2015). According to the POEA, 300,000 Filipino seafarers are currently employed in the global labour market, i.e. approximately a quarter of seafarers worldwide (BIMCO and ISF 2015). Those who are deployed onboard overseas ships are generally covered by a POEA-SEC. This means that the relationship between the seafarer worker,

² Contractualisation refers to short-term and unprotected temporary work arrangements, where so called 'end-of-contract workers' are hired and fired every five (5) months. This practice allows employers the option not to make the workers permanent employees.

the crewing agency and the shipowner is governed by a short-term contract that contains the minimum terms and conditions of employment – a situation supported by the Supreme Court of the Philippines.

The Supreme Court of the Philippines in the case of Douglas Millares and Rogelio Lagda versus National Labour Relations Commission (Kapunan 2002) confirms the contractual nature of the seafarers' employment, that is to say that seafarers are similar to overseas contract workers who are hired on a contractual basis and for a definite period. They are not covered by the term 'regular employment' as defined under the Philippine Labour Code. In an important distinction, as far as it affects Filipino seafarers, the Supreme Court reasoned that having a fixed term is essential and a natural consequence of the overseas employment of seafarers to which the concept of regular employment does not apply.

This research intends to explore the views, perceptions and experiences of Filipino seafarers, crewing managers, shipowners, and government regulators with regard to the POEA-SEC. The principal aim of the study is to address this research question:

- From the perspective of major stakeholders in the Philippine seafaring industry, are the terms and conditions of the POEA-SEC implemented in ways that offer protection when seafarers are deployed on-board overseas ships?

Out of this question, there are two further subsidiary questions:

- What are the workers' experiences of the POEA-SEC as an instrument for ensuring their protection, welfare and well-being?
- What are the strategies put in place by the state for the effective implementation of the provisions of the POEA-SEC?

It is envisioned that a study of the terms and conditions of the POEA-SEC will give some indication of how successfully the Philippine state is in balancing its role of protecting the welfare of Filipino seafarers when set against its role to engage with investors and advance the political and economic development of the country (Santos 2011). In the simplest sense it may be further asked:

- Do the labour brokerage activities of the government facilitate Filipino seafarers' prospects to live and work with dignity?
- Do the numerous terms and conditions of the POEA-SEC afford seafarers the opportunity to live under conditions free from exploitation?

These questions correspond to the objectives of this research and are a constituent part of the questions asked during the individual interviews and focus groups with industry stakeholders. The questions asked generated the empirical data to address the objectives of this thesis which are explained in the next section.

1.3 Motivations and aims of the study

This study was conceived in recognition of the Philippines as a country rich in human resources. It has a population of 100 million and a labour force of 38.1 million (POEA, 2012), with 10.2 million Filipinos working abroad in two-hundred and twenty-one (221) countries (CFO 2014) bringing in over 54.2 billion US dollars into the Philippines each year (BSP 2016). Filipino workers are known to dominate particular occupations, from nursing to construction, domestic help to merchant seafaring (CFW 2009; McKay 2010; CFO 2014).

History is an important explanation for the migration phenomenon in the Philippines. International migration started between the 1900's to 1930's and can be traced to its colonial past (Asis 2006). Being a colony of the United States of America (USA), Filipino workers arrived in the US territory of Hawaii to

work in sugarcane and pineapple plantations and subsequently as apple or orange pickers in California, Washington, Oregon, as well as fishermen in Alaska (Asis 2006). Filipino immigration in the USA grew and diversified after the 1965 Immigration and Nationality Act was passed. In the 1950s, it was possible to settle permanently in other countries. Countries such as Canada, Australia, and New Zealand dismantled their pro-European immigration policies and allowed Filipinos to enter their countries on a family or skills-based provision. They also settled in non-traditional countries of immigration such as Japan and Germany through marriage or work-related migration (Asis 2006).

Growth in temporary labour migration in the 1970s was fuelled by several factors. First, the economic growth of the Philippines could not keep up with its population growth and the government was unable to provide jobs and decent wages. The second factor is the need of Gulf countries for workers to support ambitious infrastructure projects. Taking advantage of these factors, the Marcos government recognized opportunities to deploy workers abroad by establishing a support framework (Abella 1993) which was strengthened by successive governments. In recent times, the absence of sustained economic development, political instability, a growing population, and high unemployment compels people to look for work abroad (Santos 2014).

The relative absence of research on the experience of seafarers coming from developing countries is an important gap that this study aims to address. Filipino seafarers deployed abroad account for a quarter of the estimated 1.3 million total seafarer workforce worldwide, and thus represent a significant part of a global industry (BIMCO/ISF 2015). As the world's largest single nationality forming part of the maritime labour force (MARINA 2005; POEA 2009), it has been acknowledged that any work stoppage involving Filipino seafarers would have a significant effect - not only domestically but worldwide (Matias, 2001).

During the recruitment process and final deployment on-board a ship, Filipino seafarers are the only actors within the industry who have day-to-day

experience of the POEA-SEC. The contract, as a piece of governmental regulation, is designed (in part) to protect seafarers in their work, when – as will be shown – they have to constantly negotiate and renegotiate workplace practices in their daily working lives. This is the nature of seafaring. However, at the same time, it is an aspect of regulation that seafarers are rarely consulted on in direct ways despite the so called tripartite labour consultation process (Ferguson and Lavalette 2004). This study aims to explore Filipino seafarers' experience of the employment contract and what the contract means for the seafarers as they go about their work – something that remains poorly understood.

Current evidence suggests that the terms of the seafarer's employment can be confusing, which leaves the seafarer exposed to many forms of abuse. Terry (2009), for example, recognised that their frequent movement across political and legal boundaries complicates and compromises their legal protection. Such gaps in the enforcement of seafarers' rights are aggravated by legal differences between different jurisdictions often resulting in inadequate legal protection for seafarers. Terry (2009), for example, cites a ruling which prevents Filipino seafarers from suing their employers in United States of America (USA) courts in favour of arbitration in the Philippines and this is enshrined in the POEA-SEC provisions³.

³ Two key decisions involving Filipinos have set the stage for the exclusion of Filipino seafarer claims in American courts: *Stolt Achievement* (2002) and *Bautista vs. Star Cruises* (2005). The latter case stems from an accident on-board a cruise ship docked in Miami. In 2003, Norwegian Cruise Lines ISS Norway suffered a rupture of one of its four boilers while docked at its Miami terminal. In the explosion, 8 crew members (all Filipinos) lost their lives, while 17 were injured, including 10 who suffered from significant burns. The National Transportation Safety Board (2007) in the United States officially attributed the explosion to "deficient boiler operation, maintenance, and inspection practices of Norwegian Cruise Line, which allowed material deterioration and fatigue which weakened the boiler. The family members of the deceased seafarers filed a suit in Miami court in the case of *Bautista vs. Star Cruises*. In defending the claims, the lawyers for Norwegian Cruise Lines (owned by Star Cruises) looked to a recent decision from the US Fifth Circuit in *Francisco vs. Stolt Achievement MT* that dismissed the case of a Filipino seafarer who had been injured while working aboard a chemical tanker as it navigated the Mississippi River. The defendant's attorney in that case persuaded a federal judge to uphold the arbitration within the POEA SEC. *Bautista* was subsequently dismissed citing the proper jurisdiction of the Philippines,

In reaching its conclusions about the POEA-SEC, this study addresses the experiences of the end-users of the contract – seafarers and crewing managers – and their involvement in processes of contract procurement, labour recruitment and worker deployment. I provide an analysis of the Filipino seafarers’ experiences with the POEA-SEC – in the context of the complex challenges posed by being citizens of a developing economy. The seafarers’ perspectives, beliefs, and assumptions of their employment offer a unique and revealing account of workers from a developing nation, enriching our understanding of the different geographies of employment across legal, social and cultural frameworks.

In view of the specific context of Filipino labour migration, the particularities of seafaring employment and the role of the state in providing supporting regulation, this study investigates how the POEA-SEC as a government-prescribed contract reflects on the state of employment relations within the maritime industry. Specifically, I argue that the POEA-SEC can be contextualised within a ‘Transnational Economic Migration Bureaucracy’ (TEMB) – an original conceptual contribution of this thesis – which reflects more broadly labour employment processes involving seafarers and the regulation of migration. This study is positioned to contribute to the field of employment relations as it examines the impact of the process of neoliberalisation on a lesser known aspect of the labour supply arrangements for Filipino seafarers, more specifically the terms and conditions of employment contract of seafarers. The analysis involves discussion of globalisation, temporary and flexible work, labour migration, shipping as a global and globalised industry and transnational social networks.

Finally, in view of the precarious employment conditions of overseas Filipino workers, this study investigates the extent to which the state - through the

where the dispute was subject to arbitration, and thus, the injury schedule in the POEA-SEC set the total figure (in US dollars) for compensation.

resources at its disposal - balances seemingly conflicting demands, i.e. developing and facilitating labour demand in the global labour market while at the same time seeking to regulate the employment of its citizens to ensure their protection. The thesis thus contributes to the field of employment regulation, insecure work and aspects of globalisation with respect to the relationship between less developed nation states, such as the Philippines and mobile capital.

1.4 Overview and structure of the study

This thesis is organized and developed across eight chapters. This introductory chapter sets out the problem and context of the research. It is followed by a review of related literature in order to set out the key issues to be addressed by the research as well as to elaborate the underlying questions of this study. Chapter 3 aims to provide the context and background of the Philippine labour employment process and policy. This is followed by a discussion of the research design and methods used in collecting and analysing the empirical evidence for the study. The next three chapters are devoted to the presentation of the findings of this research, focusing on: 1) analysis of the POEA-SEC, 2) the perspective of the employers' representatives, and 3) the workers' experiences. Chapter 8 presents an analysis and discussion of the findings of the research while engaging with and contextualising them in relation to the literature discussed in chapter 3. The last chapter forms the main conclusions of this research. These Chapters are more thoroughly explained in the paragraphs that follow.

Chapter 2 focuses on a critical evaluation and review of related literature. It analyses the macro-level factors and themes that underpin the relationship between key actors and their impact on work and labour standards, in order to understand the effects on Filipino seafarers. It looks into the regulation of the labour market, and the effect of flexible work in general by relating this to the

maritime industry as an example of both a global and 'globalised' industry. The chapter also discusses the extensive global networks that link shipowners, ship managers, labour supply agencies, as well as maritime training institutions.

Proceeding from an exploration of the changes in the world of work brought about by globalisation, the discussion continues to analyse the emergence of labour supply countries from developing nations with the experience of certain atypical workers. This will be related to the developments in the maritime industry from which labour supplying countries, such as the Philippines, emerged to answer the need for cheaper crews. Seeking to explore issues related to the overseas employment of seafarer workers, it addresses the limited attention devoted by previous studies to the role and effectiveness of protection to seafarers offered by specific forms of regulation such as employment contracts, on which this work is focused.

Chapter 3 establishes linkages between macro perspectives outlined in the literature review chapter and the succeeding three data chapters which presents the micro-level local contexts by which labour supply arrangements and the migration process thrives. It discusses the POEA-SEC, along with its other components, within the Philippine temporary economic migration bureaucracy (TEMB). This chapter traces the concepts from which the TEMB originated and presents the specific advantages of adopting the TEMB in relation to previous concepts of migration. It presents an overview of the institutional framework of international labour migration in the Philippines by describing the rise of the migration industry and the government recruitment system in the Philippines that supports this policy. The critical role of the Philippine Overseas Employment Administration (POEA) and other institutions involved in the labour export process is emphasized as well as the role of other supra-national bodies such as the International Maritime Organization (IMO) and the International Labour Organization (ILO). The protection of the remittance scheme (i.e. wages) is discussed as a central motivation to the overseas employment and migration as it is a critical source of foreign currency

support. The domination of the temporary employment schemes for the recruitment and crewing agencies is an important part of this chapter as well as the introduction of the employment contract as a regulatory intervention and a government imperative for seafarer employment. The chapter further discusses the structure of the maritime industry to show the interaction of the web of actors or stakeholders. This interrelationship shows the global reach, complicated nature and fragmented set-up of the government to promote and regulate labour migration.

Chapter 4 provides an account of the methodology of this research, which was developed on the basis of the critical examination of relevant literature in Chapters 2 and 3. It combines a description of the field site, the strategies used for the research and a reflection on theoretical, methodological and ethical issues. It incorporates the different stages of empirical work, justifying the choice of qualitative methods, the process of selecting the case studies, difficulties of access, data analysis techniques and the ethical dimensions of the research.

Chapter 5 critically examines the terms and conditions of the POEA-SEC as supported by case law, government issued rules and regulations and other relevant documents. From the thirty-three (33) provisions of the contract that seek to address various multiple issues, the discussion focused specifically on seven (7) provisions which I determine relate to the concerns of the seafarers and crewing managers and which helped inform the interviews: a) the parties to the contract, b) duties of the manning agencies prior to worker deployment, c) duration of employment, d) monetary conditions, e) working conditions (hours of work and rest periods), f) labour relations, and g) disability benefits.

Chapter 6, sets out the data on the experience or perspectives of the principal or crewing managers in negotiating and approving the contracts of seafarers. This chapter will focus on the experience of the employers and their representatives on their role as signatories to the contract and in implementing

the POEA-SEC provisions. It presents the effect of the perceived shortage of seafarers and competition with other labour supplying countries to show how crewing agencies in the Philippines adjust their recruitment strategies in order to meet the demand for seafarers.

Chapter 7 presents the data generated from interviews and focus groups with seafarers themselves who relate their experience on-board the ship and with employment contracts. The seafarers' actual experience will be linked with the analysis in Chapter 5 on contract provisions - such as duration of contract, hours of work, and hours of rest. The chapter demonstrates how seafarers are often at the mercy of government regulators, crewing managers, and the captain of the ship. Seafarers' dependence on the state is encouraged by the various entities in the whole labour employment process and such a relationship is maintained by seafarers' need for paid employment.

Chapter 8 analyses and draws together the themes that have emerged from the national case study presented in the previous chapters. It reflects on the main findings of the research and its implications using relevant (theoretical) literatures and existing research. The experience of the different groups of participants is divided into different sections to show, through their perspective, the true nature of the terms and conditions of the contract.

These sections centre on the themes from the findings of this research which aims to address the underlying questions of this research. The first theme is the elaborate labour export policy of the government which includes the implementation of the POEA-SEC. Whether deliberate or not, it is argued that the policy on migration bureaucracy appears to subordinate seafarers in the service of business for profit. The second theme explores the idea that the true nature of the contract is merely symbolic and tokenistic, drawing on some examples from the interviews and focus groups with seafarers. Lastly, the chapter concludes that the contract is used as an instrument of control by different entities over the workers in order to continue the proliferation of the

export of labour. As a final part of the discussion chapter, it argues that a closer analysis of the POEA-SEC would show that the true exploitative relationship and nature of the contract are veiled and concealed in its terms and conditions.

Lastly, Chapter 9, concludes with the summary of the key findings of the study, the contributions of the thesis from an empirical, methodological and academic stand-point, its policy implications, proposals and recommendations, reflections on the research process and the research agenda for future work.

Chapter 2

THE IMPACT OF NEOLIBERAL PROCESS ON LABOUR SUPPLY

2.1 Introduction

What follows is a general evaluation and review of literature, which is relevant to this study's research question. It discusses global perspectives on the regulation of the labour market and employment. The focus is work and labour standards, particularly temporary work which is principally discussed in the context of the maritime industry as a globalised industry. An important factor in this discussion is the extensive global networks that link shipowners, ship managers, and labour supply agencies, (see Section 2.2) i.e. the stakeholder networks that comprise the institutional framework for the employment of seafarers globally (discussed further in Chapters 3 and 8).

Section 2.3 examines literature that describes the emergence of labour supply countries, and focuses on the lives of certain atypical workers. The discussion relates to developments in the maritime industry that produced the current state of international shipping from which labour supplying countries (that are mostly developing nations, such as the Philippines) emerged to answer the need for cheaper crews. Seeking to draw together and explore the emergence of crews of convenience and the overseas employment of seafarer workers, this section seeks to demonstrate the limited attention paid by previous studies (See for

example Matias 2001; Manzano 2011)⁴ to the role and effectiveness of the protection of seafarers offered by institutions, such as employment contracts, the latter being the focus of my work. Since my research was conducted in the Philippines, I include an account of the Philippine national context to set the scene for this study and provide background to the following chapters. This Chapter concludes with a summary of the discussion of the literature.

2.2 Globalisation as a world system perspective

Overall, this study seeks to understand the impact of globalisation on work and labour standards and their effects on Filipino seafarers. More specifically, as a parameter of workers' rights set on a national framework, this study sets out to use the international context to determine the efficacy of the POEA-SEC as a regulatory instrument based on the depiction of seafarers' experiences during their employment process.

Martinelli (2003, p. 292) proposes that there should be a change in our sociological perspectives to "shift the level of analysis at the global level and take a world system perspective in any study", (2003, p. 293). This research takes the same perspective on (and definition of) globalisation as Martinelli (2003, p. 294):

"... (A) set of related processes that interconnect individuals, groups, communities, states, markets, corporations and international governmental and non-governmental organizations in complex webs of social relations; and, more synthetically, as the growth of networks of worldwide interdependence."

⁴ Manzano (2011) focused only on more generalized struggles at the time of globalization in the maritime industry, while Matias (2001) focused on employment conditions and benefits the impact of unions for Filipino seafarers in foreign-registered vessels

Globalisation as a perspective is considered appropriate for this study as it is focused centrally on the experiences of seafarers who are considered global workers employed in a highly global and globalised industry. This understanding reflects the many manifestations of globalisation as it applies to the Philippines and this research. In view of the coordination and complex interconnection of the Philippine state with other states and institutions of similar interests, it is important to discuss the impact of these relationships insofar as the labour market is concerned and the role that each stakeholder performs in the deployment of labour.

Consistent with the definition, it is proposed in this study that seafarer workers' employment is influenced by networks, events, institutions, relationships and policies at the local, regional and global level. It will be further argued that extensive global networks link important institutions: capital (shipowners), labour (seafarers) and government (the state qua regulator/legislators) primarily in order to facilitate (seafarer) employment and migration. As an explanation on the impact of globalisation on states, it might be suggested that states are "undergoing a deep transformation, as their functions and powers are rearticulated and re-embedded in complex transnational, regional and local networks" (Martinelli 2003, p. 303). This will be shown and explained further in the next chapter, which looks into the micro-level links by which labour supply arrangements, recruitment system, and migration process are organised both domestically and internationally for seafarers.

Hence, this study reviews related literature on the interrelationship between the forces of globalisation, the demand for cheap labour and its effect on work and labour standards. This is both necessary and timely and may help shed light on their implications for policy and regulation for seafarers (Section 3.2.1). Further, the next sub-section reviews literature concerned particularly with the consequences of flexible work in general (Section 3.2.2) and its implication for the health and well-being of seafarers. Section 3.2.3 focuses the discussion on the maritime industry as globalised industry where employment is flexible in a

number of ways. Recalling how globalisation is defined by Martinelli above, this helpfully sheds light on how organisations are embedded within a range of networks or institutions to form a component of the bureaucratic structure of (seafarer) recruitment (to be discussed in Chapter 3).

2.2.1 Globalization and regulation of the labour market

It is acknowledged that one of the effects of globalisation in the world economy is the capacity (or lack of capacity) of states to regulate the economic activities of private corporations. With the growth of the influence of capital on state policies, it is contended that the implementation or adoption of policies that are compatible with neoliberal concepts steadily dilutes labour protection legislation (Dore 2004). At the same time, the greater use of temporary or contingent contracts permits easier dismissal, relaxes insurance obligations, reduces legal rights of trade unions, and impairs workers' ability to strike. This research explores the Filipino seafarers' experience of the POEA-SEC – as an attempt by the Philippine government at an alternative form of regulation – and the extent to which it addresses such issues and concerns.

A variety of regulatory experiments and proposals seek to address these widespread regulatory challenges. Different global regulatory strategies have been examined and have been found to be limited in their success and problematic in numerous ways (see for example, smart regulation and enforced self-regulation in relation to global sectors) on the premise that effective global governance depends upon effective global enforcement (Bloor et al. 2004; Bloor et al. 2006; Sampson and Bloor 2007; Bloor and Sampson 2009).

Moreover, many forms of regulatory regimes veer away from the more traditional/hard law/state regulation that emerged to address labour market problems. Bercusson and Estlund (2008) suggest that the problem of established international approaches to governing labour standards and labour relations is a possible threat to the autonomy of states as it not only weaken

states' control over market activity but also undermines national labour standards as the intense international competition erodes the ability of the individual states to enforce their own labour standards (Donn 1994) – a key concern for this research. However, the efficacy of these emerging forms of regulatory regimes is disputed and what is called for is a return of the state's participation in addressing labour problems (see Bercusson and Estlund (2008). Examples of these regulatory regimes are: 'downward' regulation including self-governance by firms themselves (Estlund 2008); 'upward' or regulation by regional federations and international organisations (Bercusson and Estlund 2008); 'outward' or regulation by NGOs and civil societies (Bercusson and Estlund 2008); trade union bargaining; compromise between self-regulation of employers while preserving the roles of state and organisations representing workers (Walters 2006; Walters and Nichols 2006; Estlund 2008; Walters and Nichols 2009) or within corporate governance structures or central role of multi-national corporations (MNCs) (Moreau 2008).

In this particular context on the return of the state's participation, there are contending principles. On the one hand, the promotion and facilitation of business interests promoting the lowest cost for payment of workers, and on the other hand, the protection and regulation of their workers' rights and adoption of the world's best practices for labour standards (Drahos and Braithwaite 2001). In general, states compete for investors by offering cheap labour and looser regulatory systems while taking for granted minimum standards for employment conditions of seafarers. As a result, Quinlan et al. (2001, p. 336) contends that there is progressive undermining of "substantive working conditions and institutional and regulatory arrangements" with negative implications for occupational health and safety.

Compatible with this, labour supplying and exporting countries devised ways to protect their workers while at the same time protecting their economic interests. Indeed, the current turn of affairs does not preclude the development of new methods of regulatory enforcement in light of new trends in the industry or

economic shifts that might occur. As a labour supplying country, the Philippines exerts efforts towards raising labour standards, securing compliance with international labour standards, or securing adequate enforcement of domestic labour laws. Hence, as suggested in this study, the Philippines, a major crew supplying state imposes an alternative form of regulation over labour standards - the standard employment contract known as the POEA-SEC – as a focus of this research.

With the prescription of the standard employment contract for seafarers working on-board overseas ships which codifies international conventions, prescribes international labour standards and practice for the working conditions of seafarers (POEA 2002), it was widely assumed that the problems of workers will be remedied (Chandran 2010; Jardin-Manalili 2010). The aim of this study - in light of such an assumption – is to explore whether these types of regulation in fact reduce the protection of workers under the law as indicated. For example, by the insecurity and flexibility provisions in employment contracts. This will be discussed further in the next sub-Section.

2.2.2 Effect of flexible work

As discussed by Johnstone, et al. (2005, 2008), as an effect of globalisation, the changes in the employment conditions and arrangements such as subcontracting, rise of precarious and contingent forms of work (Connelly and Gallagher 2004), short-term fixed contract workers with contracts of less than 12 months in duration, and significant growth of patterns of work, all fall outside the paradigm of full-time employment (Felstead and Jewson 1999). In this section, our attention is drawn to the fact that where there used to be permanent employment, and a secure retirement through a state pension, workers today are employed in flexible employment arrangements.

As traditionally conceived, ‘work’ according to Vosko (2000), is formal employment typically implying an employer-employee relationship, which is

more or less defined by an economic contract with enumerated tasks, in exchange for pay and other substantial remuneration of employment. However, using historical, economic and political contexts and capitalist labour markets as the underlying cause, the nature of work is continually changing. There is a pronounced shift from institutionally entrenched lifetime employment system of core employees to increased labour market flexibility arising in a number of non-standard, contingent and casual workers driven by the imperative of sustaining sales growth in the face of increased competition (Theodore and Peck 2002; Peck et al. 2005; Coe et al. 2007).

Increased insecurity is perhaps the greatest threat posed by more flexible labour relations (Standing 1997). The literature on atypical and contingent work and its effects on security of tenure, pay and work relations is abundant and instructive for this research (e.g. Dore, 2004, Papastergiadis, 2000, Deakin and Wilkinson, 1991). For instance, Papastergiadis (2000) points to the erosion of security of tenure and freedom in wage-relations, the growth of pay inequality at an unprecedented rate, and the increase of various forms of casual work in relation to full-time and regular jobs. In view of the active inducement of low-wage employment, Dore (2004) said the effect is the widening of pay inequalities, lowering of pay standards, and the removal of legal 'floor of rights' to wages and conditions in the contract of employment (Deakin and Wilkinson 1991). As further discussed in the literature, the very nature of temporary agency work poses a challenge to the social protection for workers on their benefits and security of tenure as it "ensure(s) low wages and long working hours, erode(s) mandatory labour standards, decreases social benefits and services, and eliminate(s) democratic rights to form unions and engage in collective bargaining" (San Juan, 1995: 107). Furthermore, the growth in subcontracting and the rationalization of 'marginal' activities by firms and public agencies has produced a situation in which many workers previously in secure jobs now face regular employment on a contract labour basis (Allen and Henry 1997; Vosko 2000).

More to the point is what is happening in certain land-based industries and sectors elsewhere in the world which is part of a complex global supply chain. Women garment workers working in 'sweatshops' in Bangalore, India are typically rural, migrant, feminised workforce in a developing economy (See Jenkins 2010). For these vulnerable workers, their hours of work are determined by target completion rather than time of day worked, while their remuneration is based on hours of day worked which is below statutory minimum rates. They are subjected to sexual harassment and repression of their freedom of association. This is the same experience of textile, electronics, and food product women workers in Thailand who are portrayed with feminized characteristics of having 'nimble-fingered' dexterity and patience for labour-intensive assembly work (Mills 2005, p. 117).

Thus, this issue on the shift in employment to a variety of contractual forms has grown in importance because of the increased labour market flexibility specially at the lower end of the service industries like manufacturing ('sweatshops', textile, electronics and food products) mentioned above or in cleaning, catering and security. This increased flexibility within a contract of employment limits the scope of protective regulation. More importantly, Johnstone and Quinlan (2006, p. 286) claims that the desire of temporary workers to obtain future work and a permanent position may induce them to accept inferior conditions, to work faster or cut corners in relation to occupational health and safety (OHS) and to be reluctant to raise OHS problems with management in view of "employer-initiated reprisals". Furthermore, this development has seen the inclination of the laws of contract in favour of employers and selected categories of employees but there is no concrete evidence to suggest how effective it had been in helping workers, more so, seafarers (Bloor et al. (2000).

These examples show the increasing emergence of global market forces to emphasise the critical significance of multinational companies adopting competitive strategies to seek out the cheapest labour and the loosest legal restrictions to secure maximum returns for their investment (Gautie and Schmitt

2010). This is complemented by the desperate attempts of poorer nations (like the Philippines) to secure investments to lift their countries out of poverty (Grint 1998). Nations with surplus labour have found that they earn significant foreign exchange through the 'export' of seafarers much as other nations send workers abroad and benefit by their remittances (Donn 2002). These changes amount to the progressive undermining of "substantive working conditions and institutional and regulatory arrangements" with often negative "implications for occupational health and safety" (Quinlan et al. 2001).

Consistent with this, Hudson (2009) argues that increases in the level of insecurity and risk of job loss for the majority has important implications for the health and well-being of workers. The relationship between changing work arrangements, the serious adverse occupational health and safety (OHS) outcomes as well as the detrimental impact to existing OHS and workers' compensation regulatory regimes has been clearly established in several empirical studies (Allen and Henry 1997; Beck 2000; Bohle and Quinlan 2000b; Lane 2000; Vosko 2000; Quinlan et al. 2001; Johnstone et al. 2005; Johnstone et al. 2008; Hudson 2009). In addition, Mayhew et al. (1997) named four key features associated with subcontracting of work as crucial influences on the OHS of subcontractors such as: economic and reward influence on OHS⁵, disorganisation effects on OHS⁶, inadequate regulatory controls⁷, and the ability of the workers to organise to protect themselves⁸. While this study recognised that patterns of injury were primarily based on the specific hazards and risk exposures in four industry sub-group studies⁹, it recognised employment status as a very important secondary effect, i.e. hazards and risks were exacerbated

⁵ Subcontractors are less likely to see OHS (regular assessment of OHS risks, conduct of OHS induction, training and supervision) as warranting attention in view of more urgent economic priorities.

⁶ Disorganisation results from subcontracting as an important source of injury at work.

⁷ Self-employed workers are not effectively covered by employment regulations or union-regulated collective agreements.

⁸ Subcontracting leads to fragmentation of workers into isolated individuals and groups operating in dispersed workplaces and in situations of relative isolation which eliminates the prospect of collective bargaining power.

⁹ Childcare, hospitality, transport and building industries.

for self-employed workers in view of intensification of labour following economic pressures and survival prerogatives. Bohle and Quinlan (2000b) further anticipated the serious and costly burden to all countries of work-related injury and disease as well as a major challenge to managers, unions, governments and most especially workers themselves.

As will be discussed in the next chapters, these tendencies have been felt more strongly in seafarer supplier countries like the Philippines. However, as observed, the above-mentioned studies have only focused on land-based industries and fail to consider the experience of seafarers from a developing economy. Hence, it would be interesting to explore seafarer experiences along the major themes above as it can enrich this study or possibly create delineation in case there are different or antagonistic contexts between them.

Thus, the impact of this global temporary agency arrangement on Filipino seafarers is an interest of this study¹⁰. Shifting the discussion on the seafaring industry in the Philippines, there is need to discuss temporary agency work and temporary employment relationships because seafaring employment in the Philippines is principally governed by a temporary and short-term contract which this research focuses on. Temporary agency work according to Vosko (2009) is:

“... characterized by a relationship between a worker, an agency and a user firm. It is governed, on the one hand, by an agreement stipulating terms and conditions of employment typically between an agency and a worker, and on the other hand, by a commercial agreement between an agency and a user firm. The essence of the

¹⁰ Other important trends identified by Vosko (2000) are commodification of labour power, and the gendered character of prevailing employment relationships for a diverse group of workers in the labour market with the rise in women's participation in the labour force. While these are important issues, they are beyond the ambit of this study.

arrangement is that workers are placed in postings with client firms”.

The arrangement associated with temporary agency work is further described by (Vosko 2009, p. 398) as temporary employment relationship’ (TER) in contrast to ‘standard employment relationship’ (SER).

“The TER contradicts all three structural features of this normative model of employment: the worker establishes occupational connections with several entities rather than one, is rarely party to an indefinite contract of employment and often may be dismissed with little notice. Workers in TERs also typically have low levels of unionization and/or coverage under a collective agreement, relatively low wages, a product partly of the mark-up or the ‘invisible fee’ that the temporary work agency charges the user firm for its services and limited access to social benefits and entitlement. The notion of the TER is thus a window into understanding precarious employment in late capitalist labour markets... Given the highly precarious nature of a temporary agency work, the workers have limited access to social benefits and statutory entitlements linked to the duration of an employment relationship since their paid working lives are often punctuated by bouts of unemployment.”

With temporary agency work arrangements being the norm for the employment of Filipino seafarers, it is argued in this research that while this type of employment has materially benefitted the seafarers, their families and the Philippine state in an economic sense, it is envisaged that there are potentially harmful effects on their health and safety. As will be explained in the next subsection, this is the result of the shift of the recruitment of seafarers from employing local hires on a permanent contract to employing seafarers from

developing countries on temporary contracts from third party crewing or manning agencies (Sampson 2012) which they pay a mark-up or invisible fee (Vosko, 2009). As further discussed by Vosko above, this kind of employment may be dismissed with little notice, have low levels of unionisation, and have limited access to social benefits.

2.2.3 The maritime industry as a globalised industry

Section 2.2.2 above discusses general literature on flexible work, temporary employment as an aspect of flexible work, globalisation as a driving force to temporary employment and the implications for occupational health and safety of workers. This section focuses more specifically on the maritime industry as an example of an industry where employment is flexible in a number of ways as evidenced by various literature.

DeSombre (2003) aptly describes shipping as the quintessential example of a globalised industry. The shipping industry is central to world trade carrying as it does some 90% of internationally traded produce (Stopford, 2008). Shipping has been instrumental in making nation states more economically integrated as it loosens the constraints of geography. Indeed, “oceans are the highways of economic development” (Stopford 2008 p. 70). The industry plays a central part in the global economy through trade characterized by free movement of goods and money, liberalized flows of capital, and systematic production of raw materials by multinational corporations (Stopford 2008). The shipping industry, along with sea transport, certainly played a central and prominent role in the global economy, with its distinctively international flavour. As DeSombre (2003) says, it is both an industry that has steered many of the globalization trends, and an industry which has a lengthy experience of national and international regulation. Hence, Alderton and Winchester (2002) suggest that the maritime industry is not only pivotal to world trade, but is also at the centre of a complex constellation of multiple interests that situates ship owners and seafarers in volatile legal, political and social circumstances.

As previously discussed, an important feature that is exhibited in the shipping industry is intense competition (Tormey 2004). This is especially true in the case of the Philippines which faces competition from other labour supplying countries. The Philippine seafaring labour market operates in a highly competitive environment especially from their Asian neighbours, as well as Eastern Europe and China. Further, there is greater labour competition from countries offering lower wages like China, Vietnam, Bangladesh, and Cambodia. All of these economies – to varying extents and different ways - are becoming more open, and more conducive to labour outflows (Jones and Pardthaisong 1999).

The consequence of competition between these countries to access the labour market is the downward pressure on wages for labour and greater latitude for recruitment agencies to take control over the process of hiring (and firing as the case may be). As a result, the rewards for work abroad are diminished, as is the expectation of improvement of human rights in the workplace, including within the maritime industry (Fitzpatrick and Anderson 2005; Zhao and Amante 2005; Cohen 2006; Agunias and Ruiz 2007).

Changing labour costs and the availability of international seafarers for employment has altered maritime labour patterns significantly over the last few decades. Seafarers from developed countries are steadily being replaced by seafarers coming from developing countries (Donn 2002; Sampson 2012). An important source of competitive advantage in labour supply countries, like the Philippines, is cheap labour costs from which shipowners benefit. It is within this context that the Filipino seafarers became a significant player in the global maritime labour market, possessing a number of advantages over their traditional counterparts. Their cheap labour cost, quick adaptability to the profession, ability to speak and understand English, in addition to their education and training are all recognized as offering competitive advantage over other labour supplying countries (Mckay 2007).

Being the most global of all industries, the shipping industry has its own regulatory body to facilitate global governance: the International Maritime Organization (IMO) which regulates ship standards (IMO 2011), and the International Labour Organization (ILO) which regulates shipboard labour standards (ILO 1947). It is recognised that these organisations have been part of the global effort to establish effective forms of regulation for the shipping industry (Sampson and Bloor 2007). However, Alderton and Winchester (2002) cautioned against the “trend towards world-regional and global regulation” strengthened by the simultaneous enlargement and deepening of the regulatory roles of the International Maritime Organization (IMO) and the International Labour Organization (ILO)” (2002: 36). This is because as some researchers have argued, the influence of IMO and ILO have been slow and limited in practice (deSombre 2006). Moreover, flag and port state regulatory regimes are inadequate in addressing seafarer welfare conditions. Further, the unique transnational character of the shipping industry unfortunately results in a situation where legal remedies set up by these international organizations and member states cannot be invoked, are not available or not effective because of the application of different laws from different jurisdictions. This is not helped by a national regulation that is slower to adjust to changing work patterns. It is for these difficulties that the maritime industry is an important industry to test the effectiveness of certain aspects of governance and regulation because of its global nature, as proposed by Bloor and Sampson (2009).

So far in the above section, I have discussed the effects of globalisation in the world market, on labour conditions and work in general and the maritime industry in particular. The next section focuses on the human element under a labour migration context, which necessitates the emergence of labour supplying countries, and the possible exploitation of workers by global supply and outsourcing. The effort of maritime trade unions to improve the welfare of seafarers are likewise discussed in the next section.

2.3 Labour migration and emergence of labour supply countries

In recent years, there has been an increasing amount of literature focused on labour migration patterns (Arnold and Shah 1984; Jones and Pardthaisong 1999; Asis 2006; Lusi and Bauder 2010); the cost benefits of labour migration to the labour-sending countries (SanJuanJr. 1995; Chandran 2010) such as significant loss of highly educated persons (brain drain) or psycho-social costs to the workers and their families in exchange for remittances (Pernia 2011); as well as the vulnerability of overseas contract workers (e.g. to be trafficked as sex workers in specific types of work or service industry (David 1991).

Studies also found that although majority of overseas Filipino workers (OFWs) are professionals with graduate and post-graduate degrees, conditions in the Philippines leave them no choice but to be employed in the overseas service sector as nurses, construction or domestic help (maids, nannies, carers) (Mckay 2007) or waiters and entertainers (David 1991). They are generally underpaid with no or limited labour protection or social benefits (E. San Juan 1995, p. 106) and are subjected to dirty, dangerous and demeaning jobs (Tyner 1994). Such literature highlights the possible economic coercion and disenfranchisement that overseas Filipino workers (OFWs) endure (SanJuanJr. 1995; Cohen 2006).

These studies suggest that on the part of the workers, they accept these types of work because of the lack of employment opportunities in the Philippines (Ezquerro 2007). The continuous outflow of workers in general reflects the lack of opportunities at home (Abella 1993). But the economic-related motives underpinning the choice of career for Filipino seafarers has been under-examined in these studies. Understanding the motivations of the seafarers requires attention to their individual engagement from their home country and their eventual deployment to a ship, which this study hopes to understand.

It has also been suggested that to ensure the participation of the labour force, the state relentlessly reconfigures the meaning of being nationalistic, with it

increasingly equated to service to the country as part of a 'reserve army of labour' (Rodriguez 2010). This was made possible by utilising various institutional mechanisms such as nationalistic rhetoric to legitimise their policies among ordinary Filipinos. They do this by publicly advertising Filipino migrants as '*mga bagong bayani*' (or modern day national heroes) or making them believe that living and working abroad temporarily is realistic, practical and common sense (Mckay 2007; Rodriguez 2010). This is noteworthy because despite the dwindling or total incapability to give social support such as education, healthcare and provision of basic services, the state draws investments from its citizens' remittances while encouraging its migrant workers to maintain political and economic connections to their country to ensure the steady flow of remittances.

In making the link to the situation of Filipino seafarers, it is clear that the international nature of seafarers' employment by crewing agencies, its long history and the rules relating to the extra-territorial application of law have all combined to place seafarers with the same economic and political motivation. First, the state has an important role in facilitating the employment of both land-based and overseas seafarer workers. As the most important element in the case study of the labour market process by this research, this study is keen on exploring the unique experience of overseas sea-based workers on pre-deployment practices (such as the Pre-Deployment Orientation Seminar (PDOS) and their employment contracts) while working on-board international ships. This will broaden the discussion on setting out the effects of globalisation in work and employment of both land-based and sea-based workers. The discussion will likewise allow the link to be expanded to the role of state in facilitating the employment of seafarers with the implementation of government regulations such as their employment contracts.

The second point is the significant and strategic role played by licensed manning and crewing agencies in the employment process in the Philippines. For instance, over four-hundred (400) crewing agencies recruit and allocate

over four hundred fifty thousand (450,000) Filipino seafarers to global shipping (POEA 2009). With the crewing agencies operating as a temporary employment agency, this means that to leave the country for work, Filipinos must be recruited by a licensed recruiter and issued with a standard employment contract which sets the basic terms and conditions for Filipino seafarers - the POEA-SEC. As discussed in the following chapters, this situation becomes more complex when a seafarer is recruited by a manning agent based in the Philippines representing a principal based in another country. The agent may sign the contract either as a principal, or as an agent of the owner. In cases filed in court, there are problems of determining the precise identity of the seafarer's employer as well as the real relationship between the seafarer, the crewing agent and the principal shipowner/shipping company (OECD 2003; Fitzpatrick and Anderson 2005).¹¹

From the materials that became part of this review, it is likewise apparent that labour export is a state-sanctioned government policy. Hence, the culture of migration emerged, aided no less by the institutionalization of migration tactics and strategies of the government in order to address the continued rise of unemployment and underemployment of its citizens (Asis 2006). The erosion of security of tenure in work has been identified as the major threat affecting work, labour and employment and the health, life and safety of workers. As a typical arrangement in the shipping industry, the temporary agency contract was likewise described and highlighted in this chapter. The adoption of a macro to micro approach in this chapter has enabled me to discuss the effects of globalisation in the world market, and the maritime industry in particular. Building on from the emergence of labour supplying countries for the global supply of seafarers, the next focus will be on the human element undergoing

¹¹ This may be seen to give rise to similar sorts of consequences, as those experienced, for example, by other workers elsewhere in the world who are at the ends of complex contractual arrangements such as home-based clothing workers likewise studied by Nossar et al (2003) in Australia. They were shown to be sufficiently distant from the retailers for which they produced goods to ensure these retailers escaped liability for the exploitation of these outworkers (Nossar et al 2003).

the process of labour migration, global supply and outsourcing. The next section discusses the emergence of ‘flags of convenience’ and ‘crews of convenience’ as business strategies that have an impact on seafarers’ working conditions and pay.

2.3.1 Global effect: Flags of convenience (FOC) and crews of convenience

Labour costs are the biggest expense to shipowners and have been the first target for cuts on operational expenses (particularly during the economic crisis). As previously noted, the premise is that savings can be made from available low-wage labour in Asia and Eastern Europe - instead of continually employing higher-priced seafarers who are nationals of embedded maritime nations (Couper et al. 1999; ILO and SIRC 2004). With the facility offered by open ship registries, shipowners in search of cheap crews recruited ‘crews of convenience’ from developing nations (Donn 2002). This practice is quite different from the practice in ‘traditional’ maritime states (e.g. Norway, China, United Kingdom, and France) in which there have historically been some restrictions on labour, both in terms of their nationality, pay and conditions. FOCs by contrast, have few such restrictions and the crews aboard vessels flagged to these states are often labelled ‘crews of convenience’. This is for a number of reasons. Firstly, such seafarers tend to be from less developed countries of the world. Secondly, and partly as a result of the former point, they tend to be less well paid than their counterparts from the more developed nations of the world as shown in Table 3.1. Third, seafarers in flag of convenience ships are also prone to experience poor working conditions (Couper, et al. (1999). A further important point relates to the consequence of the shift to flags of convenience and the rise of “crews of convenience”. These crews are assembled by a network of companies and agencies which means that every part of the world that offers cheap labour becomes a potential source of labour supply (ILO and SIRC 2004). Since open registers have the freedom to recruit crews from other countries, crewing policies, managerial and national

preferences result in employment of seafarers with different nationalities (Couper et al. 1999; DeSombre 2003; ILO and SIRC 2004; Tsamourgelis 2009).

ITFGlobal (2014) defines an FOC as a type of registration 'where beneficial ownership and control of a vessel is found to be elsewhere than in the country of the flag the vessels is flying.' This means that the requirement that seafarers have to be nationals of the flag and port of registry need not be complied with the flagging out or conversion of ports of registries of ships to flags of conveniences. Further, when shipowners register their vessels to states other than their own country of origin, it avoids the costs and restrictions associated with ships registered in the major maritime states. There is an economic benefit. FOCs levies no or minimal taxes. Aside from the fact that FOCs allow ships to be crewed by non-nationals, FOCs do not require the citizenship of shipowners or operators. The additional attraction for shipowners is that FOCs have neither the will nor capability to impose domestic or international regulations on registered ships (Alderton and Winchester 2002).

The evolution of the FOC system in the last fifty (50) years reached such extent that, by 1998, 51.3% of the world's total gross tonnage was registered to FOC fleets (Alderton and Winchester 2002). This development has generally been viewed as overwhelmingly damaging by various players within the global maritime industry because it is assumed that owners who flag to open registers do so mainly in order to make savings in operational costs, as well as circumvent high labour costs and fiscal regimes. This development all accrues, with detrimental effect, to the seafarers' working conditions and economic benefits.

Flagging out to emerging open registers, second registers, international or open registers is a business strategy which has a huge impact on seafarers e.g. reduced crewing levels and extended working hours have been observed by Bloor et al. (2000). Issues of workers risking ill health, injury and death are important implications for the health and well-being of seafarer workers and are

worth investigating. As a component of a fully globalised industry (Alderton and Winchester 2002; DeSombre 2003) “crews of convenience” demonstrate willingness to perform variety of roles even under stressful conditions which is aggravated by their separation from their family and homes (Thomas et al. 2003). These are also workers who understand very well that they are required to get on with the job and keep the vessel running even if it results in fatigue and risky practices (Sampson 2011).

Alderton and Winchester (2002) found a strong correlation between inefficient regulation, low flag state conformance index (FLASCI) scores and inferior working conditions for seafarers who have significant effect upon the safety of the seafarers. However, while the phenomenon created a lowering of the level of regulation, it did not create a full-pledge race to the bottom. The reason given is while some states avoid certain international regulations; it nevertheless complied with minimum international requirements to avoid deletion from the ship registry. Also, the combination of port state control measures that target mostly FOCs, international pressure and incentives eventually saw the industry raising their compliance with labour standards, and gradual improvement of safety regulations (DeSombre 2003).

Ruggunan (2011) commenting on the experience of South African and Filipino seafarers, argued that despite the shift to FOC shipping, wage rates and unionisation levels remain high and defies the trends towards a ‘race to the bottom’. However, this conclusion is questionable since Table 2.1 which Ruggunan developed to show the comparison of monthly on-board wages (in US dollars) for seafarers from 11 countries, indicates that the salary of Filipino ratings fall far below the wages of the highest paid counterparts from the EU despite prescription of an ITF rate¹².

¹² International Transport Workers Federation (ITF) Uniform Total Crew Cost (TCC) Collective Agreement For Crews on Flag of Convenience Ships (1 January 2012-14)

Table 2.1: Monthly on-board earning for ratings in 2005 (US\$)

Country of domicile	Dry cargo	Tanker
United Kingdom	3,300-3,960	4,620-4,950
Russia	1,330-1,485	1,485-1,595
South Africa	1,430-1,650	1,650-1,950
China	900-1,100	1,060-1,320
Croatia	1,430-1,485	1,430-1,485
India	1,280-1,485	1,335-1,485
Montenegro	1,420-1,485	1,485-1,595
Philippines	1,155-1,485	1,210-1,485
Poland	1,210-1,485	1,540-1,650
Romania	1,210-1,485	1,430-1,650
Ukraine	935-1,045	1,045-1,155

Source: (Ruggunan 2011 citing International Shipping Federation, 2005)

The above sub-section has thus shown that certain business strategies such as shift of flag of registries to FOCs reflect the growth of the employment of crews of convenience.

2.3.2 Exploring the Filipino seafarers' experience of their employment contracts

At this stage, it remains uncertain how the features of the POEA-SEC impact on the work and welfare of Filipino seafarers. This is important because the contribution of Philippines as the leader in supplying seafarers and the seafarers in global labour cannot be denied (Alderton and Winchester 2002). Despite this, the review of the literature in relation to the research topic reveals that there is lack of empirical evidence showing that overseas Filipino seafarers were consulted on their experience of their standard employment contracts. In the absence of a clear statement and this gap in research, this study is an opportunity to examine the Filipino seafarers' experience on the effectiveness of the POEA-SEC in improving the working conditions of seafarers.

In the context of the discussion in the previous sections, and before discussing the experiences of the seafarers on the POEA-SEC, the next section provides some pertinent information on the Filipino seafarers to provide some contextual background for the discussion of the accounts of the seafarers and their crewing managers in Chapters 6, 7 and 8.

Zhao and Amante (2005) summarized regional origins and family backgrounds (of seafarers) and focus their analysis on the recruitment, pay and trade union affiliations, and maritime education and training of the seafarers. The extract below from Zhao and Amante (2005, p. 541) describes the life of the seafarer while they are looking for a job:

“Although the agency is the formal point of entry into employment, the seafarers’ own job search begins, as it does universally and in all occupations, with accumulating scraps of labour market intelligence from such formal and informal sources as advertisements, relatives, friends, classmates, school official, former crew members and shipmates. They simultaneously make daily visits to agencies for the latest job postings and announcements. The Rizal Park seafarer labour market is the venue for checking information with other seafarers, information about working conditions, policies and practices of crewing agencies and shipping companies.

Seafarers travel by ferry into Manila, often from various islands hundreds of miles away and often spend months in job search. In our survey we found that the average cadet took 13 months to find his first job. Only those seafarers employed through a shipping company’s wholly owned agency could expect to have to wait for less than two months for their next ship. While engaged in job search in Manila, seafarers may stay with friends or relatives but

most lodge in cheap and crowded rented 'apartments' or trade union–owned dormitories... The market is most harsh to cadets. Many young graduates of the maritime academies have to work as 'utilities', i.e. as volunteer assistances, for the agencies for months without any pay before they can hope to find a (sic) assignment.”

From the literature and the evidence gathered for this research, it is apparent that seafarers from developing countries like the Philippines usually come from poor families (Amante 2003, 2004b). From the above extract, it is shown that given the limited employment opportunities and low living standards in the Philippines, there is no shortage of workers willing to go to sea to support their families. From the interviews for this research (Chapter 6), it will be shown that some Filipinos working on overseas vessels claim they are earning three times what they could make on the domestic fleet and nine times what they can earn ashore. Under these conditions, it is easy to imagine that workers are willing to take safety risks and to put up with a great deal of hardships in order to keep these jobs.

There is moreover, a specific appeal to seafaring beyond a broadly reliable and reasonable (in relative terms) wage. Using gender as a lens, McKay (2007) argues that Filipino seafarers (being mostly male) are also able to obscure exploitative or emasculating labour relations at their workplace by asserting their exemplary masculinity (heroic breadwinners, sacrificing for the sake of their families) through assertion of conspicuous consumption ('one day millionaires', 'largesse') and narratives of adventure ('sexual prowess', 'seasoned adventurer'). To sustain the supply of the labour force, the Philippine state uses rhetoric on identity and nationalism in order to maintain the loyalty of the migrants. This ensures the workers' economic and political connections to the Philippines (Rodriguez 2010) or that observed by McKay (2007) on the role of the Philippine state in promoting and regulating the seafaring niche and in crafting narratives of heroism and masculinity to reinforce it.

In the interviews with the seafarers and the crewing agencies (discussed in Chapter 6 and 7), they constantly point out that foreign principals prefer Filipino seafarers because of their training and their English speaking capabilities (Zhao and Amante 2005). As will be argued, this clearly demonstrates how the Philippine state constructs an image of Filipino seafarers that is cognisant and consistent with the requirements of shipowners or principals – the qualities of pliability such as reliability, resilience, loyalty and obedience and at the same time cheap labour (Mckay 2007). With this marketing stereotype, it will be suggested in Chapters 7 and 8 that Filipinos remain in subordinate positions, with the exploitative relations and treatment of the seafarers which are left unchallenged.

Before concluding this Chapter, the next section discusses how trade unions seek to improve the unique working conditions of seafarers employed on foreign-flagged ships under a short-term employment contract with high levels of mobility. This raises a number of questions regarding a seafarer's connection with multi-cultural seafarers on-board, their participation in relation to trade union activities and the potential subordination of their rights to the needs of capital.

2.3.3 Effort of maritime trade unions to protect their members

The examination of Alcid (n.d.) on the response of non-governmental stakeholders¹³ to the situation of overseas Filipino workers (OFWs), draws attention to the limited geographic reach of maritime trade unions and non-governmental organizations (NGOs) in protecting their members especially for seafarers. Thus, seafarers find themselves faced with severe practical obstacles in accessing their rights or implementing their rights in the workplace

¹³ More particularly, MARINO and AMOSUP as the representative of workers in the sea-based sector, who are fighting against seafarer blacklisting or providing service to the seafarers while at shore.

because they do not have access to their home communities nor do they have the resources to sustain themselves in case of disputes with their employers.

There are efforts by the International Transport Workers Federation (ITF), together with the IMO and ILO, to establish a system of multinational industrial relations and collective bargaining in flags of convenience ships staffed by multinational crews by laying down minimum standards for working conditions and incomes under the ITF Total Crew Cost Agreement (ITF-TCC)¹⁴ (Koch-Baumgarten 1998; Lillie 2004). However, Amante (2004a, p. 86) said that the tensions between globalization, national labour regulatory policies and industrial democracy makes this a “fictional reality” and is a challenge facing Filipino seafarers. Amante (2004b) cites the decision of AMOSUP, an ITF trade union affiliate in the Philippines, who choose to temporarily freeze the scheduled increase of the basic minimum wage for able seamen (\$50 increase) as it would render the wages of Filipino seafarers more expensive and less competitive in relation to seafarers from other Asian regions. This issue will also be further explored in Chapters 7 and 8.

This restriction on the limits available to seafarers to bargain for better terms and conditions compared to, for example, dock workers is recognized by Carmichael and Herod (2012) - given the geographical mobility, itinerant nature of employment and limited contact with other seafarers on-board the ship. It is suggested that forming solidarity with other workers is difficult because they are from different communities in the global South with no informal social or cultural interactions on which strong ties of solidarity are built (Carmichael and Herod 2012). Hence, as more workers fall outside the traditional labour law paradigm, there is corresponding decline in union membership and influence (Johnstone et al. 2005). The decline of union power is attributed to the “systematic union-

¹⁴“Instead of having a single, uniform ‘standard agreement’ for all FOC seafarers, with all wages and benefits specified precisely, shipowners could negotiate agreements with ITF affiliates that needed only to add up to an ITF-determined labour cost level. The TCC rate was intended to allow more flexibility to unions and employers in adapting to local conditions, while still preventing inter-union wage competition” (Lillie, 2004)

weakening strategies of neo-liberal government (which) is a relevant factor because of their declining collective bargaining power and their loss of political influence” (Dore 2004, p. 51). And so with the decline in union power, certain regulatory provisions or institutions such as the employment contract attempt to protect the rights of seafarers.

Foremost among this is their right to payment of wages, the right to healthy, safe and decent working conditions, and the right to time off including time off ashore, the right to repatriation and, the right to their day in court (Fitzpatrick and Anderson 2005). This is relevant because there are cases of seafarers being abandoned in foreign countries, denied shore leave, and incarcerated without court conviction, and so on (Couper et al. 1999). Inevitably and more recently, there has been considerable focus on acts of piracy and armed robbery against ships, which, apart from being a threat to trade, have a significant and personal impact on the seafarers involved, especially those taken hostage for ransom (Abila and Tang 2014; IMO 2015). To add to the already growing concern involving seafarers, 80% of maritime accidents had been attributed to the seafarers (criminalisation) which is another important factor that has to be addressed.

Essentially, this highlights more clearly the need to articulate the results of an in-depth study of the terms and conditions of the POEA-SEC which is envisaged to show how the government efforts fare by adopting neoliberal strategies with respect to the effects for the improvement of the working conditions of Filipino seafarers.

2.4 Summary and conclusion

This chapter discussed the impact of globalisation, its manifestation in work and labour standards and their consequences to Filipino seafarers. In discussing the POEA-SEC as an alternative form of regulation of the labour market, we were

given a preview of several entities which compose the network needed for labour export coming from employers, employees and the government.

Following a review of relevant literature, it is apparent that most literature came from the perspective of academics from the global North. The existence of studies from the Philippines is confined to land-based overseas workers or Philippine-based workers. There is no contemporary research focusing on the views of seafarers who come from developing countries on the issue of the efficacy of their employment contracts. This gap in research suggests the need to gather empirical evidence directly from seafarers as well as other relevant major stakeholders in the maritime industry.

Proceeding from the changes in the world of work, the discussion then turned to the human element of the shipping industry. As a main component of this study, the life and work of the seafarers and its relationship with government regulation were described. The unique character of the maritime industry results in emerging regulatory regimes as a legal remedy for the protection of workers. Labour supplying states had been put to the task of raising its labour standards and to ensure compliance with standards set by international organizations. As set forth above, the role of globalisation to a nation State's regulatory devices such as prescription of a standard employment contract will be invariably analysed in this study. Not to be discounted is the discussion of the effect of the tensions created between national labour regulatory policies and maritime trade unions to individual seafarer rights given their geographic mobility and nature of employment.

This chapter discussed the themes that underpin the functional relationships between key actors and the impact of neoliberal processes on labour supply arrangements and work standards. In the next chapter, the micro-level links by which labour supply arrangements and the context under which migration processes thrive will be examined. Leading on from the discussion of the global perspective in this chapter, the next chapter aims to continue the review of

related literature and discuss, within local contexts, the interrelationship between global capitalism, the employers' demand for cheap labour, the efforts of the functionaries of the state to regulate labour migration from the Philippines and its effects to workers' labour conditions. It discusses the POEA-SEC within the Philippine temporary economic migration bureaucracy (TEMB).

Following chapters will also explain the legal relationship between the worker and the employer to understand the effect of contractual language with the issues of power, control, and social justice - especially when the relationships are between the powerful (employers) and the weak (employee). This study will rely on the analysis of the POEA-SEC in Chapter 5 and interviews with the parties to the contract and a legal expert, which will be discussed in Chapters 6, 7 and 8.

Chapter 3

THE POEA-SEC WITHIN THE PHILIPPINE MIGRATION BUREAUCRACY

3.1 Introduction and overview

This chapter continues the review of related literature. It discusses the global reach, complicated nature and fragmented set-up of a national bureaucracy that promotes a temporary employment scheme. In doing so, it highlights the role and importance of the POEA-SEC as a form of regulatory intervention. Furthermore, it discusses the interrelationship and interaction between numerous actors using the POEA-SEC to show its consequences to the working conditions of the seafarers. This chapter aims to establish linkages between the previous literature review chapter and provide context for the three findings chapters that follow.

This chapter is divided into three sections. Section 3.2 provides an account of the Philippine government's migration policy and the institutional framework of the labour recruitment system. It also outlines the role of crewing agencies in international labour migration in Asia, in other developing countries and in the Philippines. It provides a description of the government's remittance scheme as a central motivation to the process of overseas employment and migration. Section 3.3 details the employment contract as one of the sources of legal right for Filipino seafarers. The following parts discuss the case study of the labour employment process for seafarer employment in the Philippines towards the approval of their POEA-SEC. It highlights the process from the perspective of the employer and a Filipino seafarer. Section 3.4 provides a summary of the discussion.

Recalling the definition of globalisation by Martinelli (2003) in the previous chapter as "...processes that interconnect (various entities) in complex set of social relations", it is argued that extensive global networks connect shipowners, ship managers, labour supply agencies, and training institutions into "worldwide interdependence". It will be shown in this Chapter that from the beginning until the end of the labour employment process of this highly globalised industry, the movement of workers entails the help of various actors: bureaucrats, intermediaries, accredited medical clinics, international organizations and transport companies. This chapter aims to provide the background under which seafarer experience is shaped and necessary to understand in the development of the concept of the transnational economic migration bureaucracy (TEMB). More importantly, this involves understanding the bureaucratic process to which the seafarers are subject - essentially, this involves the collection of various documents/data, conduct of medical tests, pre-departure training and exchange of money - for the seafarer to be deployed on-board international ships. This is important to understand the protections available for the seafarers granted by the state under an industry which is permeated by global forces and neoliberal concepts.

