



Exploitative Labour Practices at Sea: An International Maritime Labour Law Perspective

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Outline

- The P&O Ferries example.
- The wider context.
- The role of the MLC, 2006.
- What can be done to improve the protection offered to seafarers against labour exploitation.



The P&O Ferries case

786 seafarers
were laid off

via zoom or via
pre-recorded
messages

as soon as
COVID-19
restrictions
started to
be lifted

without notice
or prior
consultation

to be replaced
by agency
workers on a
£2.60 per hour
wage



Issue 1

To what extent British employment law provides adequate protection to seafarers working on board ships that operate from British ports but are not registered in the UK?

Did British employment law apply at all in this case?

Did P&O Ferries break any of the provisions of British employment law?

What are the legal consequences to be faced by P&O Ferries?

What are the remedies to be available to those affected by the dismissals?

What measures can be taken to provide seafarers with improved protection in the future?

Issue 2

What is the impact of outsourcing on the employment rights of seafarers, and particularly the right to decent working and living conditions on board ships?



shipowners

Reduces ship operating costs.

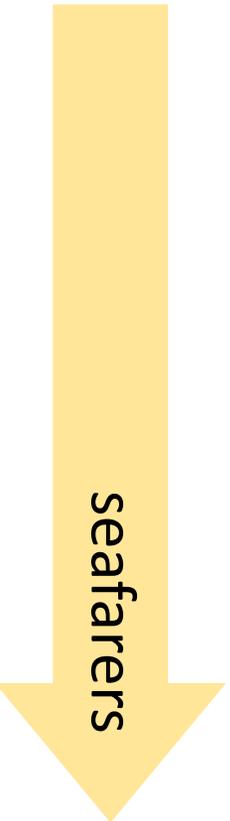
Accommodates new corporate organisational, management and operational practices.

Addresses challenges related to the increasing level of responsibility and accountability.

Fosters an environment where precarious employment contracts prevail.

Adds to the potential difficulties in identifying the responsible party for employment rights.

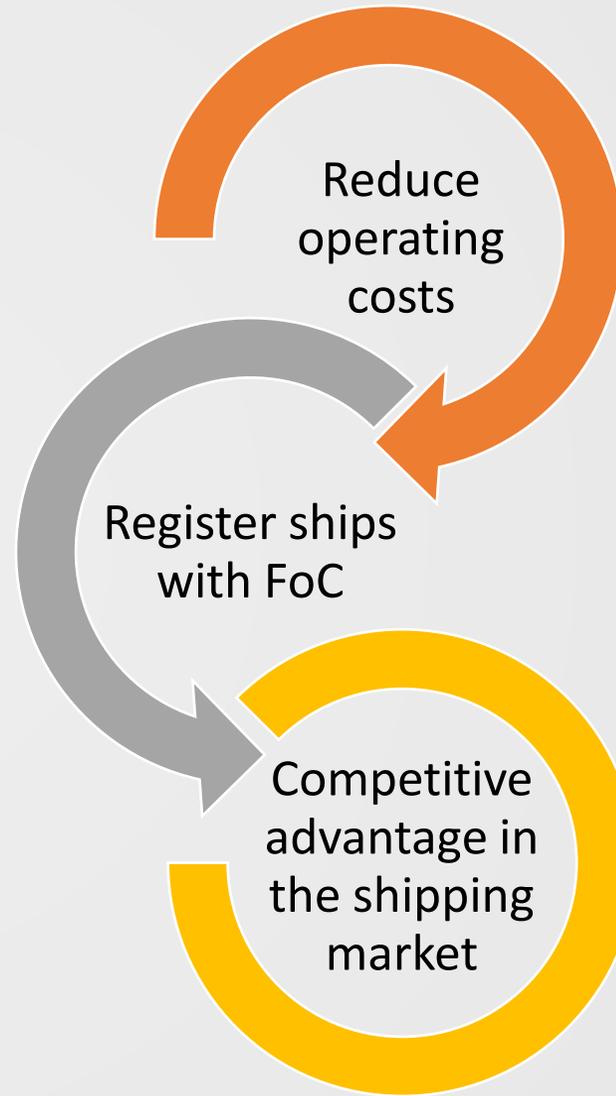
Creates vulnerability to labour exploitation, even with regard to its more severe forms.



