

Not in New Zealand's waters, surely? Labour and human rights abuses aboard foreign fishing vessels

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Abstract

In August 2010, *Oyang 70*, a South Korean fishing vessel fishing in New Zealand's exclusive economic zone (EEZ), capsized with the loss of six lives. Beyond the tragedy of the loss of lives, information obtained from the surviving crew detailed labour and other abuses aboard the *Oyang 70*. This is not the first allegation of abuse aboard foreign charter vessels (FCV) fishing in New Zealand's EEZ. New Zealand government policy supports the use of high quality FCVs to complement the local fishing fleet, provided FCVs do not provide a competitive advantage due to lower labour costs and foreign crew receive protection from exploitation. Using the global value chain and global production network analyses, this research examines which institutions are responsible for the working conditions of an important but largely invisible and vulnerable workforce on FCVs in New Zealand waters. Semi-structured interviews were undertaken with key individuals in the fisheries industry and with foreign crew. We found within the fisheries value chain there is an institutional void pertaining to labour standards on board FCVs and in some cases disturbing levels of inhumane conditions and practices have become institutionalised.

Keywords: foreign charter vessels, New Zealand fishing industry; labour abuse; global production networks, global value chain

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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 arrangement¹. 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 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 charter vessels (FCV). It was the *Amaltal Atlantis*, a New Zealand owned and crewed vessel, which 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, as well as others allege labour and other human rights abuses aboard the *Oyang 70*.

This is not the only allegation of abuse aboard 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; MUNZ, 2011). In May 2011, 7 Indonesian crew walked off the Korean *Shin Ji* vessel in Auckland and a month later 32 Indonesian crew walked off the *Oyang 75*³ vessel in Christchurch. All 39 crew cited verbal, psychological and contract abuse including the under-payment and non-payment of wages and a number also alleged sexual harassment, physical abuse, and inhumane punishments.

In their drive to minimize costs and maximise profits, some fishing vessel operators can be lax in respect to labour and safety standards as well as their 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

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 fishes and the quantity of fish it harvests. The vessel is required to be registered as a New Zealand fishing vessel with approval granted by the Director General of the Ministry of Agriculture and Forestry.

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, Hyun Choi (New Zealand Companies Office, 2010).

³ Tu'Ere Fishing Ltd, is the New Zealand charterer of the *Shin Ji* vessel, and SSF, is the New Zealand charterer of the *Oyang 75*. Tu'Ere Fishing is 50 percent owned by Hyun Choi. Following the dispute with the *Shin Ji* crew, Tu'Ere Fishing placed itself in voluntary administration and at the end of June 2011, following the *Oyang 75* dispute, Choi's 100 per cent shareholding in SSF was transferred to his wife (New Zealand Companies Office, 2011).

human rights abuse on foreign crewed deep sea fishing vessels, underpinned by a climate of fear and an industry obsessed with secrecy. Morris's report highlights fraudulent documentation, exploitation, intimidation, coercion, blacklisting, inhumane working conditions, brutal beatings, sexual assault and even murder. Despite the attention his 2001 report received, in 2005 Morris noted that "for most abused seafarers little has changed and in fact, for some conditions have worsened...owners still hide behind layers of secrecy" (Morris, 2005, 21). 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 the *Shin Ji* and *Oyang* vessels which were legally fishing on behalf of New Zealand annual catch entitlement holders in New Zealand's waters.

New Zealand has the world's fourth largest EEZ. During the development of New Zealand's deep water fisheries, foreign joint ventures were seen by the government as necessary. They "encouraged an influx of new ideas, different technologies and ways of fishing" (Rees, 2005, 122). New Zealand government policy supports the use of 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"⁴. 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 last of these that is the focus of this paper.

Against this backdrop key questions in this paper are: which institutions are responsible for overseeing working conditions of an important but largely invisible and vulnerable workforce on FCVs fishing in New Zealand waters? In the case of *Oyang 70* and *Oyang 75*, 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? Or should the chartering party, *SSF* be solely responsible for mitigating labour conditions? Equally, what role do New Zealand institutions play in ensuring labour and other human rights abuses do not occur within its EEZ? Using the global value chain (GVC) and global production networks (GPN) perspectives, this paper addresses these questions from an institutional perspective.