3.2 Institutional framework

To explain the origins of the TEMB, what follows is a discussion of concepts of migration, which are central to the crafting of the TEMB conceptual framework. The discussion focuses on the components of the bureaucratic structures of recruitment, which are organized at the national level in different Asian countries (Thailand, Indonesia and China), namely: 'transnational social networks' proposed by Jones and Pardthaisong (1999); 'patron-client networks' proposed by Rudnyckj (2004); and, Xiang and Lindquist (2014)'s concept of 'migration infrastructure':

'Transnational social networks' recognises the domination of commercial agencies as intermediaries between workers and foreign employers in the international labour employment in Thailand. These important institutions evolved functionally in linking employers in the more developed economies to prospective migrants in less developed countries supplemented by commercial providers of migration services, such as recruitment agencies, much like how seafarers are recruited and hired.

In discussing the technologies of servitude in relation to the second concept of 'patron-client networks', Rudnyckj (2004) describes how networks facilitate transnational labour migration of female domestic helpers through 'patrons' from Indonesia. As such, it demonstrates the technologies used to rationalize the interconnection of the global economy with the localized moral economies. There are certain similarities to how seafarers and women domestic helpers are recruited in some areas, and this pattern of recruitment forms part of the TEMB framework. Like the women helpers, seafarers are assisted by certain well placed relatives or friends ('patrons') of seafarers ('clients') – by giving financial assistance and providing the introduction of the seafarer to the crewing agencies (networks) for facilitation of hiring. Crewing agencies then provide the necessary training to ensure that the seafarer is competent and qualified to perform their role on-board the ship.

The third concept is 'migration infrastructure' in China and Indonesia which provided a new and more exhaustive way of studying labour migration. This concept went further in explaining how various aspects of migration infrastructure facilitate migration. More particularly, it enumerated various components of the migration infrastructure for the recruitment and deployment of overseas workers: commercial- recruitment intermediaries; regulatory- state apparatus and procedures for documentation, licensing and other purposes; technological- communication and transport; humanitarian- NGO and international organizations; and, the social- migrant networks.

Considering what had just been discussed, what is common between the three presented concepts is the networking between state regulations, commercial intermediaries, and technological components of the “migration infrastructure” at the national level. Clearly, the concept of ‘migration infrastructure’ and the various components discussed are analogous to the practice of recruitment of seafarers in the Philippines (and evident in the TEMB).

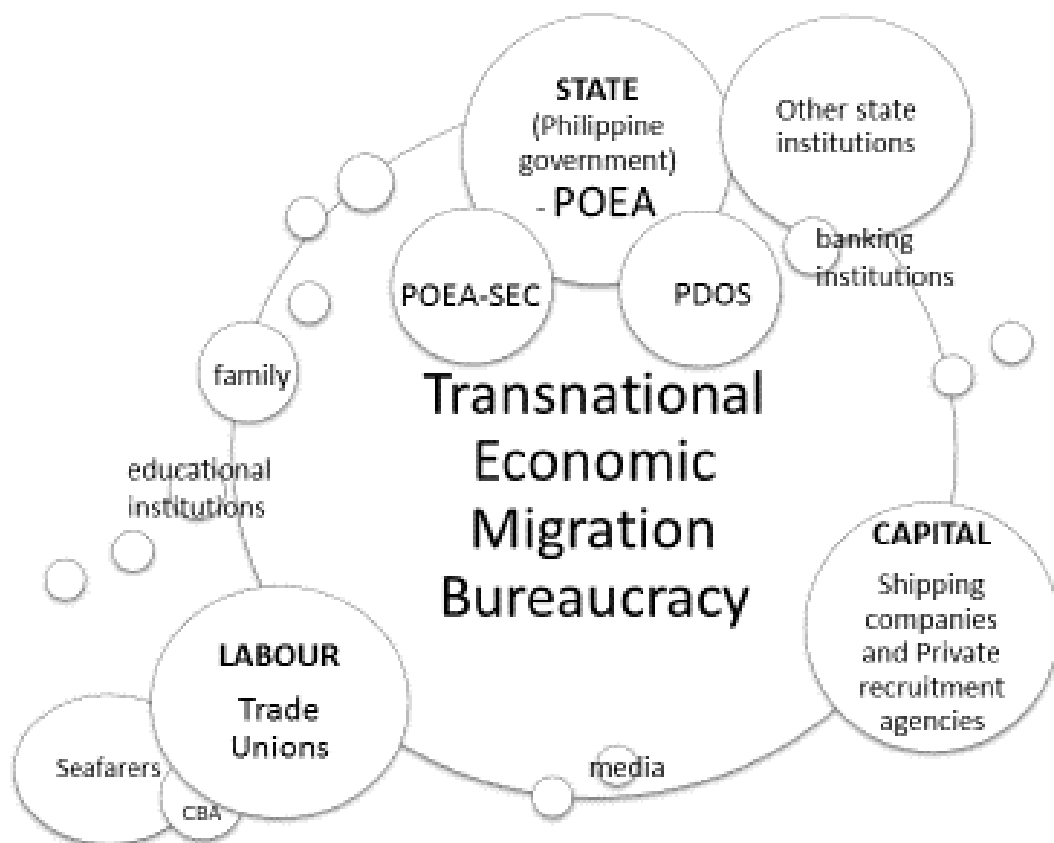


Figure 3.1. Tripartite actors in the Philippine maritime industry labour employment process (Source: Researcher)

Taking the findings of the above literature into account, this study will show that the tripartite actors (state, capital and labour), interconnect and intersect with each other to form a complex migration bureaucracy that institutionalizes

migration of workers overseas. This is demonstrated in Figure 3.1 below, which shows the conceptual framework I have used, within which the different actors and stakeholders are situated in the case of the Philippine seafaring industry. As an analytical tool on which this study is based (which evolved and is further discussed in Chapter 8 as a transnational economic migration bureaucracy – TEMB), it will be helpful to discuss the components or entities of this informal migration infrastructure – state, capital and labour.

The ‘state’¹⁵ or government regulators are tasked to ensure the safety of the ships and the welfare of the seafarers. As mentioned in Chapter 2, the state has an important role in the labour employment process such as its pre-deployment practices: the Philippine state requires overseas workers to undergo the Pre-Departure Orientation Seminar or PDOS and to be covered mandatorily by the POEA-SEC. The PDOS and the POEA-SEC are the legal and institutional strategies that seafarers have to go through prior to their deployment on-board international ships. These measures are administered through the POEA, a government agency under the Department of Labour and Employment (DOLE) (POEA 2009) which ensures the continued recruitment, deployment, and training of workers, either as OFWs or locally. For our purposes, ‘other state institutions’ shown in Figure 3.1 include the Central Bank of the Philippines which ensure that banking institutions have facilities where the earnings of overseas workers can be sent back to the country in the form of remittances.

‘Capital’ is represented by shipowners. At the labour supply country, the shipowner is represented by manning or crewing agency representatives who signs the contract of employment with the seafarers on behalf of the

¹⁵ Supranational organisations like the United Nations (UN), and its specialized agencies like the International Labour Organisation (ILO), International Maritime Organisation (IMO), as well as the Organisation for Economic Co-operation and Development (OECD), sets international labour and shipping standards on their member states and on the certification and training of the seafarers. Regulators of these standards can either be flag states, port states, coastal states, and crew supply states which all have an impact on the maintenance of ship safety and seaworthiness and the continued employment of competent seafarers.

principal/shipping company/employer. Licensed manning agents have since then played a significant and strategic role in the employment process in the Philippines. Section 3.2.1 provides a further discussion on the role of private recruitment agencies in international labour migration. As part of private recruitment agencies' agreement with shipowner/principals is the recruitment of medically and technically qualified seafarers. They also assume full responsibility for all claims and liabilities that may arise in connection with the use of their license, assume joint and solidary liability with the employer for all claims and liabilities arising out of contract and guarantee compliance with Philippine labour law as well as those of the country of employment of the seafarers. The licenses are valid for two years when they may be renewed but not transferred (ILO 2002b). Other entities, like the ship manager or ship operator or bareboat charterer¹⁶ likewise represent the shipowner in the actual operations of the ship while suppliers and customers dictate the level of skills and competence of the seafarer of which these ship interests must rely.

These recruitment agencies are important gatekeepers in the labour export process (Tyner 2010). The private sector is composed of labour-recruitment agencies. This is further subdivided into *private recruitment agencies* (PRA)¹⁷ or those licensed to recruit and deploy land-based overseas contract workers. As earlier discussed, private recruitment agencies (PRA) and other allied forms of recruitment are deeply entrenched and institutionalised in the outmigration process.

¹⁶ "Bareboat charter" means a contract for the lease of a ship, for a stipulated period of time, by virtue of which the lessee has complete possession and control of the ship, including the right to appoint the master and crew of the ship, for the duration of the lease (UN, 1986)

¹⁷ Private recruitment agencies can be further subdivided into *private employment agencies* (PEAs) which supply labour to foreign clients with the foreign client as the principal employer and *service/construction contractors* (SCCs) which provide labour through the deployment of Philippine companies, with the Philippine company receiving the foreign labour contract. *Manning agencies* are PEAs who are licensed specifically to recruit and deploy seafarers, or sea-based workers, for vessels plying international waters or other maritime related activities (POEA, 2010).

A change in approach to regulation for the use of private employment agencies is apparent. Before the 1970s there was a prohibition on private employment agencies or temporary work agencies which stemmed principally from concern over abuses perpetrated by them. There was widespread consensus that workers should not have to pay for work and the provision of employment placement through public employment services. This is in deference to the declaration of ILO that 'labour is not a commodity' (ILO's Declaration of Philadelphia of 1944). While there are exceptions to this rule, the compromises became more widespread, fostered by the adoption of ILO Convention on Private Employment Agencies (1997). Thereafter, the expansion of temporary work agencies became possible. Countries in Europe such as Netherlands, Denmark, France and the UK introduced licensing and registry systems for temporary work agencies. This brought greater legitimacy to temporary agency work.

With the various personalities involved, this makes it difficult to identify the beneficial owner of the ship - as the registered owner listed in the ship registry may either be nominee directors, nominee shareholders or bareboat charterers (OECD 2003). In the case of flag of convenience (FOC) registered ships, the real owner remains anonymous. It is important to show clearly the real employer of the seafarers and their relationship with the workers as this is relevant when questions of liability for the abuse of seafarer's human rights become a contentious issue. This will be further discussed in Chapter 7 in relation to the experience of seafarers.

Individual seafarers and maritime trade unions collectively represent 'labour'. The terms and conditions of the POEA-SEC directly impinge on the seafarers whether on-board the ship or ashore. Their legal right and protection directly depends on the interpretation and implementation of the employment contract and additionally, the Collective Bargaining Agreement (CBA). It is recognized that they require special protection due to the hardship and danger attached to this profession and the limitation of unions to effectively represent them. They

are distinct from land-based workers in view of the particular nature of their employment and geographic mobility - seafarers cannot leave their workplace (the ship) at the end of the day.

On the whole, and in connection with how we adopted Martinelli's definition of globalisation and Xiang and Lindquist (2014)'s concept of "migration infrastructure", we are able to apply these concepts to the complex structure that shape the governance of the Philippine maritime industry. We were also able to discuss how the workings of these network of state institutions (government regulators), labour organizations, labour recruitment agents, foreign employers, and potential migrant workers have strongly and actively influenced these actors. Moreover, the production of international labour migration for both land-based and sea-based sectors is the result of the interaction of these actors which operate both domestically and internationally (Terry 2009). This is reflected, more generally, in the next sub-section where the role of agencies in international labour migration in Asia, other developing countries and the Philippines will be discussed.

3.2.1 The role of agencies in international labour migration in Asia, other developing countries and the Philippines

The history of private recruiters involved in international migration has been well-established in the literature (Jones and Pardthaisong 1999; Aguilar Jr. 2003; Agunias and Ruiz 2007; Tyner 2010). From the emergence of modern forms of private recruitment agencies in Eastern Asia in the 1970s¹⁸ to serve the increasing demands of Middle Eastern states mostly as construction workers (Arnold and Shah 1984), these commercial and bureaucratic agencies have augmented social networks in the organization of international labour migration in Asia. This shift in labour migration from the Middle East to the growth

¹⁸ Awareness of employment opportunities abroad spread and labour supply began to exceed demand. Middle Eastern employers then shed their recruitment role to agencies financed by placement fees from the aspiring workers.

industries developing elsewhere in the Asian region¹⁹ (Jones and Pardthaisong 1999) ensured that the government and population of labour-surplus countries²⁰ have access to high-earning prospects abroad.

The success of the organization of international labour migration within Asia has been largely dependent on and dominated increasingly over the last two decades by agencies which, for a substantial fee, act as intermediaries between workers and foreign employers (Jones and Pardthaisong 1999). These agencies are responsible for the recruitment, documentation, mobilisation and transport of workers. The growing number of recruitment agencies and the whole host of commercial providers of migration services compose the 'immigration industry' in Asia and comprise the complex network that links the labour-sending state with the labour-receiving state.

The particular form of international labour migration policy in the Philippines has allowed it to become a country that promotes and markets its citizens as preferred labour to the global market. This had been confirmed in several articles (See for example O'Neil 2004; Asis 2006; Pernia 2011). Given its oversupply of labour force, the country seized this weakness as an opportunity to field its workers globally. With much of the country's policies focused on the service sector²¹ instead of developing its advantage in the manufacturing and agricultural sector, these institutional workings supported the culture of migration involving millions of Filipinos - despite the reported risks that they are

¹⁹ Namely, Japan and the newly industrialising countries of Hong Kong, Singapore, Taiwan and South Korea and Brunei (David 1991).

²⁰ Namely: Philippines, Indonesia and Thailand. Some countries of intermediate economic status like Thailand and Malaysia are both labour exporters and importers Jones H. and Pardthaisong, T. 1999)

²¹ "The service sector produces intangible outputs – the application of labour, skills and technology – that change the condition of products or persons, of that facilitate transfer of knowledge of ownership, among others" (NEDA, 2015). According to the Philippine Statistics Authority, our country's Services sector is composed of those who engage in the following: Wholesale and retail trade, information and communication, financial and insurance, real estate activities; repair of motor vehicles and motorcycles, professional, scientific and technical activities, transportation and storage; accommodation and food service activities, administrative and support service activities, public administration and defence, education, human health and social work activities, arts, entertainment and recreation, activities of extraterritorial organization and bodies, activities of households as employers (NEDA, 2015).

likely to face. In many Asian countries including the Philippines, the export of labour is intended as a stop-gap measure while the state is in the process of implementing alternative policy reforms. However, while its Asian neighbours adopted trade overseas to spur the growth of its economy, labour export remains a major development policy in the Philippines, as discussed by Abella (1993) and Pernia (2011)

As such, it was suggested that the government is itself engaged in 'legal human trafficking' of seafarers (Rodriguez 2010). This had also been written about by Ezquerro (2007) using the case of Filipino workers in the United States. She likewise proposed the existence of 'legalized trafficking' in view of biased policy making, rigid and strict immigration policies in the US and the lack of employment laws covering caregivers and domestic workers in the Philippines. Hence, their recruitment or entry to a receiving country, although by legal means, has the potential to create situations of vulnerability, subordination, and exploitation found in cases of illegal trafficking which may be the case for Filipino seafarers despite their employment contracts.

The pattern of uneven development in the Asian region shows that while its Asian neighbours such as South Korea, Taiwan, Singapore, and Japan have fared better economically, the Philippines remained a poor country. Moreover, it has been suggested that this undermining of economic, social and political development is the result of massive corruption in government which makes the Philippines, once touted as the "next Southeast Asian tiger economy", entangled in the reality of a third world country with "huge foreign debts, perennial trade deficits, widespread poverty, low national income and high unemployment" (Amante 2003). Having no economically attractive job opportunities at home, Filipino workers, who mostly come from the low socio-economic groups, see their employment abroad as a way out of poverty (Amante 2003).

What is happening in the Philippines, as demonstrated in the literature is that the government is adopting a complementary policy of encouraging migration and at the same time supporting manufacturing and agricultural exports (Cohen 2006). Aside from recognizing its human capital as an advantage to counter massive unemployment, the Marcos administration in the 1970s directed the creation of an apparatus to regulate the deployment of workers overseas. First, there was a shift of a strategy from import substitution industrialization (ISI) that favoured capital-intensive industries producing for the domestic market. This shifted again to export-oriented industrialization, which encouraged the investment of foreign capital in the form of export-processing zones.

Second, with the codification of all labour laws in the Philippine Labour Code (1974), labour policies and programs were geared towards overseas employment. The passage of the Labour Code and the parallel reorganization of government entities institutionalized the labour employment program of the government. Pernia (2011) with (Alcid n.d.) and (Abella, 1993) cites non-governmental organizations' assertions that overseas employment has been a *de facto* government policy since the government not only manages migration but also recruits and deploys workers abroad (O'Neil 2004) to solve the growing problem of unemployment in the 1970s (Pernia 2011; Alcid n.d.). The continuing demand for workers abroad fuelled further migration which is pushed further by the problems faced by the country internally (Asis 2006).

Third, the composition of the POEA reveals its over-arching reach into all aspects of the overseas employment program and indicates that it does not function in isolation but is part of a bigger state function. This is manifested by the POEA Governing Board²² and its interaction of the tripartite committee resulting in the formulation of the current POEA-SEC. The POEA is a crucial part of the migration bureaucracy to ensure the success of the recruitment

²² The POEA Governing Board referred to in Figure 4.4 is composed of the Secretary of Labour as Chair, the POEA Administrator as Vice-Chair, a representative from the private sector, and three (3) slots for overseas Filipino workers' representatives come from the land-based, sea-based and women's sector.

process. As suggested by Tyner (2010) the POEA²³ functions as a 'command centre' and serves as the conduit between individuals and institutions. As part of its mandate, it assesses and monitors overseas labour market conditions by utilising government officials abroad to help determine which countries offer profitably for the deployment of (migrant) workers. Although their core functions do not involve movement of labour, these officials find their terms of reference revised in order to assist in the labour market categories that are becoming crucial to the deployment of labour. For instance, a POEA government official said that ambassadors and consulate officials, labour attaches and other officials abroad act as the 'eyes and ears' and watch for any labour-market developments in the country in which they are stationed and report it to the POEA directly or the Department of Foreign Affairs (DFA) which then reroutes the information to the POEA. State-sanctioned marketing missions, promotional campaigns, bilateral agreements and media advertising help promote and develop overseas employment opportunities.

²³ Historically, two agencies were created in the Philippine Labour Code in 1974: the Overseas Employment Development Board (OEDB) and the National Seaman's Board (NSB) (Tyner, 2010) These agencies were responsible for marketing, developing, recruiting and deploying land-based and sea-based workers, respectively. Another agency which already existed, the Bureau of Employment Services (BES), functioned as a transitory, government-run employment agency which simultaneously regulates private recruitment agencies. Events which occurred in the 1970s and 1980s triggered a reorganization of the overseas employment program. Thus, the OEDB, NSB and BES were merged to form the Philippine Overseas Employment Administration (POEA) in 1982 as government renewed its effort to increase its labour-export program and deploy the workers through a licensing and documentation scheme involving the workers and the private sector (POEA 2008)

Table 3.1. The POEA divisions and offices

<p>POEA Governing Board Chairman: Secretary of Labour and Employment as Chairman Vice- Chairman: POEA Administrator as Vice-Chairman Members: Representatives from private, women, sea-based and land-based sectors</p>			
<p>POEA Administrator</p>			
<p>Deputy Administrator for Employment and Welfare</p>		<p>Deputy Administrator for Licensing and Adjudication</p>	
<p>Pre-Employment Service Office</p>	<p>Welfare and Employment Office</p>	<p>Licensing and Regulation Office</p>	<p>Adjudication Office</p>
<p>Sea-based Centre Agency Hires Group - Accreditation Division - Processing Division - Seafarers Registry Unit</p>	<p>Government Placement Branch - Client Services Division - Recruitment and Documentation Division</p>	<p>Employment Regulation Branch - Employment Service Regulation Division - Labour Assistance Centre</p>	<p>Adjudication Branch</p>
<p>Pre-Employment Services Office (land-based agency hires)</p>	<p>Welfare Services Branch - Workers Education Division - Assistance and Welfare Division</p>	<p>Licensing Branch - Licensing and Evaluation Division - Inspection Division</p>	<p>Recruitment Regulation Branch</p>
<p>Land-based Centre (Non-agency hires) - <i>'Balik Mangagawa'</i> (Back-to-Work) Division - Name-hire Unit</p>	<p>Welfare Employment Office - Employment Branch - Land-based Registry Division - Manpower Development Division</p>	<p>Anti-Illegal Recruitment Branch - Legal Assistance Division - Operation and Surveillance Division - Prosecution Division</p>	<p>Legal Research Docket and Enforcement Branch - Legal Research Division - Docket and Enforcement Division</p>

The divisions and offices of the POEA shown in Table 3.1 and illustrated in Appendix “G” and explained in section 3.2 help promote and develop overseas employment opportunities for various skills categories. Most significantly, the framework uniquely involves the cooperation between the government, the employers, and the workers, through their trade unions. As well as working with

relevant government institutions²⁴, the POEA likewise coordinates its efforts with a number of private recruitment agencies. Bringing together private foreign employers and Philippine-based recruitment agencies is necessary in order to establish contact with labour receiving states.

As demonstrated above, the Philippine state maintains, controls and disciplines its labour force using not only institutional resources for the continued and sustained mobilization of its workers. It explains the mechanisms that shape and inform the government's economic policy which facilitates the delivery of seafarers to the labour employment market. The remittance scheme, as will be discussed in the next section, is very much a critical part of this institutional framework.

3.2.2 Remittance scheme

Taking advantage of the need of labour-receiving countries for cheap labour, the employment of Filipinos overseas not only improves the lives of the workers and their families but also the Philippine economy. Overseas workers' remittances have kept the Philippine economy afloat and insulated the country from the financial crisis in 2009 (Yujuico and Valisno 2010). This has become a vital source of stimulus for sustenance of the economy of the Philippines which registers a favourable growth amidst fiscal problems.

²⁴ Another government entity is the Overseas Workers Welfare Administration (OWWA). It is under the Department of Labour and Employment (DOLE). This entity is important because it administers a Fund for specific purpose benefits for overseas workers and their families such as education, training, scholarship, health and livelihood; disability and death benefits; and, for repatriation in times of crisis. Filipino seafarers become mandatory members of the OWWA by contributing mandatorily to the OWWA Fund. As well as working with other government institutions involved in the seafaring industry such as the Maritime Industry Authority (MARINA), Technical Education and Skills Development Authority (TESDA), Professional Regulatory Commission (PRC), Department of Foreign Affairs (DFA) and Department of Health (DOH), the POEA likewise coordinate its efforts with a number of private recruitment agencies (PRAs).

The legal basis for the requirement to remit a certain percentage of the seafarer's basic salary to their beneficiaries in the Philippines is institutionalized in the Philippine Labour Code of 1974 and specified in the standard employment contract (POEA-SEC). The contract of employment for seafarers (POEA-SEC) is unique as seafarers are the only category of overseas workers who are required by law to remit a certain percentage of their wages (at least 80% of wages at least once a month) to the seafarer's allottee in the Philippines (McKay 2010). The Philippine economy has become heavily reliant on remittances from overseas Filipinos, both from the land-based (e.g. nursing) and sea-based sectors. Hence, from the point of view of the Philippines, overseas Filipino workers (OFWs) are an important group of people because of the remittances they bring.

The mutual benefit for the worker and the Philippine state is apparent. On the part of the worker, the literature described Filipinos to embrace a culture of emigration as a means of survival (Abella 1993; Yang 2004; McKay 2010). Households adopt immigration of one of their family members as an economic strategy. Family members are commonly expected to go abroad either temporarily or permanently to ensure that they can send their children to school, give them access to quality health care, and provide for their basic needs (Parreñas 2006).

On the part of the Philippine state, the full-year cash remittances of OFWs amounted to US\$22.8B for the year 2013 alone. Of this amount, US\$5.22B account for the total cash transfers from the 380,000 sea-based workers (BSP, 2014). The sustained global demand for professional and skilled overseas Filipino workers (OFWs) as well as improved monitoring of remittance flows (BSP, 2012). These remittances strengthen the foreign exchange reserves, help stabilize the economy, and provide government with funds to finance development projects.

To promote efficiency, the government continue to devise specialized systems in terms of faster delivery time and lower service fees (Gonzaga 2009). Access to formal channels for remitting funds to Philippine beneficiaries or allottees can be traced to technological innovations and wider remittance network of financial institutions which promote the smooth and efficient remittance flow process of sending money to beneficiaries or allottees. The cross-border financial transactions, on the other hand, are governed by multi-dimensional set of laws. The regulations set by *the Bangko Sentral ng Pilipinas* (BSP) or Central Bank of the Philippines focus on payment and settlement systems that facilitate faster delivery time and lower service fees.

To further increase the amount of remittance, Yujuico and Valisno (2010) proposed greater human capital investment to ensure a more highly educated force. This upgrade of the provision of education is premised on the belief that it will improve the workers' bargaining leverage. This is coupled with the governments' efforts to establish social networks with market intelligence on job vacancies and political conditions in order to broaden the geographical possibilities for the workers. It is predicted that as it is enhanced, more funds could be channelled to households' foreign exchange savings, micro-enterprise activities and other alternative financial instruments with the intent of eventual re-integration of some of the seafarers to land-based activities.

Section 3.3 details the employment contract as one of the sources of legal right for Filipino seafarers. It discusses the case study of the labour employment process for seafarer employment in the Philippines towards the approval of their POEA-SEC. To provide the context or background in the next chapters, this section highlights the process from the perspective of the employer and a Filipino seafarer.

3.3 The employment contract as a regulatory intervention – case study of the labour employment process

There are two sources of legal rights of Filipino seafarers: the law and their employment contracts (Binghay 2005; Jardin-Manalili 2010). In terms of the law as a source of the legal rights of seafarers and in recognition of the shipping industry as the world's first genuinely global industry (deSombre 2006), international seafarers' and ship owners' organizations, supported by governments, came together to create an international regulatory response of an appropriate kind – global standards applicable to the entire industry.

The Philippine Constitution, the Philippine Labour Code, the Migrant Workers Act and the POEA Memorandum Circular No. 10, series of 2010 are the important domestic laws relating to the labour employment process and the POEA-SEC²⁵.

In terms of the contract as a source of legal rights of seafarers, this follows the various models of institutional design for worker protection in a globalised economy. Deakin (2007) discussed that during the early period of capitalist development in Britain, the institutional design appropriate for labour protection is characterized by a contract of employment. Under the contract of employment, workers were offered protection in return for subordination. In the European continent, the contract of employment was recognized as a mechanism of economic integration within the enterprise and of social cohesion beyond it. Even traditional maritime practice dictated the need and entitlement of a seafarer to articles of agreement specifying the terms of employment.

To consider rights arising from contract of employment, it is necessary to consider national maritime and employment laws, and also the actual contracts of employment that may be in use. Currently, deployment onboard overseas ships is generally for short periods of time. This means that the relationship

²⁵ Their salient features are contained in Appendix "J".

between the worker/seafarer, the manning/crewing agency and the user firm/shipowner is governed by an employment contract. This contract contains minimum terms and conditions of employment but the parties can agree to better terms and conditions subject to the approval of the POEA (ILO 2002a). This employment contract drawn locally with the manning agency is distinct from a collective agreement with the maritime trade unions and the so called ship's articles which is presented by the captain once on-board the ship.

Hiring Filipino seafarers

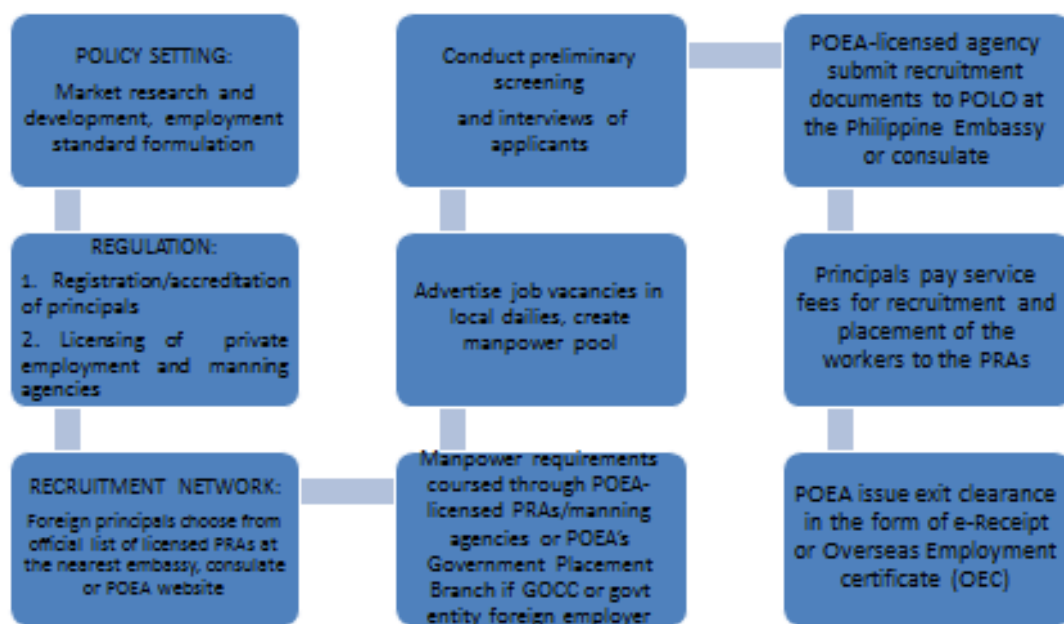


Figure 3.2. Process of Hiring Filipino Workers from Employer Perspective (Source: Researcher)

As mentioned previously, this research use the intricacies of the labour employment process towards the approval of the standard employment contract as a case study to show the context under which Filipino seafarers enter the seafarer industry, facilitated by the interplay of various actors. In describing the contractual process to engage the services of the workers, special attention was paid toward the interplay of the institutional framework to establish the parameters for the workers' employment rights and protection.

Figure 3.2 illustrates the process of hiring Filipino workers from an employer's perspective. On the part of the manning or crewing agents, they are regulated by the POEA, through a licensing and registration system in order to be allowed to recruit Filipinos for overseas employment. This entails policy setting and market research on the part of the POEA and other state institutions, the registration or accreditation of the employers (principals) and the use of the recruitment network set-up by the POEA to fill-in job vacancies through the PRAs or manning agencies.

The government sets a high requirement to issue licenses to recruitment companies. To be granted a license, an agency must meet the minimum capitalization requirement, submit an escrow agreement and a surety bond²⁶. As part of the application, manning agents undertake to recruit only qualified seafarers and assume full responsibility for all claims and liabilities that may arise in connection with the use of their license. They also assume joint and solidary liability with the employer for all claims and liabilities arising out of the contract. They are prohibited from collecting any placement fee for the recruitment and deployment of seafarers.

To gain employment, a seafarer goes through a process of documentation involving various government entities. As shown in Figure 3.3, this includes interface with various government and private agencies: the Maritime Industry Authority for his Seaman's Identification and Record Book (SIRB) and certification that he has undergone the required training courses²⁷, POEA for

²⁶ Minimum capitalization requirement of two million pesos (PhP2,000,000) or forty-six thousand one hundred and seventy US dollars (US\$46,170) and must submit an escrow agreement in the amount of one million pesos (PhP1,000,000) or twenty-three thousand US dollars (US\$23,000) as well as a surety bond on one hundred thousand pesos (PhP100,000) or two thousand three hundred US dollars (US\$2,300).

²⁷ The SIRB is where entries of his services on board are entered by the Master of the ship and the ratings of performance are entered.

the issuance of a Seaman's Registration Card, manning agency²⁸, and government-accredited clinic/doctor for the medical examination and psychological test. After being certified as medically fit for employment, and it has been determined that their training certificates comply with international requirements, additional training courses may be required. Once all the tests, examinations and certifications have been completed and complied with, the seafarer undergoes a Pre-Departure Orientation Seminar (PDOS) with an accredited training service provider where the seafarer's rights and obligations under the contract of employment are discussed. This is followed by the issuance and signing of the POEA-SEC with their crewing agencies.

The foregoing description sheds light on the labour employment process in the Philippine seafaring industry with the POEA-SEC as a kind of objective legal document meant to be used by the employer and the seafarer. In conjunction with other implementing entities and stakeholders, it sets up certain rights and responsibilities in compliance with the standards imposed by supranational organizations. Seafarers are covered by special and separate body of law contained in merchant shipping legislation and codes, supplemented by residual maritime laws, labour and employment provisions, provisions in contracts, collective agreements, crew agreements and ship's articles. The intertwined network of national and international organisations which try to enforce the regulatory framework of the maritime industry affect the everyday working conditions of seafarers the most.

²⁸ where he undergoes an interview, a written examination and a trade test depending on the requirement of the foreign principals

which this study is based, the components or entities of the transnational economic migration bureaucracy (TEMB) were identified.

As demonstrated in the discussion above, the Philippine state's government economic policy, mechanisms and strategies ensures the continued and sustained mobilization of its workers and the delivery of seafarers to the labour employment market. As discussed, the remittance scheme is very much a critical part of this institutional framework.

At this stage and in the chapter that follows, it is suggested that the POEA-SEC is framed in such a way as to work against the interest of the workers. With a deeper analysis of the POEA-SEC in the next chapter and using the experience of the seafarers, it will be shown that it is difficult for the workers to enforce the contract to their advantage. It will also be proposed that rather than being used for their protection, the true nature of the government prescribed POEA-SEC actually diminished the ability of the seafarers and their unions to negotiate better terms and conditions. This is aggravated by the fact that, in many ways, seafarers do not share the power base that other workers have. For example, not all of them belong to, or have access to the International Transport Workers' Federation (ITF); neither do they belong to sufficiently powerful national unions. While various national seafarer unions represent such a front to improve their rights, the work of these entities does not sufficiently represent the interest of the Filipino seafarers much less the world's one and a quarter million seafarers (Manuel 2011).

Chapter 4

RESEARCHING THE STANDARD EMPLOYMENT CONTRACT

4.1 Introduction

This Chapter elaborates on the research strategies used in this study and explains why they were adopted. Section 4.2 details the preparation for the research including the positionality of the researcher, conduct of the pilot case study, negotiation of access and the profile of the participants. Section 4.3 presents the discussion of the field work proper. Section 4.4 highlights the methods used in the analysis of data collected from the field. Section 4.5 discusses the limitations of the study as well as the ethical dilemmas encountered during the research process, which are discussed towards the end. The final section provides a summary and conclusion.

This research employed a case study approach to address the question:

From the perspective of major stakeholders in the Philippine seafaring industry, are the terms and conditions of the POEA-SEC implemented in ways that offer protection when seafarers are deployed on-board overseas ships?

In asking this question, the research also sought to understand the influence of the global political economy in certain policy interventions of the state in the employment of overseas workers and in ensuring their protection.

In this research, case study is defined as:

an in-depth exploration from multiple perspectives of the complexity and uniqueness of a particular project, policy, institution, program or system in a 'real life' (Simons 2009, p. 21)

More specifically, this research uses the "progressive case study" approach (Eisenhardt, 1989 in Steenhuis and Bruijn, 2006, p. 7):

Progressive case study being a mix of the two methods²⁹ is an inductive (theory developing) case study approach that is oriented in the interpretivist paradigm. The outcome is some theory that should not be considered validated but rather contains concepts and possible relationships which creates new insight (grounded in empirical data) and that can be tested in subsequent research (Steenhuis and Bruijn 2006, p. 7).

The progressive case study approach allows the collection and analysis of rich data from several inter-related sources. It is acknowledged that case study may have some limitations in terms of representativeness, generalizability, reliability and validity (Yin 2003; Flyvbjerg 2006; Starman 2013). To address these limitations, I followed triangulation techniques using multiple data sources or methods and to examine different perspectives and allow theoretical saturation (Steenhuis and Bruijn 2006; Eisenhardt and Graebner 2007). Multiple approaches such as interviews, focus groups, documentary analysis and site observation have been employed to gather evidence. Together with the feedback from participants from various groups, this has enabled the development of a nuanced or contextual view of reality and helped uncover the complexities embedded in a multi-faceted labour employment process.

²⁹ Case research proposed by Yin (2003) and Grounded Theory research proposed by Glaser and Strauss

In hindsight, a carefully designed quantitative approach using a survey questionnaire could have been conducted for this study to help ascertain the effectivity of the implementation of the POEA-SEC. However, this would not have fully captured the seafarer's experience as envisaged in this study nor provide explanations of the complexities of the labour employment processes that seafarers undergo. This is the main reason why quantitative research methods were not used.

4.2 Preparatory work for the research

This section discusses the preparatory work prior to conducting the field work proper: preparing the interview schedule, and selection of the case sample. It also discusses my positionality as a researcher (4.2.1), the conduct of the pilot case study (4.2.2), negotiation for access (4.2.3) and the field work site (4.2.4).

I prepared interview guides for each of the participant groups – regulators, maritime lawyer, crewing managers and seafarers. In preparing my interview schedules, I divided the questions to cover key issues as shown in Table 4.1. The overarching theme for the questions was the process adopted by government and the private employment agencies engaged in the maritime industry. The key issues in Table 4.1 were further developed during the analysis phase as themes, concepts or analytical tools of the data collected (Steenhuis and Bruijn 2006). This will be discussed further in section 4.9.

In terms of selecting my sample, I used theoretical sampling as recommended by Eisenhardt and Graebner (2007) to illuminate the relationships among the participants of this research and their experience of the POEA-SEC. It is acknowledged that the sample does not necessarily represent a specific population (Eisenhardt and Graebner 2007).

Table 4.1. The key issues of the interview schedule

Government	Maritime lawyer	Crewing managers	Seafarers
1. General Information	1. General information	1. General information	1. General information
2. Personal background	2. Professional background	2. Company profile	2. Personal career
3. Plans, policies and programmes	3. Plans, policies and programmes		
4. Rationale for prescribing the SEC	4. Rationale for prescribing the SEC		
5. Jurisdiction over seafarers	5. Jurisdiction over seafarers		
		3. Competition	3. Issues involving contract terms and conditions
		4. Regulation	
		5. Training	
		6. Recruitment process	4. Grievances
		7. Contract workers	5. Unfair treatment
6. Dealing with problems and issues of the SEC	6. Dealing with problems and issues of the SEC	8. Protection	6. Pay
		9. Adhesion	7. Work/life balance
		10. Dealing with problems of the SEC	
		11. Social dialogue	
7. Governance	7. Governance	12. Governance	
8. Tripartism	8. Tripartism	13. Tripartism	8. Union
		14. Assessment	9. Assessment
9. Amendments to the SEC	9. Amendments to the SEC	15. Amendments to the SEC	
10. Conclusion	10. Conclusion	16. Conclusion	10. Conclusion

From the industry information collected, I chose to focus on a manning agency I have called Tanglaw-Diwa as the subject of the case study – this is because it is a typical case in one sense but which, at the same time, is also atypical. It is a typical critical case (Flybjerg 2006)³⁰ because it was recognized by the

³⁰ As reported by the POEA (2005) it is one of the manning agencies which is consistently recognized as a top performer for deploying the highest number of highly qualified seafarers. It was likewise awarded the Presidential Award of Excellence for manning agencies in the sea-based sector PIA (2010) and recognized for deploying the highest number of seafarers and consequently the highest foreign

government for its best operating practices. It is assumed that Tanglaw-Diwa as a model organization complies with safety regulations for its seafarers. I thought that if I found issues of non-compliance during the research, then it is more certain that the same problem or issue would exist in other enterprises that were less careful to comply with safety regulations (Flybjerg 2006).

Tanglaw-Diwa is also atypical, hence, an interesting case subject. As shown in Figure 4.1, it is a shipping conglomerate whose operations are very diverse but inter-connected - manning and crewing management handling the recruitment and documentation of seafarers; ship management providing marine and technical services not only to its ships, but also to shipowners; a shipowning company that owns and/or manages different types of ships (passenger, tanker, cargo, container, bulk); and, also undertakes insurance brokerage, transport and logistics and other auxiliary services.

Pag-asa Shipping, Abakada Shipping, Kaibigan Shipping, Maharlika Shipping and the In-House Training Department of Tanglaw-Diwa (all pseudonyms) which are subsidiary companies of Tanglaw-Diwa formed the case units for this research. The study of these case units is important in order to understand the dynamics between crewing managers and the seafarers. For instance, through site observation and the interviews, I was able to examine whether and to what extent crewing managers explained rights and responsibilities under the POEA-SEC to the seafarers. Further, crewing managers are a good source of information to explain if seafarers are given the opportunity to ask questions and clarify vague concepts in the contract before the seafarers sign it. The same interviews were also helpful in providing information on the level of influence that employers' representatives exert in crafting of the terms and conditions of the standard contract as well as their strategies in sustaining the

exchange earnings. It had also been recognised for its exemplary welfare programmes and allied services POEA (2005).

steady supply of Filipino seafarers to the global labour market. This is discussed in Chapters 6 and 7.

Operations of Tanglaw Diwa Shipping Corp.

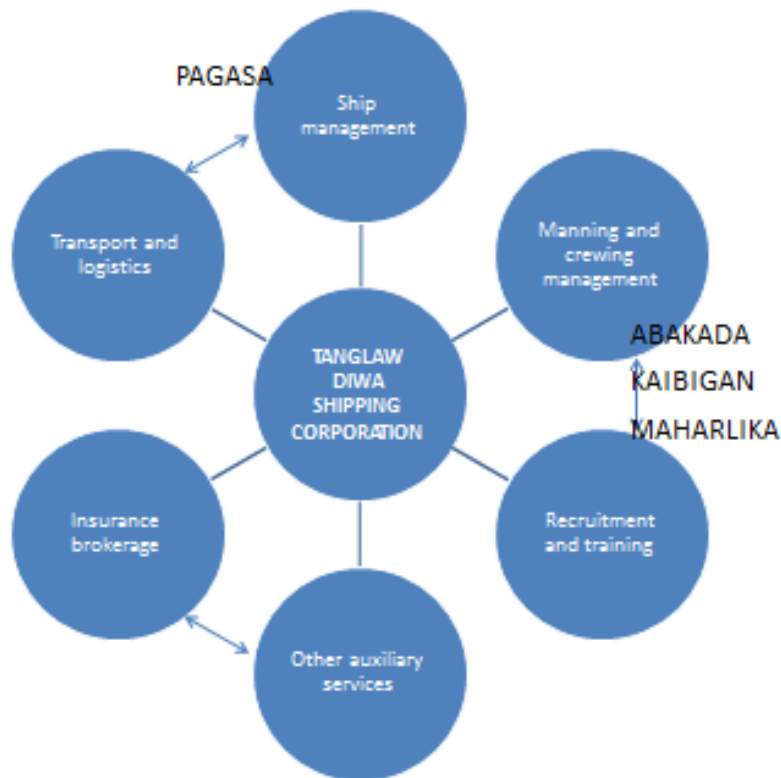


Figure 4.1. Tanglaw-Diwa with its subsidiary companies
(Source: Researcher)³¹

³¹ *Tanglaw-Diwa, Kaibigan, Maharlika, Abakada, Pag-asa* are all pseudonyms.

4.2.1 Reflections as a researcher

In this section, I offer some reflection in relation to my current profession and my role and status as a researcher – whether I am an insider or an outsider.

I am a lawyer and have worked in the Maritime Industry Authority (MARINA)³² for fifteen (15) years. My work involves granting franchise to ships to carry passengers and cargoes in the domestic trade and hearing cases that are filed against shipowners for violation of relevant rules and regulations. This includes investigating major incidents or accidents within Philippine territories involving the loss of lives and cargoes at sea such as capsizing, collision, or grounding. The human element is always a side issue in my line of work. Seafarers would only be involved in these cases when they are implicated in a maritime accident or incident and their license as a seafarer is at risk of being suspended or cancelled. Unless they are called as witnesses, seafarers do not attend these hearings (they may be dead, injured in the accident or in hiding). They were always represented in these administrative cases by private lawyers who submit documents, certificates, and licenses in compliance with directives during these quasi-judicial proceedings over which I preside. Thus, I do not have any direct interface with seafarers in my work.

My interest in studying the POEA-SEC was influenced by my experience in policy making to promote and regulate the maritime industry and my training as a lawyer. In general, this has involved being asked to assess contracts as to whether it was negotiated with the best interest of the client, it contains all the essential terms and conditions, and does not have any conflict with law. I

³² The MARINA is one of the government entities involved in the labour market for seafarers as it is mandated to promote the maritime manpower sector by maintaining a reservoir of trained manpower to meet the needs of the maritime industry (MARINA, 2005). Established as ‘the single maritime administration in the Philippines’ under Executive Order No. 75. One of MARINA’s interface with seafarers is the issuance of the seafarer’s identification and record book (SIRB), otherwise known as the seaman’s book. The SIRB is a passport-like document where the service record of the seafarers are stamped and recorded. More recently, certificates of competence (COC) and certificates of proficiency (COP) to seafarers are also being processed in the MARINA.

wanted to find out the reasons for requiring the seafarers to be covered by the POEA-SEC.

In terms of the issue of my role in the conduct of the research, I am an insider to my participants only in terms of having similar nationality, sharing the same Filipino language and being commonly conscious of our country's involvement in the supply of labour and our culture of migration. For example, we know where Luneta Park is located and know it as a place where seafarers meet to find employment. I recall an interview with a Fleet Director who merely pointed to the direction of Luneta Park with his lips when asked where he recruits seafarers. This non-verbal gesture requires no interpretation in view of the common knowledge within maritime industry concerning the role of Luneta as a place of recruitment. This is what Tillman (2002, p. 3) highlighted when she said, "(f)rom a culturally sensitive perspective, shared knowledge and understandings of the phenomenon under study are implied". However, at other times in my fieldwork, I could easily become an outsider when participants talked to each other in a native language that I do not speak.

I am also an outsider in terms of my gender, profession and educational background. The majority of my interviewees are male, as shown in Table 4.5. In fact, when I was asking for the statistics of male and female seafarers being handled by Abakada Shipping, the Fleet Director told me that he had never processed the papers of any female seafarer. He pointed out that if I wanted to join as a seafarer I would have to start on-board cruise ships and not in the navigation side (with watch keeping duties) because I am female. Also, while I was observing inside the crewing agency offices, I was constantly being mistaken as the spouse or partner of a seafarer, which constantly reminds me that I am an outsider to their activities in view of my gender and profession.

Most of the participants are seafarers or former seafarers while I am a government employee in an institution often criticised by the seafarers for poor service. Hundreds of thousands of seafarers go through application processes

involving government departments and private entities for their employment. All Filipino seafarers are required to have employment contracts before being deployed on-board an overseas trading ship. Although as an overseas postgraduate student I may sympathise with seafarers in terms of 'being homesick', I may never share the sub-culture of seafarers who have to be in ships for long periods of time.

These differences as an outsider researcher did not seem to affect my fieldwork. In fact, it afforded access at the beginning of the research, as will be discussed in sub-section 4.2.3. Gaining a certain level of acceptance from my participants provided trust and openness in the sharing of experiences. The seafarers assumed I understood their concerns and could perhaps contribute in the improvement of their working lives.

In undertaking this research, I realize in a way that it is not a matter of being an insider or outsider to the research. Rather, it is important to be consciously aware of my role and assuming the notion of continuum from insider-outsider throughout my research (Hockey 1993). I subscribe to the argument of Hellawell (2006, p. 490) that "there can simultaneously be some elements of insiderness on some dimensions of the research and to some extent some elements of outsidersness".

As highlighted by Dwyer and Buckle (2009, p. 59):

"Being a member of the group under investigation does not unduly influence the process in a negative way. Disciplined bracketing and detailed reflection on the subjective research process, with a close awareness of one's own personal biases and perspectives, might well reduce the potential concerns associated with insider membership. Furthermore, one does not have to be a member of the group to be studied to appreciate and adequately represent the experience of the participants.

Instead, we posit that the core ingredient is not insider or outsider status but an ability to be open, authentic, honest, deeply interested in the experience of one's research participants, and committed to accurately and adequately representing their experience."

The awareness of both sides of the issue made me resolve to endeavour to carry out the research objectively, with full ethical responsibility and professional integrity when I proceeded with my field work. This is what I will discuss in the next sections.

4.2.2 Pilot case study

Following ethical approval³³, I conducted the pilot study in Manila from March to April 2012. During the pilot study, I tested and practiced the different interview schedules³⁴ with a seafarer, a fleet director and a maritime lawyer. Using the pilot interview experience, I revised the interview questions and removed unnecessary or repetitive questions. I translated the questions for seafarers in Filipino³⁵ as the seafarer told me that it was easier for them to express themselves in Filipino than in English.

Table 4.2 presents the summary of the methods, participants and output for the pilot case study.

³³ Attached as Appendix "B" is the Approval by the SREC of this research.

³⁴ The revised interview schedules are attached herein as Appendix "C" for government official of NLRC, Appendix "D" for government official of POEA, Appendix "E" for maritime lawyer, Appendix "F" for seafarers and Appendix "G" for crewing agency managers.

³⁵ The national language of the Philippines.

Table 4.2. Methods, participants and output for the pilot case study

METHODS	PARTICIPANTS	OUTPUT
- 3 informal interviews	- 1 seafarer - 1 fleet director - 1 maritime lawyer	- 3 pilot interviews - Revised interview questions
- Casual conversations	- 3 overseas workers - seafarer relatives and friends	- Revised interview questions - Suggestion to bring along POEA-SEC for reference - Suggestion to attend PDOS

Additionally, I was able to refine the data collection plans, ways of gaining access and familiarization with the possible field sites. I was also able to re-think my research question and to focus on the experiences of the seafarers rather than the perspective of the policy makers. During this period, I started gaining access to the elite interviewees by sending letters introducing my research. I also started recruiting potential seafarer and crewing manager participants as is explained in sub-section 4.2.3. During the pilot study, I assessed the risks I might encounter as a lone researcher, as exemplified by the experience of Sampson (2004).

Casual conversations with overseas workers, seafarer relatives and friends supplemented the pilot interviews. It was during these casual conversations that invaluable suggestions were made by the seafarers: to bring along a copy of the POEA-SEC to remind the participants (both seafarers and crewing managers) of its contents; and to attend a Pre-Deployment Orientation Seminar (PDOS). I complied with these suggestions with very satisfactory results as shown in the presentation of findings in Chapters 5, 6 and 7.

4.2.3 Negotiation of access

This section describes how access was gained to Tanglaw-Diwa Shipping Company, its subsidiary companies and participants. It also describes the

challenges encountered in gaining access to the elite interviewees and how these difficulties were overcome. Table 4.3 shows a summary of the different tactics I employed to gain access to the participants.

Table 4.3. Tactics employed to gain access to participants

METHOD FOR GAINING ACCESS	PARTICIPANTS	OUTPUT
a. Visit to Philippine Merchant Marine Academy (PMMA) Graduate School for presentation of the research	<ul style="list-style-type: none"> - professor of Maritime Law as gatekeeper - postgraduate students who are general manager, training director, crewing manager, fleet director, and former employees of crewing agency 	<ul style="list-style-type: none"> - Recruitment of potential participants to the research - Access to crewing agencies offices - Access to fifteen seafarers: Focus groups - five seafarers each from <i>Kaibigan Shipping</i> and <i>Maharlika Shipping</i>; Interview - five (5) seafarers from <i>Abakada Shipping</i>.
b. Formal access letters sent to possible elite interviewees (A), (B), (C) and (D) by courier service c. Follow up calls to the elite interviewees	<ul style="list-style-type: none"> - elite interviewees 	2 interviews: <ul style="list-style-type: none"> - 1 senior government official A of government office 1 - 1 senior government official (C) of government office 2
d. Requested introduction from government official to one of the elite interviewees and seafarer applicants at Maritime Industry Authority (MARINA)	<ul style="list-style-type: none"> - Government official (E) as gatekeeper - Maritime lawyer (D) - Seafarer applicants at MARINA 	1 interview of senior lawyer official from maritime law association (D) 10 interviews with seafarers
e. Recruitment of seafarers from friends and relatives	<ul style="list-style-type: none"> - seafarers 	<ul style="list-style-type: none"> - Interview of five (5) seafarers

In view of my work at the MARINA, I am acquainted with a professor at the Philippine Merchant Marine Academy (PMMA)³⁶ who was also a former government official. He became my gatekeeper to the shipowners' representatives, training director, crewing managers (fleet directors) and former seafarers. He facilitated access to the company and the participants by introducing me to his students during one of his class at the PMMA. I gave a briefing on my research for the possible participants and gatekeepers. During this briefing, the students started sharing their experience on the POEA-SEC as former seafarers. I attribute this openness and trust to the positive endorsement of the professor who helped establish the value of my research and my trustworthiness as a researcher similar to the experience of Reeves (2010) and Sixsmith et al. (2003).

The students of the PMMA professor are the general manager, crewing managers and training director of Tanglaw-Diwa and its subsidiaries which I intended to visit. By going to them directly, I bypassed the bureaucracy in their respective companies (Belousov et al. 2007). This made me realize like Zaman (2008) that approaching those in the academe as gatekeepers can be very rewarding. I was also given access to their seafarer applicants who were either waiting to be deployed or undergoing the Pre-Deployment Orientation Seminar (PDOS):

Insofar as the elite interviewees are concerned - (A), (B), (C) and (D), all occupying senior management positions in the government sector, I sent them formal access letters as advocated by Stephens (2007) and made calls to their

³⁶ The PMMA is a maritime academy which produces merchant marine officers. It offers Bachelor of Science in Marine Transportation (BSMT) major in navigation and seamanship, Bachelor of Science in Marine Engineering (BSME) major in steam engine and electrical engineering, and post-graduate programme in maritime-related studies. It was in a Masters programme in Shipping Management and Maritime Education and Training class where I went to gain access and recruit participants. The professor reserved the last 30 minutes of his 3 hour lecture so I can introduce myself, my topic of research and ask the help of his students to volunteer as participants in the interview and focus groups. The students gave me a warm reception as they were already familiar with the Seafarers International Research Centre (SIRC) through another colleague, a staff of the SIRC, who sought their help for another research survey he was conducting.

assistants or visited their offices to obtain a schedule. The government officials required copies of my interview schedule as a matter of internal office policy. They informed me that they intend to provide the answers in writing. Although I informed them that a face-to-face interview is important, they insisted that it would be best for them to see the questions first before agreeing to be interviewed. However, they still did not submit their answers to the questions even though I gave them advance copies of the questions. This pattern of follow-up and refusal of officials (A), (B) and (C) necessitated a second phase to the fieldwork from December 2012 to March 2013 (Welch et al. 2002).

Involving government officials in the study is a difficult decision knowing the tension between the MARINA and Department of Labour and Employment (DOLE) agencies³⁷. This is because of the MARINA initiative (backed by the President of the Philippines and the legislative department) to transfer the functions performed by DOLE agencies to the MARINA. Despite the opposition of the DOLE, the MARINA was declared as the single maritime administration in the Philippines to perform STCW functions. I thought that getting access to DOLE government officials might be difficult in view of this. I realised that to get information from these sources (to investigate my interest in the POEA-SEC), I would require support from influential gatekeepers to access possible interviewees in government.

There are numerous reasons for the hesitation of government regulators to reply to my request for interview. First is the difference in professional values between the academic community and the organisational culture which they represented. As observed by Zaman (2008), developing countries generally do not have a strong culture of research and no institutionalized body to regulate issues of ethics, rights or privacy issues. Hence, I surmise that Philippine government regulators tend to be wary or indifferent towards researchers

³⁷ DOLE agencies are Technical Education and Skills Development Authority (TESDA), Philippine Regulations Commission (PRC), Commission on Higher Education (CHED), National Telecommunications Commission (NTC). It also involves another department, the Department of Health (DOH).

(Welch et al. 2002). Second, they may consider the interview as some form of a challenge to their professional expertise (Harvey 2011). Since my research is focused on the effectiveness of implementation of the POEA-SEC, this may be a sensitive subject to government officials as my study might reveal deficiencies to the governmental system such as corruption, incompetence, poor organisation and things of this nature (Belousov et al. 2007). This might also explain their request to have an advance copy of my questions so they can prepare their answers (Stephens 2007).

Table 4.4 Number of seafarer participants in the interview and focus groups per rank, and shipboard position

Level/shipboard position	DECK DEPARTMENT			ENGINE DEPARTMENT			STEWARDS DEPARTMENT			TOTAL
		I	FG		I	FG		I	FG	
Management Level (Officers)	Captain	4	2	Chief Engr.	3	1	-	-	-	15
	Chief Mate	-	1	First Engr.	2	-	-	-	-	
	-	-	-	First Asst. Engineer	2	-	-	-	-	
Operational Level (Officers)	Third Officer	1	1	Second Engr.	2	2	-	-	-	11
	Third Mate	2	2	Second Asst. Engineer	-	1	-	-	-	
Support Level (Ratings)	Able Seaman	-	2	Oiler	1	1	Chief Cook	2	1	15
	Ordinary Seaman	-	1	Fitter	1	1	Cabin Stewardess	-	2	
	Boson	1	1	-	-	-	-	-	-	
TOTAL	-	8	10	-	11	6	-	2	3	40

Legend: I – Interview; FG – Focus Group

In the case of maritime lawyer D and the ten (10) seafarer applicants, I had to ask government official (E) of the MARINA to act as a “proper intermediary” (Zaman 2008) to intervene as an “influential sponsor” (Welch et al. 2002). Drawing attention to institutional affiliation and personal connection allowed me

to get an appointment for interview because of the established relationships and networks of this government official with the other elite interviewee and the seafarers. The remaining seafarer participants were recruited through friends and relatives.

4.2.4 Participants' profile

Table 4.4 shows the various ranks in the management, operational and support level and shipboard positions in the deck, engine and steward departments of the forty (40) Filipino seafarers who participated in the interview and focus groups. This shows a good balance and representation in the level (management, operational and support) and shipboard position (deck, engine and stewards department) of the seafarer participants.

There were forty-four (44) male and five (5) female participants for this study, as shown in Table 4.5.

Table 4.5 Gender of Participants

Participants	Male	Female	Total
Seafarers	38	2	40
Government officials	0	2	2
Crewing agency officials	4	0	4
Training directors	1	1	2
Maritime lawyer	1	0	1
TOTAL	44	5	49

4.2.5 Field work site

Both the pilot study and the field work for this research were conducted in Manila, Philippines. Manila has been referred to as a “key node in the global circuit of labour” by Tyner (2010).

continuous build-up of immigrant population or labour immigrants who leave their provinces or the country for jobs in the capital or overseas (Asis 2006). The specific field sites of this study are the offices of the shipping companies, MARINA, POEA and Luneta Park. All of these are located within the vicinity of Malate, Ermita Manila except for POEA which is in Mandaluyong, Metro Manila.

4.3 In the field - research techniques

This section describes the conduct of the case study, providing information on the data collected, addressing the triangulation issue, and other research techniques used during the fieldwork such as analysis of the POEA-SEC, semi-structured interviews, focus groups and site observation.

After the conduct of the pilot case study, I conducted my fieldwork proper in Manila in two stages: from April to June 2012 and December 2012 to March 2013, covering a period of five (5) months.

Table 4.6 shows the key interview participants from Tanglaw-Diwa and its subsidiary companies and other government agencies. Table 4.6 also shows the combination of different data collection strategies in every case unit to gather as much data as possible, shed light on the research questions and allow my understanding to deepen until there is theoretical saturation.

