

Seafarers' Rights in the Globalized Maritime Industry

Editor

Roger Blanpain

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List of Abbreviations

| | |
|--------|---|
| ACFTU | All-China Federation of Trade Unions |
| AMOSUP | Associated Marine Officers and Seamen's Union of the Philippines |
| BEA | Maritime investigation office (<i>French: Bureau – enquêtes-accidents</i>) |
| CBA | Collective Bargaining Agreement |
| CCPR | Covenant on Civil and Political Rights |
| CEEP | European Centre of Employers and Enterprises Providing Public Services |
| CESCR | Covenant on Economic, Social and Cultural Rights |
| COSEC | Co-ordination Council for Overseas Seamen Employment of China |
| CPEM | Permanent Commission of Enquiry into Accidents at Sea (<i>French: Commission permanente d'enquête sur les événements de mer</i>) |
| DWT | Deadweight |
| EC | European Community |
| ECHR | European Convention on Human Rights and Fundamental Freedoms |
| ECJ | European Court of Justice |
| ECSA | European Community Shipowners' Associations |
| ENMC | European Network of Maritime Clusters |
| ESC | European Social Charter |
| ETF | European Transport Workers' Federation |
| ETUC | European Trade Union Confederation |
| EU | European Union |
| FOCs | Flags of Convenience |
| FPR | Fair Practice Committee |

List of Abbreviations

| | |
|------------|---|
| FST | Federation of Transport Workers' Unions in the European Union |
| FSU | Finnish Seamen's Union |
| GATT | General Agreement on Tariffs and Trade |
| GDP | Gross Domestic Product |
| GMDSS | Global Maritime Distress and Safety System |
| GOHNET | Global Occupational Health Network newsletter |
| GPM | General Purpose Manning |
| GT | Gross Tonnage |
| IACS | International Association of Classification Societies |
| IAMU | International Association of Maritime Universities |
| IBF | International Bargaining Forum |
| ICS | International Chamber of Shipping |
| ICONS | International Commission on Shipping |
| IGO | Intergovernmental Organization |
| ILC | International Labour Conference |
| ILO | International Labour Organisation |
| IMEC | International Maritime Employers' Committee |
| IMMAJ | International Maritimes Mariners Organisation of Japan |
| IMO | International Maritime Organisation |
| INMARSAT | International Maritime Satellite Organisation |
| Intercargo | International Association of Dry Cargo Shipowners |
| INTERTANCO | International Association of Independent Tanker Owners |
| IPO | Initial Public Offering |
| IRRA | Industrial Relations Research Association |
| ISEG | International Seafarers Employers Group |
| ISF | International Shipping Federation |
| ISM | International Safety Management |
| ISPS | International Ship and Port Facility Security Code |
| ISO | International Organization for Standardization |
| ITF | International Transport Workers' Federation |
| ITIC | International Transport Intermediaries Club |
| ITLOS | International Tribunal for the Law of the Sea |
| ITUC | International Trade Union Confederation |
| JAMRI | Japan Maritime Research Institute |
| JMC | Joint Maritime Commission |
| JNG | Joint Negotiating Group |
| KRW | South-Korean Won |
| KRX | Korea Exchange |
| KSA | Korea Shipowners' Association |
| MARINO | Mariners Association for Regional and International Networking |
| MARPOL | International Convention for the Prevention of Pollution from Ships |

