



'Beyond the State': The limits of international regulation and the example of abandoned seafarers

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ABSTRACT

This paper contributes to debates about the effectiveness of international regulation and the place of 'the state' in developing and enforcing effective international shipping regulation. It focuses on the example of the Maritime Labour Convention (2006) to highlight some of the challenges and successes of international regulation in defending the rights of workers to 'decent work'. The empirical basis of the paper is a novel analysis of abandonment data which allows for the consideration of the resolution of abandonment cases pre-and-post-MLC. This is the first time that such objective analysis has been used to evaluate the efficacy of MLC. The paper describes the regulatory framework which offers protections to seafarers in such circumstances and the ways in which internationally agreed regulations at the ILO are enforced. It describes the data and analyses the effectiveness of the MLC, in increasing the speed with which abandoned seafarers are repatriated. It discusses the implications of the findings and draws conclusions, relating these to broader discussions of the limits and importance of international regulation.

1. Introduction

This paper focuses on the effectiveness of governance in relation to one aspect of the complex, global cargo shipping industry. The international shipping industry has been characterised as amongst the most globalised of industries. There are 53,973 commercial cargo vessels of more than 1000 gross tons² in the world fleet (UNCTAD 2021:36). The majority of these ships are owned in one country and registered in another, a process which is termed 'flagging out'. Not only has the link between vessel ownership and registration been largely severed (which is akin to the offshoring of land-based industries [45]) but the labour market for seafarers is both internationalised and largely casualised (Sampson et al., 2018 [52]). Seafarers are frequently employed by third party crewing agents who supply seafarers to both ship managers and to owner operators who are often located in other nations. Furthermore, the ship (the workplace) is mobile and operates across, and beyond, borders. This renders the governance of labour standards across the industry complex and challenging.

Whilst shipping is at the forefront of globalisation it comprises just one of many sectors which can be described in this way [41]. The contemporary world is characterised by ongoing transformation

resulting in the development of interconnections in trade and capital, and the continued internationalisation of labour markets. Such change has been accompanied by a necessary expansion of global governance mechanisms and instruments [27]. International governance takes place **beyond the state** but as this paper argues in relation to its efficacy it is important to recognise that, in practice, such governance remains dependent on nation states and the actions and decisions of national governments.

The case for global governance of a kind which protects individuals from the potentially negative aspects of capitalism has been well made. As Keohane puts it for example:

To make a partially globalised world benign, we need not just effective governance but the *right kind* of governance. ([27]: 325).

The International Labour Organisation (ILO) is seen by many to be providing the 'right kind' of governance in that its agenda for the promotion of 'decent work' is driven by humanitarian concerns with social justice relating to the protection of workers and the reduction of poverty. However, its task is not an easy one, as it seeks to engage the commitment of parties, with conflicting interests, to ideals which remain contested. This is one of the significant barriers standing in the way of

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² Ships of less than 1000 gross tons are not normally counted in the world fleet as they are so small that they are unlikely to trade internationally

the development of effective international regulations covering workers such as seafarers. As Thomas and Turnbull put it in their contemporary analysis of the work of the ILO:

Albert Thomas, the ILO's first D-G (1919–32), likened the Organization to a car in which the workers acted as the engine, governments as the steering wheel, and employers as the brakes (quoted by Maupain, 2013 [49]: 123–124) – an analogy that is clearly supported by the data on voting at the ILC. In effect, therefore, the Office can rely on the votes of the workers (25%), can assume the (initial) opposition of employers (25%), and must persuade the government representatives (50%) to steer in the desired direction. ([43]: 544).

In some sectors, the ILO has faced particularly strong challenges of this kind. One such example is provided by the international shipping industry. Here the ILO was frustrated in its efforts to defend labour standards, for decades, as significant numbers of nation states, chose not to ratify a multitude of ILO conventions concerning seafarers. Beyond this there was also a significant issue of enforcement to contend with, which posed considerable challenges given the regulatory structure of the industry and the rise of so-called Flags of Convenience (FOCs).³

This paper contributes to debates about the effectiveness of international regulation and the continued significance of 'the state' notwithstanding the importance of the rise of polycentric governance [32]. In doing so, it focuses on the example of the ILO, Maritime Labour Convention 2006 [50] (MLC hereafter). MLC has been described as a 'superconvention'. It covers a broad range of labour standards and issues related to: minimum requirements for seafarers to work on vessels (for example minimum age, medical certification, training, recruitment); conditions of employment (for example contracts, wages, hours or work/rest, vacations, repatriation, compensation); accommodation, recreational facilities food and catering (for example cabin/bathroom size and occupancy, provision of food); health protection and medical care, and welfare and social security protection. In this paper the focus is solely on the aspects of MLC which deal with vessel abandonment.

The effectiveness of MLC in addressing this issue will be assessed via the analysis of data on seafarers' abandonment. In terms of the limitations of MLC, the novel analysis of abandonment data will allow for the consideration of the speed and successful resolution of abandonment cases. This will be the first time that such objective analysis has been used to evaluate the efficacy of MLC in relation to provisions concerned with abandonment.

The paper will begin by describing abandonment and its context. It will continue to describe the regulatory framework which offers protections to seafarers and the ways in which, once ratified by nation states, regulations agreed at the ILO and the International Maritime Organisation (IMO) are enforced. It describes the data that have been drawn upon to analyse the effectiveness of the MLC. It discusses the implications of the findings and draws conclusions relating the example of shipping, seafarers, and the MLC to broader discussions of the limits and significance of international polycentric governance and regulation.