There were also data gathered outside the company to gain additional insight – interviews of the regulators on national policy and other seafarers on working conditions and analysis of the POEA-SEC. The legal analysis of the POEA-SEC will be discussed further in chapter 5.

Table 4.6. Object, subject, case units and other key participants

OBJECT: PROCESS OF SIGNING OF THE POEA-SEC			OTHER SUPPLEMENTAL DATA OUTSIDE THE COMPANY
SUBJECT: TANGLAW-DIWA SHIPPING CORPORATION			
<ol style="list-style-type: none"> 1. Collection of industry information 2. Focus group with five officers 3. Focus group with five ratings 			
SHIPMANAGEMENT DIVISION	MANNING DIVISION (Crewing agencies)	RECRUITMENT AND TRAINING	
<p style="text-align: center;">Case unit 1: Pag-asa Shipping</p> <ol style="list-style-type: none"> 1. Interview of Vice-President for Operations/ General Manager (former Master Mariner) 2. Observation of operations 3. Collection of industry information 	<p style="text-align: center;">Case unit 2: Abakada Shipping</p> <ol style="list-style-type: none"> 1. Interview of Fleet Human Resource Director (former Chief Engineer) 2. Interview of Fleet Manager 3. Interview of five seafarers 4. Observation of seafarer deployment <p style="text-align: center;">Case unit 3: Kaibigan Shipping</p> <ol style="list-style-type: none"> 1. Interview of Fleet Director (former Master Mariner) 2. Focus group of five officers <p style="text-align: center;">Case unit 4: Maharlika Shipping</p> <ol style="list-style-type: none"> 1. Interview of Fleet Director (former Master Mariner) 2. Focus group of five ratings 3. Observation of operations 	<p style="text-align: center;">Case unit 5: In-house Training Department</p> <ol style="list-style-type: none"> 1. Interview of Training Director (former Master Mariner) 2. Interview of PDOS-Trainer 3. Observation of conduct of PDOS sessions with 100 seafarers and 2 trainers 	<p style="text-align: center;">From other government agencies</p> <ul style="list-style-type: none"> - two interviews with government officials (A and C) - Analysis of the 2010 POEA-SEC - Archival analysis of related labour laws, rules and regulations. - Site visit of Seafarer Processing Division of government agency B <p style="text-align: center;">From private sector</p> <ul style="list-style-type: none"> - one interview with maritime lawyer (D) - recruitment and interview of fifteen seafarers - observation of Luneta Park seafarer centre

4.3.1 Interviews

The use of semi-structured interviews enabled the participants to express views, perceptions and experiences on specific terms and conditions of the POEA-SEC. Table 4.7 shows the summary of the participants for the interview, the date of their recruitment and the output of the fieldwork. I have a total of twenty-nine (29) interviewees.

The main theme in the interviews is the experience of the seafarers on the provisions of the POEA-SEC and their experience of the labour employment process for the processing and approval of the POEA-SEC. Sample questions are contained in interview guides attached as Appendices “C” to “G”.

Table 4.7: Summary of participants for the interview, date of recruitment and output of fieldwork

PARTICIPANT/S		DATE OF RECRUITMENT OR INTERVIEW/OUTPUT
CREWING AGENCY MANAGERS/ SHIPOWNER'S REPRESENTATIVES	senior officials of crewing agencies/shipping companies: - 1 manager of Crewing agency 1 - 2 managers of Crewing agency 2 - 1 manager of Crewing agency 3	Interviewed on May to June 2012 - 3 interview transcripts - Fieldnotes replaced 1 transcript as manager of crewing agency 1 refused to have his interview recorded.
TRAINERS	1 Training Director and 1 Trainer of Pagasa Shipping Company	Interviewed on May to June 2012 - Fieldnotes as they refused to have their interview recorded
SEAFARERS	Twenty seafarers: - 5 recommended by family, friends, relatives - 5 from crewing agencies - 10 applicants in MARINA for Seafarer's Identification and Record Book (SIRB)	Recruited on May 2012 and interviewed from May to June 2012 and January to March 2013 - 20 interview transcripts
MARITIME LAWYER	1 senior lawyer official from maritime law association (who handled case arising from contract for employer shipowner/crewing agency and handled case for seafarers)	Interviewed on November 2012 - 1 interview transcript
GOVERNMENT OFFICIALS	1 senior government official A of government office 1	Interviewed on February 2013 - 1 interview transcript
	1 senior official B of government office 2	Interviewed on March 2013 - Fieldnotes replaced 1 transcript as official refused to have her interview recorded.
TOTAL	29 interviewees	26 transcripts and 3 fieldnotes

I interviewed the following shipowners' representatives: Vice-President for Operations of Pag-asa Shipping, the ship management division of Tanglaw-Diwa, the Fleet Human Resource Director, Fleet Manager of Abakada Shipping, the Fleet Directors of Kaibigan and Maharlika Shipping and the Training Director and PDOS Trainer of Tanglaw-Diwa. Shipping company representatives and crewing agency officials represent the shipowners and are considered as intermediaries between the employers and the seafarers. They complete the tripartite perspective of the workers, government and employers. Five of the seven interviewees from the crewing agencies are former seafarers

who made the shift from their sea-based employment to high-ranking officials in their present shore-based positions. Using their experience of the POEA-SEC not only as crewing managers but also as former seafarers, they were asked if their companies can change the POEA-SEC or influence the policy making in the Philippines. They were also asked about any possible conflict of interest with the different operational activities of the company which would unduly impact on the welfare of the seafarer.

The interview data from the shipowner representatives presented certain issues and questions which I thought required more probing with the seafarers and the government regulators. These were particularly related to the terms of the POEA-SEC which were either inconsistent with national laws or raised serious questions about the implementation of the POEA-SEC. They included:

1. Details such as names of the ship, the parties, principal and local agent are prone to be revised or changed even after the approval by the POEA;
2. Period of contract is short-term and temporary which seems to circumvent national law that makes contractual employment into regular employment after a period of six months of service;
3. Seafarers receiving lower pay than that specified in the contract or receiving a salary lower than that received by seafarers of different nationalities;
4. Overtime pay rendered for overtime work is not sufficient compensation and results to work fatigue;
5. Disability grading system for monetary compensation in case of loss of life or injury provides for a lower ceiling but can be entitled to higher compensation in other countries.

With these issues in mind, I started my interviews with the seafarers. In total, I interviewed twenty (20) seafarers: five (5) seafarers from Abakada Shipping, five seafarers recommended by friends, and ten (10) seafarer applicants at the MARINA. The interviews lasted at an average of two (2) hours. The questions

were designed to let them describe their personal experience and professional life, working and living conditions, their activities and roles on-board the ships and their views of government and employers in protecting their welfare. The interview and focus groups with seafarers were conducted amidst their employment events which are related to their employment contract: after their PDOS seminar, while applying for their seaman's book or while waiting to be deployed in the crewing agencies. Thus, they are conducted at the crewing managers' offices or at my office at the MARINA.

After I conducted the 4 focus groups, and interviewed 5 seafarers from Tanglaw Diwa and its subsidiary companies, I was hearing the same types of experiences of the POEA-SEC. For purposes of triangulation and for richer data, I thought while in the field that I needed to hear if the experience of other seafarers are different. As mentioned earlier and as shown in Table 4.6, these interviews comprise the data which I gathered outside the company for purposes of validation and confirmation. I deliberately interviewed 15 seafarers outside the company to supplement the focus group and interviews of seafarers. I wanted broader information on their experience with their companies, their interaction with POEA and other employment experience. In widening the sample, my aim was to find out if the experience of the seafarers employed by Tanglaw-Diwa are different or much more widespread with other seafarers. It is thus emphasised that this research is not supposed to be a numerical representation of the seafarers.

Two government regulators and a maritime lawyer were interviewed during the second stage of the fieldwork from December 2012 to March 2013 to supplement the analysis of the POEA-SEC and the interviews so far conducted with the crewing managers and the seafarers. I was successful in getting access to regulators this time because I was guided by the lessons of the first phase of the fieldwork. I realised the wisdom of letting government regulators answer the questions in writing because they could articulate their views better. I also realised that some data from elite government officials (written response

to the interview questions) is better than no data at all (Harvey 2011). However, I also knew that it is critical to supplement this with face-to-face interviews to observe and understand the perspectives and behaviour of these government officials. To gain access this time, I downplayed my connection with the MARINA.

As architects of the POEA-SEC and holders of information, the interview with the regulators are more intensive and lasted for three (3) hours as it sought to draw out government's policy and the reforms and improvements introduced for seafarers' welfare. The interview further probed the reason for the prescription of the POEA-SEC for seafarers, other safeguards put in place for the protection of workers and their intervention in case of problems with employment.

4.3.2 Focus Groups

Aside from the semi-structured interviews, I also conducted four (4) focus groups with seafarers as shown in Table 4.8. Each focus group was limited to 5 seafarers only for easy management of the interactive discussion (Belzile and Oberg 2012)⁴⁰. Two of the focus groups were for management and operational level officers and two were for the support level or ratings. The focus group of the officers were separated from the ratings to avoid possible dominance by high-ranking officers if they are mixed with lower-level ranked ratings which might inhibit the openness of the sharing of experience. The focus groups lasted at an average of two (2) hours.

In the focus groups, I let the seafarers discuss their views on the effectiveness of implementation of their employment contracts. According to Kamberelis and Dimitriadis (2005), the use of focus groups produce data that are seldom produced through interviewing and observation as it "facilitates the exploration

⁴⁰ The structure of the focus group was based on the Standards of Training, Certification and Watchkeeping (STCW) level of seafarers, namely: Management level composed of master, chief mate, chief engineer; Operational level composed of 3rd or 2nd mate, duty engineer, and assistant engineer; and, Support level composed of ratings like ordinary seaman, and able seaman.

of collective memories and shared stocks of knowledge that might seem trivial and unimportant to individuals but that come to the fore as crucial when like-minded groups begin to revel in the everyday.” I witnessed this when the seafarers clarified amongst themselves the meaning of certain provisions of the POEA-SEC like the meaning of ‘point of hire’ as it affects the computation of their salary.

Table 4.8: Summary of participants for the focus groups

METHODS	PARTICIPANTS	OUTPUT
FOCUS GROUP	4 focus groups with 5 seafarer participants per group a. 2 focus groups for management and operational level officers b. 2 focus groups for support level or ratings	4 Focus group transcripts
TOTAL	20 seafarers	4 transcripts

The participants in the interviews and the focus groups were good informants as well as intelligent commentators about their work. However, knowing that reality is much more complex, it is important that these accounts be supplemented by an understanding and analysis of longer-term historical trends, for example, or of the possible effects of global forces on policy decisions. Thus, for purposes of analysing the responses, the interviews and focus groups need to be examined through the lens of relevant literature which is discussed in Chapters 2 and 3.

4.3.3 Field site observation

On-site observation had been conducted to have a close understanding of what happens during this process of employment. This approach emphasizes the importance of studying the concrete experience of seafarers who goes through all stages of employment. The observation of real life situations not only inside Tanglaw-Diwa but outside of it – at government offices of MARINA or POEA while waiting for their application, or while on ‘stand-by’ at Luneta Park seafarer centre.

The preview of the seafarer experience of the employment process in these places provided greater depth of understanding - the length of the process, the behaviour, dynamics and interaction between the parties while the contract is being processed or negotiate for better terms and conditions. It also considered the treatment of the seafarers by government and crewing agency employees. This provides a rich data on the power relations between these main groups of actors⁴¹. This is discussed in chapters 6 and 7 of this research.

Following a suggestion during the pilot study, I also observed two sessions of Pre-Departure Orientation Seminar (PDOS) conducted by a crewing agency for seafarers to explain the terms and conditions of the POEA-SEC, to update them of the developments on the terms of his employment, the company policy that must be observed during his employment and a focus on compensation and benefits in case of death, accident or injury to the seafarers. This provided me with rich insight on what the crewing agencies impart to the seafarers who are about to be deployed on-board a ship, how the trainers treat the seafarers and the imposition of strict discipline from the way they dress, the observance of decorum and time. I did not employ covert research during the observation (Homan 1980; Calvey 2008; Zaman 2008).

4.4 Data Processing - Transcription, translation and data analysis

With the exception of the interview with government official B, the two trainers and a crewing managers, I made an audio recording of the interviews and focus

⁴¹ Before I knew that the POEA-SEC is brought by the liaison officer of the crewing agencies to the POEA I was interested to know: if they explain terms and conditions of employment and other relevant information to the seafarers or is it merely mechanical processing; do they ensure that any seafarer recruited or deployed is qualified and hold the documents necessary for the job concerned; do they check if the contracts of employment are in accordance with applicable laws, regulations and collective bargaining agreements; do they see to it that seafarers are informed of their rights and duties under their contracts of employment and the articles of agreement prior to or in the process of engagement.

groups with the consent of the participants. Fieldnotes replaced the audio recording of these interviews and to record my on-site observations. I was guided by an understanding that how my interviewees talk about their lives and themselves, the use of particular words, images and metaphors are significant to describe and conceptualize their experiences (Hammersley 2010). In terms of translating the interviews, I am aware that there is risk of losing the meaning that the seafarers attach to their experiences. Hence, it is important that the interviews and focus groups were carefully and faithfully transcribed (Bloor et al. 2001) and translated from Filipino into English.

As a progressive case study (Steenhuis and Bruijn 2006), the objective of the research is to use the case as the basis to develop theory inductively (Eisenhardt 1989). Building theory from case studies involves using one or more cases to create theoretical constructs, propositions and/or mid-range theory from case-based, empirical evidence (Eisenhardt 1989). This process of reflection, thinking through of the pressing concerns of the participants, and generation of ideas continued during the transcription of the interviews and was sustained until the actual writing up of subsequent chapters of this thesis (Thomas and Hodges 2010). This involves the recursive cycling of case data, emerging theory, and later, extant literature (Eisenhardt and Graebner 2007).

The roadmap for building theories prescribed by Eisenhardt (1989) was the guide for this process of building theory. It includes definition of research question, *a priori* specification of constructs, triangulation or multiple data collection methods, theoretical sampling, within-case and cross case analysis, and comparison with literature until theoretical saturation is reached (Eisenhardt 1989). A clear definition of the research question was identified earlier on which permitted the identification of the object of investigation, the subject case and the kind of data gathered.

As mentioned earlier, it helped that before proceeding with the fieldwork, I organised my interview questions into key issues as shown in detail in Table

4.1. These shape the objectives, initial research design and research questions and became a logical foundation for the concepts and emergent theory. I recognised, however, that the early identification of the research question and the possible constructs are tentative and may shift, as it did during the duration of this research.

Table 4.9. Development of concepts and themes

CONCEPTS IN FINDINGS CHAPTERS			THEMES OR RELATIONSHIPS
Chapter 5 A critical examination of the POEA-SEC	Chapter 6 Experience of Employer's Representatives	Chapter 7 Experience of the seafarers on the enforcement of the POEA-SEC	Chapter 8 Transnational Economic Migration Bureaucracy
Parties to the contract	Process of hiring seafarers	The pains and gains of seafaring life	Labour export policy of the government
Manning agency duties prior to deployment	Coping with the effects of seafarer shortage	Actors who influence seafarers' work and employment	i. Transnational economic migration bureaucracy ii. Provision of minimum terms and conditions
Labour standards i. Duration of employment ii. Monetary considerations iii. Working conditions – hours of work c. Disability benefits	Disempowerment of Filipino seafarers i. Experience of the PDOS ii. Violations to the POEA-SEC committed by Filipino seafarers	Awareness of the contract	Symbolic nature of the contract iii. Adherence to the contract iv. Contrast between contract terms and seafarer experience - Intensification of work and fatigue - in-built harm factor within the compensation system
Labour relations		Seafarers' experience and perceptions of the contract	The contract as an instrument of control

In terms of building theory, there is a need to frequently maintain an overlap in data analysis with the data collection (Eisenhardt 1989). This is made possible by the use of field notes to annotate what is happening in the research with some observation, impressions, and initial analysis. These reflective commentaries and observations formed the basis for deeper analysis. This is particularly important in taking note of relationships between what I have

observed and what the participants were telling me. This allowed me the flexibility to adjust the data collection or make additional questions depending on themes or concepts that emerged or need verification.

After the generation of the data, the challenge at the next stage was to ensure that all data or evidence could be analysed and interpreted. I used NVivo for coding and categorizing large amounts of text that was collected from the interviews, focus groups and document analysis. The ability to depict my findings in a graphical map using NVivo was helpful for the formulation of possible theories. It helped me to develop the understanding of transnational economic migration bureaucracy (TEMB) shown in Figure 8.1 and 8.2 with its non-hierarchical relationships, circular loops and unstructured networks. More of this will be discussed in Chapter 8.

In using NVivo, I became more familiar with the data. Initial examination of the data by putting memos and labels allowed unique patterns to emerge before some generalization is made. Once a pattern is established, it is interpreted in terms of the setting in which it occurred. From a description of this event or setting, a more general interpretation of its meaning is made. From here, different conclusions and the ability to build theories arise (Kohlbacher 2006). From this within-site analysis, over-all impressions on the treatment of the seafarers, tentative themes, concepts and relationships between variables begin to emerge.

The analysis was done in different stages and involved the use of broad themes. Some **KEY ISSUES** had been incorporated in the interview schedule, as earlier discussed and shown in Table 4.1. The responses were categorized accordingly to multiple categories. This was followed by the formulation and testing of theories 'moving back and forth between the interviews themselves and generalizations about them' (Squire 2008: 50).

The data was further coded along a **CONCEPTUAL BASIS** relying on initial interpretation of the data. These became the heading of the thesis' empirical

chapters 5, 6, and 7 as shown in Table 4.9. I have presented the data by dividing it according to its source – documentary analysis of the POEA-SEC and other relevant labour laws, rules and regulations (Chapter 5), interview and observation of the operations of the crewing agencies and the PDOS (Chapter 6), and interviews and focus groups of seafarers (Chapter 7).

Finally, the concepts were connected to relevant data to form **THEMES OR RELATIONSHIPS** between the entities and the global market forces (labour market policy of the government, symbolic nature of the contract, and the contract as an instrument of control) which became the running theme of the Discussion (Chapter 8). Identification of substantive statements that might say or mean something demonstrate the different possibilities of interpreting or giving multiple connotations (Kohlbacher 2006). During this process, the next step is to compare systematically the emergent frame with the evidence from each case in order to assess how well or poorly it fits with the case data, the idea being to constantly compare data and theory and which is the closest fit.

This brought out the insights from the different types and sources of data. When a pattern from one data source is corroborated by evidence from another, the finding is stronger and better grounded. When evidence conflicts, this can be reconciled through deeper probing of the meaning of the differences (Eisenhardt 1989). Table 4.9 shows the key themes, concepts or hypotheses that developed after reading existing literature that have similar findings in a different context to the seafaring industry – land-based sector and see basic differences between them.

4.5 Ethical considerations

To be ethical, Wood (2006: 379) said that research subjects must consent to their participation with full understanding of the potential risks and benefits. The distribution of Participant Information Form (PIF) (AAA 1998; BSA 2002) which is attached as Appendix “H” and business card (Appendix “I”) served as my authoritative credentials and links to a university (Reeves 2010). I also

explained “what the research is about, who is financing it, why it is being undertaken, and how it is to be disseminated” in consonance with the BSA (2002) guidelines. I assured the participants that their commentaries will be confidential, the matter not to be divulged to anyone at any time or under any circumstance, they will remain anonymous, that they will be given a different name or pseudonym, and that any information that might identify them will not be used (Coffey et al. 2012). I asked for their permission to record the interviews and focus groups, explained that they have a right not to answer any question if they feel uncomfortable answering or would constitute a violation of their privacy. I also told them that they can also withdraw at any time if they do not feel like participating.

At the actual interview and focus group sessions, I considered the participant’s emotional state to prevent undue distress or hurt feelings. I asked if they need to take a break or wish to continue with the interview. I did not experience any of my participants experiencing distress as to warrant referral for post-traumatic counselling.

As I conducted the fieldwork as a lone female researcher, I made sure that institutional as well as personal measures (Bloor et al. 2007) were taken to minimize the dangers to myself as I enter a male-dominated occupation (Sampson and Thomas 2003). I reflected on the risks involved in the research as well as the acceptable level of risks I should be taking (Belousov et al. 2007). Having formal and informal gatekeepers, however, reduced the risk of any form of harassment. I conducted the interviews at their offices during office hours. As a native of the fieldwork site (Zaman 2008; Turgo 2012) I more or less know which places pose danger or risk to myself.

4.6 Limitations of the study methods

This section identifies various limitations which were encountered during the data collection and analysis stages of the research. This will be returned to in chapter 9 for recommendation of future work.

As earlier mentioned, this study does not include representatives from seafarers' unions, groups or associations as they were already involved in the tripartite taskforce which amended the POEA-SEC together with government regulators and employers' associations and resulted in the amendments to the POEA-SEC in 2010. Limiting the interviews to the experience of individual seafarers on the terms and conditions of the POEA-SEC is viewed as different from the narrative of the representative of a seafarers' union, groups or association.

Moreover, since I only interviewed two (2) government officials, this study might be supplemented by future studies. But this should consider the existence of organisational politics and turf war between Philippine government departments (Welch et al. 2002). As earlier discussed, for example, the directive to transfer STCW-related functions to the MARINA with the corresponding transfer of functions, records, equipment, facilities, rights and other assets and personnel from different agencies of the Department of Labour and Employment to the Department of Transportation through the MARINA did not sit well with the other government regulators I interviewed because of the loss of their functions, powers and responsibilities. I was able to expound on this issue in section 2.2.3.

This study likewise focused on the 2010 version of the POEA-SEC. It is assumed that discussion of the differences between 2010 POEA-SEC, prior amendments and the Philippine ratification of the Maritime Labour Convention (MLC 2006) would have made the study more robust.

4.7 Summary and conclusion

This Chapter provided an account of the methodology of this qualitative case study research of the process of approving the standard employment contract (POEA-SEC). It discussed and analysed my fieldwork site, the conduct of the pilot study, the strategies used for the research and a conceptual reflection on theoretical, and methodological and ethical issues. It looked into the different

stages of empirical work, the justifications for the choice of qualitative methods, the process of selecting the case studies, difficulties of access, data analysis techniques and the ethical dimensions of the research.

The way I negotiated relationships with the participants, how I interacted with them and my analysis of the interview data made full use of my linguistic facility and intimate knowledge of the history, culture and sensibilities of the Filipino people. It provided me with a way to imagine and experience seafarers' lives and concerns. It is important to have tremendous capacity for empathy, to step back to reflect on the things critically and to expel wrong assumptions, prejudices and biases.

These methods were used as a tool in analysing the intricacies of certain actions and decisions of specific actors in the industry given the political, cultural, social and economic context in the Philippines. It helped stimulate and explore the Filipino seafarers' point of view and experience of the efficacy of the terms and conditions of their employment contract. As institutional representative of others in similar positions, the views, attitudes and interpretation that underpin the behaviours of the workers, policymakers, practitioners and stakeholders in the seafaring industry likewise help structure a more robust research.

The next chapter will present the data generated from a critical examination of the standard employment contract. The data chapters that follow will relate the experience of the major stakeholders in the maritime industry and their relationship and their perspective on their experience of the standard employment contract. As will be shown in the next Chapters, a significant number of seafarers appear not to enjoy optimum living and working conditions despite these regulatory efforts.

Chapter 5

THE POEA-SEC: A CRITICAL EXAMINATION

5.1 Introduction

The main aim of this chapter is to critically examine the contents of the POEA-SEC within a legal institutionalized framework. It is important to use other sources of data such as Philippine case law and other secondary texts in order to be informed of the significance (and understand the nuances) of the POEA-SEC. The link to other documents is important in order to form the context or background in clarifying the provisions and understanding the document. Atkinson and Coffey (2011) refers to this interconnectedness of documents as inter-textuality.

The Chapter provides a short background on the development of the POEA-SEC since its implementation in 1983 by the POEA. This is followed by a discussion of the significance of the POEA-SEC in determining the conditions under which seafarers may be deployed on-board ocean-going vessels. The next part will be the analysis of the POEA-SEC in relation to relevant case and statutory law to emphasize its context, status and meaning. This analysis complements the other data generated by this research which will be presented in chapters 6 and 7 and discussed in chapter 8.

In view of the length and numerous provisions of the POEA-SEC, this chapter focuses on the provisions that the seafarer participants in the research said have direct implications and particular resonance to their lived and actual

experience: duration of employment (Section 2.B of the POEA-SEC), monetary considerations (Sections 6 to 9 of the POEA-SEC), working conditions in terms of hours of work and rest periods (Sections 10 to 11 of the POEA-SEC), labour relations (Section 16 of the POEA-SEC), and disability benefits (Section 20 of the POEA-SEC).

5.2 POEA-SEC Background

Historically, there have been private agreements adopted to ensure observance of seafarers' rights. They ranged from *ad hoc* negotiations between seafarers and the ship captain to more formal negotiations between the maritime trade unions and individual companies. This developed into collective bargaining agreements between national unions and employers' organizations and finally by international negotiation between the International Transport Workers Federation (ITF) and the International Shipping Federation (ISF) and other international employer representatives on conditions at sea (Fitzpatrick and Anderson 2005).

In view of the Philippine Labour Code provision (Article 18) that Filipino workers cannot be directly hired by foreign employers, it is required that Filipino seafarers must have a valid POEA-SEC (composed of the individual employment agreement and its attachments). If the seafarer is a member of a union, the POEA-SEC is supplemented by the Collective Bargaining Agreement (CBA). The terms and conditions of employment embodied in the POEA-SEC codify the relevant conventions of the International Maritime Organization (IMO) and the International Labour Organization (ILO). The POEA-SEC is individually adopted and formally agreed upon by the concerned principal/employer and the seafarer. A seafarer through their crewing agency liaison officer submits the POEA-SEC to the POEA as the implementing agency. Once it is approved by the POEA, the seafarer is expected to bring it to the ship with a copy to be given

to the Master of the ship along with other travel documents. The seafarer also keeps a personal copy on-board the ship.

Since 1983, the POEA-SEC had undergone substantial changes and has existed in several versions. During its mandatory periodic review in May 2008, amendments to the POEA-SEC were re-negotiated through a tripartite consultation process involving the maritime unions representing the seafarer worker groups (AMOSUP-ITF), shipowners and manning agency associations, and government regulators (delRosario 2010). A technical working group (TWG) was formed to consult with various industry stakeholders. After more than two years of work, the POEA through its Governing Board issued a Resolution on 4 October 2010 approving the amendments to the POEA-SEC. The amendments have prospective application and cover those seafarers whose employment contracts are processed starting 12 November 2010 (delRosario 2010). For clarity, the document being considered for this research is the 2010 POEA-SEC⁴² as amended by the POEA-SEC of 2013⁴³. Before analysing the substantial provisions of the POEA-SEC, a preliminary evaluation of the POEA-SEC: its contents, its compliance with essential elements of a contract using Philippine statutory law and jurisprudence, and the significance of its adoption are considered in the next paragraphs.

The POEA-SEC is composed of two parts. The first part is the one-page 'Contract of Employment' (see APPENDIX "J") executed in triplicate between the seafarer (employee) and the manning agency representing the principal or shipowner (employer)⁴⁴. The contents of the first part are outlined in Appendix "K" for reference. The second part is forty-pages long and contains the thirty-three (33) sections of the standard terms and conditions which govern the employment of Filipino seafarers on-board ocean-going vessels. The Philippine

⁴² POEA Memorandum Circular No. 10, Series of 2010, entitled: Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-Board Ocean-Going Ships.

⁴³ As the recent version that covers the period of this research.

⁴⁴ The Contract of Employment was revised on 2013 by virtue of POEA Memorandum Circular No. 04, Series of 2013, entitled: Revision of the One-Page Covering Employment Contract.

government had prescribed a template for the standard employment contract to avoid the usual complaints against contracts in general such as fraud, the use of force or breach of contract. The POEA requirement that every POEA-SEC be processed and approved by the POEA is an additional measure to ensure that the contract is beneficial to those persons signing the contract and especially the seafarer. The tripartite consultation process ensures that the POEA-SEC reflect the consensus of all the stakeholders. The government expects little opposition to the POEA-SEC terms and conditions because it has been drafted by a tripartite body. Each group, however, represents opposing interests and it is the way these opposing interests are played out that forms a central part of the analysis of this thesis – as will become clear in this and subsequent chapters.

The POEA-SEC is a legal agreement that embodies the essential elements of a contract provided under Philippine Civil Law (Congress 1949)⁴⁵. To be considered a legal contract, it must show that the parties freely consented to the agreement and they have capacity to enter the agreement as a result of their free will. This seeks to avoid certain vulnerable classes of individuals entering into an agreement such as minors and individuals with mental incapacity. It is also essential for the contract to have a monetary consideration (wages in exchange for service) which becomes the purpose for any party to enter into an employment agreement. These legal requirements must be complied with to make the terms and conditions of employment of seafarers legally binding and enforceable in the Philippines (Congress 1949).

As a general rule, persons are free to enter into contracts as long as it is not illegal or contrary to public morals. The very nature of the POEA-SEC reveals that it is a contract of adhesion, i.e. the template provisions are prescribed by the government, the manning agency prepares the drafts while the participation

⁴⁵ The elements of a valid contract under Article 1318 of the New Civil Code of the Philippines are consent or meeting of the minds, determinate subject matter, and price certain in money or its equivalent.

of the seafarer is limited to merely affixing their “adhesion” or signature in the contract to render their service in exchange for material consideration (Corona 2007a)⁴⁶. As a general rule, these contracts of adhesion are binding as ordinary contracts because in reality, the party who adheres to the contract is free to reject it entirely (Nocon 1994)⁴⁷. However, the law guards against any dominant person or powerful entity taking advantage of the weakness of another person and completely depriving the latter of the opportunity to bargain on equal footing.

The adoption of this POEA-SEC as a condition for seafarer’s employment is significant for various reasons (Brion 2008)⁴⁸. First, it reflects the intention of the government to represent the interest of the seafarers who may be in a vulnerable state in terms of negotiating a contract with respect to their employers. The government intends that the seafarer will not be at a disadvantage when signing a contract with a manning agency who has access to legal advice and other institutional support.

Second, when the manning agency signs the contract on behalf of the foreign shipping company, there is assurance that the latter voluntarily subjects itself to Philippine laws and jurisdiction. The manning agency and the principal are both liable in cases filed by the seafarer (Abad 2010)⁴⁹.

Third, the standard employment contract is concerned with public interest. It is designed primarily for the protection and benefit of Filipino seafarers. For its legal interpretation, the Philippine Supreme Court said that it should be

⁴⁶ *Equitable PCI Bank, Aimee Yu and Behan Lionel Apas vs. Ng Sheung Ngor, et al.*, G.R. No. 171545, 19 December 2007 which defines a contract of adhesion.

⁴⁷ In this case, the court did not find the situation to be highly inequitable since the petitioner is a highly-educated man, a CPA-lawyer (*Serra vs. Court of Appeals and RCBC*, 229 SCRA 60, January 1994)

⁴⁸ In this case, *Vergara v. Hammonia Maritime Services, Inc.* (G.R. No. 172933, 06 October 2008.), the court upheld the provisions of the POEA-SEC that the declaration of permanent total disability must be done through an assessment/certification of the company-designated physician.

⁴⁹ In this case, *Bandila Shipping, Inc. Mr. Reginaldo A. Oben, and Fuyoh Shipping Inc. v. Marcos Abalos*, G.R. No. 177100, 22 February 2010), the court denied a seafarer’s claim for compensation because his illness (gallstones) is not listed in the POEA-SEC Schedule of Disability, hence not work-related.

“construed and applied fairly, reasonably and liberally” in favour of the Filipino seafarer⁵⁰ as a protection of their livelihood (Corona 2007b). This is consistent with the constitutional provision of “utmost protection to labour” (Romero 1996)⁵¹. The court is aware however that this should not be used as a tool to oppress employers⁵².

Finally, the significance of the POEA-SEC is its binding effect internationally. It is formulated in accordance with international standards and maritime practices and adheres to national and international labour standards. More recently, Title 2, Standard A.2.1 of the Maritime Labour Convention (ILO, 2006) sets the basic conditions in order for seafarers’ employment agreements to be considered as a fair agreement. The conditions set by the MLC includes both the seafarer and the shipowner signing the contract, giving the seafarers an opportunity to examine and seek advice on the agreement before signing, and giving a copy of the signed original agreement to the parties⁵³. These requirements coincide and are consistent with the requirements under Philippine civil law. The further revision by the POEA of the one-page employment contract on March 2013 also complies with the MLC to include the following new particulars in the seafarers’ employment agreement: seafarer’s date of birth and place of birth; shipowner’s address; and reference to the collective bargaining agreement, if applicable⁵⁴.

⁵⁰ In *Seagull Maritime Corp. and Seagiant Shipmanagement Co. Ltd. V. Jaycee Dee and NLRC*, G.R. No. 165156, 02 April 2007, the court held that in disability compensation it is not the injury per se which is compensated by the incapacity to work. Although the seafarer suffered only an injury to his left foot, the test to determine its gravity is the impairment or loss of one’s capacity to earn and not its mere medical significance.

⁵¹ In an illegal dismissal case filed by a seafarer, the court held in *Wallem Maritime Services, Inc. and Wallem Shipmanagement Ltd. V. NLRC and Joselito V. Macatuno*, G.R. No. 108433, 15 October 1996, 263 SCRA 174 that the right of an employer to dismiss an employee must be exercised in accordance with the procedure set forth in the POEA-SEC and the Labour Code.

⁵² In *Magsaysay Maritime Corporation and/or Cruise Ships Catering and Services International N.V. vs. NLRC and Rommel B. Cedol*, G.R. No. 186180, 22 March 2010, the court ruled that the seafarer working as assistant housekeeping manager is not entitled to total and permanent disability benefits for his failure to refute company-designated physician’s finding that his illness (lymphoma) is not work-related.

⁵³ Title 2, Standard A.2.1 of the Maritime Labour Convention, 2006 is attached as Appendix “L”.

⁵⁴ Title 2, Standard A.2.4 of the Maritime Labour Convention, 2006

The POEA-SEC embodies the minimum requirements acceptable to the government of the Philippines for the employment of Filipino seafarers on-board foreign ocean-going vessels. Since the terms and conditions of employment are minimum requirements, this means that parties may improve on the terms and conditions as long as it is in writing and it is appended to the contract⁵⁵. An example of this are collective bargaining agreements (CBA) which effectively amends the POEA-SEC as long as it contains better terms and conditions for the seafarers. Another important provision which can be improved, is the monetary considerations – this ensures the attractiveness of the profession to both the seafarer and the employer. For the latter, cheap labour costs are a significant factor in the employment of Filipino seafarers worldwide (McKay 2010).

5.3 Analysis of the terms and conditions of contract

After the preliminary outline and evaluation of the POEA-SEC in the previous section, and using the concepts that emerged from the seafarer interviews and focus groups, themes relating to seafarers' living and working conditions were identified for further examination of the POEA-SEC. They included:

- a. Labour Standards
 - i. Duration of employment
 - ii. Monetary considerations
 - iii. Working conditions
 1. hours of work
 2. rest periods
- b. Labour Relations
- c. Disability Benefits

⁵⁵ Item 2, POEA MC No. 10, Series of 2010

Prior to the discussion of the above items, however, there are two concerns that have certain implications for seafarers, namely: the parties to the contract and the duties imposed on manning agencies prior to deployment. These show the significant role of the crewing agencies in the recruitment and deployment of seafarers in compliance with the terms and conditions of the POEA-SEC and will be considered first.

5.3.1 Parties to the contract

The parties or signatories referred to in the POEA-SEC are the seafarer, the manning agency and the shipowner/principal. They are the entities for whom the POEA-SEC is addressed and for whose duties and responsibilities are explicitly identified⁵⁶. A 'seafarer' is defined in the POEA-SEC as "any person who is employed or engaged in overseas employment in any capacity on board a ship other than a government ship used for military or non-commercial purposes" (POEA 2010: 2). A manning agency refers to "any person, partnership or corporation duly licensed by the Secretary of Labour and Employment to engage in the recruitment and placement of seafarers for ships plying international waters and for related maritime activities" (POEA 2010: 1). The principal/employer/ company refers to "any person, partnership or corporation hiring Filipino seafarers to work on-board ocean-going ships" (POEA 2010: 2).

Such broad definition possibly contributes to the difficulty of identifying the shipowner/principal for purposes of determining legal liability or enforcing seafarers' rights as will be explored in chapter 7. Adding to the layer of complexity, seafarers are recruited by manning or crewing agencies who may sign the contract on behalf of the foreign shipping company. This adds to the difficulty of determining if the seafarer has direct relationship with the crewing

⁵⁶ Section 1 (A) of the POEA-SEC, Duties. A. Duties of the Principal/Employer/Master/Company. Section 1 (B) of the POEA-SEC - Duties of the Seafarer

agency or with the principal or shipowner. Considering that the identity of the owner is kept secret, this anonymity encourages owners to shield themselves and escape liability.

Given the global arrangements under which seafarers are employed with changes in technology requiring enormous capitalization, the structural ownership of a shipping company varies significantly (Fitzpatrick and Anderson 2005). It is possible that the shipping company can be a privately owned limited company to a national consortium, multinational organization with global alliances and more likely to be an equity-funded listed company. In certain calculated economic decisions by a shipowner, it is possible that ships are left to be arrested by creditors or abandoned in a foreign port together with its crew. With the different patterns of ownership, the affected seafarers may not be able to trace from among the corporate entities who is responsible to finance their repatriation.

Other circumstances which can further complicate matters in a ship not in possession of the shipowner is the involvement of other players in the management (as ship manager) and operation (ship operators). It is possible that under this circumstances, the shipping company can be sold while its ships are at sea without the knowledge of its workers. These are the realities involving changing patterns of ownership that seafarers are likely to be unaware of and which might have an effect, in numerous ways during or after their employment i.e. presenting serious and significant challenges to the enforcement of the terms of the POEA-SEC. Some aspects of this will be discussed in following chapters.

5.3.2 Duties imposed on manning agencies

Aside from the parties to the contract, another concern is the compliance of the crewing agencies and the seafarers with certain basic requirements for drawing a contract. More particularly, during the pre-deployment stage of seafarers, the

manning agencies have to comply with certain requirements of the Maritime Labour Convention of (MLC) 2006 and items 3-5 of POEA-SEC (2010), as follows:

1. Use and submit to the POEA the full text of the seafarer's employment contract including improvements, if any, for approval and processing.
2. Inform and provide copies of the amended terms and conditions to all its accredited principals/employers.
3. Ensure that its departing seafarers are given a copy of the processed and approved employment contract, including its improvements if any. Under no circumstances shall seafarers be allowed to leave for their respective vessels without a copy of the processed employment contract. Such contract shall be randomly checked at the airports.

To ensure that seafarers have a copy of the employment contract as required by the MLC of 2006, manning agencies are mandated to give a copy of the processed and approved SEC to its seafarers. To ensure that seafarers have copies of their SEC and to validate existence of their exit clearance, random checks are conducted at the Labour Assistance Centres (LAC) located at Philippine international airports. On the other hand, Item 6 of POEA-SEC (2010) directs the crewing agencies to include the provisions of the amended terms and conditions in the Pre-Departure Orientation Seminar (POOS) curriculum for its hired seafarers.

Crewing agencies are tasked to recruit and hire seafarers who are fit for duty and meet the requirements of its principal. The manning agency also has to make sure that the seafarers are covered by the mandatory insurance to answer for its liabilities in case of injury, illness or death of the seafarer. This is discussed in Chapter 6. Duties of the seafarers are provided in Section 1.B of the POEA-SEC. These duties are repeated by the trainer in the PDOS sessions I observed: *“to faithfully comply with and observe the terms and conditions of the contract...”, “to abide by the Code of Discipline...”, “to be obedient to the lawful commands of the Master...”, “to be diligent in their duties...”, “to conduct*

themselves in an orderly and respectful manner...” Seafarers have to comply with these rights, duties and obligations in all stages of their employment. This will be commented upon in more detail in Sections 7.2 and 7.3 of Chapter 7 in relation to their interaction with various actors in their seafaring life and their motivations for being seafarers. In the relationship between the contract and the individual seafarer, the PDOS acts as a physical manifestation of the contractual relationship. This research explores the implications of the PDOS sessions, where the trainer addressed the seafarers as “*mga nangangamuhan*” (those serving masters), which is consistent with the requirements of shipowners for obedient workers (McKay and Wright 2007).

The parties to the contract and the duties imposed on the crewing agencies are two concerns that affect the seafarers prior to their deployment on-board the ship. The next section will focus on the provisions of the POEA-SEC which (like the PDOS mentioned above) have direct implications for the lived experiences of the Filipino seafarers who are part of this research.

5.4 Labour Standards

In terms of the labour standards, these relates to the duration of employment, monetary considerations, and working conditions in terms of hours of work. Issues relating to labour relations and disability benefits will be discussed in the latter part of this Chapter.

5.4.1 Duration of employment

The contract of the seafarer provides that their period of employment shall not exceed 12 months (Section 2.B of the POEA-SEC)⁵⁷. Providing for a shorter

⁵⁷ POEA-SEC: Section 2.B. The period of employment shall be for any period mutually agreed upon by the seafarer and the employer but not to exceed 12 months. Any extension of the contract shall be subject to mutual consent of both parties.

time on-board the ship spares the seafarers from the continued isolation and difficulty of working at sea. On the other hand, this provision promotes temporary/short-term employment which undermines the security of tenure of the seafarers. Employers can easily dispose of their workers and replace them with new workers at cheaper costs. As they are not assured of employment after their contract, seafarers are forced to go from one employer to another. It may be argued that the temporary contract agreement runs counter to the Philippine Labour Code provision which declares workers regular employees after a 6-month probation period. Despite the fact that the performance of their task is necessary and desirable in the usual trade and business of their employees, seafarers remain contractual employees despite long years of service to the same company according to the Philippine Supreme Court (Kapunan 2002).

This indicates intent to circumvent the constitutional right of regular employees to security of tenure, which means that as contractual employees they will not be entitled to certain mandatory benefits assured by law e.g. security of tenure, monthly allowance, 13th month pay, retirement benefits or pension plan. The Supreme Court justified this policy by saying that the said benefits contemplates the situation of domestic workers only and not seafarers who generally earn more than their domestic land-based counterparts⁵⁸ (Castillon-Lora 2010; Perez 2012).

As earlier mentioned, the POEA-SEC expressly allows the parties to agree to better terms and conditions than what had been provided in the POEA-SEC. This can include an agreement to make the seafarers' employment permanent and convert their contractual status to regular workers of the company, for

⁵⁸ In *Lynvil Fishing Enterprises, Inc., et al vs. Andres G. Ariola, et al*, G.R. No. 181974, 1 February 2012, the court ruled that the employer intended to go around the security of tenure of the seafarers as regular employees in the context of their employment that: they are doing tasks necessary to the fishing business with positions from captain to *bodagero*, after the end of the trip, they are hired for another trip with new contracts, the arrangement continued for more than ten years.

example. However, with the repeated practice of contract renewal, the contractualisation of seafarers' employment is continued.

That seafarers are considered contractual employees is further reinforced in the declaration of the Philippine Supreme Court (Kapunan 2002) which decreed that seafarers are considered contractual employees and cannot be considered as "regular employees" (Kapunan 2002) as defined in Article 280 of the Labour Code of the Philippines (1974)⁵⁹. The reason provided by the court is that the SEC provision on a "fixed term not to exceed 12 months" is essential to an overseas employment contract. The court asserted that the concept of regular employment is not applicable to seafarers, notwithstanding the provisions of the Philippine Labour Code because their employment is governed by the contracts. By signing it, they are hired or rehired and their employment ends upon termination of the contract. As such, they cannot be considered as "regular employees" as defined in Article 280 of the Labour Code of the Philippines (1974).

5.4.2 Monetary considerations

Another issue in the POEA-SEC that has a significant implication for the seafarers are the provisions relating to monetary benefits in exchange for service rendered on-board the ship. As will be discussed in chapter 7, salaries and wages are the primary motivation of the seafarers to work at sea.

In the POEA-SEC, the seafarers have rights, benefits and privileges that pertain mainly to monetary benefits. For example, the seafarers are entitled to receive basic wage (monthly wage and shipboard pay), overtime pay (open, guaranteed and fixed overtime), leave pay (Section 12, POEA-SEC), rest pay, holiday pay

⁵⁹*Douglas Millares and Rogelio Lagda vs. National Labour Relations Commission, Trans-Global Maritime Agency, Inc. and Esso International Shipping Co., Ltd.*, G.R. No. 110524, July 29, 2002 seafarers are considered contractual employees as an exception to Article 280 of the Labour Code in view of the agreement between the parties.

and other allowances and benefits⁶⁰. Other monetary benefits required by the contract and by law to be given to the seafarer at the time of his departure⁶¹ from the point of hire are: free air (or sea or land travel)⁶²; entitlement to normal airline baggage allowance⁶³; travel tax, documentary stamp tax and airport fee exemption; and, free compulsory insurance coverage (RA 10022, 2009), a requirement that is mandatorily required to be secured by the manning agency at no cost to the seafarer. Further benefits that the seafarers are entitled to receive are repatriation cost for termination without valid cause and in case of death; subsistence allowance of US\$100 per month for a maximum period of 6 months if the seafarer is involved in a case or litigation for the protection of his right in the receiving country; employer's liability insurance for money claims to a maximum of 3 months' salary; transportation cost for 'compassionate visit' by one family member or person requested by the seafarer when the seafarer is hospitalized/confined for at least 7 days; medical evacuation under appropriate medical supervision; medical evacuation under medical supervision to the seafarer's residence.

From this long enumeration of benefits, it can be deduced that the compensation package of a seafarer under the employment contract is attractive and higher than the compensation received by many land-based workers in the Philippines in agriculture or manufacturing. It is however lower than those received by seafarers in developed countries as shown in Table 2.1 of Chapter 2. This is because the POEA set a rate that is higher than the salary offered to its counterpart locally, but still managed to maintain competitive rates vis-à-vis other labour supplying states to attract foreign employers/shipowners. Despite this seeming discrepancy and in the context of seafarers coming from

⁶⁰ The wages are paid monthly not later than the 15th day of the month following the commencement of the contract until the arrival at the point of hire (Section 6.A, POEA-SEC).

⁶¹ This is the start of the employment period of the seafarer.

⁶² POEA-SEC: Section 3. Seafarers are entitled to free passage from point of hire to port of embarkation with normal baggage allowance.

⁶³ POEA-SEC: Section 4. Seafarers are entitled to the usual baggage allowance. Cost of excess baggage shall be for the account of the seafarer.

poor rural backgrounds, their employment improves the living conditions of the seafarer and their families.

The receipt of this benefit is subject to a mandatory condition imposed by the POEA-SEC. Seafarers are required to remit through an authorized Philippine bank at least eighty per cent (80%) of the seafarer's basic monthly salary to their designated allottee (Section 8.A, POEA-SEC). Another innovation in the POEA-SEC 2010 is to change the word 'beneficiary' which is limited by law to certain relatives who are rightful recipients of death compensation benefits of the worker into 'allottee' which has a broader meaning. "Allottee" is defined under the POEA-SEC as referring to any person identified by the seafarer to receive 80% of his monthly basic salary. The term is so broad to cover non-relatives or himself. These changes in the employment contract ensure the return of the seafarers' salaries to the country as a critical source of the country's export earnings. The banks' involvement ensures that the money being remitted goes through the official channels to the Philippines and not the black market.

In chapter 7, it will be discussed that such monetary benefits subject the seafarers to certain sacrifices, e.g. to forego a longer vacation with family and endure the dangers and difficulties of seafaring life. It will be shown that this is experienced by the seafarer from the start of their career until they work at sea.

Notwithstanding these benefits under the contract, and when the seafarer is no longer at a state of health or age that is fit to continue with their work, they are not entitled to retirement benefits except if there is an agreement or policy providing for such benefit (Quisumbing 2006) ⁶⁴. As contractual employees, seafarers are employed from one agency to another. Retirement, on the other

⁶⁴ The court ruled in *Eastern Shipping Lines, Inc. and/or Erwin L. Chiongbian vs. Dioscoro D. Secan, G.R. No. 159354, April 7, 2006* that a seafarer who worked on-board a ship for 24 years cannot claim for optional retirement benefits being dependent on the sole option of the shipping company in accordance with the agreement with the workers. He was however awarded financial assistance as an equitable concession owing to the special circumstance of the case.

hand, contemplates a continuous period of employment in one company with a legally mandated age for either mandatory or optional retirement. The employers/principals are given the option to adopt their own policy of retirement in order to entice loyalty from their seafarer employees. Being recommendatory, they also have an option not to provide it. To answer for this, an additional feature of the POEA-SEC is the requirement for seafarers to be mandatorily covered under the Philippine social security regimes (Section I.A.2 of the POEA-SEC). This requirement will allow the seafarers to retire under conditions provided by the Social Security System (SSS) law.

Another monetary benefit provided under the POEA-SEC is receipt of premium pay or double allowance for sailing under war and war-like operations in war-risk trading areas. The POEA determines these war-risk areas periodically. Under the provisions of the POEA-SEC, the seafarer has the option to sail with the ship with the possibility of being victims of piracy at sea. If he opts not to sail with the ship, he bears the cost of his repatriation and possibly the reprimand of the company.

These are some examples of ample compensation given to the seafarer but at the cost of being long periods of separation from their families or exposure to the hazards of sailing at sea such as piracy (Abila and Tang 2014). This will be further discussed in Chapter 7.

5.4.3 Working conditions - Hours of work

In exchange for the monetary benefits given them, the POEA-SEC provides that they are paid for regular hours of work on-board a ship - forty-eight (48) hours a week or eight (8) hours every twenty-four (24) hours midnight to midnight, Monday to Sunday (Section 10, POEA-SEC). It should be noted that the forty-eight (48) hour per week pertains only to regular work and does not include overtime work or work performed in excess of eight hours a day and work performed in case of emergency duty.

This is dictated by the very nature of shipboard life. The seafarers living and working space are in the ship for long periods of time. As related by the seafarers in Chapter 7, their duty on-board the ship never ends. Furthermore, what constitutes 'reasonable rest period' is dependent on the master's discretion as well as customary international practices and standards which it is not clearly defined (Section 10.A, POEA-SEC). The dictates of faster port turn-around, tightened security and continuation of their work on the ship to comply with statutory requirements of documentation add to their duties on-board making rest period and shore-leave a luxury (Kahveci 1999). Seafarers likewise work long hours resulting in broken sleep patterns and of patterns of long working days, without a day off (McKay and Wright 2007). Hours of work and rest periods are matters important to the seafarers especially since excessive working hours and fatigue are an acknowledged problem in the shipping industry (Jensen et al. 2006; Smith et al. 2006; Wadsworth et al. 2008). More of the seafarers' accounts of their working hours will be provided in Chapter 7, in relation to fatigue. In chapter 7, the evident discord between aspects of POEA-SEC provisions that promote worker welfare and the realities of work on-board ship clearly exposed.

5.4.4 Disability benefits

The POEA-SEC provides extensively for compensation benefits in case of injury, illness or death of the seafarer. In case of disability, the contractual benefits afforded to the seafarer while he is on-board the ship in a foreign port are continued payment of wages⁶⁵, free medical treatment, free dental treatment for serious cases, free surgical treatment, free hospital treatment, free board and lodging⁶⁶. In addition, the seafarer also receives sickness allowance for a period not exceeding 120 days⁶⁷, reimbursement of the cost of medicines

⁶⁵ POEA-SEC : Section 20.A.1

⁶⁶ POEA-SEC: Section 20.A.2

⁶⁷ POEA-SEC: Section 20.A.3 (par.1).

and reasonable cost of actual travelling expenses and/or accommodation⁶⁸. If the seafarer is declared fit to go back to work, he shall continue to work unless the employer is unable to find work on-board his former vessel or another vessel owned by the employer, in which case he will be repatriated. The full cost of repatriation is at the employer's expense.

However, despite the above disability benefits, it is shown that not all kinds of injuries or illnesses are compensable. The amendment to the POEA-SEC in 2010 added primary and general conditions which must be strictly complied with, otherwise, the claim of the seafarer will fail⁶⁹. The primary conditions are: the injury, illness or death occurs during the term of the contract; it is work-related or arose out of or in the course of employment; the conditions in Section 32-A of the POEA-SEC must be satisfied. The primary conditions require a causal connection between the seafarer's illness and the work for which he had been contracted or proof that the work and the cause of his death, illness or injury became worse because of the working conditions (Chico-Nazario 2009)⁷⁰.

Aside from the primary conditions, Section 32-A of the POEA-SEC provides for general conditions before an occupational disease may be rendered compensable: the seafarer's work must involve the risks described; the disease was contracted as a result of the seafarer's exposure and under such other factors necessary to contract it; and, there was no notorious negligence on the part of the seafarer.

⁶⁸ POEA-SEC: Section 20.A.3 (par. 2).

⁶⁹ As distinguished from the 2000 POEA-SEC which imposes only one condition - the death, injury or illness occurred during the term of his contract.

⁷⁰ *Carlos N. Nisda v. Sea Serve Maritime Agency, et al.*, G.R. No. 179177, 23 July 2009 held that the evidence presented by claimant tug master proved a reasonable connection existed between the work he performed and the development and exacerbation of his coronary artery disease making it an occupational disease compensable under Section 32-A of the POEA-SEC.

Furthermore, there are exempting circumstances under which an agency/ employer/principal may be excused from paying compensable death, injury, illness or disability of a seafarer. An example is when the injury, incapacity, disability or death is directly attributable to or resulted from the seafarer's wilful or criminal act or intentional breach of his duties⁷¹. Another example is when there is fraudulent misrepresentation on the part of the seafarer or when they knowingly conceal or do not disclose a past medical condition, disability or history in the Pre-Employment Medical Examination or PEME⁷². Connected with this is are pre-existing illnesses⁷³ or those illness which a seafarer failed to disclose during their PEME.

These requirements show that to claim compensation, the burden of proving the existence of all primary and general conditions had been shifted to the seafarer (Castillon-Lora 2003; Terry 2009). The discussion above suggests that while the government recognize the inherently dangerous nature of seafaring as an occupation by providing for compensation in case of injury, illness or death, the chances of being compensated for illness and injuries are becoming restricted in certain respects. The addition of conditions for receipt of benefits and shifting the burden on the seafarer to prove their right to claim compensation is consistent with a body of wider literature of compensation systems in other countries, such as Australia and Canada. It demonstrates very clearly an in-built harm factor within the compensation system itself because of the way the system tends to stigmatise workers and the way in which it prevents access to the receipt of compensation by making it difficult. This means that the compensation system actually promotes more systemic harm than the good that it actually set out to do (Lippel 2003a, b; Grant and Studdert 2009). This will be further discussed in Chapter 7.

⁷¹ POEA-SEC: Section 20.D

⁷² POEA-SEC. Section 20.E

⁷³ POEA-SEC: no. 11 Definition of Terms

5.5 Summary and conclusion

The creation of the POEA-SEC signals that the Philippine government as a competitive labour supply state intends to observe its commitment to the international community by making its rules and regulations compliant with international conventions such as the Maritime Labour Convention (MLC) of 2006.

This chapter highlights two interrelated but opposing interests of the government. The promotional aspect includes employment generation to facilitate the employment of the unemployed population whether locally or overseas. The POEA-SEC reflect government's response for less government intervention in putting investment in the country. Having a formal written sample contract simplified doing business in the Philippines because the terms and conditions of the contract are laid out formally. The transparency allows the employers to see what are expected of them, how much they have to spend for deploying Filipino seafarers on-board their ships and compare it with the salaries offered by competing labour supply nations.

The second interest is the regulation aspect which involves the protection of the welfare of overseas workers. With the discussion of the possible inconsistencies of the POEA-SEC with the rights of workers, the question remains on how effective the contract is in protecting the seafarers especially since they are working outside the territorial jurisdiction of the Philippines. The efficacy of the standard employment contract is put to the test because there are contractual provisions prone to be violated by the parties such as the receipt of wages, hours of work provision, entitlement to shore leave, and compensation for injury or illness. It remains a reality that seafarers may not enjoy optimum living and working conditions.

It is necessary to move beyond this limited analysis to explore the actual experience of employers' representatives and seafarers in the field. This is the purpose of Chapters 6 and 7. This is important because the seafarers and

crewing managers have a daily experience of the POEA-SEC during the recruitment and employment process. The interaction between the seafarers, the crewing agencies and the government agencies will help answer the questions posed in the first part of this chapter: what is the POEA-SEC was supposed to accomplish, who they were written for, and do they have in mind the possible scrutiny that other people will have of the document? This will be further discussed in the next chapters.

Chapter 6

EXPERIENCE OF EMPLOYERS' REPRESENTATIVES

6.1 Introduction and overview

The previous chapter provided a description and analysis of the provisions of the standard employment contract for seafarers (POEA-SEC). This chapter draws on the experience of its use by employers. The next chapter will discuss the experience of the seafarers with the POEA-SEC.

The Chapter is divided into five sections. Section 6.2 provides an account of the process of hiring seafarers by putting together the experience of the crewing agency managers. This highlights the coordination between the shipowners, crewing managers and seafarers during the seafarer recruitment process. It also highlights the significant role played by the crewing managers on how they enhance, improve or breach the provisions of the POEA-SEC during the contract negotiation process.

Section 6.3 provides an understanding on how crewing managers handle problems such as shortage of seafarers, inasmuch as it relates to the possible adjustment of the POEA-SEC provisions, such as extension of the duration of the contract, or the compensation of the seafarers.

Section 6.4 highlights data collected during the observation of the way seafarers are treated by the trainers when the terms and conditions of the POEA-SEC was being explained during the Pre-Departure Orientation Seminar (PDOS) sessions mentioned in chapter 5. Additionally, it specifies through the perspective of the crewing managers the provisions of the POEA-SEC that are

commonly violated by the seafarers. The last section provides the summary and conclusion of this chapter.

6.2 The process of hiring Filipino seafarers

This section provides an account of the process of hiring seafarers as illustrated in Figure 6.1. A Fleet Manager related his perspective of what happens when a seafarer applies for work:

“Once they pass through recruitment, if they were able to comply with what we need for a certain position, we have the principal approve it. We send the résumé for approval of the principal. Once approved by the principal, that is the only time we process.. or the application process starts. The process is usually, first they undergo medical, pre-employment medical.” (Fleet Manager, Abakada Shipping Company, Interview)

Potential crew members are thus screened, interviewed, tested, and medically examined as similarly observed by Dearsley (1990).

