

**SOCIAL PROTECTION FOR SEAFARERS
UNDER MARITIME LABOUR CONVENTION,
2006**

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Abstract

The provisions relating to the social protection for seafarers have existed since ancient times under various definitions of the term "seafarer". The International Labour Organization, 1920 established laws concerning both the rights of seafarers at work and their social protection. The Maritime Labour Convention, 2006 (MLC, 2006) is the most significant development of seafarers' rights, covering the social protection of seafarers: wages; hours of work and rest; medical care on board and ashore; their health protection; welfare of seafarers; and prevention of accidents; and social security. Under Title 4 of the MLC, 2006, social protection means health protection, medical care, welfare and social security protection, and refers to medical care on board ship and ashore, shipowners' liability and social security. Social protection is laid down as a right of all seafarers in Article IV of the MLC, 2006, a right which ratifying States have the obligation to ensure. All states must respect and give priority to the social protection rights of seafarers because they are the human element of the shipping industry. In addition, the responsibilities of states have grown exponentially in the areas of social protection, and regional organizations are being reformed for seafarers to be adequately covered by social protection in accordance with the MLC, 2006.

Abbreviations

AEC	ASEAN Economic Community
AMOSUP	Associated Marine Officers and Seamen's Union of the Philippines
APSC	ASEAN Political-Security Community
ASCC	ASEAN Socio-Cultural Community
ASEAN	Association of Southeast Asian Nations
CMI	Comite Maritime International
DMA	Department of Marine Administration
DMLC	Declaration of Maritime Labour Certificate
EC	European Community
ECSA	European Community Shipowners' Association
ETF	European Transport Workers' Federation
EU	European Union
FAL Convention	Convention on the Facilitation of International Maritime Traffic
FMN	Filipino Maritime Network
FOCs	Flags of Convenience
FST	Federation of Transport Workers Unions
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICMA	International Christian Maritime Association
ICSW	Committee on Seafarers' Welfare
IFOMS	Independent Federation of Myanmar Seafarers
ILC	International Labour Conference
ILO	International Labour Organization
IMCO Convention	Convention on the Intergovernmental Maritime Consultative Organization
IMO	International Maritime Organization
ISLA	International Seamen's Mutual Labor Association
ISPS	International Ship and Port Facility Security Code
ITF	International Transport Workers Federation

JMC	Joint Maritime Commission
MARINO	Mariners' Association for Regional and International Networking Organization
MARPOL	The International Convention for the Prevention of Pollution from ships
MATEU	Marine Transport Employees Union
MLC, 2006	Maritime Labour Convention, 2006
MMWF	Myanmar Maritime Workers' Federation
MOSA	Myanmar Overseas Seafarers Association
MSF	Myanmar Seamen's Federation
MSs	Member States
NGOS	Non-government organization
P&I	Protection and Indemnity Club
POEA	Philippine Overseas Employment Agency
POSU	Philippine Officers & Seamen's Union
PSAP	Philippine Seafarers' Assistance Program
PSC	Port State Control
PSU	Philippine Seafarers Union
S.U.B	Seafarers Union of Burma
SCI	Seamen's Church Institute of New York & New Jersey
SD	Seafarer Division
SOLAS	The International Convention for the Safety of Life at Sea
STCW	The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers
UFS	The United Filipino Seafarer
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea

Introduction

Although the term "seafarer" has been defined in different ways by the various maritime instruments, today, it is commonly taken to mean everybody who is working on a ship. That is not only people engaged in navigating and operating the ship but also those employed in any other capacity on a ship. The maritime laws and statutes enacted by maritime nations, in keeping with the maritime conventions, contain provisions for the social protection of seafarers.

Under the definition of the International Labour Organization (ILO), social protection is referred to as the set of public measures that a society provides for its members to protect them against economic and social distress that would be caused by the absence or a substantial reduction of income from work as a result of various contingencies (sickness, maternity, employment injury, unemployment, invalidity, old age, and death of the breadwinner); the provision of health care; and, the provision of benefits for families with children. Social protection is also a human right laid down in fundamental international human rights instruments.

The ILO endeavored in 1919 to advance the cause of social justice and contribute to the establishment of universal and lasting peace. Since 1920, the ILO has been promoting seafarer rights by adopting conventions and recommendations specifically related to maritime labour. However, some conventions were out of date and did not reflect contemporary working and living conditions on board ships. So, the ILO adopted the Maritime Labour Convention (MLC), 2006 on 23 February 2006 at the 10th maritime session and 94th session of the International Labour Conference (ILC).

The Maritime Labour Convention, 2006 sets international standards for the world's first genuinely global industry. It is widely known as the "seafarers' bill of rights". It is unique in that it aims both to achieve decent work for seafarers and to secure economic interests through fair competition for quality ship owners. The Convention is comprehensive and sets out, in one place, seafarers' rights to decent working conditions. It is readily updatable and uniformly enforced and will become the "fourth pillar" (The International Convention for the Safety of Life at Sea (SOLAS), the International Convention for the Prevention of Pollution from ships

(MARPOL), the International Convention on Standards of Training, Certification and Watchkeeping for seafarers (STCW)), of the international regulatory regime for quality shipping, complementing the key conventions of the International Maritime Organization (IMO) dealing with safety and security of ships and protection of the marine environment.

Under Article IV of the MLC, 2006, every seafarer has the right to:

- a safe and secure workplace that complies with safety standards
- fair terms of employment
- decent working and living conditions on board ship
- health protection, medical care, welfare measures and other forms of social protection.

According to the MLC, 2006, social protection means as health protection, medical care, welfare and social security protection and deals with medical care on board ship and ashore; shipowners' liability and social security.

Today, world trade is mainly carried by shipping. Seafarers play a vital role in the maritime shipping sector. The social rights of seafarers must be respected and given priority by all states concerned. The MLC, 2006, establishes a system based on responsibilities as flag states, port states and labour supply states. Moreover, the Convention provides a no more favourable treatment clause for ships of non-ratifying members. Each member state of ILO therefore, is required to implement the MLC, 2006.

Similarly, the regional organizations need to reform for seafarers in order to be adequately covered by social protection in accordance with the newly Convention. Today the shipping sector has allowed various systems and flexibilities. This has become complicated and caused issues for seafarers to access social protection, mainly, because, workers and employers are often based in different countries, often with differing approaches to the provision of social security and often with very different levels of economic and social development. By employing a uniform system, as provided by the MLC, such issues would be eliminated.

The European Union (EU) is one of the regional organizations and a leading player in the global maritime industry. It comprises 28 member states. Many of EU the member states have completed social protection benefits. In the EU, the legal provisions relating to seafarers provide more uniform protection of seafarers' labour rights and provide same rights enjoyed by shore workers. The EU was strongly

involved throughout the process of adoption, ratification and implementation of the MLC, 2006.

Similarly, the Association of Southeast Asian Nations (ASEAN) is also a regional organization and a major source of seafarers for the international shipping industry. It comprises 10 member states. Under the ASEAN Charter, the people of ASEAN member states have the right to equitable access for human development, social welfare and justice. ASEAN member states have differing national policies on the seafaring industry. But, seafarer unions play an important role in the protection of seafarers' rights. Among the member states, the MLC, 2006, has been ratified by only four states (Malaysia, Philippines, Singapore and Vietnam). Many ASEAN member states already had their national maritime labour laws in line with ILO standards. However, it is necessary for each member state of the ILO to implement the MLC, 2006. At present, a number of ASEAN member states are attempting to implement the MLC, 2006. In Myanmar, a member state of the ILO and ASEAN, the problem is that seafarers are faced with a lack of social protection. Moreover, in the Myanmar Merchant Shipping Act, 1923, the provisions concerning social protection for seafarers are not sufficient for the security and safety of seafarers. It has, thus, become necessary to explore the laws and regulations regarding the social protection of seafarers under the present situation and to supplement them, where necessary, with provisions that ensure the social protection for seafarers, in line with MLC, 2006.

Chapter 1

Definition and Nature of Social Protection for Seafarers

The term “seafarer” is defined variously in the international labour conventions, maritime instruments and other documents. The definitions have several basic structural components in common. The provisions relating to social protection for seafarers existed since the ancient times. But, the world shipping industry has gradually evolved into such a unique structure that it has become complicated for sea-based workers to access social protection. Therefore, the International Labour Organization (ILO) has adopted a number of international standards (Conventions and Recommendations) relating to social protection for seafarers since 1920.

1.1 Definition of Seafarers

The International Labour Organization (ILO) has adopted many Conventions and Recommendations that contain various definitions of the term “seafarer” which vary widely in order that they may serve the different goals and scope of the individual Conventions and Recommendations. The two types of terms, namely “seaman (seamen)” and “seafarer (seafarers)” are included in the ILO maritime instruments.

Out of these two types of terms, found in the ILO maritime instruments, the Conventions (No. 8, 9, 22 and 23)¹ which ran during the 1920s, contain, the term “seaman”.

¹ Unemployment Indemnity (Shipwreck) Convention, 1920 (No.8), Placing of Seamen Convention, 1920 (No.9), Seamen’s Articles of Agreement Convention, 1926 (No.22), Repatriation of Seamen Convention, 1926 (No.23).

The term “seamen” includes all persons employed on any vessel engaged in maritime navigation.² “Seamen” is also defined as all persons, except officers, employed as members of the crew on vessels engaged in maritime navigation.³

According to the Seamen’s Articles of Agreement Convention, 1926 (No.22), the term of “seamen” includes every person employed or engaged in any capacity on board any vessel and entered on the ship's articles. It excludes masters, pilots, cadets and pupils on training ships and duly indentured apprentices, naval ratings, and other persons in the permanent service of a Government.⁴

The definition of seafarer in Convention No.23⁵ is similar to the definition of Convention No. 22.

Thus, the term “seaman” refers to any person employed or engaged to serve in any capacity on board a vessel. Seamen are also called sailors or mariners. With respect to the laws affecting seamen, the term is generally used in the sense which it is given in the construction of the British statutes relating to merchant shipping as “any person (except masters, pilots and apprentices) employed or engaged in any capacity on board any ship”. In most countries seamen are required to pass an examination as to eyesight, hearing and physical condition, and to give evidence as to service and capabilities. In law the term “seaman” usually refers to any man serving on board a seagoing vessel below the rank of officer.⁶

The Social Security (Seafarers) Convention, 1946 adopted and used the term “seafarer” for the first time. According to the Social Security (Seafarers) Convention, 1946 (No.70), “seafarer” includes every person employed on board or in the service of any sea-going vessel, other than a ship of war, which is registered in a territory for which this Convention is in force.⁷ The meaning of the term “seafarers” of the Seafarers' Pensions Convention, 1946⁸ is almost identical to the meaning in Convention No.70.

In the case of four sets of Conventions supplemented by Recommendations – Convention No.180 and its accompanying Recommendation No.187, Convention No. 145 and its Recommendation No.154, Convention No.163 and its following

² Unemployment Indemnity (Shipwreck) Convention, 1920 (No.8), Article-1, para-1.

³ Placing of Seamen Convention, 1920 (No.9), Article-1.

⁴ Seamen’s Articles of Agreement Convention, 1926 (No.22), Article-2, para-b.

⁵ Repatriation of Seamen Convention, 1926 (No.23), Article-2, para-c.

⁶ Kerchove, R, de., “International Maritime Dictionary”, 2nd edition, May 1973.

⁷ Social Security (Seafarers) Convention, 1946 (No.70), Article-1, para-a.

⁸ Seafarers' Pensions Convention, 1946 (No. 71), Article-1.

Recommendation No.173 and Convention No.134 complemented by Recommendation No.142 – the definition of “seafarer” in the Recommendations take after that of seafarer in their Conventions.

Under the Seafarers Hours of Work and the Manning of Ships Convention, 1996 (No.180), the term “seafarer” means any person defined as such by national laws or regulations or collective agreement who is employed or engaged in any capacity on board a seagoing ship to which this Convention applies.⁹

In the Prevention of Accident (Seafarers) Convention, 1970 (No.134)¹⁰, as well as its accompanying Recommendation No. 142¹¹, the term of “seafarer” covers all persons who are employed in any capacity on board a ship, other than a ship of war, registered in a territory for which this Convention is in force and ordinarily engaged in maritime navigation.

In the Continuity of Employment (Seafarers) Convention, 1976 (No.145), the term “seafarers” means persons defined as such by national law or practice or by collective agreement who are normally employed as crew members on board a seagoing ship other than-

- (a) a ship of war;
- (b) a ship engaged in fishing or in operations directly connected therewith or in whaling or in similar pursuits.¹²

The Recommendation No. 154 contains the same meaning as Convention No.145.

In the Seafarers’ Welfare Convention, 1987 (No.163)¹³, “seafarer” means any person who is employed in any capacity on board a seagoing ship, whether publicly or privately owned, other than a ship of war. Also, Recommendation No.173¹⁴ provides the same meaning.

Following the Health Protection and Medical Care (Seafarers) Convention, 1987 (No.164)¹⁵, the Repatriation of Seafarers Convention (Revised), 1987 (No.166)¹⁶ defines “seafarer” as any person who is employed in any capacity on board a seagoing ship to which this Convention applies.

⁹ Seafarers Hours of Work and the Manning of Ships Convention, 1996 (No.180), Article-2 (d).

¹⁰ Prevention of Accident (Seafarers) Convention, 1970 (No.134), Article-11, Para-1.

¹¹ Prevention of Accident (Seafarers) Recommendation, 1970 (No. 142), para-1(a).

¹² Continuity of Employment (Seafarers) Convention, 1976 (No.145), Article-1, para-2.

¹³ Seafarers' Welfare Convention, 1987 (No. 163), Article-1, para-a.

¹⁴ Seafarers' Welfare Recommendation, 1987 (No.173), para-1 (a).

¹⁵ Health Protection and Medical Care (Seafarers) Convention, 1987 (No.164), Article-1, para-4.

¹⁶ Repatriation of Seafarers Convention (Revised), 1987 (No.166), Article-1, para-1.

Under the Social Security (Seafarers) Convention (Revised), 1987 (No.165), the word “seafarers” means persons employed in any capacity on board a seagoing ship which is engaged in the transport of cargo or passengers for the purpose of trade, is utilized for any other commercial purpose or is a seagoing tug, with the exception of persons employed on –

- (i) small vessels including those primarily propelled by sails, whether or not they are fitted with auxiliary engines;
- (ii) vessels such as oil rigs and drilling platforms when not engaged in navigation;

The decision as to which vessels and installations are covered by clauses (i) and (ii) is taken by the competent authority of each member in consultation with the most representative organizations of shipowners and seafarers.¹⁷

As regards other international instruments, the Convention on Facilitation of International Maritime Traffic (FAL Convention) provides: “crew member” means any persons actually employed for duties on board during a voyage in the working or service of a ship and included in the crew list.¹⁸

According to the British Merchant Shipping Act, 1995, the term of “seamen” includes every person (except masters and pilots) employed or engaged in any capacity on board any ship.¹⁹

In the Accident Prevention on Board Ship at Sea and in Port, “seafarer” means any person employed in any capacity on board a seagoing ship or vessels engaged in commercial maritime navigation, whether publicly or privately owned, other than a ship of war.²⁰

In the Myanmar Merchant Shipping Act, 1923, “seaman” means every person (except masters, pilots and apprentices duly indentured and registered) employed or engaged in any capacity on board any ship.²¹

Under the Maritime Labour Convention, 2006 (MLC, 2006), “seafarer” means any person who is employed or engaged or works in any capacity on board a ship to which this Convention applies.²² Therefore, any person working on board a ship would be considered to be a seafarer, regardless of whether engaged specifically for

¹⁷ Social Security (Seafarers) Convention (Revised), 1987 (No.165), Article-1, para-c.

¹⁸ Convention on Facilitation of International Maritime Traffic, 1965, Annex Section-1.

¹⁹ British Merchant Shipping Act, 1995, Section-313.

²⁰ ILO: “Accident Prevention on Board Ship at Sea and in Port”, 2nd edition, 1996, para-3.

²¹ The Myanmar Merchant Shipping Act, 1923, Section-2(8).

²² Maritime Labour Convention, 2006, Article-II, para-1(f).

the time of the charter by the shipowner or the charterer, or employed on a permanent basis with the former or the latter.

The term “seaman” is therefore very broad under General Maritime Law. In the United States of America (USA), the intention of Congress is to protect seamen, and to include all seamen hired to serve on board a vessel. Accordingly, Federal Courts have determined that the term “seaman”:

- Extends to all persons employed on a vessel to assist in the main purpose of the voyage.
- Extends to all persons whose duties are maritime in character and rendered on vessels engaged in commerce or trade, in navigable waters.
- Includes anyone employed on a vessel to which an American corporation holds legal title and which another American corporation operates under demise charter.
- Shall include persons who otherwise might be deemed not to be a seamen; it includes some that might otherwise be excluded; it does not take anyone out who would otherwise be there.²³

Upon taking all the above definitions into consideration it would appear that any member of the crew, including, *inter alia*, a captain, chief engineer, engineer, second engineer, assistant engineer, first mate, second mate, officer, boson, chef, crew chef, deckhand, chief stewardess or chief steward, and stewardess and/or steward will be within the definition of “seafarer”.²⁴ This could lead to uncertainty in deciding if a certain category of person could be regarded as a seafarer. In this connection, the MLC states that, in the event of doubt as to whether any categories of persons are to be regarded as seafarers for the purpose of the Convention, the question shall be determined by the competent authority in each member after consultation with the shipowners’ and seafarers’ organizations concerned with this question.²⁵

Although there is a wide variety of definitions of "seafarer" in ILO maritime instruments, these definitions have several basic structural components in common.²⁶

²³ <http://www.1800jonesact.com/book/maritime.html>

²⁴ Jennifer Lavelle, "The Maritime Labour Convention 2006: International Labour Law Redefined", Informa Law from Routledge, 2014, p. 73.

²⁵ Maritime Labour Convention, 2006, Article-II, para-3.

²⁶ ILO: Second Meeting: “Definitions and Scope of Application Provisions in Existing ILO Maritime Instruments and Related Texts”, High-level Tripartite Working Group on Maritime Labour Standards, doc. TWGMLS, Geneva, 2002, para-6.

Of these various components, “capacity of persons on board” and “nature of vessels on board which seafarers are employed” are vital. Concerning “capacity of persons”, the most common formulation is “employed in any capacity on board”.²⁷

Additionally, MLC, 2006, applies to all ships, publicly or privately owned, which are engaged in commercial activities. But, ships engaged in fishing, ships of traditional build (dhows and junks), warships or naval auxiliaries, or ships which exclusively navigate inland waters where port regulations apply are not covered by the new Convention. Also, there are provisions to exempt smaller ships (200 gross tonnage and below) not engaged in international voyages from certain aspects of the Convention. So, seafarers who work on these categories of excluded vessels are not under the care and protection of the MLC 2006.

Therefore, under the MLC, 2006, everybody who is working on board a ship would be regarded as a seafarer. When compared with the former Conventions, this would mean that not only the people involved in navigating and operating the vessel but also those on a cruise ship vessel (e.g. musicians, hair dressers, shop assistants, etc.) would be included. So, the definition of seafarer under MLC, 2006 is clearer than the other ILO Conventions in order to understand the meaning of workers which are covered as seafarers specifically. Under MLC, 2006, everybody who is working on board a ship may have the better rights and remedies. For shipowners, there may be more socially responsible in shipping industry.

1.2 Definition of Social Protection

The definition of “social protection” is defined by the International Labour Organization (ILO) and other international organizations.

“Social protection” is defined by the ILO as the set of public measures that a society provides for its members to protect them against economic and social distress that would be caused by the absence or a substantial reduction of income from work as a result of various contingencies (sickness, maternity, employment injury, unemployment, invalidity, old age, and death of the breadwinner); the provision of health care; and, the provision of benefits for families with children.²⁸

²⁷ ILO: Second Meeting: “Definitions and Scope of Application Provisions in Existing ILO Maritime Instruments and Related Texts”, High-level Tripartite Working Group on Maritime Labour Standards, doc. TWGMLS, Geneva, 2002, para-7.

²⁸ ILO: World Labour Report: “Income Security and social protection in a changing world”, 2000, Geneva, p. 29.

The definition of “social protection”, according to the United Nations (UN), differs substantially among societies in terms of how they approach and define social protection. Differing traditions, cultures and organizational and political structures affect definitions of social protection, as well as the choice about how members of society should receive that protection. Social protection is broadly understood as a set of public and private policies and programmes undertaken by societies in response to various contingencies to offset the absence or substantial reduction of income from work; to provide assistance for families with children as well as to provide people with health care and housing.²⁹

According to the International Monetary Fund, Government outlays on “social protection” include expenditures on services and transfers provided to individual persons and households, and expenditures on services provided on a collective basis. Expenditures on individual services and transfers are allocated to groups though expenditures on collective services are assigned to groups. Collective social protection services are concerned with matters such as the formulation and administration of government policy, the formulation and enforcement of legislation and standards for providing social protection, and applied research and experimental development into social protection affairs and services.³⁰

The Organization for Economic Co-operation and Development has defined “social protection” as policies and actions which enhance the capacity of poor and vulnerable people to escape from poverty and enable them to manage risks and shocks better. Social protection measures include social insurance, social transfers and minimum labour standards.³¹

According to the World Bank, Social Protection is a collection of measures to improve or protect human capacity, ranging from labour market interventions and publicly mandated unemployment or old- age insurance to targeted income support. Social Protection interventions assist individuals, households, and communities to better manage the risks that leave people vulnerable.³²

²⁹ United Nations Economic and Social Council (ECOSOC), “Enhancing Social Protection and Reducing Vulnerability in a Globalizing World: Report of the Secretary-General”, New York, 2000, p. 4.

³⁰ <http://www.imf.org>

³¹ The Organization for Economic Co-operation and Development (OECD), “Promoting pro-growth social protection. Tech. rep”., 2009, p. 12.

³² <http://www.worldbank.org>

With regard to the definition of the “social protection”, expressed by the United States Agency for International Development, social protection is public intervention that seek to enable poor and vulnerable households to increase their ability to manage risk, thereby allowing them to contribute to, participate in and benefit from, economic growth.³³

Under the definition of the African Union, “social protection” encompasses a range of public actions carried out by the state and others that address risk, vulnerability, discrimination and chronic poverty.

The right to social security in childhood, old age and at times of disability is expressed in a range of International Human Rights Declarations and treaties. Social security transfers in the form of, for example, pensions, child benefits and disability allowances are considered to be core elements of a comprehensive social protection system.³⁴

According to the Asian Development Bank, "social protection" is a set of policies and programs designed to reduce poverty and vulnerability by promoting efficient labour markets, diminishing people's exposure to risks, and enhancing their capacity to protect themselves against hazards and the interruption/loss of income.³⁵

With regard to the definition of “social protection”, the Caribbean Development Bank defined it as all interventions from public, private, voluntary organization and social networks, to support communities, households, and individuals, in their efforts to prevent, manage, and overcome a defined set of risks and vulnerabilities.³⁶

"Social protection" expressed by the Department for International Development is a sub-set of public actions carried out by the state or privately that address risk, vulnerability and chronic poverty.³⁷

The term social protection is also used in MLC, 2006 and means, health protection, medical care, welfare and social security protection. Under MLC, 2006,

³³ B. Paolo and O. Marie, “Social protection for development: a review of definitions”, European University Institute, Firenze, Italy, 2010.

³⁴ Ibid.

³⁵ Baulch B., Weber A., Wood J, “Social Protection Index for Committed Poverty Reduction”, Volume 2: Asia, Asian Development Bank, 2008.

³⁶ B. Paolo and O. Marie, “Social protection for development: a review of definitions”, European University Institute, Firenze, Italy, 2010.

³⁷ Ibid.

social protection deals with medical care on board ship and ashore; shipowners' liability and social security.³⁸

Therefore, different international organizations propose different definitions of the term social protection. Generally, social protection is broader than social security which is a core element of a social protection system.

1.3 Human Rights Perspective on Social Protection

The existence of social protection can be recognized as one of the great social achievements of the 20th century. Being an important objective of social policy in many countries, social protection is often seen as a fundamental right of individuals to access effective and efficient programmes that alleviate hardship arising from social risks such as sickness, old age, unemployment, social exclusion as well as programmes that secure income of the population through food security, job training, supplementary education and affordable housing.³⁹

As a concept, social protection may be seen as a further development of the long-established aim of social security. The fundamental international documents on human rights such the Universal Declaration of Human Rights (1948) and International Covenant on Economic, Social and Cultural Rights (1966) have direct reference to social security.⁴⁰

According to Article 22 of the Universal Declaration of Human Rights of 1948, "everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality."

Also, Article 23 provides that:

- Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

³⁸ ILO: Handbook (2012), "Guidance on implementing the Maritime Labour Convention, 2006 and Social Security for Seafarers", International Labour Office, Geneva, p. 9.

³⁹ Economic and Social Council: "Report of the Secretary-General, Enhancing Social Protection and Reducing Vulnerability in a Globalizing World", 2001.

⁴⁰ Ibid.

- Everyone, without discrimination, has the right to equal pay for equal work.
- Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.⁴¹
- Everyone has the right to form and join trade unions for the protection of his interests.

Moreover, “everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, and housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”⁴²

Article 9 of the International Covenant on Economic, Social and Cultural Rights, 1996, recognizes “the right of everyone to social security, including social insurance”.