1.1. How seafarers become 'trapped' on board

Notwithstanding the fact that seafarers go to sea of their own volition, one of the most regular descriptions of seafaring offered to researchers by shipboard workers is that being at sea is like being 'in prison' [41]. This does not simply refer to the feeling of being confined on a metal structure in the midst of the ocean. Seafarers are unable to set foot on land in a port without permission from the local immigration officers. Just as shore leave depends on permissions from the port authorities [4,48] so too does any kind of access to land-based facilities or

to transport home. A seafarer cannot just decide to leave a ship once it is alongside in port. Permission to leave must be organised and is frequently denied on the grounds of nationality or failure to meet with bureaucratic requirements (such as applying for visas in person).

Every year a number of seafarers find themselves 'abandoned' by ship operators in ports across the globe. In such cases, companies have often run into financial difficulties and simply fail to pay their bills, the wages of the seafarers, and vessel costs such as provisions and port dues. Abandoned vessels are frequently subjected to detention by port authorities and seafarers find themselves stranded on their vessel, within port limits, and usually without critical supplies such as food, fuel and water. They are unable to leave without permission from the local authorities and funds for flights and visas. The problem is a long-standing one. In 2002 Li and Ng, (2002) reported that in the period 1996–1999 there were 210 cases of vessel abandonment associated with bankruptcies. In 2020, the ILO reported concerns that vessel abandonments⁴ might escalate due to the COVID 19 pandemic [24]. Early indications suggest that their concerns were well-founded as by the end of 2020 there had been 60 abandonment cases. This figure compares with 39 cases registered on the ILO database in 2019, and 46 in 2018.⁵ As companies struggle to meet the financial challenges associated with the long-term nature of the COVID-19 pandemic, we might expect the figure to rise again.

It is very often the case that companies which abandon their ships operate substandard tonnage posing an environmental threat of some significance to the port-states where they call [15]. The threat which is posed may go beyond this, however, as there are several examples of abandoned vessels which have been linked to terrorist organisations and/or illegal activities. Recently, for example, the explosion of a warehouse in Beirut was linked to the suspected illegal activities on the abandoned vessel *Rhosus* [33] and the Palmali shipping group which owns several abandoned vessels (including *General Shiklinsky* which is returned to later in the paper) has suspected links to human trafficking and other illegal activities [9]⁶.

Whilst it may not be in the interests of states to stringently police other elements of MLC it is to their advantage to resolve cases of abandonment and to remove substandard operators from the international shipping arena. It is also in the interests of stakeholders keen to promote a positive image of the shipping industry as well as of seafarers, their representatives, their families, and communities. This makes the example of abandonment particularly worthy of consideration.

Comparing Pre-and-Post-MLC cases of abandoned seafarers – provides us with the opportunity to assess the powers and limits of international regulation. Before considering the data on abandonment in more detail, however, it is necessary to outline the regulatory framework governing the international shipping industry and to describe the way in which international regulatory bodies, nation states (and their national maritime authorities which are composed of state actors), and non-governmental organisations (NGOs) play unequal but important roles in the polycentric governance of international shipping.

1.2. The regulation of the international shipping industry

The shipping industry is generally held to provide a critical case [17] for the study of the regulation of globalised industries [8]. The sector is covered by well-established and elaborate international regulations and the mobile nature of ships means that they are more open to inspection

⁴ Vessel abandonments on the ILO database include fishing vessels. However, in the data presented in this paper fishing vessels have been excluded.

⁵ These figures cover all cases of abandonment listed on the ILO database including fishing vessels which are not included in the data analysis referred to later in this paper

⁶ The founder of Palmali is currently in prison in Turkey charged with links to a terrorist group (Belford and Klasfeld, [5]; Papachristou, [35])

³ A flag of convenience is defined by the ITF as one that flies the flag of a country other than the country of ownership.

than fixed plant tethered to a specific territory. If international regulations cannot be enforced in the context of shipping (where ships operate beyond the boundaries of their flag-state and may therefore be inspected by international regulators without crossing borders) it is likely to indicate that they cannot be effectively enforced elsewhere [8].

The shipping industry is complex and multi-layered and the regulatory framework and apparatus that apply to it in relation to one area of standards is not the same as another. For example, the regulation of the safety of life at sea, of environmental standards, and of seafarers' standards of education and training, is undertaken under the auspices of International Maritime Organisation (IMO). The IMO is not a tripartite organisation. Decisions at IMO are made by member (flag) states alone and it is only member states who enjoy voting rights at IMO. In contrast to the IMO, and as described earlier, the ILO is a tripartite organisation with the remit of protecting seafarers' labour standards.

The international regulations established at both IMO and ILO have been subject to patchy and often ineffective enforcement. Flag-state control was initially relied upon to maintain standards established at both IMO and ILO, but with the growth of commercial open registers such reliance proved to be increasingly futile (Sampson and Bloor 2007 [51]). This was particularly the case in the face of relatively low levels of ratification [12,36] which could be seen as a dominant feature of ILO regulation. In 2002, Li and Ng identified ten ILO regulations adopted in the period 1920–2000 which had failed to ever come into force. Amongst the remaining ILO regulations relating to shipping and seafarers they highlighted very poor overall levels of international ratification (Li and Ng 2002).

