Labour abuse aboard foreign fishing vessels in New Zealand’s waters: an institutional territoriality and governance approach

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1.0 Introduction

At about 4.40 a.m. on 18 August 2010, Oyang 70, a South Korean fishing vessel fishing in New Zealand’s exclusive economic zone (EEZ), capsized and quickly sank in calm conditions with the loss of six lives. Owned by the South Korean Sajo Oyang Corporation, Oyang 70 had been fishing in New Zealand waters since 2002 under a time charter arrangement.1 At the time of sinking Oyang 70 was chartered to New Zealand based Southern Storm Fishing (2007) Limited (SSF).2 The crew on board the 38-year-old Oyang 70 comprised of Indonesian, Filipino, Korean, and Chinese nationals. A mayday call was sent and seven of the eight fishing boats that responded to the distress call, were foreign crewed charter vessels. In any event, it was the Amaltal Atlantis, a New Zealand owned and crewed vessel that rescued 45 survivors and recovered 3 bodies of the Oyang’s crew. Three crew, including the Korean captain who refused to abandon ship, remain missing. Beyond the immediate tragedy of the loss of lives, the subsequent information gleaned by the crew of the Amaltal Atlantis, and from the surviving crew themselves details labour and other human rights abuses aboard the Oyang 70.

Unfortunately, this is not the first allegation of abuse aboard Oyang vessels and other foreign crewed charter vessels fishing in New Zealand’s EEZ. In fact, there have “been numerous documented cases of crew members not being paid, being underpaid, having their wages eaten up by agency fees, and being verbally and physically abused” (MUNZ, 2009; see also Cunliffe, 2006; Devlin, 2009; DoL, 2004).

In their drive to minimize costs and maximise profits, some fishing vessel operators can be overly lax in respect to labour and safety standards as well as basic human rights obligations. The industry is “home to some of the worst examples of abuse in the workplace” (EJF, 2010, 6). Morris’s (2001) ground breaking global study “Ships, Slaves and Competition” found widespread human rights abuse on foreign crewed deep sea fishing vessels - underpinned by a

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1 A time charter vessel is equipped, crewed, and operated by the foreign vessel owner for a fixed period, but the chartering entity directs where the vessel fish and the quantity of fish it harvests.

2 Incorporated in early 2007, SSF was 45 percent owned by Oyang Corporation Ltd, but at 4.05 p.m. on the day of the tragedy its entire shareholding was transferred to the sole remaining New Zealand based shareholder (NZ Companies Office, 2010).
climate of fear and an industry obsessed with secrecy. Morris’s report highlights blacklisting, brutal beatings, sexual assault, and even murder. Despite the attention his report received, in 2005 Morris noted that “for most abused seafarers little has changed and in fact, for some conditions have worsened” (Morris, 2005, 2). Whilst abuse is often associated with illegal, unregulated and unreported (IUU) fishing vessels, this is not always the case as can be seen in the example of Oyang 70 which was legally fishing in New Zealand waters.

New Zealand has the world’s fourth largest exclusive economic zone. During the development of New Zealand’s deepwater fisheries, foreign joint ventures were seen as necessary as they “encouraged an influx of new ideas, different technologies and ways of fishing” (Rees, 2005, 122). New Zealand government policy supports the use of high quality FCVs to complement the local fishing fleet, provided “FCV crew receive the same terms and conditions as New Zealanders doing comparable work, FCV crew have the same protection from mistreatment and exploitation as New Zealand crew”, and the “use of FCVs does not provide a competitive advantage over New Zealand crew due to lower labour costs”3. Employment in the deep sea fishing industry comprises: 1) New Zealanders working on New Zealand vessels; 2) foreign crew working on New Zealand vessels; and 3) foreign crew working on foreign owned vessels fishing under contract to New Zealand companies. It is the latter that is the focus of this paper.

Against this backdrop the key questions are: who is legally and morally responsible for working conditions of an important but largely invisible and vulnerable workforce, on foreign crewed charter vessels fishing in New Zealand waters? In the case of Oyang 70, should Oyang Corporation Ltd, the employer, abide by New Zealand employment laws and fishing industry guidelines or the laws of another national or international institution or indeed no formal institution? Equally what role do New Zealand authorities play in moderating labour and other human rights abuses occurring within its exclusive economic zone? Using the global value chain and global production network analyses, this paper addresses these questions from an institutional perspective.

