

Crew Welfare Issues in New Zealand Opinion for Human Rights at Sea

1. HRAS has recently produced an independent report (“the HRAS Report”) in relation to failures by the New Zealand Government (“NZ”) to support seafarers’ shore-based welfare facilities and services. Such services at New Zealand ports are often inadequate, in that:
 - a. Seafarers do not always have access to a warm, safe and secure building with essential core welfare facilities. Seafarers’ centres are often too small for the numbers using the ports in question, especially given the growth in cruise ships calling at New Zealand ports. At Akaroa there is no seafarers’ centre at all.
 - b. Centres are staffed by volunteers giving up time on a charitable basis, rather than reasonably paid staff. The numbers of volunteers are insufficient to staff the centres to an acceptable level.
 - c. Wi-Fi connection is often limited or poor.
2. There is no assured funding for the provision of shore-based seafarer welfare facilities and services. Apart from some small grants (from Maritime New Zealand, port authorities and Christchurch council), NZ, shipping companies and port authorities/operators make little or no financial contribution to the care of seafarers. Instead, the vast majority of the necessary funding comes from local seafarers’ charities and organisations.
3. Pursuant to Standard A4.4.3 of the Maritime Labour Convention 2006 (“the MLC”) NZ designated the Seafarers’ Welfare Board (“the SWB”) to review seafarers’ welfare facilities and services within New Zealand. SWB’s chairperson (Reverend John McLister) commissioned the HRAS Report. Reverend McLister is of the view that the current situation is unsustainable and that shipping companies, port authorities, and all those profiting from the maritime sector should make a financial contribution to the care of crews coming ashore in New Zealand.
4. We are instructed that NZ collects maritime levies from shipping using New Zealand ports under the Maritime Transport Act 1994 (“the MTA”). However, this Act does not include any functions, duties or powers relating to seafarers’ welfare, and therefore NZ (as represented by Maritime New Zealand, the relevant regulatory body) are of the view that it is not possible to fund seafarer welfare services through such levies. There is no other legislation which supports the provision or funding of such services.
5. In these circumstances, HRAS concluded that NZ had failed to comply with their obligations under the MLC to provide financial and other support to seafarers’ shore-based welfare facilities and services. HRAS also concluded that NZ has not properly engaged

with the ILO as per its State reporting requirements because, when it has reported on the measures taken to give effect to the MLC, NZ omitted to respond regarding Regulation 4.4 of the MLC.

6. The HRAS Report has been sent to the New Zealand Government for comment, but no response has been received to date. In the meantime, we are asked to advise on the following issues:
 - a. Whether or not the New Zealand Government, having ratified the MLC, is legally obliged to enact legislation to provide long-term support to the daily running and sustainability of seafarers' centres themselves supporting global crews who pass through New Zealand;
 - b. In the alternative, whether or not the New Zealand Government is morally obliged to support the daily running and sustainability of seafarers' centres; and
 - c. Whether or not commercial port authorities can be compelled in any way to support the daily running and sustainability of seafarers' centres.
7. It should be noted at the outset that we are not New Zealand-qualified lawyers and therefore can express only the most tentative view on any issue legality or enforcement under New Zealand law.

Question (a): MLC Issues

8. The MLC was adopted by the International Labour Organisation ("ILO") and establishes minimum living and working conditions for seafarers. The MLC entered into force internationally in August 2013 and currently has been ratified by 96 countries representing the vast majority of global tonnage. New Zealand has ratified the MLC and all amendments to it currently in force.
9. The MLC is organised in a rather convoluted manner, but the basic structure is as follows:
 - a. The Articles and Regulations set out the core rights and principles and the basic obligations of ratifying States.
 - b. There is then a Code setting out how the Regulations should be implemented. Part A of the Code consists of mandatory Standards, but Part B comprises non-mandatory Guidelines. Implementation of Part A is however flexible, in that many provisions are drafted in general terms and states are entitled to give effect to the detailed requirements through "*substantial equivalence*" (see Article VI).

10. The primary focus of the MLC is on the responsibility of shipowners and Flag States and on standards onboard vessels. However, there are provisions relating to shore-based welfare services. The relevant provisions of the MLC are as follows:
 - a. Article IV.4 states that every seafarer has the right to “*welfare measures*”. Pursuant to article IV.5 each Member shall “*ensure*” that such rights are “*fully implemented*”.
 - b. Regulation 4.4.1 requires Member states to:
 - i. “*ensure*” that shore-based welfare facilities “*where they exist*” are easily accessible. Standard A4.4 paragraph 1 makes clear that welfare facilities “*where they exist*” are available for the use of all seafarers without discrimination. There appears to be no breach of these provisions: what welfare facilities there are do appear to be offered to all seafarers;
 - ii. promote the development of welfare facilities “*in designated ports*” to provide seafarers with access to “*adequate*” welfare facilities and services. Paragraph 2 of Standard A4.4.2 clarifies that development of welfare facilities should be promoted “*in appropriate ports*” and that Members are to determine, after consultation with shipowners’ and seafarers’ organisations, which ports are to be regarded as “*appropriate*”.
11. Regulation 4.4.1 must be respected and “*implemented in the manner set out in the corresponding provisions of Part A of the Code*” (MLC Article VI.2). However, if a Member is not in a position to implement in accordance with Part A then it can do so “*through provisions in its laws and regulations or other measures which are substantially equivalent to the provisions of Part A*” (MLC article VI.3).
12. The most obvious point arising out of a consideration of the mandatory provisions of the Code is that it is not compulsory to have a welfare centre in every port. Arguably NZ are in breach of Regulation 4.4.1 or Standard A4.4, if they have not “*promoted the development of welfare facilities*”, and have not adequately consulted with seafarers’ organisations as to which ports are “*appropriate*” in terms of requiring welfare facilities. SWB should rely upon these arguments. That is because failing to ensure that there is a welfare centre in every port is not a breach of these provisions.
13. The HRAS Report is correct to point out that the MLC also contains guidance which recommends provision of adequate welfare centres. The relevant guidelines are as follows:
 - a. Guideline B4.4.1 paragraph 1 requires Members to take measures to ensure that adequate welfare facilities and services are provided in designated ports of call.