Recognition of the limited success of Flag-state Control (FSC) in enforcing internationally established regulatory standards resulted in the adoption of a new approach at IMO. The approach was built around a principle of 'no more favourable treatment'. It allowed all ratifying states to enforce the regulations which they had committed to, on vessels visiting their ports as well as on vessels carrying their flag (i.e., registered with them). This new form of inspection and enforcement was termed 'Port-state Control' (PSC).

Enforcement via PSC has been welcomed in the literature on the regulation of shipping and is seen as having the potential to plug an important loophole. This is particularly the case where command-and-control-style enforcement (by inspectors in ports) is augmented with 'smart' regulatory measures such as the publication of vessel deficiency and detention records, which have the potential to impact on charterers creating what has been termed a 'market in virtue' [7,38].

Furthermore, across the sector there are also a number of regional actors which implement supplementary standards (e.g., the European Maritime Safety Agency), 'clubs' [11] which play a role in maintaining standards (e.g. IACS and Paris MoU) and industry actors exerting market-based private regulatory influence [3] such as the oil majors⁷ via their own 'Ship Inspection Report Programme (SIRE). These fragmented, overlapping, complex and multi-level structures amount to a system of 'polycentric' governance in an industry where there is a relatively high level of motivation across international boundaries to achieve both a 'level playing field' for operators and higher level of safety.

However, variable port-state inspection practices (Sampson and Bloor 2007), lack of training for inspectorates [1,36], restricted time and its implications for the scope of port-state inspections [13], and corruption [40] all have the potential to significantly undermine the progress that such new approaches represent.

1.3. The Maritime Labour Convention

In 2006, the piecemeal approach to the ILO regulation of shipping changed with the introduction of MLC. This convention came into force

in August 2013. It incorporated many of the existing (often poorly supported) ILO regulations pertaining to shipping, making it much easier to achieve international coverage with regard to some issues. That is to say that in ratifying the single MLC, countries were in effect adopting a raft of regulations which they had resisted for decades.⁸ By December 2020, 97 ILO member states had ratified the MLC. Between them, these countries were responsible for registering 91% of total world gross tonnage. This apparent triumph was backed up by new measures for enforcement (copied from IMO) whereby ratifying states were able to enforce the provisions of the convention on all vessels calling at their ports. Using this mechanism, and in theory, the ILO convention gained sufficient 'teeth' to allow it to make a difference [36].

The encouraging signs that MLC had the potential to radically improve the living and working standards of seafarers upon its introduction were considered sceptically by some commentators. In some cases, this was a result of concern over enforcement [2] while in others it related to the fact that when introduced, MLC did little to raise overall labour standards (Sampson and Ellis 2015). This was largely a result of compromises that were made in the development of the MLC. Many of the regulatory provisions which were consolidated into the convention were not supported by flag-states and as a result many desirable clauses were downgraded upon inclusion within MLC and changed in status from mandatory requirements to 'guidance' [25,30].

Since its introduction, the MLC has been amended⁹ and it has also been studied in greater detail. With this greater scrutiny have come further criticisms. Many arise from detailed work on specific states and shortcomings in the ways in which they have sought to incorporate the provisions of MLC into national legislation and/or have supported systems of enforcement (e.g. Greece and the Philippines, [48] and Abila et al., 2015 respectively). More generally, there have been suggestions that while MLC has served to enshrine certain rights and entitlements for seafarers these are observed on paper more than they are put into practice [48].

Within the MLC one area of protection relates to the position of seafarers when their vessel is abandoned. A seafarer is defined as abandoned by the MLC when a shipowner fails to cover the cost of the seafarer's repatriation or has left the seafarer on board without the necessary maintenance or support, or has otherwise severed ties with the seafarer, for example, via non-payment of wages for a minimum period of two months. Abandonment often occurs when a ship operator is in financial difficulties and in many cases operators simply 'disappear' in such circumstances – hidden in a trail of offshore companies within companies. In the past, this has meant that seafarers' only recourse has been to seek to legally arrest their vessel and require its sale via the local courts. They are then in a position to make a claim against the proceeds of the sale. This is a lengthy and cumbersome process which seafarers are ill-equipped to pursue unless they have support from a third party – most usually this has come from the International Transport Workers Federation (ITF).

The MLC as thrice amended (2014, 2016, 2018) contains provisions aimed at ensuring that all vessels are covered by an effective and rapid system of financial security such that in the event of a vessel being abandoned any seafarers on board can be repatriated and paid in a timely manner. Flag-states are responsible for ensuring that all vessels registered with them are covered by such a system. Although there is flexibility in relation to the form that the financial security can take, in many cases it is manifested in insurance cover which is provided by 'P&I clubs'.¹⁰ In cases of abandonment, the financial cover provided by

⁸ NB However some pre-existing regulatory standards were downgraded to become 'guidance' in MLC

⁹ Further amendments are expected following a meeting of the Special Tripartite Committee in April 2022

¹⁰ There are thirteen major international P&I clubs which insure ship operators for losses relating to their vessels, their operations, and their personnel.

⁷ This term refers to the major oil companies as commonly denoted in the sector

insurers or others is required to meet the costs for food, accommodation, water supplies, essential fuel, and medical care for seafarers while they remain on board, as well as reasonable costs associated with their repatriation in addition to outstanding wages (subject to a four-month limit) and entitlements.