Semi-structured interviews were undertaken with key individuals in the fisheries industry in New Zealand including companies chartering foreign vessels, crew of the rescue boat Amaltal Atlantis, former observers who worked on foreign crewed charter vessels4, seafarer’s welfare agency officials, and with foreign crew themselves. Crew members from different Korean FCVs were interviewed but in order to protect those who participated, only the crew from Oyang 70

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4 Ministry of Fisheries observers are placed aboard both domestic and FCV to ensure the integrity of New Zealand fisheries management system.
is directly referred to in this paper. Official documents, including Observers hand written diaries, Ministry of Fisheries reports, Department of Labour (DoL) reports, and Ministerial communications, pertaining to foreign charter vessels (FCVs) were obtained pursuant to the New Zealand Official Information Act 1982 and analyzed.

The paper proceeds as follows. Section Two discusses key international conventions, treaties and policies pertaining to governance within the fisheries industry. The section first looks at governance in the fisheries industry at the global level and then, at the national level, the role of the State as a signatory and also as a non-signatory to such agreements. Section Three explores the emergence of a global migrant labour market within the industry. Section Four details examples of labour abuses aboard FCVs fishing in New Zealand’s EEZ. The article concludes with a call on all States – not just New Zealand – to quickly ratify relevant international conventions to extend first world governance to marginalized and vulnerable migrant fishers.

2.0 Global governance within the fisheries industry

Using the global value chain, and the related, global production network framework, this paper examines the role of institutions governing the global fisheries industry. In his conception of global value chains (GVC) (originally global commodity chains), Gereffi (1994) outlined three key dimensions which shape global value chains: an input-output structure; geography; and governance structure. Institutions were later added as the fourth dimension and according to Bair (2005) have not adequately been incorporated into the framework by GVC researchers. A global value chain is governed at two levels, first at the chain level by lead firms and suppliers and at a secondary level by national governments, multilateral organisations and NGOs.

The global production network emerged, in part, as a critique of GVC and in particular the failure of the GVC approach to “appreciate the importance of different institutional and regulatory contexts that shape international production systems” and importantly, that the GVC approach “downplays the role of the state as an actor that seeks to influence the geography of the chain by regulating what occurs in those links that touch down on its territorial borders” (Bair 2008, 355). In contrast the global production network analysis emphasizes a wide range of actors which help influence and shape global production (Coe, Dicken and Hess, 2008; Hess and Yeung, 2006; Henderson et al., 2002). Actors external to the chain, but who bear on the actions of chain actors are considered a key component of value chain governance. In particular, the global production network research places more emphasis on the “institutional environment within which networks not only operate but are formed and
shaped”. Institutions at the multilateral level play a key role in influencing global production networks particularly in terms of geography however nation-states remain a key actor as institutions exist because they are endorsed by nation-states (Coe et al., 2008).

Coe et al. (2008, 281) state that global production networks “are embedded within multi-scalar regulatory systems”. Within the fisheries global value chain there are a multi-scalar network of institutions -- at the global level, there are three specialized United Nations agencies which oversee and facilitate global governance in the fisheries value chain: the Food and Agriculture Organisation (FAO), the International Maritime Organisation (IMO) and the International Labour Organisation (ILO). These three institutions have jointly developed a number of safety codes and guidelines for the fisheries sector, however they are not binding. At the national level, the fishing vessel component of the value chain comes under three main State governance jurisdictions which are collectively responsible for ensuring the maintenance of maritime standards (Hare 1997). Firstly, flag State control, which permits a State to exercise its international and domestic powers to regulate the activities of vessels flying its flag. Secondly, a coastal State can regulate the activities of foreign vessels in its waters and thirdly, port State control to assess and enforce compliance of international and domestic regulations. There are also regional institutions which help shape the global fisheries chain.

2.1 International Institutions

The FAO, IMO, and ILO have jointly developed a number of non-binding safety codes and guidelines for the fisheries sector. Cornerstone to the FAO’s work is the voluntary 1995 Code of Conduct for Responsible Fishing, which holistically embodies key elements from relevant international instruments. It establishes principles and standards of behaviour for responsible practices, for the conservation, management, and development of the world’s fisheries (FAO, 2010). Importantly, the Code inter alia requires States to ensure that all fishing activities are conducive for safe, healthy, fair working and living conditions, and meet internationally agreed standards.