Tanglaw-Diwa Company has multiple departments to handle these processes. They have a centralized recruitment department that accepts and screens all of the applications of seafarers. The recruitment department coordinates with all other thirty (30) crewing agencies under the company for the type of positions they need and forwards the applications of the seafarers they do not need to the appropriate crewing agency. It likewise keeps a pool or roster of ex-crew and those who are on vacation. It is only when they do not have the needed crew in its roster that they accept new applications:

“ All of the excess of new applicants whom you don’t need, you can pass them to others. That is the cooperation that happens.” (Fleet Human Resource Director, Abakada Shipping Company, Interview)

Process of hiring Filipino seafarers

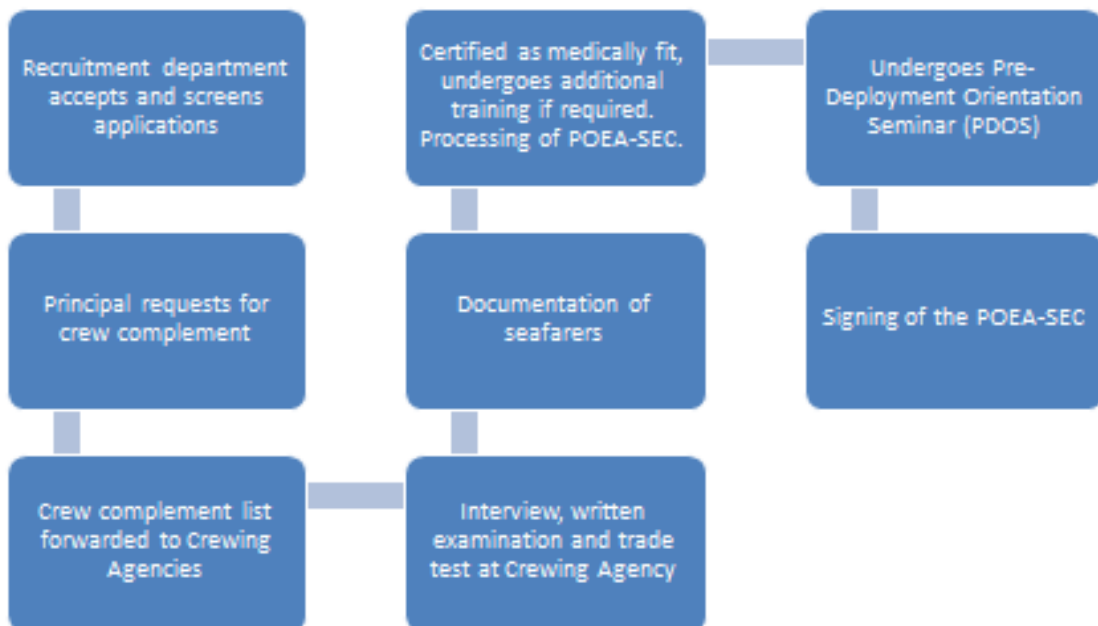


Figure 6.1. Process of hiring seafarers using employer's perspective (Source: Researcher).

In view of the strong competition between agencies, this practice of cooperation between the crewing agencies prevents possible recruits from applying to another crewing agency outside of the Tanglaw-Diwa group of companies.

This type of cooperation is further reflected within the crewing agency units. The fleet HR director and fleet manager of Abakada handles the recruitment and documentation of more than five hundred (500) Filipino seafarers both on-shore and on-board. They are assisted by cadets who are scholars in Tanglaw-Diwa's training centre who will eventually also be deployed for their shipboard duty. The fleet human resource (HR) director outlines the division of labour between him and the other fleet manager in their crewing agency:

“Before it was just Abe (a pseudonym) and me but it is becoming difficult for Abe now because he handles all of the documentation. Now we were given additional staff. At least we have support for documents...”

I take care of looking for crew. Sometimes I have to go out. So I cannot help him on the documentation, he handles that single-handedly.”
(Fleet HR Director, Abakada Shipping Company, Interview)

There is coordination with the principal (shipowners) and the crewing agencies in the Philippines during the recruitment process. As explained by the Fleet Director of Abakada, the acceptance and screening of the recruitment and deployment of seafarers is initiated by the request for a crew complement from various principals (shipowners) abroad. Abakada Shipping has Liberian and Greek principals who prefers to recruit Greek nationals for the top four positions in the ship (Master, Chief Engineer, Chief Mate and Second Mate) and Filipino seafarers for the rest of the shipboard positions. This makes Filipino seafarers a subordinate part of a multi-national crew

Hence as shown above, the crewing managers act as the intermediary between the shipowners and the seafarers. The important role of the crewing agencies is further demonstrated in the dynamic role they play during the recruitment process. To provide crew for the thirty-nine (39) vessels of a single principal, crewing managers do not wait for walk-in applicants. They actively source the required crew from places frequented by seafarers like Luneta Park, various government institutions or seafarer centres. The fleet director explained that there is a need to adjust their recruitment strategies to respond to the shortage of seafarers, especially when they belong to the ‘shortage positions’:

“In crewing, sometimes I need to go out because of need, because of the volume of the demand.” (Fleet HR Director, Abakada Shipping Company, Interview)

In view of the proximity of the crewing agencies to Luneta Park, the fleet director finds it convenient to go to Luneta Park where seafarers converge while looking for employment (Tyner 2000; Asis 2006). As a former chief engineer, the fleet director recounted the relationship between seafarers, crewing agencies and Luneta Park. He said that as a seafarer back in the 1970's, he would usually go to Luneta Park to pass the time. As the years passed and shipping companies in the area increased, he observed that the seafarers became more numerous making the area look like a marketplace. He said:

“When the agencies increased, the seafarers likewise gathered there at around lunchtime. I do not know who thought of building a tent there and then it was uncontrollable. I do not know what they want to do there already. It’s like a marketplace.” (Fleet HR Director, Abakada Shipping Company, Interview)

Once they get the seafarer and their application is approved by the principal, the processing of the application starts, usually commencing with a pre-employment medical examination (PEME). This is a requirement of the POEA-SEC under Section 1.B. Once the seafarer is certified fit to work, the processing of the standard employment contract is initiated.

For urgent hiring and deployment, the contract can be issued while waiting for the results of the PEME:

“We have simultaneous processing. Let’s say, for example, he has to be deployed urgently, urgent deployment, after the medical, we can already issue the POEA contract. But the process is usually to wait until the medical says he is fit until we issue the contract. Because there might be an occasion where it will be pending because the medical says he is not fit to work or declared fit to work. If we process the contract first that is a bigger problem.” (Fleet Manager, Abakada Shipping Company, Interview)

The fleet director then prints the contract with all the details such as the name of the seafarer, the ship, the shipping company, and the salary of the seafarer. This will then be signed by the seafarers. Once signed, the POEA-SEC is forwarded to the documentation department of Tanglaw-Diwa to be forwarded to the POEA for processing and approval. It is brought to the POEA by the liaison officer of the crewing agency. In practice, once the POEA-SEC is forwarded to the POEA in the morning, the approval of the POEA-SEC is received later the same day. The crew are given copies of the contract once they are ready to be deployed.

“So far, this time, employment is fast. Maybe it is because of the shortage of officers in all types of vessels.” (Fleet HR Director, Abakada Shipping Company, Interview)

When the seafarer is employed, the company processes the so-called Personnel Data Sheet (201 file) of the seafarer in order to set in motion their rights under the contract to compensation and benefits (Section 20, POEA-SEC). Foremost among the duty of the principal/employer company under Section 1.A.2 of the POEA-SEC is to provide coverage to the seafarers under the Philippine Social Security System (SSS), Philippine Health Insurance Corporation (Philhealth), Employees’ Compensation Commission (ECC), and Home Development Mutual Fund (PAG-IBIG Fund).

The fleet director of Pag-asa observes that the processing of the seafarers’ employment has to be fast. In view of the accelerated processing, seafarers are usually advised by their crewing managers to study the provisions on their own, in their spare time on-board the ship:

“The terms and conditions are explained during briefing. I usually tell them I cannot explain all because it is lengthy. I cannot explain it one by one. Our one day will be finished with that. But all of this, you bring this with you, it being 3 copies, I tell them to read it every so often. I tell them that. It is already easy to understand. This is not the terminology

of law that is difficult to understand so they can read it themselves.”

(Fleet Director, Pagasa Shipping Company, Interview)

This process complies with the provisions of POEA Memorandum Circular No. 10, Series of 2010, which requires agencies to give a copy of the processed and approved employment contract to its departing seafarers. The interviewees attribute their tendency to act swiftly on the demand of the principals in certain ‘shortage’ officer positions like Second Engineer. A consequence is competition among the crewing agencies, which is more pronounced at this part of the recruitment process.

The accounts of the crewing managers above show the active coordination between various entities during the recruitment – the shipowners, the crewing managers, and the seafarers – until the approval of the POEA-SEC by the POEA. The significant role played by the crewing manager is emphasised because they can adjust and accelerate certain recruitment strategies.

The next section develops this by providing an account from crewing managers on the decisions they adopt in conducting their business. It is important to discuss this as it relates to the possible adjustment of the POEA-SEC provisions, e.g. extension of the duration of the contract, or the improvement of the compensation of the seafarers under their employment contracts. It may also suggest certain breach of the contract provisions or the recruitment process.

6.3 Coping with the effects of seafarer shortage

The Baltic and International Maritime Council/International Shipping Federation (BIMCO/ISF) Manpower Update forecast a shortage of 27,000 maritime officers worldwide brought about by the increase in the number of ships necessary to transport global cargoes (2005, 2010). These effects have been felt by the crewing managers in the Philippines as they are mostly concerned with

supplying the needs of their principals amidst the shortage of supply of seafarers in certain positions:

“In the officers, there is a shortage because of the great demand for Filipinos. We all know that.” (Fleet Director, Kaibigan Shipping Company, Interview)

The General Manager of Pag-asa Shipping explained that it is not entirely accurate to call it shortage of seafarers but shortage in Management Level positions only. He surmised that the difficulty to progress to Management Level positions (Chief Officer to Captain in the deck department and Second Engineer at the engine department to Chief Engineer) is caused by the hesitation of seafarers in Operational Level positions (Third Officer and Second Officer) to be promoted. He believed the hesitation stemmed from fear of responsibility attached to the position. But he acknowledged that the high cost of training and examination required for their promotion is a further reason why it takes the seafarers a long time to progress as management level officers.

The shortage of seafarers in certain positions poses problems for some seafarers who wish to go home after the termination of their original contract duration. For example, if crewing managers do not find the replacement seafarer for a shortage position, the original 6-month contract of seafarer on-board can be extended for up to twelve (12) months. The adjustability of the contract duration facilitates the extension of the POEA-SEC and ensures the continuous operations of the ship with a full crew complement.

The short, fixed-term contractual nature of the POEA-SEC was accepted as ‘normal’ by the General Manager of Pag-asa Shipping who indicated that as far as he knew, seafarers in the Philippines have always been contractual workers. He added that permanent employment for seafarers had never been adopted in the Philippines and contrasted this with the practice of the Europeans who hires seafarers as permanent employees. He said it was interesting why the

government does not push to make seafarers permanent employees especially for Philippine-flagged vessels:

"It had never been adopted by us. Other countries would do that but never in the Philippines. For Europeans, that is not something new, that permanent employment. We had been... the industry had been pushing that all along. But I don't know why our government is not pushing to do permanent employment specially for Philippine-flagged vessels. But because most of our Philippine-flagged ships are bareboat chartered⁷⁴, they have disponent owners. The real owners are not really Filipinos. So the terms of the contract are really dictated by the actual owner. But if that is going to be institutionalized, perhaps, I think the foreign shipowners will approve because they are used to that anyway."
(General Manager, Tanglaw-Diwa, Interview)

As discussed in the previous Chapter, this is possible under POEA Memorandum Circular No. 10, Series of 2010 since the terms and conditions of the contract are minimum requirements and therefore, the parties to the contract may change the status of its seafarers from contractual to permanent employees if they should choose to do so. As will be discussed later in the chapter, the matter of the duration of contract, however, is a difficult issue. Some seafarers want to have a short duration as is often the case with officers, while ratings may prefer a longer duration of their contract in order to receive more pay to be able to maintain the lifestyle that their families have become accustomed to. When asked for the ideal duration of the contract which would be workable for the seafarers, the fleet director said that:

"I think 6 months is good enough. But ratings want a longer contract because their wages are lower. So their tendency is to extend their

⁷⁴ The Bareboat Chartering Decree of June 1975, amended in 1976, in 1980, in 1989 permitted foreign-owned ships to be registered in the Philippine register, provided the ship was bareboat chartered to a Filipino national or company Dearsley, D. 1990. *ISF Guide to International Maritime Labour Supply*. London: Lloyd's of London.

contract to 9 months or 10 months. The real reason for this is financial problem.” (Fleet Human Resource Director, Abakada Shipping Company, Interview)

A sense of their serious commitment to the labour employment process therefore emerged from the interaction with the crewing managers, seen for example in the way they sought to provide their principals (the shipowners) with competent seafarers and in their acknowledgment of their duty to strictly implement and enforce the POEA-SEC.

Aside from adjusting the duration of the contract, the crewing managers can also enhance and improve the training opportunities for seafarers and the amount of their benefits under the POEA-SEC to ensure the retention of the seafarers or to attract them to be employed in their agencies.

The development of a ‘career pathing’ system, participation of the principal in the education and training of the seafarers and the provision of additional benefits such as training allowance and investment in training and education as well as development of rotation plans for the deployment of seafarers on-board the ship, on top of those provided in the POEA-SEC were some measures proposed by the crewing managers to achieve this.

While these measures support the enhancement of the careers of the seafarers, of course they also help ensure the steady supply of competent seafarers for deployment. And they support the continued existence of these private crewing companies as well as the highly-intensive capital put in by the shipowner investors.

The General Manager of Pag-asa suggested that the stakeholders in the maritime industry should work closer together in order not to experience difficulty in recruiting seafarers. As a long term solution, he proposed that the shipowners and crewing agencies should support a career planning or ‘career pathing’ system for seafarers from the time they are cadets until they move up

the ranks. This entails investment in a cadet ship program wherein the principal pays for the cost of the training and training allowance:

“You know almost all manning agencies have tie-ups with schools. Because of the shortage of seafarers, each has their school so they are able to capture them right after graduation. They are already our apprentice. I am not sure because I am also not in the position on how they make the selection of schools and students. But for Tanglaw-Diwa, I would know that they are our cadets. They came from the Tanglaw-Diwa-designated schools from Luzon, Visayas and Mindanao. They are our scholars.” (Fleet Human Resource Director, Abakada Shipping Company, Interview)

He said that there are crewing agencies or shipping companies who “realize their investment in eight (8) to ten (10) years” because they have the foresight to prepare to be part of the education and training and the continuous professional development of the seafarers. As they are in the business of supplying qualified seafarers, this is part of this ‘career pathing’ system together with additional benefit to provide training allowance. However, the POEA-SEC only includes compensation and benefits for injury or illness (Section 20.A) and compensation and benefits for death (Section 20.B). It does not include training benefits, which are provided by the company and seemingly designed to build loyalty and prepare the future workforce. However, these efforts to retain the seafarers also seem to tread a fine line between the granting of benefits to them and causing them to become a form of indentured or bonded labour.

As crewing managers see it, the grant of training benefits tends to be equated with retention of the seafarers in the most in demand positions. When the principal shoulders the cost of training and gives the seafarer higher salaries, they say they get the cooperation and loyalty of the seafarers:

“There are a lot of company paid training especially for refresher courses. This is a requirement that is personal to the seafarer. So supposed to be they should pay for it. If the company pays, it is a

reward, a benefit of the principal to the seafarer. To pay for their loyalty, the principals sometimes pay for it. There are some principals who would do that.” (Fleet HR Director, Abakada Shipping Company, Interview)

The General Manager explained that the reason for the shipowner investing in the training of seafarers is not really for the personal enhancement of the seafarer and to ensure the competence of the seafarer in handling the ship but rather the retention of the seafarer, the protection of their investment and to avoid the cost of an incident or maritime accident:

“A prudent shipowner has to invest somehow in training their seafarers since they are the end-user. If they don’t do it, they might hire less qualified seafarers. Anything that happens on-board, the cost and expenses will eventually be shouldered by the company. So investing in training is proven to avoid much bigger expenses on the side of the shipowner.” (General Manager, Pag-asa Shipping Company, Interview)

This is the reason why Pag-asa Shipping devotes much of their office space to training rooms and classroom for seafarers and offers their in-house trainings free of charge. The General Manager of Pag-asa Shipping said that more established companies have their own in-house training and training divisions/sections for their newly recruited seafarer officers, or those occupying management and operational level positions. They prioritize the training of high-ranking officers because of the burden and responsibility falling on them as representatives of the owners of the company and as a bridge between the company and the rest of the crew.

The in-house training is specific to the needs of the company. For example, seafarers are trained on their maintenance systems, familiarization with the company safety management system, commercial operations, and the business side before they are sent on-board. Because Pag-asa is a ship chartering

company, the senior officers are considered the representative of the owners, or substantially the managers on-board. The senior officers undergo a course on how to run a ship business, how to deal with charterers and sub-charterers. In this way, it is intended that they know and appreciate the perspective of the shipowner and care for the ship more. As he again emphasized:

“We realized they have to have that. Of course, each company has their own way of running things. If the person who is going on-board is not familiar with your system it would be difficult. It would have an effect on the kind of service he will render because he is not prepared. He comes on-board he does not know how the ship is being run, he does not know about the safety management system. He doesn’t know how the commercial operations are being managed. So it might result to certain delays, certain consequences that will cost the company money. So it is better to invest in in-house training.” (General Manager of Pag-asa Shipping, Interview)

It is noted however, that the more important reason given by the General Manager of Pag-asa for this is to avoid the cost of delays in case of mismanagement of the ship due to the lack of concern of the senior officer on-board the ship.

Shipowner/principals are therefore forced to offer additional schemes or benefits in the model contract to make it attractive for the seafarer. Payment of salaries while on vacation, completion of contract bonus, re-joining bonus and stand-by pay are some of the measures made to ensure seafarer retention. They likewise offer medical benefits for the seafarers and their dependents and make long-term loans such as housing or car loans available to the seafarers. The General Manager said that if they grant these loans (like car or housing loan) to the seafarers, they will be assured not only of higher supply of seafarers but of higher seafarer retention because the seafarer will not be able to leave if he has a loan with the company. The General Manager however

recognizes that this is a risky undertaking for them if the seafarer becomes injured or disabled and cannot return to their sea service.

From the above, it was discussed how crewing managers handle problems such as shortage in certain seafarer positions which necessitate the enhancement, adjustment or possible breach of the contract provisions. These efforts create a form of bonded labour, which may begin to explain why seafarers have to be submissive subjects to various entities who impose their control, power and discipline over the seafarer and their shipboard life. This will be elaborated in the next section and further discussed in section 7.3 of chapter 7.

6.4 Disempowerment of Filipino seafarers

This section explains certain practices of the employers' representatives that disempowers Filipino seafarers. 'Disempowerment' is used in this section to mean the reduction of the discretion and control of seafarers, to ensure their passivity and obedience to entities they consider as masters.

This is shown in two parts. Section 6.4.1 highlights some of the data collected during the observation of the Pre-Departure Orientation Seminar (PDOS) session on the manner the seafarers are treated by the PDOS trainers while the terms and conditions of the POEA-SEC are being explained to the seafarers. Section 6.4.2 points to provisions of the POEA-SEC that according to the crewing managers are commonly violated by the seafarers **such as the pre-termination of their contract**. However, it is argued that these supposed violations of contract are in fact the response of the seafarers to the maltreatment they get on-board either from their colleagues or from their superiors. This is aggravated by the loneliness they feel during their separation from their families

6.4.1 Experience of the PDOS

Aside from the interviews and observation of the operations of the crewing agencies, I observed two (2) sessions of PDOS conducted by the in-house training department of Tanglaw-Diwa for the benefit of their seafarers who are ready to be deployed on-board overseas trading ships. This is in compliance with POEA Memorandum Circular No. 10, Series of 2010 which requires PDOS providers to include the provisions of the amended terms and conditions governing the employment of Filipino seafarers on-board ocean-going ships. There were one hundred (100) seafarers who participated in this seminar. The training director and the trainer were interviewed before and after the observation of the PDOS to complement the interviews with the crewing managers or fleet directors.

My claims in this sub-section rely mainly on two informants, namely, the trainer of the PDOS and the fleet human resource director of Abakada Shipping. On the basis of this limited evidence, other methods and sources of evidence were drawn upon to validate the conclusions made on the experience of seafarers of the PDOS – especially on how they are referred to during the session. First, field notes were taken during the observation of the PDOS sessions. Second, after the observation of the PDOS, focus groups were conducted with seafarers wherein non-verbal signs were more telling than views expressed. That is, whilst the seafarers did not verbalize being referred as “nangangamuhan” (slaves with masters), it would seem that they their treatment as such, as well as being referred to in this way, encouraged and ‘normalised’ this view of themselves. Further, whilst I only observed two sessions of the PDOS, it is worth mentioning that this training is conducted twice daily with 100 seafarer participants in each session. Thus, the effect across the seafarer population is potentially widespread and significant **although more data is required to confirm such a conclusion.**

The trainers, as accredited agents of the government, prepare the seafarers for their life on-board the ship through the PDOS. Echoes of their discipline while

they are studying in maritime training institutions are re-enacted during the PDOS – from the way they dress, prompt attendance to the session, posture, active participation, reminders not to make any complaints, to be grateful for their job, and to be low-key. Reminders to “observe, submit and obey” emphasise the inferior status of the seafarer and their obligations to comply with the orders of their employers. These are samples of what the PDOS trainer said to the seafarers during the PDOS sessions I observed:

“I do not know why you choose to go through so much hardship. In the ship, you undergo so much difficulty. In the ship you suffer so much. Your work in the ship needs you to observe, submit and obey....”

“But in the ship, you are working with masters (nangangamuhan).”

“For the lawful orders on-board the ship the response there is always ‘yes’. And ‘no’ is not acceptable.”

“You have to be submissive there. It is necessary that you know how to follow.”

“Your work in the ship needs you to observe, submit and obey.”

(PDOS Trainer, Tanglaw-Diwa Shipping Corporation, PDOS Observation)

Seafarers are told during the PDOS to be prepared to make sacrifices when employed as a seafarer including accepting the dangerous work they perform in a high-risk environment:

“If you are on-board the ship, you are prone to incidents and other situations beyond your control. Once you are on-board the ship, because you are mariners, you cannot do anything anymore. You are always at high risk. High risk work, high risk life. Never low, never medium. As they say, it is all the time. Its 24/7.” (PDOS Trainer, Tanglaw-Diwa Shipping Corporation, PDOS Observation)

The PDOS Trainer talked to the seafarers in this way to make them realize there were sacrifices to be made in working as a seafarer but this is better than

not having work. Although sarcastically said, it imparted the message that seafarers are expected to be followers of orders while on the ship because there are masters who should be obeyed:

“Do not complain. That is part of the sacrifice. If you want to change that, then do not go on-board the ship. There’s no place like home. If I were you, just stay at home. You know, I do not know why you are struggling so much. In your house, you have a nanny. In your house even if you don’t work, its alright. You do not have an alarm clock. Nobody tells you to work or to do this or do that. And definitely, you are the kings and queens of your house. That is why I do not know why you have to go through so much hardship. In the ship, you suffer so much. In your house you do not experience that. What do you have to observe in your house when it is your mother who is working? What do you have to submit when you have your wife to do that for you? You set your own rules in your house. But in the ship, you have masters. That’s why at the end of the day you do not have a choice. The principal is still on top okay?” (PDOS Trainer, Tanglaw-Diwa Shipping Corporation, PDOS Observation)

Commitment to the contract and with values of honesty and trustworthiness are emphasised to the seafarers during the PDOS:

“In our motto, the letter C stands for Commitment. So we signed the contract. We agree. So we have to be honest and truthful that whatever we agreed upon, our commitment is there and we will finish our agreement with our employer.” (PDOS Trainer, Tanglaw-Diwa Shipping Corporation, PDOS Observation)

If the seafarers do not honour the terms and conditions of their contract, they are told that they run the risk of destroying the reputation of all Filipino workers. Thus, it is important for seafarers *“to perform their duty under Section 1.B of the POEA-SEC to conduct himself at all times in an orderly manner towards his*

shipmates...” It is important to commit to the contract in order to protect the reputation of the Philippines as a labour supply country and their company as provider of workers to the principals. If the case were otherwise, principals might turn to other labour supply countries if Filipino seafarers do not honour the provisions of the government-prescribed contract:

“That is why I do not like trouble. It is not only my reputation but the company as well. And not only the company but all of us Filipinos. I often tell them, why do they often have disagreements, or disturbances? What will the whites say, ‘those Filipinos’. They will not say ‘those Cebuanos or Ilocanos’. They will say ‘those Filipinos are troublemakers’. So they refer to all of us. Filipinos finish their contract because we endure all sufferings (matiisin). We have financial needs but in terms of attitude, we do endure everything”. (Fleet Director, Kaibigan Shipping, Interview)

Seafarers are also called upon to assume various roles such as being ambassadors of goodwill. Seen differently from being docile workers, this involves assuming an active role in building up the reputation of the Philippines as a labour-supplying country. The intention seemingly to be to build the morale of the seafarer while at the same time preserving the good reputation of the country with foreigners:

“Do you know that whether you like it or not, crew members, when you go out of the country, don’t you know that you are called our ambassadors of goodwill? Hello guys, ambassadors. Of what? Bottles? Fistfights? Brawls? You are called ambassadors of goodwill of our country, the Philippines, that is why you have to properly protect our cultures and values so that our image abroad will be good. If they see negatives, it also reflects on us. That is why each and every one of us when we go out of the country, we should not disregard our values and culture or allow ourselves to be seen by the majority in a negative way

specially by foreigners.” (PDOS Trainer, Tanglaw-Diwa Shipping Corporation, PDOS Observation)

It also includes being ready to transform themselves into another person outside of their house. As seafarers, they are expected to act more professionally, dignified and noble because of their career. However, one of the values being emphasized is obedience to the rules and regulations on-board the ship, and to the policies declared by the shipping company:

“In the ship, you are obviously not at home. That is 10 months of sacrifice, the people are all different. And take note, you have to transform into a different person. You have to be professional because you have a career. You have to be dignified, noble. Those are the characteristics needed to be a mariner. And what we always highlight among your duties is obedience. In Tagalog, ‘macho-nurin’ (cuckold). But others in the ship are hard-headed and stubborn. They like to earn but they do not like to work. They are stupid.”

“You know the rules and regulations on-board the ship, you should follow it. If it is prohibited to eat inside the cabin, or it is prohibited to cook inside the cabin or not to drink alcoholic drinks, do not be hard-headed. You need to be submissive. It is necessary that you know how to follow. Because one of your duties under Section 1 is to know how to follow. One of your duties under Section 1 is to be obedient. There should be a transformation to a new you. Separate your attitude inside the house and the ship. In the house you might be ordinary but when it comes to the ship, you have to be professional.” (PDOS Trainer, Tanglaw-Diwa Shipping Corporation, PDOS Observation)

To further emphasize the importance of being obedient, the PDOS Trainer tells the seafarers that there is no point on being ‘hard-headed’ because they are someone who has masters, who can control their livelihood and their future. When they maintain a low-key profile, they will be able to survive the life on the ship, maintain good graces with their superiors and shipmates:

“It is necessary that the behaviour you bring along with you is the attitude of someone who have masters. Observe, submit and obey. That’s all. That’s all you need boy.” (PDOS Trainer, Tanglaw-Diwa Shipping Corporation, PDOS Observation)

Assuming this attitude during his shipboard life, it is not difficult for Filipino seafarers to be obedient to the commands on-board the ship. By the very nature of their shipboard assignment, they are always on-call, every part of the body has to be alert to every contingency or urgency that happens on-board and they cannot really relax even on rest period:

“You cannot defy the lawful orders and commands of the captain. For the lawful orders on-board the ship, the response is always ‘yes’. ‘No’ is not acceptable. You have to be prepared, you have to adjust, and you have to let it sink in that whether you like it or not, within 24 hours, your status is always on call. And because of these lawful commands, it means there is urgency. If there is an urgency or necessity, people have needs and requirements. That is what we call ‘when warranted’. That is the necessity. That is why when it comes to the ship, you should be flexible, and you are not limited by your department. You should not be limited by what you know. You can still help, you can do something. The lawful command is powerful in the ship. Even if you are in your rest period.” (PDOS Trainer, Tanglaw-Diwa Shipping Corporation, PDOS Observation)

They are further reminded that if they do not observe their duties or if they do not conduct themselves accordingly, penalties can be imposed for offenses on-board under Section 33 of the POEA-SEC. The captain can be the one to impose the penalties, or the POEA, after investigation:

“If you read section 33 contained in pages 5 to 6, you should be disciplined in the ship. Section 33 tells you mariners about the list of offenses and its corresponding administrative penalty. That is why

every action, or even if you do not act, even from mere talk, you are acting differently, it can be seen your attitude or behaviour is different. Please be prepared because there is a penalty for that. For example, you are on duty but you are not in your post. Your co-workers do not know where you are, your supervisor is looking for you. You know they can impose a penalty for you. It is listed there. Or you abandoned the ship while it is on port, because you got jealous of your colleagues. Your superior told you not to go down because you are the one on duty, you will man the ship, but still you went on land and they saw you. They can definitely impose a penalty on you.” (PDOS Trainer, Tanglaw-Diwa Shipping Corporation, PDOS Observation)

And they are reminded of the scrutiny of inspections. Indeed, inspections conducted by port authorities to check on the welfare of the seafarers are presented by the trainer as external checks for the purpose of ensuring the seafarer’s compliance with rules and regulations:

“You need to be careful because there are authorities who go up the ship without proper notice. Once the port authorities are on-board, they will disturb anyone in the ship, even the captain. Once they go on-board the ship, it is random, they do not choose anyone. No matter what your position is, they can interview you and they will check your cabin. They are authorized to check our ships so please be prepared. It is common in the ports that you go to, there are authorities that wait for the arriving ships. They won’t give notice even when they know you are still far away so you will not have any preparation.” (PDOS Trainer, Tanglaw-Diwa Shipping Corporation, PDOS Observation)

Another form of disempowerment as a human being is that seafarers are relegated to being mere parts of the body. During the discussion of Section 32 of the POEA-SEC on the schedule of disability or impediment for injuries suffered and diseases including occupational diseases or illness contracted, the PDOS Trainer said that for work-related injury, if the crew is on-board the ship,

all of the parts of the seafarers' body are covered with a corresponding equivalent grade under the POEA-SEC:

"In Section 32, page number 3 of the contract. What they did there is that every part of the seafarer's body is chopped with a corresponding amount and that is their limit. It was put into different levels. At the end they placed it under different grades. It is from grade 1 up to grade 14 in every parts of your body. There is a corresponding amount that you are entitled to. When their arm is cut, for example, it is included in Section 32 already... If the seafarers want a bigger amount I will give them a tip. They should master the part of the body with the lower number equivalent. If they read it, those are from grades 5 to 1. The smaller the grade, the higher the cash benefit equivalent. That's fifty thousand dollars (\$50,000)... That is a big amount... As long as they are on-board the ship. But not when they are on land. So I advise them not to be reckless when they are on land because if they damage any part of their body when they are on land, they cannot get anything." (PDOS Trainer, Tanglaw-Diwa Shipping Corporation, Interview)

Notwithstanding the fact that the retirement age in the Philippines generally is sixty-five (65) years old, the continuous employment of seafarers depends on his being certified 'fit for duty'. This emphasizes the seafarers' duty under Section 1.B under POEA-SEC to take responsibility for his health. It also highlights the temporariness of their employment. With regard to the age and state of health of seafarers, this is what the PDOS Trainer told the attendees to the PDOS:

"I know that you know that when your age is 40 and above, your situation is already risky. Why? Do you remember the saying that 'life begins at 40'? It means that reality will come in. The moment that you will be buried here on earth is near. (Laughter). Why? You already have arthritis. Your hips are already painful and it even wiggles like a wheel. That is why you have to condition yourselves when you are

already in your 40s. When you are at this age range, it also means that you are at risk of being replaced. Because those who are younger will fight you with their what? Energy! That is why you might be replaced. Because when you are already old, and your body is already wiggling when you are fixing the cabins, when you cannot even raise your hands nor move your hips and you cannot even stand straight, definitely, you cannot deny that there is already a problem with that.” (PDOS Trainer, Tanglaw-Diwa Shipping Corporation, PDOS Observation)

The trainer also tells the benefits the seafarers can obtain when they get injured, sick and especially when they die, seafarers are seen as a “good investments” by their beneficiaries:

“Of course, death should not be last on your list. That is what you call a good investment. That is why you mariners, whatever you look like, you are really loved because you are a good investment. So if you fall under our conditions, your family will be able to receive, regardless of rank, 50,000 dollars. Listen. If you are a family man, you have children below 21 years of age. Each one of them will receive 7,000 dollars. Up to four children only. There’s even bonuses, what can you say about that? (Laughter). The bonus is given and intended for you and it is given because we know that you have viewing for 7 days that is why you have to be attractive to look at.” (PDOS Trainer, Tanglaw-Diwa Shipping Corporation, PDOS Observation)

However, in view of the conditions imposed to receive compensation, seafarers still run the risk of not getting benefits if they do not fulfil all the strict conditions of the POEA-SEC, such as being in the list of sickness in Section 32-A and being able to justify that the disease they have is work-related. This call to mind the duty of the seafarer under Section 1.B of the POEA-SEC “to take personal responsibility for his health while on-board the ship”:

“In page number 4 of your contract is Section 32-A. Enclosed in Section 32-A are all of the sickness that was approved for seafarers’ claims and benefits. If the sickness that they acquired is not in the list, it’s very simple, they will not be paid. That will be their reference, their standard. And the disease that was placed there has to be justified on how it can be connected with your work, your profession. Like when they get ill with pterygium and cataract. The explanation in Section 32 is that pterygium and cataract can be acquired if you are exposed to the wind or if their job is in open air and when exposed to UV lights. And when they are able to justify the disease, yes, they will definitely get their benefits. If they acquired cataract and pterygium, the definition or manner that it is justified is not there, it could be possible that the answer will be ‘no’. But it is enclosed in Section 32. The kidney disease is also in that section but the seafarer has to justify the way work has damaged their kidney. That it is related to their work. If they damaged their kidney and the finding is it is damaged because of their drinking habits, eating habits, and it is not connected, the answer will be ‘no’ in terms of P and I. But it can be ‘yes’ if they can justify it. That is why they should justify it so they will be entitled to benefits.” (PDOS Trainer, Tanglaw-Diwa Shipping Corporation, Interview)

Thus, the emphasis of the training is to make the seafarers aware of their own burden of responsibility in relation to the additional conditions imposed in the POEA-SEC, as discussed in the previous chapter, in order to justify their right to receive compensation or benefits in case of injury, illness or death.

It is also important to note that the PDOS is a mechanism which addresses the lack of interface between the government regulators and the seafarers during the processing and approval of the POEA-SEC. However, it is conducted when the seafarer is ready to be deployed, had already been certified fit for duty, had signed the POEA-SEC and is only waiting for their deployment on-board the ship. This means that the training provided by the PDOS does not fulfil the

requirement in MLC 2006 for the POEA-SEC to be extensively explained to the seafarers prior to signing. It did not inform the seafarers of their rights and responsibilities before they had bound themselves into a contract.

6.4.2 Violations to the POEA-SEC committed by the seafarers

Crewing managers likewise have the tendency to blame the seafarers for violations in the contract. As a general rule, the termination of the seafarer's employment "ceases when the seafarer completes his period of contractual service" (Section 18.A of the POEA-SEC). The employment is also terminated when the "seafarer signs-off and is disembarked for medical reasons" (Section 18.B.1); when the "seafarer signs-off due to shipwreck, ship's sale, lay-up of ship, discontinuance of voyage or change of the ship principal" (Section 18.B.2; when the "seafarer voluntarily resigns and signs off prior to expiration of the contract" (Section 18.B.3); or, when the "seafarer is discharged for just cause" (Section 18.B.4). It is considered a violation if the seafarer decides to leave the ship for other reasons before the expiration of the contract. They are held liable for their repatriation cost as well as the transportation cost of their replacement unless the employer assumes the transportation cost of the seafarer's replacement on compassionate grounds.

A fleet manager attributes the cause of pre-termination of the POEA-SEC to how the seafarers respond when they do not like the situation or the relationships on-board the ship. He said that one reason for the pre-termination of the contract is when they find it difficult to get on well with their shipmates because of differences in culture:

"Actually the only problem with the ship is how to go along well. If others do not want the behaviour of their shipmates, what happens is they make gimmick so they can go home. That's what happens to the contract. And knowing that seafarers have different attitudes and you don't agree with each other, you wrangle with each other, you would

go home". (Fleet Human Resource Director, Abakada Shipping Company, Interview)

Difficulties in working relationships are expected since the seafarer work with different individuals every time they board a ship. It is difficult to build friendships in view of their different work patterns and different stations on-board the ship. It might be a good opportunity for the seafarers to bond during their rest periods and shore leave as provided in Section 13 of the POEA-SEC but the differences in the schedule of the rest periods and shore leave makes it impractical, thus, harder to develop friendships.

Another reason is not being able to cope with the personalities of officers of senior ranks. Filipino seafarers are trained with strong military discipline where the distinction between officers and ratings are pronounced. Officers maintain a certain distance with the ratings which may explain the indifferent attitude they display towards the ratings. These differences create misunderstandings which aggravate this problem further making the duty of the seafarer under Section 1.B difficult to comply with. It is given as another reason for the pre-termination of the duration of the contract:

"The most problem of Filipinos for their contract, the reason for not finishing it is the character of their superior. I cannot give other reasons. The only difference for contract not to be finished is character difference. That's the only thing - when they feel that they are not handled well by their senior officers. Others are sensitive when they are yelled at or castigated so they go home. Because of attitude problems, there are many unfinished contract. Character and attitude especially since their superiors are foreigners. Specially Europeans, if you are with them they have a tendency to yell at all times. The British, on the other hand, they wave like this (making a motion with his hands). For us that is bad because we do it differently. It is the reverse for us. The British when they call you like that it means they are already angry. That is why, by culture sometimes, that's what makes the gap. But that

is not so at this time.” (Fleet Human Resource Director, Abakada Shipping Company, Interview)

If a medical reason is the ground for disembarking from the ship, the employer bears the full cost of the seafarer’s repatriation if the sickness is work-related. Depending on the situation, this can become a problem because it usually entails additional expenses for the seafarer or the company for the repatriation of the seafarer back to the Philippines as well as assumes the transportation cost of his replacement (Section 19.G of the POEA-SEC). There is therefore some anticipation that seafarers may fake illness to get off a ship. This is explained by the Fleet HR Director of Abakada:

“The problem with the contract only comes in when the seaman wants to make the problem. The seafarer knows when he was issued a contract that it is going to be for 10 months. He knows that it’s for 10 months. He was hired for a period of 10 months. He was able to pass the entire medical. But if you don’t finish it, your superior will say due to illness. They will fake illness so their reputation will not be destroyed with the company. Those reasons. But the company knows about this already. What you have to do it go to the doctor and make him certify that you are really sick. That is what happens to the contract.” (Fleet Human Resource Director, Abakada Shipping Company, Interview)

Crewing managers further acknowledge that the effect of being away from their families and loved ones may also be the underlying reason why seafarers cannot get along with their shipmates when the seafarer is on-board the ship. They are aware that prolonged separation from their homes and families, family and marital problems (Thomas 2003) takes a toll on the personalities of the seafarers and cause them to become irritable. This makes getting along with their fellow crew members difficult. They suggest that these feelings of loneliness and homesickness then become a reason for them to renege and request for early termination of their contract (Section 19.G of the POEA-SEC):

“Sometimes, you know the life of the seafarer, they are irritable. This is because they are far from their families and stressed with their work. So sometimes, others, instead of paying for their debt, once they have difficulty, they go home. They request for family problem.” (Fleet Human Resource Director, Abakada Shipping Company, Interview)

The Fleet Human Resource Director said that seafarers should not be sensitive on how they are treated by other seafarers or their superiors. He proposed that the frame of mind of the seafarers should be to practice more tolerance of others so that they will not jeopardize their career or profession:

“It’s okay I don’t mind it because I need my job, I need it to live. I don’t need to argue with others otherwise my work will be destroyed, my profession will be destroyed.” (Fleet Human Resource Director, Interview)

A strategy proposed by the crewing agencies is the development of a rotation plan for the deployment of the seafarers in their vessels. The contractual nature of seafarer’s employment makes this easy. For instance, in six (6) months on, three (3) months off contract, three (3) sets of officers rotate their trips for smooth transition in two (2) ships. Once one seafarer gets off one vessel, he goes on leave for three months and goes to another vessel. As there is regularity, this rotation system enables the seafarer to calculate more or less when they are going on-board and when they will be going back to shore. Another proposal made by the Fleet HR Director would be to shorten the duration of the contract of employment:

“I think that is the reason why they shortened the contract duration. I think the IMO already saw that, the ILO... that the long contract is stressful for the seafarer... including the character differences. Add to that their shipboard work.” (Fleet Human Resource Director, Abakada Shipping Company, Interview)

These quotes all highlight how crewing agencies and their trainers drill the importance of submissiveness and obedience to the seafarers. But the response of the seafarer when maltreatment becomes unbearable is to pre-terminate their contract. This is aggravated by their feeling of isolation in view of their separation from their families and homes. However, this pre-termination of contract is considered a violation and the seafarer may bear the cost of this decision.

6.5 Summary and conclusion

When contemplating their experience on the implementation of the POEA-SEC, crewing managers convey their appreciation to the government for prescribing the POEA-SEC. Clearly, they maintain their commitment to the POEA-SEC as a document by performing their duties to their principals or the shipowners through the supply of competent seafarers. However, their experience in recruiting and hiring the seafarers also demonstrates the compromises they make in the process of employing seafarers.

Going to such lengths as hiring seafarers in Luneta Park is one example of this compromise. Nowhere can it be more powerfully demonstrated that labour is on sale than in the transaction made in Luneta Park between the crewing managers and the seafarer. The reference to Luneta as a market place by the fleet director is specifically relevant as it portrays seafarers as commodities for sale. This is further reinforced by the crewing managers act of going to Luneta as buyers of human labour.

Another form of compromise is the accelerated processing of employment. This has both positive and negative consequences. In terms of answering the manning requirements of the shipowner/principals, the fast response is good for the investors and the reputation of the Philippines as a labour supplying country. However, the standard to competence may have been compromised in the rush to make the recruitment. Furthermore, while this is good for the

livelihood of the seafarers who are looking for employment, this has negative repercussions in terms of implementing the Maritime Labour Convention (2006), which requires that the terms and conditions of the contract should be explained extensively to the seafarers. The consequence is that there is a risk that seafarers may not have been duly informed of their rights and responsibilities before they bind themselves into a contract.

Implicit in all of this is the crewing agencies' goal of conducting their business for profit. The proposal to develop a 'career pathing' system, provision of additional benefits on top of those provided in the POEA-SEC such as training allowance and in-house training, may be seen as measures that enhance or develop the manpower sector and ensure the continued supply of competent seafarers.

In the long run, these measures protect the continued existence of these private crewing companies as well as the highly-intensive capital investment by the shipowners. The provision of additional benefits they are willing to give, while beneficial to the seafarer, demonstrates the nature of the competition among crewing agencies in trying to guarantee seafarer's loyalty. This is likewise be prejudicial to the interest of the industry as a whole as the success of the whole employment scenario is characterized by who has the highest bid for the seafarer.

Set against the background of global labour demand for flexible, short-term, contractual and extremely mobile labour as discussed in the previous chapters, it shows that the Philippine government is complicit in assuring the continuous employment of its overseas workers in the global labour market. For one, the process is facilitated by the institutional mechanism put in place by the government such as the standard employment contract (POEA-SEC). The short-term contractual nature of their employment makes them easy to replace, hire and employ depending mainly on the labour cost.

The next Chapter will explore the experience of the seafarers.

Chapter 7

EXPERIENCE OF SEAFARERS ON THE ENFORCEMENT OF THE POEA-SEC

7.1 Introduction and overview

In Chapter 5, I discussed the POEA-SEC as a legal document and indicated a need to move beyond an analysis that focused solely on its (legally) declared provisions. The contractual provisions are meant to offer both protection to seafarers and create a fair and legal (employment relations) framework for engagement between a seafarer (employee) and a shipping company (employer). However, as was suggested, the standard employment contract as a legal document is often weighed against the seafarers where its provisions are not always intended for the benefit of the employee.

The chapter that followed aimed to provide an account of the employers' experience of the POEA-SEC and its role in supporting and attracting seafarer employment in the Philippines. The contract is one element, among others (e.g. a compliant state and cheap labour) that provides an environment beneficial to large conglomerate shipping companies. This is often at the expense of fair, dignified and safe employment. In what follows, data is presented that provides an account of the experience of Filipino seafarer labour. It indicates the ways in which the POEA-SEC as a legal document meant to offer protection to the employees of shipping companies, falls short.

My engagement with the workers was guided by their perceptions on the enforcement and implementation of the POEA-SEC, particularly as an instrument intended for seafarer protection. The data on which this chapter is based came from the interviews and focus group discussions as well as the observation of the recruitment and labour employment process (see Chapter 2). It presents an account of the issues confronting the seafarers and how the terms and conditions of the POEA-SEC addressed them.

The chapter is divided into five sections. Section 7.2 provides the seafarers' motivations for being at sea, whilst being aware of its disadvantages, e.g., separation from their family and home. Section 7.3 describes the seafarers' life on-board the ship and their way of coping with the risks and difficulties of being at sea. This includes dealing with powerful actors and observing their orders, e.g., ship's captains, union representatives, government regulators, crewing agency managers, as well as the sometime difficult experience of living and working alongside fellow seafarers. Section 7.4 presents examples of seafarers' experience of the modification or alteration of the terms and conditions of the contract and its possible effects to their safety and well-being. The final section provides the summary and conclusion of this chapter.

7.2 The pains (and gains) of seafaring life

The deployment of a significant number of Filipino seafarers to the global market had been a phenomenon that started in the 1970's. Historically, the Philippines, as an island archipelago, boasts a rich maritime and seafaring tradition from which a seafaring career is passed through generations (Dearsley 1990; Amante 2003). As a retired captain, whose father was also a captain in overseas trading ships for fifty (50) years, recalled:

"I was really obsessed to be a seafarer. My father brought me to the ship with him so I grew up almost in the ship. My blood is there. So when I go back to our house I can no longer sleep without the buzz of

the engine. I like to be in the ship always... It was the happiest day of my life when I enrolled in BSMT.” (Retired Captain, Interview)

The above view is however, an exception in my interviews with the seafarers. It would seem that the continuation of the historical, geographical and familial maritime tradition is no longer the principal motivation of most of the participants of this research. For most of the seafarer participants, the temptation or allure of adventure, travelling and seeing the world for free (a relative term and the costs to workers are the focus of this chapter) were given as a reason for embarking on a seafaring career. As will be shown, it would seem however, as with other overseas Filipino workers (OFWs) that seafarers use this discourse or narrative to cover the distress of being separated from their families. Indeed, the seafarers’ experience – from recruitment to deployment and employment – is in many and various ways a stressful time. It is the purpose of this section to give a sense of the motivations, difficulties and vulnerabilities experience by those seeking seafaring employment.

Seafarers are willing to undergo sacrifices (such as being separated from their family and home for long periods at a time, the difficulties of working on-board a ship, the dangers of the sea) in exchange for monetary remuneration.

A Boson admitted during the focus group that:

“It’s really nice to work as a seafarer but it is so difficult. We are terribly homesick but we just convert the sadness to dollars. It is nice at the end of the month because of the salary we receive but on the first day of the month, we are poor again.” (Boson, 2nd Focus Group with ratings)

When the Boson said “it’s really nice to work as a seafarer”, he expresses his gratitude - the salaries they receive are better than the salary of Filipinos working in the domestic labour market. The difficulty of being at sea and leaving their homes and families is however, clear. Further, as mentioned in chapter 5,

the mandatory remittance requirement on the seafarers (to send 80% of their earnings to their named allottee in the Philippines) means the benefit of the relatively good salary feels short-lived.

Such practical and economic motivations force seafarers to continue working and forego some privileges (such as a longer vacation with their family) in order to meet the basic necessities of life, e.g., everyday living expenses (food, housing, etc.) like food, their children's education and other expenses:

"I have two (2) college students now and I am the only one who is working in our family. This is our only means of livelihood." (Chief Cook, Interview)

It is important to remember that, as set out in Chapter 4, the overseas employment of seafarers in the Philippines occurs within the context of massive unemployment and widespread poverty (Amante 2003). Almost all of the seafarer participants come from poor rural backgrounds in the Visayas and Mindanao regions located in the central and southern Philippines, where other options are very limited.

Lacking other opportunities or offers of a better salary in the domestic labour market, as well as their desire to give their families better lives, many Filipinos choose to embark on a career at sea despite its dangers and difficulties (Tyner 2000; Amante 2003). In this respect, Filipinos have been obliged to embrace a culture of emigration and households adopt the immigration of one of their family members as a means of survival (Abella 1993; Yang 2004; McKay 2010). Thus, a family member is commonly expected to go abroad (temporarily or permanently) to provide for their families, to ensure that they can send their children to school, give them access to quality health care, and provide for their basic needs (Parreñas 2006). A Captain explains the situation in the following terms:

"It is good for the poor people. At least they to sacrifice one from their family so they can sustain their other siblings. But if your life is already

comfortable I don't see any reason why you will become a seafarer. There's no need. Its such a waste of your time on earth spending it all on the ocean." (Captain. 1st Focus Group with Officers)

Seafaring is seen as a better high paying alternative to more traditional industries like agriculture or manufacturing (WB 2013) and would be seafarers are often steered towards education courses on 'nautical or marine engineering' as more practical choices. Some of the seafarers attribute their choice of education and profession through the prompting of seafarer relatives with the promise of bigger salaries and seeing other countries:

"My cousin helped me get a job. I worked for a long time in hotel and restaurant in the province, almost 8 years. I transferred to seafaring through the prodding of my cousin. To earn more." (Chief Cook, Interview)

"I did not plan to be a seafarer. I think I got lost on the way here. When I went to Manila from Cotabato, my original plan was to get an agriculture course because my family have farm lands. But my cousins and other relatives here in Manila dissuaded me from taking up an agriculture course. My cousins have uncles or fathers who are also seafarers. They said the pay is low in agriculture and I should take up a nautical course instead. They said I can see other countries. Of course in the province, you cannot see those. That is why I tried it and I was sent adrift here like a castaway. I do not even know what nautical is. I have never encountered that in my readings before." (Chief Mate, 1st Focus Group with officers)

However, in what follows, it is shown that the onset of the seafarer's difficulties begins at the early stages of choosing seafaring as a career and applying for a job at various crewing agencies. An individual seeking seafaring employment typically migrate to the city to look for employment undertake training, and a

medical examination and complete their documentation, after which they are deployed on-board the ship.

“I stay in AMOSUP in Intramuros. It is a dormitory type accommodation. If you are a member of AMOSUP (the trade union), they will let you stay there for free. This is where I always stay when I need to be in Manila specially when our Japanese principal asks us to be immediately available or to be in Manila. (Chief Cook, Interview)

Manila is at the centre of recruitment, a place where all workers, not only seafarers, migrate in search of a job. With the increasing presence of crewing agencies and the seafarers – as well as the maritime unions not to mention government offices (such as the Department of Labour and Employment (DOLE), Maritime Industry Authority (MARINA), Maritime Training Council (MTC) and Professional Regulatory Commission (PRC) - the employment process becomes convenient and accessible when it is concentrated in one area.

In particular, Luneta Park, Manila, as mentioned in previous chapters, has proven to be an excellent place for seafarer recruitment. It has become a central place of recruitment, which encourages seafarers (and crewing agency staff) to ‘hang out’, converge interact, and pass the time while waiting for news of their employment:

“From the province, I have to go to Manila to find a job because the agencies do not have a branch office in the provinces. I go to Luneta when I have difficulty looking for a job. You have to be there every day because the recruiters are there. They see the seafarers at once because every day they are there. If you want a bigger salary, you can choose from that place. You will be able to compare the salaries being offered by different companies, all of the benefits they give. When I was new here in Manila that is where I usually stay. I was hired in Luneta for the first time with my cousin’s help. That is where my second company got

me too. That is the place for seaman recruitment.” (Chief Cook, Interview)

Reaching Manila or Luneta is however, perhaps the least of the prospective seafarer’s concern. In addition, there is, for example, a financial impact to seeking work. When seafarers look for employment, undertake training and complete their documentation they have to meet all expenses - they do not receive salaries or allowance. As contractual employees, they are entitled to their salaries and certain hotel, airfare and travel allowance but only upon commencement of the POEA-SEC. The period of engagement or commencement of the POEA-SEC starts from the actual departure of the seafarer from the Philippine airport or seaport.

Aside from this “*no work, no pay*” practice, a Chief Engineer observed further that seafarers do not receive good treatment in exchange for their contribution to the country’s economic development as they are left exposed to the elements and vulnerable to the danger of the streets during the pre-deployment process.

“Our government always say that the seafarers are very generous when it comes to remitting their contributions. In dollars! But it is sad to think that we are only loitering the sidewalks. Where are the things they say? But we are not receiving the right incentives by bringing dollars here. If you observe, we are scattered everywhere. If you are near them you can even smell the sourness of their sweat. I do not know what they want to do there. We do not have a decent home for seafarers.” (Chief Engineer, Interview)

Those looking for work are also vulnerable to particular forms of exploitation. For example, so called ‘fixers’ approach seafarers to ‘volunteer their assistance’ in expediting the processing of the seafarers’ documentation (e.g. medical examinations at clinics which are supposed to be accredited from a certain government agency for a fee or ‘bribe’. Further, crewing agencies use certain

strategies to promote their business (at the expense of the worker) as related by a retired captain below:

“You know in Luneta, I will go there, spend some time there. Someone will go there to recruit us. They will tell us, ‘This company offers big salaries. The principal will arrive today.’ We will go to the company without eating lunch. A number of us seafarers went there. True enough, the principal really arrived. But he went there only to see if the agency has a lot of applicants so he will transact his business in that agency. So the technique of the agency is to come up with a lot of people so that the principal will say that the agency has a lot of applicants. But he has not committed yet to that agency. They have a gimmick. Sometimes you will suffer. (Retired Captain, Interview)

This takes advantage of the seafarers’ need to be close to the crewing agency offices and to be accessible to the potential employers when they are applying for a job or completing their documentary requirements to be certified ‘fit to work⁷⁵.’

During the pre-deployment stage, seafarers who are not residents of Manila stay in seaman’s centres in the periphery of Ermita and Malate. This means spending time away from their families and homes whilst they undergo training as part of their documentation process. However, some seafarers found a way of spending quality time with their family while training:

“Instead of spending time with your family, we go to training. That is why sometimes we have to ask our wives to accompany us even in our

⁷⁵ To be certified as ‘fit for work’, seafarers have to undergo what is termed in the POEA-SEC as Pre-Employment Medical Examination (PEME) (Section 20.E of the POEA-SEC) or Post-Medical Examination (Section 20.A.3 of the POEA-SEC) by a company-designated physician within three (3) working days upon their return. Failure to comply with this mandatory reporting requirements result in forfeiture of claim benefits for injury or illness.

training. Even our children are there because we do not have time for them". (Chief Mate, 1st Focus Group)

Aside from the separation from families, seafarers usually complain of the considerable cost component of the training required by the government. They also believe that it only enriches the maritime training institutions:

"The maritime industry is highly regulated. We have a lot of training. We cannot just go to the ship if we do not update your training. You will be left behind. Here you need to have yearly updates of your training. Whatever is needed you should train for it. Other training centres will probably become rich because of the MLC training requirement. P30,000 for 6 weeks of training aside from other trainings? C'mon!" (Captain, 1st Focus Group with officers)

Seafarers complain about maritime academies and training centres who they accuse of taking advantage of their education and training by charging them enormous fees for mandatory training requirements which they need for the advancement of their careers:

"You know, in my own view, the proper training really should not be here on the land but onboard. Because there you can do it hands on. But here on land, it is more business. The trainings they conduct onshore. Business for the training centres so they will have profits. Because you know, the seaman, instead of spending their vacation together with their family, they are in the training centre. After the training they are placed in a line-up so they have no more time or they have time but it is so short. You cannot enjoy. That is when I saw that I cannot do it. (Retired Captain, Interview)

Notwithstanding what they say about the training requirement, seafarers must comply for advancement in their rank and career. As shown in the interview extract below, investment in personal and professional development is part of the seafarers' duty. Compliance with the standards set by their employers who

are complying with government-set regulations ensures their qualification as a competent seafarer and guarantees their employment:

“There is the MLC 2006 requirement perhaps they will require us to have another training on that. They said if you do not have a training for MLC 6, that is need for our COC, when we go to PRC for our license, they will not renew our license. That’s too bad, isn’t it? If they require one month or half a month for it, we have to get it because it is required.” (Chief Mate, 1st Focus Group)

What is conveyed in this section is an account of the difficulties of the process by which the prospective seafarer experiences becoming a seafarer, which is not recognised (financially and contractually) – until they have the necessary documentation (medical and training certificates), been offered a job and negotiated an employment contract. Evidently, despite being separated from their families and homes, as well as undertaking financial commitments, seafarers persist in looking for employment at sea and working on-board ships for long periods of time for the purpose of giving their families a better life.

7.3 Actors who influence seafarers’ work and employment

This section shows that in the course of their seafaring life, seafarers have to cope with more than the risks of being at sea. Seafarers must deal and interact with a range of actors and organisations, both on land and at sea (such as the captain of the ship, the seafarer unions, and government regulators). As will be shown, these actors make a significant impact on the seafarers’ experiences during their work and employment.

The first actor is the captain of the ship who holds the highest office of responsibility on-board the ship. It must be remembered that while the captain is also a seafarer who is subject to the POEA-SEC and the influence of owners and agencies, his role on-board is to act on behalf of the owners of the ship –

and literally called “Master” on-board. As stated by a Captain during one focus group, they have “to be on top of everything,” while the members of the crew are expected to acknowledge the authority of the captain. Hence, if instructed to do some work, they are expected to obey without question, even if it will endanger their lives:

“We collided with another ship inside the Mississippi. The ship cracked and it was just cemented because we had been laden with cargoes already. We were about to cross to Lisbon, Portugal... we have to cross Atlantic Ocean which is about 15 to 17 days of water. This is typhoon season in America. We still departed for Portugal because of the cargoes, it is already there in the hold. The company will lose profits if not. That is how the Captain decided because they are under pressure from the directive of the bosses”. (Former Captain, 1st Focus Group with Officers)

The amount of power possessed by the captain and the possible abuse of their power is more pronounced because they have custody of important documents belonging to the seafarers such as their passport, seafarers’ identity and record book (SIRB), and POEA-SEC. Some seafarers express fear that if they earn the ire of the captain, the captain will reflect the same in their documents which can affect their future employment and livelihood, as one seafarer recounts:

“You know, they can single you out and send you back home without any reason, without even telling you what the grievances are against you. The style is for the officers to have their own favourite crew (‘bata-bata system’). The seaman’s book, there is a record there. If the captain put a red mark on it, you have to explain to the POEA because it means you are blacklisted... but not totally blacklisted. It’s just that when you are transferring to another company, it mars your record. So now you cannot just... they make a report because on the ship you already have grievances against you, they will do everything to prove your fault.” (Able seaman, 2nd Focus Group with ratings)

The second actor exerting an influence on seafarers' employment are the unions or groups or associations with which the seafarers are obliged to affiliate as a condition of their employment. While it is a function of trade unions to represent and protect the workers' interest, maritime unions in the Philippines would seem to confront something of a dilemma in this respect. On the one hand, protecting workers' interest might include negotiating improvements in wages and conditions. On the other, it might also be seen as securing their jobs in a competitive market by keeping their wages low and the contract temporary. It would seem from the testimony of participants in this study that Philippine unions are more substantially engaged with the latter. An observation that is to a large extent supported in the literature (Ruggunan 2011). An example would be a case discussed by a maritime lawyer interviewed for this research where the issue of the contractual nature of seafarers' employment was confirmed by the Philippine Supreme Court (Kapunan 2002). At the time, seafarer groups were confronted by a predicament:

"The Supreme Court, applying the POEA-SEC ruled that he is only a contractual employee. In this case, even the major seafarer unions were in a dilemma in the sense that, in the final analysis, the foreign employers will source their crew from other labour-supplying countries if the cases were decided differently." (Maritime lawyer, Interview)

In addition, seafarers perceive their seafarer unions as a service organisation to provide for their and their dependents' hospitalisation in exchange for the payment of union dues:

"What the seafarer contribute is only 1.5% of our basic salary as contribution which they take from our salary... And you can avail of the services of the seaman's hospital including your dependents. All is free including giving birth, even caesarean birth it is for free. All you have to pay is the taxi." (Captain, First Focus Group of Officers)

But even this type of health service provided by the union is dependent on the amount of contribution of the seafarers and their willingness to withstand the

inadequate service, as can be noted from this exchange between the seafarers during the focus group for ratings:

JPP:

What are the benefits you receive from AMOSUP?