1.4. Enforcement of MLC

Flag-states, port-states and labour supply countries share responsibility for the enforcement of the MLC. Other parties such as the ITF may be of assistance to seafarers in making complaints to flag-states about employer non-compliance, but these can only be addressed by flag-states themselves and not by the ITF. The ITF may also raise complaints against flag-states with the ILO. These are deemed appropriate when flag-states are perceived as failing to take adequate steps to enshrine the provisions of MLC in national law. As with seafarer complaints, the role of the ITF in this process is solely to raise issues of non-compliance with ILO. The ITF also plays a role in informing seafarers of their rights under MLC.

On paper these provisions constitute very significant progress in relation to protections afforded to abandoned seafarers by international regulations. However, there has not been an analysis, to date, of the practical impact of MLC on the important issue of the resolution of internationally distributed cases of abandonment. In this paper, an evaluation of the effectiveness of the MLC is made with regard to the specific provisions concerning seafarer abandonment. Having outlined the methods adopted, the paper will report on an analysis of the ILO database on abandoned seafarers, to ascertain whether the provisions of MLC have resulted in better and quicker resolution of abandonment cases with an associated improvement in the speed with which seafarers are repatriated to their homelands.

2. Method

In order to consider the practical impact of the MLC on the resolution of abandonment cases, the ILO database containing all notified cases of vessel abandonment was interrogated. All abandonment cases which are notified to ILO are included in the database. Flag-states, port-states, labour sending countries, and NGOs with consultative or observer status at IMO or ILO are permitted to report cases of abandonment to ILO for inclusion in the database. Once the ILO receives notification of a case of abandonment, the details are sent to IMO so that the IMO number of the vessel, the flag, vessel type, company and registered owner can all be checked and verified. These details are initially published on a restricted access webpage. Interested parties are notified and given the opportunity to provide new information/details within ten working days. After this period, the information is placed on the publicly accessible ILO database.

The database itself is qualitative in nature. Individual cases are described in free text which is inserted under a series of standardised headings. The cases are not aggregated. However, using an inbuilt search engine, it is possible to list cases in various ways (in alphabetical order by ship name, for example, or in date order as per the notification date).

Data analysis was conducted under the direction of the author by a work experience student who spent several weeks at the Seafarers International Research Centre in the summer of 2019.¹¹ The analysis included all 377 cases of cargo vessels¹² recorded as abandoned in the

database at the time of the analysis. This resulted in coverage for the period from the first recorded case in 06.01.2004 to the date of the analysis on 06.06.2019. Each case was carefully read to ascertain when a vessel was abandoned; when the vessel was notified as abandoned to authorities; when the case was resolved/closed; which parties were involved in assisting resolution of abandonment; the details of the abandonment (e.g., were provisions of food and water being made available to the ship by the operator; the flag of the vessel; the place of abandonment; the nationality of seafarers on board). This information was coded¹³ as appropriate and was entered into a Microsoft Excel spreadsheet. It was subsequently exported for further analysis into SPSS to allow for Chi-Squared tests to be run. In this paper, the focus is on findings relating to pre-and post-MLC resolution times in relation to abandonment cases. An illustrative example of some selected details of a case appearing on the ILO database in 2020 is provided in Fig. 1.

Several of the questions addressed in the data analysis relate to the resolution of abandonment cases – whether flag-states met their MLC responsibilities in such cases and the impact of MLC on the speed of this process. As such, the time taken for the resolution of pre-MLC cases and post-MLC cases of abandonment was analysed and compared. In order to undertake this analysis accurately, the dates when MLC regulations came into force for individual flag-states were required (see Fig. 2). These dates are provided on the ILO website, and these were used to establish speediness of resolution pre- and post-MLC on a case-by-case basis.

The data were also analysed with reference to types of flag-state. Flag-states can be divided into three types – national (first) registers, second (national) registers, and open registers which are also termed by the International Transport workers Federation (ITF) ‘Flags of Convenience’ or ‘FOCs’ as they are commercial registers which have been established as profit making entities and which attract tonnage from any part of the world on the grounds that they allow operators to reduce costs. FOCs are widely regarded as taking a less stringent approach to international regulation than other registers. However, they register more than 70% of the world’s deadweight tonnage [37]. In this analysis pre-and post-MLC abandonment cases relating to ships registered with FOCs were therefore considered and compared to the findings for pre-and post-MLC abandonment cases relating to ships registered with national (first or second) registers, to look for significant differences. Use was made of the ITF Global website listing of flags of convenience as it stood on 19 September 2019 (see Fig. 3).

2.1. The impact of MLC on the resolution of abandonment cases in the period 06.01.2004 to 06.06.2019

The data analysis indicates that more than two thirds (68.9%) of cases of abandonment which took place before the adoption of MLC by the flag-state concerned (hereafter referred to as pre-MLC) took two years or more to resolve. In cases which occurred after MLC had been adopted by the flag-state concerned (hereafter referred to as post-MLC) this fell to 11.5% of cases. Pre-MLC only 21.4% of cases were resolved within a year of abandonment and post-MLC this rose to 69.2% (NB still leaving almost a third of cases unresolved for more than a year). Thus, it seems that upon abandonment, seafarers’ problems were resolved more quickly after the MLC came into force than they had been before the MLC. These differences in resolution times were found to be statistically significant using Pearson Chi-Square analysis¹⁴ ($p = 0.000$).