International instruments adopted by the ILO and the United Nations affirm that every human being has the right to social security. In the declaration of Philadelphia (1944) the International Labour Conference recognized the ILO's obligations as regards the extension of social security measures to provide a basic income to all in need of such protection and comprehensive medical care.⁴³

Social protection has also been a prominent issue in international forums. It was the central theme at the World Summit for Social Development held in Copenhagen in 1995, where governments committed themselves to “develop and implement policies to ensure that all people have adequate economic and social protection during unemployment, ill health, maternity, child-rearing, widowhood, disability and old age”.⁴⁴

The 24th special session of the United Nations General Assembly, convened in Geneva in June 2000 to provide a five-year review of the Summit, underscored the

⁴¹ Universal Declaration of Human Rights, UN GA res. 217A (III), 1948, Article-23.

⁴² Ibid, Article-25(1).

⁴³ ILO: “Social security: Issues, challenges and prospects”, Report IV, 1st edition, Geneva, 2001, p. 25.

⁴⁴ Bonilla G.A and Gruat J.V, “A Life Cycle Continuum Investment for Social Justice, Poverty Reduction and Sustainable Development”, Geneva, November 2003, p. 12.

importance of establishing and improving social protection systems and sharing best practices in this field. The issue of social protection also received serious consideration at the Financing for Development Summit, held in Monterrey, Mexico, in March 2002. Moreover, the recent Summit on Sustainable Development in Johannesburg stressed the need to “strengthen the social dimension of sustainable development by emphasizing follow-up to the outcomes to the World Summit for Social Development and its five-year review and by support to social protection systems”.⁴⁵

Finally, in light of the most recent 2008 global economic crisis, the UN adopted the Social Protection Floor Initiative in 2009, led primarily by the ILO, WHO and other UN agencies, to “support countries in efforts to plan and implement sustainable social transfer schemes and essential social services on the basis of the concept of a Social Protection Floor”.⁴⁶

The international community has also been working towards making social development and human well-being central to sustainable development and poverty reduction. It has united around a series of shared values, goals, and strategies, and is working to achieve them through a continuum of efforts, with social protection playing an important role.⁴⁷

Under human rights law, states are legally obligated to establish social protection systems. Social protection is expensive and difficult to implement by the states. Now, there are a number of mechanisms that provide social protection in various nations. These policies and instruments vary under country context.

1.4 Evolution of Social Protection for Seafarers

In the pre-Christian era, commercial practices had developed in Mediterranean shipping. Following the practices, the maritime codes appeared in the 11th to 13th centuries which provided remarkable protections for ship’s crews, even by current standards. The ancient codes’ (for example, Barcelona and Tortosa in Spain, Marseilles in France) provisions relating to medical care for seafarers are better than

⁴⁵ Bonilla G.A and Gruat J.V, “A Life Cycle Continuum Investment for Social Justice, Poverty Reduction and Sustainable Development”, Geneva, November 2003, p. 12.

⁴⁶ Mahidol Migration Centre, Institute for Population and Social Research: "Migrant Workers’ Rights to Social Protection in ASEAN: Case Studies of Indonesia, Philippines, Singapore and Thailand", Philippines, 2011, p. 18.

⁴⁷ Bonilla G.A and Gruat J.V, “A Life Cycle Continuum Investment for Social Justice, Poverty Reduction and Sustainable Development”, Geneva, November 2003, p. 13.

modern land workers' medical care rights. The codes granted ships' crews the repatriation to their home at the end of their voyage and also required ships' crews to be provided decent lodging and sustenance (by the standards of the day).⁴⁸

The Medieval Barcelona Code, for example, provided that the captain of a ship or vessel shall have food in his ship or vessel sufficient for fifteen days; namely, bread, wine, salt, meat, vegetables, oil, water, and two packets of candles. And if any mariner be sick or be injured in his legs from the time when the ship or vessel put to sea, the captain of the ship or vessel shall give to the mariner his needs in food for the whole voyage. If the mariner makes the voyage, and the mariner shall have all his wages. But if the mariner be unwilling to go on the voyage, he shall not have any wages.⁴⁹

Lawmakers did not enact these ancient seafarers' protections for charitable or human-rights reasons. Such concepts didn't exist in the middle ages. Seafarers are capable professionals, but also very vulnerable to exploitation, abuse, and discrimination. Seafarers take a highly mobile workplace from country to country and beyond. Mariners are often far away from the land-based institutions that provide stability and predictability. Mariners are strangers and friendless almost everywhere they go. They are usually foreigners in the ports they visit who feel suspicion and lack of protection by local authorities. The protections for seafarers were developed out of the self-interest of maritime commercial enterprises. The protections for seafarers were therefore also based upon commercial interests. These commercial interests that led to developing seafarers' rights continue to be relevant today. Seafarers are the most regulated of all workers. Thus, every aspect of their shipboard being their work, sleep, food, recreation, hiring, dismissal, health, sickness, and even their death are regulated.⁵⁰

The maritime laws and statutes enacted by maritime nations contain the laws regulating seafarers and protecting their rights. The statutes are often influenced by the general maritime law and by international conventions. The general maritime law originated from ancient customs of early Mediterranean seafaring nations. The earliest maritime law appears to have influenced the Roman legal system. Because the fundamental dangers of seafaring have never changed, today's maritime law is a

⁴⁸ B. Stevenson, D., "MLC 2006: A Sign of Hope for the Maritime World", Gdynia, Poland, 28 June 2007.

⁴⁹ Ibid.

⁵⁰ Ibid.

mixture of ancient rules and new laws. In fact, the time-honored principles of "maintenance and cure" are still useful today. The general maritime law has for centuries provided seafarers extraordinary protections which applies to cases involving injuries or accidents on the waterways of the United States, in the Gulf of Mexico or at sea. Maritime law is very specialized and has evolved over the last 200 years in the United States.⁵¹

During the 17th and 18th century sailing ships needed many more seafarers than were willing to go to sea. Jails were emptied, drunks were shanghaied, and many other deceptive methods were used to "recruit" seafarers. The merchant ship crews in that era were tough, unruly and unwilling workers. Shipowners and ships' officers resorted to extremely oppressive measures to maintain control over their crews. At that time maritime, commerce expansion coincided with the rise in national legislated statute –making. Also maritime nations mostly passed the maritime statutes for expanding trade of national interests. Therefore, the statutes tended to protect shipping interests, one of which was controlling unruly seafarers involuntarily pressed into service on merchant sailing vessels.⁵²

In the 19th century, states began to show a relatively larger interest in international maritime trade in order to improve their economies. Great Britain, for instance, used to carry out half of the world trade back in that century. Thus, the British Parliament enacted the British Merchant Shipping Act in 1850, with the aim of improving shipboard life for masters and seafarers.⁵³ Rules relating to the protection and discipline of seamen when on service were provided in Merchant Shipping Act.⁵⁴ Attempts towards protection of seafarers at the national level continued with the establishment of the Mission to Seamen in 1856 and many other initiatives.⁵⁵

The resulting horrible abuses inspired 19th century reformations, principally through trade unions and Christian church institutions. For example, the Seamen's Church Institute of New York & New Jersey (SCI) was the largest, most

⁵¹ <http://www.1800jonesact.com/book/maritime.html>

⁵² B. Stevenson, D., "MLC 2006: A Sign of Hope for the Maritime World", Gdynia, Poland, 28 June 2007.

⁵³ Deirdre Fitzpatrick and Michael Anderson, "Seafarers Rights", 1st edition, Oxford University Press, 2005, p. 15.

⁵⁴ Merchant Shipping Act, 1854, part –III. It was amended in 1894, 1906 and 1995 respectively.

⁵⁵ Deirdre Fitzpatrick and Michael Anderson, "Seafarers Rights", 1st edition, Oxford University Press, 2005, p. 15.

comprehensive mariners' agency in North America in 1834. At that time, the SCI began its efforts to improve seafarers' conditions.⁵⁶

Moreover, another example is the International Christian Maritime Association (ICMA) of Christian organizations founded in 1969 to encourage ecumenical collaboration and mutual assistance among organizations. Such collaboration works at local level, in port, and at national and international level. In a fragmented and divided society, ICMA is to promote unity, peace and tolerance. Every ICMA chaplain and welfare worker are responsible for serving seafarers, fishers and their dependants regardless of nationally, religion, culture, gender or ethnic origin.⁵⁷

As universal protections, the seafarers' rights that emerged from 19th century reforms were country specific. A patchwork of national statutes had largely replaced the general maritime law traditionally followed throughout the maritime world. The general maritime law did, however serve as a source for maritime nations' statutes, and National courts still recognized such law on maritime law issues not covered by statute.⁵⁸

By the beginning of the 20th Century, workers unrest about labour conditions grew in industrialized countries, and trade unions gained increasing influence. Their demands for social justice and higher living standards for workers were heard at the end of the First World War, where the participants in the Paris Peace Conference recognized workers' significant contributions to the war efforts both on the battlefield and in industry. In 1919, the Treaty of Versailles created the International Labour Organization.⁵⁹

The ILO arose to establish international labor standards in a variety of industries. From its very beginning in 1919, the ILO focused its attention on seafarers to promote rights at work, encourage decent employment opportunities, enhance social protection including health protection and strengthen dialogue in handling work-related issues. ILO bears a lot of Conventions on seafarers. Although many conventions contained provisions of social protection for seafarers, problems occurred. ILO conventions do not effectively explain the enforceable standards.

⁵⁶ <http://www.seamenschurch.org/about-us>

⁵⁷ <http://www.icma.as/>

⁵⁸ B. Stevenson, D., "MLC 2006: A Sign of Hope for the Maritime World", Gdynia, Poland, 28 June 2007.

⁵⁹ Ibid.

In 1948, International Maritime Organization (IMO) was established to deal with the maritime industry at an international level. The principal international conventions of the IMO relevant to the interests and rights of seafarers are the following:

- The International Convention for the Safety of Life at Sea (SOLAS) 1974;
- The International Convention for the Prevention of Pollution from ships 1973, as modified by the Protocol of 1978 (MARPOL 73/78)
- The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW) 1973 and the Protocol of 1978;
- International Ship and Port Facility Security Code (ISPS)
- Convention on the Facilitation of International Maritime Traffic, 1965 (FAL Convention)

However, IMO does not create rights; it mainly governs the international maritime fields through regulatory laws. IMO Conventions impose obligations on States and other relevant actors of the field, and through this approach, they create certain benefits for seafarers. For example, Chapter VI of STCW⁶⁰, 1978 regulates mandatory minimum requirements relating to medical first aid and medical care for seafarers. In other words, IMO promotes the protection of seafarers rights incidental to their main aim, which are promoting safety and security in shipping and preserving the marine environment.

Hence, the provisions relating to protection for seafarers emerged in ancient times. The protection for seafarers was developed out of the self-interest of maritime commercial enterprises. During the 17th and 18th century, maritime nations passed maritime statutes for expanding trade of national interests. As universal protections, the seafarers' rights that arose from the 19th century reforms were country specific. Later, ILO adopted the universal conventions concerning social protection for seafarers and the international conventions relating to the interest and rights of seafarers. However, the IMO did not regulate to the protection of seafarers' rights.

⁶⁰ International Convention on Standards of Training, Certification and Watchkeeping for seafarers, 1978 and was amended in 1995, 1997, 1998 and 2006.

1.5 Standard-Setting Activities of International Labour Organization in Maritime Social Protection Sector

The International Labour Organization exists, as it has from its inception, to bring together governments, employers and workers to promote decent conditions of work and social justice. It recognizes that seafaring will always pose special hazards to life and health because of the hostility of the sea and the nature of the working conditions aboard ship. But it also recognizes that much can be done to reduce accidents to ships and their crews through good design and better safety features.⁶¹

Recent years have seen more and more ships having been registered under open registry ships.⁶² This led to complicated issues which needed reforms in countries and regions in order for workers to be adequately covered by social protection.⁶³ The standard-setting in the ILO has aimed directly at that issue and has sought to maximize social security coverage for all seafarers.⁶⁴

Similarly, much can also be done to improve the quality of life at sea, regardless of the rigours of modern ship operations. Regardless of the flag they are sailing under and the type of trade, they are in, seafarers, the ILO points out, should be entitled to good living conditions, regular communications with their home, the guarantee of regular pay, adequate medical care, repatriation, social security and welfare benefits for themselves and their dependants.⁶⁵

Therefore, the ILO adopted the first international instruments on social security protection of seafarers as early as in 1920. Following the prevailing pattern in the first decades of ILO standard-setting, the first Conventions adopted in this field, i.e., the Unemployment Indemnity (Shipwreck) Convention, 1920 (No. 8), the Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No. 55) and the Sickness Insurance (Sea) Convention, 1936 (No. 56) made provisions for the

⁶¹ <http://www.ilo.org>

⁶² Dr. K X Li and Professor J Wonham, "The role of states in maritime employment & safety", Dalian maritime university press, 2000, p. 153.

⁶³ A.S Isabelo, "Strengthening social protection for migrant workers: A regional view of issues and reforms in sea-based industry", Regional Conference on Labour Law and Social Security, UP SOLAIR Auditorium, November 2011.

⁶⁴ Dr. K X Li and Professor J Wonham, "The role of states in maritime employment & safety", Dalian maritime university press, 2000, p. 153-154.

⁶⁵ <http://www.ilo.org>.

coverage of seafarers, as a specific category of workers, in respect of specific contingencies.⁶⁶

A shift occurred in 1946, with the adoption of a new international legal framework for social security protection of seafarers and their dependants, embodying a more comprehensive approach to social security that reflected developments that were taking place in the field of international social security standard-setting. This new framework, comprised the Social Security Seafarers Convention, 1946 (No. 70), the Seafarers' Pensions Convention, 1946 (No. 71), and the Seafarers' Social Security (Agreements) Recommendation, 1946 (No. 75).⁶⁷

In 1987, the Organization updated both the Sickness Insurance (Sea) Convention, 1936 (No.56) and the Social Security Seafarers Convention, 1946 (No.70) as the Social Security (Seafarers) Convention (Revised)⁶⁸ for the primary objective of ensuring comprehensive social security protection to all seafarers.

Moreover, the Organization adopted the Convention No. 147⁶⁹ in 1976 to identify substandard ships and bring them into conformity with the existing safety, health and social standards accepted by the shipping world.⁷⁰

In spite of the clear will among ILO constituents to ensure that seafarers would benefit from adequate social security protection and equality of treatment, the relevant Conventions have not received wide spread ratification. At the same time they undisputedly influenced the content of both collective bargaining agreements and national laws and regulations in the sector, they have an impact on the progressive development of this area of international law.⁷¹

In early 2000, following a lengthy review process, the Governing Body of the ILO declared that among all ILO maritime social security standards, only Convention No. 165 should be categorized as up-date as it responded to current needs.⁷² Thus, in January 2001, following a recommendation of the shipowners and seafarers representatives within the ILO's Joint Maritime Commission (JMC), the ILO decided

⁶⁶ ILO: Handbook (2012), "Guidance on implementing the Maritime Labour Convention, 2006 and Social Security for Seafarers", Geneva, p. 4-5.

⁶⁷ Ibid, p. 5.

⁶⁸ Social Security (Seafarers) Convention (Revised), 1987 (No.165), 2 July 1992.

⁶⁹ Merchant Shipping (Minimum Standards) Convention, 1976 (No.147).

⁷⁰ ILO: "Submission to the International Commission on Shipping; The activities of the International Labour Organization for the Shipping Industry", Geneva, August 2000.

⁷¹ ILO: Handbook (2012), "Guidance on implementing the Maritime Labour Convention, 2006 and Social Security for Seafarers", Geneva, p. 6.

⁷² Ibid.

to consolidate the entire body of its international maritime labour standards in a single instrument. A high level tripartite working group was established and met several times and became active between 2001 and 2004 to prepare a draft text.⁷³ The High-level Tripartite Working Group discussed the matters regarding social protection for seafarers at the meetings.

On February 23, 2006 the Tenth Maritime Session of the International Labour Conference, adopted the Maritime Labour Convention. It sets out seafarers' rights to decent conditions of work and helps to create conditions of fair competition for shipowners. The MLC will be the “fourth pillar”⁷⁴ of international regulatory regime for quality shipping which includes minimum requirements for seafarers to work on a ship; conditions of employment; accommodation, recreational facilities, food and catering; health protection, medical care, welfare and social security protection; compliance and enforcement.

The consolidation of international labour standards by the MLC, 2006 offered a unique occasion to reaffirm both the necessity of ensuring adequate social security protection to all seafarers and the core principles on which such protection should be based and which are at the core of sustainable social security systems.⁷⁵

The MLC will ensure that seafarers are guaranteed equal and acceptable conditions no matter which flag they sail under. It aims to create a level playing field and contains a number of principles such as non discrimination on the basis of a seafarer’s race, colour, sex, religion, political opinion, national extraction, or social origin. It also seeks to provide new rights to seafarers with respect to employment benefits, health and safety and accommodation.

The existing standards of ILO’s maritime labour instruments made it difficult for governments to ratify and enforce them due to their complexity and their very detailed provisions. Additionally, some were out of date and did not reflect contemporary working and living conditions on board ships. MLC 2006 has become operative as a more effective and efficient enforcement and compliance system. Moreover, MLC essentially covers the same subject matter as the ILO’s maritime labour instruments, updating them where necessary.

⁷³ Appave, D., “Medical Issues in the ILO’s Draft Consolidated Maritime Labour Convention”, 8-13 May 2005.

⁷⁴ Maritime Labour Convention (MLC,2006)-the fourth pillar of international quality shipping-, complementing SOLAS-, MARPOL- and STCW- Conventions.

⁷⁵ ILO: Handbook (2012), “Guidance on implementing the Maritime Labour Convention, 2006 and Social Security for Seafarers”, Geneva, p. 6.

Chapter 2

Social Protection Rights of Seafarers under Maritime Labour Convention, 2006

The Maritime Labour Convention (MLC), 2006 was adopted on 23 February 2006 at the 10th maritime session and 94th session of the International Labour Conference (ILC) of the International Labour Organization. MLC, 2006 sets out seafarers' rights to decent conditions of work and helps to create conditions of fair competition for shipowners. No more favorable clause stands for non-ratifying States. The MLC, 2006 will ensure that seafarers are guaranteed equal and acceptable conditions no matter which flag they sail under.

2.1 Development of Maritime Labour Convention, 2006

Since 1920 the International Labour Organization (ILO) has adopted Conventions and Recommendations to ensure working and living conditions for seafarers while at sea and in port; but they were not designed to secure the widest possible acceptability among governments, shipowners and seafarers. Moreover, they were not readily updateable and they were not effectively implementable and enforceable.

The ILO's original and most important task has been the development, promotion, and monitoring of international labour standards.¹ The main subject areas of the international labour standards include the fundamental rights at work, which are

¹ Werner Sengenberger, "International Labour Organization: Goals, Functions and Political Impact", 2013, p. 9.

contained in the eight so - called core labour standards of the ILO. These are freedom of association and the right to organise; the right to collective bargaining; the abolition of forced labour; a minimum age for employment and the effective abolition of child labour; the prohibition of workplace discrimination; as well as the mandate for equal pay for women and men for work of equal value.²

ILO has increasingly focused its efforts on achieving change by working with governments and relevant national organizations to secure decent working conditions, including social protection, largely by adopting a rights-based approach.³ By the end of the twentieth century, there had been 11 maritime sessions of the International Labour Conference, and 40 maritime labour Conventions, one Protocol and 29 maritime labour Recommendations had been adopted, covering a wide variety of issues, including recruitment and placement, minimum age, hours of work, safety, health and welfare, labour inspection and social security.⁴

The existing ILO maritime labour standards were criticized as that they:

- had not kept pace with developments in the shipping industry;
- were often set out in complex, uncoordinated and overlapping provisions;
- were subject to time-consuming and costly amendment procedures,
- were inadequately applied at the international level;
- were unevenly enforced, unfairly burdening providers of decent work;
- and
- lacked certain aspects in comparison with those of non-tripartite bodies.⁵

The main concern was that these international standards were still not having a sufficient “on the ground” impact on the working and living conditions experienced by seafarers. The relevant Conventions, many of which dealt with a single issue, were unevenly ratified and even more unevenly implemented and enforced.⁶

² Werner Sengenberger, "International Labour Organization: Goals, Functions and Political Impact", 2013, p. 9.

³ McConnell ML., Devlin D, Doumbia-Henry C, "The Maritime Labour Convention 2006: A Legal Primer to an Emerging International Regime", Martinus Nijhoff Publisher, 2011, p. 36.

⁴ Christodoulou- Varotsi, I & Pentsov, Dmitry, "Maritime Work Law Fundamental: Responsible Shipowners, Reliable Seafarers", Springer-Verlag Berlin, 2008, p. 11.

⁵ McConnell ML., Devlin D, Doumbia-Henry C, "The Maritime Labour Convention 2006: A Legal Primer to an Emerging International Regime", Martinus Nijhoff Publisher, 2011, p. 48.

⁶ Christodoulou- Varotsi, I & Pentsov, Dmitry, "Maritime Work Law Fundamental: Responsible Shipowners, Reliable Seafarers", Springer-Verlag Berlin, 2008", p. 11-12.

Many existing maritime labour Conventions have a low ratification level. Table 1* shows previous 37 ILO Conventions were ratified in a much smaller proportion of the 185 member States of the ILO. Because, when ILO Conventions are ratified by member states of the ILO, they are liable to implement them in their national legislation.

In relation with Table 2*, ILO Recommendations only had guidance character and most of them were very outdated. They did not reflect the working and living conditions for seafarers because of the obsolescence of them.

It was also found that these existing standards made it difficult for governments to ratify and enforce them due to their complexity and their very detailed provisions. Additionally, some were found to be out of date and did not reflect contemporary working and living conditions on board ships. Many reasons have been put forward to explain the need for a new consolidated instrument.

Therefore, the Joint Maritime Commission (JMC) has unanimously adopted the resolution, known as the Geneva Accord between the Shipowner and Seafarer representatives, concerning the review of relevant ILO maritime instruments.⁷ They pointed out that there was an urgent need to consolidate and improve the existing 68 maritime labour instruments together in a single new convention to reflect the specific needs of all stakeholders of the maritime sector.⁸

The MLC 2006 has been designed to become a global legal instrument that will be the “fourth pillar” of the international regulatory regime for quality shipping, complementing the key Conventions of the International Maritime Organization (IMO), such as the International Convention for the Safety of Life at Sea (SOLAS), 1974, the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1978, and the International Convention for the Prevention of Pollution from Ships (MARPOL).⁹

The MLC, 2006 is also sometimes called the “seafarers’ bill of rights” which will help ensure “Decent Work” for seafarers, no matter where ships sail and no matter which flag they fly. Shipowners also support the MLC, 2006 as it is seen as an

* Annex 1.

* Annex 2.

⁷ ILO, Joint Maritime Commission (29th Session): Final Report, (ILO, Geneva, 2001) (doc.JMC/29/2001/14), p. 28-29.

⁸ Ibid.

⁹ ILO: "Maritime Labour Convention, 2006: Frequently Asked Questions (FAQ)", Third (revised) edition, 2014, A1, p. 2.

important new tool to help ensure a level playing field for quality shipowners that may have to compete with ships that have substandard conditions. The MLC, 2006 is also important for governments because it brings together 37 international labour Conventions and the related Recommendations in one comprehensive modern document that covers almost every aspect of decent work in this sector.¹⁰

The aims of the MLC 2006 is to achieve both decent conditions of work for the world's more than 1.2 million seafarers and to create conditions of fair competition for shipowners. Following its entry into force, seafarers working on around 70 per cent of the World's international shipping tonnage will be covered by the new Convention. The Convention establishes minimum requirements for almost all aspects of working conditions for seafarers, and a strong compliance and enforcement mechanism based on flag State inspection and certification of seafarers' working and living conditions.¹¹

There are several novel features in the MLC, 2006 as far as the ILO is concerned. The whole structure of the Convention differs from that of traditional ILO Conventions.

The *Preamble* to the MLC, 2006 sets out the intentions and the objectives of the Members of the ILO in adopting the Convention. The *Preamble* refers to the global nature of the shipping industry and the need for seafarers to have special protection. It also links the MLC, 2006, to the other key international conventions that establish minimum standards for the shipping industry in connection with safety, security and marine environmental protection. The MLC, 2006, complementing other major international maritime conventions, reflects international agreement on the minimum requirements for working and living conditions for seafarers.¹²

The structure of the MLC, 2006 diverges from the normal ILO Conventions. The new Convention consists of two components, which are: the regulatory part, with the Articles and Regulations, followed by a two-part Code, the Part A "Standards" and the Part B "Guidelines". The articles, regulations and the Code Part "A" are mandatory, but the Code Part "B" is non mandatory.

¹⁰ ILO: Handbook (2012), "Guidance on implementing the Maritime Labour Convention, 2006 and Social Security for Seafarers", International Labour Office. – Geneva, p. 7.

¹¹ UN: "Review of Maritime Transport 2013", Report by the UNCTAD Secretariat, Chapter 5; Legal Issues and Regulatory Developments, New York and Geneva, 2013, p. 104.

¹² ILO: Handbook (2012), "Guidance on implementing the Maritime Labour Convention, 2006 and Social Security for Seafarers", International Labour Office. – Geneva, p. 7.