Oiler:

You can have check-up. But in 2004 I was not able to use it ever since they deduct from me.

Cabin Stewardess 1:

That is because you do not go to your union. They will not go to you you have to go to them because you need to get the requirements from them. They will check your contribution. Your ship if it is a member. That's their office in Intramuros. You go there to get the booklet.

Able Seaman:

What I know sir is they collect \$120 dollars if you want the booklet but if we are only contributing \$20, then we are not entitled to the booklet.

Bosun:

You know sir there are a lot of seafarers going to AMOSUP and they are telling us that we are not entitled to get benefits. They refer us to Medicare.

Oiler:

For us, we get the booklet from the family centre. So I think it is a good idea to give them a visit.

Able Seaman:

Some are able to use it by going to the hospital of AMOSUP. I have a colleague who went there who was confined but he died.

Bosun:

That is when you are patient enough to line up. But because we already have the health card, that is what I use because you will not spend for anything there too. But here in AMOSUP, you have to be patient to line up." (Excerpt from the 2nd Focus Group with Ratings)

Another seafarer's experience of a union (a confederation of labour federations of different sectors and industries) who he expected to protect his rights under a modified employment contract had been frustrating. In the words of the retired Captain:

"The contract was corrected by snowpake... I don't know how it was be approved by POEA. That is why I decided to back out. But they (crewing agency) do not like to give me back my documents, license, seaman's book, passport. That is why I went everywhere. I went to Elliptical in TUCP, Trade Union Congress of the Philippines. But they cannot help me. It was frustrating. I cannot help but tell you that they do not have much support. That is why I went to OWWA too. I want to go onboard already, I was desperate!" (Retired Captain, Interview)

Moreover, in matters of enforcing the provisions of the contract in the workplace of the seafarers, i.e. the ship, Philippine unions are not actively involved. Implementation falls in international entities like the International Transport Workers' Federation (ITF) who practice their powers of inspection or detention of ships or companies contravening maritime law and regulations:

"The only group who helps the seafarers abroad in case of conflict is the ITF. When the ITF boards the ship, they look at the salary, the benefits. Once it is not compliant, the ship will stop. Specially in Australia. Because the dock workers are there. When they say 'do not work on those ships', when the crew's wages are substandard, no one will work. The ship and company will lose their profits. Because they are on standby. Now you will also sign with ITF because it is favourable to you. But when you go back to the Philippines, you will be blacklisted, you can no longer board the ship. Where will we go? If an ITF will board the ship like in New York, we are afraid. We do not like that. They will tell us, 'why don't you like it when I am helping you'. We answer, 'I do not like to sign that. Others who signed with ITF were no

longer able to board other ships when they went home”. (Retired Captain, Interview)

The Philippine government and government regulators comprise the last group of actors that have a significant impact on the seafarers' work and employment. As discussed in chapters 3 and 4, the government has a labour export policy. Central to this policy is the generation of revenue through the remittance of the seafarers or other overseas workers. The mandatory requirement is for the seafarers to make an allotment of at least 80% of their monthly salary to identified allottees through an authorized Philippine bank. Some seafarers send a special monthly remittance on top of 80% of their basic salary as related by an Able Seaman:

For us it is different. The 80% is based only on the basic salary. It is not followed because most of the time we give more than the 80%. That is monthly special remittance. For us all of the salary we earn, 80% or even more of that goes to the allottee. But they ask us to send additional money. 80% from the basic salary does not include the overtime. So if it basic only that they get it from, then it is not enough for your family. So we have to send special monthly remittance. Our overtime, we send that too. What we earn from overtime and other extra pay we send to them. (Able Seaman, 2nd Focus Group with ratings)

Getting remittance had proven to be a more effective means of generating revenue for the Philippines than what can be earned from foreign capital investments and development assistance schemes from international financial organizations or developed countries. This explains why it is a prominent feature of the employment contract. As a critical source of the country's earnings, this compensates for the failure of the government to provide jobs, decent wages and basic services (Asis 2006; Rodriguez 2010)

In addition to the mandatory remittance, seafarers provide for certain contingencies for their welfare in the form of the mandatory deductions. They pay twenty-five dollars (US\$25) to the Overseas Workers' Welfare Administration (OWWA) as OWWA membership fee⁷⁶. Aside from this deduction, departing overseas workers are also charged nine hundred pesos (PhP900, about US\$20) as contribution to the Philippine Health Insurance Corp. (PHILHEALTH) and one hundred dollars (US\$100) or its peso equivalent processing fee to the POEA. A former Master Mariner explains that:

"It is not a one-time deduction. They deduct for every contract we have. They charge 25 dollars again even in the same year you board the ship on a different contract. Once they process the contract, automatically, OWWA deducts \$25." (Former Master and Training Director, Interview)

Aside from assuring the monetary returns of the seafarer workers to the country, the invisible control and power of the government on its seafarers extends beyond its territories. Through the contract, the obedience of the seafarer to perform certain duties and responsibilities is ensured. The seafarers' experience of the far-reaching extent of the government regulation will be related in this part. Compliance with the regulations imposed in the POEA-SEC with respect to the offenses and penalties imposable on-board (Section 33 of the POEA-SEC), among others are just some of the experiences of the seafarers related in what follows.

An important provision to ensure seafarer discipline and the government's control over seafarers even beyond its territory is Section 33, which details the

⁷⁶ OWWA Memorandum Order Instruction No. 8 stipulates the collection of US\$25 or its peso equivalent per worker/per contract as a revenue-generating scheme from its labour export. Payment of this membership fee entitles the overseas Filipino worker to the social services of the OWWA. Non-payment would mean that the OWWA has no responsibility to provide services to the migrant. The OWWA pools the trust fund from the membership fee for the provision of social services. An example of the service are OWWA shelters which are provided to workers who were illegally terminated and had nowhere to go for assistance.

offenses and penalties imposable on-board. For instance, the drinking of alcoholic beverages is regulated - drunkenness while on duty, creating trouble on-board due to intoxication and failure to perform assigned jobs due to intoxication are punishable offences under Section 33.C [a-c] POEA-SEC to which the Master can impose outright dismissal. As observed by a Chief Cook in one of the interviews:

“For camaraderie, sometimes we have our Saturday night’s bash. One shot only. There is a regulation on drinking; there is a limit so we have to know that. If you have more than enough to drink, sometimes your personality changes. You have arguments with other people. Your thinking is distorted. You are different, you go wild. You’ll get into trouble because of that.” (Chief Cook 2, Interview)

This provision makes the seafarer very conscious of his actions while on-board - aside from the need to preserve good relations with their colleagues (which alcohol might impair), or adopt a healthy lifestyle aboard the ship, the more important reason is that the very nature of their job requires them to be alert and focused.

A final important provision that emanates from the contract to ensure seafarer discipline and the government’s control is the use of the grievance procedure on-board the ship. This is seen by the seafarers as an effective tool to handle the resolution of complaints or offenses committed on-board the ship. The Captain and other high-ranking crew enforce this provision. It serves as a deterrent to committing offences, ensures the good relations of the crew on-board ship and maintains the reputation of the Filipino seafarers to their foreign employers. In reflecting on all of this, the Third Engineer made this observation on the mechanics of the POEA-SEC grievance machinery:

“Of course, if you observe someone who needs to be restrained (pasaway), you give him an order. If he does not obey your order, of course, you will give him a warning. When he is given a warning, the captain should be present, as well as the head of his department and a

witness. He should be made to sign a paper saying that a grievance procedure had been conducted. Whatever is written there as his offence (all of the sample offenses are provided in the contract) and where it is his first offense, at least we have proof of the offense he committed, and that he had been warned accordingly that if ever the same or another offense is committed, he will be made to go home.” (Third Engineer, Fourth Focus Group for Officers)

All of the various entities of control impose their power and discipline over the seafarer’s employment and shipboard life:

“You see they are controlled. Because once you have a complaint... When you complain, that is the problem, there are a lot of seaman in Luneta. They can replace you anytime. For every one, there are a hundred replacements for you. That sort of control, you are treated like a puppet by the company so you cannot complain or ask negative things. It is very hard. (Retired Captain, Interview)

What is being demonstrated throughout this section, is the interaction of the network of government agencies, labour recruiters, labour organizations, and private corporations to operate both domestically and internationally with as little hindrance as possible. The underlying theme in the labour of the seafarers is the primary objective of shipowners to maximize their profits and the government to benefit from the labour of its citizens. However, whilst the state is dependent on the income generated by the seafarers’ labour, it also seeks to protect them through the provisions of the POEA-SEC. In the next section, I focus on an account of how contractual provisions designed to protect workers, with stark implications for the safety and welfare (e.g. financial) of Filipino seafarers.

7.4 Awareness of the contract

This section gives examples of the importance given by the seafarers to monetary considerations as discussed in section 7.2, as a response to the question of what seafarers usually look for before signing the POEA-SEC and its Addendum. From their responses, the majority - if not all - of the seafarers said that before signing the contract, they check on the POEA-SEC provision on salaries and benefits over other provisions:

“Whenever I see it, we look at the name of the ship, and of course our salary and the base of the contract. Normally the name of the ship. Our position is important too so we check it. But the number one is salary. It has to be contained there. I try to see if there is an increase. If there is no increase, better luck next contract.” (Third Mate, 4th Focus group with officers)

Other details like the name of the seafarers, the ship they will be deployed on, grievance machinery, duration of the contract are also checked by the seafarers - but the priority is to cross-check the benefits they will receive:

“The first thing I look at is the salary and the details of the overtime, bonuses.. that everything is all there. That is the only time I sign it. I also look at my name, and the ship. And the duration of the contract. But priority really is the benefits.” (Second Assistant Engineer, 4th Focus group for officers)

However, some seafarers said that they do not look at the terms and conditions of the contract because they are not given enough time by the crewing agency to read it prior to signing, or they are rushed into signing the documents. They also identified that the contract is very long, especially the length of the Addendum, which does not allow proper scrutiny:

“As for the terms and conditions, it is so long. Normally we read them before we sign them. But what happens is everything is so fast-paced. They tell us, ‘sign here, sign there and then take care of all other

documentation.' We just sign every page. Pages 1 to 6 three sets. Sometimes our crewing manager will tell us, 'you read that, there are some changes to that'. But we cannot read each and every page before we sign because everything happens so fast. So what we do is always bring it onboard the ship and it is where we read the contract because it has a lot of changes introduced by POEA. It is so long, we cannot memorize it you know." (Second Engineer, 4th Focus group for officers)

Actually, in the contract, ever since I board the ship, the explanation of what is contained there is not done. You just sign it. And then when you sign it, the name of the ship is not yet there. It is blank whatever it is you are signing. You know seaman, they are not as particular about these concerns. At least the only consolation there is, he was accepted once he signs the contract. But as to the explanation of the contents of the contracts, its terms, I have not encountered any agency who said, this is like this. You know when you sign, when you arrive at the ship, the salary is different. Sometimes there are two contracts that you sign. One contract for the local POEA and another contract for the European. There are two (2) contracts. For the principal. So what is it all about? The only concern of the seaman is to board the ship. They do not care about the legalities, documentation. We do not care about it as long as we are allowed on-board the ship. (Retired Captain, Interview)

From the above, it can be seen that the seafarers are not given enough time or opportunity to clarify the provisions, to ask questions, or be informed if there are new policies/clauses or modifications to their contract.

However, seafarers read the provisions when they have settled down in the ship:

"We like to read everything but it is so long we do not have the time to read it. Maybe when given the time I will read everything. And in the ship we have a copy of that onboard so we will be able to read them. That is aside from the copy we give to the captain." (Able seaman, 3rd Focus group with ratings)

Sometimes there are other reasons for not reading the contract. For example, newly recruited seafarers explained that they do not read because of their excitement on being recruited and finally being able to go on-board the ship and travel abroad:

"For the first contract I signed, I was so excited about boarding the ship, I just signed the contract. We do not care about the contract for as long as we have a salary. So we do not know better at that time. If ever something happened to us, we do not care to find out because we are excited to travel." (First assistant engineer, 4th Focus group with officers)

Veteran seafarers, on the other hand, take the contract for granted because they said they already know the provisions of the POEA-SEC and the benefits that they are entitled to are already well-established:

"I don't really look at all of those things now. Because we had been assured that almost everything had been covered by P and I insurance. Compensation for injuries for instance." (Captain, Interview)

Insofar as the processing and approval of the POEA-SEC, it was highlighted by many seafarers that they do not have any interaction or interface between the POEA government regulators and the seafarer because the signed POEA-SEC is sent through a POEA-accredited liaison officer of the crewing agency or manning agency who brings the signed POEA-SEC in bulk to the POEA.

"Yes someone took care of it for us. They have a person to take charge of that. I never go to POEA because the crewing agency has a person to

take care of that for us. There is no more hassle for us.” (Chief Cook, Interview)

This means that the seafarers do not see the POEA office and its government employees who process and approve the POEA-SEC. This further means that the seafarers cannot ask questions about provisions of the POEA-SEC which are unclear to them.

Given such an opportunity, seafarers expressed fear that the government employees they talk with might complain to the crewing agency (i.e. about receiving a lot of queries from the seafarers). The issue for seafarers in this respect is that they are afraid of a backlash and being replaced for getting their employers in trouble. Below is an excerpt of the conversation with a former master mariner who shared his experience in an interview:

Q: You said that you sign contracts in the office of your crewing agency. After you sign, are you given a copy?

A: No. It is first given to the POEA.

Q: And then, do you bring it to POEA for their signature?

A: No, we have a liaison. We are only given a copy.

Q: So you do not have any interaction with POEA?

A: None, we do not even have a picture of POEA or go there.

Q: No interaction with POEA? I thought if you have questions especially when the contract has unclear terms which you cannot ask in the office, I thought perhaps that it is better if you can clarify it from the POEA, that they address these things?

A: That is difficult. That can be very difficult. In the books it might be easy but in real life, it is hard.

Q: Excuse me for my ignorance, but why is it hard?

A: *What if the POEA will tell the agency, 'you have a crew here who asks a lot of questions'. That will not be good for us. What will be our protection against those kinds of people?" (Retired Captain, Interview)*

Clearly this provides a shaky foundation and background for beginning work as a seafarer. Further, it is noted that modification or alterations to the employment contracts are expected to suit monetary commercial or business considerations – sometimes for the seafarer but most often for private stakeholders:

"No, not all agency is like that but there are agencies who are like that. I have a lot of experience in contract signing. There are times they fill-up the name of the ship, I signed it but the POEA has not signed yet. I was called after 3 days to go back. They give me a copy of the contract and I noticed that the name of the ship is already different. Not the ship I wanted. I applied for the job because I wanted to be in the ship and they changed it to American President Lines. I don't like it there. Or in a cement carrier for a 4 months contract. When I went back it was a container ship for a 9 month contract. But I already signed it. They just put snowpake. Can that be? Contract was corrected by snowpake⁷⁷?" (Retired Captain, Interview)

7.5 Seafarers' experiences and perceptions of the contract

There are a number of potential contractual issues – including the duration of the contract, the status of seafarers as contractual employees, hours of work in relation to hours of rest, and work done on holidays. Violations – from the workers' perspective – related to these latter issues are discussed in what follows. A particular issues of which there are a number of examples is the modification to the contract particulars after signing. One concerns the change of the ship on which the seafarer is deployed resulting in a change in the seafarer's salary:

⁷⁷ Snowpake is a brand of correction fluid used for typing mistakes.

“Yes changes to the contract happen. Before you go, you will be transferred to another ship. Sometimes they change the salary. That is what hurts us. When we already signed the contract, they will change the salary. Sometimes they will tell us there is an emergency and we have to be transferred to another ship, but the salary is lower. But if we were already processed by the POEA, and there are changes to the contract approved by the POEA, then they would have to process a new one again and then let us sign it right?” (Captain, 1st Focus Group with officers)

Changes to the duration of the contract are also a concern for workers – the duration of contract is subject to alteration or change or extension while the ship is sailing. This is in consideration of the schedule of the ship and the availability of the crew who will replace the seafarer whose contract is expiring or expired:

“My contract was only for 6 months but it was extended, so I served 11 months in all. They extend for convenience because the needs of the port are considered by company. That is why they extend.” (Second Engineer, 4th Focus Group with Officers)

The violation occurs when the change to the contract is unilateral in the sense that it is only the company that decides the extension of the contract since the crew is on-board the ship. This is against Section 2.B of the POEA-SEC which requires the mutual consent of the parties for any extension of the contract. In practice, renewal documents are sent to the ship and this is how the crew is informed of the changes. Furthermore, there is a mechanism in the POEA-SEC that allows a three (3) month extension to provide for exigencies of the ship. Section 19.A of the POEA-SEC states:

“Section 19. Repatriation

- A. If the ship is outside the Philippines upon the expiration of the contract, the seafarer shall continue his service on

board until the ship's arrival at a convenient port and/or after arrival of the replacement crew provided that, in any case, the continuance of such service shall not exceed three months. The seafarer shall be entitled to earned wages and benefits as provided in his contract"

This is highlighted by the experience of a Chief Cook:

"Its for 9 months. Its minus one plus one. It can become 8 months or even ten months. It depends on the convenient port to the ship. For example, the next port is far, then it would take 11 months. You can only go down at that port." (Chief Cook, Interview)

However, the extension of the contract can become longer than the three (3) months period when a seafarer with similar experience and qualification are not available. This is true of officer positions like captain of chemical tankers or other technical positions like a Second Engineer.

Sometimes, the extension of contract duration has deleterious effects on the health and life of a seafarer. For example, the original contract of one seafarer on which I have data was extended from twenty-eight (28) days to sixty-five (65) days. The seafarer's spouse contended that her husband died because of continuous exposure to the noise, vibration and toxic gas in the engine of a drilling ship. The following account of the maritime lawyer, who handled the complaint of seafarer's spouse against her husband's employer for death compensation, suggests that the death would have been avoided if his contract had not been extended and the seafarer had sufficient rest at home from his tour of duty:

"I have a case involving a second engineer who worked 12 hours per day for 7 days a week, for 65 days onboard a drilling ship. The original contract period was continuous for 28 days, 11 hours a day, seven days a week. The employer did not replace him but unilaterally extended his service to 12 hours a day for 68 days. The employer did not get the

POEA approval prior to the extension despite the rule that any alteration, change or amendment of the contract shall have the prior approval of the POEA. Considering the type of ship, my client's husband has to be inside the engine room for 12 hours a day and was subjected to noise and vibration of the engine, the odour of toxic gas, change of temperature, lack of sufficient rest and food. That is why 5 days after arrival in Manila he complained of a headache. He was brought to the hospital, but after 5 days in the ICU and two operations, he died of heart attack, exactly 10 days after his repatriation. The surviving spouse filed a death claim with the NLRC who awarded the claimant \$50,000. But on appeal by the employers, the NLRC Commissioner reversed the NLRC Labour Arbiter reasoning that since the death occurred after the contract and after the repatriation of the deceased seafarer, the heirs are not entitled to benefits. (Maritime lawyer, Interview)

More often than not, the consent of the seafarer to the extension of the contract is more for monetary consideration and in order not to jeopardize the chances of future employment. There are times too when the seafarer wishes to refuse another contract extension, but is bound to continue his service on-board until the ship arrives at a convenient port or after arrival of the replacement crew. The unique nature of the seafarer's life also draws him to honour his commitment to continue with work in order not to jeopardize the operations of the ship.

Aside from the contract duration, there are other contract provisions like hours of work, and hours of rest which cannot be effectively enforced:

“For us, we work for 44 hours per week. This is regular. We have guaranteed overtime for 85 hours⁷⁸ which is already paid. Any excess to the 85 hours is subject to another payment depending on our contract how many hours we are entitled. So this means we do not have any rest at all. What I mean is, in a day, we can rest between 8 to 10 hours (per day) but during emergencies, we have to help. In our company our rest periods are not violated because we can... unlike before when we just work and work without sleep. This is where we distribute the hours so that all can rest. But this seldom happens especially during emergencies in cargo ships. It is really like that what the Captain said. In the engine room if there is a problem, we cannot let the day pass without working on it. We have to do it at once. It is like that. It is 24 hours’ work. It never ends.” (Third Engineer, 1st Focus Group with officers)

From the above account of the Third Engineer, the seafarers render 44 hours per week as their regular working hours and are paid guaranteed overtime for 85 hours per month. This does not include the number of hours of work rendered during emergencies as well as hours devoted to paper work arising from port state control inspections and statutory documentary requirements which add to their multiple duties and pressures on-board:

“Sometimes there’s an emergency like port state will suddenly arrive. There should be preparation. Because nowadays there is port state, and all kinds of inspections so we must be divided accordingly to deal with emergencies.” (Chief Mate, 1st Focus Group with officers)

⁷⁸ Section 11.B.2 of the POEA-SEC provides that “Guaranteed or fixed overtime – not less than thirty percent (30%) of the basic monthly salary of the seafarer. This fixed rate overtime shall include overtime work performed on Sundays and holidays but shall not exceed one hundred (105) hours a month.”

The Second Engineer made an important point about their rest hours being observed so that they will not feel fatigued which might affect their work performance. His experience is, however, different since they have to contend with emergencies and other consideration while at sea, hence sacrificing their rest periods:

“Although we live in our workplace, it is important to know for our own safety if the rest hours are still right so we can perform right. Before we join the work, we have to be fit for it, fit for the job we are supposed to do, that we are not feeling fatigued. But since in the ship an emergency can occur anytime, the rest period is not always followed. This is the first thing that gets violated.” (Second Engineer, 1st Focus Group with officers)

Hence, by the very nature of their shipboard life, seafarers are not able to maximize their rest hours because their living and working space are in the same place. Unlike land-based workers who can go back to the comfort of their homes after a working day, seafarers cannot.

What is outlined above is consistent with other research, which finds that excessively long hours gives insufficient recuperative rest – and contributes to high levels of fatigue (Smith et al. 2006). Certainly, excessive working hours is an acknowledged problem in the shipping industry (Smith et al. 2006), which is caused by increased frequency on port, reduced manning levels and other physical hazards:

“We have to respond to whatever is the demand of the operations. We have to respond to it. Otherwise, the ship gets delayed if the engine stops because we do not like to work or fix it even if there are spare parts.” (Captain, 1st Focus Group with officers)

The concern is to finish the job at all costs, even if rest periods or holidays are lost, to avoid the ship being delayed. This is best illustrated by the responsibilities of the Chief Cook and his on-board experience:

“It is really different when you are on land and at sea. In my thirteen years of experience, I do not have a holiday. I cannot afford not to cook because the officers and the crew have to eat even in holiday.” (Chief Cook, Interview)

This is not helped by the fact that the POEA-SEC’s provision on what is ‘reasonable rest period’ depends significantly on the master’s discretion’ in the same way that the hours of works is determined and prescribed by the Master (Section 10.A of the POEA-SEC) – the question of violation becomes ambiguous here. Some view this as a ‘give and take relationship’, as explained by a captain in an interview:

“You know it is a give and take relationship. There are times when you are pressured to do work but there are times when there are slack times. So it is give and take. You know what happens to some crew, they just like to receive and receive but when it comes to giving, they do not like to give. It will depend on how you explain it to them I guess. I say, now we are pressured but after this we will not have very much to do, you will be allowed to rest. On Monday you are on holiday. It is like that. We also give back what we take. Because if it is an operational requirement, you have to do that. In the ship, we have different Mondays.” (Captain, interview)

The definition of ‘reasonable rest period’ under the POEA-SEC depends on customary international practices and standards (Section 10.A of the POEA-SEC) which may be quite unclear. Hence, for an Able Seaman (AB), he is expected to have watch keeping aside from other duties around the clock. He explained what being an AB entails:

“Our difference with the ordinary seaman is we are the ones on duty at night. In the morning, we usually go with the ordinary seaman, four of them. But at night, we are still on duty. We divide the 24 hours into the three ABs. From 8 to 12, 12 to 4, and 4 to 8. We divide it. We should not

feel tired because we never run out of things to do every day. There is always something to be done. We have to look for it. We are never vacant. And then when we are close to the port, we are the ones who steer the ship.” (Able seaman, 3rd Focus group with ratings)

As previously mentioned, the potential for seafarers to be fatigued is raised because of factors unique to the maritime industry, but which are nevertheless mostly attributable to commercial pressures. The outcome is that seafarers suffer from poor quality of sleep, negative environmental factors, high job demands, and high stress levels, which can eventually lead to accidents at sea and contribute more generally to the detriment of the physical and mental health of the individual seafarer (Smith et al. 2006).

However, seafarers also commonly underreport or falsify their working hours/time sheet – it might be suggested to find favour as reliable and compliant employees:

“The rest hours are sometimes broken when you are on duty. There are 3 who are rotating. In a day, you have only 8 hours. So when you have open overtime, you have to be overtime for another 4 hours. And then after your overtime, that is the only time that you can rest. The maximum you work in a day is 14 hours and then 10 hours maximum rest period. But this seldom happens.” (Bosun, Second Focus Group with Ratings)

Work is continuous not only for the complement of the deck and engine departments but also for those in the steward department. A conversation with 2 Cabin Stewardesses (CS) who clarified their situation when asked if their hours of work are followed and if they are able to rest:

“Q: What about your hours of work, is it followed?”

CS 2: For us we have extra side duties. That becomes our overtime pay. In the cabin department, our working hours are between 8 to 4 and then an additional 2 hours every day. That’s because

we are already paid overtime pay in our contract so we have to render 2 hours overtime daily.

Q: For example in a week how many days are you on duty?

CS 1: Every day. There is no rest day. This is how it is in the housekeeping departments. I don't know how it is in other departments.

CS 2: Every day. The 2 hours additional duty is part of that. Every day we are on duty from 8 to 4. It is the side duty that can be changed, that there is rotation. It can be 4 to 6, 6 to 8, 8 to 10 or from 6 to 7:30 in the morning." (Conversation with Cabin Stewardess 1 and 2, Second Focus Group with Ratings)

The cabin stewardess in the Steward Department explained that they give up an additional two hours for 'extra side duties' on top of their regular working hours. The 'attractive' compensation package of offering guaranteed overtime payment in advance may also explain the circumvention of the hours of rest provision, the payment of double salary in case of work undertaken on holidays, and the payment of overtime pay if work is rendered beyond the regular working hours. Since the seafarers receive the guaranteed overtime pay in advance, they are obliged to perform the job. The consequence for this is the recognized underreporting or falsifying of working hour time sheet in order to be compliant with the mandatory rest periods. This is consistent with the report of Smith et al. (2006) who said that those who were found to report higher fatigue also under-record their working hours. Illegal practices such as these were considered normal, but are clear violations that carry health and safety implications.

The violation of rest periods and work hours are to the benefit of the shipowners and on occasion where additional overtime is available, the seafarer may receive pecuniary benefits (as well as enhanced reputation as a reliable worker). There are, moreover, some related provisions in the contract that the seafarers find ineffective. A specific example is the declaration of holidays in the

Philippines. Section 11.C of the POEA-SEC enumerates twelve days that will be considered as holidays at sea and in port, but these are not often observed:

"I read the special holidays. But for my job as chiek cook, I do not have a holiday. I cannot afford not to cook because the officers and the crew have to eat even in holiday." (Chief Cook)

In retrospect, the holidays specified in the list are Philippine holidays. It further provides that "any hours of work or duty including hours of watchkeeping performed by the seafarer on designated rest days and holidays shall be paid rest day or holiday pay." Hence, as correctly observed by an Able Seaman, those who work in the Philippines are entitled to double pay when they work during these times but this is not the case with seafarers. As agreed upon by the Cabin Stewardess, the times they work during the specified holidays are part of their guaranteed overtime in their contract.

Such accounts as detailed above are examples of the modifications or changes to the contract, which arguably amount to its violation. There are also instances of violation where seafarers do not obtain their contractual entitlements. At other times, workers are not able to assert their rights under the contract because they said they are not aware of the provisions of the contract (see above for the discussion on lack of time to read and understand the contract) which may result in its provisions not being fully implemented:

"I was hospitalized for 14 days. What I got was only for SSS benefits, only the sickness allowance. What happened was, when I went to the office, they said I cannot get anything. I accepted that since I was very new. I do not know." (Chief Engineer, First Focus Group of Officers)

If the cause of the accident is work related, the seafarer should continue to receive his basic salary for one-hundred and twenty days (120) days until he gets well, plus receive additional compensation from the Social Security System (SSS). On top of the benefits mentioned, the seafarers should not forget to

make a claim from the Employees Compensation Commission (ECC). The latter benefits are usually forgotten because it is not reflected in their pay slip. The above interview extract demonstrates the way a seafarer might lose out on certain benefits because they are ignorant of them and unable to assert their rights.

Further, one of the benefits under the contract is what is termed as the 'compassionate visit'. This is the visit of a member of their family to seafarers who are hospitalized for more than seven (7) days. In this case, the company will shoulder the airfare expenses of the family member of the seafarer:

"We are entitled to be visited by one family member in case we are hospitalized. Imagine who will take care of us when we are sick. So we need that. Most of the time when we are sick, we are left in the hospital and the ship continues on its voyage. Sometimes only the agent will visit us." (Captain, First Focus Group with officers)

However, some benefits come with restrictions. A Second Engineer who was injured by electrical burns while he was a cadet shared his experience. There was no compassionate visit privilege at the time so no one took care of him during his confinement at the hospital:

"They are implementing that only now. Before, I had an accident on-board the ship. My burns cannot be cured by medicines alone. I was hospitalized for 5 days and the ship had to leave me in the hospital. No one was taking care of me during those five days. The only one who was looking out for me was the agent but he doesn't even go there regularly. And then when I was allowed to go home, that is the only time they approved my leave. After I was sent home, I was under medication for 3 more weeks." (Second Engineer, First Focus Group with officers)

Finally, and related, there are also parts of the contract that the seafarers find overly complicated, and which create confusion, and which are implemented

differently by different companies. An example of this is the interpretation or definition of 'point of hire.' Section 2.A of the POEA-SEC provides:

“Section 2. Commencement/Duration of Contract

- A. The employment contract between the employer and the seafarer shall commence upon actual departure of the seafarer from the Philippine airport or seaport in the point of hire and with a POEA-approved contract. It shall be effective until the seafarer’s date of arrival at the point of hire upon termination of his employment pursuant to Section 18 of this Contract.”

This is important for the purpose of determining the commencement of the employment contract between the employer and the seafarer which is in turn important for the purpose of determining the salary to be given at certain periods. As one seafarer shared:

“I cannot particularly understand this complicated provision about ‘point of hire’. Because this is connected to how much salary we get and when we receive it. We usually get just our basic salary from the point of hire. But for other companies, they can give all your salary and allowances. I do not remember the exact section but we contested this already. We should receive our full salary even if we are still in transit.”
(Chief Engineer, First Focus Group of Officers)

The statement of the Chief Engineer might be interpreted in one of the two ways: it suggests that companies are either confused about the definition of 'point of hire' or choose to interpret it in particular ways (in order to delay payment). Whatever the case might be, the outcome is that there are difference in interpretation and implementation, which seafarers find confusing – as one Captain comments:

“From other companies there is no problem with that. No problem at all. When they compute, it is point of hire to point of hire. But there are some principals who want to save \$50 more.” (Captain, First Focus Group with Officers)

Such provisions require clarity. Otherwise, it becomes points of tension and protest. As might be expected, the seafarers want to be reimbursed the expenses they incurred while in transit and thus paid, e.g. accommodation expenses and considered as employees while aboard a flight to or from port. Perceived violations of the contract become much more apparent when related to remuneration packages – given that the latter, as discussed at length, provide the main motivation for those embarking on a seafaring career. Elaboration of the contract term is thus important.

The principal point of this section is that the monetary, commercial or business interest considerations of the major stakeholders in the seafaring industry account for the poor enforcement of the POEA-SEC provisions. The latter results in deleterious effects to the health and welfare (including financial welfare) of the seafarers, as indicated above, and some deeper social implications:

“Actually there is a twist. When I had been a long time in the ship, I realized that I cannot be a seafarer forever. Because this is more on a personal side. I almost did not see my father before. I don’t want that experience to happen to my child.. not see each other forever. You see I only have one child. Perhaps I wanted us to be closer now because I did not have a close relationship with my father. Maybe that is why I want to change the trend. I retired from seafaring. My father was a seafarer for fifty (50) years even when my mother does not like him to be a seafarer anymore. But when he comes to the house, he becomes sickly because his environment is the sea. He cannot breathe because of the pollution here. You know that’s it, he cannot sleep without the noise. I also felt that slowly that is why I thought its about time I stop before it

becomes worse. You see he cannot sleep in our house. (Retired Captain, Interview)

The examples cited in this section relate mostly to the seafarer's experience and, among other things, changes made to the duration of contract, and poor observance of hours of work and rest periods, which as discussed have implications on their welfare as seafarers. However, in more general terms, what is clear from these specific examples, as well as other violations and weaknesses of the contract evidence here, is the shortcoming of the POEA-SEC in one of its principal aims, i.e. to offer protection to Philippine citizens in the exercise of their labour when working beyond the jurisdiction of the Philippines as a sovereign state. More worryingly, the evidence suggests that the POEA-SEC embodies the state's complicity – within and beyond its sovereign borders – what the aims of (often foreign) capital (shipowners), at the expense of labour (i.e., Philippine citizens).

7.6 Summary and conclusion

The starting point for this research is the seafarers' perceptions of the enforcement and implementation of the POEA-SEC, as an instrument for protecting their health, safety and well-being. Insofar as addressing the main question of how well the terms and conditions of the standard employment contract are enforced from the experience of the seafarers, there are a number of notable points.

First, this chapter draws attention to the seafarers' own account of their motivations for being seafarers, despite the known disadvantages of being at sea. It highlights the pre-deployment process towards the signing of the contract that a seafarer has to go through prior to boarding the ship and outlines some of the issues or problems confronting the seafarers in this respect. As their stories are told, the efficacy or weakness of the POEA-SEC terms and conditions begin to become apparent. The majority of seafarers are from poor backgrounds and

forced to make their way from the provinces to the city to improve their families' lives. They are repeatedly told not to make any complaints, to be low-key, and these constant reminders indoctrinate the seafarer to be passive, docile, obedient workers, grateful to be given the job that other unemployed workers aspire to. With such a frame of mind, they are ready to do the bidding of their 'Masters'.

Along with the POEA-SEC, the PDOS (as discussed in previous chapters) is the mechanism used by the government to prepare the seafarer to a life on-board a ship. That is, to live, deal with and interact with various Masters. It echoes the rigid military discipline observed by seafarer cadets while they are studying in maritime training schools. It perpetuates the idea that seafarers have to be submissive subjects to their Masters: the captains of the ship, seafarer unions, government regulators and crewing agencies. These various entities, both present and absent in the ship, impose their power, control and discipline over the seafarer's employment and shipboard life. The intersection and interaction of the network of government agencies, labour recruiters, labour organizations, and private corporations operate both domestically and internationally to ensure the continued mobilization of the Filipino seafarers in the global labour market.

With the POEA-SEC providing the guiding principles, this research reveals the machinations of its enforcement. In my reading of the contract provisions as a maritime lawyer, in relation to the experience of the seafarers as documented in my research, I view many of the provisions (mainly those designed to protect seafarers as fellow citizens) and their enforcement as really quite superficial. Certainly, it is not proactive in the sense of protection.

Enforcement comes in the form of cases filed by disgruntled seafarers when he or she is not satisfied with the compensatory benefits he receives.

The provision of the contract also makes exemptions to set rules. For example, the extension of the contract admits certain exemptions in view of the nature of the seafaring industry. Hence, it is shown that even when the contract is in

force, the terms and conditions of the contract maybe modified or altered to suit commercial or business considerations of some stakeholders. While it is claimed that seafarers are more concerned with salaries and pecuniary benefits over other terms and conditions, it must be realized that the monetary rewards come with tangible benefits e.g. the alleviation of poverty and provision of basic necessities. The seafarer fulfils, moreover, his/her role of being '*mga bagong bayani*' or modern day heroes by the country because of the expectation that they will invest back to their country through the remittance of a substantial portion of their salary. This is a particularly prominent feature and the only efficiently enforced provision of the employment contract: it supports government-set strategies to capture the remittance of the workers and is a critical source of state income.

Chapter 8

TRANSNATIONAL ECONOMIC MIGRATION BUREAUCRACY (TEMB)

8.1 Introduction

Despite elaborate institutional mechanisms of governance, there is insufficient protection offered to seafarers in the way that the POEA-SEC is being implemented. This chapter shows that the terms of the contract alone are not sufficient to address the problems associated with vulnerability of Filipino seafarers under their present working conditions. It demonstrates that the contractual instrument is more properly intended to ensure the continued mobilization of Filipino migrant labour workers in the overseas labour market and that the POEA-SEC is essentially an economic arrangement, fundamentally constructed around facilitating the capture of the financial remittances of the workers involved.

The discussion centres on three interrelated themes, namely: the labour export policy of the government, the symbolic nature of the contract, and how the contract is used as an instrument of control.

8.1.1 Transnational economic migration bureaucracy (TEMB)

In this section, my intention is to focus on how the POEA-SEC functions as a mechanism for supporting the labour export policy of the Philippine government. In this labour export policy, economic consideration takes precedence over those claiming to protect the rights of Filipino citizen to fair and safe work. It claims to balance this policy with the protection of Filipino citizens employed in

the maritime sectors through the provisions of the POEA-SEC – a regulatory intervention in the form of a standardized short-term temporary contract required by the state to protect workers and at the same time promote private investments.

The programme of the government to implement a deliberate overseas employment policy is reinforced by a legal framework in which the formation of a transnational migration bureaucracy is both formally and informally institutionalised (Rodriguez 2010). In chapter 3, I discussed the formal aspect through the legal framework that supports this policy through the Philippine Labour Code of 1974⁷⁹ and showed how this codification of labour laws and the parallel reorganization of the government institutions helped support the state administration of the overseas employment of seafarers. To this end, the POEA and other agencies have developed a particular history (based in legislation) aimed at officially facilitating the overseas employment of Filipino workers (Tyner 2010).

Although this overseas labour employment function is vested in the POEA as a specialised governmental entity, it requires cooperation from other state administrative institutions within the Philippines and overseas, along with that of private institutions such as recruitment agencies and banking or financial institutions in order to succeed. As will be shown in this chapter, the activities of the crewing agencies show how they augment government capacity to recruit and deploy seafarers.

⁷⁹ The Philippine Labour Code of 1974 codifies all the labour laws of the Philippines. This law created the Overseas Employment Development Board (OEDB) and the National Seaman's Board (NSB) which was subsequently merged to form the Philippine Overseas Employment Administration (POEA). This means that the creation of the POEA to simultaneously act as a government-run employment agency and regulator of private recruitment agencies would ensure that before the private recruitment agencies can recruit and before the workers can be deployed for work, they have to pass through the licensing and documentation scheme of the POEA.

The experiences of Filipino seafarers with the terms and conditions of the POEA-SEC as they go through the labour employment process, as outlined and discussed in Chapters 6 and 7, also make clear the participation of other groups of stakeholders. This includes the crewing agencies, the family, educational institutions, and the media which together with other components of the TEMB work as part of the informal component of the system that augments the authority of the government as it promotes a culture of migration - shown here in Figure 8.1. The family and educational institutions form part of the TEMB. The former providing the rationale (wages to support a family) for people (mostly men) seeking seafarer employment and the latter forming a key part of seafarers' engagement in the industry (see section 7.2 in Chapter 7 for a fuller explanation). The help of media to invent rhetoric that proclaims seafarers and all overseas workers as "*mga bagong bayani*" (or modern day heroes/heroines) ensures the participation of the labour force in the labour employment process, evoking a sense of national pride to the overseas workers for being a substantial part of nation-building. Such values and ideologies focusing on identity and nationalism are used as tools to maintain control and even discipline the workforce (see McKay 2007; Ruggunan 2011).

The formal and informal components together form a complex relationship with the structures of recruitment and contribute towards the development of a '*transnational economic migration bureaucracy*', which reinforces the role of the Philippines as a major labour-sending country (see Figure 3.1 in Chapter 3).

Private labour recruitment agencies or crewing agencies are part of the institutional framework and bureaucracy of recruitment, documentation, mobilisation and transport of workers. In the recruitment, processing and deployment of seafarers, as shown in subsection 6.2 in Chapter 6, crewing agents act as intermediaries between the ship-owners who are based abroad and the seafarers in the Philippines. They therefore act as intermediaries linking together the labour-sending state with the labour-receiving state (the latter in

the form of the maritime administration of the ships on which their work are registered).

In Section 2.3 of Chapter 2, it was noted that the increase in the number of accredited crewing agencies is significant to explain the facilitation of the recruitment and employment of seafarers. In the case study of Tanglaw-Diwa, its organisation into multiple departments to handle various levels of maritime services reflects the internationalization of the company to provide service at a transnational scale. It has more than thirty (30) crewing agencies under its umbrella to support the crewing needs of various foreign principals (employing 500 seafarers for one principal alone). This demonstrates the large scale recruitment by Tanglaw-Diwa and its crewing agencies (Section 6.2 of Chapter 6). In Chapter 6, I noted the impact of crewing agencies, and the extent to which they have become active agents in recruiting competent seafarers to answer to the requirements of shipowners, mostly under short-term contracts. The continuous and constant interaction and coordination between the shipowners and crewing managers on the preferred attributes and eligibility of the seafarers for certain specified positions show how the demand for Filipino seafarers is supplied.

The development of the bureaucratic structures of recruitment link together the state, employers/crewing agencies, and the workers involved. According to a government official (C) interviewed, the state's role includes monitoring the labour needs of the market and negotiating for labour market shares aside from the regulation and licensing of the activities of the recruitment agencies. Through these activities, the state brings together private foreign employers and Philippine-based recruitment agencies enabling them to draft manning agreements or labour contracts. It thus ensures that citizens go through official channels and in its own terms reduces the possible exploitation of workers by illegal recruiters or traffickers.

Hence, as mentioned earlier, central to the policy of promoting and facilitating overseas employment is the prescription of certain safeguards for the protection of the overseas workers. This point was emphasized by a POEA official who asserted that while it might advocate employment facilitation, the main reason for the existence of the POEA was the regulation of the protection of seafarers' welfare. This indicates that the state intends to maintain a certain level of control within the labour supply arrangements⁸⁰. The POEA official highlighted the efforts of the Philippine government to comply with international laws and conventions in order to ensure its good reputation – on which its ability to supply labour to the world depends⁸¹. But this is only relevant if the Philippine state operationalises the standards found in these conventions in practice. As I have demonstrated in my findings, and will discuss at greater length later in this chapter using the experience of the seafarers in this study, this is far from always the case.

This is itself a process that has involved recent changes in the structure of the maritime administration, and the development of a quality standards system and has intensified implementation measures particularly in certification activities, and monitoring of maritime education and training institutions⁸² (all of which has previously been found wanting). While these reforms arguably act to strengthen

80 Hence, other different departments of the POEA reveals it's reach in all aspects of labour employment and deployment of workers abroad spanning the lifecycle of a seafarers' employment which extends not only to the processing of employment contracts but also to:

- a. Legal assistance to cases arising from the employer-employee relationship,
- b. Assistance to victims of illegal recruitment and other violation of recruitment regulations, and,
- c. Re-integration schemes for workers going back to the Philippines.

81 Among others, it includes the Maritime Labour Convention (MLC) of 2006 which ensures the right of seafarers to decent conditions of work. As a major provider of seafarers in the labour market, the Philippine state likewise observes its commitment to the international community to provide duly trained, licensed and certificated seafarers by giving full and complete effect to the requirements of the 1978 International Convention on Standards of Training, certification and Watchkeeping for Seafarers, as amended MARINA. 2014. RA 10635 empowers MARINA as the single maritime administration on STCW. In: Authority, M.I. ed. Philippines: MARINA.

⁸² The structural change will do away with dealing with 6 separate agencies in coordinating and aligning policies thereby eliminating layers of bureaucracy. It also reduces the time that the seafarers spend travelling between the agencies and standing in queues. (MARINA, February 2014 – Updates on the draft EMSA report).

the bureaucracy serving transnational economic migration, there is to date little evidence they address problems experienced by workers in relation to the implementation and operation of the POEA-SEC. This is the context under which the workers engage with their work and it is the context that produces poor working conditions despite the best efforts of the state and trade unions (Amante 2004a; Miner 2011; Ruggunan 2011; Carmichael and Herod 2012; Alcid n.d.)⁸³.

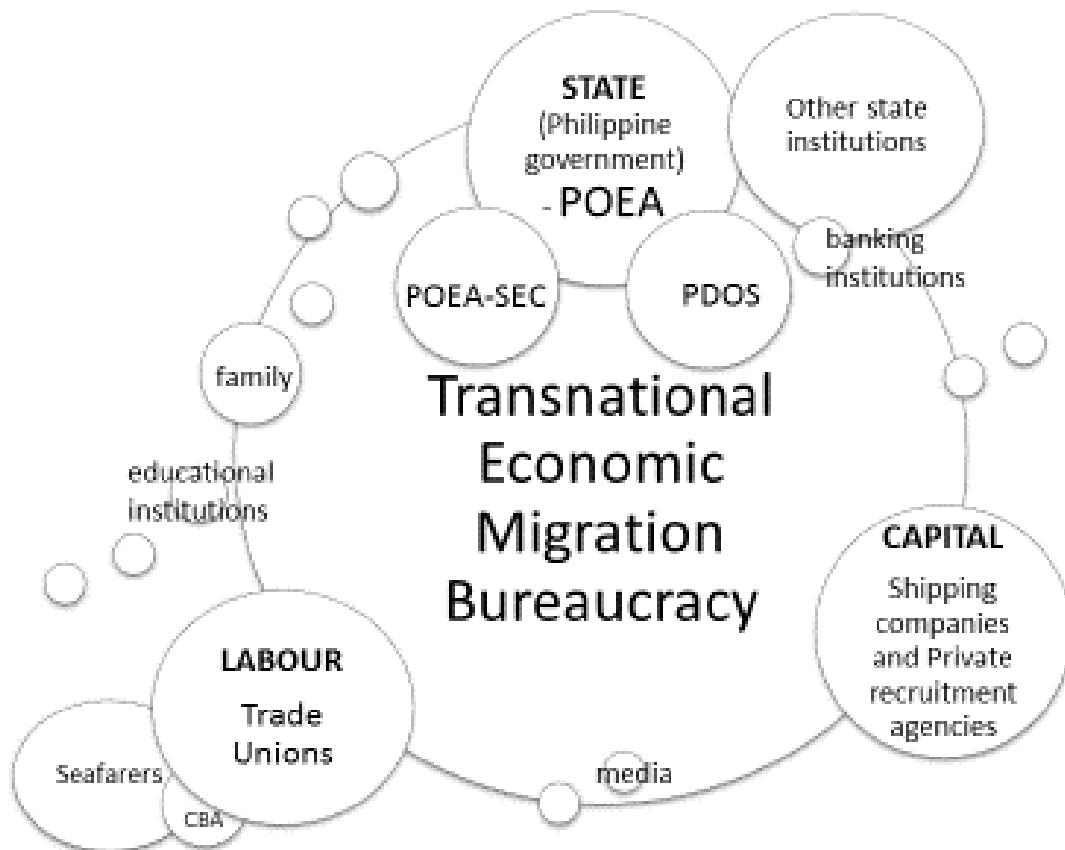


Figure 8.1 Transnational economic migration bureaucracy (Source: Researcher)

⁸³ Alcid discussed the actual cooperation and strategy among non-governmental stakeholders in response to the situation of OFWs– migrants’ organizations, NGOs and labour unions, including seafarer trade unions in the Philippines such as MARINO, initially set up to protect rights of blacklisted seafarers, and the service provided by AMOSUP, including free hospitalization, treatment and medicine at the Seamen’s hospital for qualified members and dependents.

The importance of the crewing agencies as a pro-active partner of the state cannot be underestimated. Most are concerned with ensuring a steady stream of qualified seafarers to be deployed in overseas ships; some crewing managers develop a long-term ‘career pathing’ system involving the shipping companies with the financing of the extensive education and training of seafarer cadets to sustain the need of the principals abroad. Supposedly attractive compensation packages, plus additional schemes or benefits such as those outlined by the General Manager of *Pagasa Shipping* (discussed in Section 6.3 of Chapter 6) are meant to entice senior officers to continue working at sea and encourage young people to be seafarers.

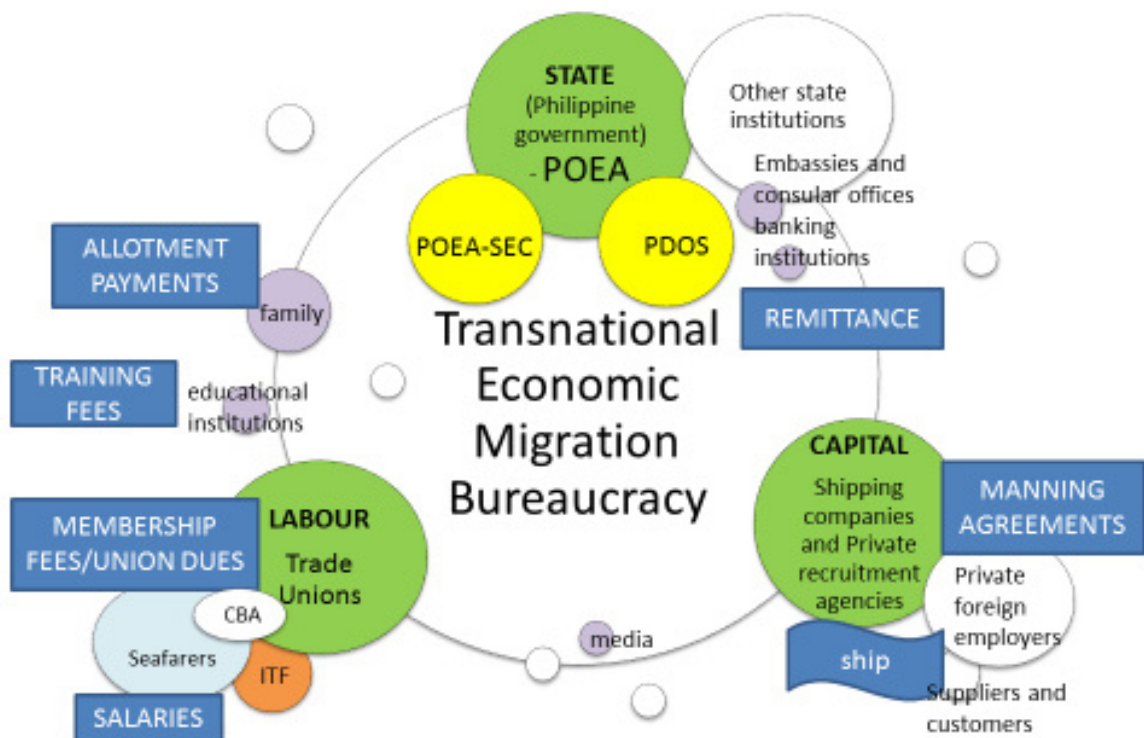


Figure 8.2 Symbolic nature of the contract – as a means of economic survival (Source: Researcher)

The inter-workings and coordination between these major actors points to a pervasive recruitment system that extends beyond the TEMB and serves the income generation needs of the state. The expanded version of the TEMB,

shown in Figure 8.2, with additional institutions, functionally links the tripartite groups of the government and the employers (in the more developed economies) to prospective migrants in less developed countries like the Philippines. What become obvious are the economic benefits that emanate from each of the component parts of the migration bureaucracy. From Figure 8.2 it is shown that the seafarers derive benefit from their salaries which they send to their families in the form of remittance or allotment payments. Educational institutions derive training fees from this system. Labour or maritime trade unions derive benefit through the membership fees and union dues they receive through the employment of seafarers. Shipping companies, private recruitment agencies and private foreign employers derive profits from the manning agreements they execute between each other from the employment of the seafarers. And of course, the state benefits from the remittance payments and through the employment of otherwise unemployed or underemployed citizens.

As Figure 8.2 illustrates, and as discussed in the next sub-section, it would appear that the provision of minimum terms and conditions in the POEA-SEC is an important element of the institutionalisation of the transnational economic migration bureaucracy within a wider institutional framework, which propagates this labour export policy and supports the country's position as a major labour supplier.

8.1.2 Provision of minimum terms and conditions

In this section, it is argued that the provision of minimum terms and conditions in the POEA-SEC represents a formal measure that not only promotes Filipino overseas labour employment, but also institutionalizes Filipino seafarers as cheap labour. This is discussed by McKay (2007) in relation to 'labour niche' which argues that Filipino seafarers are promoted by the state to specifically fill lower occupational positions.

The setting by the POEA-SEC of minimum terms and conditions which are acceptable to the Philippine government for the employment of its seafarer

citizens indicates a response to the global market's demand for developing nations' cheap labour (Gautie and Schmitt 2010; Terry 2011; Sampson 2012). As described in Chapter 7, the adoption of a standard employment contract (POEA-SEC) which is based on short-term contractual relationship, affords shipping companies the opportunity to avail themselves of the services of temporary, mobile and flexible workers. As the experiences described by interviewees made clear, they can be summoned as contractual workers for work within finite periods of time, and return home after the termination of their employment. As a result of these contingent employment arrangements, domestic labour protection legislation which had been established to protect the rights of workers to security of tenure and to receive competitive rates of employment is undermined. As transnational companies exploit developing nations for cheap labour, this further indicates the state's intention to remove obstacles and encourage greater flexibility for its overseas labour employment programme (Terry 2011).

The government's continuous prescription of the POEA-SEC encourages short-term employment, usually for single voyage contract, and therefore forfeits other options. This means that the Labour Code provision, which makes the workers regular or permanent employees after a six-month probation period does not apply to seafarers. The deleterious effects of precarious employment had been discussed in various literatures (See Allen and Henry 1997; Beck 2000; Johnstone 2003; Connelly and Gallagher 2004). As distinguished from workers in the other industries, the continuous employment of a worker in the land-based industry creates an assumption that the worker is necessary for the business of the company. This is not the case for the seafarers, however.

The POEA-SEC, with its short-term and temporary employment provision justifies a situation where the employers can let go of the seafarers after their contract ends. This makes seafarers vulnerable, easily replaceable, dispensable and leads to insecurity. The outcome is pressure on seafarers to

accept the terms and conditions that are offered to them by the crewing agencies.

With security of tenure absent from the equation, the workers' main concern is to be continuously employed. This makes them reluctant to complain about poor working conditions or, being on-board an unseaworthy ship.

The fear of being dismissed from service makes the seafarers unwilling to question practices that explicitly contravene their workplace rights and conditions as well as maritime safety standards that could potentially endanger their lives and cause damage to the environment. This confirms the point of Papastergiadis (2000) who argues that these forms of labour arrangement erodes security of tenure. In addition, having a fixed, short-term contract in the shipping industry shows that it is a form of control whereby seafarers feel obliged to work for the shipowner despite the dangerous workplace conditions.

Unpredictable temporary work arrangements are not unique to Filipino seafarers – both within and outside of seafaring (Allen and Henry 1997; Mayhew et al. 1997; Quinlan et al. 2001). In comparison with other countries, Thomas et al. (2003, p. 61 citing SIRC 1999) found that the contract lengths of seafarers from India, China and the United Kingdom vary according to nationality and rank, and reflect company employment policies, types of trade and differential labour market values. Similar to the contractualisation of labour in the cleaning, catering and security industries studied by Allen and Henry (1997) temporary work produces a situation in which many workers now face employment on a more precarious, contract labour basis in respect of their hours, benefits and entitlements. Mayhew et al. (1997) also discuss the occupational health and safety consequences of sub-contracting and self-employment for four industry case studies⁸⁴ stating that injury and illness patterns are predictable to job task exposures which are exacerbated by the

⁸⁴ Child workers, hospitality workers, transport workers and building workers

intensification of their labour following economic pressures and survival prerogatives.

Such vulnerabilities reflect the prescription of minimum requirements in the POEA-SEC, which undermines the rights of workers to receive a competitive rate of compensation. An example would be the setting up of rates of income as shown in Table 2.1 in Chapter 2, which shows the salary received by Filipinos being lower than those received by seafarers in developed countries and the ITF-TCC (International Transport Workers' Federation Total Crew Cost) Agreement Prescribed Wages. Under this arrangement, rather than being confined to hiring more expensive seafarers from their home countries, or other traditional maritime nations, the principals are given the option to hire cheaper seafarers from developing countries like the Philippines (Ruggunan 2011).

Moreover, the mandatory obligation on the part of the employers to pay their counterpart contribution for retirement pension benefits is waived. This arrangement complements the 'flagging out' strategy as shipowners operate within flag state regimes that are less regulated or policed. As a consequence, contractual workers are deprived of their right to pension benefits, which are enjoyed by those in regular or permanent positions.

This type of contingent and atypical employment is not unique to the seafaring industry but can be observed in policies of labour contractualisation increasingly used in a range of land-based sector in the Philippines (and elsewhere) such as construction, manufacturing, administrative and support services, information and communications (Bernabe et al. 2014b); or in childcare, hospitality, transport and building work (Mayhew et al. 1997). Similar to the experience of the supermarket salesclerks and fast-food chain workers discussed by Bernabe et al., (2014) or cleaning, catering and security industries studied by Allen and Henry (1997), these practices contribute to job insecurity because this type of work arrangement is unprotected by law and allows for the circumvention of statutory rights of workers to social benefits. This means that employers who

hire temporary or contractual employees are not obliged to pay government-mandated benefits that are otherwise required for regular or permanent employees which make them cheaper⁸⁵. This indicates protection of the private sector's interest and a neo-liberal approach to economic growth entailing the relaxation of the Philippines' employment regulation (Tyner 2010; Terry 2011).