Semi-structured interviews were undertaken by the authors with key New Zealand fishery industry individuals and with foreign crew themselves from a range of FCVs. In order to protect the privacy and confidentiality of those who participated, and in particular the crew and their families, not all of the vessels the foreign crew served on are identified in this paper. Interviews were undertaken in Indonesia in May 2011 with surviving crew from the *Oyang 70*, plus family members of those who perished, as well as with Indonesian crew from other FCVs operating in New Zealand. In total 144 interviews were undertaken. Official documents, including observers' hand written diaries, Ministry of Fisheries reports, Department of Labour (DoL) reports, Immigration New Zealand Approvals in Principles, and Ministerial communications, pertaining to were obtained pursuant to the Official Information Act 1982. Indonesian and New Zealand employment contracts were obtained, along with manning agent wage calculation sheets, pay slips and individual crew bank statements.

⁴ OIA Letter (March 2008)

The paper proceeds as follows. Section Two introduces the GPN and GVC frameworks in order to understand ways in which institutions shape the labour terrain. Section Three discusses key international conventions, treaties and policies pertaining to the governance of labour standards within the fisheries industry. It 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 Four details examples of labour and other abuses aboard FCVs fishing in New Zealand waters. The article concludes with the identification of an institutional void and a call on New Zealand to extend first world governance to marginalized and vulnerable migrant fishers.

2.0 The role of institutions and labour within GPNs

Using the GVC and the related GPN framework, this paper examines the role of institutions governing the global fisheries industry in relation to labour conditions. In his conception of GVCs (originally global commodity chains (GCC)), Gereffi (1994) outlined three key dimensions which shape GVCs: an input-output structure which consists of a set of products, services and resources; a territorial dimension encompassing firms in different locations and distribution networks; and a governance or co-ordination structure. Institutions were later added by Gereffi as the fourth dimension and according to Bair (2005) have not adequately been incorporated into the framework by GVC researchers. GVCs are governed at two levels, firstly at the chain level by lead firms and suppliers, and secondly by institutions which shape the conditions under which a value chain is embedded, thereby impacting on and influencing firm strategy (Gereffi, 1994; Bair, 2005; 2008).

GPN analysis, uses the word 'network' to avoid the linear denotation of a chain, although inevitability there is a vertical dimension, and to emphasises the multi-dimensional nature of relationships and the "complex circulations of capital, knowledge and people that underlie the production of all goods and services" (Coe *et al.*, 2008, 275). The GPN framework emerged, in part, as a critique of GVCs and in particular the failure of the GVC approach to "appreciate the importance of different institutional and regulatory contexts that shape international production systems" (Bair, 2008, 355). Hess and Yeung (2006, 1198; see also Smith *et al.* 2002) go further in stating that the "neglect of institutions...poses a significant problem". Significantly the GVC approach is seen to downplay "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 within its territorial borders" (Bair, 2008, 355).

In contrast, the GPN analysis emphasises a wide range of actors which help influence and shape global production (Coe *et al.*, 2008; Hess and Yeung, 2006; Henderson *et al.*, 2002). Emphasis is placed on the institutional environment in which networks are formed and operated in order to examine "the dynamic linkages and institutionalized power relations that these networks create not just across economic space but also across social and institutional contexts, at national, regional and subnational levels" (Levy, 2008, 951). Actors external to the chain such as institutions, including national governments, multilateral organisations and non-governmental organisations, are active constituents within GPNs. While multilateral institutions play a key role in influencing GPNs particularly in terms of geography, the nation-state remains a key actor as multilateral institutions exist because they are endorsed by nation-states (Coe *et al.*, 2008). Firms which operate in more than one country can be "subject to divergent pressures at the level of national subunits" (Levy, 2008, 948) as national institutions can impose different requirements on firms.