The Regulations and the Code, which contain Standards and Guidelines, are organized under the five Titles. These five titles are:

Title 1: Minimum requirements for seafarers to work on a ship;

Title 2: Conditions of employment;

Title 3: Accommodation, recreational facilities, food and catering;

Title 4: Health protection, medical care, welfare and social security protection;

Title 5: Compliance and enforcement.

Title 1 contains requirements with respect to minimum age, medical certificate, training and qualifications, as well as recruitment and placement. *Title 2* deals with seafarers' employment agreements, wages, hours of work and rest, entitlement to leave, repatriation, seafarer compensation for the ship's loss or foundering, manning levels, career and skill development, and opportunities for seafarers' employment. *Title 3* includes accommodation and recreational facilities, as well as food and catering. *Title 4* concerns health protection, medical care, welfare and social security protection which contains provisions concerning medical care on board ship and ashore, shipowners' liability, health and safety protection and accident prevention, access to shore-based welfare facilities, and social security. Finally, *Title 5* establishes requirements with respect to Flag State responsibilities, notably the requirements concerning maritime labour certificates and declarations of maritime labour compliance, Port State responsibilities, and labour supplying responsibilities.

Therefore, each Title contains groups of provisions relating to a particular right or principle (or enforcement measure in Title 5), with connected numbering. The first group in Title 1, for example, consists of Regulation 1.1, Standard A1.1 and Guideline B1.1, relating to minimum age.

The MLC, 2006 contains a comprehensive set of global standards, based on those that are already found in maritime labour instruments adopted by the ILO since 1920. The new Convention brings almost all of the existing maritime labour instruments together in a single new Convention that uses a new format with some updating where necessary.

There are a few new subjects, particularly in the area of occupational safety and health to meet contemporary concerns, such as the effects of noise and vibration on workers or other workplace risks. The provisions relating to flag State inspections, including the use of "recognized organizations" and the potential for inspections in foreign ports (port state control) in Title 5 is based on existing maritime labour

conventions. The new Convention builds upon them to develop a more effective approach to these important issues consistent with other international maritime Conventions that establish standards for quality shipping with respect to matters, such as ship safety and security and protection of the marine environment.¹³

One of the most innovative aspects of the MLC, 2006, as far as ILO Conventions are concerned, is the certification of seafarers' living and working conditions on board ships.¹⁴

Another important concept of the new Convention according to Dr Doumbia-Henry is:

The format of the new Convention and its terminology build upon and further develop the well-established format of IMO Conventions, but with adjustments to meet ILO values and approaches. Article XV, relating to a new "accelerated amendment" procedure (to allow for rapid updating of more technical detailed provisions in the Code which is part of the Convention), is a good example of how an IMO procedure has been adapted to a tripartite environment and to the specificity of international labour Conventions. In essence, the procedure gives individual States parties to the Convention an opportunity to opt out of amendments to the Code approved by the tripartite General Conference of the ILO, which would otherwise apply to them, by tacit consent, if they do not opt out within a stated time.¹⁵

The Convention was set to enter into force 12 months after the date on which there had been registered ratifications by at least 30 members with a total share in the world gross tonnage of ships of 33 per cent.¹⁶ This requirement having been fulfilled, the Convention entered into force on 20 August 2013, one year after registering 30 ratifications of countries representing over 33 per cent of the world gross tonnage of ships. After five more ratification (Bahamas, Norway, Liberia, Marshall Islands, and Panama) the ratifying countries represent over 43 per cent of the world gross tonnage (which is over 33 per cent; the second requirements for entry into force).

The existing ILO maritime labour Conventions will be gradually phased out as ILO Member States that have ratified those Conventions ratify the new Convention, but there will be a transitional period when some parallel Conventions will be in

¹³ ILO: "Maritime Labour Convention, 2006: Frequently Asked Questions (FAQ)", Third (revised) edition, 2014, A5, p. 5.

¹⁴ Ibid.

¹⁵ Doumbia-Henry C., Devlin D.D, Mc Connell L.M. (2006), "The Maritime Labour Convention, 2006 Consolidates Seafarers' Labour Instrument", Volume 10, Issue 23.

¹⁶ Maritime Labour Convention (MLC) 2006, Article VIII (3).

force. Countries that ratify the Maritime Labour Convention, 2006 will no longer be bound by the existing Conventions when the new Convention comes into force for them. Countries that do not ratify the new Convention will remain bound by the existing Conventions they have ratified, but those Conventions will be closed to further ratification.¹⁷

The MLC, 2006 contains a comprehensive set of global standards, based on those that are already found in the maritime labour instruments (Conventions and Recommendations), adopted by the ILO between 1920 and 1996.¹⁸ It brings all, except the Convention addressing seafarers' identity documents of 2003 (Convention No. 185) and the 1958 Convention that it revises (Convention No. 108), as well as the Seafarers' Pension Convention, 1946 (No. 71) and the (outdated) Minimum Age (Trimmers and Stokers) Convention, 1921 (No. 15), of the existing maritime labour instruments (international labour standards).¹⁹

In short, the aim of the new Convention is to achieve decent conditions of work for the world's more than 1.2 million seafarers and accordingly, the MLC has updated, where necessary, the previous ILO Conventions which were ratified by a smaller proportion of member states. The increase in the number of member states to the new Convention can be attributed to the fact that the MLC now includes the most favoured treatment clause, making shipowners more willing to comply with the regulations and also because seafarers will get better guarantees for their living and working conditions under the present Convention.

2.2 Social Protection Rights of Seafarers

Under Article III of MLC, 2006, the fundamental rights of seafarers are:

- (a) freedom of association and the effective recognition of the right to collective bargaining;
- (b) the elimination of all forms of forced or compulsory labour;
- (c) the effective abolition of child labour; and
- (d) the elimination of discrimination in respect of employment and occupation.

¹⁷ ILO: "Maritime Labour Convention, 2006: Frequently Asked Questions (FAQ)", Third (revised) edition, 2014, A 19, p. 11.

¹⁸ Ibid, A 1, p. 3.

¹⁹ Ibid.

Moreover, according to Article IV of this Convention, every seafarer has the rights to:

1. a safe and secure workplace that complies with safety standards
2. a right to fair terms of employment
3. a right to decent working and living conditions on board ship
4. a right to health protection, medical care, welfare measures and other forms of social protection.

And also provides that each Member State shall ensure, within the limits of its jurisdiction, that the seafarers' employment and social rights are fully implemented in accordance with the requirements of the Convention. Unless specified otherwise in the Convention, such implementation may be achieved through national laws or regulations, through applicable collective bargaining agreements or through other measures or in practice.

In brief, seafarers have a right to a safe and secure workplace, where safety standards are complied with, where they have fair terms of employment, decent living and working conditions, including social protection such as access to medical care, health protection and welfare.

2.2.1 Wages

All seafarers have the right to wages for their work regularly and in full in accordance with their employment agreements.

Historically, seafarers' wages depended upon the success of the voyage. Wages were paid only if the vessel made a profit. About 150 years ago, maritime nations began enacting statutes that codified or modified seafarers' rights to wages. Such statutes now determine seafarers' rights to wages, and the statutes can vary from country to country.²⁰

Today, almost every maritime nation has outlawed the custom of seafarers' wages being dependent on the success of the voyage. Seafarers are entitled to be paid their earned wages without regard to their vessels' earnings.²¹

²⁰ B. Stevenson, D., "The IMLI Manual on International Maritime Law, Volume II, Shipping Law", 1st edition, Oxford University press, 2016, p. 219.

²¹ Ibid.

The amount of wages is determined by the seafarers' contract or collective bargaining agreement. Some countries have minimum wage laws, but in most cases today contractual wages exceed the legal minimums.²²

The MLC, 2006 recommends that an able seafarer be paid at least as much as recommended by the Joint Maritime Commission.²³

Under MLC, 2006, each Member shall require that payments due to seafarers working on ships that fly its flag are made at no greater than monthly intervals and in accordance with any applicable collective agreement.²⁴

Seafarers shall be given a monthly account of the payments due and the amounts paid, including wages, additional payments and the rate of exchange used where payment has been made in a currency or at a rate different from the one agreed to.²⁵ Each Member shall require that shipowners take measures to provide seafarers with a means to transmit all or part of their earnings to their families or dependants or legal beneficiaries.²⁶

Measures to ensure that seafarers are able to transmit their earnings to their families include:

- (a) a system for enabling seafarers, at the time of their entering employment or during it, to allot, if they so desire, a proportion of their wages for remittance at regular intervals to their families by bank transfers or similar means; and
- (b) a requirement that allotments should be remitted in due time and directly to the person or persons nominated by the seafarers.²⁷

Prior to the adoption of the new Convention the periodicity of payment of wages has been dealt with in the Seafarers' Wages, Hours of Work and the Manning of Ships Recommendation, 1996 (No. 187), whereas the transfer of earnings to the families has been addressed in the Seamen's Welfare in Ports Recommendation. As a result, the inclusion of these two respective requirements into the mandatory Standard represents a significant change in the existing standards concerning seafarers' wages,

²² B. Stevenson, D., "The IMLI Manual on International Maritime Law, Volume II, Shipping Law", 1st edition, Oxford University press, 2016, p. 220.

²³ Ibid.

²⁴ Maritime Labour Convention (MLC), 2006, Standard A.2.2.

²⁵ Ibid, Standard A. 2.2(2).

²⁶ Ibid, Standard A.2.2(3).

²⁷ Ibid, Standard A.2.2(4).

because previously these measures have been merely recommended, but not required.²⁸

In sum up, seafarers are entitled to be paid their wages regularly and in full. Compared to the previous Conventions relating to wages, one significant factor in the MLC, 2006, is seafarers have the right to transfer of earnings to their families.

2.2.2 Hours of Work and Hours of Rest

Seafarers have regulated hours of work or hours of rest. Today's merchant ships are operated by a small number of seafarers. Small crews create a significant challenge for both ship operators and seafarers to ensure that seafarers get adequate sleep to remain alert and well rested. When seafarers are deprived of needed rest, mistakes and accidents happen. Fatigue has been identified as a major factor in many maritime casualties. Both shipowners and seafarers have incentives for seafarers to work beyond safe human endurance limits. Ship operators can reduce costs by employing fewer seafarers who work longer hours. Seafarers can earn more money by working more hours. Therefore it is important to regulate hours of work and hours of rest to protect seafarers' health and maritime safety.²⁹

Ancient maritime codes did not place limitations on seafarers' hours of work. The IMO has adopted standards for seafarers' hours of rest that are based on marine safety and fatigue considerations.³⁰

The ILO has also adopted the Conventions for seafarers' hours of work and rest. In 1936, the Hours of Work and Manning (Sea) Convention (No.57) and the Wages, Hours of Work and Manning (Sea) Convention in 1946 was adopted respectively. Also the Wages, Hours of Work and Manning (Sea) Convention, 1949 (No.93) and the Wages, Hours of Work and Manning (Sea) Convention, 1958 (No.109) were laid down. These Conventions never attracted sufficient ratifications to come into force. In 1996, the Seafarers' Hours of Work and the Manning of Ships Convention (No.180) was adopted and it was a different approach from previous ILO Conventions. This Convention came into force in 2002. As it concerns the hours of work and rest, the MLC, 2006 closely follows the provisions of Convention No.180.

²⁸ Christodoulou- Varotsi, I & Pentsov, Dmitry," Maritime Work Law Fundamental: Responsible Shipowners, Reliable Seafarers", 2008, Springer-Verlay Berli, p. 308.

²⁹ B. Stevenson, D., "The IMLI Manual on International Maritime Law, Volume II, Shipping Law", 1st edition, Oxford University press, 2016, p. 220.

³⁰ Ibid, p. 221.

According to MLC, 2006, each Member acknowledges that the normal working hours' standard for seafarers, like that for other workers, shall be based on an eight-hour day with one day of rest per week and rest on public holidays. However, this shall not prevent the Member from having procedures to authorize or register a collective agreement which determines seafarers' normal working hours on a basis no less favourable than this standard.³¹

The limits on hours of work are a maximum of 14 hours in any 24-hour period; and 72 hours in any seven-day period. The limits on hours of rest are a minimum of ten hours in any 24-hour period; and 77 hours in any seven-day period.³²

The previous Conventions relating to hours of work and rest did not have sufficient ratifications. The work of seafarers is very dangerous because of the nature of their work. Thus, they need sufficient hours of rest. In the MLC, 2006, the hours of work and rest are specified for seafarers.

2.2.3 Accommodation and Recreational Facilities

Merchant sailing vessels needed large crews and precious space had to be allocated between crew accommodation and cargo. Because shipping is a business of transporting cargo, cargo space was maximized at the expense of crew living spaces. Fortunately for seafarers, as well as for shipowners, living conditions on merchant vessels have improved greatly since the days of sail. Now there is a greater appreciation that maintaining decent living conditions on merchant vessels is not only necessary to maintain seafarers' health and well-being but also to attract and retain skilled and reliable people to shipboard careers.³³

The Accommodation of Crews Convention (Revised), 1949 (No.92) and the Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133) contain the standards for crew accommodation in effect for ships depending on when the ship was constructed. The MLC 2006 supersedes these conventions for ships constructed after the date when the Convention came into force in the vessel's flag state.³⁴

³¹ Maritime Labour Convention (MLC), 2006, Standard A.2.3 (3).

³² Ibid, Standard A.2.3 (5).

³³ B. Stevenson, D., "The IMLI Manual on International Maritime Law, Volume II, Shipping Law", 1st edition, Oxford University press, 2016, p. 226.

³⁴ Ibid, p. 227.

The provisions of the new Convention dealing with on-board accommodation are primarily drawn from the Accommodation of Crews Convention (Revised), 1949 (No. 92), the Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133, the related Crew Accommodation (Air Conditioning) Recommendation, 1970 (No. 140) and the Crew Accommodation (Noise Control) Recommendation, 1970 (No. 141), but have been updated to reflect the advice of the Shipowners and Seafarers representatives regarding contemporary standards and needs in the sector.³⁵

Seafarers are entitled to safe and decent living and recreational facilities on board. Each Member shall ensure that ships that fly its flag provide and maintain decent accommodations and recreational facilities for seafarers working or living on board, or both, consistent with promoting the seafarers' health and well-being.³⁶

The requirements for the construction of a ship includes in Regulation 3.1 of MLC 2006. In other words, shipowners should comply with the requirements stipulated in this Convention together with IMO guidelines. The IMO definition ergonomics is the study and design of working environments (e.g., work station, cockpit, ship bridges) and their components, work practices and work procedures for the benefits of the worker's productivity, health, comfort and safety. Moreover, a ship is similar to a floating platform which can be effective due to external and internal environment conditions such as weather, temperature, humidity, noise, vibration and ship motion (pitching, rolling and slamming). The objective of the Regulation 3.1 of MLC 2006 is to care for those factors which are detrimental to the safety and performance of those who work and live onboard.³⁷

In spite of these requirements for accommodation and recreational facilities on board, stipulated by the MLC and the IMO guidelines, violations of these requirements still take place, as illustrated below.

In the case of the ship the *Bermuda I*³⁸, the ship and crew had been abandoned no contract on board. The crew were starving and requesting repatriation. The ship was substandard in all aspects, having main engine and hull deficiencies, inadequate fire fighting equipment and unacceptable working and living conditions. The ship was under arrest by the Port State Control (PSC) following the discovery of false

³⁵ Christodoulou- Varotsi, I & Pentsov, Dmitry," Maritime Work Law Fundamental: Responsible Shipowners, Reliable Seafarers", 2008, Springer-Verlay Berli, p. 313.

³⁶ Maritime Labour Convention (MLC), 2006, Regulation 3.1(1).

³⁷ International Maritime Human Element Bulletin (2004). *Alert, Issue No.3*: The Nautical Institute.

³⁸ *Bermuda I vs. 7 Seafarers*, March 2007.

documents. The apparent flag State of Cambodia denied any knowledge of the vessel in its register. The local International Transport Workers Federation (ITF) inspector was looking for possible ways to repatriate the crew and reimburse outstanding wages.

In the case of the ship the *Concel Pride*³⁹, no food, shortage of fuel, unacceptable living conditions and substandard maintenance existed according to PSC. The Self-appointed agent, Ybarrola was to supply food and water, however, there was no contact with the owners. A Joint letter co-signed by the ILO Director General and the IMO Secretary General to the Flag State administration, urged them to facilitate the resolution of this case. Finally, the Nigerian seafarers were detained on arrival in Nigeria. The ITF was endeavouring to clarify the situation.

In the case of the ship *Sea-N.Way Ocean*⁴⁰, the ship crews were abandoned without food, drinking water or fuel. This information which originated from the crew was confirmed by the local ITF affiliate. The owners also seemed to be in debt to local suppliers and shipping agents. The crew was enduring substandard living conditions, with no air conditioning and subject to serious risks of disease from mosquitoes and other insects prevalent in the region at this time. From 9th -12th May one crew member was admitted to hospital ashore with amoebic dysentery and pneumonia, he was released as the bill was not paid. The ITF regional office in Rio was in communication with the crewing agents, and endeavouring to put pressure on the vessel owners to respect the human rights of the crew members. But, no satisfactory response was received.

It is obvious from the above three incidents regarding accommodation and recreational facilities for seafarers that due respect was not given in these cases to the provisions of the MLC for the social protection of seafarers.

2.2.4 Food and Catering

Historically, shipowners have been obliged to provide food for their crews. The early maritime codes recognized the importance of decent nutrition to seafarers' health and thus to their ability to perform their duties.⁴¹

³⁹ *Concel Pride Ship vs. 15 Seafarers*, Nigeria Flag, 17 May 2005.

⁴⁰ *Sea-N.Way Ocean vs. 10 Seafarers*, Panama Flag, 10 May 2007.

⁴¹ B. Stevenson, D., "The IMLI Manual on International Maritime Law, Volume II, Shipping Law", 1st edition, Oxford University press, 2016, p. 227.

Seafarers have access to good quality food and drinking water provided under regulated hygienic conditions. Another important aspect of this Convention is that food and drinking water of appropriate quality, nutritional value and quantity should adequately cover the requirements of the ship. And member states shall take into consideration different cultural and religious backgrounds.⁴²

As per an article in Lloyd's List – Protection and Indemnity Club (P&I) with regard to seafarers-

Professor James Brewer wrote: Shipowners need to shape up to look after the health and fitness of the crew members- or risk more accidents at sea. Too many of the world's seafarers suffer from heart problems, obesity or tiredness that can be blamed on poor diet, insurers have insisted. Some people are consuming too much stodge and others too much sugar. Danger diets have become a worry from the marine safety and insurance viewpoint- ship maintenance and cargo care can also suffer- that concerns have been raised at the level of the International Group of P&I clubs.

Mr. Tony Baker, the head of loss prevention of the Club underlined: a significant number of P&I claims relate to sun-standard performance or ill-health of seafarers. He emphasized that proper nutrition, along with adequate rest and sleep, regular exercise and good hygiene, help to prevent diseases and improve health, well being and general performance. When referring to a proper nutrition, this means a balanced diet with sufficient protein for the formation and repair of body tissues, adequate supply of minerals to reinforce body tissues and sufficient carbohydrates and the right amount of fats for energy. There must be vitamins to keep the brain, nerves and other vital organs functioning.

In Lloyd's list, shipowners need to shape up to look after the health and fitness of crew members or face risk at sea and that too many of the world's seafarers suffer from heart problems, obesity or tiredness, which can be blamed on poor diet, insurers have insisted. For example, failing to observe regular meals and missing breakfast can lead to low performance.⁴³

The failure of the shipowners to look after the health and safety of the crew may be seen in the cases below.

⁴² Maritime Labour Convention (MLC), Regulation 3.2.

⁴³ [http:// www.lloydslist.com/art/1147057656246](http://www.lloydslist.com/art/1147057656246)

In the case of the *s.s.Maznah*⁴⁴, the crew had not been paid since May 2005. Insufficient food, water and fuel have been provided since the beginning of July 2005. The Vessel has been arrested in July 2005 by the High Court of Sabah and Serawak for unpaid bunker fees. The Crew was suing the company for unpaid wages. The ITF facilitated a dialogue between the owner and crew.

In the case of the *s.s.Tsarina*⁴⁵, crew was running out of food and water and then contacted the manning agents, the shipowner and the flag State, but no responses were received.

In the case of the *s.s. Tan Trader*⁴⁶, the ship was arrested by PSC on 17 December 2008 due to unpaid wages, substandard food, gas and oil. The vessel was docked without crew and under Italian Coast Guard supervision. Negotiations were taken to arrange repatriation of the crew.

In the case of the Ship the *Atlantic Star*⁴⁷, the ship was sailing with poor living conditions and lack of provisions for several months around the west coast of Africa. The crew made several calls to the International Workers' Trade Federation (ITF) inspector and arrived in Las Palmas on 27 September 2009. There was no response from the shipowner. Provisions & water were supplied by the local agent Stella Maris.

In the case of the *s.s. Alutrans*⁴⁸, the crew had not received salaries since they joined the vessel on 22 July 2007. The ship was at anchor and had been under arrest since 21 January 2008. Provisions were not being supplied by the owner and the seafarers were reliant on help from other seafarers from ships visiting the port.

The above incidents regarding the provisions of insufficient food and water are violations of the Regulation 3.2 of the MLC which requires the supply of food and drinking water of appropriate quality and quantity.

2.2.5 Medical Care on Board Ship and Ashore

It has been recognized since long ago that, seafarers enjoy rights to free medical care. For centuries, seafarers have had medical benefits superior to those provided to shore-based workers.

⁴⁴ *Maznah Ship vs. 21 Seafarers*, Indonesia Flag, 19 August 2005.

⁴⁵ *Tsarina vs. 10 Seafarers*, St.Vincetnt & Grenadines.

⁴⁶ *Tan Trader vs. 9 Seafarers*, Malta Flag, 17 February 2009.

⁴⁷ *Atlantic Star Ship vs. 15 Seafarers*, Belize Flag, 2 October 2009.

⁴⁸ *Alutrans vs 8 Seafarers*, Panama Flag, 5 June 2008.

This right is very different and much broader than a land worker's rights to medical care. Unlike workers' compensation for land workers, there is no requirement for seafarers to prove that their sickness or injury was caused by their employment.⁴⁹

Under MLC, 2006, each member shall ensure that all seafarers on ships that fly its flag are covered by adequate measures for health protection and medical care, including essential dental care, that they have access to prompt and adequate medical care whilst working on board. Such protection and care shall, in principle, be provided at no cost to the seafarers.⁵⁰

In the three cases that follow, the seafarers' right to medical care was violated by the shipowners.

In the case of the ship *the Destiny*⁵¹, the vessel is detained by Port State Control (PSC) due to her unseaworthy condition. Agents have stopped supplying the vessel as they were owed money. The cargo of timber had value, but this could not be realized in Cape Verde. Ship owner had shown no interest in resolving the situation. The impasse was having an adverse effect on the mental health of the crew. The seafarers needed to be repatriated on humanitarian grounds. In particular, two had medical conditions that required their immediate return home.

In the case of the ship *the Lady Belinda*⁵², all the crew members had not been paid for 9 months. They had had no food, water and medical care for 3 months. On 13 December 2008, the Flag State was informed that the owner had disappeared. Upon contacting the management company, it was learnt that the owner owed the management company and agent lots of money. Contact was made with the Flag State and information was received from the State that on 13 December 2008, the vessel's registration had been suspended.

In the case of the ship *Symphony 1*,⁵³ the engine was out of order, the ship's certificate had expired, there was a black out on board resulting in no air conditioning. Food was in short supply and there were no bunkers. The ship was detained by PSC due to numerous deficiencies. The crew was unpaid for more than 3 months and the Chief Officer was in need of medical treatment.

⁴⁹ B. Stevenson, D., "The IMLI Manual on International Maritime Law, Volume II, Shipping Law", 1st edition, Oxford University press, 2016, p. 230.

⁵⁰ Maritime Labour Convention (MLC), 2006, Regulation 4.1.

⁵¹ *Destiny vs 16 Seafarers*, Panama Flag, 11 March 2008.

⁵² *Lady Belinda vs 6 Seafarers* (Bangladesh (4); Syrian Arab Republic(2)) , Comoros Flag , 28 April 2009.

⁵³ *Symphony 1 vs 32 Seafarers*, Liberia Flag, 26 November 2008.

The events described above were in contradiction to the Regulation 4.1 regarding medical care on board ship and ashore provided in the MLC.

Moreover, the MLC requires each Member to adopt laws and regulations establishing requirements for on-board hospital and medical care facilities and equipment and training on ships that fly its flag.⁵⁴ Such national laws and regulations shall as a minimum provide for the following requirements⁵⁵:

(a) all ships shall carry a medicine chest, medical equipment and a medical guide, the specifics of which shall be prescribed and subject to regular inspection by the competent authority; the national requirements shall take into account the type of ship, the number of persons on board and the nature, destination and duration of voyages and relevant national and international recommended medical standards;

(b) ships carrying 100 or more persons and ordinarily engaged on international voyages of more than three days' duration shall carry a qualified medical doctor who is responsible for providing medical care; national laws or regulations shall also specify which other ships shall be required to carry a medical doctor, taking into account, *inter alia*, such factors as the duration, nature and conditions of the voyage and the number of seafarers on board;

(c) ships which do not carry a medical doctor shall be required to have either at least one seafarer on board who is in charge of medical care and administering medicine as part of their regular duties or at least one seafarer on board competent to provide medical first aid; persons in charge of medical care on board who are not medical doctors shall have satisfactorily completed training in medical care that meets the requirements of the STCW; seafarers designated to provide medical first aid shall have satisfactorily completed training in medical first aid that meets the requirements of STCW; national laws or regulations shall specify the level of approved training required taking into account, *inter alia*, such factors as the duration, nature and conditions of the voyage and the number of seafarers on board; and

(d) the competent authority shall ensure by a prearranged system that medical advice by radio or satellite communication to ships at sea, including specialist advice, is available 24 hours a day; medical advice, including the onward transmission of medical messages by radio or satellite communication between a ship and those

⁵⁴ Maritime Labour Convention (MLC), 2006, Standard A.4.1 (3).