Cases of vessel abandonment may occur some considerable time prior to the notification of the abandonment and there is normally a discrepancy between the recorded date of abandonment and the recorded date of notification of abandonment in the dataset. It is self-evident that authorities cannot be expected to work to resolve cases of

¹¹ My thanks to Eleanor Jones who undertook the analysis as part of an 8-week work experience programme at Cardiff University and to Neil Ellis who provided her with day-to-day support particularly with regard to SPSS.

¹² As previously mentioned, fishing vessels are included on the database but were excluded for this study of the impact of MLC on abandonment cases in the cargo shipping sector

¹³ Coding was undertaken with direction and supervision

¹⁴ Using a significance level of 0.05

| | |
|--|--|
| Name of ship | <i>Galaxy F</i> |
| Flag | Panama |
| Port of abandonment | Misurata, Libya |
| Abandonment date | 16 January 2020 |
| Reporting member govt. or organisation | ITF |
| Number of seafarers | 18 |
| Nationalities | Greece (4), India (6), Ukraine (8) |
| Circumstances | P&I: London P&I Club (insurance certificate: 9 May 2019 to 20 February 2020) |
| | Ship has been under arrest since early December 2019 due to a dispute over lost/damaged cargo. Crew's wages unpaid since December 2019 and requested their repatriation (employment term for 5 crew members came to an end) There are also a problem with provisions which is exacerbated by the absence of a willing local agent. |
| Actions taken | 17 February 2020: Flag-state informed |
| | Other The owners are said to be in negotiations with the P&I Club and the arresting party to provide a bond requested by the court in order to have the vessel released and to proceed to Malta. Owners intended to settle the crew wages for December 2019 in the week starting 10 Feb 2020 but failed. |
| | Provisions provided Provisions were provided with the ship's Master buying food for crew ashore for cash received from the owners. However, the crew are complaining of a lack of food and fuel. |
| Repatriation status | Repatriation pending Crew wish to return home but want to receive outstanding wages before leaving. |
| Payment status | Payment Pending Crew remains unpaid since December 2019 |
| Comments and Observations: | ITF (19 October 2020) Vessel has been sold and deleted from the Panama register. Crew were repatriated with partial payment. Crew have not contacted the ITF to confirm final receipt of wages. Resolved. |

Fig. 1. Example of the information recorded on the MLC abandonment database.

abandonment when they are unaware of them, so supplementary analysis was undertaken of the time from notification of abandonment to resolution, pre-and-post-MLC. This analysis confirmed the positive impact of MLC on the resolution of cases. Pre-MLC 76.4% of cases took more than a year to resolve once authorities had been notified of the abandonment. Post-MLC this fell to 31.4% of cases. These differences were statistically significant ($p = 0.000$). However, it is important to note that for more than a third of abandoned seafarers, cases of abandonment still took more than 12 months to resolve. These figures therefore indicate both the improvements resulting from MLC and also its continued limitations.

The data analysis suggests that MLC has resulted in higher levels of flag-state involvement in abandonment cases. Prior to MLC coming into force, just 11.4% of flag-states met their responsibilities in terms of abandonment cases and this rose to 35.8% post-MLC (NB still less than half). Pearson Chi-Square analysis confirmed that this difference was

significant ($p = 0.000$). When the findings were analysed to consider differences between cases where vessels were registered with Flags of Convenience and cases where vessels were registered with first or second national registers, it became apparent that whilst Flags of Convenience were significantly more likely to be involved in the resolution of cases post-MLC than they were pre-MLC this was not the case with vessels registered with national flags. Pre-MLC Flag of Convenience (FOC) registers met their responsibilities in relation to 10.8% of abandonment cases and post-MLC this rose to 42.4% of cases (total cases of FOC abandonment = 241). Pearson Chi-Square confirmed that this difference was significant ($p = 0.000$). In terms of nationally registered vessels, there were fewer cases of abandonment overall ($n = 126^{15}$). Pre-MLC national registers met their responsibilities in 13.5% of cases and

¹⁵ In ten cases the flag was not identified

| Year | Countries |
|------|---|
| 2006 | Liberia |
| 2007 | Marshall Islands |
| 2008 | Bahamas |
| 2009 | Norway, Panama |
| 2010 | Bosnia and Herzegovina, Bulgaria, Canada, Croatia, Saint Vincent and Grenadines, Spain |
| 2011 | Antigua and Barbuda, Australia, Benin, Denmark, Kiribati, Latvia, Luxembourg, Netherlands, Singapore, Switzerland |
| 2012 | Cyprus, Morocco, Palau, Philippines, Poland, Russian Federation, Saint Kitts and Nevis, Sweden, Togo, Tuvalu |
| 2013 | Barbados, Belgium, Faroe Islands, Finland, France, New Caledonia, Germany, Ghana, Greece, Hungary, Italy, Japan, Lithuania, Malaysia, Malta, Nicaragua, Nigeria, Samoa, Serbia, South Africa, United Kingdom of Great Britain and Northern Ireland, Gibraltar, Isle of Man, Vietnam |
| 2014 | Argentina, Bangladesh, Belize, Congo, Fiji, Gabon, Iran, Ireland, Kenya, Maldives, Mauritius, Korea, Seychelles, Bermuda, Cayman Islands |
| 2015 | Cabo Verde, China, India, Mongolia, Montenegro, Curacao, Romania |
| 2016 | Albania, Algeria, Estonia, Honduras, Jordan, Myanmar, New Zealand, Portugal, Slovenia, Thailand |
| 2017 | Indonesia, Jamaica, Sri Lanka, Tunisia |
| 2018 | Chile, China-HK SAR, Djibouti, Gambia, Grenada, Lebanon, Slovakia |
| 2019 | Cook Islands, Ethiopia, Iceland, Senegal, Sudan, United Republic of Tanzania |
| 2020 | Brazil, British Virgin Islands, Falkland Islands (Malvinas) |

