The effectiveness of global regulation in the shipping industry: a critical case study

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THE SHIPPING INDUSTRY AS A CRITICAL CASE

The shipping industry is responsible for the transportation of the bulk of the world's internationally traded goods, employing almost 1.2 million seafarers (ILO, 2006) from across the globe. Its regulation is of particular analytic interest because it is arguably a 'critical case' (Goldthorpe et al., 1968) in terms of the effectiveness of global governance.

The critical case approach was famously employed by Goldthorpe et al. in their study of car workers, designed, primarily, to establish whether or not empirical evidence, which they identified as lacking in this area (Goldthorpe and Lockwood, 1963), supported the notion of embourgeoisement (Goldthorpe et al., 1968). In order to facilitate their research a setting was sought which would be as '*favourable as possible* for the validation of *embourgeoisement* thesis' (p. 2). They argued that should embourgeiosement of working-class people not be found to occur in the most favourable of settings (Luton, a medium-sized town on the outskirts of London, in their judgement) then it would be safe to conclude that it would be unlikely to be occurring 'to any significant extent in British Society as a whole' (p. 2).

Similarly we suggest that, in considering issues of global governance (that is, both regulation and enforcement), the shipping industry constitutes a critical case in relation to *effective* governance. The very

nature of the industry, its inherent mobility, means that unsafe vessels pose a potential threat to the international community at large. Whilst a number of accidents at sea continue to be attributed to structural failure associated with, for example, poor vessel design, the operation of old vessels suffering from metal fatigue, poor maintenance resulting in rust damage, and poor equipment, etc., human factors are held to be responsible for increasing proportions of accidents at sea (UK P&I Club, 1999). Such human factors include poor seamanship or poor decision-making as a result of inadequate training, failure to follow collision regulations, and fatigue. Fatigue (often associated with under-crewing) is a significant problem in the sector and has been identified as a direct cause of a number of accidents involving watchkeepers who have fallen asleep on duty. The International Commission on Shipping's *Inquiry into Ship Safety* (ICONS, 2000) has suggested:

Cutbacks in crew numbers and maintenance effort arising from commercial pressures were blamed as a major cause of accidents with approximately 80 per cent of shipping collisions, groundings and sinkings being estimated to be attributable to human factors. (2000: 55)

This threat of accident, with associated environmental and economic cost, has been one of the main drivers for attempts at effective global governance in the sector. The industry has its own regulatory body – the International Maritime Organization (IMO) – which regulates ship standards, while its UN sibling – the International Labour Organization (ILO) – regulates shipboard labour standards. The IMO has largely taken responsibility for attempting to regulate issues relating to ships as structures (e.g. issues concerning vessel design, equipment to be carried, etc.) and to basic standards of training. The ILO, by contrast, has generally assumed responsibility for issues relating to the working and living conditions of seafarers (issues relating to accommodation, food, employment rights, etc.). In 2006 the ILO amalgamated all of its many conventions relating to shipping into one 'super' convention, designed to improve the ease with which standards could be understood and enforced. As has been noted by others, global industries are complex and inherently difficult to govern (Dicken, 2011). However, shipping can be seen as a critical case in relation to effective global governance because in this industry there have been long-standing and sustained efforts to establish effective forms of global governance dating back to the first decades of the 20th century.

In the future, it is likely that with the expansion of global governance, particularly in relation to environmental/safety issues and international labour markets, the effective *enforcement* of global regulation is going to increasingly be the focus for academic attention as opposed to discussions of the *forums* for global governance. In respect of environmental governance the schism between regulatory agreements and regulatory compliance has already been noted (Simonis and Bruhl, 2002) and as yet it is unclear how greater compliance can be secured in relation to global environmental regulation. However, our argument is that, given the advantages inherent in the shipping sector in relation to the possibilities for regulation (which would also apply to other transport sectors such as aviation), if regulatory compliance cannot be adequately secured in this sector it is unlikely to be achieved elsewhere. The parallel with Goldthorpe et al. is strong here inasmuch as they observed of the workers they studied that 'if (they were) not highly typical of the present, (they) may well prove to be in many ways more typical of the future' (1968: 9). Similarly, we suggest that while shipping as a single global industry may be regarded as atypical at present, if current trends continue, then shipping may well be prototypical of what is to come in terms of the challenges and difficulties posed in regulating globalizing sectors.

GLOBALIZATION AND THE GOVERNANCE OF SHIPPING

The term globalization is used in different ways and has different meanings. The definition we use here relates to economic globalization and accords with an understanding of globalization as being predicated upon transborder activities; a conceptualization promoted by authors such as Held et al. (1999) and Scholte (2000). By its nature the shipping industry is international but it is the transborder nature of vessel operation occurring as a consequence of the separation of ships from their ownership and from their operators in terms of nationality (flag) that makes the industry a globalized one.