⁵⁵ *Ibid*, Standard A.4.1 (4).

ashore giving the advice, shall be available free of charge to all ships irrespective of the flag that they fly.

The Member State should ensure that measures are provided for health protection, medical care, including essential dental care, for seafarers working on board a ship that flies its flag.⁵⁶ The provisions of health care are not limited to treating sick or injured seafarers even including preventive measures, such as health promotion and education programmes.⁵⁷

In addition to that, Guideline B4.1 contains detailed recommendations with respect to provision of medical care; medical report form; medical care ashore; medical assistance to other ships and international cooperation; as well as medical care for the dependants of seafarers.

According to the guideline⁵⁸, the Member State should ensure that at least one designated seafarer is on board the approved medical first-aid training required by STCW, which enables such persons to take immediate, effective actions in case of accidents or illness occurring on board a ship. The designated person should make use of medical advice by radio or satellite communications.

Under Guideline B 4.1.3, shore-based medical facilities for treating seafarers should be adequate for the purposes. The doctors, dentists and other medical personnel should be properly qualified.

Measures should be taken to ensure that seafarers have access when in port to:

- (a) outpatient treatment for sickness and injury;
- (b) hospitalization when necessary; and
- (c) facilities for dental treatment, especially in cases of emergency.

Suitable measures should exist to facilitate the treatment of seafarers suffering from disease. In particular, seafarers should have prompt access to clinics and hospitals ashore, without difficulty and irrespective of nationality or religious belief, and, whenever possible, shipowners should make arrangements to ensure, when necessary, continuation of treatment to supplement the medical facilities available to them.

Each Member should adopt measures to secure proper and sufficient medical care for the dependants of seafarers domiciled in its territory pending the development

⁵⁶ Maritime Labour Convention (MLC), 2006, Standard A4.1 (1).

⁵⁷ Ibid, Standard A4.1 (1) (e).

⁵⁸ Ibid, Guideline B4.1.1 (1) (a).

of a medical care service which would include within its scope workers generally and their dependants where such services do not exist and should inform the International Labour Office concerning the measures taken for this purpose.⁵⁹

As compared to the Health Protection and Medical Care (Seafarers) Convention, 1987 (No. 164), which contained an obligation to provide medical care and health protection to seafarers free of charge, while they are serving on articles, the new Convention has made this obligation, in the words of the Preparatory Report a “little more flexible” with the addition of the words “in principle”. As a result, unlike Convention No. 164, the new Convention does not preclude ratifying Members from providing to seafarers paid medical care and health protection.⁶⁰

In medical care, the ILO Convention (No.164) provides health protection only for seafarers on board ship and ashore. But, the MLC provides more protection than the ILO (164) to seafarers, adding their dependants as well and broadly includes protection to seafarers on shore.

2.2.6 Health and Safety Protection and Accident Prevention

The MLC aim is that the work environment on board ships promotes occupational safety and health for the seafarers. The Regulation 4.3 stipulates that each Member shall ensure that seafarers on ships that fly its flag are provided with occupational health protection and live, work and train on board ship in a safe and hygienic environment.

Furthermore, each Member shall develop and promulgate national guidelines for the management of occupational safety and health on board ships that fly its flag, after consultation with representative shipowners’ and seafarers’ organizations and taking into account applicable codes, guidelines and standards recommended by international organizations, national administrations and maritime industry organizations.

And each Member shall also adopt laws and regulations and other measures addressing the matters specified in the Code, taking into account relevant international instruments, and set standards for occupational safety and health protection and accident prevention on ships that fly its flag.

⁵⁹ Maritime Labour Convention (MLC), 2006, Guideline B4.1.5.

⁶⁰ Christodoulou- Varotsi, I & Pentsov, Dmitry," Maritime Work Law Fundamental: Responsible Shipowners, Reliable Seafarers", 2008, Springer-Verlay Berli, p. 315-316.

The laws and regulations and other measures to be adopted in accordance with the above requirements, shall include the following subjects⁶¹:

- (a) the adoption and effective implementation and promotion of occupational safety and health policies and programmes on ships that fly the Member's flag, including risk evaluation as well as training and instruction of seafarers;
- (b) reasonable precautions to prevent occupational accidents, injuries and diseases on board ship, including measures to reduce and prevent the risk of exposure to harmful levels of ambient factors and chemicals as well as the risk of injury or disease that may arise from the use of equipment and machinery on board ships;
- (c) on-board programmes for the prevention of occupational accidents, injuries and diseases and for continuous improvement in occupational safety and health protection, involving seafarers' representatives and all other persons concerned in their implementation, taking account of preventive measures, including engineering and design control, substitution of processes and procedures for collective and individual tasks, and the use of personal protective equipment; and
- (d) requirements for inspecting, reporting and correcting unsafe conditions and for investigating and reporting on-board occupational accidents.

With regard to the occupational safety and health protection⁶²,

- (a) take account of relevant international instruments dealing with occupational safety and health protection in general and with specific risks, and address all matters relevant to the prevention of occupational accidents, injuries and diseases that may be applicable to the work of seafarers and particularly those which are specific to maritime employment;
- (b) clearly specify the obligation of shipowners, seafarers and others concerned to comply with the applicable standards and with the ship's occupational safety and health policy and programme with special attention being paid to the safety and health of seafarers under the age of 18.

⁶¹ Maritime Labour Convention (MLC), 2006, Standard A4.3 (1).

⁶² Ibid, Standard A4.3 (2) (a - d).

- (c) specify the duties of the master or a person designated by the master, or both, to take specific responsibility for the implementation of and compliance with the ship's occupational safety and health policy and programmes; and
- (d) specify the authority of the ships seafarers appointed or elected as safety representatives to participate in meetings of the ship's safety committee. Such a committee shall be established on board a ship on which there are five or more seafarers.

In addition to that, the Guidelines contain detailed provisions with respect to provisions on occupational accidents, injuries and diseases; exposure to noise; exposure to vibration; obligations of shipowners; reporting and collection of statistics; investigations; national protection and prevention programmes; content of protection and prevention programmes; instruction in occupational safety and health protection and the prevention of occupational accidents; safety and health education of young seafarers; as well as international cooperation.

“The laws and regulations and other measures referred to Regulation 4.3, paragraph 3 shall be regularly reviewed in consultation with the representatives of the shipowners and seafarers' organizations.”⁶³

Compliance with the requirements of applicable international instruments on the acceptable levels of exposure to workplace hazards on board ships and on the development and implementation of ships' occupational safety and health policies and programmes shall be consistent with the requirements of this Convention.⁶⁴

Reporting and investigation of occupational safety and health matters shall be to ensure the protection of seafarers' personal data, and shall take account of the guidance provided by the International Labour Organization on this matter.⁶⁵

The competent authority shall cooperate with shipowners' and seafarers' organizations. The competent authority shall require that shipowners conducting risk evaluation in relation to management of occupational safety and health refer to appropriate statistical information from their ships and from general statistics provided by the competent authority.⁶⁶

⁶³ Maritime Labour Convention (MLC), 2006, Standard A4.3 (3).

⁶⁴ Ibid, Standard A4.3 (4).

⁶⁵ Ibid, Standard A4.3 (6).

⁶⁶ Ibid, Standard A4.3 (7-8).

As compared to the Prevention of Accidents (Seafarers) Convention, 1970 (No. 134), the new Convention adds the requirements of risk evaluation as part of occupational safety and health policies and programmes on ships that fly the Member's flag. In addition to that, the list of matters to be covered by provisions concerning occupational safety and health, as established by Convention No. 134, in the new Convention has been placed in a non-mandatory part B of the Code. As concerns the new list itself, as compared to Convention No. 134, it has been modernized to include a wide range of human elements affecting occupational safety and health, such as physical and mental elements of fatigue, the effects of drug and alcohol dependency, as well as HIV/AIDS protection and prevention.⁶⁷

Therefore, states are required to develop and promulgate national guidelines for the management of occupational safety and health on board ships that fly their flag, after consultation with representative shipowners' and seafarers' organizations and taking into account applicable codes, guidelines and standards. All occupational accidents and occupational injuries and diseases resulting in loss or serious personal injury, and such other may be specified in national laws or regulations.

2.2.7 Access to Shore-based Welfare Facilities

Shore leave is necessary to a seafarer's emotional, spiritual, cultural, and physical well-being. Shore leave is a basic right that should be granted to all seafarers except in the most extreme circumstances. For as long as seafarers have gone to sea on merchant ships, shore leave existed as a cherished right, but it is not an absolute right. Seafarers' rights to go on shore leave were balanced against their vessels' operational requirements and health and safety considerations.⁶⁸

According to Regulation 4.4 of the MLC, 2006, each member shall ensure that shore-based welfare facilities, where they exist, are easily accessible. In other words, no discrimination exists with regard to welfare facilities on the basis of nationality, race, colour, sex, political opinion, social, culture or the ship's flag.⁶⁹

Furthermore, under Standard A 4.4(2), each Member shall promote the development of welfare facilities in appropriate ports of the country and determine,

⁶⁷ Christodoulou- Varotsi, I & Pentsov, Dmitry," Maritime Work Law Fundamental: Responsible Shipowners, Reliable Seafarers", 2008, Springer-Verlay Berli, p. 318.

⁶⁸ B. Stevenson, D., "The IMLI Manual on International Maritime Law, Volume II, Shipping Law", 1st edition, Oxford University press, 2016, p. 227.

⁶⁹ Maritime Labour Convention (MLC), 2006, Standard A 4.4 (1).

after consultation with the shipowners' and seafarers' organizations concerned, which ports are to be regarded as appropriate. In addition to that, Standard A 4.4 (3) provides each Member shall encourage the establishment of welfare boards which shall regularly review welfare facilities and services to ensure that they are appropriate in the light of changes in the needs of seafarers resulting from technical, operational and other developments in the shipping industry.

In addition to that, the Guidelines contain detailed provisions with respect to responsibilities of Members; welfare facilities and services in ports; welfare boards; financing of welfare facilities; dissemination of information and facilitation measures; and seafarers in a foreign port.

Unlike the Seafarers' Welfare Convention, 1987 (No. 163), which imposed on the ratifying Members the duty to ensure that adequate welfare facilities and services are provided for seafarers both in port and on board ship, under the new Convention the Members shall merely ensure that shore-based welfare facilities, where they exist, are easily accessible. Furthermore, while under Convention No. 163 each Member has to ensure that welfare facilities and services are provided in appropriate ports of the country for all seafarers, irrespective of nationality, race, colour, sex, religion, political opinion or social origin and irrespective of the State in which the ship on which they are employed is registered, under the new Convention, each Member shall require the availability of welfare facilities to all seafarers, where such facilities exist on its territory. These changes reflect the concern expressed by some governments regarding the need to ensure that the wording refers to an obligation to promote the development of shore-based welfare facilities "without importing any financial obligation to provide or establish these facilities".⁷⁰

In sum, shore-based welfare is important for the physical and mental well-being of seafarers.

2.2.8 Social Security

Social security protection is one of the most essential aspects of decent work, but also one of the most complex issues to implement, particularly in a globalized sector such as the maritime sector where workers and employers are often based in

⁷⁰ Christodoulou- Varotsi, I & Pentsov, Dmitry, " Maritime Work Law Fundamental: Responsible Shipowners, Reliable Seafarers", 2008, Springer-Verlay Berli, p. 319.

different countries, often with differing approaches to the provision of social security and often very different levels of economic and social development.

The International Labour Conference adopted standards on the social security of seafarers as early as 1920. It first turned its attention to the provision of unemployment benefit (Convention No. 8). In 1936, the Conference adopted two complementary texts: Convention No. 55, which determines the liability of shipowners in the case of sickness, accident or death of seafarers and Convention No. 56 covering the sickness insurance of seafarers. Ten years later, the Conference strengthened the protection of this category of workers through the adoption of two new Conventions: Convention No. 70, which is designed to resolve all the social security problems of seafarers for all contingencies in a simple and global instrument, and Convention No. 71 which covers seafarers' pensions.⁷¹ The former was ratified by only seven countries and never went into force. The ratifying countries were: Algeria, France, Netherlands, Peru, Poland, Spain and the United Kingdom.⁷²

In the 1980s, the revision of all of the above Conventions was envisaged in so far as it was considered preferable to replace them by a single instrument of global scope. In 1987, the Conference therefore adopted the Social Security (Seafarers) Convention (Revised), 1987 (No. 165).⁷³ This Convention was only ratified by three countries (Hungary, Philippines and Spain).

However, many countries have a major problem with respect to providing the essential complementary support to cover the longer-term risks and ensure social protection for the seafarers themselves and their dependents (wife and children) following the end or interruption of the seafarers' employment.⁷⁴

The MLC, 2006, while consolidating the previous ILO maritime social security Conventions and taking into account the particular obstacles which seafarers face, also adopted a new approach aimed at:

- promoting social security coverage for all seafarers and
- reflecting the ILO approach described above with respect to flexibility and recognizing the reality of most social security systems, while

⁷¹ International Labour Organization, "International Labour Standards: A Global Approach", 1st edition, 2002, p. 572.

⁷² <http://www.marinebenefit.com>

⁷³ International Labour Organization, "International Labour Standards: A Global Approach", 1st edition, 2002, p. 572.

⁷⁴ <http://www.marinebenefit.com>

- emphasizing an approach that recognizes the complementary role of the, often shorter term, social protection provided by employers/shipowners.⁷⁵

The Regulation 4.5 and the associated provisions of the Code (Standard A4.5 and Guidelines B4.5) of the MLC, 2006, cover social security, primarily with respect to its provision through national social security systems.

Under Regulation 4.5, each Member undertakes to take steps, according to its national circumstances, individually and through international cooperation, to achieve progressively comprehensive social security protection for seafarers.⁷⁶ Each Member shall ensure that seafarers who are subject to its social security legislation, and, to the extent provided for in its national law, their dependants, are entitled to benefit from social security protection no less favourable than that enjoyed by shore workers.⁷⁷

The branches to be considered with a view to achieving progressively comprehensive social security protection are: medical care, sickness benefit, unemployment benefit, old-age benefit, employment injury benefit, family benefit, maternity benefit, invalidity benefit and survivors' benefit, complementing the protection provided for under Regulations 4.1, on medical care, and Regulation 4.2, on shipowners' liability, and under other titles of this Convention.⁷⁸ At the time of ratification, the protection to be provided by each Member shall include at least three of these nine branches.⁷⁹ Furthermore, each Member shall take steps according to its national circumstances to provide the complementary social security protection to all seafarers ordinarily resident in its territory. This responsibility could be satisfied, for example, through appropriate bilateral or multilateral agreements or contribution-based systems. The resulting protection shall be no less favourable than that enjoyed by shore workers resident in their territory.⁸⁰

Notwithstanding the above attribution of responsibilities, Members may determine, through bilateral and multilateral agreements and through provisions adopted in the framework of regional economic integration organizations, other rules

⁷⁵ ILO: Handbook (2012), "Guidance on implementing the Maritime Labour Convention, 2006 and Social Security for Seafarers", International Labour Office. – Geneva, p - 10.

⁷⁶ Maritime Labour Convention (MLC), 2006, Regulation 4.5 (2).

⁷⁷ Ibid, Regulation 4.5 (3).

⁷⁸ Ibid, Standard A4.5 (1).

⁷⁹ Ibid, Standard A4.5 (2).

⁸⁰ Ibid, Standard A4.5 (3).

concerning the social security legislation to which seafarers are subject.⁸¹ Each Member's responsibilities with respect to seafarers on ships that fly its flag shall include those provided for by Regulations 4.1 and 4.2 and the related provisions of the Code, as well as those that are inherent in its general obligations under international law.⁸²

Unlike the Social Security (Seafarers) Convention (Revised), 1987 (No. 165), which prescribed concrete standards of social security benefits, the new Convention does not establish any specific standards. It merely requires each Member to take steps, according to its national circumstances, individually and through international cooperation, to achieve progressively comprehensive social security protection for seafarers. This shall be viewed as a reflection of a "realistic approach to the promotion of social security protection, which would otherwise have created an obstacle to the wide-scale ratification of the Convention."⁸³

Moreover, the majority of the obligations under the MLC, 2006, Regulation 4.5 and the Code, which deal with social security, are directed to the country in which the seafarer is ordinarily resident. There are also some specific obligations directed to flag States, essentially confirming the complementary obligations under Regulation 4.1 and 4.2 and other provisions in the MLC, 2006 related to social protection. There is also a more general obligation on all countries to cooperate to try to ensure that seafarers are not left without social security protection when working outside their country of residence. The legal form and system for implementing these requirements is flexible and may take the form of laws or regulations or private schemes or collective bargaining agreements or a combination of these. It can also involve bilateral or multilateral agreements to ensure maintenance of coverage under contributory or non-contributory systems or involve provisions adopted within the framework of regional economic integration organizations.

2.2.9 Shipowners' Liability

Under MLC, 2006, the shipowner is held responsible for meeting the requirements of the Convention. The shipowners are liable for various claims.

⁸¹ Maritime Labour Convention (MLC), 2006, Standard A4.5 (4).

⁸² Ibid, Standard A4.5 (5).

⁸³ Christodoulou- Varotsi, I & Pentsov, Dmitry, " Maritime Work Law Fundamental: Responsible Shipowners, Reliable Seafarers", 2008, Springer-Verlay Berli, p. 320.

A shipowner is defined as "the owner of the ship or another organization or person, such as the manager, agent or bareboat charterer, who has assumed the responsibility for the operation of the ship from the owner and who, on assuming such responsibility, has agreed to take over the duties and responsibilities imposed on shipowners in accordance with this Convention, regardless of whether any other organization or persons fulfil certain of the duties or responsibilities on behalf of the shipowner".⁸⁴

The provision to provide financial security is set out in the Convention. Each member shall adopt laws and regulations requiring that shipowners of ships that fly its flag are responsible for health protection and medical care of all seafarers working on board the ships in accordance with the following minimum standards.⁸⁵

- (a) shipowners shall be liable to bear the costs for seafarers working on their ships in respect of sickness and injury of the seafarers occurring between the date of commencing duty and the date upon which they are deemed duly repatriated, or arising from their employment between those dates;
- (b) shipowners shall provide financial security to assure compensation in the event of the death or long-term disability of seafarers due to an occupational injury, illness or hazard, as set out in national law, the seafarers' employment agreement or collective agreement;
- (c) shipowners shall be liable to defray the expense of medical care, including medical treatment and the supply of the necessary medicines and therapeutic appliances, and board and lodging away from home until the sick or injured seafarer has recovered, or until the sickness or incapacity has been declared of a permanent character; and
- (d) shipowners shall be liable to pay the cost of burial expenses in the case of death occurring on board or ashore during the period of engagement.

However, the Convention does not provide a list of suitable financial instruments so that it will fall upon each Member Flag State to determine what it considers to be suitable financial security. It should be noted that financial security (or insurance) is also required under the MLC in two other circumstances:

- (i) Repatriation of seafarers

⁸⁴ Maritime Labour Convention, 2006, Article-II, para-1(j).

⁸⁵ Ibid, Standard A4.2 (1) (a-d).

(ii) Recruitment and Placement (Manning) Agents.

There is much debate on how Flag States will implement the Financial Security obligations. Many shipowners are hoping that Protection and Indemnity (P&I) cover will be sufficient but specific insurance products are being created to cover these risks.⁸⁶

There has been some debate in the shipping press as to whether existing insurance arrangements, in particular P&I cover, is sufficient to satisfy the financial security obligations under the MLC. Clearly, owners and operators would prefer that their obligations are covered under existing policies and indemnities. Others have suggested that current P&I cover is inadequate to satisfy all of the above obligations.⁸⁷

However, Club cover has various exclusions which arise from war, terrorism, insolvency, biochemical attack, radioactive contamination, etc. where Club cover is either limited or unavailable. These exclusions are not permitted under MLC.

According to MLC, 2006, the following three cases are the only exemptions from the shipowners' liability.

- (a) injury incurred otherwise than in the service of the ship;
- (b) injury or sickness due to the wilful misconduct of the sick, injured or deceased seafarer; and
- (c) sickness or infirmity intentionally concealed when the engagement is entered into.⁸⁸

This gap in coverage of seafarers' claims could amount to a difficulty to implement the provisions of the MLC.

As compared to the Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No. 55), the new Convention prescribes an additional obligation of shipowners to provide financial security so as to assure compensation in the event of the death as set out in national law, the seafarers employment agreement or collective agreement.⁸⁹

Today, the vast numbers of the world's population still lack access to adequate levels of social protection and, in some countries, to any meaningful form of social protection. Seafarers are among the categories of workers for whom the lack of

⁸⁶ <http://www.clydeco.com>.

⁸⁷ Ibid.

⁸⁸ Maritime Labour Convention (MLC), 2006, Standard A4.2 (5).

⁸⁹ Christodoulou- Varotsi, I & Pentsov, Dmitry, " Maritime Work Law Fundamental: Responsible Shipowners, Reliable Seafarers", 2008, Springer-Verlay Berli, p. 317.

adequate coverage is of concern. The adoption of the new consolidated Maritime Labour Convention by the ILO Maritime Conference was a major step forward for the rights and social conditions of seafarers everywhere.

Chapter 3

The Role and Responsibility of States in the Maritime Social Protection Sector

Today between 80 and 90% of world trade is carried by shipping, making ship-borne trade an indispensable pillar of the global economy which relies on a productive and efficient maritime sector given this, it is obvious that seafarers play a vital role in maintaining stability and promoting sustainable growth in the maritime sector. Hence, the social rights of seafarers constituting the human element of the shipping industry must be respected and given priority by all the parties involved.

3.1 Jurisdiction and Liabilities of Flag States

The term flag state refers to the country where a ship is registered and/or the country whose flag the ship is flying. Ships can, and often do, move from one country/ registry/ flag to another during the course of their operating lives. Under international law the flag state is the government that has authority and responsibility for regulating ships, and the conditions on board ships, that fly its flag no matter where they travel in the world.¹

The principle of flag State jurisdiction is one of the most widely acknowledged in international maritime law, yet it remains one of the most contentious. The rights of flag States have remained largely unchanged since the original evolution of the concept. But the list of their responsibilities has grown

¹ International Labour Organization: Maritime Labour Convention, 2006 (MLC, 2006): Frequently Asked Questions (FAQ), 3rd (revised) edition, 2014, p. 53.

exponentially, in areas ranging from ship safety standards and crew training to marine pollution, maritime security, and seafarer welfare.²

All States, whether coastal or land-locked, have the right to fix conditions for the grant of their nationality to ships, for the registration of ships in their territory, and for the right to fly their flag. Flag States have exclusive jurisdiction over vessels flying their flag on the high seas, except in exceptional cases provided for in international treaties or in the 1982 Convention.³

3.1.1 Jurisdiction of Flag States

The institution of the ‘flag State’ developed over several hundred years. Its early development was influenced by two key imperatives, which can be summed up as ‘nationality’ and ‘registration’. The importance of the ‘flag’ or ‘nationality’ of vessels stems from the principle of freedom of the seas, and the realities of long-distance sea voyages. Historically, the flag embodied the idea of national protection and national administration of the vessels of a nation-state, and was necessary to ensure adequate protection of vessels traveling far from their home port. Over time, requirements for registration, regulating the ownership and operation of vessels, developed to give effect to improvements in safety standards for navigation, vessels and seafarers, and to put in place some environmental protections in relation to the conduct of shipping operations.⁴

Flag state authority over the conduct of and on board a vessel may be described as "quasi-territorial". "A ship which bears a nation's flag is to be treated as part of the territory of that nation. A ship is a kind of "floating island". The legal authority of a state with respect to persons, property and conduct on board vessels of its nationality is indeed tantamount to that enjoyed within the borders of state territory.⁵

The Draft Articles Concerning the Law of the Sea 1956, prepared by the International Law Commission, formed the basis for discussion and adoption of the High Seas Convention 1958 (the High Seas Convention) which was the first legally

² Goodman, Camille, The Regime for Flag State Responsibility in International Fisheries Law – effective fact, creative fiction, or further work required?, 23 *Austl. & NZ Mar.L.J.*2009.