| | |
|--------|--|
| MLAANZ | Maritime Law Association of Australia and New Zealand |
| MLC | Maritime Labour Convention, 2006 |
| MMA | Malta Maritime Authority |
| MOL | Mitsui O.S.K. (Osaka Shosen Kaisha) Lines |
| MORI | Market & Opinion Research International |
| MoU | Memorandum of Understanding on Port State Control |
| MS | Member State |
| NGO | Nongovernmental Organization |
| NT | Net Tonnage |
| NOL | Neptune Orient Lines |
| NYK | Nippon Yusen Kaisha |
| OCIMF | Oil Companies International Marine Forum |
| OECD | Organisation for Economic Co-operation and Development |
| OHCHR | Office of the United Nations High Commissioner for Human Rights |
| P&I | Protection and Indemnity |
| PLC | Public Limited Company |
| POEA | Philippine Overseas Employment Administration |
| PSC | Port State Control |
| SCI | Seaman's Church Institute |
| SIRC | Seafarers International Research Centre |
| SIRE | Ship Inspection Report Programme |
| SMCP | Standard Maritime Communication Phrase |
| SMNV | Standard Marine Navigational Vocabulary |
| SOLAS | International Convention for the Safety of Life at Sea |
| SSD | Special Seafarers Department |
| SSPA | Statens Skeppsprovvnings Anstalt (<i>Swedish company for maritime solutions</i>) |
| STCW | International Convention on Standards of Training, Certification and Watchkeeping |
| TCC | Total Crew Cost |
| TEU | Twenty-Foot Equivalent Unit |
| UN | United Nations |
| UNCLOS | United Nations Convention of the Law of the Sea |
| UNCTAD | United Nations Conference on Trade and Development |
| UNICE | Union of Industrial and Employers' Confederations of Europe (As from 23 January 2007 name changed to BUSINESSEUROPE) |
| WHO | World Health Organization |
| WTO | World Trade Organization |

Summary

Today we are part of an international society living in a world supported by a global economy. The world economy simply could not function adequately without ships and the shipping industry.¹ For the sustainable development of the world, it is of essential importance to have excellent transport and communication systems. 'The international shipping industry is responsible for the carriage of 90% of world trade of goods and is the life-blood of the global economy'² (see Appendix 1, Figure 1). On 1 January 2008, the world fleet consisted of 50,525 vessels with a combined tonnage of 728,225,000 gross tonnes (GT);³ approximately 40,000 were merchant ships trading internationally and transporting all kinds of cargo (see Appendix 1, Figure 2).⁴ Today the world fleet is registered in over 150 nations and comprises over a million seafarers from all over the world and from almost every nationality. Shipping may be the most international of the worlds' largest industries and one of the most risky and dangerous. Without shipping, the import and export of goods will be unfeasible – 'half the world would starve and the other half would freeze'.⁵

The complication in the shipping sector is the fact that there is an enormous variety of actors in it, and, moreover, ship owners, cargo owners, ship registration,

1. (International Maritime Organisation 2005).

2. (BIMCO, INTERCARGO, ICS, ISF, INTERTANKO 2006).

3. *Gross tonnage (GT)* forms the basis for manning regulations, safety rules and registration fees. Both gross and net tonnages are used to calculate port dues. The gross tonnage is a function of the moulded volume of all enclosed spaces of the ship. The net tonnage is produced by a formula that is a function of the moulded volume of all cargo spaces of the ship. The net tonnage shall not be taken as less than 30% of the gross tonnage. The International Convention on Tonnage Measurement of Ships, 1969 meant a transition from the traditionally used terms *gross register tons (grt)* and *net register tons (nrt)* to *gross tons (GT)* and *net tons (NT)* (IMO n.d.).

4. (Lloyd's Register n.d.).

5. (BIMCO, INTERCARGO, ICS, ISF, INTERTANKO 2006).

ships, cargos, crews, officers, forwarders, brokers and financiers might all be based in different countries, entirely separate from the location of the ship.⁶ An illustration of this complicated situation is cargo carried from nation A to nation B, in a vessel registered in nation C and owned by a person from nation D, with the crew of the vessel coming from nations E, F and G (see Appendix 1, Figure 3).⁷ Public and private organizations are involved in regulating the global shipping policy at international, regional and national levels. The three-dimensional level of policy-making (international, supranational and national) could give rise to confusion, overlapping legislation, gaps and vagueness in wording in paperwork. Consequently, the structure of the shipping sector brings to mind questions such as:

- What is the relationship between the nation States and the international maritime law-making organizations, such as their implementation powers?
- What are the roles and the importance of regional and supranational bodies such as the European Union (EU)?
- What are the functions of international organizations such as the United Nations (UN), the International Labour Organisation (ILO), the International Maritime Organisation (IMO) and the International Transport Workers' Federation (ITF) in the policy-making process?

