ILO

Research Report

The Question of:

Corporate legal accountability regarding the working conditions in maritime industry

Introduction

Globalisation has contributed to the maritime industry increasing every year.
Shipping has long been the major form of transportation, as well as an essential communication link connecting coastal cities, countries and continents. Next to rail transportation, water transportation is economically and environmentally the most efficient way to travel or transport merchandise; and, nowadays, around 90% of world trade is carried by the international shipping industry.
http://www.windrosenetwork.com/Maritime-Sector
Gives a good overall picture of the maritime industry, its economic importance, and developments (offshore and cruise).
Along with economic benefits connectivity and efficiency-related benefits are also tempting factors. So it may not be surprising that over 38 million employees work in the shipping and fishery industry globally in a variety of fields. However, this industry is regarded as one of the most dangerous professions according to not just the ILO. For instance, the fatality rate of water transportation industry proved to be 4.7 times higher than the rate for all the U.S. workers.
https://www.cdc.gov/niosh/topics/maritime/default.html
These workers face a high risk of not only general injuries but some unique hazards as well, which will be elaborated on in the 'General Overview' section. For these reasons it is our common goal to improve the conditions of these employments with the help of the Maritime Labour Convention (2006) and other treaties that were adopted to find a suitable solution.

The Committee

The ILO was founded in 1919, and since then it brings together governments, employers and employees with the aim of creating labour standards, developing policies and conceiving programmes that could help in the promotion of decent work for all men and women. The ILO has 187 member states; 186 of the UN members and the Cook Islands. In 1946 it became the first specialized agency of the UN. The unique tripartite structure gives an equal voice for governments, employers and workers for the debates. The mission of ILO includes the promotion of rights at work, enhancing social protection and working towards decent working opportunities.

Key Terms

IMO-International Maritime Organisation:

a UN specialized agency with the aim of creating a regulatory framework for the shipping industry.

Seafarer:

it means any person who is employed or engaged or works in any capacity on board a ship (Maritime Labour Convention, 2006).

Shipowner:

it means the owner of the ship or another organization or person, such as the manager, agent or bareboat charterer, who has assumed the responsibility for the operation of the ship from the owner and who, on assuming such responsibility, has agreed to take over the duties and responsibilities imposed on shipowners in accordance with this Convention, regardless of whether any other organization or persons fulfil certain of the duties or responsibilities on behalf of the shipowner (Maritime Labour Convention, 2006).

Gross tonnage:

it is a value calculated in accordance with the tonnage measurement regulations

Flag State:

merchant ships need to be registered in a country (not necessarily the owners' country of origin) and then carry the flag of that state plus follow its regulations.

Below a list of the top 10 flag states. It may provide useful as these countries will be important in your debate:

https://lloydslist.maritimeintelligence.informa.com/LL1125024/Top-10-flag-states-2018

Inspection:

a careful examination carried out by the PSC-Port State Control of a country.

Goal of this inspection is to increase the safety and security of the employees.

ISM Code-International Safety Management Code:

it is an intrinsic part of the IMO and works to ensure the safety of seafarers.

PSC-Port State Control:

the inspection of a foreign ship that checks whether the ship satisfies the conditions of the regulations. Those inspections are carried out at the ports of the countries where ships arrive and depart. The goal of those inspections is to contribute to the safety and security of the employees.

NIOSH-National Institute for Occupational Safety and Health:

US institute with the aim of developing new knowledge in the field of occupational safety and health.
https://www.cdc.gov/niosh/topics/maritime/default.html

Labour-supplying state:

These include the countries that provide many of the employed persons. Countries that typically provide many of the (lower ranking) persons are for example the Philippines.

Flag state vs Port state:

An State is called Flag State when the ships is registered in that country, the ships carries this flag. The Port State is any State with an international port. For example a ship is registered in Hong Kong and is in the port of Singapore. In this example is Hong Kong the flag state and Singapore is the Port State.