Fig. 2. Country ratifications of MLC by year.

Antigua and Barbuda; Bahamas; Barbados; Belize; Bermuda; Bolivia; Cambodia; Cayman Islands; Comoros; Cyprus; Equatorial Guinea; Faroe Islands; French International Ship Register; German International Ship Register; Georgia; Gibraltar; Honduras; Jamaica; Lebanon; Liberia; Malta; Madeira; Marshall Islands; Mauritius; Moldova; Mongolia; Myanmar; Netherlands Antilles; North Korea; Panama; Sao Tome and Principe; St Vincent; Sri Lanka; Tonga; Vanuatu

Fig. 3. Flags of convenience as of 19 September 2019.

post-MLC this rose to 18.4% of cases. This increase was not statistically significant ($p = 0.521$).

Finally, the data analysis indicates that MLC had a positive impact on the involvement of the ITF in cases of abandonment. Post-MLC the ITF were involved in more cases than pre-MLC. Pre-MLC they were involved in 80.0% of cases and post-MLC they were involved in 88.5% of cases ($p = 0.040$). This is important because cases where the ITF was involved were resolved more rapidly than cases where the ITF was not involved. When the ITF were involved just over half of cases (53.8%) took more than one year to resolve. When the ITF were not involved 82.6% of cases took more than one year to resolve ($p = 0.010$).

2.2. An illustrative case

The case of the vessel *General Shiklinsky* (GS) which was abandoned in Oristano, Italy, on 24 June 2020 is illustrative and helpful in demonstrating how these issues play out in real life situations (see Fig. 4). The case occurred recently and has been chosen to be supplemental to the quantitative data analysis that has been presented. It illustrates the ongoing nature of the shortcomings associated with the enforcement of MLC as well as the complexities of individual cases and the challenges presented in relation to their resolution.

The case of GS highlights some of the limitations of the international regulations which are aimed at protecting seafarers' rights, whilst simultaneously indicating some of the benefits of MLC. The actions of

the flag-state in suspending operational certification, related specifically to the cancellation of P&I insurance cover and the resultant non-conformity with MLC. The cancellation of the certification prevented the vessel from sailing but did not assist in the resolution of the abandonment. Cognizant of its responsibilities as an MLC signatory state, the authorities in Malta sought to apply pressure on the vessel owners to resolve the case as well as on three different P&I clubs in a bid to recover unpaid wages. Ultimately, however, this endeavour was unsuccessful and of no benefit to the seafarers. In this way, the case reveals the extent to which the MLC can be rendered 'toothless' once companies become insolvent or when they abandon vessels, for other reasons, with no intention of reclaiming them. Cases such as GS where seafarers have gone unpaid for many months also reveal the ineffectiveness of both flag-state control and port-state control enforcement regimes which primarily rely on documentary checks of compliance. In this case, as in many, it was evident that the vessel had been sailing whilst the seafarers on board had not been in receipt of wages for many months. The ship passed through many ports prior to its arrest in Italy. Some of these were located in states where MLC was in force, yet they did not pick up the non-compliance. Indeed there is some evidence that the ship called into ports in Spain, Israel and Turkey immediately prior to its detention in Italy (<https://www.vesseltracker.com/en/Ships/General-Shiklinsky-9437775.html>, accessed 13/1/21). Of these, only Spain has ratified the convention and as such, the case is also useful in highlighting another difficulty with enforcement. The problem is that, as long as

The case of General Shiklinsky

GS was flagged with Malta. Malta became the 34th ILO member state to ratify MLC in January 2013¹. There were 14 seafarers on board. On June 10th 2020 the seafarers contacted the ITF complaining of unpaid wages (in some cases for more than 12 months), no provisions on board, and contracts of more than twelve months. The ship was recorded as abandoned following its detention by control officers in Italy. The ITF received notification that the P&I club had cancelled the insurance cover it had provided for the vessel. The Flag-state contacted three P&I clubs which had formerly insured vessels in the shipping operator's fleet and also made representations to the owners. None of these efforts met with success. The Flag-state withdrew operational certification on July 2nd, 2020, due to the lack of insurance and associated non-compliance with MLC. The ITF paid for the repatriation of 11 of the 14 seafarers who chose to disembark and three decided to remain on board to attempt to recover their lost wages via the local courts.

Fig. 4. the case of General Shiklinsky.

some port-states do not ratify the convention there are increased chances of non-compliant ships evading the enforcement of the attendant regulations (which are largely ‘policed’ by port-state control inspectors). Furthermore, the case demonstrates the lack of vigilance from flag-states, or at least from some flag-states, with regard to monitoring the regulatory conformity of vessels on their register.

