

*International Maritime Labour Law*. By Laura Carballo Piñeiro (Springer Academic Publishing, Heidelberg, 2015) 322 pp. [DOI: [10.1007/978-3-662-47032-9](https://doi.org/10.1007/978-3-662-47032-9)]

International Maritime Labour Law deals with an old but unsettled topic, always prone to further discussion. Maritime employment has historically deserved specific attention in the labour law field on grounds of the particularities attached to working and living on board a ship. Moreover, the fact that the activity is carried out in different sovereignty and non-sovereignty areas has been essential in the regard given to this topic by international agencies such as the International Maritime Organization (IMO) and in particular, the International Labour Organization (ILO), which have been striving to harmonize the living and working conditions on board across the world. However and despite this specific attention and internationalization, private international law has failed in singling maritime employment out; the applicable rules are those laid down for any type of individual and collective employment relationship regardless of its particular features.

There is, though, a meta-history behind these general rules and how they apply to maritime labour which this book seeks to deploy in all its different aspects, i.e. International Maritime Labour Law not only focuses on international jurisdiction and conflict-of-laws issues, but also provides insights of public international, comparative and uniform law. Noteworthy, her author, Laura Carballo Piñeiro, is Associate Professor of private international law at the University of Santiago de Compostela, having this research been mainly conducted at the Max Planck Institute for Comparative and Private International Law in Hamburg, and financed by the Alexander von Humboldt Foundation. Besides, the book has been published in the collection Hamburg Studies on Maritime Affairs dependent on the International Max Planck Research School for Maritime Affairs at the University of Hamburg.

In this respect, the book is structured in five chapters providing, the first one, a brief overview of the socio-economic and legal factors that influence the private international law approach to maritime employment. The second chapter deepens in the factors that have made maritime labour truly international and thus one area especially suitable for forum and legal shopping; the (un)successful remedies put in place in order to ameliorate this situation have a prominent place in this chapter preparing the field for addressing the private international law issues in the following chapters. While chapter three and four tackle, respectively, international jurisdiction and conflict-of-law rules on individual employment contracts, the five one deals with collective employment relationships, including the right to undertake industrial action, collective bargaining, and employees' rights to information, consultation and participation in company decision-making bodies. The broad variety of topics analysed—including the examination of non-contractual matters, social security issues and insolvency matters— fully justifies the title of this book.

The flag-of-convenience phenomenon is, of course, present all over the monograph and fully developed in the second chapter. The novelty of this book lies in that it places this issue in context and as a trigger of further phenomena, which have equally contributed to the internationalization of maritime employment and led to poor working conditions on board. In particular, 'crews of

convenience' appear in the horizon as a response of the traditional maritime nations to the flight of their shipping and fishing fleet towards open registries, by setting up international and second registries that entitle ship-owners to resort to seafarers non-resident in the flag state and submit their contracts to a law other than the law of the flag. This is nowadays a generalized trend that would have not been possible without the cooperation of manning agencies. In fact and as the author suggests, the latter and other forms of business cooperation schemes have a major role in the internationalization of maritime employment, so that the responsibility for improving the living and working conditions on board cannot be just placed on ship-owners as employers; it has to be shared by all businesses taking advantage of international labour markets. While piercing the corporate veil and corporate responsibility may help in this undertaking, the author highlights that a more pro-active approach is needed, one in which ship-owners and manning agencies are held jointly liable against seafarers and fishermen.

Once the factors leading to the internationalization of maritime employment have been unveiled, the second chapter moves towards the steps undertaken by the international community to stop the race to the bottom in employment conditions. As the attempts to cut short flags of convenience by establishing a genuine link between the state and the ship flying its flag failed, IMO and ILO made a move towards the harmonising of minimum labour standards, with a view to making the responsibilities of the flag state clear. This movement has proved to be very successful in the shipping sector where the Maritime Labour Convention (MLC, 2006), is already in force. In this respect, the success of this convention lies in the fact that businesses have been the first interested in promoting this harmonization on the grounds of avoiding unfair competition in this sector. In contrast, the ILO No 188 Convention concerning work in the fishing sector (WFC, 2007) has not yet entered into force despite its significance for fishermen, but it is expected to do it in the near future as the European Union has already advised its member states to sign it. At any rate, both conventions share the same approach, i.e. they place the responsibility for the living and working conditions on board on flag states while entrusting port and labour supplying countries with control obligations. As the author states, this is not to be disregarded to the extent that the general idea is that flag states still remain the main, although not the only one, actor in maritime affairs.

