CHAPTER 13

Jurisdiction, Ships and Human Rights Treaties

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Introduction

The particular vulnerability and consequent widespread abuse of the rights of the world’s 2 million seafarers are now relatively well documented.\(^1\) Since the first ILO Convention which specifically sought to protect an aspect of seafarers’ rights was adopted in 1920, a significant number of others have followed.\(^2\) Over the last ninety or so years the ILO has been at the vanguard of seeking to protect the rights of seafarers, not only by the adoption of Conventions but also through other initiatives, such as the database on abandonments.\(^3\) Little if any attention, however, has so far been paid in the literature to the extent to which the UN Human Rights Treaties and the Treaty Bodies they establish can and have protected the rights of not only seafarers but also any others who

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\(^2\) The first specific Convention is ILO Convention No. 7, Minimum Age (Sea) Convention, 1920. It is possible to identify in total 33 ILO Conventions which specifically relate to seafarers, although a number of these seek to revise aspects of earlier Conventions. Of the ILO Conventions, the most important is Convention No. 186, Maritime Labour Convention, 2006, (MLC) which seeks to modify aspects of all the other ILO Conventions relating to seafarers. At the time of writing (November 2014) the MLC has been ratified by sixty ILO states. According to the terms of Article VIII(3), MLC, the Convention shall come into force 12 months after it has been ratified by at least 30 Members with a “total share in the world gross tonnage of ships of 33 per cent.” The Convention entered into force on 20 August 2013. The Convention, which is comprehensive in scope, adopts a rights-based approach, unlike many of the earlier ILO conventions it replaces. For further discussion on the MLC see chapter 12 of this volume.

find themselves on board ships.\textsuperscript{4} The objective of this chapter is to do so and to undertake what is in essence an inter-regime investigation and consider the relationship between the Law of the Sea and UN human rights treaties. In determining which of these UN treaties can and do protect human rights on board ships a number of issues need to be considered.

First, a human rights treaty may seek to specifically exclude certain individuals who would usually be on board ships from its ambit, the Migrant Workers Convention, 1990 which seeks to exclude, for example, seafarers from its ambit is such a treaty.\textsuperscript{5} Second, some of the UN human rights treaties do not oblige states parties to extend the protection of certain rights to non-nationals; for example, the International Covenant on Economic and Social Rights, 1966 (ICESCR) does not oblige “developing countries” to extend to non-nationals the economic rights protected by the Covenant.\textsuperscript{6} As seafarers are usually defined as “migrant workers employed on board a vessel registered in a state of which he or she is not a national” this limits the utility of the Covenant with regard to certain (economic) rights in relation to some states parties but does not mean that the Covenant cannot be used by the Committee on Economic, Social and Cultural Rights (CESCR) to protect seafarers or others with regard to non-economic rights.\textsuperscript{7} All the relevant ICESCR rights may be invoked by nationals who either work or find themselves on board ships registered in a state party as well as all non-nationals who work on board ships registered in developed states parties. More broadly than the ICESCR, Article 1(2) of the Race


\textsuperscript{5} Article 3(f), International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990: adopted by General Assembly Resolution 45/158 of 18 December 1990. Article 2(2)(c) defines a seafarer as “a migrant worker employed on board a vessel registered in a State of which he or she is not a national”.

\textsuperscript{6} Article 2(3), International Covenant on Economic, Social and Cultural Rights, 1966, 993 UNTS 3. It is worth noting that very few, if any, developing states have in practice invoked Article 2(3) before the CESCR.

\textsuperscript{7} See the definition of seafarers in Article 2(2)(c) of the Migrant Workers’ Convention.