Whilst GVC analysis is inclined to emphasise lead firms as key actors within a “hierarchical system of production”, the GPN approach “focuses on the way that different social actors interact in the process of value creation and capture” (Cumbers *et al.*, 2008, 371). Within GPNs labour can be viewed either as “passive victims as capital seeks cheap labour” (Smith *et al.*, 2002, 47) or as an asset underpinning the structure of production networks. Indeed, upgrading benefits that accrue to firms may not necessarily trickle down to workers, as firm upgrading may actually be achieved through deteriorating working conditions. Cumbers *et al.* (2002, 372) state “labour is too often taken as a given, without a deeper conceptualisation of it as a social category...and its relations to other actors within global capitalism such as ‘the state’ and ‘capital’.”

This paper seeks to understand the relationship between institutions governing the fisheries GPN in regards to labour conditions. In particular, it seeks to examine the role that institutions may, or may not, play in controlling labour abuse aboard FCVs fishing in New Zealand waters. Importantly the regulatory frameworks established by institutions are crucial for the way in which GPNs and labour relations are configured across territorial boundaries. In order to address the question which institutions are legally responsible for working conditions aboard FCVs fishing on behalf of New Zealand companies, this paper will advance the institutional dimension within the GPN debate.

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

Within the fishing industry, companies are increasingly hiring migrant labour from under-developed and developing countries which provide a ready stream of cheap labour (Bloor and Sampson, 2009). Undeniably, a key driver of the globalised fishing industry is the price of the labour itself (Morris, 2002). “Ship-owners consider cost savings on 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). Indeed, outsourcing of labour provides fertile ground for operators to obfuscate their labour obligations.

3.0 Institutions and the Fisheries GPN

The United Nations is the key multilateral institution governing the fisheries GPN and includes a number of specialized agencies which oversee and facilitate global governance. In particular, the 1982 United Nations Convention on the Law of the Sea (UNCLOS) “gives nations rights as well as responsibilities to utilize their living marine resources in a rational and sustainable manner” (FAO, 2010). Together the Food and Agriculture Organisation (FAO), the International Maritime Organisation (IMO) and the International Labour Organisation (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 IMO is responsible for 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, the 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. It aims to improve technologies and working conditions, and ensure the 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 as 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, STCW⁵, and MARPOL⁶. 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).

⁵ 1978 International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW).

⁶ 1973/1978 International Conventions for the Prevention of Pollution from Ships (MARPOL).

In fact, as States ratify the MLC, the provisions of those maritime labour instruments which are applicable to commercial fishing vessels will no longer apply⁷. 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).

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 that vessels flying their 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).

3.1 The Role of the State

There are three main State governance jurisdictions which are collectively responsible for ensuring the maintenance of maritime standards: flag, coastal, and port State controls (Hare, 1997). There are also regional institutions which help shape the fisheries GPN as well as State institutions responsible for labour entry and conditions of work.

Firstly, flag State control, permits a State to exercise its international and domestic powers to regulate the activities of vessels flying its flag. UNCLOS outlines the responsibilities of flag States (FAO, 2010) and in particular 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”. According to Hare (1997), there are well established historical and legal doctrines that permit a coastal State to exercise jurisdiction over vessels that navigate its waters and especially those that call at its ports through port State control. 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.

⁷ The maritime labour instruments are: 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.

However, Hare (1997) noted that the majority of ports pay 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 continue to be used by “economically stressed ship-owners” (Hare, 1997, 2).

Secondly, a coastal State can regulate the activities of foreign vessels in its waters⁸. Thirdly, port State control can assess and enforce compliance of international and domestic regulations. Port State control permits 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). 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).

Furthermore, a number of regional initiatives have resulted in States being bound together in a harmonised port State control system through Memoranda of Understanding (“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, 1997). The objective of the Paris MoU was 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 was “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, 1994¹⁰. 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.

4.0 The New Zealand Fishing Industry

In 2011 there were 27 foreign registered fishing vessels operating in New Zealand’s EEZ under charter arrangements with New Zealand companies. The vessels are chartered complete with crew who are employed via specialized recruitment agents, known as manning agents. While

⁸ In 2007, the United Nations Office of Legal Affairs, Division for Ocean Affairs and the Law of the Sea advised New Zealand, FCV activities “can be regulated by the coastal State in accordance with Article 62(4) of UNCLOS, since the list contained in that provision was not exhaustive” (ILO, 2007b, p. 32).