Also, over the last few decades, the global economy and more specifically international shipping has gone through enormous technological, financial and structural changes, which in light of the destructive market competition, have brought about low freight rates, short time in port and fast turnaround times, reduction in crew size, employment of cheap labour from developing countries, avoidance of national regulations and taxes and diminished living and working standards on board. All of these factors, exacerbated by the globalization of the economy and the shipping industry, as well as the use of Flags of Convenience (FOCs), have further contributed to the existing problem of the exploitation of seafarers.

The international community has realized that the seafarer is the human factor that operates the ship and it is a vital element in the new globalization process. For that reason, to curb the mistreatment of seafarers, it is of extreme importance to have an international unified maritime labour regulatory system and an international regulatory body to regulate the minimum standards, applicable in every part of the world, equally to all seafarers on every ship. Hence, in February 2006, following a special International Maritime Labour Conference in Geneva, the ILO made a major step toward the adoption of a new Maritime Labour Convention (MLC) that consolidates and updates a wide range of labour standards concerning ship owners and seafarers in the maritime sector. The MLC was a result of more than five years of intensive work among organizations such as the ITF and the International Shipping Federation (ISF) that worked together with the ILO in the name of a common goal of creating global labour standards applicable to the

6. (Selkou and Roe, *Globalisation, Policy and Shipping: Fordism, Post-Fordism and the European Union Maritime Sector* 2002).

7. (Fitzpatrick and Anderson 2005).

whole industry, standards that would be more understandable, simple, acceptable, realistic, logical, adoptable and enforceable. The Convention is an attempt at creating an international labour instrument governing the first truly global industry that is of essential importance to the global economy.

Alongside the developments on the international stage, were the growing tensions between the EU and the maritime industry that reached an all-time high following the disasters of the *Erika*⁸ and *Prestige*.⁹ As a result, in December 2005 a European Maritime Policy Conference in a close relationship with, and in cooperation with, the European Commission, the European Network of Maritime Clusters (ENMC) and the European Community Shipowners' Associations (ECSA), was organized in Brussels. The outcome of the Conference was the Third Maritime Safety Package of proposed EU maritime legislations. The new European Maritime Policy Framework covers all maritime sectors. Likewise, in connection with the new ILO Maritime Labour Convention, the Council adopted a draft decision stating that the Member States (MS) should ratify the Convention on Labour Standards for Seafarers by the end of 2010. The ratification of the Maritime Labour Convention by the EU and its MS will improve the working and living conditions of European maritime workers and will serve as an example for the rest of the world to follow.

In brief, shipping is a global industry and as such all its characteristics pertinent to policy-making are extremely complex. Therefore, the first purpose of this study is to examine in detail the structure of the shipping industry and to focus on the impact on seafarers' working and living conditions within the continuing process of change and globalization. The second aim is to analyse the seafarers' rights in the light of the international enforcement mechanisms and particularly in the light of the new ILO Maritime Labour Convention. Last but not least, the author endeavours to illustrate the efforts of the European Community (EC) to improve the labour standards for almost 300,000 workers from the EU.

8. On 12 Dec. 1999 the Maltese registered tanker *Erika* broke into two, off the coast of Brittany, France and spilled 19,800 tons of heavy fuel oil. This is equal to the total amount of oil spilled worldwide in 1998. The economic consequences of the incident have been felt across the region. A drop in the income from tourism, loss of income from fishing and, a more recent development, a ban on the trade of sea products including oysters and crabs, have added to the discomfort of the local populations.
9. The *Prestige*, a Greek tanker sailing under Bahamas flag and transporting oil for the Swiss branch of a Russian petrol company, split into two parts on 19 Nov. 2002 and sank off Spain's north-western coast with a 70,000-ton cargo of oil, resulting in severe damage to the region's fishing and tourism industry.