In the early part of the 20th century national shipping companies generally registered their vessels under their national flags and were thereby subject to national regulation (incorporating internationally agreed standards where these had been adopted). In the post-war period major maritime nations, essentially those with developed economies, took steps to improve safety in the industry, particularly via the introduction of more stringent controls over labour markets and ship opera-

tions. Thus employers increasingly had to abide by national collective bargaining agreements and minimum standards in relation to conditions as well as more technical safety standards. This tended to increase operating costs.

Associations between profitability, regulatory avoidance and workplace safety have been noted elsewhere (Nichols, 1991; Obando-Rojas et al., 2004, Sampson 2011) and ship operators were seemingly cognizant of these connections. Sub-standard ship operators have been described in successive Organisation for Economic Co-operation and Development (OECD) reports (e.g. OECD, 2001) as saving significant proportions of operating costs by regulatory avoidance associated with 'flagging out'. The new flag States (termed 'flags of convenience' by the International Transport Workers' Federation) have often exercised little control over ship operators' vessels or their behaviour as employers (ICONS, 2000; Winchester and Alderton, 2003, De Sombre 2006) and have been recognized as largely ineffectual enforcers of regulations (Donaldson, 1996, Bloor 2012).

One important consequence of the regulatory avoidance associated with flagging out has been that employers have become free from labour market constraints and have gone in search of cheap labour sourced from developing economies. This has driven the development of a global labour market (Sampson and Schroeder, 2006, Sampson 2013), which has implications for the regulation and enforcement of standards of seafarer education.

'Flagging out' and the associated movement away from national control transformed the industry into a truly global sector no longer bound by national legislation. However, when public outcries followed a series of major pollution incidents national politicians realized that they needed to regain control over shipping given its potential to impact upon public opinion and upon other areas such as tourism and marine harvesting. Various ways were therefore sought to establish more effective forms of global shipping governance via the IMO, the ILO, and regional associations of port-States.

This article considers the effectiveness of some of the forms of governance that have been introduced in an effort to 're-regulate' the shipping industry on a global basis. It augments the emergent literature on global and multi-level governance (Bache and Flinders, 2004; Held and Koenig-Archibugi, 2005; Held and McGrew, 2002; Scholte, 2000;

Wilkinson, 2005), which consider overarching issues such as account-ability (Held, 1995; Held and Koenig-Archibugi, 2005; Keohane, 2005; Tehranian, 2002), less visible areas such as transnational crime (Williams and Baudin-O'Hayon, 2002), peace and security (Camilleri, 2002; Griffin, 2005), the internet (Perri 6, 2002) intellectual property rights (Sell, 2002), or finance (Scholte, 2002). Specifically, it considers efforts to regulate a single industry on a global basis via the implementation of 'smart regulation' and the application of 'enforced self-regulation'.

METHOD

The reported findings are derived from two international studies undertaken at the Seafarers International Research Centre and supported by the ESRC and British Academy.

The port-State control study data, collected in 2003–4, comprised researchers' fieldnotes recording observations of ship inspections by port-State Control Officers (PSCOs) in the UK, Russia, and India, plus interviews with inspectors and other key industry stakeholders. A total of 104 ships were visited. Inspectors were drawn from five different offices and inspections embraced a range of ship types. Thirty-seven semi-structured interviews (including five e-mail interviews) were conducted with inspectors and other key stakeholders. These included national and international regulators, ship operators, shipping agents, a charterer, a pilot, port health inspectors, union officials, port officials, a ship surveyor and a ship insurer. Twenty-nine of these interviews were audio-recorded and transcribed (and where necessary translated). These interviews and fieldnotes were collected centrally and systematically analysed.

The study of seafarer education and training was an international pilot study designed to provide a discrete set of usable data. The research took place in the period 2002–3 and entailed ethnographic site visits to maritime colleges and training centres (collectively termed METs). In the course of the visits to METs detailed fieldnotes were maintained and subsequently analysed. Four colleges were included in the research, as well as one independent and two company-run training centres offering a variety of mandatory and non-mandatory courses for officers. Additionally, 30 semi-structured interviews were carried out with personnel managers (or equivalent) employed by ship operators, college lecturers/trainers, union officials, and an official of the IMO. The interviews were transcribed and coded prior to analysis.