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 or safety of any person.

there are manning agents who abide by regulations and acceptable standard practices, there are also unscrupulous agents who are perpetrators of labour abuses. These agents will typically target naive, marginalized and vulnerable individuals from the lowest socio economic areas in developing countries to work on foreign flagged deep-sea fishing vessels (Morris, 2001). 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 and pay onerous fees in order to secure a place aboard a vessel (EJF, 2009; 2010). Despite, FCVs fishing in New Zealand waters being “subject to a complex regulatory framework that incorporates elements of flag State responsibility, port State control, fisheries regulation and immigration policy” (SeaFic, 2011). The documented cases of labour abuse in New Zealand’s waters have largely occurred on FCVs (see Table 1).

Table 1: Examples of reported cases of fishermen leaving ships due to abuse and exploitation (2005-2011)

Year	Incident
2005	<ul style="list-style-type: none"> • Six Indonesian fishermen sought refuge from the Korean vessel <i>Melilla 203</i> citing mistreatment. • Ten Indonesian fishermen fled the Korean vessel <i>Sky 75</i> claiming physical and mental abuse. • In a later incident two Vietnamese fishermen fled <i>Sky 75</i> also claiming abuse. • Four Chinese fishermen fled the Korean vessel <i>Oyang 96</i> citing abuse. • Eight Indonesian fishermen fled the <i>San Liberatore</i>, a New Zealand owned vessel. • Crew jumped ship from the Korean vessel <i>Melilla 201</i>; this incident “revealed a history of death, injury and pollution on that ship and its sister ship the <i>Melilla 203</i>” (MUNZ 2011).
2006	<ul style="list-style-type: none"> • Nine Indonesian fishermen fled the Korean vessel <i>Marinui</i> claiming physical and mental abuse. • Twenty seven crew aboard the Ukrainian vessel <i>Malakhov Kurgan</i> went on strike over a wage dispute. • Burmese crew aboard the Korean vessel <i>Sky 75</i> claim abusive treatment.
2009	<ul style="list-style-type: none"> • Eleven Indonesian fishermen fled the Korean vessel <i>Shin Ji</i> claiming physical and verbal abuse and the non-payment of wages. • Four crew jump ship from the Korean vessel <i>Melilla 201</i> citing abusive treatment and long shifts.
2010	<ul style="list-style-type: none"> • A Korean vessel, the <i>Oyang 70</i>, sunk with the loss of six lives. Survivors complain of physical and mental abuse aboard the vessel as well as non-payment of wages.
2011	<ul style="list-style-type: none"> • Seven Indonesian crew leave the <i>Shin Ji</i> early following the drowning of the Bosun. On returning home bonuses were withheld by the manning agent. • Dissatisfied with the insurance payment to the widow of the Bosun, the <i>Shin Ji</i> captain anchored at sea for almost a month refusing to fish. • Seven Indonesian crew fled the Korean vessel <i>Shin Ji</i> claiming physical, mental and sexual abuse as well as the non-payment of wages. • Thirty two Indonesian crew fled the Korean vessel <i>Oyang 75</i> claiming physical, mental and psychological abuse as well as the non-payment of wages.

Source: MUNZ 2011; Interview data

New Zealand has a good record of ratifying and complying with its international obligations. Nevertheless, New Zealand has yet to ratify a number of crucial instruments (see Table 2) that are instrumental for the protection of migrant fishers. Most important are the 1993

Table 2: Key international maritime treaties and agreements – fisheries and shipping