The most important responsibility of the IMO is the safety and security of shipping and the prevention of pollution from ships (IMO, 2010a). Of all the treaties and conventions dealing with maritime safety, IMO’s 1974 International Convention for the Safety of Life at Sea as amended (SOLAS), is the most important. The seafarer is at the heart of this convention; however fishing vessels are exempt from most of its provisions, due to their unique differences in design and operation (IMO, 2010a). This resulted in the IMO adopting in 1977 the first-ever
Convention on the safety of fishing vessels - The Torremolinos International Convention for the Safety of Fishing Vessels. However, this convention was never ratified and, was subsequently absorbed into the 1993 Torremolinos Protocol. The Protocol focuses on the design, construction, equipment, and port State maintenance and inspection standards for fishing vessels, to promote the use of improved technologies, better working conditions, and carrying out of activities in a sustainable manner. The Protocol will come into force one year after 15 States with at least 14,000 vessels of 24 metres and over, have ratified it. To date the Protocol has been ratified by 17 states, but the aggregate fleet total has yet to be reached. Currently, the IMO is reviewing the lack of ratifications in order to bring this much needed treaty into force (IMO, 2010b). Complementary to the 1993 Protocol is the International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel personnel (STCW-F), 1995 which mandates common standards for crew. STCW-F is the first attempt to provide a binding international framework to improve the training and certification of crew in the globalised fishing industry. Its aim is to reduce the high accident rate by improving safety standards for crew on vessels greater than 24 metres in length.

In contrast, to the FAO (which focuses on sustainable practices) and the IMO (which deals with safety and security of shipping), the ILO’s key objective is to advance decent and productive work conditions underpinned by freedom, equity, security and human dignity (ILO, 2007a). It also has a “constitutional mandate to protect migrant workers” (Wickramasekara, 2004, 22). Since 1920, the ILO the only tripartite UN agency has adopted numerous labour Conventions and Recommendations. Building on and, to a large extent, consolidating 68 of these instruments, the Maritime Labour Convention (MLC), also known as the Seafarers “Bill of Rights”, was adopted in 2006 to provide seafarers, especially those from developing countries, with the right to decent work conditions (ILO, 2010). The MLC is designed to complement IMO Conventions and, as the “fourth pillar” of the international regulatory regime for quality shipping, sits alongside the other pillars namely; SOLAS, STCW\textsuperscript{5}, and MARPOL\textsuperscript{6}. However, even though it is expected to come into force during 2011, under Article II, paragraph 4, fishing vessels are not specifically covered by the Convention (ILO, 2010).

\textsuperscript{5} 1978 International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW).
In fact, as States ratify the MLC, the provisions of those maritime labour instruments which are applicable to commercial fishing vessels – will no longer apply. To fill this void and mindful of a pressing need to protect and promote the rights of fishing workers, as well as provide decent working conditions, a comprehensive parallel instrument to the MLC, the Work in Fishing (WIF) Convention (No. 188) supplemented by a WIF Recommendation (No. 199) - was adopted in 2007 (ILO, 2007a). This WIF Convention applies to all fishers and all commercial fishing vessels and is designed “...to ensure that fishers have decent conditions of work on board fishing vessels with regard to minimum requirements for work on board; conditions of service; accommodation and food; occupational safety and health protection; medical care and social security" (ILO, 2004; ILO, 2007a; ILO, 2007b).

Importantly, the WIF Convention recognises changes to the fisheries sector over the past 45 years, particularly the impact of globalisation, and the nature of multinational corporations (ILO, 2007a). The Convention also incorporates relevant provisions of the MLC and particularly covers migrant workers working on foreign flagged vessels over 24 metres in length operating in distant-water fisheries, such as foreign crewed charter fishing vessels (ILO, 2004; ILO, 2007a). Even though flag States are responsible for ensuring vessels flying its flag comply with the provisions of the WIF Convention port States can also exercise jurisdiction through the port State control provisions contained in Articles 43 and 44. Breaches of the WIF Convention include: unsanitary accommodation, catering, and ablution facilities; inadequate ventilation, air conditioning, or heating; and, sub-standard food and drinking water. The Convention comes into force 12 months after it has been ratified by 10 members, eight of which must be coastal States. However, historically, fishing sector convention adoption and ratification levels have been very low (ILO, 2007b).

2.2 The Role of the State

According to Hare (1997) fishing vessels come under three main State governance jurisdictions, which are collectively responsible for ensuring the maintenance of maritime standards. Firstly, flag State control, which permits a State to exercise its international and domestic powers and obligations to regulate the activities of vessels flying its flag. Secondly, a

7 Ship-owners’ Liability (Sick and Injured Seamen) Convention, 1936; Seafarers’ Welfare Convention, 1987; Health Protection and Medical Care (Seafarers) Convention, 1987; Social Security (Seafarers) Convention (Revised), 1987; Repatriation of Seafarers Convention, (Revised), 1987; Labour Inspection (Seafarers) Convention, 1996; Recruitment and Placement of Seafarers Convention, 1996; and the Seafarers’ Hours of Work and the Manning of Ships Convention, 1996).
coastal State can regulate the activities of foreign vessels in its waters and thirdly, port State control, to assess and enforce compliance of international and domestic regulations.