Regulating a globalized industry: two attempted strategies

Global industries present particular challenges in terms of regulatory enforcement (Bloor and Sampson 2009). Traditional 'command and control' regulatory practice – the proscription of certain behaviours by legislatures which then empower inspectorates to monitor and police local practice (Rosenau, 2005) – has increasingly come to be seen as sub-optimal by regulators and regulatees alike, not least because of the greater opportunities for local regulatory avoidance in late modern globalized markets. Socio-legal studies writers have variously described the new regulatory strategies adopted in place of command and control: Ayres and Braithwaite (1992) have described an enforcement pyramid, flexibly responsive – and increasingly punitive – in relation to regulatory breaches; Hutter (1997) has written of 'accommodative' or 'compliance' strategies of enforcement; Gunningham et al. (1998) have described, under the term 'smart regulation', the use of multiple policy instruments and a broad range of regulatory actors (Black 2008) ; and most recently, Braithwaite (2005) has written about regulatory regimes which seek 'to flip markets in vice into markets in virtue'. While these terms are not coterminous, we will use 'smart regulation' here as an umbrella term to denote an approach to regulatory practice which is transparent ('name and shame'), has graded penalties and is flexibly targeted on the least compliant; is an approach whereby regulators seek to mobilize market forces to incentivize regulatees to proactively comply with regulations (for example, competition between ship operators for the carriage of cargoes would be expected to result in a desire to be seen not to be operating sub-standard vessels). 'Smart regulation' in this usage is similar to American writings on 'new governance' (e.g. Dorf and Sabel, 1998), although the latter have not been applied to cross-national regulatory matters.

Port-State control is an example of the attempted smart regulation of the shipping industry. Via a series of regional agreements, signatory port-States (as opposed to flag-States) ratifying international conventions have determined to enforce their provisions aboard all vessels calling at their ports regardless of flag ('nationality'), and to implement a common cross-national methodology on vessel inspection. In most sectors it is difficult to implement the provisions of ILO conventions at the level of the individual workplace. The shipping industry, however, is

unusual in that its workplaces are mobile and operate internationally. The adoption of methods of port-State inspection allows for the possibility of the development of the first effectively enforced regime of global governance. If global governance is seen to fail under such circumstances, it is arguably doomed to failure in less conducive environments such as those associated with global commodity chains in the production of goods, demanding global legal pluralism across a range of sites (Snyder, 2001).

Port-State control officers inspect vessels to check on compliance with international standards as laid down by the conventions (e.g. ILO Convention 147[1]) which their home state has ratified; inspectors may require deficiencies in compliance to be rectified and serious deficiencies can lead to vessel detention, until the deficiencies have been addressed (with consequent costs, – repairs, berthing fees, lost business, etc.). The cross-national inspection process is self-consciously transparent. The propensity for a ship to undergo inspection in a new port depends on its risk profile and the computation of the risk profile is publicized, so that ship operators are able to take proactive steps to reduce their risk profile and minimize their chances of inspection. Moreover, the results of such inspections are publicly accessible via the internet. Increasingly, customers (often vessel charterers) check on the detention records of vessels before deciding where to place their business. As one ship operator explained, "It's getting through to charterers now (…). Everybody is using Equasis[2]– lawyers, charterers, P & I clubs (…). 'Name and shame' works: it's helping to remove the sub-standard ships that are driving down the freight rates".

It has been argued by Braithwaite and his collaborators (Ayres and Braithwaite, 1992; Braithwaite, 2005) that globalized industries need not necessarily pose greater problems for regulators than national industries, provided that global economic forces can be harnessed for the purpose of what is termed 'virtuous competition' (i.e. competition based on quality as opposed to price). However, for such regulation to prove effective certain conditions need to be met, particularly in relation to a perception of equity in enforcement of regulatory standards across the globe. The ship inspection process in Russia, the UK, and India is scrutinized here to examine consistency of practice cross nationally. Furthermore, the views of ship operators, charterers, and others are considered in relation to virtuous competition.

A second form of regulation that has been attempted in the shipping sector is based upon self-enforcement and the documentary (paper-based) demonstration of compliance. Following the spillage of 120,000 tons of oil by the stricken *Torrey Canyon* in 1967, the IMO drew up a convention on standards on training and certification commonly referred to as 'STCW'78, which attempted to establish international standards for the duties and requirements of officers and ratings. IMO and ILO do not generally police the standards that they set via inspection – this is a matter for the national maritime administrations (e.g. the UK's Maritime and Coastguard Agency) of the ratifying states. Thus, labour supply countries were required to practise self-enforcement of the STCW78 regulations and early attempts at this were ineffective, resulting in the amendment of the convention in 1991, 1994 most significantly1995, and most recently 2010.