The two following chapters undertake the analysis of individual employment contracts, mainly focussing on the private international law rules in force within the European area of justice. Although both chapters address the issues of non-contractual obligations, social security and ship-owners' insolvency with a view to provide the full picture of matters related to maritime employment, the bulk of the analysis lies on the provisions on employment relationships. In this vein, these chapters are connected by the examination of two connecting points, 'habitual workplace' and 'the business which engaged the employee', as they are embedded in both the jurisdictional rules laid down in Section 5 of Chapter II of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012, and the Lugano Convention of 30 October 2007 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, and the conflict rule furnished by Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the

law applicable to contractual obligations (Rome I). In view of where work is carried out, the establishing of the habitual workplace is of particular interest here.

The jurisdiction where seafarers and fishermen habitually discharge their obligations towards their employers is particularly troublesome, given that work is carried out on board a ship that sails through sovereignty and non-sovereignty areas. While this challenge has been overcome by taking resort to public international law and the responsibilities placed upon flag states, flags of convenience have put that the flag state is the habitual workplace into question. Other jurisdictions such as the place of the business engaging the seafarer or the home port have been explored; however, the latter have proved as easy to manipulate as the ship's registration is. Taking this into account, this book points out that the role of the flag in this sector cannot be easily discarded, in particular after the MLC, 2006, and WFC, 2007, being the answer to the flag-of-convenience issue in the private international law toolkit. In this vein, the difference between international jurisdiction and conflict of laws rules needs to be made.

Seafarers' access to justice requires them to be provided with a choice of several heads of jurisdiction, as the European instruments do. Against this background, the issue of flags of convenience is to be tackled by providing other jurisdiction criteria than the habitual workplace. From this perspective on, the book explores other criteria, in particular the jurisdiction of the ship-owner's establishment and that of the co-defendant, with a view to include the role of manning agencies in maritime employment in the discourse; if they are the one dealing with seafarers' matters, their location ought to be taken into account while providing them access to justice. Along the same lines of expanding the number of jurisdictions available to seafarers, chapter three thoroughly analyses the *forum arresti* provided by the 1952 and 1999 Conventions relating to the Arrest of Seagoing Ships; as well as other heads of jurisdiction include in national legislation, in particular Spanish domestic law which has proved effective in providing seafarers' access to court.

The approach to the jurisdiction of the flag in the chapter devoted to conflict of laws issues is, of course, different as only one law is meant to govern the employment relationship. While the connection 'habitual workplace' seeks to provide for the closest law to the contract, flags of convenience do not fit in this rationale. The solution is not, however, to get rid of the flag law in all cases - as it would not be in line with e.g. the responsibilities that the MLC, 2006 and the WFC, 2007, place on flag states-, but to resort to the escape clause in all those situations in which a closer law to the employment relationship can be found.

The last chapter of the book addresses the collective aspects of maritime employment, an issue which has deserved little attention from a private international law perspective. This is due to the fact that collective bargaining is considered a domestic matter, and there are practically no provisions dealing with its transnational dimension. In the light of the internationalization of the maritime venture, this is particularly troublesome in the shipping and fishing sectors. The gap has been filled up by the International Transport Workers' Federation (ITF), an umbrella association for hundreds of trade unions across the world that coordinates solidarity and strike actions, and concludes transnational collective agreements with ship-owners all over the world. Nevertheless, the ITF's

activity poses challenges if brought before a court to the extent that international jurisdiction and conflict rules are still in its infancy in this sector. While this is not anymore the case of non-contractual liability arising out of the right to strike—which has already found its way to the law in the books as a result of a case involving the ITF, Case C-18/02, *DFDS Torline*—, a case in point is transnational collective agreements and worker rights to participate in the business decision-making bodies, providing this book some interesting solutions to these still open issues.

As a result, *International Maritime Labour Law* has to be considered as a remarkable book, both in terms of the overall vision it provides to the complex phenomenon which is analysed, as well as for the deep study and the different novelties that it provides to the reader.

Guillermo PALAO MORENO  
Universitat de València