The most important international instrument in respect to the world’s seas is the 1982 United Nations Convention on the Law of the Sea (UNCLOS) (Hare, 1997). UNCLOS “gives nations rights as well as responsibilities to utilize their living marine resources in a rational and sustainable manner”, and outlines the responsibilities of flag States (FAO, 2010). Moreover, Article 94, paragraph 3 states: “Every State shall take such measures for ships flying its flag as are necessary to ensure safety at sea with regard, Inter alia, to...the manning of ships, labour conditions and the training of crews, taking into account the applicable international instruments”. Whilst flag States are responsible for ensuring that ships flying their flag comply with the provision of UNCLOS, coastal states can regulate the activities of foreign flagged charter vessels in their EEZs.

According to Hare (1997), there are well established historical and legal doctrines that permit a State to exercise jurisdiction over vessels that navigate its waters and especially those that call at its ports through port State control8. In fact, he argues that port State control is an obligation under international law for those who have signed up to international instruments such as UNCLOS, SOLAS, and regional initiatives “and even by virtue of their membership of the IMO alone” (Hare, 1997, 6). Thus, once a vessel voluntarily enters a port it becomes entirely subject to the laws and regulations of that State. However, Hare noted that the majority of ports paid lip-service to the inspection of substandard visiting vessels; rather they tended to focus on their own vessels. Consequently, sub-standard foreign vessels that should have been consigned to the scrap heap continued to be used by “economically stressed ship-owners” (Hare, 1997, 2).

Importantly, the sharing of information between port States in respect to sub-standard vessels, their owners, and operators is critical to the success of port State control (Hare, 1997). A number of regional initiatives have resulted in States being bound together in a harmonised port State control system through Memorandum of Understandings ("MoUs"). The first was in 1982, when in reaction to environmental issues, shocking human rights abuses, and the failure of the flag States, especially flags of convenience to comply with international maritime regulations, the Paris Memorandum of Understanding (Paris MoU) was agreed upon (Hare,

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8 “Port State Control (PSC) is the inspection of foreign ships in national ports to verify that the condition of the ship and its equipment comply with the requirements of international regulations and that the ship is manned and operated in compliance with these rules” (IMO, 2011).
The objective of the Paris MoU is to ensure that vessels comply with IMO and ILO regulations. Twelve years later, the Tokyo Memorandum of Understanding on Port State Control in the Asia-Pacific Region (Tokyo MoU)\(^9\) was adopted. The aim of the Tokyo MoU is “to eliminate substandard shipping so as to promote maritime safety, to protect the marine environment, and to safeguard working and living conditions on board vessels” (Tokyo MOU, 2009, 1). However, port State control does not extend to humanitarian issues, such as exploitation and abuse of workers because of the subjective nature of minimum standards (Morris, 2001; 2005).

The key to MoUs and port State controls is the responsibility of each member State to ensure that each vessel calling at its port complies with the international instruments listed in the MoU, such as SOLAS. New Zealand, as a member of the Tokyo MoU, exercises its port State control obligations through the Maritime Transport Act, 1994\(^10\). Port State control has proved effective in eliminating sub-standard shipping; however Anderson (2002) argued that all is not well with port State control - the last safety net - as substandard ships continue to be a problem.

### 3.0 A Global Labour Market

One of the key features of the recent era of globalisation is the increased mobility of labour and capital (Dicken, 2007) as companies relocate parts of value chain production offshore to cheaper sites of production (Gereffi, 1994; Gereffi and Korzeniewicz, 1994), or for migrant labourers, both skilled and unskilled, to travel abroad to seek employment opportunities elsewhere (Athukorala, 2006; Wickramasekera, 2002). Widening economic disparities has led to an increase in unskilled migrant labour however employment opportunities are not necessarily accompanied by improved working conditions. In many receiving countries migrant labourers can experience widespread abuse and disregard of basic human rights (Wickramasekera, 2004).

Within the fishing industry, the cost efficient logic applies wherein companies are increasingly hiring migrant labour from under developed and developing countries which provide a ready stream of cheap labour (Bloor and Sampson, 2009). “Ship-owners consider cost savings on...

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\(^9\) Full members of the Tokyo MOU are Australia, Canada, Chile, China, Fiji, Hong Kong, Indonesia, Japan, Republic of Korea, Malaysia, New Zealand, Papua New Guinea, Philippines, Russian Federation, Singapore, Solomon Islands, Thailand, Vanuatu, and Vietnam.