In the years following the 1995 STCW amendment, the IMO sought to place pressure upon labour supply nations to comply with the regulations by planning the publication of what it termed a 'white list' of countries deemed by the IMO to have demonstrated full compliance. The list was eventually published in 2000 and was a potentially powerful tool. Ships employing seafarers from 'non-white list' countries could expect to be detained by port-State control officers thereby incurring considerable costs. This effectively guaranteed that no seafarers from non-approved countries were employed by international ship operators after the year 2000. However, a fundamental flaw remained. This related to the basis established for the demonstration of compliance. National maritime administrations retained responsibility for the regulation of local training and education and demonstrated compliance with STCW via the production of documentation, subsequently scrutinized by the IMO. Such practices have been identified as problematic in other sectors (Lange, 2002) and there is evidence that regulators find it difficult to obtain all the documentation they require from those subject to regulation. In these circumstances it is suggested that regulators frequently relax their rules to accommodate deficiencies (Lange, 2002; Shavell, 1998) resulting in an overall erosion in standards. Even where regulatory compliance exists this may be superficial in nature, as Hutter has commented in relation to self-regulation by British Railways; self-regulatory activity may be 'more procedural than substantive', paying 'more attention to the letter than the spirit of the law' (2001: 394).

In order to consider the effectiveness of this process of 'enforced self-regulation', data were collected from visits to maritime colleges and training institutions to examine, first hand, the standards in operation in different institutions and in different countries. Additionally, the views of the 'clients' of METs (ship operators employing seafarers) were analysed to consider their satisfaction with the competence of the new seafarers they employ. Effective enforcement of the regulation would be expected to produce a basic standard of quality across all MET institutions which would result in satisfaction amongst employers in terms of the quality of their new recruits.

THE EFFECTIVENESS OF SMART REGULATION AND PORT-STATE CONTROL

Transparency is key to the creation of a competitive market based on quality as opposed to cost. In the case of the shipping industry, customers (usually vessel charterers) need to be able to access data on quality which will allow them to make assessments of the safety standards of the ships they wish to utilize. In addition, they have to regard such data as valid – not subject to inaccuracies resulting from the processes by which they are produced. Specifically, ship operators need to have faith in the ability of the port-State control system to apply international regulatory standards in an even-handed manner. Should such consistency fail, 'interpretation' of port-State control statistics (e.g. 'detentions in that port don't count') will undermine the development of a virtuous market. Charterers will no longer be sure if the vessels they are considering are of a high or a low quality and will therefore base their commercial decisions on other factors. Once this happens, ship operators will recognize that they no longer gain a great deal from efforts to comply with regulation.

The data suggested that such inconsistency in inspection practice was already a problem in relation to smart regulation. One operator for example commented that:

There's ONE word you can put in (your report) for port-State control: inconsistency. Inconsistency between ports and between countries.

A senior manager with a different company produced a series of files on alleged wrongful detentions suffered by his company's vessels. These kinds of incidents had undermined this individual's faith in the

port-State control process:

> … the whole effectiveness of Port State Control, it's gone. It no longer matters – the inspection regime is so bad now – that it doesn't matter if the ship's got a record of detentions. Now surely that's counter to the original intention to having a police force. And we wanted that police force, because we think we're a good operator and we wanted rid of the bad operators. (….). But it hasn't worked like that.

Fieldnote data also pointed to instances of inconsistent inspection practice. However, these were often examples of serious deficiencies that had *not* been previously recorded at earlier inspections. One inspector boarded a ship following a report from the French coastguard that the ship had been drifting having broken down off Ushant. In a port-State inspection in Spain, only two months previously, no deficiencies had been recorded. Yet this inspector identified fourteen separate deficiencies. Inspectors were aware that some colleagues were more likely than others to detain ships and to list more deficiencies. These differences were confirmed by the comparative analysis of inspection records. In one office for example, in the course of a year one inspector averaged 1.4 deficiencies per inspection, while another averaged 8.4 deficiencies per inspection.

There was also a widespread perception amongst stakeholders of inconsistencies in practice between countries. To use, Walls et al.'s (2004) term, there were differences in the 'trust profiles' assigned to different national port-State regimes by shipping publics. There were indications that such perceptions were well founded. Cross-national differences in the relationships framing the practice of inspections were identified between the different countries included in the study. In India, for example, relations between the Indian Mercantile Marine Department and shipping interests were more informal and familiar than comparable relationships in the UK. In particular, shipping agents played a pivotal role in the inspection process, calling in to Mercantile Marine Department offices, offering inspectors the use of their mobile phones, facilitating transport to and from docks (even dropping inspectors at their homes in the evening). Such activities would have been considered unwelcome, and improper, in the UK. The enhanced mediator role played by shipping agents in Indian port-State inspections is reflective of the importance of mediators and brokers in Indian commercial culture. The agents had opportunities to intercede on behalf of their clients (the ship operators) to avoid the listing of deficiencies by inspectors,

and (crucially) to avoid formal detentions by asking for the temporary suspension of the inspection to allow a breathing space for repairs to occur. However, whilst the research did identify differences in inspection practice they need *not* have a basis in fact to be of significance: mere perception of inconsistency in inspection practice is sufficient to weaken commercial motivation to improve standards to avoid future detentions. The perception of inconsistent practice thereby undermines the effectiveness of smart regulation.