seafarers

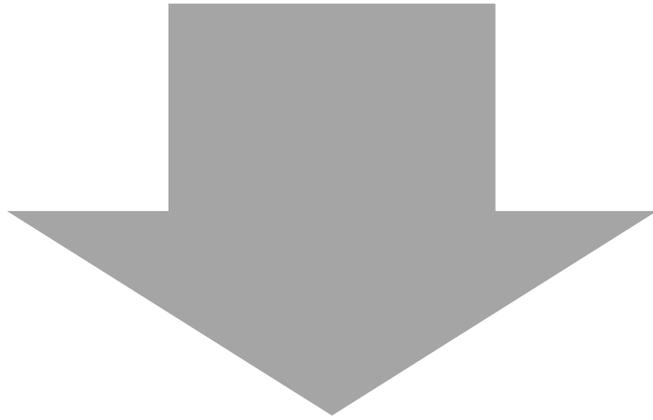


Cost efficiency





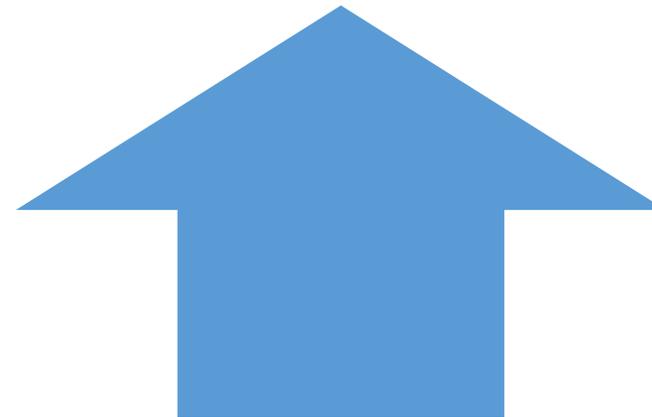
Maritime
Labour
Convention
(MLC), 2006



Secure a level
playing field for
shipowners



Promote decent
working and living
conditions for
seafarers



How did the
MLC, 2006,
strive to
achieve
these 'twin'
goals?

Set out minimum requirements for seafarers to work and live on a ship and conditions of employment.

Created a compliance and enforcement system dedicated to the inspection and certification of labour and social conditions for seafarers.

The 'no more favourable treatment' principle

Set the grounds for ships of non-ratifying states to be inspected and detained for poor or substandard working and living conditions for seafarers.

Shipowners would not be able to gain a competitive edge in the shipping market if their ships were registered with flags of convenience.

States would no longer have a commercial interest to condone or fail to regulate working conditions that fall well below the international minimum maritime labour standards.





Has the MLC, 2006, achieved these goals?



The MLC, 2006, has failed to address some gaps and weaknesses that create vulnerability to exploitation.