³ *Ibid.*

⁴ *Ibid.*

⁵ Dr. K X Li and Professor J Wonham: “The role of states in maritime employment & safety”, Dalian maritime university press, 2000, p. 189-190.

binding international instrument to set out the rights and responsibilities relating to flag State jurisdiction.⁶

One of the essential adjuncts to the principle of freedom of the seas is that a ship must fly the flag of a single State and that it is subject to the jurisdiction of that State. This opinion of the International Law Commission in 1956 on a draft article of the High Seas Convention (HSC) was a product of its time; a time of traditional maritime States and responsible long-established shipping companies operating for the most part under the effective maritime administrations of their national flag.⁷

In 1958 the States Parties to the HSC, desirous of “codifying the rules of international law relating to the high seas”, recognized the customary right of a State to fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Agreement was also reached on the measures necessary to ensure the safety of ships flying the flag of a State over which the flag State must exercise jurisdiction. These flag State responsibilities were reaffirmed, expanded upon and clarified through the Law of the Sea Convention in 1982.⁸

The United Nations Convention on the Law of the Sea 1982, which now provides the basis for understanding flag State jurisdiction in international law, developed from the ideas of the 1958 Convention, notably in relation to the responsibilities of flag States to take measures to ensure safety at sea.⁹

According to Article 94(1) of UNCLOS, every Flag State is obligated to “effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.” In particular, every state shall assume jurisdiction under its internal law over each ship flying its flag and its master, officers and crew in respect of administrative, technical and social matters concerning the ship.¹⁰

The "Constitution of the Sea" or otherwise known as the United Nations Convention on the Law of the Sea (UNCLOS) specially sets down the responsibility and jurisdictions of not only flag states but also of coastal states and port states in

⁶ Goodman, Camille, *The Regime for Flag State Responsibility in International Fisheries Law – effective fact, creative fiction, or further work required?*, 23 *Austl. & NZ Mar.L.J.*2009.

⁷ N.K. Mansell John: *"Flag State Responsibility: Historical Development and Contemporary Issues"*, Springer, 2009, p. 2.

⁸ *Ibid.*

⁹ Goodman, Camille; *Flag State Responsibility in International Fisheries Law – effective fact, creative fiction, or further work required?*, 23 *Austl. & NZ Mar.L.J.*2009.

¹⁰ United Nations Convention on the Law of the Sea (1982), Article-94 (2) (b).

relation to the use of the sea. Although its principles are limited in application to States and other entities having international personality, it somehow finds a direct significance for individuals like the seafarers who were arrested within coastal waters for causing marine pollution.¹¹

In this connection, Article 97(1) of the UNCLOS, which provides protection to the shipmaster and other crew members, specifies that: in the event of a collision or any other incident of navigation concerning a ship on the high seas, involving the penal or disciplinary responsibility of the master or of any other person in the service of the ship, no penal or disciplinary proceedings may be instituted against such person except before the judicial or administrative authorities either of the flag state or the State of which such person is a national.

According to international law, the flag states shall exercise comprehensive jurisdiction- civil, criminal and administrative – over ships flying their flags. The United Nations Convention for the Registration of Ships (the UN Registration Convention) suggests that the flag states, in accordance with their laws and regulations, may allow persons of other nationalities to serve on board ships flying their ships in accordance with the relevant provisions of international convention.¹²

Thus, Flag States, in theory, have sovereign authority over all vessels in their register, and are nominally the most important regulators in maritime shipping. Flag States are expected to implement in legislation relevant ILO and IMO conventions. They are also expected to maintain inspection apparatus to ensure that the ships they register comply, and apply legal sanctions on the shipowner if they do not. Flag States, when they are actually regulating as flag states, have the most consistent and comprehensive authority of any shipping industry actor.¹³

In a world without FOCs (flags of convenience), a regulatory regime based on flag state enforcement would probably be adequate. However, shipowners may elect to flag their ships in any country that will have them. Since choice of flag is influenced by the enforcement of standards under that flag, there is a constant temptation for countries to change their regulations specifically to attract shipowners. Shipowners operating at a high standard may choose to continue to fly high-standard

¹¹ Churchill, R.R., Lowe, A.V: "The Law of the Sea", 3rd Edition, Melland Schill Studies in International Law, Juris Publishing, Manchester University Press, 1999, p. 1.

¹² Dr. K X Li and Professor J Wonham: "The role of states in maritime employment & safety", Dalian maritime university press, 2000, p. 190, 191.

¹³ International Labour Organization: "Cross-Border Social Dialogue and Agreements: An emerging global industrial relations framework?", 1st edition, 2008, p. 198.

flags, but those seeking to reduce costs will move to flags where enforcement is weaker. Therefore under current conditions, flag state authority does not constitute a comprehensive regulatory enforcement regime for global shipping.¹⁴

The Maritime Labour Convention, 2006 includes a strong element of flag state enforcement.¹⁵ Each member shall effectively exercise its jurisdiction and control over ships that fly its flag by establishing a system for ensuring compliance with the requirements of this Convention, including regular inspections, reporting, monitoring and legal proceedings under the applicable laws.¹⁶

The problem of flag state jurisdiction facilitating the development of flags of convenience is more likely to be tackled effectively by developing internationally agreed standards on the issue.

3.1.2 Liabilities of Flag States

Naturally, the corollary of flag State rights is flag State responsibilities. The basic responsibilities of flag States are those set out in Article 94 of the 1982 Convention which requires a flag state to effectively exercise jurisdiction and control over ships flying its flag, and to take measures to ensure safety at sea. This includes a requirement for the flag State to maintain a register of ships flying its flag and to assume effective jurisdiction under its internal law for the ship, officers and crew in respect of administrative, technical and social matters.¹⁷

Article 94(5) of UNCLOS also makes clear that a Flag State does not have total discretion over the standards that it prescribes for ships flying its flag. Any rules or regulations must conform to international standards, procedures and practices. This rule of reference therefore incorporates international standards relating to the construction, equipment and seaworthiness of ships, use of signals, environmental standards and, significantly for the issue of social justice under consideration, the manning of ships, training of crews and standards on board vessels.¹⁸ Such emphasis on internationally accepted standards is of practical necessity; it would be simply chaotic if shipping standards varied wildly or were simply incompatible with each

¹⁴ International Labour Organization: "Cross-Border Social Dialogue and Agreements: An emerging global industrial relations framework?", 1st edition, 2008, p. 198-199.

¹⁵ Ibid, p. 199.

¹⁶ Maritime Labour Convention, 2006, Article V, para-2.

¹⁷ Goodman, Camille; Flag State Responsibility in International Fisheries Law – effective fact, creative fiction, or further work required?, 23 Austl. & NZ Mar.L.J.2009.

¹⁸ Harrison, James: Making of the Law of the Sea; 2011, Cambridge University press, p. 167.

other and act to the severe detriment of the work of organisations such as the ILO who seek to establish uniform labour standards for the benefit of the human rights and dignity of seafarers.¹⁹

Thus, under international maritime law, the Flag State has traditionally had the responsibility to ensure that everything on the registered ship is in accordance with the generally accepted international standards. It has, however, often proven ineffective in practice with a lack of capacity or unwillingness to adopt and enforce said standards severely hampering attempts to universalize and ensure the application of international labour standards.²⁰

When a state assumes legal authority over a ship by granting of its flag, the state also assumes a certain obligation to take measures to ensure that the vessel acts in a fashion consistent with international law. International responsibilities on the party of the flag state will arise out of a failure adequately to exercise its authority to prevent any violent conduct to foreign seafarers or indeed other parties.²¹

Flag states have obligations to protect foreign seafarers working on board ships flying their flags just as they shall protect alien labour in their territories. The UN Registry Convention provides that national laws shall ensure that international seafarers who are working on ships flying their flags may be entitled to enjoy the benefits and rights in accordance with international standards or no worse than their national seafarers.²²

A foreign seafarer employed on board a ship should be treated as a foreign worker within flag state territory, and enjoys basic rights of its own national seafarers. The flag state has international obligations to ensure foreign seafarers' rights are being properly protected.²³

The majority of the obligations in the MLC, 2006 are directed to flag states and competent authorities in flag states largely in connection with setting and

¹⁹ Churchill, R.R., Lowe, A.V : "The Law of the Sea", 3rd Edition, Melland Schill Studies in International Law, Juris Publishing, Manchester University Press, 1988, p. 265.

²⁰ Baird, Richard: Illegal, Unreported and Unregulated Fishing: An Analysis of the Legal Economic and Historical Factors Relevant to its Development and Persistence; 5 *Melb.J Intl.Law* 299, 2004, p. 314.

²¹ Dr. K X Li and Professor J Wonham: "The role of states in maritime employment & safety", Dalian maritime university press, 2000, p. 191.

²² Ibid, p. 193.

²³ Ibid, p. 190.

enforcing standards for ships and shipowners, because of the international responsibility for ships flying their flag.²⁴

Each country is also given a certain responsibility with respect to seafarers who are not covered by its national system, as they are not ordinarily resident, but are working on ships that fly its flag, to the extent that they are not adequately covered by the national schemes of the country in which they are ordinarily or nationals.²⁵

Where responsibilities were confined to flag States or even labour supplying responsibilities, Regulation 4.1 (Medical care on board ship and ashore) is directed to both flag and port States and, in some cases, coastal States. As in other regulations, the flag State is obliged to ensure that standards for medical care, including essential dental care, are met on board its ships and that shipowners respect the seafarer's right to visit a medical doctor or dentist, without delay, in a port of call. However, even if the flag State requires this access and shipowners give permission and try to facilitate access, no shipowner or flag State can require that a foreign port allow a seafarer access to health care services on shore.²⁶

The main responsibility of a country as a flag state under Regulation 4.5 (Social Security) and Standard A4.5 is to ensure that the shipowners' social security protection obligations are respected for seafarers on their ships, particularly those set out in Regulations 4.1 (Medical care on board ship and ashore) and 4.2 (Shipowner's liability) which, respectively, concern the provision of medical care on board ship and ashore, and shipowner's responsibility for the costs of medical care and financial compensation of seafarers and their families, as the case may be, in case of sickness, injury or death occurring while they are serving under an employment agreement or arising from their employment.²⁷

Under the Maritime Labour Convention, 2006, each Member is responsible for ensuring implementation of its obligations under this Convention on ships that fly its flag.²⁸ Each Member shall establish an effective system for the inspection and certification of maritime labour conditions, ensuring that the working and living

²⁴ ILO: Handbook (2012): Guidance on Implementing the Maritime Labour Convention, 2006 and Social Security for Seafarers, Geneva, p. 9.

²⁵ Ibid, p. 13.

²⁶ McConnell ML., Devlin D, Doumbia-Henry C, " The Maritime Labour Convention 2006: A Legal Primer to an Emerging International Regime", Martinus Nijhoff Publisher, 2011, p. 398.

²⁷ ILO: Handbook (2012), "Guidance on Implementing the Maritime Labour Convention, 2006 and Social Security for Seafarers", Geneva, p. 13.

²⁸ Maritime Labour Convention, 2006, Regulation 5.1.1, para-1.

conditions for seafarers on ships that fly its flag meet, and continue to meet, the standards in this Convention.²⁹

In establishing such system, a Member may, where appropriate, authorize public institutions or other organizations (including those of another Member, if the latter agrees) which it recognizes as competent and independent to carry out inspections or to issue certificates or to do both. In all cases, the Member shall remain fully responsible for the inspection and certification of the working and living conditions of the seafarers concerned on ships that fly its flag.³⁰

Regulation 5.1.3 (Maritime labour certificate and declaration of maritime labour compliance) prescribes additional requirements with respect to ships of 500 gross tonnage or over, engaged in international voyages; ships of 500 gross tonnage or over, flying the flag of a Member and operating from a port or between ports in another country; and, at the request of the shipowner to the Member concerned, any other ship that flies the flag of the Member.³¹ Under this Regulation, each Member shall require such ships which fly its flag to carry and maintain a maritime labour certificate certifying that the working and living conditions of seafarers on the ship, including measures for ongoing compliance to be included in the declaration of maritime labour compliance, have been inspected and meet the requirements of national laws or regulations or other measures implementing this Convention.³²

Each Member shall also require ships that fly its flag to carry and maintain a declaration of maritime labour compliance stating the national requirements implementing this Convention for the working and living conditions for seafarers and setting out the measures adopted by the shipowner to ensure compliance with the requirements on the ship or ships concerned.³³

The maritime labour certificate and the declaration of maritime labour compliance shall conform to the model prescribed by the Code. A maritime labour certificate, complemented by a declaration of maritime labour compliance, shall constitute *prima facie* evidence that the ship has been duly inspected by the Member

²⁹ Maritime Labour Convention, 2006, Regulation 5.1.1, para-2.

³⁰ Ibid, para-3.

³¹ Ibid, Regulation 5.1.3, para-1 and 2.

³² Ibid, Regulation 5.1.3, para-3.

³³ Ibid, para-4.

whose flag it flies and that the requirements of this Convention relating to working and living conditions of the seafarers have been met to the extent so certified.³⁴

Furthermore, each Member shall require that ships that fly its flag have onboard procedures for the fair, effective and expeditious handling of seafarer complaints alleging breaches of the requirements of this Convention (including seafarers' rights).³⁵ Each Member shall also hold an official inquiry into any serious marine casualty, leading to injury or loss of life that involves a ship that flies its flag.³⁶

Under international law, the country with legal responsibility for conditions on board ships flying the country's flag is the flag state. However, in many cases, seafarers are not residents or nationals of the flag state and have no connection with the flag state other than the fact that he or she is working on board a ship flying the state's flag. This situation presents challenges for national social security schemes or systems most which are developed to cover persons who are nationals or who live and work (ordinary resident) in the country concerned.³⁷

So, the flag states should ensure that an appropriate mechanism such as a mutual fund, wage insurance and social security scheme exists to cover wages and related moneys owed to seafarers employed on ships flying their flag in the event of default of payment by their employer.

3.2 The Role of Port States

The spatial authority over a vessel is considered, without reference to the region in which the vessel is located at the time, as vested exclusively in the flag state. However, a non-governmental merchant ship entering a foreign port becomes subject to the laws and jurisdiction of the port state.³⁸

States exercise sovereignty over their ports, defined in UNCLOS as “the outermost permanent harbor works which form an integral part of the harbor system.”³⁹

³⁴ Maritime Labour Convention, 2006, Regulation 5.1.1, para-4.

³⁵ Ibid, Regulation 5.1.5, para-1.

³⁶ Ibid, Regulation 5.1.6, para-1.

³⁷ ILO: Handbook (2012), "Guidance on Implementing the Maritime Labour Convention, 2006 and Social Security for Seafarers", Geneva, p. 4.

³⁸ Dr. K X Li and Professor J Wonham: “The role of states in maritime employment & safety”, Dalian maritime university press, 2000, p. 200.

³⁹ United Nations Convention on the Law of the Sea (1982), Article-11.

Deriving from this sovereignty is the right of the Port State to control what vessels enter its ports and under what conditions.⁴⁰ In prescribing conditions for entry, Port States are entitled to regulate their ports consistent with the protection of various interests of the State and may even close their ports to foreign vessels flagged to a particular State without concern that such closure is discriminatory in practice.⁴¹

There are, of course, restrictions imposed on a State's application of its laws to vessels in its ports relating to the applicability of local labour laws and situations when a ship enters the port in distress.⁴²

However, states have long found that it is beneficial to international trade for port states not to interfere with foreign vessels in matters affecting only the internal discipline or economy of the foreign ships. Matters relating to labour disputes are usually left to the authorities of the flag state.⁴³

The failure of flag states to live up fully to their obligations over their ships has led to the action of port or coastal states. This leads to the development of the port state control.⁴⁴

Port states are not obligated to inspect foreign ships in their territories, but do so in their own interests, i.e., safety and prevention of pollution to their coastal and port areas and maintenance of working and labour standards set forth in international conventions of which they are parties. By signing international agreements on uniformity of port state control, states take the liabilities to enforce applicable international conventions and standards to foreign ships under their jurisdictions.⁴⁵

The International Maritime Organization (IMO) and the International Labour Organization (ILO) conventions have to a great degree extended or unified the practice of port state control over safety, working and living standards. It is foreseeable that port state control will have a great influence on the enforcement of international maritime conventions, whether or not they have been ratified by a sufficient number of states.⁴⁶

⁴⁰ Klein, Natalie, "Maritime Security", 2011, Oxford University Press, p. 66.

⁴¹ Ibid, p. 67.

⁴² Kaye, Stuart: The Proliferation Security Initiative in the Maritime Domain, Israel Year Book of Human Rights, 2005, p. 210-211.

⁴³ Dr. K X Li and Professor J Wonham: "The role of states in maritime employment & safety", Dalian maritime university press, 2000, p. 200.

⁴⁴ Ibid, p. 201.

⁴⁵ Ibid, p. 202.

⁴⁶ Ibid, p. 201, 202.

The Seafarers' Welfare Convention⁴⁷ was the firstly Convention adopted by the ILO to create and bring into practice a single, comprehensive international legal document on the overall welfare of workers at sea, albeit within a limited subject area.

According to Article 2 (1) of Convention 163, States are to “ensure that adequate welfare facilities and services are provided for seafarers both in port and on board ship”. Under this Convention, the definition of welfare facilities and services include: “welfare, recreational, and information facilities and services.”

Thus, not only are obligations directly imposed on Port States but also on Flag States. Moreover, Port States are required to “ensure that the necessary arrangements are made for financing the welfare facilities and services provided.”⁴⁸ This imposes positive obligations on the Port State concerning their own implementation of welfare rights for seafarers who come into their ports.

The idea of Port States having jurisdiction over vessels developed in the International Convention for the Safety of Life at Sea, 1974 (SOLAS).

The SOLAS Convention is a key maritime law convention which deals with the seaworthiness of vessels and defines standards for fire-safety measures, the carriage of navigational equipment and the construction of ships and life-saving equipment.⁴⁹ In setting these standards, SOLAS, like the vast majority of international maritime law, places the primary obligations for compliance, implementation and enforcement on the Flag States themselves.⁵⁰ However, there are also provisions allowing for Port State control, essentially enforcement jurisdiction for Port States, through an early version of the MLC's certification and inspection regime.⁵¹

Regulation 5.2.1 of the MLC, 2006 provides that every foreign ship calling, in the normal course of its business or for operational reasons, in the port of a Member may be the subject of inspection for the purpose of reviewing compliance with the requirements of this Convention (including seafarers' rights) relating to the working and living conditions of seafarers on the ship.⁵² Each Member shall accept the maritime labour certificate and the declaration of maritime labour compliance as *prima facie* evidence of compliance with the requirements of this Convention

⁴⁷ Seafarers' Welfare Convention (No. 163), 8 October 1987.

⁴⁸ Ibid, Article-2(2).

⁴⁹ Churchill, R.R., Lowe, A.V: "The Law of the Sea", 3rd Edition, Melland Schill Studies in International Law, Juris Publishing, Manchester University Press, 1999, p. 266.

⁵⁰ Zwinge, Tamo; Duties of Flag States, 10J Intl Bus.&Law 2011, p. 302.

⁵¹ International Maritime Organization: A Summary of IMO Conventions, 2001, p. 17.

⁵² Maritime Labour Convention, 2006, Regulation 5.2.1, para-1.

(including seafarers' rights). Accordingly, the inspection in its ports shall, except in the circumstances specified in the Code, be limited to a review of the certificate and declaration.⁵³

Nevertheless, where an authorized officer, having come on board to carry out an inspection and requested, where applicable, the maritime labour certificate and the declaration of maritime labour compliance, finds that: (a) the required documents are not produced or maintained or are falsely maintained or that the documents produced do not contain the information required by this Convention or are otherwise invalid; or (b) there are clear grounds for believing that the working and living conditions on the ship do not conform to the requirements of this Convention; or (c) there are reasonable grounds to believe that the ship has changed flag for the purpose of avoiding compliance with this Convention; or (d) there is a complaint alleging that specific working and living conditions on the ship do not conform to the requirements of this Convention; a more detailed inspection may be carried out to ascertain the working and living conditions on board the ship. Such inspection shall in any case be carried out where the working and living conditions believed or alleged to be defective could constitute a clear hazard to the safety, health or security of seafarers or where the authorized officer has grounds to believe that any deficiencies constitute a serious breach of the requirements of this Convention (including seafarers' rights).⁵⁴

Where, following a more detailed inspection by an authorized officer, the ship is found not to conform to the requirements of this Convention and: (a) the conditions on board are clearly hazardous to the safety, health or security of seafarers; or (b) the non-conformity constitutes a serious or repeated breach of the requirements of this Convention (including seafarers' rights); the authorized officer shall take steps to ensure that the ship shall not proceed to sea until any nonconformities that fall within the scope of subparagraph (a) or (b) of this paragraph have been rectified, or until the authorized officer has accepted a plan of action to rectify such non-conformities and is satisfied that the plan will be implemented in an expeditious manner. If the ship is prevented from sailing, the authorized officer shall forthwith notify the flag State accordingly and invite a representative of the flag State to be present, if possible, requesting the flag State to reply within a prescribed deadline. The authorized officer

⁵³ Maritime Labour Convention, 2006, Regulation 5.2.1, para-2.

⁵⁴ Ibid, Standard A5.2.1, para-1.

shall also inform forthwith the appropriate shipowners' and seafarers' organizations in the port State in which the inspection was carried out.⁵⁵

In addition to that, each Member shall ensure that seafarers on ships calling at a port in the Member's territory who allege a breach of the requirements of this Convention (including seafarers' rights) have the right to report such a complaint in order to facilitate a prompt and practical means of redress.⁵⁶

As concerns Port State responsibilities, the new Convention has introduced two changes into the existing standards, as prescribed by the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147). First, under the new Convention, as a general rule, the Port State inspections shall be limited to a review of the maritime labour certificate and the declaration of the maritime labour compliance. Second, under the new Convention, ships may be detained by the Port State in the event of non-conformity to its requirements not only when the conditions on board are clearly hazardous to the safety, health or security of seafarers (as under Convention No. 147), but also when this non-conformity constitutes a serious or repeated breach of the requirements of the new Convention (including seafarers' rights).⁵⁷

Under the new convention, the port state must undertake a detailed inspection where the working and living conditions believed or alleged to be defective could constitute a clear hazard to the safety, health or security of seafarers. If ships are found to be in non-conformity with the requirements of this Convention, the Port State may detain those ships.

3.3 Liabilities of Labour Supplying Countries

The major maritime labour supplying countries are almost all developing countries. As a citizen owes obligations to his nation, the state has the liability to protect its citizens, particularly when they travel, live and work abroad.⁵⁸

Generally, open-registry countries are weak in protection of foreign seafarers working on board their ships.⁵⁹ Seafarers, especially from the traditional maritime nations, have been the big losers in this flight to the flags of convenience (FOCs) in

⁵⁵ Maritime Labour Convention, 2006, Standard A5.2.1, para-6.

⁵⁶ Ibid, Regulation 5.2.2, para-1.

⁵⁷ Christodoulou- Varotsi, I & Pentsov, Dmitry," Maritime Work Law Fundamental: Responsible Shipowners, Reliable Seafarers", Springer-Verlay Berli, 2008, p. 323-324.

⁵⁸ Dr. K X Li and Professor J Wonham: "The role of states in maritime employment & safety", Dalian maritime university press, 2000, p. 204.

⁵⁹ Ibid, p. 205.

which there were brisk competition between registers to offer the cheapest registry fees and greatest freedoms. Shipping standards under many of these flags were lax, notably on the manpower front, with poor standards of oversight.⁶⁰ Thus, labour supplying countries should, for the reasons of both obligations in law and in morality, take measures to protect their seafarers working on foreign ships.⁶¹

Firstly, labour-supplying countries should establish comprehensive regimes regarding seafarers working and living conditions, social welfare and insurance. Secondly, labour-supplying countries should make efforts to adopt ILO conventions and recommendations relating to seafarers rights in their legal systems and to properly implement these regulations. Lastly, labour-supplying countries need to regulate the activities of the agencies within their jurisdictions.⁶²

Labour supplying states' obligations have now been included in international conventions relating to skill certification, identity documents and recruitment. Although labour supply states rarely have the authority or capacity to intervene comprehensively in shipping regulation, they do have some authority towards their seafarers, and are therefore another link in the chain of responsibility.⁶³

Nevertheless, since most, if not all, countries may act as suppliers of seafarers, albeit on a small scale, in the sense that their citizens may serve on ships registered outside their territory, to avoid the misconception of a limited category of “labour supplying States”, the new Convention simply refers to “labour-supplying responsibilities”.⁶⁴

The concept of “labour supplying responsibilities” as well as the list of such responsibilities represents a major innovation of the Convention as compared to the existing maritime labour standards, which up to present were aimed either at the responsibilities of Flag States or those of Port States. This innovation shall be viewed as a reflection of the important role of labour supplying countries in the area of enforcement for matters such as recruitment and placement agencies and employment agreements and social security protection.⁶⁵

⁶⁰ <http://seafarersrights.org/flag-state-responsibilities-and-seafarers-rights/>

⁶¹ Dr. K X Li and Professor J Wonham: “The role of states in maritime employment & safety”, Dalian maritime university press, 2000, p. 205.

⁶² Ibid.

⁶³ ILO: “Cross-Border Social Dialogue and Agreements: An emerging global industrial relations framework?”, 1st edition, 2008, p. 200.

⁶⁴ Christodoulou- Varotsi, I & Pentsov, Dmitry: “Maritime Work Law Fundamental: Responsible Shipowners, Reliable Seafarers”, Springer-Verlay Berli, 2008, p. 324.

⁶⁵ Ibid.