Each member (=flag state) from the IMO who is the administration of a port state has to install Port State officers. Those officers will inspect the ship according the international legislation and not according the national legislation.

For example an inspector from the flag state Hong Kong will inspect a ship which is in Singapore according the legislation of Hong Kong. So the inspection is according the minimum regulations of the conventions which are ratified by Hong Kong plus additional regulation of Hong Kong. The port state officer in Singapore will look at all the conventions which are in force from the IMO and ILO. The port state officer will not take the additional flag state legislation in consideration.

https://www.quora.com/What-are-the-differences-between-Port-State-Inspection-and-Flag-State-Inspection

Paris MoU on Port State Control

The organization consists of 27 participating maritime Administrations and covers the waters of the European coastal States and the North Atlantic basin from North America to Europe.
The current member States of the Paris MoU are: Belgium, Bulgaria, Canada, Croatia, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Latvia, Lithuania, Malta, the Netherlands, Norway, Poland, Portugal, Romania, the Russian Federation, Slovenia, Spain, Sweden and the United Kingdom

Annually more than 18.000 inspections take place on board foreign ships in the Paris MoU ports, ensuring that these ships meet international safety, security and environmental standards, and that crew members have adequate living and working conditions.
Basic principle is that the prime responsibility for compliance with the requirements laid down in the international maritime conventions lies with the shipowner/operator. Responsibility for ensuring such compliance remains with the flag State.

This organization issues an annual report on flag states' inspection performance:
https://www.parismou.org/detentions-banning/white-grey-and-black-list