Preface

In regard to my choice of the subject of this study, I first encountered the subject 'International Labour Law and Globalization' during my LL.M at the Faculty of Law in Tilburg University. Following this course, I became interested in maritime labour issues in the world of constant changes and an accompanying process of globalization. Meanwhile, my participation in the 'Geneva Lectures' tour at the ILO Headquarters in Geneva increased my interest in the subject.

I found the subject to be completely fascinating, given the complexity of the field of study and the need for more research in the area.

I also cannot escape the fact that I grew up in a small maritime city, where there is a seafarer in almost every other family and many people 'know' about the sea and the maritime discourse, because in a way, they are part of the maritime community. Besides, my husband is a marine officer.

I would like to extend my thanks to Professor Roger Blanpain for being an invaluable discussion partner on the subject, as well as editing the study.

Purpose

The adoption of the MLC, which has not yet been ratified by the international maritime community members, poses a lot of pending issues on the working and living conditions of seafarers. It is the purpose of this study to examine, on the one hand, all aspects of the merchant maritime industry and, on the other, the human element and the people who are standing at the heart of the industry – the seafarers. I will explore all levels of maritime policy-making on the global and European level, focusing on issues concerning the compatibility of the working and living conditions of seafarers within the continuing process of globalization and deregulation of the maritime industry. My aim is to examine some of the important features of the shipping industry in today's world of globalization through the eyes of the modern seafarer and in the light of the new MLC and the new EU integration policy that has lead to the formulation of a general view on the future development of the shipping industry and its related labour standards.

The underlining question to be answered in this research is what makes the seafarers and the shipping industry so important as to justify a special treatment by international law in general and EC law in particular.

Methods and Sources

My intension is to present a general overview and a legal analysis of the working and living conditions of the seafarers in connection with the international, supranational and national maritime legislation. Trying to give a clear legal picture, I will also use international case law, advisory opinions and policy statements by the international community.

In addition, I will also rely on internet sources such as the web pages of the ILO, IMO, ITF, ISF, European Commission and the data they have provided. For analysis of the MLC, I will use mainly the Convention itself and the Record of Proceedings of the International Maritime Conference Ninety-fourth (Maritime) Session, Geneva, 2006 (ILO, 2006).

The discussion of the working and living conditions of seafarers in the shipping industry is not a new phenomenon. Scholars have written quite extensive books and papers on the subject. Consequently, I will use the doctrine that is relevant to this study. The following authors: Paul K. Chapman, *Trouble on Board*, Alistair Couper, *Voyages of Abuse*, and Deirdre Fitzpatrick and Michael Anderson, *Seafarers' Rights*, have been of particular importance for my work. I strongly recommend the ILO publication in collaboration with the Seafarers International Research Centre (SIRC), 'The Global Seafarer'.

Delimitation

The scope of the research is limited to the problems concerning the working and living conditions of seafarers on board merchant ships flying only in international waters and serving the global sea transport system. When we say ‘a seafarer’, we mean any person who is employed, engaged or works in any capacity on board a seagoing ship other than a government ship used for military or non-commercial purposes.¹⁰ Consequently, the cabotage,¹¹ the navy and the non-commercial fleet are outside the scope of this study.

10. Article 1(d), C179 (International Labour Organisation 1996).

11. *Cabotage* is sea transport between two ports (a port of loading/embarkment and a port of unloading/disembarkment) located in the same country irrespective of the country in which the seagoing vessel is registered. Cabotage can be performed by a seagoing vessel registered in the reporting country or in another country. One port transport is included. (OECD 2007).