Within the socio-legal studies literature, some authorities have argued that globalized industries have been regarded as commensurately responsive to 'good' governance, in so far as globalizing economic forces can be harnessed for the purposes of virtuous competition in respect of labour standards (e.g. Ayres and Braithwaite, 1992). There is, however, a more pessimistic strain of writing which emphasizes the importance of 'place' in understanding regulatory performance (e.g. Nelkin, 2002). In particular, Haines (2003) has recently written about the ways in which national occupational health and safety standards intersect with particular economic, political and cultural contexts to produce local differences in 'regulatory character'. Within this perspective, cross-national inconsistencies in inspection practice may be regarded as inevitable and attempts to impose uniformity may simply be seen as a counter-productive legal irritant, particularly among industrializing nations. It may not be, therefore, that the process of port-State control is especially flawed, but rather that the consistency required to support a system of smart regulation is not feasible in an international context. This would call into question the very possibility of exercising effective smart regulation in the control of global industries and would challenge previous assumptions about the effective application of such regulation in a global context.

THE EFFECTIVENESS OF ENFORCED SELF-REGULATION IN SEAFARER EDUCATION AND TRAINING

A different regulatory tack has been taken in approaching international standards of seafarer education and training. Here the IMO took the lead in the 1970s, establishing, for the first time, international standards for seafarer training and certification in contrast to the (variable) national standards then operating. These regulations had the potential to make a considerable impact upon standards because non-ratifying states were covered by their provision as well as those ratifying the relevant

convention. Ratifying states were required to ensure that all ships using their ports were compliant, whether or not those ships were registered with states that were party to the convention (IMO, 2003).

Thus the regulations effectively ensured that all seafarers working aboard ships trading internationally were required to carry recognized certification relating to the jobs for which they were employed and in time this aspect of the regulation came to be included in the regime of port-State control inspections discussed previously. However, the terms of STCW95 also provided for the development of basic standards in education and training for which guidelines were set down. Compliance with these standards was required to be monitored on the ground by national maritime administrations, who were obliged to demonstrate compliance with STCW (1995) via the submission of paperwork to the IMO.

The effectiveness of such regulatory forms in the development of national occupational health and safety systems has previously been questioned with respect to national regulatory systems for occupational health and safety (James and Walters, 1999, James and Walters 2005). The question addressed here is whether such regulatory forms are effective when introduced on a global scale.

Initially the STCW convention was only weakly complied with. However, following the 1995 amendment to STCW, parties to the convention came under considerable pressure to demonstrate compliance in order to secure a place on the IMO's forthcoming list (published in 2000) of countries deemed to have fully complied with the regulation. Party states were expected to audit and monitor standards of maritime education and training and to grant, or deny, training and education institutions 'approved' status as appropriate. The IMO made suggestions as to what maritime administrations might reasonably consider in their assessment of METs (see Appendix).

However, efforts to encourage administrations to fully implement such audits and to close down those institutions that failed to meet guideline standards faced a number of problems, some of which are common to regulatory regimes operating on the basis of enforced self-regulation (Hutter, 2001).

Where safety protocols and procedures are externally produced and 'imposed', research in other sectors suggests that they often fail to be internalized. This results in lip-service being paid to regulation rather

than wholehearted commitment (Hutter, 2001). This appeared to be the case with some national maritime administrations who were more concerned with going through the motions of compliance than with rigorously rooting out sub-standard MET establishments. In the Philippines, for example, stakeholders suggested that politics and nepotism were important elements in decisions about granting licences to training institutions. As one Filipino personnel manager explained:

Before when the issue of the STCW95 white list was very hard, they were talking about only seven (institutions in the Philippines) will pass the criteria of STCW95 (…) And then when we were in the process of submitting our papers to IMO, suddenly we have seen (…) 20 more, a total of 20 now, being considered, because they said okay they have reached a standard that has surpassed the IMO requirement. And then until we were confirmed in the white list, there were more than 40 who finally made it. Out of the seven, became 20 and then more than 40.[3] We were very happy with seven, or at least even 20, but not with 40 now. But now, I don't know really, but there are some political issues about then, when that was being considered, because some maritime schools are owned by congressmen. So I am probably suggesting something …