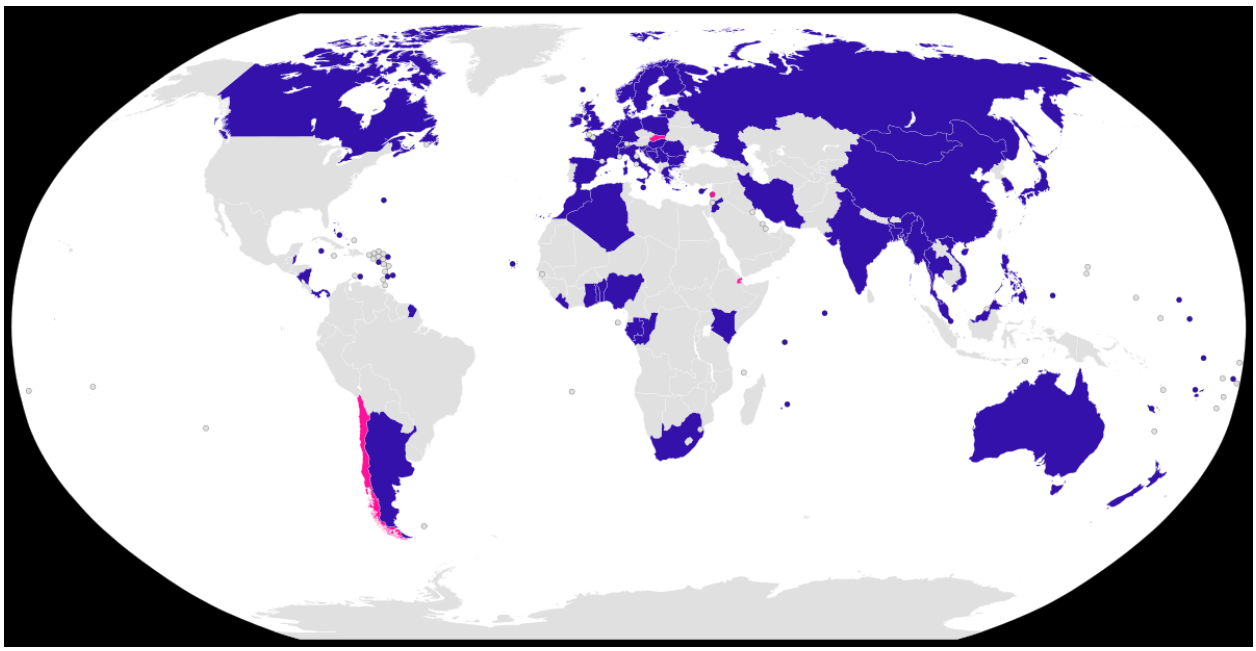
General Overview

As it was mentioned before, maritime industry employs a great number of workers globally although being considerably dangerous. That is why it has been a significant topic for decades. To make the situation better, we need to examine the issue from as many aspects as possible and be aware of the studies and conventions that would help us.

Firstly, dealing with a maritime worker's safety and the possible hazards is essential. Maritime workers can find employment in a great variety of fields, like shipyards, trade, transportation or seafood processing. Thus the working conditions may be pretty diverse in each case. However, there are certain types of risks that are present most of the times, such as heat and cold stress or the use of power tools. Vessel disasters, spillages and severe weather conditions are more unique ones. By looking at the study of the National Institute for Occupational Safety and Health (NIOSH), the following hazard categories can be distinguished: chemical hazards, environmental hazards, respiratory hazards, injury hazards, personal protective equipment and worker health & well-being. The web pages developed by NIOSH could be useful for recognizing these hazards.

Secondly, one needs to become familiar with the Maritime Labour Convention. It was a huge step that helped millions of seafarers in improving their working conditions by establishing international labour standards. It succeeded in achieving higher amount of ratifications than the previous conventions in the topic. MLC has now been ratified by 93 states, but the ILO set their sights on achieving 100 ratifications as part of their 100th Anniversary (Centenary). (See the link of the 93 ratifies at the "Further Reading" section and the picture of them on the map below.) Three meetings have been held so far, and the fourth will take place in Geneva from 21 to 23 April 2021.

Maritime Labour Convention
https://en.wikipedia.org/wiki/Maritime_Labour_Convention#/media/File:MaritimeLabourConven



What aspects does the MLC deal with? The basic aims of MLC 2006 are "worldwide protection of the rights of seafarers" and "establishing a level playing field for countries and ship-owners committed to providing decent working and living conditions for seafarers, protecting them from unfair competition on the part of substandard ships". The five Titles of the Convention are: 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; Compliance and enforcement. It includes the amendments of 2014 and 2016 to the Code of Convention and deals with each title in more details.

The "Port State Control" is the inspection of a foreign ship, how is the inspection carried out? Countries that ratified MLC 2006 approved that ships flying their flag would comply with the requirements and might inspect entering ships. Admiral Luigi Giardino of the Italian Coast Guard was interviewed by ILO News about the inspections.

He explained that the decision of inspecting a ship entering Italy depends on the ship's risk profile and existing complaints. He also stated that the most common problems are finding underage children and the lack of evidence of the qualification of seafarers. If the requirements do not meet with the Convention there can be sanctions. He also speaks about the state of the ship, the role of fatigue etc. (Find the link of the interview at the "Further Reading" section.)

Although much has been achieved by MLC, there are still many cases that disable corporate legal accountability from coming into being. In May 2019 maritime workers around the world protested at the Australian government and demanded the "reinvigoration f Australia's domestic shipping industry". "The current Australian government has failed Australian seafarers through deregulation of the industry and permitting Flag of Convenience vessels to operate in Australia's coastal trade which has resulted in the loss of thousands of jobs in the sector"- the article says. In July 2019 Nigerian mob started a strike as a response to unpaid wages. According to the article this has lingered for over a year and maritime workers had enough of being denied from their rights. As it can be seen in these examples, the violation of natural rights occurs day by day in maritime industry.

To sum up, we can resolutely state that this issue is a severe one which involves a considerable amount of countries and affects their employees. The MLC made a great difference at the time, but it is high time for a refreshment by us. Noting with concern the need of international cooperation between the Members, we hope for improvement in this issue.