\(^10\) The Maritime Transport Act, 1994 provides for the detention of any ship and imposition of conditions for its release *inter alia* where the operation or use of the ship endangers or is likely to endanger any person or property, or is hazardous to the health of safety of any person.
crews from developing countries to be a legitimate lever in achieving competitive rates” (ITF, 2006, 24). While labour standards in many countries may be comprehensively regulated within the physical borders of a nation-state, issues of regulation for a global industry, such as the fishing industry is problematic as labour outsourcing allows companies to evade national labour agreements (Bloor and Sampson, 2009; Dicken, 2007; Sampson and Bloor, 2007).

One development which has facilitated labour abuse is the practice of using Flags of Convenience (FOCs) which refers to a country allowing a foreign-vessel to fly their flag, typically for a nominal fee. Ships can change the flag they fly at will -- a practice aptly termed “flag hopping” (EJF, 2010) and by engaging in flagging hopping, ship owners reduce regulatory and compliance costs. Under UNCLOS, the country whose flag the vessel is flying is responsible for ensuring compliance with maritime and other laws. However, some convenience flag States lack the resources or incentives to ensure compliance with the Law (EJF, 2009) and can in fact be a landlocked state for example, Bolivia and Mongolia. The increasing use of FOCs has seen, in some instances, a deliberate shift away from national control over a ship to a nebulous entity. This helps unscrupulous operators escape oversight to continue their sub-standard operations unhindered (Morris, 2001). According to the International Transport Workers’ Federation (ITF) flag states are weak enforcers of regulations and FOCs “are often characterised by the lowest standards of working conditions” (EJF 2009, 22).

According to Dawson (2011) “Unscrupulous fishing vessel owners, regularly use companies registered in flag of convenience jurisdictions to hold the ownership of their vessels. This prevents States from enquiring as to the beneficial owner of the vessel and complicates the enforcement of domestic fisheries obligations. Further, it is a common practice for vessel owners to “bareboat charter out” or lease their vessels from an owning company to a leasing company set up in a different jurisdiction under a different flag in order to further blur the lines of accountability”.

The emergence of a global labour market in the fisheries industry has been accompanied by the specialized recruitment agents, known as manning agents, who supply labour to fishing vessels. While there are manning agents who abide by regulations and acceptable standard practices equally there are unscrupulous agents who are perpetuators of labour abuses. Unscrupulous agents appear to demonstrate little regard for basic human rights. Such agents will typically target naive, marginalize and vulnerable individuals from developing countries to work on foreign flagged deep-sea fishing vessels (Morris, 2001). Workers are often from remote rural areas with low levels of education and little or no experience aboard vessels (EJF
Competition for employment can be intense and hence the sector is open to bribery (EJF, 2009; 2010). Potential employees may be required to work for the manning agents for months with little or no reimbursement in order to secure a place aboard a vessel (EJF, 2009; 2010). The practices of some manning agents, for example, forcing workers to pay extortionate fees and the manipulation and deduction of payments to crew families can have “crippling financial consequences” and thus workers can be rendered powerless and subject to future exploitation (EJF, 2010, 12). “This is expressly prohibited under ILO Conventions 9$^{11}$ and 179$^{12}$, which requires the ship owner to pay the agent” (Morris, 2001, 44).

4.0 The New Zealand Fisheries Industry

In 2010, there were 22 (including the Oyang 70) foreign registered fishing vessels over 45 metres in length operating in New Zealand’s EEZ under charter arrangements with New Zealand companies (FishServe, 2010). The vessels are chartered complete with crew who are employed by the New Zealand charter party via manning agents. These foreign flagged vessels are “subject to a complex regulatory framework, that incorporates elements of flag state responsibility, port state control, fisheries regulation and immigration policy” (SeaFic 2011). Nevertheless, FCVs are seen to be of greater risk and problematic; the documented cases of labour abuse in New Zealand’s waters have occurred solely on FCVs.

New Zealand has an excellent record of ratifying and complying with its international obligations and in particular complies with its obligations under UNCLOS Article 62(2) by allowing foreign flagged fishing vessels to harvest allowable catch, which cannot be harvested by New Zealand flagged vessels (MFish, 2008). However, New Zealand has yet to ratify a number of crucial instruments (see Figure 1) that are instrumental for the protection of migrant fishers. Most important are the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, the 1993 Torremolinos Protocol, and the WIF Convention and its Recommendation.

In 2006 following concerns by DoL about sweatshop conditions on FCVs efforts were made to introduce a coherent and transparent Code of Practice$^{13}$ (COP) setting out benchmarks for industry activity. A 2004 DoL investigation “identified wider labour-related issues”$^{14}$ aboard

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$^{11}$ Placing of Seamen Convention, 1920
$^{12}$ Recruitment and Placement of Seafarers Convention, 1996
$^{13}$ The COP was authored by DoL, the Seafood Industry Council (on behalf of individual companies), and the New Zealand Fishing Industry Guild. 