In addition to such shortcomings in the practices of national maritime administrations the IMO was under some pressure, where necessary, to relax regulations with regard to specific administrations on the grounds of expediency and pragmatism. This pressure derived from the importance of particular nations to the international supply of seafaring labour. Pragmatic and expedient approaches to enforcement are not uncommon in other sectors (Hawkins, 1984; Lange, 2002). For example, in his study of environmental pollution control Hawkins describes how officers take into account the impact, on the local economy, of the application of any sanctions (e.g. unemployment) prior to reaching a decision about how they will respond to incidents where pollution regulations have been broken (1984: 197–8).

In the case of the IMO, there was a perception amongst stakeholders that it would find it impossible to exclude particular nations from the 'white list' because of their critical importance to the international supply of labour and thus the industry as a whole. The Philippines, which supplies the global labour market with over a quarter of its seafarers, was a case in point. The Philippines was included on the 'white list' despite widespread dissatisfaction amongst stakeholders with the standards in

many maritime colleges and, indeed, with the integrity of the maritime administration itself. In 2002, two years after the Philippines had been included by the IMO on the 'white list', Australia moved to briefly ban the employment of Filipino seafarers on ships berthing in Australian ports, following publicity over corrupt practices in the conduct of officer examinations (Wadeson, 2003). More recently the European Union has threatened to withdraw recognition of all new certificates issued by the Philippines following repeated complaints about quality (Leander and Osler 2012). To date, however, the Philippines remains a 'white listed' maritime labour supply country.

Such incidents have reinforced the perception that compliance with standards in some states has not been achieved via enforced self-regulation. However, the greater test of compliance may be via a consideration of the extent to which colleges and training institutions meet the guidelines laid down by the IMO in relation to what constitutes adequate provision (see Appendix on the areas considered to be relevant for inspection). All MET establishments in all white-listed countries have been endorsed by national maritime administrations as satisfactorily meeting high standards of teaching and learning in conjunction with these guidelines. However, our data suggest that they fail to do so.

Just as local regulatory character is a factor in the enforcement of cross-national regulation (Haines, 2003), so too is national economic development and local resource level. In the study of METs three countries were included with differing levels of Gross National Income (GNI). In Singapore and the UK GNI levels were relatively high at the time of the research whilst in the Philippines they were comparatively low. Other indicators of economic development further confirm these disparities (see Table 1).

Table 1
Selected economic indicators for Singapore, the UK and the Philippines*

	Singapore	**UK**	**Philippines**
Per capita GNI (2001) US$	21,500	25,120	1,030
Per capita electricity (2000) kWh	6,948	5,601	477
Fixed line or mobile telephone Per 1000 population (2001)	1,195	1,385	192

Source: Worldbank, 2003.

Such differences in terms of economic development were reflect-

*   Using the most recent data i.e. that for 2000 or 2001, as available.

ed in differences in levels of resource in MET institutions. Differential access to resource impacted upon colleges in a variety of ways. Some lacked very basic infrastructure, such as telecommunications, and suffered interrupted power supplies. Less directly, colleges were affected by nationally stretched resources in a variety of ways: for example, poor 'entry level' student knowledge, and an inability to erect new buildings and purchase a range of hard- and software.

In some colleges problems of physical resource were compounded by a lack of investment in teaching staff and administrative personnel. It was clear that this impacted considerably on educational provision. MET senior staff described a number of problems that prevented them from recruiting the personnel that they would have preferred. These included limitations on the salaries that they were permitted to offer, a lack of funding for senior posts and inadequate funds for staff development and training. In two of the four colleges that were visited, experienced ex-sea staff were routinely put through extensive teacher training programmes with associated accreditation. However, in the others, staff had limited opportunities for development. This often left teachers frustrated and disappointed. As one lecturer put it, 'In my mind, the real thing is, manpower (sic)... we need to really improve the quality of instructors'.

Thus, in some colleges, as a result of lack of resource and infrastructure, standards were well below the 'norm'. This is indicative of the failure of enforced self-regulation with regard to establishing consistent levels of quality in the international provision of seafarer training and education. Such failure was confirmed by the data collected via interviews with stakeholders. Just as ship charterers have begun to mistrust detention records so too have employers learned not to rely on the 'white

list' as a guide to adequate standards of maritime education and training. Exemplifying a commonly expressed view, one employer suggested that the reason his company recruited in Pakistan and India rather than the Philippines was that the standards of general, and maritime, education were higher there. He explained that his company had not "… got any Filipino cadets …(because) the standards are nowhere as high as Pakistan or India … That's the standard of education and also (on) the maritime side down there".