Treaty	Agency	Adopted/entered into force	NZ Action	Entered into force in NZ
International Convention for the Prevention of Pollution from Ships (MARPOL), 1973 as modified by the Protocol of 1978	IMO	1973		
		Entered into force:		
		Annex I - 1983	Accession 1998	25/12/1998
		Annex II – 1987	Accession 1998	25/12/1998
		Annex III – 1992	Accession 1998	25/12/1998
		Annex IV – 2003	-	-
		Annex V – 1988	Accession 1998	25/12/1998
International Convention for the Safety of Life at Sea (SOLAS), 1974 as amended	IMO	1974		
		Entered into force 1980 Protocol of 1988	Accession 1990 Accession 2001	23/05/1990 06/06/2001
International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW) as amended	IMO	1978 Entered into force 1984	Accession 1986	30/10/1986
United Nations Convention on the Law of the Sea (UNCLOS)	UN	1982	Signed 1982	19/07/1996
		Entered into force 1994	Accession 1996	
Torremolinos International Convention for the Safety of Fishing Vessels, Protocol of 1993 (Torremolinos Convention)	IMO	1993 Not yet in force	Early stage of Considering accession	-
Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas	FAO	1993 Entered into force 2003	Acceptance 2005	14/07/2005
International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel personnel (STCW-F)	IMO	1995 Not yet in force	Considering accession	-
Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks	UN	1995 Entered into force 2001	Signed 2001 Ratified 2001	18/04/2001
FAO Code of Conduct for Responsible Fisheries	FAO	1995 Voluntary	No action required	-
Maritime Labour Convention 2006	ILO	2006 Not yet in force	Under assessment	-
Convention Concerning Work in the Fishing Sector 2007	ILO	2007 Not yet in force	Early stage of considering accession	-
Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing	FAO	2009 Not yet in force	Signed 15/12/2009	-

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

Torremolinos Protocol, and the 2007 WIF Convention and its Recommendation. In addition, the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families has yet to be ratified.

In 2004, following an investigation the Department of Labour (DoL) “identified wider labour-related issues”¹¹ aboard FCVs. This investigation, coupled with high levels of desertions (see Table 3), led to the development of a coherent and transparent Code of Practice (CoP) which set out benchmarks for industry behavior. The CoP was authored by DoL, the Seafood Industry Council (on behalf of individual companies), and the New Zealand Fishing Industry Guild. It 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” (DoL *et al.*, 2006, 4). The Code provides clear guidelines for companies that engage FCVs to abide by, for example minimum expectations pertaining to employment agreements, minimum living and working conditions including pay, as well as an audit process. Under the CoP, the New Zealand company should monitor the employer’s performance (operator of the vessel) as well as the performance of the manning agents.

Table 3: Annual number of deserters jumping ship in New Zealand waters

Year	Annual number of ship deserters	Currently lawfully in NZ	Back at sea on ship	Overstayer (unlawfully in NZ)	Removed from NZ	Repatriated by company	Undetermined status	Voluntarily departed NZ
1994	1				1			
1995	3	1			1			1
1996	1				1			
1997	14				14			
1998	26	3		6	13	3		1
1999	20	1		4	9	2	1	3
2000	14			2	10	1		1
2001	28			6	15	6		1
2002	15	1		5	9			
2003	50	2		11	31	2	1	3
2004	157	18		7	104	12	11	5
2005	99	23	1	7	54	8	3	3
2006	29	3		3	11	11		1
2007	28	1		12	9		6	
2008	5	2		3				
2009*	15					15		
2010*								
2011*	46	6				7		32
Total	551	61	1	66	282	67	22	51

Source: 1994-2008 OIA data; 2009-2011 Authors calculations based on interview data

¹¹ OIA Letter (December 2004)

Immigration policy requires that FCV crew hold a work visa. By association the Minimum Wage Act 1983 and the Wages Protection Act 1983 are applicable. As part of the implementation of the CoP, from November 2005, the New Zealand Government set out minimum wage entitlements for FCV crew. The regulations were further strengthened and from 1 January 2009; crew were entitled to be paid at least the minimum hourly wage plus an extra \$NZ2.00 per hour. In 2011, FCV crew pay increased to a total of \$NZ15 an hour. In no instance are employers permitted to pay less than 42 hours per week or pay less than the minimum hourly rate after deductions. Furthermore under the CoP, if the employer refuses to pay the minimum entitlement, then the New Zealand company can be required to pay. FCV operators vigorously opposed the minimum remuneration requirements on the basis of the additional cost¹², and in 2009 the industry asked the Minister of Immigration to weaken the protections afforded to migrant crew. The Minister declined to do this¹³.