Under Regulation 5.3 (Labour-supplying responsibilities) of MLC, 2006, without prejudice to the principle of each Member's responsibility for the working and living conditions of seafarers on ships that fly its flag, the Member also has a responsibility to ensure the implementation of the requirements of this Convention regarding the recruitment and placement of seafarers as well as the social security protection of seafarers that are its nationals or are resident or are otherwise domiciled in its territory, to the extent that such responsibility is provided for in this Convention.⁶⁶ Furthermore, under Standard A5.3 which was provided in Title 5 (Compliance and Enforcement) of MLC, 2006, each Member shall enforce the requirements of this Convention applicable to the operation and practice of seafarer recruitment and placement services established on its territory through a system of inspection and monitoring and legal proceedings for breaches of licensing and other operational requirements.⁶⁷

Although maritime law has made seafarers particularly protected legal figures, many of the world's seafarers are beyond the protection of these laws and regulations because they do not know about their rights or they don't have access to courts where their rights might be protected. It is the duty of labour-supplying countries to see their overseas seafarers are being well treated. In this regard, national countries may provide free legal service to their overseas seafarers, particularly where seafarers are engaged in employment with open registry ships. In this regard, labour supply countries should in the first instance establish a complete legal system on seafarers' rights and welfare in line with international conventions and standards. Labour supply countries may sign bi- or multi-agreement with labour employing countries to ensure their overseas seafarers are employed under conditions required in international law.⁶⁸

Labour-supplying countries should ensure that the contractual terms offered by foreign shipowners will prevent abuses and contribute to the welfare of seafarers. The best safeguard for labour-supplying countries is to ensure social protection.

⁶⁶ Maritime Labour Convention, 2006, Regulation 5.3, para-1.

⁶⁷ Ibid, Standard A 5.3, para-1.

⁶⁸ Dr. K X Li and Professor J Wonham: "The role of states in maritime employment & safety", Dalian maritime university press, 2000, p. 226-227.

3.4 Obligations of all States

The vast number of world's population still lack access to adequate levels of social protection and, in some countries, to any meaningful form of social protection. Seafarers are among the categories of workers for whom the lack of adequate coverage is of concern. Seafarers from many different countries can work on board a ship that is registered in a country other than their countries of residence or nationality and is owned or operated by a shipowner who may be a national of yet another country. Often seafarers work on many different ships for varying periods of time and under differing employment agreements. They may also be recruited and hired through third party agencies operating in other countries.⁶⁹

Gaps in coverage may, therefore, appear when seafarers are employed on a ship flying a flag of a different country than their country of residence, and/or when they are resident for a time in a different country than their country of nationality or ordinary residence.⁷⁰ So, all states are required to cooperate to provide coverage for seafarers working on their ships.

3.4.1 International Cooperation

Oceans connect all lands and ships visit different lands. These factors make shipping a very international business. It is easy to be convinced that a unified legal system over the world is vital for the maritime industry. Under a unified system, everyone involved always knows his rights, obligations and liabilities, which are the same everywhere. It is, of course, more efficient, predictable and economical for international trade than under divided systems. The importance and necessity for international uniformity of maritime law was recognized a century ago.⁷¹

The history of international maritime legislation and unification may be accounted to the establishment of the Comité Maritime International (CMI) in 1879 with the aim of promoting unification of maritime law and practice world-wide.⁷² When the United Nations (UN) arose from the ashes of the Second World War in 1945 there were 51 original member States. This was at a time when the administration of world shipping was dominated by traditional maritime nations with

⁶⁹ ILO: Handbook (2012), Guidance on Implementing the Maritime Labour Convention, 2006 and Social Security for Seafarers, Geneva, p. 4.

⁷⁰ Ibid.

⁷¹ Dr. K X Li and Professor J Wonham: "The role of states in maritime employment & safety", Dalian maritime university press, 2000, p. 219.

⁷² Ibid.

long established maritime administrations. The majority of these nations were founding members of the UN. At the time of adoption of the Intergovernmental Maritime Consultative Organization (IMCO) Convention, which established an international body for the regulation of ships in 1948, a further seven States had become members of the UN. Over the period between 1948 and 1958, during which gradual acceptance by States of the IMCO Convention brought this instrument into force, a further 25 States joined the UN, including the flag States of Finland, Ireland, Italy, Spain, Japan, and Malaysia, bringing the total membership of the UN to 82.⁷³

After the establishment of the United Nations (UN), international governmental organizations, International Maritime Organization (IMO), International Labour Organization (ILO), United Nations Conference on Trade and Development (UNCTAD), The United Nations International Law Commission (UNILC), The United Nations Conference on Environment and Development (UNCED) and World Trade Organization (WTO) play increasingly important roles in the area. As a result, a great number of maritime conventions have been adopted. Taking the total number of conventions as a criterion, it is unbiased to say that legislation has been more successful in the international maritime sector compared with that of other transport activities and has of course contributed a great deal to safer ships and cleaner oceans.⁷⁴

The ILO, as an autonomous UN agency for labor and social matters is in a key position to push for social protection of people, in particular the social protection of maritime workers. The ILO has adhered to the tripartite representation but allowed social dialogues beyond the traditional groups. The ILO has adopted ILO Conventions and Recommendations for ratification of governments to set the international labor standards and the social standards. The ILO has a Joint Maritime Commission (JMC) that undertakes consolidation of conventions in the maritime industry. ILO's maritime activities include shipping, fishing, ports, and inland waterways transport. In the supervisory process, the ILO has the Committee of Experts on the Application of Conventions and Recommendations.⁷⁵ The ILO, IMO, JMC and other UN organs

⁷³ N.K. Mansell John: "Flag State Responsibility: Historical Development and Contemporary Issues", Springer, 2009, p. 118.

⁷⁴ Dr. K X Li and Professor J Wonham: "The role of states in maritime employment & safety", Dalian maritime university press, 2000, p. 219.

⁷⁵ A.S Isabelo, "Strengthening social protection for migrant workers: A regional view of issues and reforms in sea-based industry", Regional Conference on Labour Law and Social Security, UP SOLAIR Auditorium, 17-18 November 2011.

through their conventions, studies, and technical cooperation programs could help to promote social protection of seafarers.

The ILO drafted 47 Conventions and 33 Recommendations relating to maritime labour matters, seafarers' rights. The aforementioned legal instruments promulgated by ILO, cover international standards for maritime labour matters including, particularly: the right to life; freedom from forced labour; freedom from torture, cruel, inhuman or degrading treatment; freedom from discrimination; child labour; right to a legal remedy and access to justice; freedom of association and the right to collective bargaining; right to strike; right to employment agreement; right to free employment services and continuity of employment; right to identification documents and shore leave; right to safe and healthy working conditions; right to fair wages; right to fair treatment; right to reasonable working hours, rest and holidays; right to health and medical care; right to social security and welfare; right to repatriation.⁷⁶

Besides ILO legal instruments, UN, IMO introduced legal instruments to protect seafarers' rights and improve the level of maritime labour conditions. As human beings, seafarers should benefit from the main human rights promulgated by the UN in its Conventions, particularly: the International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR); the International Covenant on Civil and Political Rights, 1966 (ICCPR) and Protocols thereto; the International Convention on the Elimination of All forms of Discrimination Against Women, 1979 (CEDAW) and Protocol thereto; the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984 (CAT) and Protocol thereto; and the Convention on the Rights of the Child, 1989 (CRC) and Protocols thereto.⁷⁷

The IMO considered seafarers' rights as a human-element of maritime affairs and promulgated relevant legal instruments to provide safe and secure ship manning, particularly: the International Convention for the Safety of Life at Sea, 1974 (SOLAS) and Protocols thereto: the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW); and the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL) etc.⁷⁸

⁷⁶ [http:// www.ilo.org/](http://www.ilo.org/)

⁷⁷ [http://www2.ohchr.org/ English-law/](http://www2.ohchr.org/English-law/)

⁷⁸ <http://www.imo.org/>

The other stakeholders are trade unions led by the International Transport Workers Federation (ITF) and the various ITF centers and affiliates. The ITF has an inspectorate system. The federation also has the ITF Seafarers' Trust. Another group are the non-government organization (NGOS) and Civil Society Organizations (CSOs). There are also faith-based organizations like the Apostleship of the Sea (AOS), the International Christian Maritime Association (ICMA) and Committee on Seafarers' Welfare (ICSW) in which all have various centers and Port Chaplaincies worldwide. All of these organizations should form a network to campaign for the social protection of seafarers.⁷⁹

International organizations, particularly, the UN and its agencies, the ILO and the IMO, efforts to create and protect rights, provide standards for seafarers with due respect to the conditions on board a ship. States have signed up to the aforesaid standards, conventions, recommendations etc. and have committed themselves to grant protection to seafarers on board a ship against abuses of their human and labour rights. However, many of the ILO Conventions relating to maritime affairs and seafarers' rights have never entered into force.

In accordance with these considerations, the ILO drafted a single super convention, the Maritime Labour Convention, 2006, which will replace the existing conventions and recommendations relating to seafarers' rights and maritime affairs.

Under MLC, 2006, the international cooperation in the area of assistance, programmes and research in health protection and medical care of seafarers might cover the following matters:⁸⁰

- (a) developing and coordinating search and rescue efforts and arranging prompt medical help and evacuation at sea for the seriously ill or injured on board a ship through such means as periodic ship position reporting system, rescue coordination centres and emergency helicopter services, in conformity with the International Convention on Maritime Search and Rescue, 1979, as amended, and the International Aeronautical and Maritime Search and Rescue (IAMSAR) Manual;
- (b) making optimum use of all ships carrying a doctor and stationing ships at sea which can provide hospital and rescue facilities;

⁷⁹ A.S Isabelo, "Strengthening social protection for migrant workers: A regional view of issues and reforms in sea-based industry", Regional Conference on Labour Law and Social Security, UP SOLAIR Auditorium, 17-18 November 2011.

⁸⁰ Maritime Labour Conventiion, 2006, Guideline B 4.1.4, para-1.

- (c) compiling and maintaining an international list of doctors and medical care facilities available worldwide to provide emergency medical care to seafarers;
- (d) landing seafarers ashore for emergency treatment;
- (e) repatriating seafarers hospitalized abroad as soon as possible, in accordance with the medical advice of the doctors responsible for the case, which takes into account the seafarer's wishes and needs;
- (f) arranging personal assistance for seafarers during repatriation, in accordance with the medical advice of the doctors responsible for the case, which takes into account the seafarer's wishes and needs;
- (g) endeavouring to set up health centres for seafarers to:
 - (i) conduct research on the health status, medical treatment and preventive health care of seafarers; and
 - (ii) train medical and health service staff in maritime medicine;
- (h) collecting and evaluating statistics concerning occupational accidents, disease and fatalities of seafarers and integrating and harmonizing the statistics with any existing national system of statistics on occupational accidents and diseases covering other categories of workers;
- (i) organizing international exchanges of technical information, training material and personnel, as well as international training courses, seminars and working groups;
- (j) providing all seafarers with special curative and preventive health and medical services in port, or making available to them general health, medical and rehabilitation services; and
- (k) arranging for the repatriation of the bodies or ashes of deceased seafarers, in accordance with the wishes of the next of kin and as soon as practicable.

International cooperation in the field of health protection and medical care for seafarers should be based on bilateral or multilateral agreements or consultations among members.⁸¹

Members, with the assistance as appropriate of intergovernmental and other international organizations, should endeavour, in cooperation with each other, to

⁸¹ Maritime Labour Convention, 2006, Guideline B 4.1.4, para-2.

achieve the greatest possible uniformity of action for the promotion of occupational safety and health protection and prevention of accidents.⁸²

In developing programmes for promoting occupational safety and health protection and prevention of accidents under Standard A4.3, each member should have due regard to relevant codes of practice published by the International Labour Organization and the appropriate standards of international organizations.⁸³

Members should have regard to the need for international cooperation in the continuous promotion of activity related to occupational safety and health protection and prevention of occupational accidents. Such cooperation might take the form of:

- (a) bilateral or multilateral arrangements for uniformity in occupational safety and health protection and accident prevention standards and safeguards;
- (b) exchange of information on particular hazards affecting seafarers and on means of promoting occupational safety and health protection and preventing accidents;
- (c) assistance in testing of equipment and inspection according to the national regulations of the flag state;
- (d) collaboration in the preparation and dissemination of occupational safety and health protection and accident prevention provisions, rules and manuals;
- (e) collaboration in the production and use of training aids; and
- (f) joint facilities for, or mutual assistance in, the training of seafarers in occupational safety and health protection, accident prevention and safe working practices.⁸⁴

With the globalization, of the world today, the social protection challenge for seafarers is to prevent protectionism in the shipping sector. This could be done through possible bilateral or multilateral agreements for seafarers to be socially protected. These mechanisms should be explored to strengthen social protection through social dialogues, improved process of collective bargaining, implementation of labour standards and social standards. The international organizations like ILO,

⁸² Maritime Labour Convention, 2006, Guideline B 4.3.11, para-1.

⁸³ Ibid, Guideline B 4.3.11, para-2.

⁸⁴ Ibid, Guideline B 4.3.11, para-3.

IMO and other multilateral organizations could explore technical cooperation and provide assistance in the field of social protection for seafarers.

3.4.2 Implementation of International Conventions

An international convention can only be implemented by proper national legal procedure. There is no international policing system as such. It is understood that the source of state law is the will of the state itself, while the source of international law is the common will of the states. International law and national law constitute two strictly separate and structurally different systems. International law cannot impinge upon national law unless the latter, a logically complete system allows its constitutional machinery to be used for that purpose. In the case of conventional rules, it is apparent that conventions must be transformed into national law by legislation approving the conventions, or implementing the provisions in national laws or regulations. It is not merely a formal procedure but a substantive requirement.⁸⁵

The conventional provisions have imposed extensive duties on States with considerable magnitude on unilateral, co-operative and consultative basis for the better realization of its goal. In particular, States are bound to apply the Convention in strict terms covering all categories of seafarers employed in commercial shipping engaged in trans-boundary or international navigation.⁸⁶

In an ideal world, flag states whose flags are flown by the world' shipping, would lay down, and enforce upon their own shipowners, standards of design, maintenance and operation which would ensure very high standards of safety at sea. Coastal states, along whose coasts shipping passes, and port states, at whose ports or anchorage shipping calls, would have no cause for concern themselves with the maintenance of such standards. One of the problems of open registration is that the host countries are normally unable or unwilling to provide enforcement mechanisms for safety and social regulations. Open registration is one of the weakest points in the implementation and enforcement of international conventions.⁸⁷

⁸⁵ Dr. K X Li and Professor J Wonham: "The role of states in maritime employment & safety", Dalian maritime university press, 2000, p. 222.

⁸⁶ Dan Malika Gunasekera; "Imposing of Responsibility on States' to Guarantee Labour Standards for Seafarers under the MLC 2006: Can ILO Achieve its Goal?", *Frontiers of Legal Research*, vol.1, No.1, , 2013,p. 30.

⁸⁷ Dr. K X Li and Professor J Wonham: "The role of states in maritime employment & safety", Dalian maritime university press, 2000, p. 223.

There is a need for policy reforms in the social security legislations in the migrant laws and the amendments to cover the seafarers. The reviews should include identification, policy formulation to fill the gaps in the social protection of international ship register. There is a need to strategize the reporting of social protection for seafarers. The inter-agency reporting mechanisms system should be strengthened for ratified ILO Conventions to support the ILO Committee of Experts on the Application of Conventions and Recommendations (COEACR).⁸⁸

Whether it may involve one's national provisions of the law and regulations or other measures that become compatible to execute its due obligations in applying the relevant Regulations of the Code, a State is deemed to implement the conventional objectives in the manner specified by itself. It further provides that such corresponding means of enactment become substantially equivalent in one's duty to implement the said relevant Regulations for the purpose of achieving the general objects of the mandatory Part of the Code thus giving effect to those provisions in the process of proper implementation.⁸⁹

At least to a considerable degree, it can be concluded that the conventional goals thus been achieved in respect of personal needs of seafarers with respect to health, education, accommodation, food and sanitary standards and employment security and benefits, training and social security rights with some overlapping situations with other corresponding IMO instruments.⁹⁰

Seafarers are a unique population workgroup, indispensable to international trade. Therefore, there must be special attention given to them because of their important role in the global economy. There are many international standards and instruments that ensure the welfare of global seafarers. However, there are still many challenges and issues to be addressed including the implementation of social protection measures by the different nation states.

⁸⁸ A.S Isabelo, Regional Conference on Labour and Social Security; "Strengthening social protection for migrant workers: A regional view of issues and reforms in sea-based industry", UP SOLAIR Auditorium, 17-18 November 2011.

⁸⁹ Dan Malika Gunasekera; "Imposing of Responsibility on States' to Guarantee Labour Standards for Seafarers under the MLC 2006: Can ILO Achieve its Goal?", *Frontiers of Legal Research*, vol.1, No.1, 2013, p. 33.

⁹⁰ *Ibid*, p. 35.

Chapter 4

Regional Organizations and Social Protection for Seafarers

The world shipping industry has gradually evolved into a unique and complex structure that causes complications for seafarers in accessing social protection. The structure of the world shipping industry has allowed various systems to exercise certain flexibilities which has given rise to a number of issues that need to be addressed through system reform in states and regions in order for seafarers to be adequately covered by social protection in accordance with the Maritime Labour Convention, 2006 (MLC, 2006).

4.1 Seafarers' Right to Social Protection in the European Union (EU)

Europe is surrounded by a 70,000 km coastline; two thirds of the European borders are coasts, consisting of two oceans, the Atlantic and the Arctic Ocean, and six different seas, the North Sea, the Baltic Sea, the Black Sea, the Aegean Sea, the Adriatic Sea and the Mediterranean. In Europe the sea and the coastline are an important source of food, energy, residence, leisure and so on. The EU is a leading player in the global maritime industry.¹

The maritime weight of the EU should in no way be neglected. Shipping companies owned by EU nationals control nearly 40% of the world fleets. Moreover, about 40% of the EU's internal trade and 90% of trade with non-EU countries is carried out by sea. It is worth mentioning that the EU imports 80% of its overall

¹ Desislava Nikolaeva Dimitrova, "Seafarers' Rights in the Globalized Maritime Industry", Kluwer Law International, 2010, p. 90.

internal needs in oil and nearly all this quantity goes by sea. The maritime sector in the broadest sense, i.e., including shipbuilding, ports, fishing and related industries and services (insurance, banking, etc.), employs around 3 million people in the EU.² At present, the EU comprises 28 member states.

4.1.1 Social Protection System in the EU

A number of European countries have completed the social protection benefits by a guaranteed minimum income, often coupled with measures for the reintegration into the labour market and calculated in such a way as to provide the beneficiary with partial and transitional wage replacement and, at the same time, to avoid creating disincentives either to work or to employment creation. This system is a part of social security.³

In Europe, the social security schemes have become progressively part of the essential elements of a citizen's life by constituting the major guarantee against the loss of income. An equivalent role is still played in other regions by traditional sources of economic security such as a house or other assets as well as family responsibility. It is part of a social policy that satisfies the citizens' desire in Europe to see the State establish rules, institutions and practices safeguarding them from social risks. It is based on a recognized duty of solidarity and, more often than not, on the explicit or tacit agreement of the large employers' and workers' federations.⁴

The European vision of an extended social security system has been criticized in various circles as weakening competitiveness and therefore making the 'old' continent unable to adjust to a globalized economy. It continues however, to influence the ILO approach. In developing countries, progresses have been most uneven. Some 75%–80% of the global population still lives in a state of 'social insecurity'.⁵

Some of the priorities areas of the EU are the protection of the employee's rights, organisation of working time, corporate social responsibility; cross-industry social dialogue, sectoral social dialogue, information, consultation and participation of employees; promoting free movement of workers in the European market with related rights, social protection and third-world countries nationals; and social protection in

² Christodoulou- Varotsi, I & Pentsov, Dmitry," Maritime Work Law Fundamental: Responsible Shipowners, Reliable Seafarers", Springer-Verlay Berli, 2008, p. 747.

³ <http://www.islssl.org/Servais-2014-Asian-Conf>.

⁴ Ibid.

⁵ Ibid.

terms of social security regimes, supplementary pension schemes, and the modernising of social protection. In this respect, the European Union is for the speedy ratification of the MLC 2006, which will surely add to the promotion of its employment policy.

EU Member States were encouraged to ratify the MLC, 2006 adopted by the ILO as swiftly as possible since the convention aims to improve working conditions for seafarers, thus reducing unfair competition on the global market as well as making merchant shipping a more attractive profession.

4.1.2 The Legal Framework of Seafarers in EU

The European shipping industry is a significant resource for jobs and revenues not only for Europe but worldwide. Of all maritime activities, the maritime transport in Europe is the second largest sector, employing around 313,000 workers from EU and non-EU countries, valued at EUR 151 billion. Some European Member States are international leading players in maritime transport. The major seafarer suppliers in Europe are Poland, Greece and Italy, and EU companies control approximately one third of the world merchant fleet.⁶

One of the biggest weaknesses of the European maritime transport is that many European ships are registered in countries outside the EU, which creates complications in gathering and analyzing data. On top of that, a large percentage of seafarers working on European ships are non-European citizens, coming from developing countries and working on a short-term contract without being registered anywhere.⁷

EU provisions which are of interest to maritime labour and which have an impact on seafarers and shipowners, can be divided into two main groups: The first one comprises instruments, i.e., mainly Directives, which are intended for all categories of labour, including maritime labour.⁸ The directive provides for more uniform protection of seafarers' labour rights, including the right to information and

⁶ Desislava Nikolaeva Dimitrova, "Seafarers' Rights in the Globalized Maritime Industry", Kluwer Law International, 2010, p. 90-91.

⁷ Ibid, p. 91.

⁸ Christodoulou- Varotsi, I & Pentsov, Dmitry, " Maritime Work Law Fundamental: Responsible Shipowners, Reliable Seafarers", 2008, Springer-Verlay Berli, p. 748.

consultation, and gives seafarers the same rights as those enjoyed by workers on shore. It also takes into account the particular nature of the shipping sector.⁹

With the exception of a small number of instruments which are not applicable to maritime labour, this group of general provisions affects, legally speaking, maritime labour and contributes to its protection. In practice, this means more rights for the seafarers and more obligations for shipowners. It is also synonymous with an additional workload for national Administrations, in view of the transposition and implementation of the measures in question in national legal orders, since, as explained in the developments below, if the requirements in question stem from European Community (EC) Directives, they need to be transposed in domestic legislation via national measures.¹⁰

The second group of provisions is specifically related to maritime labour. This is a more limited group of provisions; it notably concerns the minimum level of training and the recognition of seafarers' qualifications (Directive 2001/25/EC, as amended), the hours of work (Commission Recommendation 1999/130/EC, Directives 1999/63/EC and 1999/95/EC) and, medical provisions requirements on board ships (Directive 92/29/EEC).¹¹

Social maritime law in the EU is equally interested in seafarers' rights to decent working hours. EC Recommendation 130/1999 of 18 November 1998 encouraged Member States which had not yet done so to ratify the ILO Convention of reference in this field, i.e. Convention 180. In addition to this, Directive 1999/63/EC put into effect the European Agreement concluded on 30 September 1998 between the European Community Shipowners' Association (ECSA) and the Federation of Transport Workers Unions (FST) concerning the working time of seafarers; Directive 1999/95/EC extended the regime in question to the vessels calling at EC ports regardless of their flag.¹²

On the basis of the general provisions of the EC Treaty, seafarers were from early times affected by EC law from the point of view of their right of free movement. This right provides for the non-discriminatory engagement and conditions of employment of seafarers with the citizenship of a Member State on the ships flying

⁹ Council of European Union, "Outcome of the Council Meeting: Employment, Social Policy, Health and Consumer Affairs", Brussels, 11 December 2014, p. 8.

¹⁰ Christodoulou- Varotsi, I & Pentsov, Dmitry, "Maritime Work Law Fundamental: Responsible Shipowners, Reliable Seafarers", 2008, Springer-Verlag Berli, p. 748.

¹¹ Ibid.

¹² Ibid, p. 750.

the flag of another Member State. However, the regime which applies to masters and second mates is more restrictive than the rest of the crew since the former are considered to participate in the exercise of public authority, which brings some limitations to the above-mentioned right of free movement.¹³

Maritime labour issues are perceived by the EU as being connected with safety at sea. Even though EU measures on maritime labour constitute a relatively small fraction of the overall 'acquis communautaire', the numerous EU measures on maritime safety which tackle technical aspects of ships and navigation should also be read in the context of the improvement of the protection of maritime labour.¹⁴

To confine oneself to the maritime labour regulatory framework, it should be borne in mind that the EU acts in the context of a problematic situation: the number of seafarers from EU Member States, and especially officers, is decreasing, the preference being for the engagement of maritime labour from third (non-EU) countries. Moreover, the competitiveness of Community registers is open to question. This has led a number of Member States to envisage the creation of second national registers, which enjoy an autonomous status and provide for more flexible conditions of functioning, especially with regard to seafarers' conditions of remuneration and social protection.¹⁵

In EU, there are two main groups of legal provisions relating to seafarers. The first one is intended for all categories of workers including seafarers and the second group is related to maritime labour only. These provisions provide for more uniform protection of seafarers' labour rights and the same rights enjoyed by shore workers.

4.1.3 Practice in EU

Maritime transport is an essential component of the European economy. A quarter of the world fleet flies a European flag and two million Europeans work in maritime industries.¹⁶

At EU level, links between social issues and maritime safety are first addressed through the European Social Agenda "Empowering and enabling individuals to realize their potential". This agenda was renewed in 2008 and identified

¹³ Christodoulou- Varotsi, I & Pentsov, Dmitry," Maritime Work Law Fundamental: Responsible Shipowners, Reliable Seafarers", 2008, Springer-Verlay Berli, p. 748.

¹⁴ Ibid, p. 749.

¹⁵ Ibid.