Trade union support is ineffective and does little to improve the seafarer's situation on the ship (Alcid n.d.). In fact, AMOSUP adopted salary rates in the POEA-SEC which are lower than that prescribed under the ITF-TCC agreement. This indicates that trade unions are complicit with the employers in setting minimum conditions and thus compound the seafarers' helplessness by operating as a "service organization" (Nichols and Cam 2005) and a component of the transnational economic migration bureaucracy. It is interesting to note that despite the presence of Philippine unions and other seafarer groups in the tripartite body that revised and re-negotiated the POEA-SEC, the finished product of the contract (POEA-SEC, 2010) still provides for minimum terms and conditions which promote contingent work. It is difficult to explain this finding, but it might be related to several factors.

A possible explanation is the choice confronting seafarer unions of fighting for higher conditions of employment, but eventually losing employment to other labour-supplying countries because of the cost component of statutory compliance to improve seafarer welfare. This comes with the potential threat of foreign employers pulling out from the Philippines, which the unions acknowledge as prejudicial to the interest of majority of their members. Another possible explanation from the workers themselves is that they are not strongly organised which is likewise supported by literature (See Carmichael and Herod 2012). The seafarers explain their lack of solidarity (and ability to 'organise') by the different work patterns and different workstations on-board the ship, the

⁸⁵ In the Philippines, these are Social Security System (SSS) contribution payments, Philippine Health Insurance Corporation (PHILHEALTH) contributions, Employees' Compensation Commission (ECC) and Home Development Mutual Fund (HMDF) contribution payments.

presence of multicultural crew, and the reduction of manning requirements. Understandably, establishing work relationships, let alone union camaraderie, is difficult under these circumstances (see inter alia Carter 2000; Heery and Simms 2007).

The next section will provide an account of the experience of the seafarers and the inadequacies of the POEA-SEC which only provides paper thin protection for seafarers.

8.2 Symbolic nature of the contract

The implication of what has been discussed above is that for the regulators or policy makers, the contract becomes the symbol for propagating the export labour policy of the government. Essentially, what I have been discussing and evidencing is the apparent weakness of the POEA-SEC to address these problems during the labour employment process. In what follows, I extend this analysis and develop a discussion more focused on the seafarers' experiences of signing the contract – and thus the seafarers' capacity for questioning the (poor) terms and conditions – and their actual employment experience.

Seafarers failure to scrutinise the POEA-SEC (and its addendum) is due to the length of the terms and conditions and the limited time the seafarers have to read the contract carefully during the signing with the crewing managers. This is exacerbated by the accelerated processing and documentation of the seafarers for deployment undertaken by the crewing agencies

This accelerated practice of the crewing managers has been recognised previously by Chapman (1992) - seafarers reported that their experience of the signing process was usually rushed, involved a lot of documentation that required their attention, and it was accompanied by a warning from the crewing agents that they could not complain to their unions about their company practices.

The extent to which employees might scrutinise their contract and, indeed, understand fully its provisions is open to question. What is clearer, however, is that the contract signing process is one-step removed from engagement with the official authorities. The signing of the POEA-SEC reveals a lack of interaction or interface between the POEA-government regulators and the seafarer during the processing of the POEA-SEC.

Of further significance is the fear of repercussions resulting from speaking to government regulators. Seafarers expressed fear about talking with government officials for fear of reprisals, jeopardising their job or future income - putting their companies in bad light. Similar observations are noted by ICONS (2000) in their discussion of crewing agencies and the marginalising of 'difficult' seafarers.

Indeed, seafarers complaining to regulators may well find themselves 'blacklisted', with lists circulated by crewing agencies to identify troublesome crew members. Further anecdotal evidence from the seafarers and crewing managers also reveal that some seafarers on stand-by at *Luneta* Park might have been blacklisted by their employers or placed in the POEA 'watchlist', for one reason or another, and hence cannot apply directly at crewing agency offices.

This blacklisting is, of course, not something that is restricted to seafaring. In the United Kingdom, for example, Druker and White (2013) discussed the 'secret blacklisting' of union activists in the construction industry operated by an organization called the Consulting Association. This association held information on a range of people, including trade union members and those who had raised health and safety concerns on sites (BBC 2013). Similar practices within seafaring demonstrate the limited protection received by the seafarers under the POEA-SEC.

The powerlessness of workers extends to the lack of representation from trade unions during the pre-deployment and lack of representation when signing the contract from their personal legal counsel. Seafarers are not represented during

the signing process and only confer and interact with the crewing managers who have the institutional and legal backing of their company. When the seafarers sign the contract, the assumption is that they rationally decide to offer their labour for a fee with a full understanding of the 40-page contract (Terry 2009). With no alternative interaction or interface with their counsel or any government regulator, it is assumed that the seafarer accepts the risks in order to be employed. Terry's observations add weight to an overarching contention of this research – that the only real choice for the seafarer, when confronted with the lengthy terms and conditions of employment, is whether to work or not.

With this situation, the seafarer unions have a major role to play in rethinking their support and representation of the seafarers not only during the negotiation of the terms and conditions of the POEA-SEC but in all stages of the seafarers' employment. For effective representation in the chemicals and construction industries, Walters (2006) propose a modification on traditional notions of representation to fit emerging work scenarios and development of new alliances to extend representation to hard-to-reach groups of workers.

The combination of these findings provides support for the premise that the processing and approval of the POEA-SEC is a mere mechanical act. The seafarers seemingly accept the terms and conditions of the POEA-SEC but what they really accept is the powerlessness of their position to do anything about them. This suggests that the Maritime Labour Convention (MLC 2006) provision which mandates that seafarers must be given enough time to read the contract, be informed of its provisions, ask questions about the terms of their employment and be updated about new policies of the government or possible modifications to the contract terms is not complied with.

8.2.1 Contrast between contract terms and seafarer experience

The particular focus of this sub-section is the undermining of the apparent protections provided to seafarers within the POEA-SEC. Specifically, there are

protections on contract duration, hours of work, rest periods or work done during holiday periods. What is discussed is evidenced from an illustration of the argument that the POEA-SEC is merely symbolic of the protections it is meant to afford.

The POEA-SEC can be modified and altered unilaterally by the company. A good example is the changing of the ship name, which can lower the seafarer's salary as agreed in the original contract.

The unique nature of ship operations and seafaring lends itself to particular types of contract modification. The POEA-SEC provides a mechanism which allows for the extension of the contract in view of the unpredictability of their work schedules. Workers thus find themselves working under a contract they have not read or might have been changed without their agreement. Because of the on-board processing available in the POEA-SEC, seafarers could be (and indeed have been) required to continue with their service on-board until the ship arrives at a convenient port and/or after the arrival of the replacement crew. Some seafarers experience an extension of their contract because of the difficulty of finding a suitable replacement with similar experience and qualifications.

Two significant issues relate directly to the seafarers' experience of contract and their well-being. The first follows from the above and concerns fatigue experienced by the seafarers. Certain provisions of the POEA-SEC on sufficient or reasonable rest periods are routinely contravened at sea because of the nature of work in shipping (see Kahveci and Nichols 2006). The second is the gap between the 'compensation system' which was promised to the workers and what is actually delivered. There is an 'in-built or systemic harm factor' within the compensation system experienced by the seafarers; and one example -the difficulty of identifying the shipowner – is used here to illustrate this argument.

Intensification of work and fatigue

The seafarer participants of this study reported working incredibly long hours; suffering from fatigue; being overworked and stressed; and suffering from anxiety.

Excessive working hours are an acknowledged problem in the shipping industry (See Smith et al. 2006) and the very nature of shipboard life allows a combination of many conditions which are unique to the marine environment which contribute to fatigue, e.g. reduced manning levels, successive port of calls, adverse weather conditions, and high levels of traffic (Smith et al. 2006). All of this results in broken sleep patterns or patterns of long working hours without days off (McKay and Wright 2007). This not only affects the health and well-being while on-board the ship, but can also potentially affect the safety of the crew and indeed the ship itself.

On board, crew members have to respond quickly to the demands of the operations of the ship in order to prevent delays and stoppage of the ship. These demands on the operations of the ship are imposed by the ship management company, ship operators or the charterers (who are known to intervene on the operations of the ship and the ship itself when they want to protect their cargoes or they want their cargoes delivered quickly) (Walters et al. 2011a; Sampson et al. 2014). The need to respond to the demands of shipping adds to the pressure of shipboard life and worsens the condition of fatigue (Jensen et al. 2006; Wadsworth et al. 2008).

The dominance of the ethic of getting the job done despite bad conditions or regardless of how tired the crew are, contributes to seafarer's fatigue (Sampson 2011). Faced with their business interests and/or commercial pressures under this capital intensive industry, the captain's decision like the supervisor or foreman on the factory floor has important implications for the physical and mental health outcomes for each individual worker.

Moreover, any delay in port translates to payment of customs tax or port dues and the non-delivery of valuable cargoes requires the crew to continue with the work sometimes under the guise that it is emergency duty. There is nothing in the POEA contract that helps to protect seafarers against this because rest periods that are supposedly designated in the contract cannot be honoured on-board the ship – emergency duties override this.

Seafarer crews meanwhile are all working to maintain the production process because of the pressures from the shore, the captain, and their fellow workers to keep it going in anticipation of the demands of management. Additional pressure to follow what the captain directs them to do is borne out of fear of being singled out as causing trouble and being sent back home without any reason. It was explained that this can be easily done by the captain since he has custody of the travel documents and their POEA-SEC making it easy for the captain to decide the immediate dismissal and repatriation of an erring seafarer. The captain can likewise mark their record books which can affect their future employment. The seaman's book becomes an evaluation tool to their competence as a seafarer. Here is another example of a situation that is even more removed from the employment contract to intercede in a beneficial way for the seafarers' protection.

As reported in Chapter 7, seafarers also said this can happen when they question workplace policies and practices, such as being on-board an unseaworthy ship. A critical aspect of this is the power and influence of the ship's captain over the future of seafarers who fear reprisals if they voice our problems. Lower ranking seafarers feel defenceless against the anger of the captain who can reflect his antagonism in the seaman's book, which is under the custody of the captain and can destroy a seafaring career with negative comments.

The effect of socio-economic conditions on the elements of productions and their consequence for workers' safety had been classically demonstrated by

Nichols (1997) in his seminal work. His observation on the factory floor reveals an emerging pattern that is fundamental to all the accounts on the extension of the duration of the contract and the experience of the workers on work intensification. This occurs in order not to interrupt or interfere with the progress of a production activity, such as ships delivering their trade. As Nichols (1997, p.3) noted:

Repeatedly, they turn a blind eye to breakers of safety regulations, and do so not because they are callous or incompetent but because, as they see it, their situation demands it. True, they are accountable to management for safety, but they are also accountable for production which is always a major issue... They do not only fail to prevent dangerous practices, but evade liability, making the men blamed for accidents and to exonerate the foreman and the firm.

An implication, given to monetary, commercial or business considerations in the seafaring industry is the possible poor compliance with the contract provisions that defeats the regulatory purpose of the prescription of the POEA-SEC. The narrated examples of the seafarers' experience and reaction on the changes to their contract duration, or the poor observance of their working hours and rest period while on-board show examples of the circumvention to the terms and conditions of the POEA-SEC. As reasoned by Bloor et al. (2000 p. 336):

Human error should not imply blameworthy behaviour where it arises out of commercial pressures, failing crew levels and turnaround times, inadequate training, excessive hours, fatigue and so on.

This is an important issue since the actual figure of incidents in the maritime industry involving human error may be as high as eighty percent (80%) (Hetherington et al. 2006).

In-built harm factor within the compensation system

Problems in the operation of the compensation system are the last point to be made to illustrate the challenge of addressing seafarer grievances. More complicated procedure and litigious compensation procedures, with the addition of numerous conditions, as well as the difficulty of identifying the entity required to address such grievances, contribute to a system of employment relations – and employment experience – that is punitive and harmful.

The health and safety of workers, with an adequate system of compensation in case of injury and illness, might be viewed as a priority for employers – who value human resource as valuable assets of their companies –while recognizing the connection between changes in work with negative OHS outcomes (Quinlan et al. 2001; Bingham 2005; Johnstone et al. 2008). Indeed, section 32-B of the POEA-SEC includes a payment schedule (an amount for every part of the seafarers' body that is injured or disabled), which corresponds with disabilities or impediments suffered as a result of injury or occupational diseases or illnesses. However, there are various conditions which must be met before the seafarer can be entitled to medical attention, sick pay or disability pay. The POEA-SEC indicates that the right to medical care for injuries and illness incurred while on-board is limited to what is termed 'occupational injuries and diseases' that are 'work-related' (Castillon-Lora 2003, 2010). This latter term was added in the year 2010 version of the POEA-SEC. In order to qualify for compensation and meet the 'fit for work' criteria, seafarers are required to divulge their medical histories. The risk of not offering full disclosure is disqualification from compensation and benefits, termination from employment, or the imposition of punitive sanctions. The emphasis in the POEA-SEC is, therefore, medical aspects i.e. proof, and indeed, liability, rather than potential loss of earning capacity that might result from the inability to work.

Hence, the burden of demonstrating a connection between the illness/injury and whether it is work-related has been shifted from the shipowner to the seafarer. The consequence of this shift alongside the addition of the term 'work-related' to

compensable illness and injury, is to make the compensation process more litigious (see also Terry 2009). A major implication of this is to entrap the seafarers and negate claims for compensation. A particularly useful example of how seafarers' claims for compensation might be negated is in the difficulty that injured parties experience when identifying who is liable, i.e. the shipping company.

Filipino seafarers are recruited by manning or crewing agencies in the Philippines. The manning agency representative signs the POEA-SEC either as a principal or as an agent, on behalf of the principal shipowner. When the manning agency signs the contract on behalf of the foreign shipping company, they voluntarily subject themselves to Philippine laws and jurisdiction. Identifying the principal or the shipping company is important in order to determine who is liable when seafarers' rights have been violated.

There are several factors that make it difficult to determine exactly who is the principal, or the shipowner. The structural ownership of the shipping company and the involvement of other players for the management and operation of the ship is a source of concern for determining the identity of the principal/employer/shipping company. This arrangement is challenging in a number of ways. It includes a divergent set of services, and sometimes, conflicting interests such as ship owning, ship management, recruitment, manning and crewing management, as well as other auxiliary services. A manning agency may assume its many roles or functions so that it can capture every aspect of the supply and logistic activity and thereby enhance its competitive advantage (OECD 2003; Walters et al. 2011a). The way it chooses to organise itself can create confusion with regard to liability/responsibility for the seafarers' protection (Chapman 1992). To illustrate this point with the case of Tanglaw-Diwa Shipping Company (TDSC): Is it Tanglaw-Diwa (the conglomerate), Pagasa Shipping (the shipping management company), or any of the crewing agencies (Abakada, Kaibigan or Maharlika) which should be included as a responsible party in a case filed for compensation?

This is reminiscent of Jenkins (2010) work on the complex value chains of garment production established across the globe, in low wage economies (such as Bangalore, India), driven by retailers, marketers and global brands. This complex network in turn affects workers' leverage in terms of poor conditions, low levels of union influence, weak enforcement of regulation, and generally insecure and unstable work. This further calls to mind Mayhew et al. (1997) who talks about the disorganisation created by the complex and multiple sub-contractor relationships creating ambiguity, undermining OHS control systems, making them more difficult to implement, and even leading to deliberate evasion of legal responsibility for OHS.

My investigation of TDSC makes clear that its manning companies deal with hundreds of principals or foreign shipowning interests situated abroad. For example, Abakada, one of its crewing agencies act as an intermediary by responding to the manpower needs of its foreign principals based in Liberia and Greece, with the recruitment, documentation and processing of the seafarers conducted in the Philippines. With the foreign shipowner represented by the local crewing or manning agency in the labour sending country, the shipowners are at a distance from the seafarers (Chapman 1992; Tyner 2010; Terry 2011). Indeed, as evidence in Chapter 6, the seafarers most often approach the crewing agencies when experiencing problems with their employment – this is where the seafarers actually have direct contact with anything resembling an employer. The seafarers interact with the agency managers, submit their documentary requirements with their fleet (short for fleet directors), and sign the employment agreement at the agency's office. Even their families go to the agency offices, called Family Centres to follow-up their allotment payments and for other kinds of practical support from the company.

Clearly, this labour arrangement of operating through crewing agencies is attractive to shipping companies because they are allowed to avail themselves of institutional devices in order to make their juridical personalities amorphous. In turn, this arrangement shields them from liability or at the very least

minimises certain legal, statutory and fiscal exposures. An OECD (2003) study has noted that various corporate mechanisms are available to hide the identities of beneficial owners.

The outcome is that the existence of these various entities within the company weakens the position of the seafarers to determine with certainty who should be held responsible when a claim is to be made (e.g. contractual disputes or violation of the terms of the seafarers' employment contracts, or in case of contractual disputes which requires filing a case in court):

*“On your claims and benefits, there are only two being offered to the seafarers: those coming from their contract and those coming from the government. Section 18 is the appropriate provision for this. If you are on the ship and something happens to you, this will give notice on how to observe getting your claims and benefits. And definitely, as per laws of our government once you are employed, this is what we follow.”
(PDOS Trainer, Tanglaw-Diwa Shipping Corporation, PDOS Observation)*

The seafarers' rights to exercise their legal rights are weakened, and this is compounded by an absence of the legal obligations of the shipowners/employers/principal from the POEA-SEC (Section 33.C of the POEA-SEC only explicitly specifies offenses and corresponding penalties for seafarers). It is therefore likely that the initiation of legal proceedings will prove tricky, while the completion of proceedings to recover compensation claims by the seafarers will seem impossible and undermine any case a seafarer might bring.

The POEA has recognized this problem and devised ways for the seafarer and the government to determine the principal's personality and its existence. A regulatory safeguard in the application for the registration or accreditation of the shipping company or principal now requires ownership details to be provided through a documentary submission.. The POEA likewise approves the manning

agreement between the shipowner/principal and the crewing agencies in order to be assured of the existence of the ships as against the safe manning requirements for their ships. Moreover, as part of extra due diligence measures, the POEA counter-checks the documents and verifies the existence of the companies by checking the website of the shipping company. However, the paper submission and the ability of this government entity to establish the existence of the company through these means may be inadequate.

Hence, the POEA has implemented POEA Memorandum Circular No. 04, series of 2013 in compliance with Regulation 2.1, Standard A2.1 of the Maritime Labour Convention of 2006. The one-page contract of employment was revised in order to reflect the name of the shipowner and address, among other amendments. These new measures must be monitored and measured to assess their effectiveness.

A further consideration in all of this is the practice of crewing agency managers. Evidence suggests that it is routine practice for managers to refer seafarer compensation claims to their Claims Department for processing (see Chapter 6). With the requirement of compulsory insurance coverage institutionalized in Republic Act No. 10022 and in the POEA-SEC, the crewing managers work on the understanding that there is a system that automatically answers for contingencies such as injury, illness or death.

In some ways, this begins to explain why the potentially compensable claims of the seafarers do not mature into full-blown cases - because the mandatory insurance is expected to answer for these claims. But it often does not. The seafarers' or their families' right to receive compensation is thus undermined within the system itself. Essentially, recent amendments to the POEA-SEC notwithstanding, what has been evident above is that seafarers' health, safety and well-being, including clear and unequivocal access to compensation, are undermined in systematic and routine ways by employers – the employment contract (and thus the state) seemingly providing little, if any, protection.

8.3 Summary and conclusion – The contract as an instrument of control

The nexus of state (government policy and institutions), capital (the shipping companies and the crewing agencies as their representatives), and labour (seafarers and their unions) relations, the government's efforts to protect those working in the industry become subordinated in various ways, and for various reasons, to the needs of the shipping companies.

Through the POEA-SEC, the government attempts to offer protections in relation to provision of workers' social welfare but without necessarily intervening in the affairs of the business interests of shipowners. Thus, for example, the promotion of contingent employment of seafarers in the POEA-SEC provisions is attractive to the employers precisely because the workers remain cheap and easily replaced. Through this device, employers can more easily subject the workers to poor terms and conditions (including poor and detrimental conditions of work) thus illustrating the limitations of national statutory regulation, as represented by the provisions of the POEA-SEC to address the exploitation of labour.

With the change in work arrangements mainly driven to cut labour costs and with weak regulatory enforcements, workers coming from the developing countries are positioned by the state and capital as exploitable and vulnerable labour. The cooperation of the worker citizens is to be expected in order to preserve their employment opportunities. Each of the stakeholders thus fulfils their respective role: exploiter, exploited and intermediaries of these entities.

As has been shown, seafarers become submissive subjects to various masters (the captain of the ship, seafarer unions, government regulators, and their crewing agency managers). There are complex reasons for this that include observance of the seafaring tradition of military discipline, strict observance of the hierarchies of rank and position, as well as the rigid structure between officers and ratings, which is fragmented further by multinational crews – with

officers originating from traditional maritime states (mostly from developed countries) and ratings from new labour supply countries, mostly from developing countries (Walters and Bailey 2013).

It is perhaps unsurprising, therefore, that violations to the contract continue to proliferate, often without protest from the workers – this is assured by the institutional mechanism put in place to make the seafarers passive, and obedient workers (Rodriguez, 2010).

The maintenance by the overseas Filipino workers (OFWs) of this subservient position, reveals, and even confirms a certain degree of power relationships between the shipowners, crewing agencies and the seafarers. As seafarers negotiate relationships and interactions within the labour employment recruitment process which culminates in the signing of the contract, there is a sense of taming in order to cultivate a good relationship between employer and employee – a relationship based on subservience. The deep division between those who control and are controlled are very apparent. Various entities, both present and absent in the ship impose their power, control and discipline over the seafarer's employment and shipboard life. The intersection with and interaction of the different networks of government agencies, labour recruiters, labour organizations, and private corporations operate both nationally and internationally to ensure their protection, but only because it assures the continued mobilization of the seafarers in the labour market. As Chapman (1992) suggests, the well-being of seafarers is generally disregarded except as a means of increasing productivity.

Chapter 9

Conclusion

9.1 Introduction

This thesis set out to explore the terms and conditions of the standard employment contract (POEA-SEC) for overseas Filipino seafarers as an institutional arrangement implemented by the Philippine government for the temporary mobilization of seafarers, as contractual workers, in the global labour market. In view of this, I have aimed to address the questions posed at the outset of this thesis on the enforcement and implementation of the terms and conditions of the Philippine Overseas Employment Agency standard employment contract (POEA-SEC), and its efficacy in protecting the welfare and well-being of seafarers. From the review of the relevant literature in Chapter 3, it can be seen there is a significant absence of research, and thus understanding, on the experience of major stakeholders in the Philippine maritime industry on the effectiveness of the terms and conditions of the POEA-SEC. To address this gap, I have explored the views, perceptions and experiences of seafarers and other major stakeholders in relation to their use of the POEA-SEC in the labour employment process.

The findings of the study challenge the view that the POEA-SEC is an effective regulatory measure to address the problems encountered by the Filipino seafarers. It has demonstrated that despite the elaborate institutional mechanism of the government, there is disconnect between the ways the POEA-SEC is being implemented and the experience of the seafarers. In what follows, I will summarize the key findings of this thesis, draw out its contribution in relation to the literature and explore potential for future research.

This chapter is divided into five sections. Section 9.2 provides a synthesis of the key findings with respect to how it addressed the research question and objectives of this study, how they affect existing theories or understanding and how they could influence further understanding of the subject. Section 9.3 identifies the policy implications or relevance of the key findings of the research. As an additional element, section 9.4 includes recommendations for future action and speculations on future trends. Section 9.5 provides the summary and conclusion of this chapter.

9.2 Summary of key findings

This section provides a synthesis of the key findings from this research. For a more systematic presentation, the summary of the arguments will show how these findings converge and address the research questions of this study, how they relate to existing theories or understanding and how they could influence further understanding of the subject.

The complexities of the labour employment process (towards the approval of the standard employment contract) is used as a case study in this qualitative study in order to be informed about the influence of global political economy in the policy interventions of the state. Special attention has been paid in this study on the POEA-SEC because it establishes the parameters for the workers' employment conditions and the power relationships in the workplace, as will be shown below.

9.2.1 Work and employment in the Philippine maritime industry

This thesis sought to examine the influence of legal, institutional strategies, and neoliberal imperatives to labour supply arrangements in a globalised world by using globalisation as a lens in order to locate them within the structure and dynamics of a capitalist society.

The place of work of Filipino seafarers is not confined to a factory floor or an office but on a ship navigating outside the territory of the Philippines. Before reaching the ship, Filipino seafarer workers have to be processed for temporary migration, documented, medically certificated and covered under a short-term contract. Upon termination of their work or in the event of illness, injury or death, the seafarers have to be repatriated. This is supported by an institutional framework through the transnational economic migration bureaucracy (TEMB) which was discussed in chapter 8 and in section 9.2.2 of this chapter.

Owing to the nature of their work, seafarers have unpredictable work schedules, work incredibly long hours and reported not to have enough rest periods. Despite the provision in the POEA-SEC on working hours and rest periods, excessive working hours are an acknowledged problem in the shipping industry as supported by literature (See Smith et al. 2006; Wadsworth et al. 2008) and the findings of this research. Conditions unique to the marine environment contribute to fatigue which not only affect their health and well-being but potentially the safety of the entire crew and ship (Wadsworth et al. 2008). Shore leave which they are supposed to spend with their family is also invaded by statutory regulatory requirements such as pre-requisite courses.

It is contended in this study that the power relations between the seafarers and the shipowners are based on subservience. This is evident from the recruitment, deployment and employment of seafarers which is controlled by several entities such as foreign shipowners and crewing agencies. During the operations of the ship, the crew responds to the demands of several entities e.g. ship management companies, ship operators or the charterers (Jensen et al. 2006; Walters et al. 2011b). The captain has the discretion to determine hours of work and rest periods of the crew as they consider the interest of other actors in the maritime industry like shipowners and regulators, suppliers and customers. Seafarers are constantly faced with multiple, contending interests, and commercial pressures of maintaining the production process contributing to their fatigue (Sampson et al. 2011). Seafarer participants recognise that in

matters of enforcing the provisions of their contract on-board the ship, Philippine unions are not actively involved. From their experience, the implementation falls on international entities such as the ITF who practice their powers of inspection and detention of ships who are contravening the terms and conditions of the contract.

9.2.2 Global networks that facilitate seafarer employment and migration

Chapter 3 connected the concept of “migration infrastructure” introduced by Xiang and Lindquist (2014) with the definition of globalization by Martinelli. These concepts were applied to the complex structure that shaped the governance of the Philippine maritime industry and the labour employment process. This concept has been developed further by proposing that a transnational economic migration bureaucracy (TEMB) exists to aid the continued employment of labour overseas. This complex structure is composed of a network of state institutions (government regulators), labour organizations, labour recruitment agents, foreign employers, and potential migrant workers which strongly and actively influenced each other towards their mutual economic benefit.

The legal framework which informally institutionalises a transnational economic migration bureaucracy (TEMB) reflects the state’s promotion of the employment of Filipino seafarers by foreign employers. Under this TEMB, governmental entities, private institutions and financial institutions work together with the seafarers’ family, educational institutions and the media to reinforce the role of the Philippines as a major labour-sending country. The coordination between these major actors exposes the complexity of the government recruitment system, which extends beyond Philippine borders and links labour-sending governments, employers in developed countries and the migrant workers in developing economies like the Philippines (see Figure 8.2 in chapter 8).

Under this framework, all overseas workers are expected to send a substantial portion of their basic salary as remittance. In sending their remittance back to the Philippines, the workers know that they are fulfilling their nationalistic role, giving significance to the rhetoric of '*mga bagong bayani*' or modern day heroes (McKay 2010; Rodriguez 2010). This suggests that the economic development of the Philippines has become the responsibility of all the overseas Filipino workers (OFWs) (Semyonov and Gorodzeisky 2005). Border crossings for employment has therefore become redefined as an act of nationalism as they maintain ties to their country by sending money or investing in business ventures as part of their reintegration (Rodriguez 2010).

The case study of the labour employment process explains the interaction of the workers with the crewing agencies. From the data, it was highlighted that the accelerated contract signing process makes the contract negotiation a mere mechanical act. It removes the engagement of official authorities, the seafarer's personal legal counsel or a union representative, with unequal power relationship limiting any opportunities for dissent. The presence of state authorities might be a powerful presence in negotiating for better terms and conditions for the seafarer, but this is not the practice. What is evident is the limited scope for seafarers to improve their situation vis-à-vis the contract and their workplace experience, and ultimately a sense of their powerlessness. I argue that this vulnerability is encouraged by the labour employment process, which is designed to make the seafarers acquiescent.

A key finding and central argument is that the contract is not sufficient – as an instrument of protection from exploitation and vulnerability - to address the problems associated with the working conditions of the seafarer. However, the POEA-SEC can be viewed as an effective instrument to ensure the continued mobilization of Filipino migrant labour workers in the overseas labour market. Thus, based on the evidence provided, it is my contention that the POEA-SEC is essentially an economic arrangement fundamentally constructed around capturing the remittance of workers. In analysing the contract and the stories of

the participants, it becomes evident that the system of remittance is a prominent feature and the only efficiently enforced provision of the employment contract supported by an intricate mechanism, as part of a government-set strategy.

With the billions of dollars earned from the remittance of overseas workers, the Philippines earned the status as a top labour exporting country that mobilizes, exports and regulates Filipino workers to the labour market worldwide. This is also in accord with earlier observations which showed that the Philippine government policy is rooted in the process of becoming active migration promoters and managers. The evidence here supports the claim that Philippine officials and government agencies who support policies that situate the overseas employment of Philippine citizens as the answer to the country's economic problems (Aguilar Jr. 2003).

9.2.3 Migrant labour and its contribution to temporary and contingent employment

The government's policy for the promotion and facilitation of labour employment is implemented with the prescription of major safeguards for the protection of overseas workers. But this is overshadowed by provisions in the POEA-SEC that provide for minimum terms and conditions, which offer little in the way of tangible and effective protections. Instead, this supposed regulatory intervention institutionalizes Filipino seafarers as short-term, contractual and cheap labour. As a result, long established labour protection legislation which prescribes the rights of workers to security of tenure and competitive rates of employment is undermined. From what had been reported in this research and by the literature (see, for example Hudson 2009), the uncertainty in employment creates a situation where seafarers turn a blind eye to unsafe practices and procedures on-board the ship in order to retain their employment, even if it obviously contravenes their workplace rights and practices – of which the data provides numerous examples.

The explanation of the enforcement mechanisms and the significant difference of the seafarers' experience of their contract suggests that contract has little more than a symbolic nature (for seafarers). In many ways, the impotence of the POEA-SEC (and the gap between implementation and protection) is due to the unique nature of the operations of the ship. The deleterious effects of precarious employment had been discussed in various literatures (See Allen and Henry 1997; Beck 2000; Johnstone 2003; Connelly and Gallagher 2004).

In hindsight, the shipping corporation selected for this study is one of the better, if not the best, corporations involved in the processing of the employment of overseas seafarers. It has been consistently recognised by the government to employ best practices in the industry (POEA 2005; PIA 2010). And yet, there are instances when the rights of the seafarers employed by this company are not observed. Thus, the question might be asked, if a more unscrupulous company had been studied, what more might have been learned about the seafarers' working lives?

Evidently, it seems that the Philippine government does not have the capacity to protect its workers. The experience of the seafarers on-board the ship in the context of the global maritime industry suggests that they cannot be reached by the contract, whether symbolic or otherwise. The contract fails to address often repeated seafarer issues, such as suffering from fatigue, stress and anxiety, which contribute to the detriment of their health and well-being (Hudson 2009). This is because the POEA-SEC is part of the mechanism to ensure that seafarers continuously work to maintain the production process in view of the pressure from the shore, the captain, and their fellow workers in anticipation of the demands of management. This occurs not only on-board the ship but also during their shore leave. The latter is often subject to international and national government's regulatory demands and requirements e.g. for training or completion of documentation as pre-requisite courses for promotion and advancement.

This is a situation when the employment contract cannot intercede in a beneficial way for the seafarers' protection. Arguably, that experience is beyond the access of anybody who has the capacity to enforce the requirements of the contract, except when noted earlier, something has gone wrong, their employment had been terminated and there are contractual or employment related issues when they fall ill, get injured, or die. But the design of the compensation system under the POEA-SEC with its complicated procedure, numerous conditions, and the difficulty of identifying the entity who will address such grievances entraps the seafarer and negates any claim for compensation.

In chapter 2, I discussed Amante's (2004b) example on the decision of AMOSUP to temporarily freeze the scheduled increase of the basic minimum wages for able seafarers which increase might be more expensive and less competitive in relation to seafarers from other Asian regions. In chapter 7, it had been discussed that seafarer unions in the Philippines favour temporary employment contracts to ensure the employment of their members. From these examples from the literature and the participants' experience, the role of seafarer unions in the Philippines in the labour migration process involves maintaining the delicate balance between protection of their members' welfare and continuing their competitive advantage for employment over other labour supply countries.

This is the context which produces poor working conditions despite the best efforts of the state and the stated purpose of seafarer trade unions to protect their members' rights. Given the monetary considerations of all the major stakeholders in the maritime industry, the poor enforcement of the contract or its circumvention defeats the very regulatory purpose for the prescription of the POEA-SEC. Hence, it is evident that the experiences and perspectives of seafarers and others discussed in the previous chapters demonstrate clearly the declining effectiveness of national control in implementing the provisions of the POEA-SEC.

9.3 Contributions of the thesis

The previous section discussed the theoretical contributions of this research. This section highlights its empirical contribution, a reflection on its methodological contributions and significance of the TEMB.

9.3.1 Empirical contribution

From the review of the literature, this is the first study to explore Filipino seafarers' first-hand experience of the POEA-SEC. Its findings enrich the existing literature on migration – with policies of migration evidenced (and argued) in this particular case to be supported by the Philippine government's regulatory measures and elaborate institutional mechanism to sustain the supply of labour to the global market.

The research focused primarily on the process that the seafarers and other major stakeholders go through (pre-deployment stage, employment stage, and post-deployment stage). In each of these stages, the study showed the links of internal structures within the Philippines as a labour sending country and its interconnectedness with employers or structures outside the Philippine territory located on more developed economies. This demonstrates once more the manifestations of globalisation and its impact on the migration bureaucracy.

9.3.2 Methodological contribution

A further contribution of this thesis is the novelty of studying the POEA-SEC both as a document and as an active participant in the seafarer experience. Indeed to extract information from the participants of this research, the POEA-SEC was treated as a participant - in terms of serving as a focal point during the interview and focus groups: it has been quite literally pointed at, referred to, and used as evidence and counter-evidence. Moreover, the interaction with the participants was very much structured on what the POEA-SEC means to the

seafarers and to the crewing agents, which takes us beyond a focus merely on the contents of the document. It is however, evident that documents, such as the POEA-SEC, can be said to influence and shape political, economic, and social activities just as much as human participants.

In a similar way that seafarers find work, I also used relevant social networks to access seafarer participants in this study. For example, in order to channel information about seafarer contracts, I used social networks with which I have interpersonal relationships such as family, and friends as well as our community ties. Additionally, my professional networks with government officials added to and further developed my existing social networks with the crewing managers and access to the seafarers. Networks are very much the same way that the migration industry operates. According to Jones and Pardthaisong (1999) and Xiang and Lindquist (2014) migration have been sustained through the information gathered from personal relations. Once these ties have been established, they are supplemented by contacts from bureaucratic agencies, with commercial providers of ancillary migration services, which are responsible for organizing international labour migration.

Using the POEA-SEC as a reference of the study showed how the government's neoliberal strategies fared in relation to the improvement of the working conditions of Filipino seafarers. As mentioned in the previous chapter, it codifies the Philippine labour migration policy and becomes an instrument that represents to the world that the Filipino seafarer is a patriotic subject/ modern day hero who helps their nation in its economic reform and recovery. It represents the seafarer as an obedient, subservient person who provides their labour to capital and to the state. Constantly addressed as such, it perpetuates the idea that seafarers are considered as "*nangangamuhan*" or one working for masters or one that has to be submissive to their masters who impose their power, control and discipline over the seafarers' employment and shipboard life. The interaction and network of the entities that the seafarers treat as masters operate both domestically and internationally, which aggravates the difficulties

of their labour conditions. The implementation of the terms and conditions of the POEA-SEC however is superficial and not pro-active do not have the same power and reach as these masters.

9.3.3 The significance of the TEMB

The groundwork of the thesis comes from the experience of the stakeholders of the POEA-SEC, as discussed in 9.3.1. Such experiences form the basis, moreover, of the significance of an academic contribution of this thesis – in particular, its development concept of the “transnational economic migration bureaucracy” or TEMB. The TEMB analysis of the regulation of the labour market in the maritime industry traces extensive global networks. These networks link and interconnect (and ultimately demonstrate the interdependence of) state institutions (i.e. regulators and the Philippines as a labour supply country), labour organisations, labour recruitment agents, foreign employers (i.e. shipowners, ship managers, labour supply agencies), migrant workers (the seafarers) and the POEA-SEC. What is clearly evident from this analysis is that the seafaring and maritime industry is set as an example of both a global and globalised industry.

The study of the seafarers’ labour employment process provides a way to understand the policy intervention of a state –manifest in the POEA-SEC – is influenced by the global political economy. In the coordination and complex interconnection of several stakeholders of similar interests at the local, regional and global level a framework is provided for the deployment of seafarer labour (Martinelly, 2003). The relevance of further literatures, such as ‘transnational social networks’ proposed by Jones and Pardthaisong (1999); ‘patron-client networks’ proposed by Rudnyckj (2004); and, Xiang and Lindquist (2014)’s concept of ‘migration infrastructure’, highlights the further inter-networking among various actors to form a migration bureaucracy.

What is evidenced by my analysis of the inter-relationships sketched out above – shaped as they are by globalisation – is the implications for labour standards

(imposed on seafarer workers), and the critical part played by the POEA-SEC, as an alternative form of regulation. By providing for a pattern of work that is outside the concept of permanent and full-time employment, we find a rise of temporary and flexible work. And, what we might observe of the maritime industry, as one of the components of the global supply chain and an element of production, despite the POEA-SEC, is insecurity of seafarers' work tenure, and, perhaps more so, a confirmation of literature discussing the consequences of flexible labour, threats to seafarers' health and well-being in general, and the dilution of long-established labour protection legislation on receipt of pension benefits and security of tenure (see for example Quinlan 2015)

The analysis of the TEMB exposes moreover, to how the Philippine state balances conflicting demands of facilitation of labour demand in the global labour market while regulating the employment of the Filipino seafarers to ensure their protection. The specific contribution here is to critical accounts in the field of employment regulation, insecure work and aspects of globalisation—especially in the maritime industry (see for example Walters and Bailey 2013).and elsewhere (see Vosko 2010; Underhill and Quinlan 2011). What the TEMB brings into sharp relief – in similar way to others, but extending the analysis to particular fields of enquiry – is the relationship between less developed states, such as the Philippines, and capital and the interaction of stakeholders to promote and at the same time regulate labour migration (see Jones and Pardthaisong, 1999; Rudnyckj, 2004; Xiang and Lindquist, 2014). Hence, my critical analysis of the POEA-SEC illustrates the state-sanctioned government policy of labour export and temporary migration through the institutionalisation of strategies to address unemployment in the Philippines and capture the remittance of seafarers.

9.4 Policy implications

Despite global pressures for supply, it is argued that there is considerable space for an alternative policy to the government's widespread policy on labour export, coupled with political will implemented at the local and national level in

order to resist pressures from the global market. The government already recognised, for example, the social effects of the separation of the seafarers or overseas workers from their family and their home (David 1991; E. San Juan 1995; Matias 2001; Migration et al. 2013). At the same time, they also recognise that the workers' remittance contributes towards the country's gross domestic earnings. Moreover, the wider strategy of focusing on services is not creating more jobs in the Philippines (Cohen 2006; Usui 2012) – certainly not in sufficient numbers to replace jobs created by the maritime industry. The country continued to suffer from high unemployment and underemployment rates which contributed to high poverty incidence which necessitated the vicious cycle of temporary migration of workers abroad (Amante 2003).

There are, however, certain elements that can contribute to the advancement of labour reforms. Being the most global of all industries, the shipping industry has its own regulatory body to facilitate global governance: the International Maritime Organization (IMO) which regulates ship standards (IMO 2011), and the International Labour Organization (ILO) which regulates shipboard labour standards (ILO 1947). This reveals the sustained effort to establish effective forms of regulation for the shipping industry (Sampson and Bloor 2007). There are also efforts by the ITF, together with the ILO, to establish a system of multinational industrial relations and collective bargaining in flags of convenience ships by laying down minimum standards for working conditions and incomes under the ITF-TCC (Koch-Baumgarten 1998; Lillie 2004).

For the Philippine economy to embark on a sustainable and inclusive growth, Usui (2012) suggested a shift from the services sector towards development of a stronger industrial base for the creation of productive employment opportunities i.e. a more diversified industrial strategy adopted by its Asian neighbours, South Korea, Taiwan, Singapore and Japan (Abella 1993; Martin et al. 2004). This entails product identification and diversification for manufacturing which involves a long and difficult implementation. This strategy involves major reforms in the vocational education system to ensure that qualified workers are

available to high value production operations (see, for example Ashton 2004; Bosch and Charest 2008). Usui (2012) also suggests that the development of the service sector should not be totally disregarded, but that this requires investment in human capital, too.

There are also reforms in the financial sector which can be extended not only to capture remittance payments but also work towards the reintegration of overseas workers in the Philippines. As the final stage in the migration process, reintegration needs to have more strategic attention. Most of the seafarers interviewed prolong their overseas employment in view of the lack of savings and government support in sustainable reintegration strategies. The promotion of financial literacy would promote the productive use of their income in micro-enterprise or business investments within the hometown of the seafarers. Simultaneously, the government has to make sure that it improves the ancillary infrastructure for a successful reintegration programme such as provision of farm to market roads, technological upgrades in agriculture and fisheries, improvement in the investment climate or in the peace and order situation.

Matters regulated by international agreements or resulting from court decisions in a different country calls for the harmonization of national laws in order not to prejudice the case of seafarers abroad. International regimes and supranational institutions of governance must be likewise strengthened at the world level and at regional level and similar political entities in other regions in the world. One of the elements calls for the adoption of international standards of good practices which had been addressed with the ratification by the Philippines of the Maritime Labour Convention of 2006 and other migration-related international instruments. However, while this contributes to the enhancement of the credibility of the Philippines as a state fulfilling its international commitments, these international instruments, much like the POEA-SEC do not have a direct effect on the improvement of the protection and welfare of Filipino seafarers.

It has to be mentioned, however, that there had been no report of fraud or abuse in my research as a result of illegal recruitment or human trafficking syndicates although this persists in land-based overseas workers and in other countries. This can be attributed to the implementation of national policies to protect the migrant workers. Additionally, through the POEA-SEC and its ancillary framework of the TEMB, the Philippines has been successful in ensuring that its seafarer nationals use official channels for employment abroad. This had been recognized by Jones and Pardthaisong (1999), further acknowledging that systems are in place in the Philippines to ensure that crewing agents provide better educated and qualified workers who had been provided information on recruitment practices. In this study, it can be added that the seafarers have undergone orientation on their employment rights and obligations through the Pre-Deployment Orientation Seminar (PDOS).

9.5 Research agenda for future work

As highlighted in section 4.5 of chapter 4, this research recognized that it is limited towards a particular focus and in terms of resources having been undertaken as a sole female student researcher. In a way, this limits the data collection capabilities of this research. However, it is contended that recognizing the limitations of the study enables the identification of recommendations for future action and speculations on future trends.

In section 4.5, it was mentioned that this study does not involve representatives of seafarer unions, groups or associations as participants. It likewise drew attention to the fact that there were only 2 government officials interviewed in view of difficulties of access and only 5 women participants of the total 49 participants. In view of these considerations, it is proposed that future work, might consider studying the involvement of seafarer union representatives, government officials from other agencies involved in the labour employment process such as the Secretary of the Department of Labour and Employment

(DOLE), Administrator of the Maritime Industry Authority and other similar authorities who handle cases filed by the seafarers against their employer for contractual disputes. The involvement of the former officials, in particular, can provide improvements in governance and policy of making overseas work as an option rather than a no-choice solution to poverty. The other officials might have also provided a wider perspective on the experiences of seafarers during the post-employment stage and it would have been of interest to see how the cases are resolved (thus providing a more complete understanding of the process).

Second, if access to the conference proceedings or journals of discussion of the tripartite working group for the amendment of the POEA-SEC is made available future research might consider providing an understanding of the agreements and mechanisms by which union representatives' consent to the adoption of lower wage scales (lower in fact than ITF-TCC mandated wage scales). The minutes of the discussion in this working group would have also provided the government reasons for the addition of conditions in order to collect compensation for injury, illness or death among other interesting anecdotes.

Third, it was previously mentioned that Tanglaw Diwa Shipping Corporation is an exemplar company which observes best practice in the industry and has been recognized consistently for its exemplary programs. In hindsight and with observance of researcher safety in the field, it would have been more interesting to know the practices of a range of companies (e.g. less scrupulous companies) in the Philippine seafaring industry for purposes of comparison of their employment practices and procedures.

Fourth, more specific experience of women seafarers would have provided another perspective on the experience of women on the contracts. For example, it can be explored whether they observed a different pay grade with their male counterparts, a different treatment for promotion into rank and levels, life on-board in general, or if they wanted additional provisions in the POEA-SEC that address gender sensitive concerns.

Fifth, future research may take advantage of a mixed methods design as another study approach. A survey questionnaire on the quantitative aspect can be designed to measure the perspective of the seafarers on the effective implementation of the POEA-SEC. The result of the survey would have provided an affirmation or opposition to the analysis of the contract, and the qualitative data as a result of the interviews and focus groups. A more resourced study might also use ethnography for the observation of the labour employment process to yield remarkable results.

Sixth, comparison of the implementation of employment contracts with other jurisdictions or countries that provide labour to other labour-receiving countries, either with their own standard employment contract or without such contract, will provide a richer study. Comparison of changes between the 2010 POEA-SEC, 2000 POEA-SEC and 2002 POEA-SEC would also have provided rich examples of the influence of global political economy dialogue.

9.6 Conclusion

This case study shows the employment process for maritime labour in the Philippines involves the help of numerous actors which includes international organizations, intermediaries, bureaucrats, accredited medical clinics, and transport companies. The whole process involves the exchange of various documents, data and money, which all intersect with one another. It reveals how intricate and complex the inter-workings of various entities are in order to succeed in the government's supposedly 'temporary' migration project. This study noted several contradictory government and private entity roles that manifest when it comes to promoting migration and in protecting the workers. This has been observed in the analysis of the POEA-SEC in chapter 5 and was also validated by the interviews with the crewing managers on the significant role they play in adjusting and enhancing the conditions of employment and in

accelerating the recruitment processes. This is done to ensure the continued employment of competent seafarers but with both positive and negative consequences. The outcome is that the POEA-SEC falls short as a legal document in terms of protecting the Filipinos seafarers.

Overall, the POEA-SEC is not just a document pertaining to the specific employment of a seafarer on-board a particular ship. It is, equally and crucially, a codification of the instrumentalist motivations underpinning Philippine labour migration policy. Thus, the POEA-SEC is an instrument that moulds and constructs the Filipino seafarer into a particular subject: a subject of the nation-state who is patriotic in that he helps build the nation as a modern-day hero. However, at the same time, the POEA-SEC also builds the Filipino seafarer into an obedient, subservient subject, servant, of other masters and ultimately, a subject of global capital. He is the worker through whose labour and disciplining money and profit are generated for the Philippine economy and for merchant capital.

Appendix “A” – POEA-SEC, 2010



**Philippine
Overseas
Employment
Administration**

Republic of the Philippines
Department of Labor and Employment
BFD Building, Ortigas Avenue cor. EDSA, Mandaluyong City 1501
Website: www.poea.gov.ph E-mail: info@poea.gov.ph
Hotlines: 722-1144, 722-1155



MEMORANDUM CIRCULAR NO. 10
(Series of 2010)

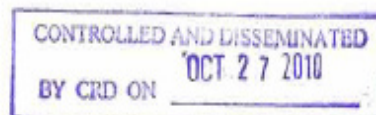
TO : ALL PRINCIPALS/EMPLOYERS, LICENSED MANNING
AGENCIES AND FILIPINO SEAFARERS

SUBJECT : AMENDED STANDARD TERMS AND CONDITIONS GOVERNING
THE OVERSEAS EMPLOYMENT OF FILIPINO SEAFARERS ON-
BOARD OCEAN-GOING SHIPS

DATE : 26 October 2010

Pursuant to Governing Board Resolution No. 09, series of 2010, the following guidelines on the implementation of the Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers on Board Ocean-Going Ships, which reflect the consensus of all the stakeholders after a series of tripartite consultations, are hereby issued :

1. The terms and conditions provided therein are the minimum requirements acceptable to the POEA for the employment of Filipino seafarers on board ocean-going ships.
2. The parties to the contract may improve on the minimum terms and conditions, provided such improvements shall be made in writing and appended to the contract of employment.
3. Manning agencies shall use and submit to the POEA, the full text of the seafarer's employment contract herein attached including improvements, if any, for approval and processing. Such improvements in the contract shall have prospective application.
4. Manning agencies are directed to inform and provide copies of the amended terms and conditions to all its accredited principals/employers.
5. Manning agencies shall ensure that its departing seafarers are given a copy of the processed and approved employment contract, including its improvements if any. Under no circumstances shall seafarers be allowed to leave for their respective vessels without a copy of the processed employment contract. Such contract shall be randomly checked at the airports.
6. PDOS providers for seafarers are directed to include in the Pre-departure Orientation Seminar (PDOS) of its hired seafarers, the provisions of the amended terms and conditions governing the employment of Filipino seafarers on board ocean-going ships.



This Circular shall take effect fifteen (15) days after publication in a newspaper of general circulation.



NORIEL P. DEVANADERA
QIC - Administrator

**STANDARD TERMS AND CONDITIONS GOVERNING THE OVERSEAS
EMPLOYMENT OF FILIPINO SEAFARERS ON-BOARD OCEAN-GOING SHIPS**

Definition of Terms:

For purposes of this contract, the following terms are defined as follows:

1. **Allottee** - **refers** to any person named or designated by the seafarer as the recipient of his remittance to the Philippines.
2. **Basic Wage** - refers to the salary of the seafarer exclusive of overtime, leave pay and other allowances and benefits.
3. **Beneficiary(ies)** – refers to the person(s) to whom the death compensation and other benefits due under the employment contract are payable in accordance with rules of succession under the Civil Code of the Philippines, as amended.
4. **Compassionate Ground** - refers to incidence of death of an immediate member of the seafarer's family which includes his parents, spouse and children if the seafarer is married or his parents if the seafarer is single
5. **Convenient Port** - any port where it is practicable, economical, safe and convenient to repatriate the seafarer.
6. **Dental Treatment** - covers tooth extraction, or dental surgery if necessary, due to accident
7. **Departure** - refers to the actual departure from the point of hire of the seafarer through air, sea or land travel transport to join his ship at a Philippine or foreign port
8. **Manning Agency** – refers to any person, partnership or corporation duly licensed by the Secretary of Labor and Employment to engage in the recruitment and placement of seafarers for ships plying international waters and for related maritime activities.
9. **Philippine Port** - refers to any Philippine airport or seaport.
10. **Point of Hire** - refers to the place indicated in the contract of employment which shall be the basis for determining commencement and termination of contract
11. **Pre-existing illness** – an illness shall be considered as pre-existing if prior to the processing of the POEA contract, any of the following conditions are present:

- a. The advice of a medical doctor on treatment was given for such continuing illness or condition; or
 - b. The seafarer had been diagnosed and has knowledge of such an illness or condition but failed to disclose the same during pre-employment medical examination (PEME), and such cannot be diagnosed during the PEME
12. **Principal/Employer/Company** - any person, partnership or corporation hiring Filipino seafarers to work onboard ocean-going ships.
 13. **Regular Working Hours** - refers to the seafarer's eight (8) hour working hours within a period of 24 hours.
 14. **Seafarer** - refers to any person who is employed or engaged in overseas employment in any capacity on board a ship other than a government ship used for military or non-commercial purposes.
 15. **Shipwreck** - refers to the damage or destruction of a ship at sea caused by collision, storm, grounding or any other marine peril at sea or in port rendering the ship absolutely unable to pursue her voyage.
 16. **Work-Related Illness** - any sickness as a result of an occupational disease listed under Section 32-A of this Contract with the conditions set therein satisfied
 17. **Work-Related Injury** - injury arising out of and in the course of employment

SECTION 1. DUTIES

A. Duties of the Principal/Employer/Master/Company:

1. To faithfully comply with the stipulated terms and conditions of this contract, particularly the prompt payment of wages, remittance of allotment and the expeditious settlement of valid claims of the seafarer.
2. To extend coverage to the seafarers under the Philippine Social Security System (SSS), Philippine Health Insurance Corporation (PhilHealth), Employees' Compensation Commission (ECC) and Home Development Mutual Fund (Pag-IBIG Fund), unless otherwise provided in multilateral or bilateral agreements entered into by the Philippine government with other countries.
3. To make operational on board the ship the grievance machinery provided in this contract and ensure its free access at all times by the seafarer.
4. To provide a seaworthy ship for the seafarer and take all reasonable precautions to prevent accident and injury to the crew including provision of safety equipment, fire prevention, safe and proper navigation of the ship and such other precautions necessary to avoid accident, injury or sickness to the seafarer.

5. To observe the Code of Ethics for Seafarers and conduct himself in the traditional decorum of a master.
6. To provide a **workplace conducive for the promotion and protection of the health of the seafarers in accordance with the standards and guidelines in Title 4 of the ILO Maritime Labor Convention, 2006.**

B. Duties of the Seafarer:

1. To faithfully comply with and observe the terms and conditions of this contract, violation of which shall be subject to disciplinary action pursuant to Section 33 of this contract.
2. To abide by the Code of Discipline as provided in the POEA rules and regulations governing overseas contract workers and the Code of Ethics for Seafarers.
3. To be obedient to the lawful commands of the Master or any person who shall lawfully succeed him and to comply with the company policy including safety policy and procedures and any instructions given in connection therewith.
4. To be diligent in his duties relating to the ship, its stores and cargo, whether on board, in boats or ashore.
5. To conduct himself at all times in an orderly and respectful manner towards shipmates, passengers, shippers, stevedores, port authorities and other persons on official business with the ship.
6. To take personal responsibility for his health while onboard by practicing a healthy lifestyle which includes taking medications and lifestyle changes as prescribed by the company-designated doctor.

SECTION 2. COMMENCEMENT/DURATION OF CONTRACT

- A. The employment contract between the employer and the seafarer shall commence upon actual departure of the seafarer from the Philippine airport or seaport in the point of hire and with a POEA approved contract. It shall be effective until the seafarer's date of arrival at the point of hire upon termination of his employment pursuant to Section 18 of this Contract.
- B. The period of employment shall be for a period mutually agreed upon by the seafarer and the employer but not to exceed 12 months. Any extension of the contract shall be subject to mutual consent of both parties.

SECTION 3. FREE PASSAGE FROM THE POINT OF HIRE TO THE PORT OF EMBARKATION

The seafarer shall join the ship and be available for duty at the date and time specified by the employer. The seafarer shall travel by air or as otherwise directed at the expense of the employer.

SECTION 4. BAGGAGE ALLOWANCE

The seafarer traveling by air to join a ship or on repatriation shall be entitled to the normal free baggage allowance offered by the airlines. The cost of the excess baggage shall be for the account of the seafarer.

SECTION 5. HYGIENE AND VACCINATION

- A. The seafarer shall keep his quarters and other living spaces such as: mess rooms, toilets, bathrooms, alleyways and recreation rooms in clean and tidy condition to the satisfaction of the master. Such work is to be performed outside the seafarer's regular working hours and for which no overtime pay shall be claimed.
- B. The seafarer shall submit to the order of the master or to the laws of any country within the territorial jurisdiction of which the ship may enter to have such vaccination or inoculation or to undertake measures to safeguard his health and the entire crew complement
- C. The company/employer shall ensure that the seafarer shall be informed on the cause, prevention and consequences of HIV/AIDS.

SECTION 6. WAGES

- A. All seafarers shall be paid for their work regularly and in full in accordance with this contract. They shall be paid monthly wages not later than 15 days of the succeeding month from the date of commencement of the contract until the date of arrival at point of hire upon termination of their employment pursuant to Section 18 of this contract
- B. Seafarers shall be given a monthly account of the payments due and the amounts paid to them, including wages, additional payments and the rate of exchange used.

SECTION 7. PAYMENT ON BOARD

Payment of shipboard pay in foreign ports shall be subject to the currency control regulations at the port abroad and to the official rate of exchange prevailing at the time of payment. Advances shall be at the master's/employer's discretion and in accordance with the foregoing conditions.

SECTION 8. ALLOTMENTS AND REMITTANCES

- A. The seafarer is required to make an allotment which shall be payable once a month to his designated allottee in the Philippines through any authorized Philippine bank. The principal/employer/master/company shall provide the seafarer with facilities to do so at no expense to the seafarer. The allotment shall be at least eighty percent (80%) of the seafarer's monthly basic salary.

-
- B. The principal/employer/master/company may also provide facilities for the seafarer to remit any amount earned in excess of his allotment, including backwages, if any, to his designated allottee in the Philippines through any authorized Philippine bank without any charge to him.
 - C. The allotments shall be paid to the designated allottee in Philippine currency at the rate of exchange indicated in the credit advice of the local authorized Philippine bank.

SECTION 9. FINAL WAGE ACCOUNT & CERTIFICATE OF EMPLOYMENT

The seafarer, upon his discharge, shall be given a written account of his final wages reflecting all deductions therefrom. Where a seafarer is landed in an emergency, the written account of his wages shall be given to him not later than one month from disembarkation. Upon the seafarer's request, he shall also be provided by his principal/employer/master/company his certificate of employment or service record without any charge.

SECTION 10. HOURS OF WORK

- A. The seafarer shall perform not more than forty-eight (48) hours of regular work a week. The hours of works shall be determined and prescribed by the master, provided that it conforms with the customary international practices and standards and as prescribed in paragraph B below.
- B. Regular working hours for the seafarer shall be eight (8) hours in every 24 hours, midnight to midnight, Monday to Sunday. The normal practice is as follows:
 - 1. The day worker shall observe the eight (8) regular working hours during the period from 0600 hours to 1800 hours.
 - 2. The steward personnel shall observe the eight (8) regular working hours during the period from 0500 hours to 2000 hours.
 - 3. The Radio Operator shall observe the eight (8) regular working hours in every twenty-four (24) hours, midnight to midnight, from Monday to Sunday as established by International Telecommunication Conventions and as prescribed by the master.
 - 4. For those who are on sea watch, their working hours shall be eight (8) hours per day. Staggering of working hours will be at the master's discretion.
- C. The record of the seafarer's daily hours of work or of his daily hours of rest shall be maintained to allow monitoring of compliance to the above provisions. The seafarer shall be provided a copy of the records pertaining to him which shall be endorsed by the master or a person authorized by the master, and by the seafarer.

The seafarer shall be allowed reasonable rest period in accordance with international standards.

SECTION 11. OVERTIME & HOLIDAYS

- A. The seafarer shall be compensated for all work performed in excess of the regular eight (8) hours as prescribed above. Overtime pay may be classified as open, fixed or guaranteed.