4.1 Labour and human rights abuses in New Zealand's EEZ

Interviews undertaken with foreign crew and former observers reveal that serious physical, mental, sexual and contract abuse is commonplace with many crew forced to work in substandard and often inhumane conditions. Furthermore, foreign crews are not receiving their legal minimum wage entitlements as outlined under the CoP. The next sub-sections detail some of our findings.

4.1.1 Substandard and inhumane working conditions

Aboard the *Oyang 70*, the 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 and 6, 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 and 20, 2011). FCVs have been described 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) wherein workers "live like rats" (Interviewee 10, 2011). Workers were required to bathe in salt water and would often find that the water heater was switched off after their shift had ended (Interviewee 20, 2011). Drinking water for crew was a rusty colour and unboiled while the officers enjoyed boiled or bottled water (Interviewees 6, 13 and 20, 2011). A number of interviewees complained of food being inadequate in quality and quantity and after about 20 days into a 40 day voyage food supplies were rationed and the galley locked (Interviewees 20, 34, 38 and 40, 2011). Often crews were fed just fish and rice or indeed in the case of one entire crew they were fed rotten fish bait (Interviewees 4, 35, 38 and 39, 2011). This is in contrast to the officers who were served a variety of food throughout the voyage. The difference between the conditions that workers experienced on the *Oyang 70* and the rescue ship the *Amaltal Atlantis* is well encapsulated in the following comment by an Indonesian survivor "this boat was like some kind of a hotel. Whoa it was good – clean, beautiful, safe, sweet smelling...[the New Zealand crew] showed extreme compassion from the highest to the lowest – even the deckhands showed compassion to me, an Indonesian" (Interviewee 100, 2010).

Fatigue is a common cause of accidents aboard FCVs. "I saw that [Sxxxx] was sleepy in front of the fish cutting machinery and his hand was cut. I, myself, got cut by the wire when I worked on the deck when I was sleepy and I even fainted that time. Accidents like this happen

¹² OIA Letter (May 2008)

¹³ OIA Letter (October 2009)

frequently, especially, on the fish season” (Interviewee 84, 2011). Many crew said only one set of wet weather gear was issued for the term of their contract, one set of gloves per month and no safety goggles, earmuffs or safety harnesses (Interviewees 59, 65, 69, 70 and 72, 2011). Other incidents include fingers being crushed in conveyer belts, fingers crushed between frozen 12kg pans of fish, chest injuries from falls, being caught, tripped and somersaulted by a wire when pulling nets. In the majority of cases, the injured crews were only given band aids, expired medicine or refused treatment and the accidents were not recorded in the ships logs or reported to Maritime New Zealand (Interviewees 43, 52 and 62, 2011). Often injured crew were instructed by officers to remain in their quarters while the vessel was in port, so that New Zealanders would not see their injuries (Interviewees 35, 36, 39 and 40, 2011).

In addition to the substandard living and working conditions and vulnerability to accidents, crew were also victims of relentless verbal and physical abuse. Muslim workers are frequently referred to as dogs – a very derogatory and offensive term for Muslims – and monkeys (Interviewee 20, 34, 38 and 39, 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 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” (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...also saw the Indonesian helmsman kicked in the genitals by an officer, because he turned the vessel the wrong way...bleeding and needed medical attention” (Interviewee 15, 2011). One Indonesian crew member was eating lunch, when without cause the Bosun placed a rice sack over his head from behind and proceeded to punch the back of his head until he had trouble breathing (Interviewee 62, 2011). On the same vessel crew members were frequently hit across the back of head for no obvious reason (Interviewees 42, 43, 44, 45, 46 and 47, 2011). Crew also reported unprovoked cruel punishments: made to stand on deck for hours, without food or water in extreme weather conditions (Interviewees 34, 36, 37 and 40, 2011). Crew felt the intention of these ruthless acts of random violence and punishments was to intimate and control them with fear.

On one vessel Indonesian crew members were required to give the captain a daily massage and continue to do so even after the captain had fallen asleep (Interviewees 34, 35 and 40, 2011). The Bosun on another vessel would frequently moon the Indonesian workers while they were eating lunch as well as pulling out his penis for crew to touch (Interviewees 58, 59, 60 and 61, 2011). One crew member in particular was frequently targeted by the same Bosun who would steal his clothes while he was in the shower and chase him around the ship naked (Interviewee 64, 2011). Another interviewee would wake to find an officer caressing his body while he slept (Interviewee 58, 2011) while yet another feared that he would be raped (Interviewee 53, 2011).