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FCVs, and the 2006 COP on Foreign Fishing Crews sought to ensure “the highest level of compliance in relation to both immigration requirements and the applicable laws of New Zealand...Being a signatory and adhering to the Code became a mandatory part of requirements set by Government for the issue of immigration visas and permits to foreign fishing crew” (Code of Practice, 2006, 4). It provides clear guidelines for companies that engage FCVs to abide by, for example minimum expectations pertaining to employment agreements, minimum living and working conditions, as well as an Audit process.

As part of the implementation of the COP, from November 2005, the New Zealand Government required that foreign crews on FCVs be paid the New Zealand minimum wage. The regulations were subsequently further tightened and from 1 January 2007, crews had to be paid at least the minimum hourly wage plus an extra $NZ1.25 per hour. The extra payment increased to $NZ2 per hour in 2009. In no instance are employers permitted to pay less than 42 hours per week or pay less than the minimum hourly rate after deductions. FCV operators vigorously opposed the minimum remuneration requirements on the basis of the additional cost.\textsuperscript{15}

4.1 Labour abuses in New Zealand’s EEZ

Despite the institutional environment, interviews undertaken with foreign crew and former observers reveal that the conditions aboard the Oyang 70 and some other FCVs are illustrative of labour abuse with many being forced to work in substandard and often inhumane conditions. The next section details some of our findings.

4.1.1 Substandard and inhumane working conditions

Aboard the Oyang 70 below deck accommodation had little or no heating and was often wet with insufficient or no ventilation. Cockroaches and bed bugs were common (Interviewees 1, 16, 2011). These conditions are not uncommon aboard FCVs as workers on other vessels complained of similar conditions as well as being forced to use old blankets for a mattress (Interviewees 6, 20, 2011) and being “treated like slaves” (Interviewee 4, 2010). Workers were required to bath in salt water or would find that after their shift the water had been switched off (Interviewee 20, 2011). Drinking water for crew was a brownish rustic colour and unboiled while the officers enjoyed boiled or bottled water (Interviewees 6, 13, 20, 2011). Indeed a number of interviewees complained of food being inadequate in quality and quantity and after about three weeks food supplies were rationed (Interviewee 20, 2011). “Often crew were fed

\textsuperscript{15} OIA Letter (May 2008).
just fish” (Interviewee 4, 2010). This is in contrast to the officers who were served a variety of foods throughout the voyage. Former observers highlighted the difference in conditions between the officers and crew, with one characterizing the environment as akin to a prison or chain gain society with the FCV going “another step from hiring cheaper labour to hiring two or three different nationalities...by using favouritism and mind games...they keep them at odds with one another creating hierarchies like in a prison gang society (Interviewee 10, 2011).

The surviving Oyang 70 crew was very surprised at the difference in conditions between the Oyang 70 and the rescue ship the Amaltal Atlantis, particularly the sleeping, washing, shower and toilet facilities as well as the food offered. “They were in awe of how we lived” (Interviewee 2, 2010). “What they caught was what they ate...you should have seen the smiles on their face when the food came out [from the Amaltal Atlantis galley]...they couldn’t believe it” (Interviewee 3, 2010). On the other hand, a New Zealand observer described one FCV as a “floating freezer...absolutely appalling conditions just like a slum...there are definitely human rights abuses out there, they are slave ships” (Interviewee 13, 2010).

In additional to the substandard living conditions, Indonesian workers are also victims of verbal and physical abuse. Muslim workers are frequently referred to as dogs – a derogatory and offensive term for Muslims (Interviewee 20, 2011). In 2011, aboard another vessel, two Indonesian crew were forced to work a 24 hour shift in a freezer with only one glove between them. This resulted in one of the crew having to have a finger amputated (Interviewee 23, 2011). On one FCV, a New Zealander reported that “Korean Officers are vicious bastards...factory manager just rapped this 12kg stainless steel pan over his [Indonesian crew member] head, split the top of his head, blood pissing out everywhere...told the Master can’t leave him in cause he’s bleeding all over the squid. He said “oh no no he’s Indonesian no touchy no touchy”. Took him to the bridge and third mate said “Indonesian no stitchy no stitchy”. I ended up giving him over 26 stitches...bit of a mess”. He also commented that the “galley boy, good looking boy on a Korean boat was raped by four Chinese crew who got him...Did see the cook with a meat clever a couple days later and the Chinese never bothered the boy after that” (Interviewee 6, 2011). On another vessel, a New Zealander “saw the factory manager and the second in charge kicking Indonesian workers on the ground with steel capped boots” (Interviewee 15, 2011).