b. Guideline B4.4.2 provides:

“1) Each Member should provide or ensure the provision of such welfare facilities and services as may be required, in appropriate ports of the country.

2) Welfare facilities and services should be provided, in accordance with national conditions and practice, by one or more of the following:

(a) public authorities;

(b) shipowners’ or seafarers’ organisations concerned under collective agreements or other agreed arrangements; and

(c) voluntary organisations.

3) Necessary welfare and recreational facilities should be established or developed in ports. These should include:

(a) meeting and recreation rooms as required;

(b) facilities for sports and outdoor facilities, including competitions;

(c) educational facilities; and

(d) where appropriate, facilities for religious observances and for personal counselling.

...8) Measures should be taken to ensure that, as necessary, technically competent persons are employed full time in the operation of seafarers’ welfare facilities and services, in addition to any voluntary workers.”

c. Guideline B4.4.4 states that financial support for port welfare facilities should be made available through one or more of:

i. Grants from public funds;

ii. Levies or other special dues from shipping sources;

iii. Voluntary contributions from shipowners, seafarers, or their organisations;
and

iv. Voluntary contributions from other sources.

14. There are, on the face of the HRAS Report, a number of arguable breaches of these Guidelines by NZ. For example, there are no technically competent persons employed full-time in welfare centres, in breach of Guideline B4.4.2 paragraph 8, and such employees are necessary given the inadequate number of volunteers. However, in terms of the main issues the position is not entirely straightforward, since the Guidelines allow for welfare facilities and services to be provided or funded by the voluntary sector.

15. Therefore, while it is common practice for compulsory or voluntary levies on shipping to be used to ensure funding for seafarer welfare facilities in ports, even the guidance part of the MLC does not mandate this. The HRAS Report itself notes that, while many states which have ratified the MLC have imposed compulsory port levies or introduced voluntary levy schemes to fund seafarers’ welfare facilities, this has not been done by every ratifying state.

16. Even if there are breaches of Part B of the Code, these provisions are non-binding guidance. It could be argued that NZ have not given “*due consideration to implementing its responsibilities in the manner provided for in Part B of the Code*”, as required by Article VI.2 of the MLC. However, SWB have made representations to NZ (via Maritime New Zealand) and it appears that these have been considered. Additionally, NZ will argue that they are entitled under Part B of the Code to rely upon the voluntary sector in any event.
17. The specific question asked by HRAS is whether NZ is legally obliged to enact legislation in respect of seafarers’ centres. The short answer is “no”. The MLC gives ratifying states a great deal of flexibility as to implementation of their obligations thereunder and there is no requirement for legislation in the current context:
 - a. Article IV.5 allows implementation of seafarers’ rights to “*welfare measures*” to be achieved through applicable collective bargaining agreements, other measures, or “*in practice*”, as well as through legislation.
 - b. Article V states that a state shall “*implement and enforce laws or regulations or other measures that it has adopted to fulfil its commitments under this Convention...*”. This means that, if legislation is adopted, it must be implemented and enforced, but makes clear that measures other than legislation are allowed.
 - c. Again Article VI.3 allows States to implement Part A of the Code through “*laws and regulations or other measures*”.
 - d. Furthermore, many of the requirements of the Code regarding welfare centres are, as set out above, general in scope and do not impose onerous obligations on Member states. The non-mandatory Guidance has arguably been breached but not all the breaches are clear and, in respect of the main issues of funding and provision of welfare centres, the MLC allows these to be provided by the voluntary sector.
18. We also note that Title V of the MLC, concerning enforcement, does not mention enforcement of the obligations regarding seafarer welfare against port states. There is therefore no obvious legal sanction.
19. In these circumstances, we are of the view that the MLC is not overly helpful to SWB and seafarers landing at New Zealand ports. However, there are arguable breaches of the MLC. The HRAS Report recommends (*inter alia*) that SWB raise a complaint with the ILO in respect of NZ’s failures in respect of seafarer welfare. This is in our view a possible way of helping to “focus” NZ’s attention on this issue.

Question (b): Moral obligations

20. While we recognise the hardship caused to seafarers and associated charities by the shortcomings of the approach adopted by the NZ Government, we can express no view as

to whether a state party is “morally obliged” to do something. As set out above, in our view NZ has arguably not complied with MLC Guidance and, given their status as a developed nation, it may be regarded as disappointing that they do not do more for seafarers at their ports. However, we cannot opine on moral issues.

Question (c): obligations of commercial port authorities

21. The MLC does not impose obligations on commercial port authorities. Nor have we come across any other international convention which would compel commercial port authorities to support seafarers’ welfare. This is therefore something for a New Zealand lawyer to examine.

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3 April, 2020