2.3. Weighing up the effectiveness of MLC in relation to cases of abandonment

Overall, it seems that MLC has had a positive impact on the time it takes for most abandonment cases to be resolved. Across flags where MLC has come into force, the length of time between abandonment and resolution has declined in parallel with the time between abandonment, notification, and resolution. This is hugely important to the individuals concerned (numbering 4324 in the dataset), as most abandoned seafarers are not in receipt of wages, leaving their families at home in a financially precarious situation and often dependent on loans. Seafarers themselves may go hungry, thirsty, and cold/hot on their abandoned vessels as food, water, and fuel run out. Sixty-one percent of the cases listed on the database, in the period of the analysis, included notes indicating that provisions were not supplied to the vessels concerned, leaving seafarers dependent on charities for support, and/or living in very uncomfortable conditions, lacking nutrition and water of adequate quality/quantity. As such, despite the relatively small number of seafarers affected by abandonment (relative to the overall numbers of seafarers working at sea – approximately 1.9 million, [6]) the rapid resolution of cases resulting in the repatriation of seafarers, and the recovery of their wages, is extremely important.

There are several ways in which the MLC has produced such an effective change in the resolution of abandonment cases. Firstly, the requirement for flag-states to make sure that all vessels registered with them have financial cover for abandonment, has increased transparency such that it is now much clearer where legal financial liability in cases of abandonment lies. This often serves to expedite the speedy resolution of cases once they are reported. Secondly, given this greater degree of transparency, where P&I clubs or other third parties are involved, it is in their interests to settle claims quickly as the longer seafarers are trapped on board abandoned vessels the higher the costs are to the P&I clubs, or other responsible entities. Thirdly, the MLC may also be expected to have increased the rapidity with which seafarers decide to report abandonment cases (thereby reducing the overall period of abandonment). This is because MLC provides a clear definition of abandonment which is universally applied and understood, and because seafarers can now have greater confidence that they will receive assistance once employers have abandoned them. Prior to MLC, many seafarers felt that they had no option but to remain on good terms with employers, even when wages were withheld, as they believed that only by ingratiating themselves with them, would they ever see their owed wages and/or be repatriated home. They were, therefore, reluctant to report their situation to third parties such as the ITF and would frequently delay making decisions to do so for as long as they possibly could. Finally, MLC has also established a limit on the required financial cover for the number of months’ wages that can be claimed by seafarers – currently set at four months [22]. This in turn has increased the likelihood that abandonment will be reported in a timely manner to parties such as the ITF and contributes to the observed reduction in time between abandonment and resolution post-MLC.

Despite the positive picture of improvement which emerged following the data analysis, abandoned cargo vessels remain a persistent problem. Cases increased from 46 and 39, in 2018 and 2019 respectively, to 60 in 2020. A significant proportion of abandonment cases also remain unresolved after a considerable amount of time. In this context, the limited liability which is established by MLC on the return of outstanding wages to seafarers can be seen as creating a system of structural injustice (see also [26]). In the 2021 meeting of the Special

Tripartite Committee established under article XIII of the Maritime Labour Convention 2006, the representative for Panama described how they had encountered various barriers to the timely repatriation of abandoned seafarers including:

‘in cases where maritime authorities did not allow the disembarkation of the entire crew for repatriation, as they would not allow the ship to be left unmanned’ ([23]:16).

The result, opined the Panama representative was for:

large numbers of seafarers having to stay on board their ships for indefinite periods of time, even though under Regulation 2.5 of the Convention it was the responsibility of the financial security provider to undertake repatriation. For example, the “Kanen Mete” ship, which flew the Panamanian flag, had been abandoned and had not been repatriated since August 2020. The provider of the financial guarantee had repatriated the entire crew with the exception of the master, whose departure had not been authorized by the local authorities. ([23]: 16–17).

Furthermore, there remain cases where vessels do not comply with MLC regulation, notwithstanding the ratification of MLC by the flag-state under which they are registered. These cases illustrate the remaining deficiencies in the enforcement of MLC. Such deficiencies can be attributed to state actors concerned with both flag-state and port-state control and the limited impact of other ‘smart’ regulatory forces which have no effect on ‘invisible’ shipping concerns operating in some markets [46].

In many respects, although these issues are specific to shipping, they highlight concerns of relevance to broader discussions of the effectiveness and challenges associated with international regulation. Most obviously, and notwithstanding new forms of governance [14] they demonstrate the continuing importance of the nation state with regard to the enactment and the enforcement of international regulations [47]. It is the action or inaction of individual governmental maritime authorities which determines both whether regulation is introduced and whether it is enforced. Although the ITF is unusual amongst Global Union Federations in maintaining its own international ‘inspectorate’ which plays an important role in informally monitoring shipboard conditions, and the observance of wage agreements and other key labour standards, such inspectors do not have the legal right to formally inspect ships with regard to compliance with MLC or other international regulations. In a sense the role of the ITF is to act as a whistle-blower and emergency service to seafarers – alerting the authorities when potential acts of non-compliance emerge. They are of great assistance to seafarers once they have been abandoned and offer a conduit to access to formal state legal processes. However, it is nevertheless only flag and port-state inspectorates which bear formal responsibility for the enforcement of international shipping regulations set by ILO and IMO.