Interviewees were asked why abused crew did not complain to port State authorities. One New Zealand interviewee (Interviewee 6, 2011) encapsulates the response: “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”. Another 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). Moreover an official audit by DoL reported “if anyone

stands against this abuse, it has been known for them to be taken to a private cabin and beaten” (DoL, 2004, 15).

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 worked¹⁴. In addition, crew claimed to have signed two different employment contracts (one for the Indonesian manning agent and the other for the NZ charter company) and did not know what they were signing when they signed their timesheets. This caused DoL to raise with their Minister issues concerning minimum pay entitlements for crew¹⁵ and the non-transparent chain of recruiting and manning agents¹⁶. 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”.

Nevertheless wage abuse still occurs. While under the CoP, crew are required to be given a copy of the employment contract in their own language, 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 (Interviewees 20, 34, 37, 40, 43, 44 and 46, 2011). Furthermore, a comparison of the Indonesian manning agent contract with the New Zealand contract highlights sharp differences. Indonesian manning agent contracts we sighted reveal crew members are paid between \$US230 to \$US500 per month based on their position and level of experience. This is well below what they are entitled to under the New Zealand minimum wage. This was further supported by our analysis of manning agent salary calculation sheets and individual bank statements. In addition, under threat of financial penalty or some other sanction, crew had no choice but to sign their timesheets, even though the number of hours recorded were grossly understated (Interviewee 20, 35, 36, 48, 49, 50, 56, 57 and 58, 2011).

Indonesian crew are recruited by manning agents in Indonesia who work closely with manning agents in Korea. Either the vessel owner or their Korean based manning agent pay the Indonesian manning agents who in turn pay the individual crew, less deductions, exchange rate losses and transfer fees. According to interviewees, the Indonesian contract between the manning agent and the crew or employer is not seen by DoL (Interviewee 20 and 79, 2011)¹⁷. The crew’s family receives on average 50 percent of the monthly salary with the remaining balance withheld until the successful completion of the contract. Many times, however, the withheld balance is not paid in full. On one vessel, the family payments were held back for three months before being paid (Interviewees 34, 36 and 40, 2011). The practices of some

¹⁴ 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”.

¹⁵ OIA Letter (May 2008)

¹⁶ OIA Letter (May 2008)

¹⁷ This has also been confirmed by a DoL OIA Audit (December 2009)

manning agents, for example, forcing workers to pay extortionate fees in order to get the job “is expressly prohibited under ILO Conventions 9¹⁸ and 179¹⁹, which requires the ship owner to pay the agent” fees (Morris, 2001, 44). Furthermore, 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).

In 2009 following the desertion of four crew from a Korean FCV, DoL launched an audit and an investigation of the issues raised by the deserters²⁰. 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”²¹. 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 overtime rates on public holidays or receiving holiday pay, and when in port was required to work a 12 hour shift.

Based on interviews undertaken along with documents obtained from crew, our analysis reveals that foreign crew on Korean flagged vessels receive between \$NZ6,700 to \$11,600 per annum after deductions for airfare, visas, and food (see Table 4). This is in sharp contrast to the guidelines outlined under the CoP.

Table 4: Employment conditions aboard FCVs

- Employment is through Manning Agents who require money and collateral to secure the job (e.g. education certificates, land certificates, house titles and additional money i.e. \$US250)
- Salary \$US250-\$500 per month paid to Manning Agent, as per the Indonesian contract, (50% paid to family with 50% less fees paid to crew at end of 2 year contract)
- On average work crew work 16 hours a day (112 hours per week); shifts can be up to 53 hours in length
- No days off during 2 year contract
- Forced to engage in extensive dumping and high-grading practices
- Lack of transparency with timesheets, wage calculations and employment costs. Crew are required to sign false timesheets
- Bonus \$NZ250-\$350 per month paid in cash at end of contract at the airport
- Fined \$US2,000-\$10,000 for abandoning contract, even if seeking refuge from abuse.