Interviewees were asked why abused crew did not complain to port State authorities. One interviewee (Interviewee 7, 2011) captures the responses: “What happens at sea stays at sea. No one talks about it, that’s always been the culture...we are governed by a secrets policy...you
have to be so bloody cautious about who you talk to or what you talk about”. A New Zealand interviewee commented “in raising health and safety issues especially on Korean vessels...[you are] told [you] are on Korean soil and there’s nothing we can do about it” (Interviewee 15, 2011). “No one wants to rock the boat...A lot of people turn a blind eye to it” (Interviewee 13, 2011). Moreover a DoL report states “if anyone stands against this abuse, it has been known for them to be taken to a private cabin and beaten” (DoL 2004, 15).

The conditions aboard some FCV are in violation of the Code of Practice (2006, 10) which states that in “accepting the responsibility to monitor working and living conditions on board vessels, the New Zealand Company will ensure that facilities and provisions for Fishers are to an acceptable standard” and then goes on to detail, for example, that adequate food should be provided and accommodation is clean and dry.

4.1.2 Minimum wage abuse

In 2007, following the introduction of the COP, DoL carried out random audits of three FCVs and found that the minimum wage requirements were not being met. The company paid crew 42 hours per week at the minimum hourly rate regardless of the total hours worked16. In addition, crew claimed to have signed two different employment contracts and did not know what they were signing when they signed their timesheets. This caused DoL to raise with the Minister of Immigration, issues concerning minimum pay entitlements for crew17 and the non-transparent chain of recruiting and manning agents18. Subsequently, the Ministers of Immigration, Labour, and Fisheries wrote to the CEO of the Seafood Industry Council to firmly reaffirm that “foreign fishers must be paid at least the minimum remuneration requirements for all hours worked. Deductions may only reduce the net pay to a level of at least the minimum wage for all hours worked” and “If employment premiums are paid by foreign fishing crew, employers will be held accountable and permission to use foreign crew will be withdrawn”.

Despite efforts by the New Zealand government, wage abuse is reported to still occur for foreign crew aboard FCVs operating in New Zealand waters. While under the CoP, crew are

16 OIA Document (April 2008), “some of the companies and SeaFIC [Seafood Industry Council] read the policy to mean that as long as, after making allowable deductions they paid an amount equivalent to or greater than the minimum wage for a 42 hour week, they were compliant...the minimum remuneration requirements are met by the payment of an allocation to the home country [to Manning Agents], various payments made at port calls during the engagement and a wash up payment at the end of the contract”.
17 OIA Letter (May 2008), “FCV crew must be paid no less than the minimum wage for all hours worked”.
18 OIA Letter (May 2008), “FCV crew must be paid no less than the minimum wage for all hours worked”.


required to be given a copy of the employment contract in their own language, antedotal evidence suggests that in practice crew sign a “signature page” which is then attached to a collective contract covering work on the vessel that complies with New Zealand regulations, but it is common for crew never to see this contract, at least in Indonesian (Interviewees 20, 23, 2011). Furthermore, on a number of voyages, crew were required to sign timesheets regardless of the accuracy of the hours and under threat of financial penalty crew have no choice but to sign such documents (Interviewee 20, 2011).

Indonesian crew were recruited by manning agents in Indonesia who work closely with manning agents in Korea. Either the employer or the Korean based manning agent pay the manning agents based in Indonesia who in turn pay the individual crew, less deductions, exchange rate losses and transfer fees. According to interviewee sources, the Indonesian contract between the manning agent and the crew or employer is not seen by DoL (Interviewee 20, 2011). Furthermore, a percentage of their pay is deducted by manning agents in Korea as well as by the manning agents in Indonesian under contract to the agents in Korea.

In 2009 following the desertion of four crew from a FCV, DoL launched an Audit and an investigation of the issues raised by the deserters19. The deserters complained of being abused by the officers, a lack of protective clothing, and being forced to work 24 hour shifts. DoL found that the record of hours worked by the crew appeared to be incorrect, employment agreements had not been given to crew at the commencement of their contract, and that “Cigarettes given to all crew, regardless of need, and deductions made from pay”20. While DoL noted that it appeared the employer was paying the crew correctly, one of the crew covered by the audit was interviewed for this study in early 2011. He said his first six months family payment of $US190 per month was retained by the Jakarta manning agent as their fee (Interviewee 20, 2011). He had been required to sign timesheets which showed a dollar amount for overtime but not the hours worked. Afterwards when he compared his timesheet to the agreement he signed with the Jakarta manning agent there was a significant difference in the number of hours worked (Interviewee 20, 2011). On average during a 35 day trip he claimed to work between 10 and 20 hours each day. During one voyage, he had been required to work a 53 hour shift, followed by a 3 hour break, and then another 20 hour shift (Interviewee 20, 2011). He could not recall ever having a day off, being paid penal rates on public holidays, receiving holiday pay, and when in port was required to work a 12 hour shift.