In computing overtime, a fraction of the first hour worked shall be considered as one full hour. After the first hour overtime, any work performed which is less than thirty (30) minutes shall be considered as half an hour and more than thirty (30) minutes shall be considered one full hour.

- B. Overtime work may be compensated at the following rates:

1. Open overtime - not less than 125 percent (125%) of the basic hourly rate computed based on two hundred eight (208) regular working hours per month.
2. Guaranteed or fixed overtime - not less than thirty percent (30%) of the basic monthly salary of the seafarer. This fixed rate overtime shall include overtime work performed on Sundays and holidays but shall not exceed one hundred five (105) hours a month.
3. Overtime work for officers shall be computed based on the fixed overtime rate.
4. For ratings, overtime work shall be based on guaranteed or open overtime rate, as mutually agreed upon by the contracting parties. For ratings paid on guaranteed overtime, overtime work in excess of 105 hours a month for ratings shall be further compensated by their hourly overtime rate.

- C. Any hours of work or duty including hours of watchkeeping performed by the seafarer on designated rest days and holidays shall be paid rest day or holiday pay. The following shall be considered as holidays at sea and in port.

New Year's Day	- January 1
Maundy Thursday	- movable date
Good Friday	- movable date
Araw ng Kagitingan (Bataan & Corregidor Day)	- April 9
Labor Day	- May 1
Independence Day	- June 12
National Heroes Day	- Last Sunday of August
All Saints Day	- November 1
Bonifacio Day	- November 30
Christmas Day	- December 25
Rizal Day	- December 30

- D. Emergency Duty

Nothing in this Contract shall be deemed to impair the right of the master of a ship to require a seafarer to perform any hours of work necessary for the immediate safety of the ship, persons on board or cargo, for the purpose of

giving assistance to other ships or persons in distress at sea, or to conduct fire, boat, or emergency drill. Accordingly, the master may suspend the schedule of hours of work or hours of rest and require a seafarer to perform any hours of work necessary until the **normal situation** has been restored or the drill has been completed. As soon as **practicable** after the normal situation has been restored or the drill has been completed, the master shall ensure that any seafarer who have performed work in a scheduled rest period are provided with an adequate period of rest.

No overtime work and pay shall be considered for such an emergency service or for fire, boat, or emergency drill.

SECTION 12. LEAVE PAY

The seafarer's leave pay shall be in accordance with the number of days leave per month as agreed upon. Days leave shall not be less than four and a half days (4 ½) for each month of service and pro-rated. Leave pay shall be settled onboard or settled within two weeks after arrival of the seafarer at the point of hire.

SECTION 13. SHORE LEAVE

The seafarer shall be allowed shore leave when practicable, upon the consent of the master or his deputy, taking into consideration the operations and safety of the ship.

SECTION 14. SUBSISTENCE, SHIP STORES AND PROVISIONS

- A. The seafarer shall be provided by the principal/employer/master/company with subsistence consistent with good maritime standards and practices while on board the ship.
- B. All stores and provisions issued to the seafarer are only for use and consumption on board the ship and any unused or unconsumed stores or provisions shall remain the property of the employer. The seafarer shall not take ashore, sell, destroy or give away such stores and provisions.

SECTION 15. TRANSFER CLAUSE

The seafarer agrees to be transferred at any port to any ship owned or operated, manned or managed by the same employer, provided it is accredited to the same manning agent and provided further that the position of the seafarer and the rate of his wages and terms of service are in no way inferior and the total period of employment shall not exceed that originally agreed upon.

Any form of transfer shall be documented and made available when necessary.

SECTION 16. GRIEVANCE MACHINERY

- A. If the seafarer considers himself aggrieved, he shall make his complaint in accordance with the following procedures:

1. The seafarer shall first approach the head of the Department in which he is assigned to explain his grievance.
 - a. In the Deck, Radio and Catering Department, the head is the Chief Mate.
 - b. In the Engine Department, the head is the Chief Engineer.
 - c. In the Catering and/or Hotel Department in a passenger ship, the head is the Chief Steward and/or Purser.
 2. The seafarer shall make his grievance in writing and in an orderly manner and shall choose a time when his complaint or grievance can be properly heard.
 3. The seafarer may also seek the assistance of the highest-ranking Filipino seafarer on board.
 4. The Department head shall deal with the complaint or grievance and where solution is not possible at his level, refer the complaint or grievance to the Master who shall handle the case personally.
 5. If no satisfactory result is achieved, the seafarer concerned may appeal to the management of the company or with a Philippine Overseas Labor Office or consular officer overseas. The master shall afford such facilities necessary to enable the seafarer to transmit his appeal.
- B. When availed of by the seafarer, the grievance procedure and all actions or decisions agreed upon shall be properly documented for the protection and interest of both parties.
- C. The aggrieved seafarer whose employment is covered by an existing CBA shall elevate any unsatisfactory resolution of his grievance to voluntary arbitration as agreed upon under the CBA. The aggrieved party whose employment is not covered by an existing CBA may elevate his complaint to the Maritime Industry Labor Arbitration Council (MILA) prior to any other forum.
- D. The foregoing procedures shall be without prejudice to other modes of voluntary settlement of disputes and to the jurisdiction of the Philippine Overseas Employment Administration (POEA) or the National Labor Relations Commission (NLRC) over any unresolved complaints arising out of shipboard employment that shall be brought before it by the seafarer.

SECTION 17. DISCIPLINARY PROCEDURES

The Master shall comply with the following disciplinary procedures against an erring seafarer:

- A. The Master shall furnish the seafarer with a written notice containing the following:
1. Grounds for the charges as listed in Section 33 of this Contract or analogous act constituting the same.

2. Date, time and place for a formal investigation of the charges against the seafarer concerned.
- B. The Master or his authorized representative shall conduct the investigation or hearing, giving the seafarer the opportunity to explain or defend himself against the charges. These procedures must be duly documented and entered into the ship's logbook.
 - C. If after the investigation or hearing, the Master is convinced that imposition of a penalty is justified, the Master shall issue a written notice of penalty and the reasons for it to the seafarer, with copies furnished to the Philippine agent.
 - D. Dismissal for just cause may be effected by the Master without furnishing the seafarer with a notice of dismissal if there is a clear and existing danger to the safety of the crew or the ship. The Master shall send a complete report to the manning agency substantiated by witnesses, testimonies and any other documents in support thereof.

SECTION 18. TERMINATION OF EMPLOYMENT

- A. The employment of the seafarer shall cease when the seafarer completes his period of contractual service aboard the ship, signs-off from the ship and arrives at the point of hire.
- B. The employment of the seafarer is also terminated effective upon arrival at the point of hire for any of the following reasons:
 1. When the seafarer signs-off and is disembarked for medical reasons pursuant to Section 20 (A)(5) of this Contract.
 2. When the seafarer signs-off due to shipwreck, ship's sale, lay-up of ship, discontinuance of voyage or change of ship principal in accordance with Sections 22, 23 and 26 of this Contract.
 3. When the seafarer, in writing, voluntarily resigns and signs off prior to expiration of contract pursuant to Section 19 (G) of this Contract.
 4. When the seafarer is discharged for just cause as provided for in Section 33 of this Contract.

SECTION 19. REPATRIATION

- A. If the ship is outside the Philippines upon the expiration of the contract, the seafarer shall continue his service on board until the ship's arrival at a convenient port and/or after arrival of the replacement crew provided that, in any case, the continuance of such service shall not exceed three months. The seafarer shall be entitled to earned wages and benefits as provided in his contract.
- B. If the ship arrives at a convenient port before the expiration of the contract, the **principal/employer/master/company** may repatriate the seafarer from such port, provided the unserved portion of his contract is not more than one (1) month. The

seafarer shall be entitled only to his earned wages and earned leave pay and to his basic wages corresponding to the unserved portion of the contract, unless within 60 days from disembarkation, the seafarer is rehired at the same rate and position, in which case the seafarer shall be entitled only to his earned wages and earned leave pay.

- C. If the ship arrives at a convenient port within a period of three (3) months before the expiration of his contract, the **principal/employer/master/company** may repatriate the seafarer from such port provided that the seafarer shall be paid all his earned wages. In addition, the seafarer shall also be paid his leave pay for the entire contract period plus a termination pay equivalent to one (1) month of his basic pay, provided, however, that this mode of termination may only be exercised by the **principal/employer/master/company** if the original contract period of the seafarer is at least nine (9) months; provided, further, that the conditions for this mode of repatriation shall not apply to dismissal for cause.
- D. The seafarer, if discharged at a port abroad for any reason shall be repatriated to the Philippines via sea or air or as may otherwise be directed by the **principal/employer/company**. He shall be provided with accommodation and food, allowances and medical treatment, if necessary, until he arrives at the point of hire.
- E. When the seafarer is discharged for any just cause, the employer shall have the right to recover the costs of his replacement and repatriation from the seafarer's wages and other earnings.
- F. The seafarer, when discharged and repatriated as directed by the **principal/employer/master/company** shall be entitled to basic wages from date of signing off until arrival at the point of hire except when the discharge is in accordance with the above or for disciplinary reasons.

If the seafarer delays or makes a detour or proceeds to a destination other than through the travel itinerary arranged by the employer to the point of hire, the employment of the seafarer will be considered terminated at the time the seafarer signs off the ship and all additional expenses shall be to the seafarer's account. The seafarer shall be entitled to earned wages and basic wage calculated based on the original scheduled date of arrival at the point of hire. All other liabilities of the company in this event shall cease at the time the seafarer is terminated. Any illness, injury or death sustained by the seafarer, due to the above shall be considered non-work related and shall not be compensated.

- G. A seafarer who requests for early termination of his contract shall be liable for his repatriation cost as well as the transportation cost of his replacement. The employer may, in case of compassionate grounds, assume the transportation cost of the seafarer's replacement.
- H. The seafarer shall report to the manning agency within 72 hours upon arrival at point of hire.

SECTION 20. COMPENSATION AND BENEFITS

A. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

1. The employer shall continue to pay the seafarer his wages during the time he is on board the ship;
2. If the injury or illness requires medical and/or dental treatment in a foreign port, the employer shall be liable for the full cost of such medical, serious dental, surgical and hospital treatment as well as board and lodging until the seafarer is declared fit to work or to be repatriated. However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician.
3. In addition to the above obligation of the employer to provide medical attention, the seafarer shall also receive sickness allowance from his employer in an amount equivalent to his basic wage computed from the time he signed off until he is declared fit to work or the degree of disability has been assessed by the company-designated physician. The period within which the seafarer shall be entitled to his sickness allowance shall not exceed 120 days. Payment of the sickness allowance shall be made on a regular basis, but not less than once a month.

The seafarer shall be entitled to reimbursement of the cost of medicines prescribed by the company-designated physician. In case treatment of the seafarer is on an out-patient basis as determined by the company-designated physician, the company shall approve the appropriate mode of transportation and accommodation. The reasonable cost of actual traveling expenses and/or accommodation shall be paid subject to liquidation and submission of official receipts and/or proof of expenses.

For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. In the course of the treatment, the seafarer shall also report regularly to the company-designated physician specifically on the dates as prescribed by the company-designated physician and agreed to by the seafarer. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties.

4. Those illnesses not listed in Section 32 of this Contract are disputably presumed as work-related.

5. In case a seafarer is disembarked from the ship for medical reasons, the employer shall bear the full cost of repatriation in the event the seafarer is declared (1) fit for repatriation; or (2) fit to work but the employer is unable to find employment for the seafarer on board his former ship or another ship of the employer.
6. In case of permanent total or partial disability of the seafarer caused by either injury or illness the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of his Contract. Computation of his benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted.

The disability shall be based solely on the disability gradings provided under Section 32 of this Contract, and shall not be measured or determined by the number of days a seafarer is under treatment or the number of days in which sickness allowance is paid.
7. It is understood and agreed that the benefits mentioned above shall be separate and distinct from, and will be in addition to whatever benefits which the seafarer is entitled to under Philippine laws such as from the Social Security System, Overseas Workers Welfare Administration, Employees' Compensation Commission, Philippine Health Insurance Corporation and Home Development Mutual Fund (Pag-IBIG Fund).

B. COMPENSATION AND BENEFITS FOR DEATH

1. In case of work-related death of the seafarer, during the term of his contract, the employer shall pay his beneficiaries the Philippine currency equivalent to the amount of Fifty Thousand US dollars (US\$50,000) and an additional amount of Seven Thousand US dollars (US\$7,000) to each child under the age of twenty-one (21) but not exceeding four (4) children, at the exchange rate prevailing during the time of payment.
2. Where death is caused by warlike activity while sailing within a declared war zone or war risk area, the compensation payable shall be doubled. The employer shall undertake appropriate war zone insurance coverage for this purpose.
3. It is understood and agreed that the benefits mentioned above shall be separate and distinct from, and will be in addition to whatever benefits which the seafarer is entitled to under Philippine laws from the Social Security System, Overseas Workers Welfare Administration, Employee's Compensation Commission, Philippine Health Insurance Corporation and Home Development Mutual Fund (Pag-IBIG Fund).
4. The other liabilities of the employer when the seafarer dies as a result of work-related injury or illness during the term of employment are as follows:
 - a. The employer shall pay the deceased's beneficiary all outstanding obligations due the seafarer under this Contract.

- b. The employer shall transport the remains and personal effects of the seafarer to the Philippines at employer's expense except if the death occurred in a port where local government laws or regulations do not permit the transport of such remains. In case death occurs at sea, the disposition of the remains shall be handled or dealt with in accordance with the master's best judgment. In all cases, the employer/master shall communicate with the manning agency to advise for disposition of seafarer's remains.
 - c. The employer shall pay the beneficiaries of the seafarer the Philippine currency equivalent to the amount of One Thousand US dollars (US\$1,000) for burial expenses at the exchange rate prevailing during the time of payment.
- C. It is understood that computation of the total permanent or partial disability of the seafarer caused by the injury sustained resulting from warlike activities within the warzone area shall be based on the compensation rate payable within the warzone area as prescribed in this Contract.
 - D. No compensation and benefits shall be payable in respect of any injury, incapacity, disability or death of the seafarer resulting from his wilful or criminal act or intentional breach of his duties, provided however, that the employer can prove that such injury, incapacity, disability or death is directly attributable to the seafarer.
 - E. **A seafarer who knowingly conceals** a pre-existing illness or condition in the Pre-Employment Medical Examination (PEME) shall be liable for misrepresentation and shall be disqualified from any compensation and benefits. This is likewise a just cause for termination of employment and imposition of appropriate administrative sanctions.
 - F. When requested, the seafarer shall be furnished a copy of all pertinent medical reports or any records at no cost to the seafarer.
 - G. The amounts paid to the seafarer due to accidental or natural death, or permanent total disablement by virtue of the provisions of RA 8042 as amended by RA 10022 and its implementing rules and regulations shall form part of and shall be deducted from the total amount that the seafarer is determined to be finally entitled to under this Contract.
 - H. Subsistence allowance benefit as provided in RA 8042, as amended by RA 10022. The principal/employer/company shall grant to the seafarer who is involved in a case or litigation for the protection of his rights in a foreign country, a subsistence allowance of at least One Hundred United States Dollars (US\$100) per month for a maximum of six (6) months.
 - I. Compassionate Visit as provided in RA 8042, as amended by RA 10022. When a seafarer is hospitalized and has been confined for at least seven (7) consecutive days, he shall be entitled to a compassionate visit by one (1) family member or a requested individual. The employer shall pay for the transportation cost of the family member or requested individual to the major airport closest to the place of hospitalization of the seafarer. It is, however, the

responsibility of the family member or requested individual to meet all visa and travel document requirements;

- J. The seafarer or his successor in interest acknowledges that payment for injury, illness, incapacity, disability or death and other benefits of the seafarer under this contract and under RA 8042, as amended by RA 10022, shall cover all claims in relation with or in the course of the seafarer's employment, including but not limited to damages arising from the contract, tort, fault or negligence under the laws of the Philippines or any other country.

SECTION 21. WAR AND WARLIKE OPERATIONS ALLOWANCE

- A. The POEA shall be the sole authority to determine whether the ship is within a war risk trading area. It shall also determine the amount of premium pay to which the seafarer shall be entitled to when sailing in that war-risk trading area.
- B. The seafarer when sailing within a war-risk trading area shall be entitled to such premium pay as the POEA may determine through appropriate periodic issuances.
- C. If at the time of the signing of the contract, an area is declared a war or war-risk trading area and the seafarer binds himself in writing to sail into that area, the agreement shall be properly appended to the Contract for verification and approval by the Philippine Overseas Employment Administration (POEA). The seafarer shall comply with the agreement or shall bear his cost of repatriation when he opts not to sail into a war or war-risk trading area.
- D. If a war or warlike operations should arise during the term of this Contract in any country within the ship's trading area, the seafarer may sail with the ship within and out of the trading area if required by the Master.

SECTION 22. TERMINATION DUE TO SHIPWRECK AND SHIP'S FOUNDERING

Where the ship is wrecked necessitating the termination of employment before the date indicated in the contract, the seafarer shall be entitled to earned wages, medical examination at employer's expense to determine his fitness to work, repatriation at employer's cost and one month basic wage as termination pay.

In case of termination of employment of the seafarer before the expiration of the term of his contract due to shipwreck, actual or constructive total loss or foundering of the ship, the seafarer shall be entitled to earned wages, medical examination at employer's expense to determine his fitness to work, repatriation at employer's cost and one month basic wage as termination pay.

SECTION 23. TERMINATION DUE TO SALE OF SHIP, LAY-UP OR DISCONTINUANCE OF VOYAGE

Where the ship is sold, laid up, or the voyage is discontinued necessitating the termination of employment before the date indicated in the Contract, the seafarer shall be

entitled to earned wages, repatriation at employer's cost and one (1) month basic wage as termination pay, unless arrangements have been made for the seafarer to join another ship belonging to the same principal to complete his contract in which case the seafarer shall be entitled to basic wages until the date of joining the other ship.

SECTION 24. TERMINATION DUE TO UNSEAWORTHINESS

- A. If the ship is declared unseaworthy by a classification society, port state or flag state, the seafarer shall not be forced to sail with the ship.
- B. If the ship's unseaworthiness necessitates the termination of employment before the date indicated in the Contract, the seafarer shall be entitled to earned wages, repatriation at cost to the employer and termination pay equivalent to one (1) month basic wage.

SECTION 25. TERMINATION DUE TO REGULATION ¼, CONTROL PROCEDURES OF THE 1978 STCW CONVENTION, AS AMENDED

If the seafarer is terminated and/or repatriated as a result of port state control procedures/actions in compliance with Regulation ¼ of the 1978 STCW Convention, as amended, his termination shall be considered valid. However, he shall be entitled to repatriation and earned wages and benefits only.

SECTION 26. CHANGE OF PRINCIPAL

- A. Where there is a change of Principal of the ship necessitating the pre-termination of employment of the seafarer; the seafarer should be entitled to earned wages and repatriation at employer's expense. He shall also be entitled to one (1) month basic pay as termination pay.
- B. In case arrangements have been made for the seafarer to directly join another ship of the same Principal to complete his contract, he shall only be entitled to basic wage from the date of his disembarkation from his former ship until the date of his joining the new ship.

SECTION 27. LOSS OF OR DAMAGE TO CREW'S EFFECTS BY MARINE PERIL

- A. The seafarer shall be reimbursed by the employer the full amount of loss or damage to his personal effects but in no case shall the amount exceed the Philippine currency equivalent to the amount of Two Thousand US dollars (US\$2,000) if his personal effects are lost or damaged as a result of the wreck or loss or stranding or abandonment of the ship or as a result of fire, flooding, collision or piracy.
- B. In case of partial loss, the amount shall be determined by mutual agreement of both parties but in no case to exceed the Philippine currency equivalent to the amount of Two Thousand US dollars (US\$2,000).

- C. Reimbursement for loss or damage to the seafarer's personal effects shall not apply if such loss or damage is due to (a) the seafarer's own fault, (b) larceny or theft or (c) robbery.
- D. Payment of any reimbursement shall be computed at the rate of exchange prevailing at the time of payment.

SECTION 28. GENERAL SAFETY

- A. The seafarer shall observe and follow any regulation or restriction that the master may impose concerning safety, drug and alcohol and environmental protection.
- B. The seafarer shall make use of all appropriate safety equipment provided him and must ensure that he is suitably dressed from the safety point of view for the job at hand.

SECTION 29. DISPUTE SETTLEMENT PROCEDURES

In cases of claims and disputes arising from this employment, the parties covered by a collective bargaining agreement shall submit the claim or dispute to the original and exclusive jurisdiction of the voluntary arbitrator or panel of voluntary arbitrators. If the parties are not covered by a collective bargaining agreement, the parties may at their option submit the claim or dispute to either the original and exclusive jurisdiction of the National Labor Relations Commission (NLRC), pursuant to Republic Act (RA) 8042 otherwise known as the Migrant Workers and Overseas Filipinos Act of 1995, as amended, or to the original and exclusive jurisdiction of the voluntary arbitrator or panel of arbitrators. If there is no provision as to the voluntary arbitrators to be appointed by the parties, the same shall be appointed from the accredited voluntary arbitrators of the National Conciliation and Mediation Board of the Department of Labor and Employment.

The Philippine Overseas Employment Administration (POEA) shall exercise original and exclusive jurisdiction to hear and decide disciplinary action on cases, which are administrative in character, involving or arising out of violations of recruitment laws, rules and regulations involving employers, principals, contracting partners and Filipino seafarers.

SECTION 30. PRESCRIPTION OF ACTION

All claims arising from this contract shall be made within three (3) years from the date the cause of action arises, otherwise the same shall be barred.

SECTION 31. APPLICABLE LAW

Any unresolved dispute, claim or grievance arising out of or in connection with this contract including the annexes thereof, shall be governed by the laws of the Republic of the Philippines, international conventions, treaties and covenants to which the Philippines is a signatory.

SECTION 32. SCHEDULE OF DISABILITY OR IMPEDIMENT FOR INJURIES SUFFERED AND DISEASES INCLUDING OCCUPATIONAL DISEASES OR ILLNESS CONTRACTED.

HEAD

Traumatic head injuries that result to:

- | | |
|--|--------|
| 1. Aperture unfilled with bone not over three (3) inches without brain injury ----- | Gr. 9 |
| 2. Unfilled with bone over three (3) inches without brain injury ----- | Gr. 3 |
| 3. Severe paralysis of both upper or lower extremities or one upper and one lower extremity ----- | Gr. 1 |
| 4. Moderate paralysis of two (2) extremities producing moderate difficulty in movements with self-care activities ----- | Gr. 10 |
| 5. Slight paralysis affecting one extremity producing slight difficulty with self-care activities ----- | Gr. 10 |
| 6. Severe mental disorder or Severe Complex Cerebral function disturbance or post-traumatic psychoneurosis which require regular aid and attendance as to render worker permanently unable to perform any work ----- | Gr. 1 |
| 7. Moderate mental disorder or moderate brain functional disturbance which limits worker to the activities of daily living with some directed care or attendance ----- | Gr. 6 |
| 8. Slight mental disorder or disturbance that requires little attendance or aid and which interferes to a slight degree with the working capacity of the claimant --- | Gr. 10 |
| 9. Incurable imbecility ----- | Gr. 1 |

FACE

- | | |
|--|--------|
| 1. Severe disfigurement of the face or head as to make the worker so repulsive as to greatly handicap him in securing or retaining ----- | Gr. 2 |
| 2. Moderate facial disfigurement involving partial ablation of the nose with big scars on face or head ----- | Gr. 5 |
| 3. Partial ablation of the nose or partial avulsion of the scalp ----- | Gr. 9 |
| 4. Complete loss of the power of mastication and speech function ----- | Gr. 1 |
| 5. Moderate constriction of the jaw resulting in moderate degree of difficulty in chewing and moderate loss of the power or the expression of speech ----- | Gr. 6 |
| 6. Slight disorder of mastication and speech function due to traumatic injuries to jaw or cheek bone ----- | Gr. 12 |

EYES

- | | |
|---|--------|
| 1. Blindness or total and permanent loss of vision of both eyes ----- | Gr. 1 |
| 2. Total blindness of one (1) eye and fifty percent (50%) loss of vision of the other eye ----- | Gr. 5 |
| 3. Loss of one eye or total blindness of one eye ----- | Gr. 7 |
| 4. Fifty percent (50%) loss of vision of one eye ----- | Gr. 10 |
| 5. Lagophthalmos, one eye ----- | Gr. 12 |
| 6. Ectropion, one eye ----- | Gr. 12 |
| 7. Ephemora, one eye ----- | Gr. 12 |
| 8. Ptosis, one eye ----- | Gr. 12 |

Note: (Smeller's Chart – used to grade for near and distant vision).

NOSE AND MOUTH

1. Considerable stricture of the nose (both sides) hindering breathing ----- Gr. 11
2. Loss of the sense of hearing in one ear ----- Gr. 11
3. Injuries to the tongue (partial amputation or adhesion) or palate-causing defective speech ----- Gr. 10
4. Loss of the three (3) teeth restored by prosthesis ----- Gr. 14

EARS

1. For the complete loss of the sense of hearing on both ears ----- Gr. 3
2. Loss of two (2) external ears ----- Gr. 8
3. Complete loss of the sense of hearing in one ear ----- Gr. 11
4. Loss of one external ear ----- Gr. 12
5. Loss of one half (1/2) of an external ear ----- Gr. 14

NECK

1. Such injury to the throat as necessitates the wearing of a tracheal tube ----- Gr. 6
2. Loss of speech due to injury to the vocal cord ----- Gr. 9
3. Total stiffness of neck due to fracture or dislocation of the cervical spines ----- Gr. 8
4. Moderate stiffness or two thirds (2/3) loss of motion of the neck ----- Gr. 10
5. Slight stiffness of the neck or one third (1/3) loss of motion ----- Gr. 12

CHEST-TRUNK-SPINE

1. Fracture of four (4) or more ribs resulting to severe limitation of chest ----- Gr. 6
2. Fracture of four (4) or more ribs with intercostal neuralgia resulting in moderate limitation of chest expansion ----- Gr. 9
3. Slight limitation of chest expansion due to simple rib functional without myositis or intercostal neuralgia ----- Gr. 12
4. Fracture of the dorsal or lumbar spines resulting severe or total rigidity of the trunk or total loss of lifting power of heavy objects ----- Gr. 6
5. Moderate rigidity or two thirds (2/3) loss of motion or lifting power of the trunk ----- Gr. 8
6. Slight rigidity or one third (1/3) loss of motion or lifting power of the trunk ----- Gr. 11
7. Injury to the spinal cord as to make walking impossible without the aid of a pair of crutches ----- Gr. 4
8. Injury to the spinal cord as to make walking impossible even with the aid of a pair of crutches ----- Gr. 1
9. Injury to the spinal cord resulting to incontinence of urine and feces ----- Gr. 1

ABDOMEN

1. Loss of the spleen ----- Gr. 8
2. Loss of one kidney ----- Gr. 7
3. Severe residuals of impairment of intra-abdominal organs which requires regular aid and attendance that will unable worker to seek any gainful employment ----- Gr. 1
4. Moderate residuals of disorder of the intra-abdominal organs secondary to trauma resulting to impairment of nutrition, moderate tenderness, nausea, vomiting, constipation or diarrhea ----- Gr. 7
5. Slight residuals or disorder of the intra-abdominal organs resulting in impairment of nutrition, slight tenderness and/or constipation or diarrhea ----- Gr. 12
6. Inguinal hernia secondary to trauma or strain ----- Gr. 12

PELVIS

1. Fracture of the pelvic rings as to totally incapacitate worker to work ----- Gr. 1
2. Fracture of the pelvic ring resulting to deformity and lameness ----- Gr. 6

URINARY AND GENERATIVE ORGANS

1. Total loss of penis ----- Gr. 7
2. Total loss of both testicles ----- Gr. 7
3. Total loss of one testicle ----- Gr. 11
4. Scars on the penis or destruction of the parts of the cavernous body or urethra interfering with erection or markedly affecting coitus ----- Gr. 9
5. Loss of one breast ----- Gr. 11
6. Prolapse of the uterus ----- Gr. 13
7. Great difficulty in urinating ----- Gr. 13
8. Incontinence of urine ----- Gr. 10

THUMBS AND FINGERS

1. Total loss of one thumb including metacarpal bone ----- Gr. 9
2. Total loss of one thumb ----- Gr. 10
3. Total loss of one index finger including metacarpal bone ----- Gr. 10
4. Total loss of one index finger ----- Gr. 11
5. Total loss of one middle finger including metacarpal bone ----- Gr. 11
6. Total loss of one middle finger ----- Gr. 12
7. Total loss of one ring finger including metacarpal bone ----- Gr. 12
8. Total loss of one ring finger ----- Gr. 13
9. Total loss of one small finger including metacarpal bone ----- Gr. 13
10. Total loss of one small finger ----- Gr. 14
11. Loss of two or more fingers. Compensation for the loss of use of two (2) or more fingers or one (1) or more phalanges of two or more digits of a hand must be proportioned to the loss of the hand occasioned thereby but shall not exceed the compensation for the loss of a hand: ----- Gr. 6
 - a. Loss of five (5) fingers of one hand ----- Gr. 6
 - b. Loss of thumb, index fingers and any of 2 or more fingers of the same hand ----- Gr. 6
 - c. Loss of the thumb, index finger and any one of the remaining fingers of the same hand ----- Gr. 7
 - d. Loss of thumb and index finger ----- Gr. 8
 - e. Loss of three (3) fingers of one hand not including thumb and index finger ----- Gr. 9
 - f. Loss of the index finger and any one of the other fingers of the same hand excluding thumb ----- Gr. 9
 - g. Loss of two (2) digits of one hand not including thumb and index finger ----- Gr. 10
12. Loss of ten (10) fingers of both hands ----- Gr. 3

HANDS

1. Total loss of use of both hands or amputation of both hands at wrist joints or above ----- Gr. 1
2. Amputation of a hand at carpo-metacarpal joints ----- Gr. 5
3. Amputation between wrist and elbow joint ----- Gr. 5

4. Loss of grasping power for small objects between the fold of the finger of one hand -----	Gr. 10
5. Loss of grasping power for large objects between fingers and palm of one hand -----	Gr. 10
6. Loss of opposition between the thumb and tips of the fingers of one hand ----	Gr. 9
7. Ankyclosed wrist in normal position -----	Gr. 10
8. Ankyclosed wrist in position one third (1/3) flexed or half extended and/or severe limited action of a wrist -----	Gr. 11

SHOULDER AND ARM

1. Inability to turn forearm (forearm in normal position-supination) -----	Gr. 11
2. Inability to turn forearm (forearm in abnormal position – pronation) -----	Gr. 10
3. Disturbance of the normal carrying angle or weakness of an arm or a forearm due to deformity of moderate atrophy of muscles -----	Gr. 11
4. Stiff elbow at full flexion or extension (one side) -----	Gr. 7
5. Stiff elbow at right angle flexion -----	Gr. 8
6. Flail elbow joint -----	Gr. 9
7. Pseudoarthrosis of the humerus with musculospiral or radial paralysis -----	Gr. 6
8. Ankylosis of one (1) shoulder, the shoulder blade remaining mobile -----	Gr. 9
9. Ankylosis of one shoulder, the shoulder blade remaining rigid -----	Gr. 8
10. Unreduced dislocation of one (1) shoulder -----	Gr. 8
11. Ruptured biceps or pseudoarthrosis of the humerus, close (one side) -----	Gr. 11
12. Inability to raise arm more than halfway from horizontal to perpendicular -----	Gr. 11
13. Ankylosis of the shoulder joint not permitting arm to be raised above a level with a shoulder and/or irreducible fracture or faulty union collar bone -----	Gr. 10
14. Total paralysis of both upper extremities -----	Gr. 1
15. Total paralysis of one upper extremity -----	Gr. 3
16. Amputation of one (1) upper extremity at or above the elbow -----	Gr. 4
17. Scar the size of the palm in one extremity -----	Gr. 14

LOWER EXTREMITIES

1. Loss of a big toe -----	Gr. 12
2. Loss of a toe other than the big one -----	Gr. 14
3. Loss of ten (10) digits of both feet -----	Gr. 5
4. Loss of a great toe of one foot + one toe -----	Gr. 10
5. Loss of two toes not including great toe or next to it -----	Gr. 12
6. Loss of three (3) toes excluding great toe of a foot -----	Gr. 10
7. Loss of four (4) excluding great toe of a foot -----	Gr. 9
8. Loss of great toe and two (2) other toes of the same foot -----	Gr. 9
9. Loss of five digits of a foot -----	Gr. 8
10. Loss of both feet at ankle joint or above -----	Gr. 1
11. Loss of one foot at ankle joint or above -----	Gr. 6
12. Depression of the arch of a foot resulting in weak foot -----	Gr. 12
13. Loss of one half (1/2) metatarsus of one (1) foot -----	Gr. 8
14. Loss of whole metatarsus or forepart of foot -----	Gr. 7
15. Tearing of achilles tendon resulting in the impairment of active flexion and extension of a foot -----	Gr. 12
16. Malleolar fracture with displacement of the foot inward or outward -----	Gr. 10
17. Complete immobility of an ankle joint in abnormal position -----	Gr. 10
18. Complete immobility of an ankle joint in normal position -----	Gr. 11
19. Total loss of a leg or amputation at or above the knee -----	Gr. 3

20. Stretching leg of the ligaments of a knee resulting in instability of the joint -----	Gr. 10
21. Ankylosis of a knee in genuvalgum of varum -----	Gr. 10
22. Pseudoarthrosis of a knee cap -----	Gr. 10
23. Complete immobility of a knee joint in full extension -----	Gr. 10
24. Complete immobility of a knee joint in strong flexion -----	Gr. 7
25. Complete immobility of a hip joint in flexion of the thigh -----	Gr. 5
26. Complete immobility of a hip joint in full extension of the thigh -----	Gr. 9
27. Slight atrophy of calf of leg muscles without apparent shortening or joint lesion or disturbance of weight-bearing line -----	Gr. 13
28. Shortening of a lower extremity from one to three centimeters with either joint lesion or disturbance of weight-bearing joint -----	Gr. 13
29. Shortening of 3 to 6 cm with slight atrophy of calf or thigh muscles -----	Gr. 12
30. Shortening of 3 to 6 cm with either joint lesion or disturbance of weight-bearing joint -----	Gr. 11
31. Irregular union of fracture with joint stiffness and with shortening of 6 to 9 cm producing permanent lameness -----	Gr. 9
32. Irregular union of fracture in a thigh or leg with shortening of 6 to 9 cms -----	Gr. 10
33. Failure of fracture of both hips to unite -----	Gr. 1
34. Failure of fracture of a hip to unite -----	Gr. 3
35. Paralysis of both lower extremities -----	Gr. 1
36. Paralysis of one lower extremity -----	Gr. 3
37. Scar the size of a palm or larger left on an extremity -----	Gr. 14

NOTE: Any item in the schedule classified under Grade 1 shall be considered or shall constitute total and permanent disability.

SCHEDULE OF DISBILITY ALLOWANCES

IMPEDIMENT GRAD	US\$ 50,000	IMPEDIMENT	
1		X	120.00%
2	*	X	88.81%
3	*	X	78.36%
4	*	X	68.66%
5	*	X	58.96%
6	"	X	50.00%
7	"	X	41.80%
8	"	X	33.59%
9	"	X	26.12%
10	"	X	20.15%
11	"	X	14.93%
12	"	X	10.45%
13	"	X	6.72%
14	"	X	3.74%

To be paid in Philippine Currency equivalent at the exchange rate prevailing during the time of paym

SECTION 32 – A. OCCUPATIONAL DISEASES

For an occupational disease and the resulting disability or death to be compensable, all of the following conditions must be satisfied:

1. The seafarer’s work must involve the risks described herein;
2. The disease was contracted as a result of the seafarer’s exposure to the described risks;
3. The disease was contracted within a period of exposure and under such other factors necessary to contract it, and
4. There was no notorious negligence on the part of the seafarer.

The following diseases are considered as occupational when contracted under working conditions involving the risks described herein:

OCCUPATIONAL DISEASE	NATURE OF EMPLOYMENT
1. Cancer of the epithelial of the bladder (Papilloma of the bladder)	Work involving exposure to alphanaphthylamine, beta-naphthylamin, or benzidine of any part of the salts; and auramine or magenta
2. Cancer, epithellomatous or ulceration of the skin or of the corneal surface of the eye due to tar, pitch, bitumen, mineral oil or paraffin, or compound product or residue of these substances	The use or handling of, exposure to tar, pitch, bitumen, mineral oil (including paraffin) soot or any compound product or residue of any of these substances
3. Deafness – severe profound hearing loss in an occupation where employee is exposed to prolonged, significant noise and vibration in his line of work	Any industrial operation having excessive noise particularly in the higher frequencies
4. Decompression sickness	
a. Caissons disease	Any process carried on in compressed or rarefied air.
b. Aeroembolism	Any process carried on in rarefied air
5. Dermatitis due to irritants and sensitizers	The use or handling of chemical agents which are skin irritants and sensitizers
6. Infections Pneumonia Bronchitis Sinusitis Pulmonary TB Anthrax Cellulitis Conjunctivitis (Bacterial and Viral) Norwalk Virus Salmonella	Work in connection with animals infected with anthrax, handling of animal carcasses or parts of such carcasses, including hides, hoofs, and horns Hepatitis A*, Norwalk, Salmonella

<p>Leptospirosis Malaria Otitis Media Tetanus Viral Encephalitis</p> <p>Including other infections resulting in complications necessitating repatriation.</p>	
<p>7. Ionizing radiation disease, inflammation, ulceration or malignant disease of the skin or subcutaneous tissues of the bones or leukemia, or anemia of the aplastic type due to x-rays, ionizing particle, radium or other radioactive substances</p> <p>a. Acute radiation syndrome</p> <p>b. Chronic radiation syndrome</p> <p>c. Glass Blower's cataract</p>	<p>Exposure to x-rays, ionizing particles of radium or other radioactive substances or other forms of radiant energy</p> <p>Short duration of exposure to large doses of x-rays, gamma rays, alpha rays and beta rays</p> <p>Chronic over-exposure to x-rays with a long latent period affecting the skin, blood and reproductive organ</p> <p>Among furnace men, glass blowers, baker, blacksmith, foundry workers. These are workers exposed to infrared rays.</p>
<p>8. Poisoning and its sequelae caused by:</p> <p>a. Ammonia</p> <p>b. Arsenic or its toxic compound</p> <p>c. Benzene or its toxic homologues; nitro and aminotoxic derivatives</p> <p>d. Beryllium or its toxic compounds</p> <p>e. Brass, zinc or nickel</p> <p>f. Carbon dioxide</p> <p>g. Carbon bisulfide</p>	<p>All work involving exposure to the risk concerned</p> <p>All work involving exposure to the risk concerned</p> <p>All work involving exposure to the risk concerned</p> <p>All work involving exposure to the risk concerned</p> <p>All work involving exposure to the risk concerned</p> <p>All work involving exposure to the risk concerned</p> <p>All work involving exposure to the risk concerned</p>

h. Carbon monoxide	All work involving exposure to the risk concerned
i. Chlorine	All work involving exposure to the risk concerned
j. Chrome or its toxic compounds	All work involving exposure to the risk concerned
k. Dinitrophenol or its homologue	All work involving exposure to the risk concerned
l. Halogen derivatives of hydrocarbon of the aliphatic series	All work involving exposure to the risk concerned
m. Lead or its toxic compounds	All work involving exposure to the risk concerned
n. Manganese or its toxic compounds	All work involving exposure to the risk concerned
o. Mercury or its toxic compounds	All work involving exposure to the risk concerned
p. Nitrous fumes	All work involving exposure to the risk concerned
q. Phosgene	All work involving exposure to the risk concerned
r. Phosphorous or its toxic compounds	All work involving exposure to the risk concerned
s. Sulfur dioxide	All work involving exposure to the risk concerned
9. Vascular disturbance in the upper extremities due to continuous vibration from pneumatic tools or power drills, riveting machines or hammers	Any occupation causing repeated motions, vibrations and pressure of upper extremities
10. Vascular disturbance in the lower extremities – varicocoele causing pain, varicose veins resulting in discoloration and ulceration.	This is due to heavy straining upon the lifting of heavy loads and prolonged standing Any occupation requiring prolonged standing and lifting of heavy loads
11. Cardio-vascular events – to include heart attack, chest pain (angina), heart failure or sudden death. Any of the following conditions must be met:	

<p>a. If the heart disease was known to have been present during employment, there must be proof that an acute exacerbation was clearly precipitated by an unusual strain by reasons of the nature of his work</p> <p>b. the strain of work that brings about an acute attack must be sufficient severity and must be followed within 24 hours by the clinical signs of a cardiac insult to constitute causal relationship</p> <p>c. If a person who was apparently asymptomatic before being subjected to strain at work showed signs and symptoms of cardiac injury during the performance of his work and such symptoms and signs persisted, it is reasonable to claim a causal relationship</p> <p>d. If a person is a known hypertensive or diabetic, he should show compliance with prescribed maintenance medications and doctor-recommended lifestyle changes. The employer shall provide a workplace conducive for such compliance in accordance with Section 1(A) paragraph 5.</p> <p>e. in a patient not known to have hypertension or diabetes, as indicated on his last PEME</p>	<p>a. if a person who was apparently asymptomatic before working showed signs and symptoms of cardiac injury during the performance of his/her work and such symptoms and signs persisted, it is reasonable to claim a causal relationship</p> <p>b. if a person is a known hypertensive or diabetic, he should show compliance with prescribed maintenance medications and doctor-recommended lifestyle changes. The employer shall provide a workplace conducive for such compliance in accordance with Section 1(A) paragraph 6.</p> <p>c. in a patient not known to have hypertension or diabetes as indicated on his last PEME</p>
<p>12. Cerebro-vascular events All of the following conditions must be met:</p> <p>a. If the heart disease was known to have been present during employment, there must be proof that an acute exacerbation was clearly precipitated by an unusual strain by reasons of the nature of his work</p> <p>b. the strain of work that brings about</p>	<p>a. If a person who was apparently asymptomatic before working showed signs and symptoms of cardiac injury during the performance of his/her work and such symptoms and signs persisted, it is reasonable to claim a causal relationship</p> <p>b. if a person is a known hypertensive</p>

<p>an acute attack must be sufficient severity and must be followed within 24 hours by the clinical signs of a cardiac insult to constitute causal relationship</p> <p>c. If a person who was apparently asymptomatic before being subjected to strain at work showed signs and symptoms of cardiac injury during the performance of his work and such symptoms and signs persisted, it is reasonable to claim a causal relationship</p> <p>d. if a person is a known hypertensive or diabetic, he should show compliance with prescribed maintenance medications and doctor-recommended lifestyle changes. The employer shall provide a workplace conducive for such compliance in accordance with Section 1(A) paragraph 5.</p> <p>e. in a patient not known to have hypertension or diabetes, as indicated on his last PEME</p>	<p>or diabetic, he should show compliance with prescribed maintenance medications and doctor-recommended lifestyle changes. The employer shall provide a workplace conducive for such compliance in accordance with Section 1(A) paragraph 5.</p> <p>c. in a patient not known to have hypertension or diabetes as indicated on his last PEME</p>
<p>13. END ORGAN DAMAGE RESULTING FROM UNCONTROLLED HYPERTENSION</p> <p>Impairment of function of the organs such as kidneys, heart, eyes and brain under the following conditions considered compensable:</p> <p>a. if a person is a known hypertensive or diabetic, he should show compliance with prescribed maintenance medications and doctor-recommended lifestyle changes. The employer shall provide a workplace conducive for such compliance in accordance with Section 1(A) paragraph</p> <p>b. In a patient not known to have hypertension has the following on his last PEME: normal BP, normal CXR and ECG/treadmill</p>	<p>a. if a person who was apparently asymptomatic before working showed signs and symptoms of cardiac injury during the performance of his/her work and such symptoms and signs persisted, it is reasonable to claim a causal relationship</p> <p>b. if a person is a known hypertensive or diabetic, he should show compliance with prescribed maintenance medications and doctor-recommended</p>

	lifestyle changes. The employer shall provide a workplace conducive for such compliance in accordance with Section 1(A) paragraph 6.
14. Cataract and pterygium	Caused by prolonged exposure to UV light or welding, wind abrasion and sea breeze
15. Poisoning by cadmium	Among workers in battery factories, who are exposed to cadmium fumes
16. Acute myeloid leukemia	Secondary to prolonged benzene exposure
17. Chronic lymphocytic leukemia	Secondary to prolonged benzene exposure
18. Vitreal hemorrhage and retinal detachment	Caused by the strain upon lifting of heavy loads
19. Hernia. All of the following conditions must be met:	
a. The hernia should be of recent origin;	
b. Its appearance was accompanied by pain, discoloration and evidence of a tearing of the tissues;	
c. The disease was immediately preceded by undue or severe strain arising out of and in the course of employment; a protrusion of mass should appear in the area immediately following the alleged strain.	
20. Bronchial Asthma – all of the following conditions must be met:	
a. there is no evidence or history of asthma before employment	
b. the allergen is present in the working conditions	
c. sensitivity test to allergens in the working environment should yield positive results	

<p>d. a provocative test should show positive results</p>
<p>21. Osteoarthritis. Any occupation involving:</p> <ul style="list-style-type: none"> a. Joint strain from carrying heavy loads, or unduly heavy physical labor, as among laborers and mechanics; b. Minor or major injuries to the joint; c. Excessive use or constant strenuous usage of a particular joint, as among sportsmen, particularly those who have engaged in the more active sports activities; d. Extreme temperature changes (humidity, heat and cold exposures) and; e. Faulty work posture or use of vibratory tools
<p>22. Peptic Ulcer</p> <p>Any occupation involving prolonged emotional or physical stress, as among professional people, transport workers and the like.</p>
<p>23. Viral hepatitis</p> <p>In addition to working conditions already listed under Philippine Decree No. 626, as amended, any occupation involving exposure to a source of infection through ingestion of water, milk or other foods contaminated with hepatitis virus; provided that the physician determining the causal relationship between the employment and the illness should be able to indicate whether the disease of the afflicted worker manifested itself while he was so employed, knowing the incubation period thereof.</p>
<p>24. Asbestosis. All of the following conditions must be met:</p> <ul style="list-style-type: none"> a. The seafarer must have been exposed to Asbestos dust in the work place, as duly certified to by the employer, or by a medical institution, or competent medical practitioner acceptable to or accredited by the System; b. The chest X-ray report of the employee must show findings of asbestos or asbestos-related disease, e.g. pleural plaques, pleural thickening, effusion, neoplasm and interstitial fibrosis; and c. In case of ailment is discovered after the seafarer's retirement/separation from the company, the claim must be filed with the System within three (3) years from discovery.

NOTE: Death or disability which is directly caused by sexually transmitted disease or arose from complications thereof shall not be compensable nor shall be entitled to the benefits provided in this Contract.

SECTION 33. TABLE OF OFFENSES AND CORRESPONDING ADMINISTRATIVE PENALTIES

- A. Pursuant to Section 17 and 18 of the Contract, the disciplinary grounds listed in the Table of Offenses and Administrative Penalties hereunder or analogous acts thereto shall be penalized according to its gravity and frequency of commission, imposed by the **Master** of the ship. Such offenses shall be penalized as indicated.
- B. Commission of a seafarer of any of the offenses enumerated in the Table of Offenses and Administrative Penalties hereunder or of similar offenses shall be ground for disciplinary administrative action at the POEA where the following corresponding penalty shall be imposed.
- C. The penalties for administrative actions by the Master and/or the POEA provided herein shall be separate and distinct from whatever appropriate criminal action that may be filed against the seafarer.

OFFENSES	AGREED ADMINISTRATIVE PENALTIES (IMPOSED BY THE MASTER)	AGREED ADMINISTRATIVE PENALTIES (IMPOSED BY POEA AFTER DUE INVESTIGATION)
<p>1. Smuggling or violation of any custom rules and regulations of the Philippines and of foreign ports</p> <p>a. smuggling any taxable item</p> <p>b. possession or use of prohibited drugs, narcotics and other contraband</p> <p>c. gun-running or possession of explosives and the like</p> <p>d. abetting or conniving with others to commit smuggling</p> <p>e. misdeclaration of or failing to declare articles leading to their seizure and fine to ship</p>	<p>Dismissal and to pay cost of repatriation and cost of his replacement</p> <p>Dismissal and to pay cost of repatriation and cost of his replacement</p> <p>Dismissal and to pay cost of repatriation and cost of his replacement</p> <p>Dismissal and to pay cost of repatriation and cost of his replacement</p> <p>Dismissal and to pay cost of repatriation and cost of his replacement</p>	<p>1st Offense One (1) year to two (2) years suspension 2nd Offense Two (2) years and one (1) day suspension to delisting</p> <p>1st Offense: Delisting</p> <p>1st Offense: Delisting</p> <p>1st Offense: Two (2) years to three (3) years suspension 2nd Offense: Three (3) years and one (1) day suspension to delisting</p> <p>1st Offense: One (1) year to two (2) years suspension 2nd Offense: Two (2) years and one (1) day suspension</p>

<p>f. misdeclaration of or failing to declare articles leading to their seizure but ship not implicated</p>	<p>1st Offense: Reprimand and warning 2nd Offense: Dismissal and to pay cost of repatriation and cost of his replacement</p>	<p>to delisting 1st Offense: One (1) year to two (2) years suspension 2nd Offense: Two (2) years and one (1) day to three (3) years suspension 3rd Offense: Three (3) years and one (1) day suspension to delisting</p>
<p>g. possession of pornographic materials leading to its seizure and fine to ship</p>	<p>Dismissal and to pay cost of repatriation and cost of his replacement</p>	<p>1st Offense: One (1) year to two (2) years suspension 2nd Offense: Two (2) years and one (1) day suspension to delisting</p>
<p>h. possession of child pornography materials leading to its seizure and fine to ship</p>	<p>Dismissal and to pay cost of repatriation and cost of his replacement</p>	<p>1st Offense: One (1) year to two (2) years suspension 2nd Offense: Two (2) years and one (1) day suspension to delisting</p>
<p>i. Any other violation which will not implicate ship</p>	<p>1st Offense: Reprimand and warning 2nd Offense: Dismissal and to pay cost of repatriation and cost of his replacement</p>	<p>1st Offense: One (1) year to two (2) years suspension 2nd Offense: Two (2) years and one (1) day suspension to delisting</p>
<p>j. Any other violation which will implicate the ship</p>	<p>Dismissal and to pay cost of repatriation and cost of his replacement</p>	<p>1st Offense: (3)Three years suspension to delisting</p>
<p>2. Desertion</p>		
<p>a. deserting or attempting to desert</p>	<p>Dismissal and to pay cost of repatriation and cost of his replacement</p>	<p>1st Offense: Delisting</p>
<p>b. advising, assisting or persuading another to desert</p>	<p>Dismissal and to pay cost of repatriation and cost of his replacement</p>	<p>1st Offense: Five (5) years suspension to delisting</p>
<p>3. Absence without leave</p>		
<p>a. abandoning post or duty without being properly relieved</p>	<p>Dismissal and to pay cost of repatriation and cost of his replacement</p>	<p>1st Offense: One (1) year to two (2) years suspension 2nd Offense: Two years (2) and one (1) day suspension to delisting</p>

<p>b. leaving the ship without permission from responsible officers during working hours</p>	<p>Dismissal and to pay cost of repatriation and cost of his replacement</p>	<p>1st Offense: One (1) year to two (2) years suspension 2nd Offense: Two years (2) and one (1) day suspension to delisting</p>
<p>c. Entrusting to others assigned duties without authority of department head</p>	<p>Master's discretion (grave or less grave, depending on circumstances)</p>	<p>1st Offense: Six (6) months to one (1) year suspension from participation in the overseas employment program 2nd Offense: One (1) year and one (1) day to two (2) years suspension 3rd Offense: Two (2) years and one (1) day suspension to delisting</p>
<p>d. Leaving the ship without permission</p>	<p>Master's discretion (grave or less grave, depending on circumstances)</p>	<p>1st Offense: Six (6) months to one (1) year suspension from participation in the overseas employment program 2nd Offense: One (1) year and one (1) day to two (2) years suspension 3rd Offense: Two (2) years and one (1) day suspension to delisting</p>
<p>4. Sleeping on post while on duty</p>	<p>Dismissal and to pay cost of repatriation and cost of his replacement</p>	<p>1st Offense: One (1) year to two (2) years suspension 2nd Offense: Two (2) years and one day suspension to delisting</p>
<p>5. Insubordination</p> <p>a. any act of disobedience to lawful orders of a superior officer</p> <p>b. attempting to assault a superior officer</p>	<p>Dismissal and to pay cost of repatriation and cost of his replacement</p> <p>Dismissal and to pay cost of repatriation and cost of his replacement</p>	<p>1st Offense: One (1) year to two (2) years suspension 2nd Offense: Two (2) years and one day suspension to delisting</p> <p>1st Offense: Six (6) months to one (1) year suspension from participation in the overseas employment program 2nd Offense: One (1) year and one (1) day to two (2) years suspension 3rd Offense: Two (2) years</p>

<p>c. assaulting a superior officer/other persons on business with the ship without the use of deadly weapon</p>	<p>Dismissal and to pay cost of repatriation and cost of his replacement</p>	<p>and one (1) day suspension to delisting from the POEA Registry</p> <p>1st Offense: One (1) year to two (2) years suspension 2nd Offense: Two (2) years and one (1) day suspension to delisting</p>
<p>d. assaulting a superior officer/other persons on business with the ship with the use of deadly weapon</p>	<p>Dismissal and to pay cost of repatriation and cost of his replacement</p>	<p>1st Offense: Delisting</p>
<p>e. behaving with disrespect towards a superior officer</p>	<p>Dismissal and to pay cost of repatriation and cost of his replacement</p>	<p>1st Offense: Six (6) months to one (1) year suspension 2nd Offense: One (1) year and one (1) day to three (3) years suspension 3rd Offense: Three (3) years and one (1) day suspension to delisting</p>
<p>f. insulting a superior officer by words or deed</p>	<p>Dismissal and to pay cost of repatriation and cost of his replacement</p>	<p>1st Offense: Six (6) months to one (1) year suspension 2nd Offense: One (1) year and one (1) day to three (3) years suspension 3rd Offense: Three (3) years and one (1) day suspension to delisting</p>
<p>g. inciting another to commit insubordination</p>	<p>Dismissal and to pay cost of repatriation and cost of his replacement</p>	<p>1st Offense: Six (6) months to one (1) year suspension 2nd Offense: One (1) year and one (1) day to three (3) years suspension 3rd Offense: Three (3) years and one (1) day suspension to delisting</p>
<p>6. Drunkenness</p>		
<p>a. drunk while on duty</p>	<p>Dismissal and to pay cost of repatriation and cost of his replacement</p>	<p>1st Offense: Two (2) years to three (3) years suspension 2nd Offense: Two (2) years and one (1) day suspension to delisting</p>
<p>b. creating trouble on</p>	<p>1st Offense: Reprimand</p>	<p>1st Offense: Six (6) months to</p>

<p>board due to intoxication</p> <p>c. failure to perform assigned jobs due to intoxication</p>	<p>and warning 2nd Offense: Dismissal and to pay cost of repatriation and cost of his replacement</p> <p>1st Offense: Reprimand and warning 2nd Offense: Dismissal and to pay cost of repatriation and cost of his replacement</p>	<p>one (1) year suspension 2nd Offense: One (1) year and one (1) day to three years suspension 3rd Offense: Three (3) years and one (1) day suspension to delisting</p> <p>1st Offense: Six (6) months to one (1) year suspension 2nd Offense: One (1) year and one (1) day to three years suspension 3rd Offense: Three (3) years and one (1) day suspension to delisting</p>
<p>7. Creating trouble outside the ship's premises</p>	<p>1st Offense: Reprimand and warning 2nd Offense: Dismissal and to pay cost of repatriation and cost of his replacement</p>	<p>1st Offense: Six (6) months to one (1) year suspension 2nd Offense: One (1) year and one (1) day to three years suspension 3rd Offense: Three (3) years and one (1) day suspension to delisting</p>
<p>8. Gambling</p> <p>a. which results in fighting or any incident as to upset the harmonious relationship on board the ship</p> <p>b. any other form of gambling which is not purely recreational</p>	<p>Dismissal and to pay cost of repatriation and cost of his replacement</p> <p>Master's discretion (grave or less grave, depending on circumstances)</p>	<p>1st Offense: One (1) year to two (2) years suspension 2nd Offense: Two (2) years and one (1) day suspension to delisting</p> <p>1st Offense: Six (6) months to one (1) year suspension 2nd Offense: One (1) year and one (1) day to three years suspension 3rd Offense: Three (3) years and one (1) day suspension to delisting</p>
<p>9. Violation of company policies and regulations for:</p> <p>a. pilferage or theft of ship's store or cargo</p> <p>b. pilferage or theft of</p>	<p>Dismissal and to pay cost of repatriation and cost of his replacement</p> <p>Dismissal and to pay cost</p>	<p>1st Offense: One (1) year to two (2) years suspension 2nd Offense: Two (2) years and one (1) day suspension to delisting</p>

ships property, of crews or passengers or other persons with business at the ship.	of repatriation and cost of his replacement	1 st Offense: One (1) year to two (2) years suspension 2 nd Offense: Two (2) years and one (1) day suspension to delisting
c. embezzlement of company funds	Dismissal and to pay cost of repatriation and cost of his replacement	1 st Offense: One (1) year to two (2) years suspension 2 nd Offense: Two (2) years and one (1) day suspension to delisting
d. unauthorized disposal of company ship's properties for personal gain	Dismissal and to pay cost of repatriation and cost of his replacement	1 st Offense: One (1) year to two (2) years suspension 2 nd Offense: Two (2) years and one (1) day suspension to delisting
e. any act of dishonesty with intention to defraud the company	Dismissal and to pay cost of repatriation and cost of his replacement	1 st Offense: One (1) year to two (2) years suspension 2 nd Offense: Two (2) years and one (1) day suspension to delisting
f. gross negligence and failure to observe proper storage and cargo handling procedures resulting in delay of ships and/or damage to cargoes	Dismissal and to pay cost of repatriation and cost of his replacement	1 st Offense: One (1) year to two (2) years suspension 2 nd Offense: Two (2) years and one (1) day suspension to delisting
g. failure to observe and comply with regulation and non-baggage shipment and acceptance of parcels on board	Master's discretion (grave or less grave, depending on circumstances)	1 st Offense: Six (6) months to one (1) year suspension from participation in the overseas employment program 2 nd Offense: One (1) year and one (1) day to two (2) years suspension 3 rd Offense: Two (2) years and one (1) day suspension to delisting
h. failure to observe regulations on expiration of shore liberty	1 st Offense: Reprimand and warning 2 nd Offense: Dismissal and to pay cost of	1 st Offense: Six (6) months to one (1) year suspension from participation in the overseas

<p>i. being left behind by ship in foreign port without justifiable reason</p> <p>j. disorderly conduct and/or disrespect towards passengers or other persons</p> <p>k. for immorality so as to cast aspersion on the good name of the ship and company</p> <p>l. inflicting harm or injury to others</p>	<p>repatriation and cost of his replacement</p> <p>Dismissal and to pay cost of repatriation and cost of replacement</p> <p>Dismissal and to pay cost of repatriation and cost of replacement</p> <p>Dismissal and to pay cost of repatriation and cost of replacement</p> <p>Dismissal and to pay cost of repatriation and cost of his replacement</p>	<p>employment program</p> <p>2nd Offense: One (1) year and one (1) day to two (2) years suspension</p> <p>3rd Offense: Two(2) years and one (1) day suspension to delisting</p> <p>1st Offense: Six (6) months to one (1) year suspension from participation in the overseas employment program</p> <p>2nd Offense: One (1) year and one (1) day to two (2) years suspension</p> <p>3rd Offense: Two(2) years and one (1) day suspension to delisting</p> <p>1st Offense: One (1) year to two (2) years suspension</p> <p>2nd Offense: Two (2) years and one (1) day suspension to delisting</p> <p>1st Offense: One (1) year to two (2) years suspension</p> <p>2nd Offense: Two (2) years and one (1) day suspension to delisting</p> <p>1st Offense: One (1) year to two (2) years suspension</p> <p>2nd Offense: Two (2) years and one (1) day suspension to delisting</p>
<p>10. Incompetence and inefficiency</p>	<p>Dismissal and to pay cost of repatriation and cost of his replacement</p>	<p>1st Offense: Two (2) years to three (3) years suspension</p> <p>2nd Offense: Three (3) years and one (2) day suspension to delisting</p>
<p>11. Inciting mutiny, malicious destruction of ship's property at any</p>	<p>Dismissal and to pay cost of repatriation and cost of his replacement</p>	<p>1st Offense: Two (2) years to three (3) years suspension</p> <p>2nd Offense: Three (3) years</p>

activity which will hamper the efficient operation of the ship		and one (2) day suspension to delisting
12. Concerted action to breach approved contracts	Dismissal and to pay cost of repatriation and cost of his replacement	1 st Offense: Two (2) years to three (3) years suspension 2 nd Offense: Three (3) years and one (2) day suspension to delisting
13. Any activity which tends to destroy harmonious relationship of the company	Dismissal and to pay cost of repatriation and cost of his replacement	1 st Offense: One (1) year to two (2) years suspension 2 nd Offense: Two (2) years and one (1) day suspension to delisting
14. Grave abuse of authority		
a. grave abuse of authority (with the use of deadly weapon) resulting in harm or injury to subordinate	Dismissal and to pay cost of repatriation and cost of his replacement	Delisting from POEA registry
b. grave abuse of authority (without the use of deadly weapon) resulting in harm or injury to subordinate	Dismissal and to pay cost of repatriation and cost of his replacement	1 st Offense: Two (2) years to three (3) years suspension 2 nd Offense: Two (2) years and one (1) day suspension to delisting
d. any other case of abuse of authority	Master's discretion (grave or less grave, depending on circumstances)	1 st Offense: One (1) year to two (2) years suspension 2 nd Offense: Two (2) years and one (1) day to three (3) years suspension 3 rd Offense: Three (3) years and one (1) day suspension to delisting
15. For gross misbehavior prejudicial to good order and discipline	1 st offense: Reprimand and warning 2 nd offense: Dismissal and to pay cost of repatriation and cost of his replacement	1 st Offense: One (1) year to two (2) years suspension 2 nd Offense: Two (2) years and one (1) day suspension to delisting
16. Causing through neglect, damage loss, spoilage or deterioration of ship's stocks and property	Master's discretion (grave or less grave, depending on circumstances)	1 st Offense: One (1) year to two (2) years suspension 2 nd Offense: Two (2) years and one (1) day suspension to delisting
17. Connivance with or cuddling of stowaway	Dismissal and to pay cost of repatriation and cost of his replacement	1 st Offense: One (1) year to two (2) years suspension 2 nd Offense: Two (2) years

		and one (1) day suspension to delisting
18. Willfully making false statement, reports, certification or documents for personal gain or with intent to mislead or defraud the company or authorities	Dismissal and to pay cost of repatriation and cost of his replacement	1 st Offense: One (1) year to two (2) years suspension 2 nd Offense: Two (2) years and one (1) day suspension to delisting
19. Any other case as to cast aspersion on the good name of the company and ship	Master's discretion (grave or less grave, depending on circumstances)	1 st Offense: One (1) year to two (2) years suspension 2 nd Offense: Two (2) years and one (1) day suspension to delisting
20. Violation to observe safety and environmental rules/ regulations	Master's discretion (grave or less grave, depending on circumstances)	1 st Offense: One (1) year to two (2) years suspension 2 nd Offense: Two (2) years and one (1) day suspension to delisting
21. Failure to observe the drug and alcohol policy of the company	Dismissal and to pay cost of repatriation and cost of his replacement	1 st Offense: One (1) year to two (2) years suspension 2 nd Offense: Two (2) years and one (1) day suspension to delisting

This contract is pursuant to Governing Board Resolution No. 09 and POEA Memorandum Circular No. 10, both series of 2010.