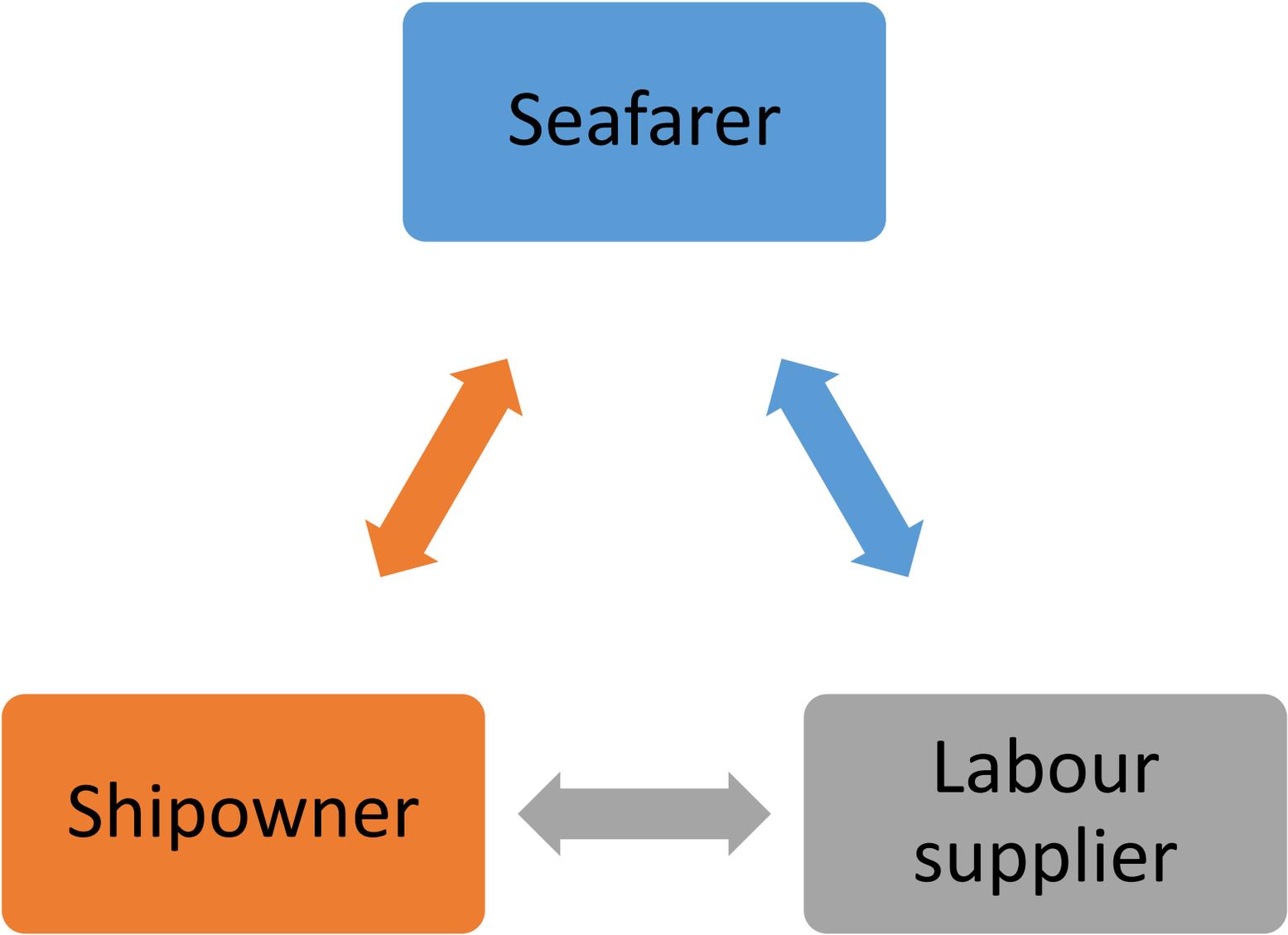


It has proven insufficient to get shipowners and other key stakeholders to change their attitude towards seafarers' rights.

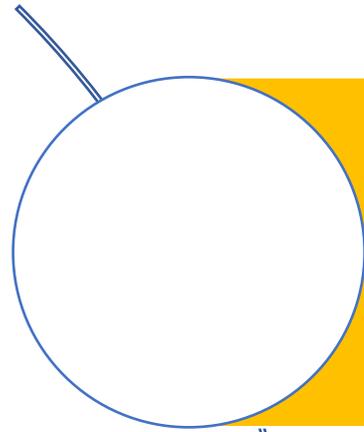


It has proven incapable of controlling flag state activities.