Major Parties Involved

United States of America

As the country with the largest economy in the world, the United States are directly and indirectly involved in many companies and therefore also in the shipping industry. In addition, the U.S. is also a country that has not signed the MLC 2006.

International Maritime Organisation

The IMO is the body of the UN responsible for the maritime industry. And because the issue is about this, the IMO is a relevant party.

Shipping companies

These companies are relevant because they are responsible for the working conditions of their employees and therefore have to turn the solutions into action.

All signatories of the MLC 2006

The countries have already tried to solve the Issue before, but now the solution of 2006 is not working anymore have to do it again. The countries are relevant because they have shown willingness in the past to solve the issue and might show it again.

All non-signatories of the MLC 2006

All countries who did not sign the MLC 2006 are also very relevant to this issue. Because they had a reason to not implement the solution of 2006. These countries can try to make a solution that also works for them so that the new solution will work for all the countries in the world and will be truly effective.

Flag states

Basic principle is that the prime responsibility for compliance with the requirements laid down in the international maritime conventions lies with the ship-owner/operator. Responsibility for ensuring such compliance remains with the flag State.

Timeline of Events

1920: Minimum age convention (sea).

1921: Medical examination of young persons convention (sea).

1936: Holidays with pay convention (sea).

1936: Shipowners' Liability (sick and injured Seamen) convention.

1936: Sickness insurance convention (sea).

1946: Social security (seafarers) convention.

1946: Accommodation of crews convention.

1946: Wages, Hours of Work and Manning (Sea) Convention.

1970: Prevention of Accidents (Seafarers) Convention.

1976: Seafarers' Annual Leave with Pay Convention.

1987: Seafarers' Welfare Convention.

1987: Health Protection and Medical Care (Seafarers) Convention.

1996: Labour Inspection (Seafarers) Convention.

1996: Seafarers' Hours of Work and the Manning of Ships Convention.

2006: International Maritime Convention.

Previous attempts to solve the issue

Maritime Labour Convention of 2006

The MLC of 2006 was the first real attempt to solve this issue. It tackled workers' rights and more. However this convention is now outdated and not efficient anymore. In addition, a disadvantage of the current treaty is that not all countries have signed it.

A history of conventions

For years, people have been trying to find a solution to this problem. That is why, since the 1920s, dozens of conventions have been held to find a solution. At the timeline are the most important ones, the remaining can be found here:
https://en.wikipedia.org/wiki/Maritime_Labour_Convention#Negotiations

Questions a Resolution Must Answer (Q.A.R.M.A.)

These are questions delegates can use to solve the issue. However, these are meant as starters for further exploration. Delegates are encouraged to think about other solutions and plans themselves.

- How would your country guarantee that no under-age person works on ships?
- The need of a medical certificate- Should all workers need a medical certificate which states they are fit to perform their duties on sea?
- How to ensure employees have the appropriate training qualifications?

Further Reading

These websites and pages can be useful to read through. There will be information about this issue and possible solutions will be suggested.

https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_696344/lang--en/index.htm
https://www.ilo.org/global/standards/maritime-labour-convention/database-ratification-implementation/lang--en/index.htm
https://www.theguardian.com/global-development/2019/jul/11/seafarers-trapped-on-ship-for-33-months-say-jail-threats-forced-them-to-reboard

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https://unctad.org/en/PublicationChapters/rmt2017ch5_en.pdf

https://www.marineinsight.com/maritime-law/what-are-flag-states-in-the-shipping-industry-2/

https://www.marineinsight.com/maritime-law/what-is-international-safety-management-code-or-ism-code-for-ships/

http://www.imo.org/en/OurWork/MSAS/Pages/PortStateControl.aspx

https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_696344/lang--en/index.htm

https://www.hellenicshippingnews.com/nigeria-maritime-workers-begin-nationwide-shutdown-of-ports/