Disposition

Part I gives a general overview of the world of shipping, clarifying the changes in the structure of the shipping industry and their impact on the conditions on board, by introducing the reader to data describing shipping and the world trade, the reasons for the changing situation and, more specifically, the consequences of the globalization process and deregulation in the maritime industry regarding the seafarers' labour standards. I will highlight issues such as the FOCs, the finance and ownership organization, the technological development, the manning companies, and so on. In other words, all aspects affecting the seafarers' working and living conditions.

Many workers in all industries are complaining about wages and living conditions, but the great difference is that after the working day is over, the seafarers do not go home. The vessel is both their working and living place. Consequently, Part II will contain a more detailed insight in the life of the seafarer in light of the new global maritime labour market and the appearance of multinational crews. In addition, the various reasons for choosing a career at sea and an overview of the seafarers' profession will be examined.

The employer provides not only working conditions but also accommodation and food; thus there is a much broader range of issues that can cause conflicts, especially when the ship is not in a seaworthy condition or is substandard. The most common issues creating discontent among seafarers are the supply of inadequate food, water and accommodation; non-payment or under-payment of wages; long hours of work without rest; lack of information and detachment from family and friends; use of multinational crew and confrontation between cultures; and so on.¹² Thereafter, Part III will examine in detail the collective and individual labour relations between employers, trade unions and seafarers, backed up with relevant facts and figures. For that purpose, special attention to wages, conditions of

12. (Chapman 1992).

employment, hours of work and rest and entitlement to leave will be done. Regarding the living conditions on board, issues such as accommodation, recreational facilities, food and catering will be discussed. In discussing the international labour standards and seafarer's rights, Part III will examine how the inappropriate working and living conditions on board and the non-observance of the international standards could cause labour conflicts.

Long before internationalization of the protection of the human rights started to develop it was recognized that seafarers needed a special protection at international level. Hence, Part IV briefly discusses international compliance and enforcement mechanisms. Moreover, I will consider the adoption, promotion and ratification of the MLC, providing a comprehensive background on the MLC and particularly the Articles concerning the working and living conditions of seafarers. This Part will deal with the importance and practical application of the MLC, its unique structure, its promotion by the international community and its gaps and loopholes on issues not touched upon by the MLC but, nevertheless, of extreme importance for the protection of seafarers, such as industrial relations, collective bargaining, collective agreements and so forth.

To respond to the issues of the shipping industry, the European community has been active in producing a framework, guidelines and other policy documents on regulating the maritime industry. As the EU and its institutions, more specifically the European Commission and the European Parliament, are more than ever exercising enormous influence on international maritime regulatory affairs, we cannot afford to disregard European maritime policy and its increasing impact on shaping maritime regulations, which will be examined in Part IV.

Finally, I will offer recommendations for improvement of the working and living conditions of seafarers and for better promotion of the MLC.

Desislava Dimitrova was born in Varna, Bulgaria on 19 October 1981. She read Law at the Chernorizets Hrabar Varna Free University, Bulgaria, where she majored in Civil and International Public Law. She furthered her studies in the Netherlands at the University of Tilburg. It is here that, after meeting Professor Roger Blanpain, she developed an interest in International Labour Law. She graduated with an LLM in International Labour Law and Social Policy. In 2009 Ms Dimitrova read a Masters in European Studies, focusing mainly upon European project Management. Ms Dimitrova worked in a number of NGOs as well as private law firms in Bulgaria. She has also gained working experience with European institutions such as the European Parliament, where she worked in DG Internal Policies, Policy Department EMPL – Employment and Social Affairs conducting research in the European policy field and particular in the European Social Policy Agenda. In the European Commission DG Employment, Social Affairs and Equal Opportunities (EMPL) in Luxembourg she carried out analysis and synthesis of the different national regulations transposing EU Directives in the field of health and safety at work, in particular of Directive 89/391/EEC (Framework Directive) and its five first individual Directives. She currently works as a European parliamentary Assistant to the Vice-President of the Internal Market Committee in the European Parliament.

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