Appendix “B” - SREC Ethical Approval

Cardiff School of Social Sciences
Director Professor Malcolm Williams
Ysgol Gwyddorau Cymdeithasol Caerdydd
Cyfarwyddwr Yr Athro Malcolm Williams



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28th February 2012

Our ref: SREC/846

Jean Ver P. Pia
PhD Programme
SOCSI (SIRC)

Dear Jean

Your project entitled "*Labour supply arrangements in the Philippine seafaring industry*" has now been approved by the School of Social Sciences Research Ethics Committee of Cardiff University and you can now commence the project.

Please note that since your project involves data collection abroad you may need approval from a competent body in the relevant jurisdiction.

If you make any substantial changes with ethical implications to the project as it progresses you need to inform the SREC about the nature of these changes. Such changes could be: 1) changes in the type of participants recruited (e.g. inclusion of a group of potentially vulnerable participants), 2) changes to questionnaires, interview guides etc. (e.g. including new questions on sensitive issues), 3) changes to the way data are handled (e.g. sharing of non-anonymised data with other researchers).

All ongoing projects will be monitored every 12 months and it is a condition of continued approval that you complete the monitoring form.

Please inform the SREC when the project has ended.

Please use the SREC's project reference number above in any future correspondence.

Yours sincerely

Professor Tom Horlick-Jones
Chair of the School of Social Sciences Research Ethics Committee

cc: E Renton
Supervisors: D Walters
H Sampson

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Mae Prifysgol Caerdydd yn eiddo gofrestrwyd, rhif 1136855

Appendix “C” – Interview Schedule for Government Official (NLRC)

Post-deployment stage

Part 1 – General Information

Name of government agency:

National Labour Relations Commission (NLRC)

Address:

Name:

Age:

Gender:

Country of Birth:

Job Title:

Section:

Length of Service:

Interview Venue:

Date:

Professional Background:

What were your posts prior to your appointment as Chairman/Commissioner/Labour Arbiter at NLRC?

How many years have you been Chairman/Commissioner/Labour Arbiter of NLRC?

Have you worked for a private organization or non-government organization prior to your appointment as Chairman/Commissioner/or Labour Arbiter?

What is the fulfilment you get from being in government? Is there a difference between serving in government or private sector or a non-government organization (NGO) or past administrations?

Plans, Policies and Programmes:

I read about the innovative policies and practices which are implemented in the NLRC. Can you tell me more about the landmark reform measures of the NLRC which includes, among others:

- reduction of case resolution to 6 months in line with the Project SpeEd of the DOLE
- current revision of Rules of Procedures and Manual on Execution of Judgment
- strict monitoring of attendance of Commissioners, Labour Arbiters, and employees
- strengthening of mandatory conciliation and mediation process
- adoption of a Code of Conduct
- proper monitoring of allocation and utilization of agency funds in accordance with the principles of zero-based budgeting
- observance of an acceptable level of performance for Commissioners and Labour Arbiters
- imposition of sanctions for non-compliance

a. What about examples of problems encountered by NLRC in implementing these policies? What were the barriers identified for these problems?

b. What are the concrete effects of these policies to the worker/seafarer clients of the Commission?

Can you relate how the 2 core goals of NLRC (disposition of labour and management disputes based on social justice and promotion and maintenance of industrial peace) had been helpful to seafarers who have pending cases with the NLRC?

Jurisdiction over seafarers

NLRC is a quasi-judicial agency mandated to 'adjudicate Labour and management disputes involving local and overseas workers through compulsory arbitration and alternative modes of dispute resolution' (ADR).

Can you explain this further insofar as the coverage of your jurisdiction?

Does these cover seafarers deployed overseas who has disputes with their employment contracts?

Does it mean that protracted and highly contested hearings are a thing of the past because of the use of arbitration and ADR?

Can you tell me more about the Single Entry Approach Desks (SEADs) which mandates a 30-day mandatory conciliation-mediation for all Labour employment cases?

What is the difference between cases filed in the POEA or the courts and those cases filed in the NLRC?

What is the process observed when there is a complaint filed by the seafarers?

Who is involved in the process?

What do they do?

Why are done in that way?

In the cases that you resolved involving the SEC, can you conclude that the SEC ameliorated the situation of Filipino seafarers' health and safety? Why do you say so?

Have you had cases which question the contents of the seafarers employment contract? Can you narrate to me some of these cases which relates for example to...

Minimum terms and conditions of employment

Wages

Hours of work

Overtime pay

Transportation

Accommodation

Annual leave

Workmen's compensation

Termination and repatriation

As NLRC Commissioner/Labour Arbiter who decides cases involving seafarers, would you say that the terms and conditions of the SEC are effectively enforced and implemented?

In this research, I will also try to elicit comments of seafarers regarding the SEC. If you are a seafarer, would you say that there is effective enforcement and implementation of the provisions of the SEC? Why or why not?

With the phenomenal growth of atypical employment or precarious non-regular, non-standard jobs, how do you keep the balance between labour protection and labour market regulations in your decision? In your policies?

How do you keep the balance between the requirements of workers and business? For example the employers' demand for greater efficiency and flexibility in the labour market vis-à-vis the workers' demand for employment stability, increased social protection and expanded social security coverage?

Can you remember a case which made you balance these interests?

The Labour Code provides for regularization of tenure for workers doing regular and necessary work after 6 months of probation but the hiring of casual and temporary seafarers by manning agencies are a common practice. Is there an inconsistency between the Labour Code and the SEC as the latter allows short-term contract and casualisation?

Dealing with problems/issues with the SEC:

Seafarers are often portrayed as marginalised workers. Do you agree with this statement?

What are most common cases filed in the NLRC which involves the SEC (like contract violation and abuse, contract substitution, non-payment of wages)? How do you deal with this cases?

How are majority of these cases resolved, in favour of the seafarer or the employer?

In your experience as Commissioner/Labour Arbiter, what can you say are the most violated or most complained provisions of the SEC?

Governance:

Insofar as streamlining procedures to reduce the processing time of key frontline services can you give me an idea or example of the level of improvement under your administration?

Based on this improved service in resolution of cases, have you received positive response or feedback from the seafarers or seafarer representatives or from the manning agencies and their associations?

Tripartism:

Is there an active public/private partnership between the NLRC and the umbrella worker organizations such as the Joint Manning Group (composed of FAME, FSA, INTERMAP, PAMAS and PJMMCC, other employer associations/organizations)?

What about relationship between NLRC and seafarer unions?

Amendments to the SEC:

How will the amendments to the SEC affect the way NLRC resolve pending cases? Examples of the changes in the SEC are as follows:

- a. Increase of leave pay from 2.5 days to 4.5 days
- b. Mandatory social security coverage
- c. Compulsory insurance and payment of death benefits, subsistence allowance and compassionate visit for agency-hired workers
- d. Mandatory insurance coverage for seafarers and to recognize foreign insurance companies providing indemnity cover to the vessel
- e. Payment of sickness allowance, mode of payment while under medical attention

Conclusion:

Given the innovative reforms introduced by the NLRC, I know that there are more plans for the future. Can you tell me something about the future developments planned by the NLRC for seafarers in the next 5 years?

Were you expecting a question that I was not able to ask today? What is it and why do you think is it relevant?

Do you have anything more to add to our conversation?

Appendix “D” – Interview with Government Official (POEA)

Rationale for Prescription of Contracts

Part 1 – General Information

Name of government agency:

Philippine Overseas Employment Administration (POEA)

Address:

Name:

Age:

Gender:

Country of Birth:

Job Title:

Section:

Length of Service:

Interview Venue:

Date:

Professional Background:

How many years have you been in government service?

Plans, Policies and Programmes:

Having worked in government for _ years, what can you say are the policies for workers/seafarers espoused in general which are different from the previous administrations? Can you give examples?

I read about the 22-point labour employment agenda for the first 100-days of President Aquino which had been done in conjunction with workers' and civil society groups ---

Can you give examples of your successes insofar as its implementation is concerned?

What about examples of problems you encountered in implementing these policies? What were the barriers identified for these problems?

Given the innovative reforms introduced by the POEA, I know that there are more plans for the future. Can you tell me something about the future developments planned by the POEA specific to seafarers in the next 5 years and relative to the seafarer contracts?

Rationale for prescribing SEC:

What are the reasons for prescribing the SEC for manning agencies/shipowners and seafarers?

What was the situation before the SEC was prescribed?
What problems or issues does it seek to address?

Seafarers are often portrayed as marginalised workers. Do you believe this statement? If so, how does POEA protect seafarers' rights?

As a government official instrumental in declaring policies, would you say that there is an effective enforcement and implementation of the SEC provisions by the government, by the shipowners/manning agencies/seafarers?

In this research, I will try to elicit comments of seafarers regarding the SEC. If you are a seafarer, would you say that there is effective enforcement and implementation of the provisions of the SEC? Why or why not?

With the phenomenal growth of atypical employment or precarious non-regular, non-standard jobs, how do you keep the balance between labour protection and labour market regulations in labour laws? How do you prevent the oft-cited global race to the bottom?

Are we the only country which prescribes the SEC? What other country, if you know, prescribes it?

Can you see the SEC being adopted by other labour supplying countries? Why or why not?

When seafarers undergo the Pre-employment Orientation Seminar (PEOS) and Pre-deployment Orientation Seminar (PDOS), are the SEC terms and conditions explained to the seafarers?

Why is there a need for the POEA to process/approve the SEC?

Who are involved in the processing of contracts in the POEA?

How many contracts on the average are processed daily per person?

What are the look-outs of the evaluators when checking the contracts?

Is there an opportunity for the seafarer to ask questions to clarify the terms and conditions of the contract? How do you characterise the relationship between the seafarer and the POEA evaluator who processes the SEC?

In the processing of the SEC, how does the POEA ensure that the parties to the contract are on equal footing?

Dealing with problems/issues with the SEC:

What are most common problems (like contract violation and abuse, contract substitution, non-payment of wages) with the SEC? How are these problems dealt with by the POEA? What are the most violated provisions of the SEC?

The SEC provisions are enforceable even beyond the jurisdiction of the Philippines and are respected by crewing agencies and shipowners to be of a global character. How can you explain this? Can you give examples?

There are manning agencies who had been awardees of excellence, toppers and hall of famers, but there are also non-reputable agencies. How are the former group given incentives? How are the latter group deterred and punished?

Governance:

Insofar as streamlining procedures to reduce the processing time of key frontline services which is part of the 22-point agenda of the Aquino administration, does this include the processing/approval of the SEC by the POEA? Can you give me an idea or example of the level of improvement under your administration?

Based on this improved service in processing the SEC, did you receive positive response or feedback from the seafarers or seafarer representatives or from the manning agencies and their associations?

Tripartism:

Is there an active public/private partnership between the DOLE/POEA and the umbrella organizations, Joint Manning Group composed of FAME, FSA, INTERMAP, PAMAS and PJMMCC, other associations/organizations?

What about relationship between DOLE/POEA and seafarer unions? What are the existing active unions for seafarers?

What was the role of these organizations during the consultation process for the SEC and its subsequent revisions?

Amendments to the SEC:

What are example of the factors which necessitated the review of the SEC for seafarers?

What are examples of the changes in the SEC?

During the tripartite consultations, how did the employers react to the additional requirements in the SEC which have consequences to costs in their operation? What about the reaction of the seafarers?

Appendix “E” – Interview with Maritime Lawyer

Professional Background

Can you tell me something about yourself?

Have you worked for government or involved in a private organization or non-government organization?

How many years have you been handling seafarer-related cases and cases involving seafarer employment contracts?

What made you decide to work with seafarers rather than for manning agents or shipowners?

What is the fulfilment that you get from handling cases for seafarers?

Plans, Policies and Programmes:

In which agency/court do you usually represent seafarers?

How was your experience in dealing with these agencies?

Do you think that they were able to successfully implement the 22-point labour employment agenda of President Aquino which includes: streamlined procedures, removal of red tape, restoration of integrity and fairness, strengthened arbitration and adjudication system, reduction of case resolution to 6 months, strict monitoring of attendance of Commissioners, Labour Arbiters, and employees, and strengthening of mandatory conciliation and mediation process?

What do you think are the concrete effects of these policies to your seafarer clients?

How had been it been helpful to seafarers who have pending cases with the NLRC, POEA, etc.?

In the cases that you handled, was the compulsory arbitration and alternative modes of dispute resolution' (ADR) used or encouraged to be used? Does these cover seafarers deployed overseas who has disputes with their employment contracts?

What is the difference of the cases filed in the POEA or the courts to those cases filed in the NLRC?

In the cases that you handled involving the SEC, can you conclude that the SEC ameliorated the situation of Filipino seafarers' health and safety? Why do you say so?

Have you had cases which question the contents of the seafarer's employment contract? For example: minimum terms and conditions of employment, wages, hours of work, overtime pay, transportation, accommodation, annual leave, workmen's compensation, termination and repatriation.

As a lawyer who handles cases involving seafarers, would you say that the terms and conditions of the SEC are effectively enforced and implemented?

In this research, I will try to elicit comments of seafarers regarding the SEC. If you are a seafarer, would you say that there is effective enforcement and implementation of the provisions of the SEC? Why or why not?

With the phenomenal growth of atypical employment or precarious non-regular, non-standard jobs, how do you suggest our government should keep the balance between labour protection and labour market regulations in their decisions? In their policies?

How do you keep the balance between the requirements of workers and business? For example the employers' demand for greater efficiency and flexibility in the labour market vis-à-vis the workers' demand for employment stability, increased social protection and expanded social security coverage?

Can you remember a case which you think this balancing of political/economic interests was weighed against protection of our seafarer workers?

The Labour Code provides for regularization of tenure for workers doing jobs which are deemed necessary and essential to the main business of the employer. After 6 months of probation the employees becomes regular. But this does not apply to seafarers who are always contractual. Do you think there is an inconsistency between the Labour Code and the SEC as the latter allows short-term contract and casualisation?

Dealing with problems/issues with the SEC:

Seafarers are often portrayed as marginalised workers. Do you agree with this statement?

What do you think are examples of cases commonly filed in the NLRC which involves the SEC (like contract violation and abuse, contract substitution, non-payment of wages): salary (delayed payment, underpayment of salary or other benefits); job description; overtime?

How have the cases you've handled been resolved, in favour of the seafarer or the employer?

Governance:

I read that the NLRC and POEA are streamlining their procedures to reduce the processing time of key frontline services. Have you experience that the resolution of pending cases in the NLRC are resolved faster now? Can you give me an idea or example of the level of improvement?

Because of the improvement in services, have you or your client given positive response or feedback by these government agencies?

Tripartism:

Are your clients members of seafarer unions?

What was the assistance of their unions to your clients if any?

Amendments to the SEC:

How will the amendments to the SEC affect the way NLRC resolve pending cases?

Examples of the changes in the SEC are as follows: Increase of leave pay from 2.5 days to 4.5 days; Mandatory social security coverage; Compulsory insurance and payment of death benefits, subsistence allowance and compassionate visit for agency-hired workers; Mandatory insurance coverage for seafarers and to recognize foreign insurance companies providing indemnity cover to the vessel; Payment of sickness allowance, mode of payment while under medical attention.

Conclusion:

Do you have anything more to add to our conversation? Were you expecting a question that I was not able to ask today? What is it and why do you think is it relevant?

Appendix “F” _ Interview guide for seafarers

Part 1: General Information - For each seafarer interviewee

Name	
Age	
Sex	
Date of birth	
Place of birth	
Nationality	
Disability	<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, type of disability	
Company	
Address	
Job title	
Length of service	
Shipboard position	
Status of shipboard employment	<input type="checkbox"/> Regular employee <input type="checkbox"/> Contractual employee <input type="checkbox"/> Others
Qualifications on entry	
Educational qualifications	<input type="checkbox"/> BSMT graduate <input type="checkbox"/> BSME graduate <input type="checkbox"/> undergraduate <input type="checkbox"/> Others, Please specify _____
Licensure examination/s passed	<input type="checkbox"/> Master Mariner <input type="checkbox"/> Chief Engineer <input type="checkbox"/> Chief Mate <input type="checkbox"/> Second Engineer <input type="checkbox"/> Second Mate <input type="checkbox"/> Third Officer <input type="checkbox"/> Third Engineer <input type="checkbox"/> Fourth Engineer <input type="checkbox"/> Others, please specify _____
Flag of registry of ship boarded	
Principal or shipowner	
Local agency	
How are you employed on board the ship	<input type="checkbox"/> By contract approved by the POEA <input type="checkbox"/> By contract approved only by the principal different from the POEA approved contract <input type="checkbox"/> By direct hire by foreign principal <input type="checkbox"/> By contract on board a Philippine-flag vessel
Types of vessel served?	
Course	
School	
Qualifications acquired since entry	
Interview venue	
Date of Interview	

PART 2 – Personal/ Career

1. Can you tell me when you first came to work in the shipping company, and in what capacity? What do you do now?
2. Can you remember how you heard about the job vacancy? If so please provide details.
3. Who interviewed you for the job and how was the interview organised? (e.g. how many were on the panel, m/f breakdown of panel, did you sit a test, etc.)
4. Has your work/job changed over time and if so how? (for example, working hours, skills, responsibility, type of work)
5. Have you taken any career breaks – family or caring responsibilities for example? (If so how was this organized/arranged? How much time did you have away from the workplace? Was it easy/straightforward to return?)
6. Where do women/disabled/young/old/migrant workers tend to be concentrated in the plant/what work do they do?

PART 3 – Issues involving Contract Terms and Conditions

Finding work

Processing of contracts with crewing agencies

Approval of contracts at POEA

Shipboard experience

Unions

Cases filed

1. Do you have a copy of your contract?
2. What were you thinking of when you signed the contracts?
3. What do you feel about the way you were treated by POEA employees during the processing of your SEC? by the crewing agents? By the unions?
4. With respect to your experience as a seafarer are the terms and conditions of your employment contract effectively implemented and enforced by your employer and by government authorities?

5. Were the terms and conditions of your employment contract fully explained to you?
6. Who explained it to you?
 - POEA?
 - Your local agency?
 - Your union?
7. When did you sign your seafarer's employment contract (SEC)?
 - Long before your scheduled departure to join the ship?
 - At the time when I am scheduled to depart from the airport to join the ship in a port abroad?
 - En route to joining the ship?
 - Others, please specify.
8. How long were you deployed onboard the ship per your contract?
9. How long were you redeployed aboard the ship after your contract expired?
 - After 2-3 months
 - After 4 to 5 months
 - After 5-8 months
 - Others
10. Were you discharged from your ship even before the expiration of your contract? What is the reason for such discharge?
 - Yes, due to change of ownership of ship?
 - Yes, due to change of entire crew of the ship
 - Yes, upon personal request due to justified reason
 - No, not at all
11. Are you a member of a labour union? If yes, what is your labour union?
 - Are you part of a collective bargaining agreement? Since when?
12. Are these parts of your contract?
 - Salary, Incentives, bonuses, overtime pay
 - Promotion
 - Extent of contract
 - Training
 - Leave for examination
 - Allotment to beneficiaries
 - Nature of job

- Number of hours allotted for work
- 13. Did you experience switching of contracts? Was the change approved by the POEA?
- 14. Have you ever felt that there were abuses in your contracts? That is was not honoured by your employer?
- 15. What is your relationship with your employer?
- 16. Do you treat your crewing agency or shipowner as your employer?
- 17. What more can be done to improve your working/living conditions on board the ship?
- 18. Are you satisfied with your contract? Do you wish to have higher salaries? Do you wish to have shorter contract or longer duration? Paid leave on vacation?
- 19. What are the problems you encountered involving your contract?
- 20. What specific provisions had been helpful for you?
- 21. Have you experienced work-related illness or injury? Did you file a case in court or with the NLRC?
- 22. In your assessment, is the contract more to your advantage or your employers'? Pro-employer or pro-seafarer?
- 23. Were you able to read your contract before signing it?
- 24. Contracts are devised by lawyers and are understandably difficult to understand. How were you able to understand the contract terms and conditions?
- 25. Do you think that when you signed it, some provisions may be contrary to your interest? What do you think are examples of these provisions that are contrary to your interest? Why did you sign it despite feelings of negativity towards it?

PART 4: GRIEVANCES

1. What do you understand a grievance to be? Please give examples.
2. Have you ever had a grievance involving your employment contract? If yes, please provide details. If no, what do you understand a grievance to be? Please give examples.
3. If you had a grievance, who would you raise it with and why?

4. What procedures/policies are in place to deal with these grievances?
5. Have you experienced any particular problems in your work, which you think are connected to your employment contract or do you know of anyone else who has had such an experience,? If so, how have these been addressed/resolved?
6. Are you aware of any contract policies that the company has? (Can you give examples?) Are there policies (at company, sector, state or EU level e.g. labour codes) that protect workers by virtue of their gender, ethnicity, age or ethnicity? (Examples)
7. Have you ever attended any seminars/discussion-groups/training on equal opportunities? (Within or outside the company) If so please provide details.
8. In your judgement, how effective is the company in dealing with equal opportunities policies?
9. Have you ever raised (with the workers' representative body and/or the union, or with the company) a general problem about equal opportunities? If yes please provide details.

Or, If you had an equal opportunities problem who would you raise it with? Why?

PART 6: UNFAIR TREATMENT

1. Do you think people in this company are ever treated differently because they are a woman, disabled, ethnic minority, mature/young? If yes, please give examples. If no, what do you understand by different treatment?
2. An example of unfair treatment might be that men are promoted more quickly than women. In your opinion, do men get promoted more quickly than women (other social groups) in your organisation?
3. There is a lot of debate in some countries about bullying and sexual harassment, what do you understand by bullying and sexual harassment?
4. Are you aware of any incidents of bullying/harassment or sexual harassment in this company? Is there a procedure or company policy to deal with such issues?

PART 7: PAY

1. In your opinion are men and women paid equally for the same jobs in this company? Is there a difference with regard to age and ethnicity?
2. In your opinion, do men and women have equal opportunity to improve their earnings in the organisation? E.g. expenses, shift allowances, travel, overtime, etc. Is there a difference with regard to disability, age and ethnicity?
3. Have you ever taken part in a job evaluation exercise within the company? If yes, please provide details. If no, are you aware whether your job/grade has been covered in a job evaluation exercise?

PART 8: WORK/LIFE BALANCE

1. Have you ever raised any questions with the company on work/life balance? If so, please provide details.
2. Have you ever raised any questions with the workers' representative body and/or the union on work/life balance? If so, please provide details.
3. Are you aware of any company arrangements on work/life balance? If yes, please provide details.
4. Have you ever sought flexible work arrangements with the company? If yes, please provide details.
5. Are the hours you work per week (including paid and unpaid overtime) a problem? If yes, how do you deal with it?
6. Are there any other work/life balance initiatives that you might like to see introduced into your work place?

PART 9: UNION

1. Are you a member of a trade union? What are your union's policies with regard to controversies involving employment contracts?
2. Do you hold any formal position within the union, works council or other worker-representative body? If so, what?
3. What are the union's priorities in relation to protection of your rights as embodied in the contract?
4. Have you ever been on a trade union course that addressed themes about equal opportunities and diversity?

5. In your judgement, how effective is the workers' representative body and/or union in dealing with equal opportunities policies and diversity?

PART 10: ASSESSMENT

1. Over the last year what would you say has been the most effective development that addresses issues of employment contracts?
2. Over the last year what would you say has been the largest problem or barriers in addressing this problem?
3. Over the last five years, how would you assess how things have changed (if at all) in relation to protection of seafarer's health and safety?
4. If you could change anything about the company/company policy or about the people you work with that would make your life at work better, what would it be?

PART 11: CONCLUSION

1. Is there anything else you would like to add?
2. General comments
3. Suggestions to improve your employment arrangement.

Appendix “G” – Interview with Crewing agency officers

On-site employment stage

Part 1 – General Information

Name of company:

Address:

Name:

Age:

Gender:

Country of Birth:

How would you describe your ethnic background?

(Self-classification: e.g. White, Mixed, Asian, Black, Chinese, Other)

Disability? *Yes / No Type:_____

(*Please delete as appropriate. If yes please state type of disability in space provided)

Job Title:

Section:

Length of Service:

Interview Venue:

Date:

Company Profile

1. What is the main business of this company?

If other than a crewing agency, what other businesses does this company have?

2. Where is the main office of this company? Where are the branches located?

3. Who is your foreign principal? What is the nationality of the company? Who are the shipowners?

4. How many people does the company employ at this branch?

5. How many people does the company employ in this country?

6. How many people does the company employ globally?

7. What is the distribution of the seafarers across various vessels of your principal?

8. What is the typical social demographic profile of the seafarers? (e.g. officers or ratings, province or city born, male or female, middle-aged or young)

9. How many women are deployed by your company on-board vessels and in which category are they assigned?

10. How many people from ethnic minorities are deployed on-board ships and in which category are they assigned?

11. What is the average age of the workforce? Does it differ much by occupational category?

Competition

12. How do you compete with 300 other manning agencies accredited in the Philippines? What sets you apart from them?

13. How do you compete with other labour supply countries and maintain the status of the Philippines as a top supplier of seafarers to the world fleet?

14. What do you think is the pivotal position of manning agencies to ensure continued seafarer employment and substantial dollar remittances?

15. The recruitment process is said to be highly organized through extensive global networks linking shipowners, ship managers, crew managers, labour

supply agencies and training institutions. What can you say about this statement?

Regulation

16. How do you deal with government regulation?
17. How do you deal with the problems with the system – heavy bureaucratic administration, doubts on quality of education, corruption, legal issues, high profile claims in foreign courts), international regulation (for instance, PSC as a check to enforce shipboard living and working conditions) and standards of shipowner principals?
18. What is your working relationship with relevant government agencies such as DOLE, POEA and NLRC?
19. Is it possible for the standard employment contracts of Filipino seafarers to have a specified period of employment to ensure continuity of employment, receive pay and benefits during the time away from the ships (although wages are higher when actively employed and minimum amount when on leave)? For example, China's COSCO has a contract for 8 years; CSG has permanent contracts valid until retirement; or, for specific companies in India, ratings are employed by specific company and upon completion of the voyage, they are entitled to leave and asked to report back to the company but they automatically go on half pay until suitable berth is secured in a company ship,.

Training

20. Do you train seafarers?
21. Do you have partnership with shipping companies insofar as training of seafarers when they specify a higher standard of competence for seafarers?
22. How much have your company invested in maritime education?
23. What actions did you take to dispel negative perception and criticism of maritime education in the Philippines?
24. Do you have an apprenticeship program?

Recruitment process?

25. What is the standard crewing standard procedure? Can you explain the process to me?
26. What is your role in the recruitment process?

27. What are the prerequisites for hiring of seafarers, of crew composition? Why do you think there is preference for Filipino seafarers (communication skills, seafarer mentality, ability to 'mix' and preference for particular nationality)?

Contract Workers

28. How do the terms and conditions of seafarer contract workers differ if at all, from workers employed directly by the company?

29. As an employment agency, in what way do you monitor the terms and conditions of seafarer employed on a contractual basis?

30. What kind of benefit or employment protection do contract workers receive as a result of working for this company?

31. Seafarers are often portrayed as marginalised workers. Do you believe this statement? If so, how does your company seafarers' rights?

32. As a crewing manager, would you say that there is an effective enforcement and implementation of the SEC provisions ---
by government?
by the employers?
by the seafarer themselves?

33. In this research, I will try to elicit comments on seafarers regarding the SEC. If you are a seafarer, would you say that there is effective enforcement and implementation of the provisions of the SEC? Why or why not?

34. In the processing of the SEC in your company, are there opportunities for the SEC terms and conditions to be explained to the seafarers?

35. Are we the only country which prescribes the SEC? What other country, if you know, prescribes it? Can you see the SEC being adopted by other labour supplying countries? Why or why not?

Protection

36. How do you make sure that seafarers are not exploited?

37. How do you monitor compliance with the contract provisions?

Adhesion

38. In the recruitment of seafarers, it is mandated by law that seafarers should be covered by a SEC. Which office in this company processes the SEC of

the seafarers? Can you tell me how the SEC is processed in your office prior to its submission to the POEA for approval?

Who processes the contracts in your office?

39. How many contracts on the average are processed daily per person?

40. What are the look-outs of the evaluators when checking the contracts?

41. Is it a mechanical process or an in-depth assessment?

42. Is there an opportunity for the seafarer to ask questions to clarify the terms and conditions of the contract? How do you characterise the relationship between the seafarer and the one who processes the SEC?

Dealing with problems/issues with the SEC:

43. What are most common problems (like contract violation and abuse, contract substitution, non-payment of wages) you have with the SEC? How are these problems dealt with?

Or, what are the most violated provisions of the SEC?

- salary (delayed payment, underpayment of salary or other benefits)
- job description
- overtime

44. How are contract violations settled at job site and are these effective?

- Grievance machinery
- Conciliation at Philippine embassies and consulates
- Blacklisting of employers and workers who commit rampant contract violations
- Disqualified from participating in overseas employment programs

45. There are manning agencies that are characterised as non-fee paying, or had been awardees of excellence, top performers and hall of famers such as your company, but there are also non-reputable agencies. How are the former group given incentives? How are the latter group deterred and punished? What can you say about the latter group?

Social Dialogue

46. Are there opportunities for the seafarers to raise their concerns regarding their contracts at the level of the company? How are complaints of seafarers regarding their contracts addressed by the company?

47. Is it more effectively discussed and resolved when it is the seafarer's representative or union who raise it? Please provide details.
48. In your opinion, what could the workers' representative bodies or union(s) do that is not currently done that would assist in improving the health, safety and welfare of seafarers?

Governance:

49. As a client of services provided by POEA, for your accreditation as a private employment agency and approval of the SEC for your seafarers, for example, what can you say about their procedures?
50. There are efforts to streamline the processing of key frontline services at the POEA, can you give me an idea of the level of improvement, based on the experience of your seafarers?
51. Based on this improved service in processing the SEC, did you receive positive response or feedback from the seafarers or seafarer representatives or from the manning agencies and their associations?

Tripartism:

52. What can you say about relationship between government, seafarers or unions and manning agencies' associations?
53. Is there an active public/private partnership between the government like DOLE, POEA and NLRC and the umbrella organizations, Joint Manning Group composed of FAME, FSA, INTERMAP, PAMAS and PJMMCC, and seafarer unions associations/ organizations?
54. What about relationship between DOLE/POEA and seafarer unions? What are the existing active unions for seafarers?
55. Would you know of the role of employer organizations if it took an active role during the consultation process for the SEC and its subsequent revisions?

Assessment

56. Over the last year what would you say has been the most effective solution that addresses the question of effectivity of enforcement and implementation of the SEC?
57. Over the last year what would you say has been the largest problem in the SEC?
58. Over the last five years, how would you assess how things have changed (if at all) in relation to seafarers' welfare?

59. In your view, what could the union/company/employees do to improve seafarers' health, safety and welfare?

Amendments to the SEC:

60. What do you think was the cause for the review and subsequent amendment of the SEC for seafarers in 2008?

61. Did you receive complaints prior/or after the revision/amendment of the SEC? What are examples of these complaints? Was it lodged by the seafarer, manning agencies, unions, others?

62. Can you cite examples of the changes to the SEC?

63. How did you or your principals react to the additional requirements (which have consequences to costs in their operation)?

- f. Increase of leave pay from 2.5 days to 4.5 days
- g. Mandatory social security coverage
- h. Compulsory insurance and payment of death benefits, subsistence allowance and compassionate visit for agency-hired workers
- i. Mandatory insurance coverage for seafarers and to recognize foreign insurance companies providing indemnity cover to the vessel
- j. Payment of sickness allowance, mode of payment while under medical attention

64. Are you using the new SEC? Can I have a sample of sample employment contracts you use for your seafarers?

CONCLUSION

65. Were you expecting a question that I was not able to ask today? What is it and why do you think is it relevant?

66. Is there anything else you would like to add?

Appendix “H” – Research Participant Information Sheet for Focus Groups

LABOUR SUPPLY ARRANGEMENTS FOR FILIPINO SEAFARERS RESEARCH PARTICIPANT INFORMATION SHEET (Focus Groups)

My name is Jean Ver P. Pia. I am a PhD student at Cardiff University. I am supervised by two senior professors in the School of Social Sciences. I would like to invite you to participate in my research project. Before you decide, it is important for you to understand why the research is being done and what it will involve. The following will give you a short overview of what this means for you and the information you decide to give me. Please take time to read the following information carefully. Do not hesitate to talk about the study with other people.

What is my research about?

This research project seeks to investigate the experiences of Filipino seafarers deployed to serve overseas trading ships and identify to what extent the terms and conditions of the POEA-prescribed standard employment contract (SEC) are enforced and implemented.

Why am I doing this research?

I am doing this research for four main reasons. First, there is no existing research focusing on the views of seafarers from developing countries on the effective implementation of the terms and conditions of their employment contracts. Second, this study is significant because seafarer’s human and worker rights are an implicit part of their employment contracts. The purpose of this study is to understand the experiences of seafarers with regard to the often publicised abuse of their rights. Third, the impact of the research on the maritime industry is relevant because Filipino seafarers comprise a third of the total seafaring community. Fourth, there is a need to understand the recent impact of the initiatives of the Philippine government with respect to protection of Filipino seafarers.

Who can take part?

Seafarers who had been deployed on-board an overseas trading ship will be invited to volunteer and take part in the focus groups. Two focus groups (FG) will comprise of officers while the two focus groups will be comprised of ratings.

What would be involved?

I will invite twenty seafarers to form part of four focus groups. Each FG will comprise of 5 seafarer participants. I would like to invite you to take part in one of this focus group. Your views as a group will inform the aims of this research and will supplement, corroborate and verify other data I am collecting. The focus group will last about one hour and 30 minutes and will be audio taped so that I have a record of what transpired during the focus group meeting.

What will I do with the information?

The information from these discussions will be the basis of my PhD thesis. The transcripts of our discussions might also be used to write and publish articles in academic journals. If you are interested, I can give you a copy of the transcript of the discussion. You are welcome to see the final thesis and/or a copy of the articles before they are published.

Will everything you say to me be kept private?

You can say as little or as much as you wish. I will ask everyone attending the focus group to keep everything that was said during the discussion confidential. The transcript will be kept in a secure place. In the transcript, your name and the names of other participants and the people you mention will be changed so you will not be identifiable.

How data will be stored/Security of data?

During the study, the data will be kept securely to prevent unauthorised access or accidental loss. The computer I use is password protected. Additional security is ensured for the security of removable storage media such as CDs, flash/pen drives, floppy disks, laptops, and, of course, paper records, they will be stored in locked steel cabinets when not in use. Whatever data I generate from you needs to be securely stored for a period of five years following the completion of this study.

The research has the approval of the School Research Ethics Committee (SREC) and is funded by the Seafarers International Research Centre (SIRC)/Nippon Foundation (NF) whose research thrust is to undertake a maritime-related social science research with a focus on seafarers and all aspects of their lives as a human element in shipping.

What if you change your mind about taking part?

Deciding to take part is a voluntary decision. You are free to withdraw from the study at any point if you wish without giving a reason.

What is my contact information?

If you are interested in taking part or have any questions concerning the research, feel free to contact me:

JEAN VER P. PIA

Telephone No. +63 2 521-80-45

Mobile No. +63 9495671652

Email address: PiaJV@cardiff.ac.uk

You can also address any queries about the research to my supervisors:

PROF. DAVID R. WALTERS through email address: WaltersD@cf.ac.uk or

DR. DEAN STROUD through email address: StroudDA1@cf.ac.uk.

We would be happy to answer any questions and I look forward to meeting you.

Appendix “I” – Research Participant Information Sheet for Interview

LABOUR SUPPLY ARRANGEMENTS FOR FILIPINO SEAFARERS

RESEARCH PARTICIPANT INFORMATION SHEET (Interview)

My name is Jean Ver P. Pia. I am a PhD student at Cardiff University. I am supervised by two senior professors in the School of Social Sciences. I would like to invite you to participate in my research project. Before you decide, it is important for you to understand why the research is being done and what it will involve. The following will give you a short overview of what this means for you and the information you decide to give me. Please take time to read the following information carefully. Do not hesitate to talk about the study with other people.

What is my research about?

This research seeks to investigate the experiences of Filipino seafarers deployed to serve overseas trading ships and identify to what extent the terms and conditions of the POEA-prescribed standard employment contract (SEC) are enforced and implemented.

Why am I doing this research?

I am doing this research for four main reasons. First, there is no research focusing on the views of seafarers from developing countries on the effective implementation of the terms and conditions of their employment contracts. Second, this study is significant because seafarers' human and worker rights are implicit part of their employment contracts. The purpose of this study is to understand the experiences of seafarers with regard to the often publicised abuse of their rights. Third, the impact of the research on the maritime industry is relevant because Filipino seafarers comprise a third of the total seafaring community. Fourth, there is a need to understand the recent impact of the initiatives of the Philippine government with respect to protection of Filipino seafarers.

Who can take part?

Seafarers who had been deployed on-board an overseas trading ship will be invited to volunteer for an interview because of your first-hand experience in employment contracts.

What would be involved?

I would like to invite you to take part in an interview. We will invite around twenty seafarers to talk about your views on how effective is the enforcement and implementation of the standard employment contract (SEC). The interview will last about one hour and 30 minutes and will be audio taped so that I have a record of what transpired during the interview.

What will I do with the information?

The information from these interviews will be the basis of my PhD thesis. The transcripts might also be used to write and publish articles in academic journals. If you are interested, I can give you a copy of the transcript of the interview. You are welcome to see the final thesis and/or a copy of the articles before they are published.

Will everything you say to me be kept private?

You can say as little or as much as you wish on what was said during the interview as it will be kept confidential. The transcript will be kept in a secured place. In the transcript, your name and the people you mention will be changed so you will not be identifiable.

How data will be stored/Security of data?

During the study, the data will be kept securely to prevent unauthorised access or accidental loss. The computer I use is password protected. Additional security is ensured for the security of removable storage media such as CDs, flash/pen drives, floppy disks, laptops, and, of course, paper records, they will be stored in locked steel cabinets when not in use. Whatever data I generate from you needs to be securely stored for a period of five years following the completion of this study.

The research has the approval of the School Research Ethics Committee (SREC) and is funded by the Seafarers International Research Centre (SIRC)/Nippon Foundation (NF) whose research thrust is to undertake a maritime-related social science research with a focus on seafarers and all aspects of their lives as a human element in shipping.

What if you change your mind about taking part?

Deciding to take part is a voluntary decision. You are free to withdraw from the study at any point if you wish without giving a reason.

What is my contact information?

If you are interested in taking part or have any questions concerning the research, feel free to contact me:

JEAN VER P. PIA

Telephone No. +63 2 521-80-45

Mobile No. +63 9495671652

Email address: PiaJV@cardiff.ac.uk

You can also address any queries about the research to my supervisors:

PROF. DAVID R. WALTERS through email address: WaltersD@cf.ac.uk or

DR. DEAN STROUD through email address: StroudDA1@cf.ac.uk.

I would be happy to answer any questions and I look forward to meeting you.

Appendix “J” – Research Participant Consent Form for Focus Groups

LABOUR SUPPLY ARRANGEMENTS FOR FILIPINO SEAFARERS

Research conducted by: **JEAN VER P. PIA**
School of Social Sciences,
Cardiff University, Cardiff, Wales, UK

AGREEMENT TO PARTICIPATE IN A RESEARCH FOCUS GROUP

1. I am willing to take part in the focus group for this research. I have been told that I will be asked to give personal information about my personal experience on how effectively the terms and conditions of the POEA-prescribed standard employment contract (SEC) are enforced or implemented.
2. I have been informed that personal statements made in the focus group will be confidential and will remain anonymous. Any individuals named will remain anonymous, and any details that would allow people to be recognised will be masked, taken out or changed.
3. I understand that no one else will have access to the data generated from the interview beyond the researcher and her two supervisors.
4. I have been informed that the information I give will be used as part of a PhD project, and will appear as a PhD thesis in university libraries, and may be generally published in the form of a book, articles, or used as training material.
5. I have been informed that the focus group will be recorded in a digital recorder.
6. I have been informed that I have the right to refuse to answer any questions that I do not wish to answer. I also understand that taking part in the research is voluntary and that I may withdraw at any time. I may also withdraw permission for the material to be used.

Signature of Participant _____
Name: (Print) _____
Date: _____
Signature of Researcher _____
Name: (Print) _____
Date: _____

Copy furnished to: Participant and Research file

Appendix “K” – Research Participant Consent Form for Interviews

LABOUR SUPPLY ARRANGEMENTS FOR FILIPINO SEAFARERS

Research conducted by: **JEAN VER P. PIA**
School of Social Sciences
Cardiff University, Cardiff, Wales, UK

AGREEMENT TO PARTICIPATE IN A RESEARCH FOCUS GROUP

1. I am willing to take part in the interview for this research. I have been told that I will be asked to give personal information about my personal experience on how effectively the terms and conditions of the POEA-prescribed standard employment contract (SEC) are enforced or implemented.
 2. I have been informed that personal statements made in the interview will be confidential and will remain anonymous. Any individuals named will remain anonymous, and any details that would allow people to be recognised will be masked, taken out or changed.
 3. I understand that no one else will have access to the data generated from the interview beyond the researcher and her two supervisors.
 4. I have been informed that the information I give will be used as part of a PhD project, and will appear as a PhD thesis in university libraries, and may be generally published in the form of a book, articles, or used as training material.
 5. I have been told that the interview will be recorded in a digital recorder.
1. I have been told that I have the right to refuse to answer any questions that I do not wish to answer. I also understand that taking part in the research is voluntary and that I may withdraw at any time. I may also withdraw permission for the material to be used.

Signature of Interviewee _____
Name: (Print) _____
Date: _____

Signature of Researcher _____
Name: (Print) _____
Date: _____

Copy furnished to: Participant and Research file

Appendix “L” – Salient features of some international and Philippine labour laws

Title of the Law	Salient features or provisions
The Maritime Labour Convention (MLC)	The MLC is an example of an international regulatory regime which consolidates more than sixty eight (68) international standards related to the maritime sector for the past eighty (80) years. It provides for comprehensive rights to decent conditions and protection at work for the world’s seafarers like minimum requirements for seafarers to work on a ship, conditions of employment, accommodation, recreational facilities, food and catering, health protection, medical care, welfare and social security protection, and compliance and enforcement. More specifically, Title 2, MLC of 2006 (on the conditions of employment) mandates that seafarers must have a seafarers’ employment agreement, which specify the terms and conditions of employment. More specifically, Standard A2.1 (para. 1) of the MLC provide for the basic conditions for the seafarer’s employment agreement to be considered as a fair agreement, among others. It requires both the seafarer and the shipowner or the representative of the shipowner to sign the agreement. It also requires that the opportunity must be given to the seafarer to examine and seek advice on the agreement before signing the agreement and the seafarer must be provided with the signed original of the agreement and other like requirements. Section A.2.4 provides for the particular contents of a standard employment agreement. Sections A.2.1 and A.2.4 of Title 2 of the MLC are appended to this chapter as Appendix “F” for reference.
The 1987 Philippine Constitution	The Constitution mandates the State “to afford protection to Labour, local and overseas, organized or unorganized, and promote full employment and equal employment opportunities for all”. It also guarantees the right of Filipino workers to humane conditions of work and ensures the seven primary rights of Filipino workers, among which is the security of tenure (Bacungan 2010)
Presidential Decree No. 442 – The Philippine Labour Code of 1974	The Labour Code provides for the overseas employment of workers, the hiring and employment of seafarers, the creation of the National Seaman’s Board (NSB), operations of crewing agencies, unionism, dispute settlement, the right to collective bargaining, the right to strike and related aspects which have implications on

	seafarers. Further, the Code sets legal provisions on occupational health and safety promotion and enforcement. Article 18 of the Labour Code prohibits direct hiring except when the entities are authorized by the Secretary of Labour like the POEA and private employment/recruitment agencies.
Republic Act (RA) 8042 – Migrant Workers and Overseas Filipino Act of 1995	This is an essential source of legal rights of seafarers (Jardin-Manalili 2010). It provides for the guarantee of migrant workers’ rights, deregulation or phase out of regulatory functions of specific government agencies, stricter rules on illegal recruitment and the corresponding penalties for such activities, selective deployment, repatriation of workers, and reintegration for return migrants. RA 8042 likewise declared that the “State shall deploy overseas Filipino workers only in countries where the rights of Filipino workers are protected.”
Republic Act 10022 – Migrant Workers and Overseas Filipino Act, as amended	This further improved the standard of protection and promotion of the welfare of migrant workers, their families and overseas Filipinos in distress.
POEA Memorandum Circular No. 10, series of 2010 – Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-Board Ocean-Going Ships	The POEA-SEC (POEA 2002, 2010) is the second source of the seafarer’s legal rights. The POEA-SEC embodies and in effect codifies the whole body of ILO/IMO conventions, Philippine laws, rules and regulations. It had been reviewed by tripartite body representing government, employers, and seafarer representatives. It had been widely believed to have ameliorated the working condition of seafarers (Chandran 2010; Jardin-Manalili 2010). As an important feature it contains minimum standards that can be subject to further negotiation by collective bargaining.

APPENDIX “M” – Outline of the contents of the one-page contract of employment with new provisions

Headings	Republic of the Philippines Department of Labour and Employment PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION
Title of the contract	Contract of Employment
Greetings	Know all men by these presents:
Prologue or opening clause:	This Contract, entered into voluntarily by and between the Parties –
Contracting parties – seafarer	Name of the seafarer
	Date of Birth (n)^{86*}/ Place of Birth (n)*
	Address
	SIRB No.
	License No.
Contracting parties - employer	Seaman’s Registration Card (SRC) No.
	Name of the agent
	Name of the principal/shipowner
	Address of the Principal/ Shipowner (n)*
Vessel	Name of vessel
	Official IMO No.
	Gross registered tonnage (GRT)
	Flag/Year built/Type of vessel
	Classification Society
Terms and conditions of employment	That the seafarer shall be employed on board under the following terms and conditions:
	Duration of Contract
Contract price	Position
	Basic Monthly Salary
	Hours of work
	Overtime
	Vacation Leave Pay
	Point of hire (Manila, Philippines)
	Collective Bargaining Agreement, if any (n)*
Additional Contractual provisions	2. ‘The terms and conditions in accordance with Governing Board Resolution NO. 9 and Memorandum Circular No. 10, series of 2010 shall be strictly and faithfully observed.’
	3. ‘Any alterations or changes, in any part of the Contract shall be evaluated, verified, processed and approved by the POEA, Upon approval, the same shall be deemed an integral part of the Standard terms and Conditions Governing the Employment of Filipino Seafarers On Board Ocean-Going Vessels.’
	4. ‘Violations of the terms and conditions of the Contract with its approved addendum shall be a ground for disciplinary action against the erring party.’
Attestation Clause – Date/ Place	In witness whereof the parties have hereto set their hands this _ day

⁸⁶ (n)* new provisions pursuant to POEA Memorandum Circular No. 04, series of 2013 re: Revision of the One-Page Employment Contract

of execution of the contract	of ___ 20__ at ___, Philippines.
Signatures	Seafarer
	Manning agency (For the employer) (name and signature/Designation)
Verification and Approval portion of the POEA	Date
	Name and signature of the POEA Official
Stamp of approval	Stamp means that the document is a Certified POEA-approved employment contract

APPENDIX “N” – Summary/outline of ‘Annex A’ of the POEA-SEC of 2010

Definition of Terms

Section 1. Duties

Section 2. Commencement/Duration of contract

Section 3. Free passage from the point of hire to the port of embarkation

Section 4. Baggage allowance

Section 5. Hygiene and vaccination

Section 6. Wages

Section 7. Payment on Board

Section 8. Allotments and remittances

Section 9. Final wage account and Certificate of Employment

Section 10. Hours of work

Section 11. Overtime pay

Section 13. Shore Leave

Section 14. Subsistence, ship stores and provisions

Section 15. Transfer clause

Section 16. Grievance machinery

Section 17. Disciplinary procedures

Section 18. Termination of employment

Section 19. Repatriation

Section 20. Compensation and benefits for injury or illness or death

Section 21. War and warlike operations allowance

Section 22. Termination due to shipwreck and ship's foundering

Section 23. Termination due to sale of ship, lay-up or discontinuance of voyage

Section 24. Termination due to unseaworthiness

Section 25. Termination due to regulation 1/4, control procedures of the 1978 STCW Convention, as

amended

Section 26. Change of principal

Section 27. Loss of or damage to crew's effects by marine peril

Section 28. General safety

Section 29. Dispute settlement procedures

Section 30. Prescription of action

Section 31. Applicable law

Section 32. Schedule of disability or impediment for injuries suffered and diseases including Occupational diseases or illness contracted

Section 32-A. Occupational diseases

Section 33. Table of offenses and corresponding administrative penalties

APPENDIX “O” – Title 2 of the Maritime Labour Convention, 2006

MARITIME LABOUR CONVENTION, 2006

TITLE 2. CONDITIONS OF EMPLOYMENT

Standard A2.1 – Seafarers’ employment agreements

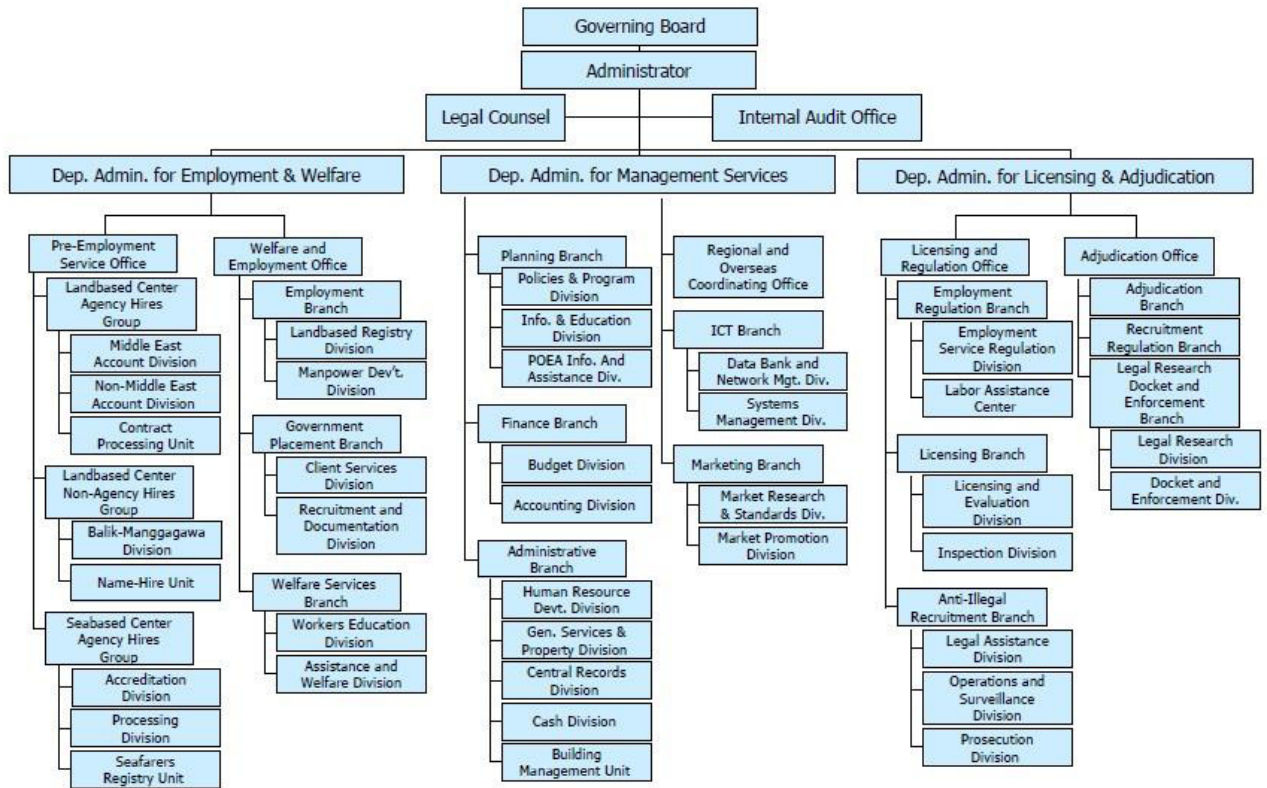
1. Each Member shall adopt laws or regulations requiring that ships that fly its flag comply with the following requirements:
 - (a) seafarers working on ships that fly its flag shall have a seafarers’ employment agreement signed by both the seafarer and the shipowner or a representative of the shipowner (or, where they are not employees, evidence of contractual or similar arrangements) providing them with decent working and living conditions on board the ship as required by this Convention;
 - (b) seafarers signing a seafarers’ employment agreement shall be given an opportunity to examine and seek advice on the agreement before signing, as well as such other facilities as are necessary to ensure that they have freely entered into an agreement with a sufficient understanding of their rights and responsibilities;
 - (c) the shipowner and seafarer concerned shall each have a signed original of the seafarers’ employment agreement;
 - (d) measures shall be taken to ensure that clear information as to the conditions of their employment can be easily obtained on board by seafarers, including the ship’s master, and that such information, including a copy of the seafarers’ employment agreement, is also accessible for review by officers of a competent authority, including those in ports to be visited; and
 - (e) seafarers shall be given a document containing a record of their employment on board the ship.

Standard A2.4 – Seafarers’ employment agreements

4. Each Member shall adopt laws and regulations specifying the matters that are to be included in all seafarers’ employment agreements governed by its national law. Seafarers’ employment agreements shall in all cases contain the following particulars:
 - (a) the seafarer’s full name, date of birth or age, and birthplace;
 - (b) the shipowner’s name and address;

- (c) the place where and date when the seafarers' employment agreement is entered into;
- (d) the capacity in which the seafarer is to be employed;
- (e) the amount of the seafarer's wages or, where applicable, the formula used for calculating them;
- (f) the amount of paid annual leave or, where applicable, the formula used for calculating it;
- (g) the termination of the agreement and the conditions thereof, including:
 - (i) if the agreement has been made for an indefinite period, the conditions entitling either party to terminate it, as well as the required notice period, which shall not be less for the shipowner than for the seafarer;
 - (ii) if the agreement has been made for a definite period, the date fixed for its expiry; and
 - (iii) if the agreement has been made for a voyage, the port of destination and the time which has to expire after arrival before the seafarer should be discharged;
- (h) the health and social security protection benefits to be provided to the seafarer by the shipowner;
- (i) the seafarer's entitlement to repatriation;
- (j) reference to the collective bargaining agreement, if applicable; and
- (k) any other particulars which national law may require.
(Underscoring for emphasis)

Appendix “P” – POEA Organisational Chart



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