19 DoL OIA Audit (December 2009)
20 DoL OIA Letter (December 2009)
Under the COP, if an Employer is not meeting the obligations as outlined in the Charter, then the employee can “require the New Zealand person or organisation to pay them” (Code of Practice, 2006, 12). However, the COP is not an Act of Parliament and therefore is not legally binding (Devlin 2009). This means the crew themselves who mostly do not speak any English must embark on a time consuming and possibly expensive claim for wages. The COP and employment structures it allows pose some key concerns about governance. Indeed there is a lack of transparency in the process and evidence clearly highlights a systematic approach by some operators to deliberately circumvent the COP requirements.

5.0 Conclusion

While GPN researchers view the state as taking an active role in networked firm activities they acknowledge that in doing so states must “accept their spatially limited power over other actors in a globalizing economy” (Hess 2008, 454). Institutions have the potential to shape the configuration of global value chains in particular locations, however within the fisheries chain there is an institutional void, or spatially limited power, pertaining to labour standards on board FCVs.

FCVs have been a feature of the New Zealand landscape for the past 25 years. When they first arrived in New Zealand, there was a persuasive business case for their operation, as New Zealand fishing companies did not have the operational capabilities or the capital to invest in deep-water-factory-freezer vessels. Article 62 of UNCLOS provides the international legislative framework by which these vessels are permitted to operate, and requires that the “national interests” of the coastal state be taken into account when considering the on going operation of these vessels. Dawson (2011) argues that New Zealand now has the technical expertise, experience, and economic capacity to harvest its total allowable catch and consequently a sunset clause should be enacted to phase out the use of all foreign crewed charter vessels.

Our interviews undertaken with foreign crew working aboard FCVs has revealed serious physical and mental abuse; work shifts of up to 20 hours per day; workers not receiving their minimum wage entitlement; inhumane living conditions; a lack of adequate food. It appears the continued utilisation of FCVs is a matter of convenience and a mechanism for operators to enjoy a competitive advantage over New Zealand flagged vessels due to significantly lower labour costs. New Zealand has attempted, through the CoP to voluntarily regulate the operation of these vessels and to prevent the labour abuse as described in this article. However, the legislative framework within which these vessels operate needs to be urgently re-examined in order to provide the protections that these migrant workers rightly deserve.
The FAO, IMO, and the ILO have urged maritime States to ratify and implement much needed maritime conventions and agreements. “Abuses and exploitation still exist and shady owners still hide behind layers of secrecy” (Morris, 2005, 21). Thus, the entry into force of the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, the 1993 Torremolinos Protocol, and the WIF Convention along with its Recommendation, would provide a comprehensive framework, crucial for a more effective system of ocean governance. Port State Control is widely considered as one of the most effective tools to enforce governance, especially foreign crew’s working and living conditions. A fully transparent governance system would greatly enhance port State control so that operators who deliberately operate sub-standard vessels and avoid their responsibilities, are held to account. The quality of the present governance system is the limiting factor.

This research investigated who is responsible for the monitoring of labour and human rights violations of migrant fishery workers in New Zealand’s EEZ. But, like all research it has its limitations. The research focused on the dark side of the industry and did not specifically examine the other end of the spectrum – the quality operators, although many quality operator and their crew contributed to this research. Their contributions were invaluable in shedding light on the industry. We found that despite signing up to a raft of conventions, treaties, and the CoP, coupled with DoL’s own investigators providing extensive reports about the abuse, at the time of writing the abuse continues unabated. Ultimately, these vulnerable at risk migrant workers depend on nation-states to effectively implement and monitor international conventions and treaties to protect their fundamental rights. It appears the burden of implementing, monitoring, and enforcement of industry standards falls to a large degree on port State control. Indeed, while operators continue to obscure their activities through a non-transparent chain of business entities and manning agents, labour and other human rights abuses of crew will continue. In the words of the ITF (2006, 36) “It is time to raise the profile of the human element of these global industries”.

References


FishServe (2010), Fishing vessels over 45m operating in New Zealand in 2010, FishServe Commercial Fisheries Services Ltd.


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<tr>
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Source: Compiled from IMO, ILO, FAO, UN, and MFAT data (2010)