Source: Interview data

¹⁸ Placing of Seamen Convention, 1920

¹⁹ Recruitment and Placement of Seafarers Convention, 1996

²⁰ DoL OIA Audit (December 2009)

²¹ DoL OIA Letter (December 2009)

5.0 Discussion and Conclusion

Using the GVC and GPN frameworks, this research has sought to address which multilateral and national institutions have oversight of labour conditions aboard foreign charter vessels fishing in New Zealand waters. The GPN analysis places “emphasis on the social and institutional embeddedness of production, and power relations between actors, which vary as sourcing is spread across multiple developing countries” (Barrientos *et al.* 2010, 4). Working conditions for workers along a production network vary depending on their position within the value chain. Our findings revealed that fishing crew, at the very beginning node of the fisheries production network are subject to precarious labour conditions and employed at the least possible cost. They are considered as mere factors of production – just another commodity - in order for other actors along the network to enhance their returns. Although there are institutional governance structures in place, we question the effectiveness of these institutions in protecting the rights of the foreign crew aboard foreign charter vessels.

GPN researchers view the State as taking an active role in networked firm activities and 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 GPNs in particular locations, however within the fisheries value chain there is an institutional void, or spatially limited power - within New Zealand pertaining to labour standards on board FCVs. The industry and DoL developed clear guidelines for those employing FCVs, yet they are not legally binding (Devlin, 2009) and appear to be woefully ineffective. Interviews undertaken with foreign crew working aboard FCVs reveal serious abuse, work periods of up to 20 hours per day with extreme shifts of 53 hours, workers not receiving their minimum wage entitlement, inhumane and cruel living conditions including food rationing, and obscured but real Indonesian employment contracts which existence is denied by New Zealand institutions. Indeed, labour practices at the very beginning of the fisheries production network appear to go entirely unmonitored.

At the multilateral institutional level, the FAO, IMO, and the ILO have urged maritime States to ratify and implement much needed maritime conventions and agreements. 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. New Zealand should urgently heed the advice of the United Nations Office of Legal Affairs, Division for Ocean Affairs and the Law of the Sea, insofar as, “the matters dealt with by the proposed [WIF] Convention could possibly qualify as matters that can be regulated by the coastal State in accordance with Article 62(4) of UNCLOS, since the list contained in that provision was not exhaustive” (ILO, 2007b, 32).

When FCVs 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. 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 and Hunt (2011) argue 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. 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 regulate the operation of FCVs vessels, however the evidence is undeniable - the CoP has failed to prevent the abuses described in this article. The quality of the present governance system is the limiting factor. As the CoP is not an Act of Parliament it is not legally binding (Devlin, 2009; Dawson and Hunt, 2011). Not one New Zealand institution with oversight for the fisheries industry – e.g. Maritime NZ, DoL, Immigration New Zealand or the New Zealand Police – effectively enforced the CoP on behalf of the *Shin Ji* and *Oyang 75* crews. The 39 crew from these two vessels remained in New Zealand for a number of weeks seeking the entitlements they were supposed to enjoy under the CoP. In the end all but six crew returned home largely empty handed. The treatment that the crew received is in violation of the CoP which clearly 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” (DoL *et al.*, 2006, 10). Under the CoP, if an Employer is not meeting its obligations as outlined in the CoP, then the employee can “require the New Zealand person or organisation to pay them” (DoL *et al.*, 2006, 12). Unfortunately for the seven *Shin Ji* crew, when confronted with wage demands, the New Zealand agent Tu’Ere Fishing, placed itself in voluntary administration leaving little recourse for the crew.

Like all research, our research 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 quality operators 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 is widespread and continues unabated. The legislative framework within which these vessels operate needs to be urgently re-examined in order to provide the protections that migrant crew so rightly deserve. Only through complete transparency along the entire fisheries value chain coupled with improvements to accountability can the insidious practices identified by this research, be stamped out. Ultimately, these vulnerable at risk migrant workers depend on first world States like New Zealand 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. In the words of the ITF (2006, 36) “It is time to raise the profile of the human element of these global industries”.

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