¹⁶ Council of European Union, "Outcome of the Council Meeting: Employment, Social Policy, Health and Consumer Affairs", Brussels, 11 December 2014, p. 8.

seven priorities (children and youth; investing in people, more and better jobs, new skills; mobility; longer and healthier lives; combating poverty and social exclusion; fighting discriminations; opportunities, access and solidarity on the global scene). It is today the basis for actions which can be taken at EU level concerning social issues in the maritime field.¹⁷

In addition to this, in 2009 the European Commission published its vision concerning “Strategic goals and recommendations for the EU’s maritime transport policy until 2018”. This document puts forward several propositions concerning the issue of human resources in the maritime transport sector, including from the perspective of improving working and living conditions on ships. It also stresses the importance of the implementation in the European Union of international social standards which result from both STCW (Standards of Training, Certification and Watchkeeping for Seafarers) and MLC (Maritime Labour Conventions).¹⁸

Since only states are members of the ILO, from 2003 the EU decided on common policies in coordination-meetings during and in between ILO-meetings, where concrete positions on different areas of the ILOMLC-draft were discussed. Due to the tripartite ILO-structure, the EU-actors act on three arenas during ILO-meetings; in the closed coordination-meetings held at least once daily; in closed Government-group meetings; and in recorded tripartite meetings. Though the EU is not a signatory to the ILO conventions and there of course, have been disagreement on what should be the EU’s coordinated positions during the process, the EU-members reached agreement on all areas of the Convention before the final adoption in 2006.¹⁹

The Maritime Labour Convention (MLC), adopted in the framework of the International Labour Organisation (ILO), deals with rights and protection at work for seafarers.²⁰ The adoption of the maritime Labour convention (MLC) in 2006 constituted a milestone for seafarers and ship owners throughout the world. It established a social floor in commercial shipping, set quality and safety standards and introduced an integrated inspection system for the most globalized economic sector in the world. The EU was strongly involved throughout the process of adoption, ratification and implementation of the MLC. It co-funded both the 2006 international

¹⁷ <http://www.crpm.org/pub/agenda/1812-note-social-maritime-agenda-presentation->.

¹⁸ Ibid.

¹⁹ http://www.jhubc.it/ecpr-riga/virtual_paperrom/024.pdf.

²⁰ <http://www.crpm.org/pub/agenda/1812-note-social-maritime-agenda-presentation->.

maritime labour conference which adopted the MLC and the ILO implementation guidance for the MLC.²¹

At European level, an agreement on the MLC was adopted between the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) on 19 May 2008.²² In 2009, the EU Maritime Social Partners Agreement, based on the MLC, became EU law.²³ A 2009 Directive implemented this Agreement, but will only be able to enter into force when the MLC is ratified by a sufficient number of countries.²⁴

In 2012, the EC launched two proposed directives to implement the MLC on flag state responsibilities and port state inspection. The ILO-EU partnership thereby contributed to the speedy ratification of the MLC by both developing countries and EU member states.²⁵

In the EU, the adoption of the ILOMLC has been followed up by an EU Council recommendation on ratification, and will be implemented mainly through a framework directive. This common ratification and implementation reflect the process of developing an "Integrated maritime policy for the EU", where successful implementation of the ILOMLC is among the main goals.²⁶

The European Commission fully supported the ILO in creating the international maritime labour standards for all seafarers worldwide through the adoption of the MLC. What is more, the European Commission was an active participant and took a key role in the negotiation process of the Maritime Labour Conference. The Commission strongly supports the idea that all areas covered by the MLC are fundamental and of great importance of seafarers standards, in terms of employment agreements, career and skill development, food and catering, accommodation, health and safety, medical care and so on.²⁷

The EU put further efforts in regulating the maritime sector in terms of working conditions and job security with the adoption of the European Directive

²¹ ILO: "The ILO and the EU, partners for decent work and social justice, Impact of ten years of cooperation", 2012, p. 11.

²² <http://www.crpm.org/pub/agenda/1812-note-social-maritime-agenda-presentation->.

²³ ILO: "The ILO and the EU, partners for decent work and social justice, Impact of ten years of cooperation, 2012, p. 11.

²⁴ <http://www.crpm.org/pub/agenda/1812-note-social-maritime-agenda-presentation->.

²⁵ ILO: "The ILO and the EU, partners for decent work and social justice, Impact of ten years of cooperation, 2012, p. 11.

²⁶ <http://www.jhubc.it/ecpr-riga/virtual-paperrom/024.pdf>.

²⁷ Desislava Nikolaeva Dimitrova, "Seafarers' Rights in the Globalized Maritime Industry", Kluwer Law International, 2010, p. 96.

implementing the new MLC, 2006 on a European level. The creation of a European binding standard will hasten the process of ratification of the MLC among MSs and strengthen seafarers' working and living conditions not only in Europe but worldwide.²⁸

In the case of implementation of the MLC, MSs and the EU have shared responsibility for most of the areas set up in the Convention. However, some articles affect subjects falling under Community responsibilities. For example, the coordination of social security schemes falls under the scope of Regulation (EEC) No. 1408/71 and the MSs do not have the right to ratify international Conventions in that area.²⁹

Among Title 1 to 4 of MLC, 2006, the fourth title falls within the general ambit of EU health and safety law, which applies to 'all sectors of economic activity, both public and private' (Article 2.1 of Council Directive 89/391/EEC, the 'framework' health and safety directive). Under Article 5(1) of the EU's 'framework' directive on health and safety, employers, including ship owners, have a duty to ensure the safety and health of workers 'in every aspect related to the work'. This duty is to be fulfilled by taking the necessary measures, including the prevention of occupational risks. Employers have an obligation to provide a system of risk assessment designed to avoid risks, evaluate them and combat them at source. According to the European Commission, out of twenty-eight EU directives governing the field of health and safety at work, only two do not apply to the maritime sector. Moreover, two health and safety directives are specific to the maritime sector: Council Directive 92/29/EEC on minimum safety and health requirements for improved medical treatment on board vessels; and Council Directive 93/103/EEC concerning minimum safety and health requirements for work on board fishing vessels.³⁰

EU legislation on health and safety protection provides comprehensive protection for seafarers at or beyond the requirements of Title 3 and 4 providing that it is adequately enforced by the member states. There is scope for further measures to be adopted specific to the maritime sector based on agreement by the social partners,

²⁸ Desislava Nikolaeva Dimitrova, "Seafarers' Rights in the Globalized Maritime Industry", Kluwer Law International, 2010, p. 96.

²⁹ Ibid.

³⁰ Jan Orbie and Lisa Tortell, "The European Union and the Social Dimension of Globalization: How the EU influences the world", 1st edition, 2009, p. 121.

following the model used for the agreement on working time. The inclusion of health and safety and working conditions provisions in such an agreement could also contribute to better application and enforcement in combination with flag state and port state control.³¹

As regards the MLC, in particular, the EU's exclusive competence is limited to the coordination of social security schemes, while the bulk of the Convention's provisions fall under shared competences in the field of social policy.³²

Social security levels in the EU are determined exclusively by the member states who have primary responsibility for guaranteeing the standards set in the fourth title. However, EU legislation provides, by means of rules concerning co-ordination of social security, that workers and their family members are protected when moving within the EU by the principles of equal treatment under national schemes. In practice, this is of particular importance to seafarers who are the most mobile of EU workers and, as they are often low paid and experience gaps between periods of employment, have to rely on social security protection. The EU's acceptance of its exclusive competence over social security co-ordination rules, as a basis for authorizing the ratification of the MLC, is therefore of particular importance in this context. In terms of substance, complementary social security protection, based on the employment relationship, is an important issue in the maritime sector, and this could also give scope for EU social partner initiatives.³³

The coordination of social security schemes provides a legal framework to be observed by all national authorities, social security institutions, courts and tribunals when applying national laws, which was devised to ensure that national social security systems are not obstacles to the freedom of movement of workers within the EU. It is not a replacement of national laws, nor does it aim to harmonize national social security laws. It merely ensures that EU nationals that reside and/or are employed in an EU country other than their own do not lose the social security rights that they would have had if they had stayed in one country. The coordination as such is based on the principle that persons moving within the EU are entitled to social security but are subject to the social security scheme of only one Member State.

³¹ Jan Orbie and Lisa Tortell, "The European Union and the Social Dimension of Globalization: How the EU influences the world", 1st edition, 2009, p. 121-122.

³² Jennifer Lavelle, "The Maritime Labour Convention 2006: International Labour Law Redefined", 1st edition, Informa Law from Routledge, 2014, p. 2.

³³ Jan Orbie and Lisa Tortell, "The European Union and the Social Dimension of Globalization: How the EU influences the world", 1st edition, 2009, p. 122.

Recently this protection has been excluded to cover non-EU nationals legally residing in an EU country.³⁴

EU is increasingly playing a bigger role in international forums dealing with maritime issues.³⁵ On the other hand, many European seafarers still fly under foreign flags, and it is in the Community's interest to ratify the Convention as soon as possible. Therefore, the EU has to continue with the promotion, ratification and enforcement of international standards until it has a Community legal framework, which will strengthen the international regulatory regime. To change the industry, all MSs must promote the positive aspects of the seafarers' profession among schools and colleges, long-term career prospects in the industry, information, training programmes, recruitment strategies and financial skill supply, among others.³⁶

In the EU, the adoption of the MLC into community law will increase the competitiveness of the EU in maritime transport and improve the working and living conditions for all European seafarers on the labour market. At present, the Convention has been ratified by mostly all of the EU member states.

4.2 Seafarers' Right to Social Protection in the Association of Southeast Asian Nations (ASEAN)

Southeast Asia is located on the Europe-Far East trade route. Moreover, it is one of the busiest shipping regions of the world and a major source of seafarers for the international shipping industry. In general, seafarers of the Southeast Asian region have played a vital role in the maritime labour market for a long time. The Association of Southeast Asia Nations (ASEAN) was established on 8 August 1967. The member states of the association are Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam. Some Southeast Asian countries, particularly Singapore and Malaysia, are key international ship owning nations. The Philippines, Indonesia and Myanmar are major providers of seafarers to the international shipping industry.

³⁴ Jennifer Lavelle, "The Maritime Labour Convention 2006: International Labour Law Redefined", 1st edition, Informa Law from Routledge, 2014, p. 2.

³⁵ <http://www.jhubc.it/ecpr-riga/virtual-paperrom/024.pdf>.

³⁶ Desislava Nikolaeva Dimitrova, "Seafarers' Rights in the Globalized Maritime Industry", Kluwer Law International, 2010, p. 98.

4.2.1 ASEAN Standards on Social Protection

The ASEAN community consists of three key pillars, that is, the ASEAN Political-Security Community (APSC), the ASEAN Economic Community (AEC) and the ASEAN Socio-Cultural Community (ASCC), all of which are closely intertwined and mutually reinforcing for the purpose of ensuring durable peace, stability and shared prosperity in the region.

The ASEAN Charter states that ASEAN shall ‘enhance the well-being and the livelihood of the people of ASEAN by providing them with equitable access to opportunities for human development, social welfare and justice.’³⁷

In March 2007, the ILO and ASEAN signed a Cooperation Agreement in which ‘social security’ was specifically outlined as one priority area for developing programmes and working together.³⁸

In 2009, the Roadmap for an ASEAN Community 2009-2015 most recently updated its action plan regarding the ASEAN social safety net.

The AEC Blueprint in 2015 envisioned a single market and single production base with free movement of goods, services, investment, skilled labour and free flow of capital.³⁹ The Vientiane Action Programme (2004-2010) section 3.2. noted that economic integration of the ASEAN countries/region would bring around a need to ‘promote social protection and social risk management systems.’ To this end, section 3.2.2. of the AEC Blueprint recommended that ASEAN ‘(1) Establish an integrated social protection and social risk management system.... and (3) Strengthen systems of social protection at the national level and work toward adoption of appropriate measures at the regional level to provide a minimum uniform coverage for skilled workers in the region.’⁴⁰

Similarly, the ASEAN Socio-Cultural Community (ASCC) Blueprint in 2009 had as one of its key characteristics social welfare and protection. According to paragraph 18, ‘ASEAN is committed to enhancing the well-being and the livelihood of the peoples of ASEAN through alleviating poverty, ensuring social welfare and

³⁷ The ASEAN Charter 2008, Article-1, paragraph-11.

³⁸ The Mahidol Migration Centre, Institute for Population and Social Research, Mahidol University: "Migrant Workers' Right to Social Protection in ASEAN: Case Study of Indonesia, Philippines, Singapore and Thailand", 8th September 2011, p. 15.

³⁹ Association of Southeast Asian Nations: "Roadmap for an ASEAN Community 2009-2015", ASEAN Secretariat, April 2009, p. 21.

⁴⁰ The Mahidol Migration Centre, Institute for Population and Social Research, Mahidol University: "Migrant Workers' Right to Social Protection in ASEAN: Case Study of Indonesia, Philippines, Singapore and Thailand", 2011, p. 22-23.

protection... and addressing health development concerns.’⁴¹ To this end, the ASCC envisioned a ‘Social safety net and protection from the negative impacts of integration and globalization... to ensure that all ASEAN peoples are provided with social welfare and protection from the possible negative impacts of globalisation and integration by improving the quality, coverage and sustainability of social protection and increasing the capacity of social risk management.’⁴²

Among the measures ASEAN has committed to undertake include: mapping social protection regimes in ASEAN; an exchange of best practice in social security systems; social protection prioritized in ASEAN’s cooperation in progressive labour practices; there would be establishment of a social insurance system to cover the informal sector; and networks of social protection agencies would be created.⁴³

The year 2015 has been the target in order to retain the significance of the ASEAN Political-Security Community (APSC). The actions to promote ASEAN Maritime Cooperation are provided in the APSC Blueprint as follows:

- i. establish the ASEAN Maritime Forum;
- ii. apply a comprehensive approach that focuses on safety on navigation and security concern in the region that are of common concerns to the ASEAN Community;
- iii. stock take maritime issues and identify maritime cooperation among ASEAN member countries; and
- iv. promote cooperation in maritime safety and search and rescue (SAR) through activities such as information sharing, technological cooperation and exchange of visits of authorities concerned.⁴⁴

The ASEAN Declaration on Strengthening Social Protection adopted in 2013 recognizes the key role of evidence-based national assessments and benchmarking of social protection delivery services in contributing to the “progressive implementation,

⁴¹ Association of Southeast Asian Nations: "Roadmap for an ASEAN Community 2009-2015", ASEAN Secretariat, April 2009, p. 72.

⁴² The Mahidol Migration Centre, Institute for Population and Social Research, Mahidol University: "Migrant Workers’ Right to Social Protection in ASEAN: Case Study of Indonesia, Philippines, Singapore and Thailand", 2011, p. 23.

⁴³ Ibid.

⁴⁴ Association of Southeast Asian Nations: "Roadmap for an ASEAN Community 2009-2015", ASEAN Secretariat, April 2009, p. 11.

effective monitoring and evaluation, as well as optimum impact of social protection”⁴⁵.

Under the ASEAN Charter, the people of ASEAN have the opportunities for human development, social welfare and justice. Some of ASEAN countries like Philippines and Myanmar are major providers of seafarers to international shipping industry. So, ASEAN maritime cooperation should be promoted not only in maritime safety but also in the social protection sector.

4.2.2 National Policy on the Seafaring Industry in ASEAN

Malaysia's policy to develop the country into a maritime nation includes the development of skilled and professional manpower to operate all aspects of the industry.⁴⁶

Singapore's decision to open the shipping registry to foreign shipowners in 1968 was motivated by the desire to create more employment opportunities on Singapore-registered ships. Tax exemption for a Singapore-registered shipowner who employs 25 percent or more of Singapore seafarers is given in the form of a rebate of half the tonnage tax for the vessel concerned. Both Malaysia and Singapore exempt all national seafarers working on locally registered ships from paying income tax.⁴⁷

In the case of Philippines, one of the objectives of its umbrella shipping body, Maritime Industry Authority, is "to generate new and more job opportunities". Indeed, the Philippines has become one of the largest suppliers of trained seafarers on foreign-owned ships. Repatriation of earnings by seafarers is an important source of foreign exchange.⁴⁸

Indonesia's Ministry of Manpower has identified the shipping sector as one source of employment in the country. Attention has also been paid to employment on foreign shipping companies as a means of providing new job opportunities as well as to earn foreign exchange. A number of measures have been implemented to promote seafarer employment. However, in order to ensure that there are sufficient officers

⁴⁵ Cheng Boon Ong and Céline Peyron Bista, "The state of social protection in ASEAN at the dawn of integration", 1st edition, International Labour Organization, 2015, p. 7.

⁴⁶ Mary R. Brooks, "Seafarers in the ASEAN Region", 1989, p. 5.

⁴⁷ Ibid.

⁴⁸ Ibid.

serving nationally registered ships, the government has banned officers from joining foreign shipping companies.⁴⁹

As for Thailand, the current move to establish a marine academy is a positive response towards the need to train to man the increasing number of Thai-flag vessels.⁵⁰

In Myanmar, one of the marine administration policies is to promote development of human resources, man-power planning and optimum utilization of such man-power in the maritime sector.⁵¹

Therefore, although the national policies on the seafarer industry in ASEAN countries vary, their main aims are to provide job opportunities and to train skilled and professional seafarers.

4.2.3 The Role of Seafarers' Unions

The seafarers' organizations of the respective ASEAN countries represent the power of the seafarers as a group. Their viability as organizations can be measured by the successes in their negotiations with shipowners in getting collective agreements signed. The more successful and well funded unions (partly through contributions by shipowners with collective agreements) organize social, recreational, medical, insurance and welfare schemes for their members.⁵²

There are main six seafarer unions in the Philippines. They are:

- (1) Associated Marine Officers and Seamen's Union of the Philippines (AMOSUP)
- (2) Philippine Seafarers Union (PSU)
- (3) The United Filipino Seafarer (UFS)
- (4) International Seamen's Mutual Labor Association (ISLA)
- (5) Philippine Officers & Seamen's Union (POSU)
- (6) Marine Transport Employees Union (MATEU)

By far the largest is the Associated Marine Officers and Seamen's Union of the Philippines (AMOSUP), recognised as the biggest seafarer union in the Philippines. The union, through its President, is represented in various policy-making bodies with government and industry, including sectoral seafarer conferences in the

⁴⁹ Mary R. Brooks, "Seafarers in the ASEAN Region", 1989, p. 5.

⁵⁰ Ibid.

⁵¹ <http://www.mot.gov.mm>.

⁵² Mary R. Brooks, "Seafarers in the ASEAN Region", 1989, p. 6.

ILO. It is affiliated with the ITF. In 2003, AMOSUP had 75,000 members.⁵³ The well managed organization gives strong support to its members as well as provides them with social, medical and other facilities and services.⁵⁴

Another union with a significant presence is the Philippine Seafarers Union (PSU). The PSU is affiliated with the Associated Labor Union - Trade Union Congress of the Philippines (ALU - TUCP), and also affiliated with ITF. PSU seafarer members work mostly in Asian routes, mainly with Japanese ships. PSU estimates it has 5,000 members.⁵⁵

The United Filipino Seafarer (UFS), with traces its origin in the Rizal Park seafarer street labour market. The UFS publishes a newspaper, *Tinig ng Marino* (Voice of the Seafarer), and its President also broadcasts a regular radio program. This union claims 20,000 members.⁵⁶

The other unions reported to have collective bargaining agreements with shipping employers are: the International Seamen's Mutual Labor Association (ISLA); Philippine Officers & Seamen's Union (POSU); and the Marine Transport Employees Union (MATEU), with domestic seafarers mostly as members.⁵⁷

Another seafarers' group, the Mariners' Association for Regional and International Networking Organization (MARINO) provides educational, organizational and para- legal advice to seafarers, with support from the Swedish Service and Communications Union (SEKO), an ITF affiliate. MARINO is trying to organize the seafarers that converge in the Rizal Park. There are reports of another group, the Filipino Seafarers Movement (FSM) but no further details are available. Another organization, the International Seafarers Action Centre (ISAC) was recently organized, to provide legal and para- legal services to seafarers that pursue claims for work-related disability, sickness and injuries as well as death benefits for dependents.⁵⁸

There are various support organisations for Filipino seafarers in other countries. The Filipino Maritime Network in Japan (FMN) was organized in 1996 by

⁵³ Maragtas. S.V. Amante, "Philippine Global Seafarers: A Profile", Seafarers International Research Centre, Cardiff University, 2003, p. 68.

⁵⁴ Mary R. Brooks, "Seafarers in the ASEAN Region", 1989, p. 6.

⁵⁵ Maragtas. S.V. Amante, "Philippine Global Seafarers: A Profile", Seafarers International Research Centre, Cardiff University, 2003, p. 68.

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ Ibid, p. 69.

people involved in the maritime industry, who live and work in Tokyo and nearby areas. The objective of the organization is "...to promote the welfare and upgrade the quality of Filipino seafarers". It is not known whether or not FMN is still active. Based in Rotterdam, the Netherlands, the Philippine Seafarers' Assistance Program (PSAP), conducts information and education activities on seafarers rights. PSAP also provides a forum for discussion on issues and concerns of the sea-based workers and their families. PSAP estimates that around 300 Filipino seafarers pass through Rotterdam each day. Hundreds work aboard Dutch ships, while a number of Filipino residents in the Netherlands successfully applied for jobs with Norwegian, German and other European ships. Some 300 Filipino men and women work on production platforms run by American, Norwegian, British, and Dutch companies in the North Sea.⁵⁹

Before 1963 Singapore seamen had too many trade unions, but during 1963-70 they had no trade union.⁶⁰ Currently, the seafarers' unions are perhaps as well organized as those in the Philippines. They are affiliated to the ITF and negotiate with shipowners on behalf of their members for better wages and conditions of work.

Thailand has no seamen's or officers' unions whatsoever while Malaysia has no nation-wide seamen's union. There is one local union, the Seamen's Association of Penang, which is consulted by employers regarding, the availability of Malaysian crew. Indonesia has one government-recognized union, the Indonesia Seafarers Union, but there is no officers' union except for the Alumin Corps of the Merchant Marine Academy.⁶¹

In Myanmar, the Seafarer Division (SD) is one of the divisions of DMA (Department of Marine Administration) and one and the only authorised crew manning department in the Union of Myanmar. Its objective is to control and prevent discrimination against national seamen by shipowners and ship manning agencies. This Division also takes care of seamen's social welfare elsewhere. Moreover, SD has a full responsibility for carrying out officers and ratings' registration, recruitment, and employment on foreign vessels.

Besides, a non-governmental union is the Seafarers Union of Burma (S.U.B) and it has been set up in 1991 in Bangkok, Thailand in order to restore and protect the

⁵⁹ Maragtas. S.V. Amante, "Philippine Global Seafarers: A Profile", Seafarers International Research Centre, Cardiff University, 2003, p. 69.

⁶⁰ <http://www.sesea.org.sg/main.html>.

⁶¹ Mary R. Brooks, "Seafarers in the ASEAN Region", 1989, p. 20.

rights of labour, particularly the fundamental right to freedom of association. The S.U.B has been providing a small room in Bangkok which seafarers can use for short-term stays when they face ill-treatment, poor health, delayed departure date, conflict with employers and so on.⁶²

After a series of talks between the International Maritime Organization (IMO) and the Department of Marine Administration and fulfilling the requirements prescribed in the Convention, Myanmar was in the white list together with other 95 nations. Therefore a Myanmar Overseas Seafarers Association on behalf of all Myanmar overseas seafarers acts to deal with IMO and other International Seamen Unions. After ratification on 4 March 1995 of the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No.87), Myanmar adopted the Myanmar Overseas Seafarers' Association Constitution on 6 October 2001. Thus, Myanmar Overseas Seafarers Association became operative in May 2002.⁶³

Myanmar Overseas Seafarers Association (MOSA) is a non-governmental organization representing seafarers. The objectives of MOSA are as follows:

- (a) To establish a non-governmental organization representing the Seafarers.
- (b) To find the ways and means of employment for the Seafarers.
- (c) To protect and ensure the rights and interest of the Seafarers.
- (d) To carry out educative learning and training course so as to foster qualified Seafarers.
- (e) To facilitate and carry out welfare programmes for the Seafarers.
- (f) To communicate and keep contact with International Maritime Organization and Seafarers Association in foreign countries with regard to the matters relating to Seafarers.

MOSA re-organizes and oversees such matters as: renewal and repeal rules and regulations in accordance with the producers of the Association; management of seafarer's various complaints with regards to compensations, claims, etc; arrangement of the workshop, seminars and trainings under the IMO's aims for the continuous development of the seafarers' efficiency; generation and management of funds for training plans, operating cost of the organization, support works for family of the members, and organizing aid for seafarers; inspection, verification, auditing and

⁶² <http://www.scribd.com/doc/36331454/seafarers-union-of-Burma-S-U-B-Background>

⁶³ <http://www.mosamyanmar.org>

substantiation of monetary functions; establishing adequate and updated communication facility between the Association and the Seafarers and coordination with local and international organizations and distribution of information; establishing networks, engaging in various seminars; managing and inspection of training centers, teaching methodology and effectiveness, assessment and examination standards.⁶⁴

The following cases demonstrate how MOSA has assisted both Myanmar and foreign seamen to settle problems of working conditions, wages etc, with their respective authorities.