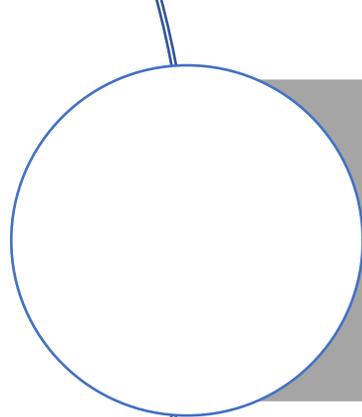
Does the MLC, 2006, continue to create room for labour exploitation within the seafaring industry?



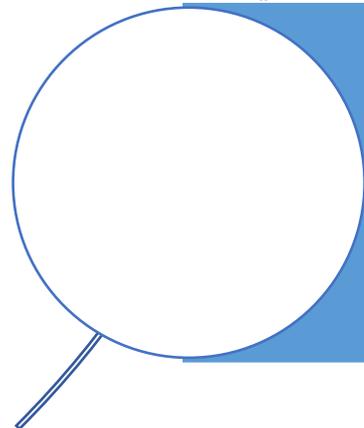
To avoid the risk of dilution of responsibility the MLC, 2006, set out the following requirements:



Seafarer employment agreement (SEA) – Regulation 2.1.



SEA shall be signed by the seafarer and the shipowner or a representative of the shipowner – Standard A2.1 (1) (a).



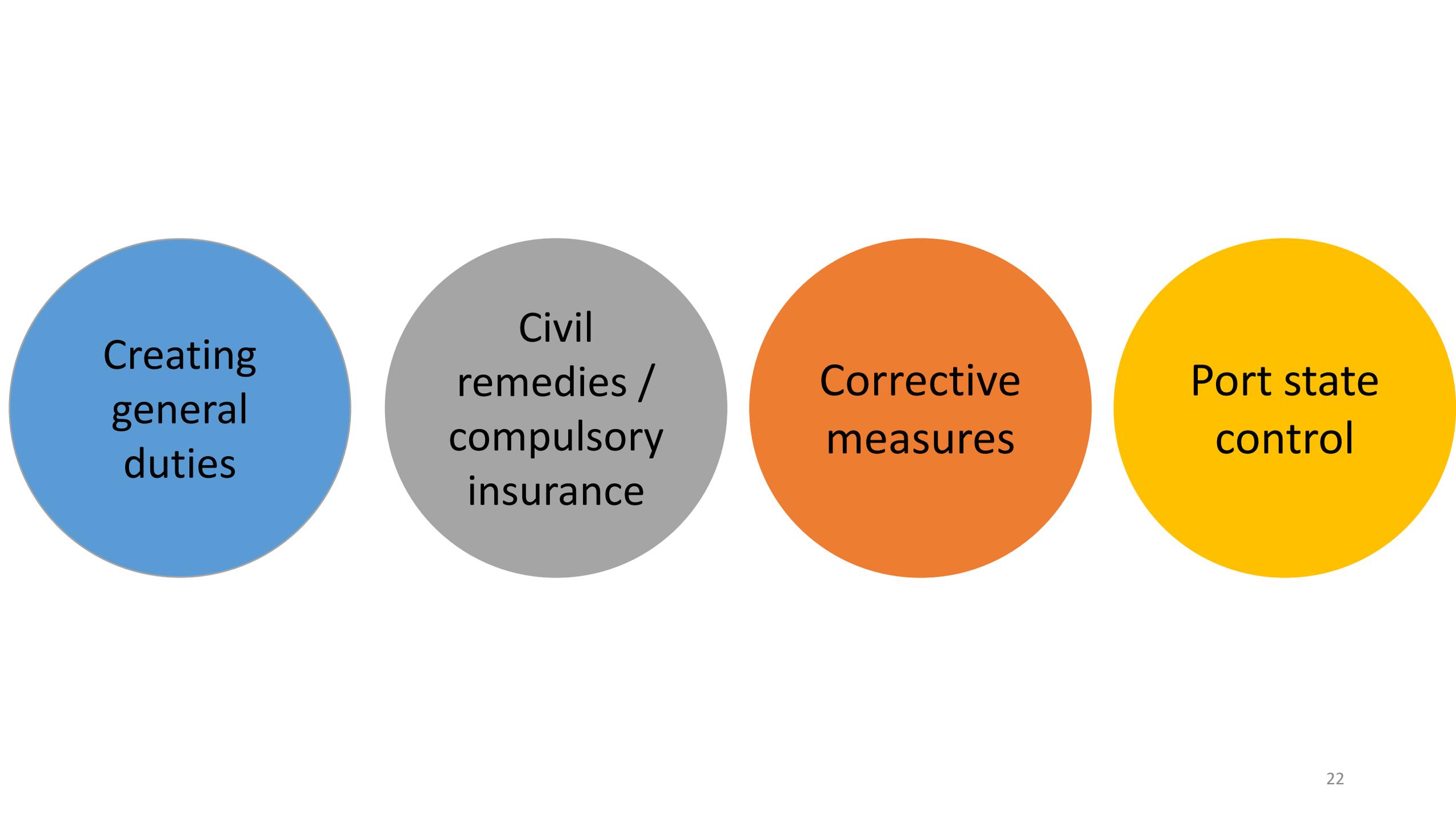
Labour supplier should be required to assume obligations to ensure the proper fulfilment by shipowners of the terms of their employment agreements concluded with seafarers- Guideline B5.3.