2.3.1. Understanding the compromised role of the nation state vis a vis the enactment and enforcement of MLC

In this globalized sector where nation states continue to play a critical role [18,34] the reliance on nation states in terms of both the introduction of international regulations and the enforcement of regulations establishes significant constraints on their scope and influence. Nation states have as a significant part of their agenda a desire to stimulate business and foreign direct investment. Their traditional pursuit of some kind of a balance between the interests of labour (their voters) and capital (often their financial backers) has increasingly become skewed such that the interests of capital are prioritised. As Panitch suggests:

We have witnessed a significant decrease over the past twenty years in politicians’ and bureaucrats’ relative autonomy from capitalist

ideology: the state's goals—and the discourse it employs to advance these goals—have become more explicitly those of business itself. ([34]: 32).

Useful as it is, MLC overall is nevertheless the product of significant compromises at ILO which 'watered down' the standards of prior conventions (incorporating them as guidance rather than mandatory standards) to facilitate the creation of one, more manageable 'super convention' which would be likely to be supported by sufficient nations to come into force [25]. Within this context the analysis that has been presented indicates that the provisions with regard to abandonment have been of benefit to seafarers in facilitating a reduction in the time that is taken to repatriate and financially compensate them. However, with cases of abandonment rising, it is not possible to argue that MLC has reduced abandonment cases overall. Examples such as those provided by the case of GS also indicate the ways in which state inaction with regard to both ratification of MLC and the proper enforcement of MLC directly contributes to cases of abandonment.

The state actors which come together with NGOs at ILO to introduce international regulation remain solely responsible for decisions about ratification and enforcement. Lax enforcement of MLC is something that should perhaps be expected in a context where the policing of international regulatory standards clashes with state-level economic interests. If states with very stringent port-state controls become unpopular, as destinations for shipping lines, this carries a heavy economic cost for national economies as transport costs increase for imported and exported goods and as port profits decline. Equally, where the registration of ships (and the attendant funds derived from vessel registration) depends on competition between flag-states, with companies considering which flags provide them with the most attractive financial terms and operating conditions this is likely to militate against the stringent enforcement of international regulations at flag-state level.

3. Conclusion

The increased mobility of capital and labour in the global economy has posed a challenge to regulation which seeks to balance economic interests with humanitarian concerns for the welfare of people, most particularly employees. International organisations such as the ILO have made every effort to meet these challenges and have made use of varying strategies to enact and enforce regulations in a variety of contexts.

In relation to the shipping industry, for many decades the ILO was frustrated in its efforts to introduce regulations that would protect the rights of seafarers to 'decent work'. The introduction of a single 'superconvention' aimed at protecting the world's seafarers was heralded as a breakthrough and certainly represented a great success judged from the standpoint of ratification. However, many compromises were struck in the drafting of MLC [25] and there have been legitimate doubts expressed over the extent to which the convention has achieved a great deal to change the overall living and working conditions for seafarers.

MLC covers many aspects of labour standards and there is much that remains for academics to study in relation to working and living conditions, desired improvements in social security and so forth. However, this novel analysis of abandonment provides a sound empirical basis for the evaluation of one aspect of MLC. It reveals that MLC has made a positive difference to the duration of seafarers' confinement on board abandoned ships creating the conditions for the provision of greater assistance to seafarers from flag-states and vessel insurers. Notwithstanding this success, the example of abandonment also serves to illustrate the limitations of MLC which remains dependent on the enforcement actions of nation states. Seafarers who experience abandonment on vessels where flag-states and port-states have failed to ensure that ships are MLC compliant may find themselves in a very similar situation post-MLC to that which they would have encountered pre-MLC. Within the polycentric governance structure that has produced the MLC, and which has produced and strengthened the effectiveness of

IMO regulation, the example of MLC illustrates the enduring importance of the nation state as a key actor. Where nation states fail to act (in the case of enforcement) or choose not to act (in the case of ratification) MLC is ineffective. In these situations, third parties may attempt to intervene and assist seafarers, but their success is constrained by local state laws and the operation of national courts.

This paper has made use of the MLC as an example of international regulation in a globalised industry. The industry presents a critical case with regard to the analysis of the effectiveness of global regulation as its very mobility and presence beyond national state borders makes its regulation all the more pressing on the world stage (substandard ships spilling oil may destroy significant elements of a country's national economy). The mobility of vessels also makes them more accessible to third party state inspectorates as enforcement of regulation can take place from without the borders of signatory states. This makes the potential reach of the MLC remarkable.

In relation to this critical case, however, the findings of the analysis of abandonment cases indicate how even in this industry, international regulations have limited impact which can be seen as independent of the actions of nation states. The example illustrates that while capital and labour in the form of ships and seafarers operate beyond borders as well as within them, international regulations can only be adopted and enforced by nation states – within borders. Consequently, the regulations fail to confer on seafarers the 'international rights' which they may believe have been promised. In the event of nation states failing to prevent the contravention of MLC, it remains the case that seafarers have limited recourse to social justice.

Recommendations

- 1) More stringent inspections focussing on unpaid wages are necessary to limit the likelihood of abandonments occurring after seafarers have been owed wages for a substantial length of time.
- 2) The time-related limitations on liability with regard to unpaid wages should be lifted. Seafarers should not be restricted to the reimbursement of 4 months owed wages but should be entitled to reimbursement of all unpaid wages that are due.

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