Other employers were more specific about particular colleges,

as opposed to countries, that they avoided when it came to cadet recruitment. In the Philippines, for example, some employers would only consider cadets graduating from a list of colleges that their personnel managers had identified as maintaining high educational standards. Effectively they operated their own corporate 'white lists'. One explained: "In the Philippines we are quite selective. I am not sure of the ones (i.e. the colleges) we have blacklisted, but there is a list we don't touch".

The data gathered in the course of site visits together with the analysis of employer perceptions and practices strongly indicate that enforced self-regulation has not been effective internationally in governing standards of education and training for seafarers. Indeed, to some employers the entire process of the enforcement of STCW seemed to be no more than an expense. As one asked rhetorically, "Seafarers have training to meet the STCW amendments, (but) are they really improved themselves?"

The failure of enforced self-regulation in relation to standards of MET provision would seem to be a consequence of a variety of factors relating to the enforcement of STCW. Despite efforts at stringent enforcement and the application of pressure on national maritime administrations via the use of the 'white list', the IMO was ultimately faced with pressure to accommodate deficient national maritime administrations and it *may* have relaxed requirements for reasons of expedience. Additionally, different countries are not only characterized by differences in regulatory character, as discussed earlier, but they also have differential access to resources, which complicates any effort at cross- cultural regulatory enforcement.

Conclusions

Considerable efforts have been made by the international community to find effective regulatory mechanisms for the control of shipping industry standards. These efforts resonate with issues of governance in other areas where commercial and economic interests compete with so called 'public interest', with the public interest often losing out (Gantzias, 2001; Horwitz, 1989, Gunningham et al 2003). Thus, governance of the shipping industry may be seen as falling short of what is required in terms of the 'public interest' as is implied by the con-

tinuance of losses of roll-on, roll-off, passenger ferries (*Herald of Free Enterprise, Estonia, Al Salam Boccacia 98*). However, it is not deficient regulation that has been the focus here but the extent to which global regulation can be rendered effective via two alternative enforcement mechanisms. In shipping, smart regulation has been implemented with respect to port-State control inspections and a system of enforced self-regulation has been implemented with regard to standards of seafarer training and education. Our data suggest that both approaches have been limited in their success. This in turn implies that, as other industries become globalized and 'break free' from national regulatory mechanisms, there may be considerable difficulty associated with attempts to regulate them. Smart regulation and enforced self-regulation are two approaches that might theoretically allow for effective regulation on a global basis but both, in the context of the example of shipping, can be seen to be problematic.

Within the shipping industry a number of factors may be identified as conspiring to undermine effective smart regulation. Elsewhere (Bloor et al., 2004), we have identified cross-national differences in resourcing of port-State control and in targeting those resources. Here, we have focused particularly on inconsistency in inspection practices both within and across national borders and on crossnational differences in 'regulatory character'. These differences in the practice of regulatory enforcement have undermined the extent to which ship charterers and other key stakeholders regard the process as valid and 'even handed'. This process has not fully broken down, but where trust in the enforcement of port-State control is entirely lost detention records will come to be seen as irrelevant in decision-making processes, and the motivation for ship operators to voluntarily comply with regulation will evaporate. In such circumstances the system of port- State control would revert to a more straightforward policing and command enforcement system 'heavily dependent on adequate and continuous funding' and efforts at smart regulation would have failed.

In terms of enforced self-regulation, efforts made by the IMO to raise and improve standards of seafarer education in many parts of the world, thereby achieving some consistency of quality across labour supply countries, have not met with great success. They have been undermined by a need for economic and political expediency on the part of the IMO and by differential access to resources as well as generic

problems associated with such regulatory regimes; for example, difficulties of paper-based assessments, and differences in levels of regulatory commitment. As a result secondary 'lists' are being constructed at both company and regional levels identifying colleges and/or countries which are deemed to truly meet the required standards as established by the IMO in 1978–95.