However,
there is still a
risk of
contracting
out of the
MLC, 2006.

- The responsibility to ensure that the employment terms in the agreement with the labour supplier are consistent with the requirements set out in the Convention rests with the shipowner – Regulation 1.4 (3).
- While the SEA is a matter to be inspected by flag states and port states, the substantive content of the various terms of employment referred to in the SEA are not always subject to inspection and certification.

How does the MLC,
2006, influence the
attitude of non-
state actors
towards seafarers'
rights?





Creating
general
duties

Civil
remedies /
compulsory
insurance

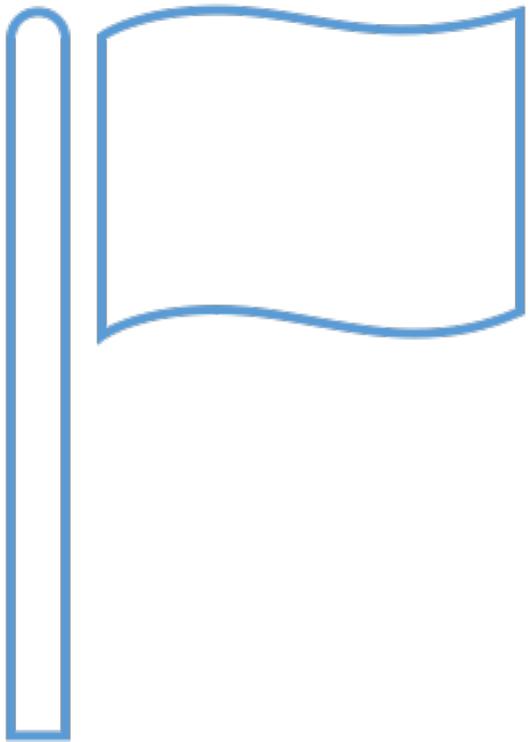
Corrective
measures

Port state
control

Paper-based inspections

More detailed inspections in a limited number of circumstances

The
framework
for port state
control



How does the
MLC, 2006,
control flag
state activities?

The framework for flag state activities





But what if flag states fail to comply with their obligations under the MLC, 2006?

Port State Control

ILO supervisory
system/mechanism



How can labour
exploitation be
more effectively
tackled in the
shipping sector?



Invest on structural changes that address social, economic and political injustices that lead to labour exploitation.

Reactive Approach

- penalties for individuals who engage in labour exploitation at sea.
- sanctions for states that condone poor or substandard living and working conditions on board ships.

- enhanced protection of seafarers' rights.
- civil remedies for individuals whose employment rights are violated.
- substantive inspections of living and working conditions on board ships.

Proactive Approach



Swansea
University
Prifysgol
Abertawe

Institute of International Shipping and Trade Law



Making waves in shipping and trade for over 20 years

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