Shipping has been subject to enduring globalizing processes. It is also an interesting example of an industry where there has been sustained public demand for global regulation. This contrasts with other global arenas such as the internet, publishing, music and manufacture. Regulations in these areas have often related to the protection of trade and markets driven by the concerns of large corporations and have often been seen to be against the public interest (Sell, 2002). However, there are sectors in which there is increasing public demand for regulation; generally those that have health and safety implications of some sort (pollution, personal injury, etc.). In the shipping industry there is plenty of evidence of public and governmental concern to ensure that international maritime safety standards are maintained, and well-established international and regional institutions and agreements (such as the IMO, the ILO, and regional memoranda of understandings) are in place to provide regulation and enforcement. We would claim, therefore, that as a result of the long-standing effort that has gone into attempting to regulate the industry, the apparatus in place to facilitate its regulation, and certain features of the industry that are relatively unique (such as the mobility of plant), the shipping industry constitutes a *critical case* for effective processes of global governance: if governance in the shipping industry should prove ineffective, then the chances of success in the effective governance of other globalized industries may be remote. However, changes can occur that render such predictions redundant (Goldthorpe et al., 1968: 177). New methods of regulatory enforcement may be developed, globalizing trends might reverse, major socioeconomic shifts might occur, the shipping industry might prove to be unique in relation to the difficulty experienced in its effective regulation (though we think it unlikely). For the present time, however, what the research unambiguously indicates is that a greater focus on the enforcement of regulation in relation to globalized sectors would be of value given that effective global governance depends upon effective global enforcement.

In studying the shipping industry as a critical case for effective

global governance we were faced with two possibilities: either we would have the opportunity to focus on a single industry example of effective global governance/ enforcement or we would be required to argue that global governance is problematic – if it were failing in the most favourable of circumstances (Goldthorpe et al., 1968). In the final analysis, our evidence suggests that even in the conducive circumstances found within the shipping sector, governance is fraught with difficulty and that there are real grounds to worry about the enforcement of regulation in a global context.

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NOTES

1. In 2006 a new convention was adopted at the ILO. This convention was designed to consolidate previous regulations relating to labour on board ships. It is anticipated that this new convention will come into force in 2013 once sufficient nation states have ratified it.
2. Equasis is an industry database on ship safety, set up following the international Quality Shipping Conference in Lisbon in 1998 and financially supported by the European Commission, France, Spain, Singapore and Japan. It can be accessed free of charge on the website,www.equasis.org
3. This number had risen to 76 by the year 2002 (MARINA, 2002).

APPENDIX

Box 1: Guidelines to national maritime administrations as to the areas to be considered in their assessments of MET quality

- Scope and objectives of training – e.g. to meet the requirements of STCW regulation II/1

- Minimum entry standards – age, sea experience, other training, medical fitness, etc.

- Intake limitations, student/staff ratio, etc.

- Staff qualifications, experience in subject, teaching skills, assessment skills

- Facilities and equipment necessary to meet objectives

- The written programmes, syllabus, timetable and course material Method of training, lectures, practical, videos, etc. and percentage of time devoted to each

- Assessment methods – examination, practical, continuous assessment, etc.

- Certification to be issued on completion to meet STCW requirements

- Maintenance of student and other records

- Security of information

- Quality standards system requirements to ensure standards are maintained

Source: IMO (2003)

Resumo

Este artigo considera o desafio da regulação através de fronteiras nacionais usando o exemplo da indústria de transporte marítimo. Examina o sucesso de diferentes estratégias globais de regulação no setor, especificamente a implementação da regulação inteligente e da autorregulação compulsória. Ao fazê-lo, baseia-se em pesquisa empírica sobre a aplicação de padrões trabalhistas, via controle do porto pelo Estado na Índia, na Rússia e no Reino Unido, e da regulação de formação profissional em Cingapura, nas Filipinas e no Reino Unido. O artigo conclui que a regulação global eficaz enfrenta desafios consideráveis. Dentro do ambiente relativamente favorável do transporte marítimo ele descobre que a regulação inteligente foi viciada pela incoerência percebida na prática de inspeção e que a auto-regulação compulsória tem se tornado menos efetiva em face das diferenças trans-nacionais de provisão de recursos e comprometimento regulamentar, agravadas pelas dificuldades de validação de base documental (*Paper-based validation* no original). O artigo alega que, em relação às questões de governança global eficaz, a indústria de transporte marítimo pode representar um caso crítico.

Palavras-chave: Efetividade da lei, globalização, regulação, transporte marítimo, formação profissional

Abstract

This article considers the challenge of governance across national borders using the example of the shipping industry. It examines the success of different global regulatory strategies in the sector, specifically the implementation of smart regulation and enforced self-regulation. In doing so it draws upon empirical research into the enforcement of labour standards via port-State control in India, Russia and the UK, and the governance of training in Singapore, Philippines and the UK. It concludes that effective global governance faces considerable challenges. Within the relatively conducive environment of shipping it finds that smart regulation has been vitiated by perceived inconsistency in inspection practice and that enforced self-regulation has been rendered less effective by cross-national differences in resourcing and commitment, compounded by the difficulties of paper-based validation. It argues that, in relation to issues of effective global governance, the shipping industry may stand as a critical case.