In one case, two Philippino nationals, MR.REYNALDA LOVERS, chief engineer and MR.NICANDRO GOTADO, deputy chief engineer of the MV-CABOT ORIENT, anchored at the port of Yangon, went to the MOSA office and asked MOSA to help them get a release from their ship as they were not in a position to perform their duties due to defects and difficulties on their ship. Even though they were not the Myanmar seafarers and not its members, MOSA informed their respective embassy about their difficulties through the authorities concerned at the DMA. Eventually, through cooperation and negotiation by MOSA between the ship's captain, the DMA and the seafarer's embassy, the matter was solved and the two engineers were able to fly back to their country.⁶⁵

In another case, five Georgian seafarers who are performing their duties on the H.IDRIS ERDOGDU vessel owned by the Kevser Shipping Company Ltd., which was berthed at the Yangon Port, complained to MOSA that they had not received their salary for one month and twenty days. MOSA sent E-mails to the Georgian Consulate in Bangkok, Thailand, the Georgian Seafarer's Union, and to the Embassies of Georgia in Taiwan, Singapore and USA respectively. MOSA also contacted the ship owner, ITF, and the Seamen Union of Georgia in their efforts to secure payment of the outstanding salaries for the five Georgian seafarers. As a result of these activities of MOSA, the five seafarers who were not on duty on their ship got the chance to fly back to their country.⁶⁶

In yet another case, Myanmar seafarers under the names of U Pyay Thein Htun (A/B) (CDC-63971), U Wai Lin Soe (A/B) (CDC- 58688), U Ye' Min Aung (O/S) (CDC- 58793) had been employed on the MV AG-Bless owned by the STM

⁶⁴ <http://www.mosamyanmar.org>

⁶⁵ *MV-Cabot Orient vs Mr.Reynalda Loveres & Mr.Nicandro Gotyardo*, 16 July 2010.

⁶⁶ *MV H.Idris Erdogdu vs Five Georgian Seafarers*, 28 January 2011.

Shipping and Training Management Company of Greece through the Shipping Agent in Yangon OMC 2000. When their contracts expired they waited to receive their air tickets back to Myanmar and payment of arrears for six months salary. However, no one from the company had arranged for their air tickets and salaries so they were stranded at Dakar in Senegal. Under these circumstances, the port authority detained their ship. Even though negotiations were carried out with the shipping agent in Dakar, the ship owner failed to reply to their request and they had to request help from the Myanmar Captain who informed MOSA and SD about their problem by phone and E-mail. As per the agreement reached, the cost of the air tickets from Senegal to Myanmar was borne by MOSA. The air tickets for the seafarers were subsequently received in Senegal and the Myanmar seafarers got back to Myanmar eventually.⁶⁷

In first two cases above are clear examples of the fact that MOSA coordinates and negotiates to settle issues faced by foreign seamen even though they are not MOSA members. Such efforts are, of course, made by MOSA to facilitate the settlement of difficulties faced by Myanmar seamen abroad while working on foreign ships, as in the third case above. These efforts of MOSA are in line with its objective to protect and ensure the rights and interests of seafarers.

Now, MOSA has been replaced by the Myanmar Seamen's Federation (MSF) which works to settle disputes between crew members and their employers.

In addition, the Myanmar Maritime Workers' Federation (MMWF) was founded by seafarers who are interested in activities for securing seafarers' rights and who have, since 2011, been striving for the emergence of the right of the freedom of association for Myanmar labour. The MMWF helps and supports the seafarers by:

1. giving Basic Trade Union Education for its members
2. providing seafarers education, newsletter or publication for its members
3. introducing its members to international organizations such as ILO, IMO, ITF, ICLS,etc.⁶⁸

There also is the Independent Federation of Myanmar Seafarers (IFOMS) which is a labour federation. It is not a charity, an NGO or a welfare organization. It was established to represent the members and put them and their families first. It is the only ITF-affiliated labour organization in Myanmar. And it supports

⁶⁷ *MV AG-Bless vs Three Myanmar Seafarers*, 14 January 2010.

⁶⁸ <http://mmwf.blogspot.com>.

unconditionally Myanmar's ratification of the Maritime Labour Convention 2006 (MLC, 2006). Contrary to the misinformed statements of some individuals and organizations, ratification of the MLC will protect jobs for Myanmar seafarers and not jeopardise them. It is only the continuation of outdated and corrupt practices that will jeopardize it seafarers' employment; shipping lines will desert Myanmar seafarers unless these breaches of the MLC stop immediately.⁶⁹

Often, seafarers are apart from their normal life for long periods of time, both living and working abroad the ship. If seafarers are not protected by seafarers' unions, they are usually paid lower wages, work longer hours with insufficient rest, and have no fixed overtime payment and live in inappropriate conditions on board a ship. Thus, seafarers' unions play an important role in protecting seafarers.

4.2.4 Practice in ASEAN

The conditions of employment, wages and welfare of seafarers vary extremely within each country and among the ASEAN states.

In Indonesia, wages paid to seafarers working for state-owned shipping companies are lower than those paid by private shipping companies, although the former is preferred because of better benefits and greater job security. Employment prospects have been threatened by government policies on forced scrapping and the phasing out of log exports while the international employment situation continues to deteriorate.⁷⁰

While there is insufficient Malaysian seafarers to man locally registered ships, foreign seafarers serving on Malaysian ships can be asked to leave to give place to a local seafarer. In practice, there is no restriction on the hiring of foreign crew and local shipowners have preferred to hire cheaper foreign crew from neighbouring countries.⁷¹

The Philippines is the top supplier of seafarers in the world, particularly ratings. Approximately 20 per cent of the 1.2 million seafarers around the world are Filipinos. More than one million Filipino seafarers are registered through the Philippine Overseas Employment Agency (POEA). Their remittances amount to US\$1 billion and contribute significantly to the national economy.⁷²

⁶⁹ <http://www.ifoms.org/projects.html>.

⁷⁰ Mary R. Brooks, "Seafarers in the ASEAN Region", 1989, p. 7.

⁷¹ Ibid.

⁷² http://www.ilo.org/manila/publications/WCMS_173266/lang--en/index.htm

Not only the Philippines is the largest source of the world's seafaring workforce and the home of nearly one third- 30 percent- of seafarers working on foreign flag ships, it also has a large domestic fleet, with nearly as many seafarers working on Philippines flagged ships.⁷³

The MLC will facilitate formulation of enabling laws and policies that specifically focus on the special context, needs and issues of Filipino seafarers.⁷⁴ The Philippines played an important leadership role in the five years of international meetings to develop and adopt the text of the MLC, 2006. Following a High-Level Tripartite Mission in 2006 the Philippines adopted a nation Action Plan to allow it to move forward. This was followed by extensive national dialogue with the social partners and numerous tripartite seminars so that all concerns could be heard and addressed. This was combined with data collection, particularly with respect to the domestic fleet and conditions of employment, and a detailed legal review and analysis. As result of this extensive consultation process legislation was developed that would implement the MLC,2006 to better protect all Filipino seafarers, including the many seafarers working overseas, and also ensure that seafarer recruitment and placement services based in the Philippines are regulated and operated in accordance with the MLC,2006 requirements.⁷⁵

The Philippines ratified the MLC, 2006 on August 20, 2012. As the 30th country, it triggered the Convention's entry into force. ILO Convention No. 185 was ratified earlier on 19 January 2012.⁷⁶

The ILO supports the Philippine's application of the requirements of MLC, 2006 and ILO Convention No. 185 through technical assistance, capacity building programmes using ILO guidelines and continued awareness raising programmes to support adoption of enabling policies and law, enforcement including inspection/compliance system, promotion of social dialogue, and other capacities for government and relevant social partners to apply requirements under MLC, 2006. This includes:

⁷³ <http://www.ilo.org/global/standards/maritime-labour-convention/WCMS-187712/lang-en/index.html>

⁷⁴ http://www.ilo.org/manila/publications/WCMS_173266/lang--en/index.htm

⁷⁵ Ibid.

⁷⁶ http://www.ilo.org/manila/publications/WCMS_451914/lang--en/index.htm

- Technical assistance for improved capacity of maritime constituents to propose guidelines, policies and laws, to align with MLC, 2006 requirements.
- Technical assistance and training programme for improved dispute resolution for cases involving seafarers.
- Specialized training for labour law compliance officers for maritime inspection, using ILO guidelines.
- Capacity building and awareness raising campaigns for Filipino seafarers and owners of Philippine registered vessels.⁷⁷

Singapore is ranked among the world's top ten largest ship registries and is regarded as a reputable flag state in the world, renowned for its quality fleet, and backed by an efficient maritime administration. Singapore is also one of the busiest ports in the world.⁷⁸ In receiving the instrument of ratification, Ms Cleopatra Doumbia-Henry, ILO Director of International Labour Standards, stated: "The ratification of the MLC, 2006, by Singapore, the world's largest port State and one of the top ten flag States, sends a powerful signal to the global maritime community. Singapore is the first country of the Asian continent to have accepted the Seafarers' Bill of Rights, and we all know how vital and important this continent is for maritime trade and the global economy. This strong expression of leadership by Singapore sends the right message to other countries to come on board to enable the worlds' seafarers to benefit from this Bill of Rights and shipowners from a level-playing field."

According to statistics, Vietnam has about twenty thousand seafarers, in which there are 6,721 seafarers of Vietnam shipowner association who works on Vietnam and international ships operating at international seaports.⁷⁹ Vietnam has long paid attention to building human resources for maritime sector, and it is shown in Vietnamese Party policies, State laws. Resolution No.09-NQ/TW dated 09/02/2007 was approved at the 4th Conference of the Party Central Committee X, it defined clearly fundamental targets, and tasks about human resources of maritime sector. Laws, ordinances, resolutions, decrees, decisions, concerned circulars which were

⁷⁷ http://www.ilo.org/manila/publications/WCMS_451914/lang--en/index.html

⁷⁸ <http://www.mom.gov.sg/newsroom/press-releases/2011/singapore-is-first-asiancountry-to-ratify-the-maritime-labour-convention-2006-mlc-2006>

⁷⁹ International Journal of Humanities and Management Sciences (IJHMS) Volume 1, Issue 1 (2013) ISSN 2320-4044 (Online), p. 132.

promulgated by Congress, government and other state agencies under their competence have the adjustment contents for human resources to serve Vietnam marine strategy.⁸⁰

Vietnamese Maritime Code 2005 contains provisions relating to seafarers; however, provisions relating to wages, insurances, health care and preferential regime for seafarers are still adjusted by many laws such as Labour Law, Health Insurance Law and under the management of relevant sectors, Ministries (Ministry of Labour, Invalids and Social Affairs - the focal of ILO, the Ministry of Health, Ministry of Transport, Ministry of Finance). Maritime Labour Convention 2006, after coming into force it will not only affect, influence certainly on Vietnamese maritime sector but also affect other areas such as insurance, labour, health particularly.⁸¹

According to Vietnam law on the seafarer's welfare regime and insurance, when seafarer had signed the long term contract with seafarers Supply Company, that company will pay insurance under the provisions of Vietnam law on the basis of usual and concrete wage without basing on the salary regime working on the sea. With the body insurance issue for seafarers (or their family), when illness or casualty occur, insurance for seafarer will belong to P&I Insurance (Sponsored and civil liability compensation council of ship- and Indemnity) under the general usage of International Maritime.⁸²

Approving and implementing of the Convention's requirements in Vietnam plays a very important role in ensuring and protecting the rights of Vietnamese seafarers in the global standardization of the labour market.⁸³ By implementing the Maritime Labour Convention, 2006, crew members will be received legal interests and rights with the better protection conditions, especially in the field of labour contract, wages, accommodation condition, recreation, health care and social welfare when they work on Vietnam and international ships.⁸⁴

The upshot for Thailand, which has yet to ratify the MLC, but whose ships dock at member countries, is that it now has to enact laws or regulations to comply

⁸⁰ International Journal of Humanities and Management Sciences (IJHMS) Volume 1, Issue 1 (2013) ISSN 2320-4044 (Online), p. 133.

⁸¹ Ibid, p. 134.

⁸² Nguyen Thanh Le, " Researching the System of Chinese and Vietnamese Law on Seafarers-From the Viewpoint of Maritime Labour Convention, 2006", Journal of Law, Vol.20, owner- Protection 2013, p. 38.

⁸³ International Journal of Humanities and Management Sciences (IJHMS) Volume 1, Issue 1 (2013) ISSN 2320-4044 (Online), p. 132.

⁸⁴ Ibid, p. 134.

with the MLC. In this regard, the Marine Department has urged the Cabinet to consider and approve its Guidelines for Implementation of Maritime Labour Convention 2006.⁸⁵

Separately, the Ministry of Labour has issued two Ministerial Regulations regarding Standards for Maritime Labours, No. 1 and No.2, in June and August 2013, respectively. These two regulations were issued under existing maritime-related laws which include the Navigation in Thai Water Act, the Thai Vessels Act and the Marine Department's regulations. They are mainly to standardize Thailand's maritime labour-related requirements and conditions under, for example, the Seafarers' Agreement, and to ensure that those requirements and conditions are in line with the MLC's framework of documents, e.g. the Statement of Compliance for Maritime Labour Convention 2006 (SoC) and the Declaration of Maritime Labour Certificate (DMLC) which set out all 14 minimal standards for the issuance of a maritime labour certificate as per the MLC.⁸⁶

Myanmar has acceded to and ratified the international instruments and ILO Conventions as well as provided for legal provisions relating to social protection for seafarers consistent with the relevant instruments. Currently, the government executive bodies promulgate rules, regulations, instructions and notifications in accordance with the existing legislation whenever required and undertake implementation and enforcement of the regulatory functions. Moreover, non-governmental organizations representing seafarers provide social protection for seafarers.

In Myanmar, a seaman's right to wages and provisions shall be taken to begin either at the time at which he commences work or at the time specified in the agreement for his commencement of work or presence on board, whichever first happens.⁸⁷

Concerning the provisions on water in relation to the health protection of seafarers, it is provided in, the Myanmar Merchant Shipping Act, 1923 that:

“All British ships and all ships upon which seamen have been shipped in British Burma shall have on board sufficient provisions and water of good quality and

⁸⁵ <http://www.lexology.com/library/detail.aspx?g=860fbecc-b2e2-496d-99e4-cbae33bb556d>.

⁸⁶ Ibid.

⁸⁷ The Myanmar Merchant Shipping Act, 1923, Section 55.

fit for the use of the crew on the scale specified in the agreement with the crew”.⁸⁸ If any person making an inspection under section 91 of the Act finds that “the provisions or water are of bad quality and unfit for the use or deficient in quantity, he shall signify it in writing to the master of the ship”.⁸⁹

If the master does not thereupon provide other proper provisions or water in lieu of any so signified to be of bad quality and unfit for use, or does not procure the requisite quantity of any provisions of water so signified to be deficient in quantity or uses any provisions or water so signified to be of bad quality and unfit for use, he shall be liable for each offence to a fine which may extend to two hundred rupees.⁹⁰

In either of the following cases—

- (i) if during the voyage the allowance of any of the provisions for which a seaman has by his agreement stipulated is reduced (except in accordance with any regulation by way of punishment contained in the agreement with the crew, and also except for any time during which the seamen willfully and without sufficient cause refuses or neglects to perform his duty or is lawfully under confinement for misconduct either on board or on shore); or
- (ii) if it is shown that any of those provisions are or have during the voyage been bad in quality or unfit for use; the seaman shall receive by way of compensation for that reduction or bad quality according to the time of its continuance to be paid to him in addition to and to be recoverable as wages.⁹¹

Under Section 87 of the Myanmar Merchant Shipping Act, 1923, all foreign-going British ships and all home-trade ships of more than three hundred tons burden shall have always on board a sufficient supply of medicines and appliances suitable for diseases and accidents likely to happen on sea voyages according to such scale as is from time to time issued by the Governor and published in the Gazette. If any requirement in this section with respect to the provision of medicines and appliances is not complied with in the case of any ship, the owner or master of that ship shall for each offence be liable to a fine which may extend to two hundred rupees, unless he

⁸⁸ The Myanmar Merchant Shipping Act, 1923, Section 85(1).

⁸⁹ Ibid, Section 85(2).

⁹⁰ Ibid, Section 85(3).

⁹¹ Ibid, Section 86.

can prove that the non-compliance was not caused by his inattention, neglect or willful default.

Myanmar ratified ILO Conventions (No. 15, 16, 22, 27)⁹² concerning seafarers. After Myanmar had ratified the Seamen's Articles of Agreement Convention, 1926 (No.22), the provision for medical examination of young persons has become necessary.

With regard to expenses of medical attendance in the case of illness, injury and death for seafarers, "if the master of, or a seamen or apprentice belonging to, a ship registered in British Burma receives any hurt or injury in the service of the ship, the expense of providing the necessary surgical and medical advice and attendance and medicine, and also the expenses of the maintenance of the master, seaman or apprentice until he is cured or dies or is brought back to the port from which he was shipped or other port agreed upon, and of his conveyance to that port, and in the case of death, the expense, if any, of his burial, shall be defrayed by the owner of the ship without any deduction on that account from his wages. Where any expenses referred to in this section have been paid by the master, seaman, or apprentice himself, the same may be recovered as if they were wages duly earned, and, if any such expenses are paid or allowed out of any money forming part of the revenues of Burma, the amount shall be a charge upon the ship and may be recovered with full costs of suit by the Government".⁹³

According to Section 90 of the Myanmar Merchant Shipping Act, 1923,

- (1) Every place in a British ship which is occupied by seamen or apprentices engaged under this Act and appropriated for their use shall have for each seaman or apprentice a space of not less than twelve superficial feet and not less than seventy-two cubic feet.
- (2) In every case the place shall be below a well caulked and substantial deck, securely constructed, properly ventilated and properly protected from weather and sea.
- (3) If any of the foregoing requirements of this section is not complied with in the case of any ship, the owner of the ship shall for each offence be liable to a fine which may extend to two hundred rupees.

⁹² Minimum Age (Trimmmers and Stokers) Convention, 1921 (No.15); Medical Examination of Young Person (Sea) Convention, 1921 (No. 16); Seamen's Articles of Agreement Convention, 1926 (No.22); Marking of Weight (Packages Transported by Vessels), 1929 (No.27).

⁹³ The Myanmar Merchant Shipping Act, 1923, Section 89(1-2).

- (4) Every place so occupied and appropriated shall be kept free from goods and stores of any kind not being the personal property of the crew in use during the voyage.
- (5) If any such place is not so kept free, the master shall for each offence be liable to a fine which may extend to one hundred rupees.

Relating to inspection of provisions, water, medicines and appliances, weight and measures, and accommodation, "a shipping-master, deputy shipping-master, or other officer duly appointed in this behalf by the Governor at any port—

- (a) in the case of any ship upon which seamen have been shipped at that port, may at any time, and
- (b) in the case of any British ship, may at any time, and if the master or three or more of the crew so request, shall enter on board the ship and inspect—
 - (i) the provisions and water,'
 - (ii) the medicines and appliances
 - (iii) the weights and measures , the accommodation for seamen, with which the ships required to be provided by or under this Act or the Merchant Shipping Acts." ⁹⁴

The Department of Marine Administration (DMA) issues Medical Certificates for Myanmar Seafarers (refer to International Convention on STCW (1995) Regulation 1/9 Medical Standards Issue and Registration of Certificate). The Department has adopted Medical Guidelines and Standards for Merchant Marine Personnel by Notification 1/99 on 1 December 1999 (as amended 1/2001 on 1 May 2000).

Even though Myanmar ratified the ILO Conventions regarding seafarers: Minimum Age (Trimmers and Stokers), 1921 (Convention No.15), Medical Examination of Young Person (Sea), 1921 (Convention No.16), Seamen's Articles of Agreement, 1926 (Convention No. 22), Marking of Weight (Packages Transported by Vessels), 1929 (Convention No.27), the Merchant Shipping Act includes only a few laws relating to the Conventions. In spite of not having ratified the other conventions of ILO relating to social protection, the MSA provides some provisions concerning

⁹⁴ The Myanmar Merchant Shipping Act, 1923, Section 91.

social protection for seafarers. These legal provisions for social protection of seafarers need to be included in the MLC, 2006.

At present, the Department of Marine Administration (DMA), the government executive body and the Seafarer Division (SD), one part of DMA, are dealing with the protection of seafarers in Myanmar.

The Directorate of Maritime Administration called the “Principal Port Officer’s Office existed in 1930 prior to the Second World War, and then it became the Nautical Adviser and Principal Officer Mercantile Marine Department. Subsequently it became the Mercantile Maritime Department in 1956, and eventually the Department of Maritime Administration on 16 May 1972.

The DMA is the government executive body which efficiently provides the State with service embodied in the Myanmar Merchant Shipping Act⁹⁵, Myanmar Registration of Ship Act⁹⁶ and the Inland Steam Vessel Act⁹⁷. The role of the DMA includes the implementation of the requirements of the IMO and appropriate national rules and regulations adopted under the Myanmar Merchant Shipping Act. The DMA is responsible for the implementation and enforcement of the regulatory functions embodied in the National Maritime Legislation. The most important functions of the DMA are those intended to ensure the safety of life at sea, the safety of navigation of the various types of vessels (coastal ships plying along Myanma coast and powered schooners, motor vessels in Myanmar Inland Water Ways, to be able to ship safely and the freight and passengers, motor vessels, motor launches) and the protection of the marine environment. The DMA promulgates, rules, regulations, instructions and notifications in accordance with the existing legislation whenever requires.

At present, the department consists of (9) divisions implementing its functions-

- (1) Legal and Technical Standards Division
- (2) Maritime Safety, Security & Environmental Protection Division
- (3) Nautical Division
- (4) Marine Engineering Division
- (5) State & Region Offices Division (Upper Myanmar)
- (6) State & Region Offices Division (Lower Myanmar)

⁹⁵ The Myanmar Merchant Shipping Act, 1923, Burma Code, Volume VII, p. 233.

⁹⁶ Ibid, p. 360.

⁹⁷ Ibid, p. 184.

- (7) Planning Division
- (8) Shipping Division
- (9) Seafarer Division

The major functions of the DMA are;

- (1) Maritime Legislation in Myanmar
- (2) Maritime Advisory to the Government Organizations
- (3) Focal Department for IMO & ASEAN Maritime Affairs
- (4) Conducting the Maritime Education and Training on behalf of Ministry of Transport
- (5) Evaluation, Certification and Verification for CoCs, CoPs and Documentary Evidence
- (6) Ship Survey and Registration
- (7) Maritime Incident, Accident Investigation and Arbitration and Report to the Governmental Bodies
- (8) Conducting Maritime Safety and Environmental Protection in Myanmar
- (9) Conducting Myanmar Ships and Port Facilities Security
- (10) Conducting Port State, Flag State and Coastal State Control in Myanmar
- (11) Focal Department for Coast Guard Agency Matters in Myanmar
- (12) Controlling Myanmar Seafarers Contract, Article and Disciplinary Matters
- (13) Controlling Myanmar Seafarers Manning Companies and Conducting Myanmar Seafarers Services
- (14) Myanmar Seafarers Registration
- (15) Conducting Myanmar Coastal and Inland Water Vessel Operating License
- (16) Controlling Navigation Safety and Conducting Safety Training in Myanmar

The DMA also gives advice to the higher authorities on Maritime Acts, Rules, Regulations and Disciplines. Moreover, the Department issues certificates for examinations and conducts activities for the rights of seafarers and their welfare.

The Seafarer Division (SD) is one part of the Department of Marine Administration (DMA). A company that wants to employ Myanmar Seamen has to

make a general agreement with the SD under which the SD agrees to supply and the Company agrees to employ Myanmar Seamen who are registered with the SD, consisting of officers and ratings for serving on board the vessels owned/ managed or operated by the Company, in accordance with terms and conditions contained in the agreement. If the cases occur, it will be settled in accordance with this agreement.

The Company undertakes full settlement of wages as shown against their names and repatriation to the original port of engagement on termination of the contracted period subject to conditions stated in the agreement⁹⁸ relating to the following: medical examination, medical treatment, dental treatment, medical leave and sick pay, compensation. In medical examination, all Seamen will undergo a proper medical examination by the Company medical officer prior to the engagement. For medical treatment, the Company will provide medical treatment and hospitalization, if necessary, due to illness or injury of the Seamen, with the medical officer/ hospital arranged by the Company or it's Agents. Under dental treatment, the Company will bear expenses for tooth extraction or filling in the nature of first aid. All other dental expenses shall be borne by the Seamen.

Regarding medical leave & sick pay, the Company shall pay the Seamen his full wages for a maximum period of (12) weeks as sick pay from the time he leaves the vessel for medical treatment until the arrival at the original port of engagement or he rejoins a vessel of the Company, after being declared fit. After expiry of the said medical leave period of (12) weeks, and if the attending medical officer declares further medical treatment to be required, the Seamen shall be entitled to 50% of his wages up to a further period of (12) weeks.

If on repatriation, the seamen is still suffering from total or partial incapacity, he shall continue to receive 50% of his wages until the Company's P & I Club and the Authorities of the Country of Ship's registry has assessed the degree of permanent incapacity.

The seafarer U Thet Nyunt (3/E) had contacted EURUS Marine Co., Ltd., and performed his duties on Shanghai Marukichi Shipmanagement Co., Ltd.'s MV. SDL MAYA on 23 October 2006. While he was performing his duties his health was deteriorated and he was hospitalized at Kuming toxin in PRC on 23 January 2007 for the month. And then he took one month rest and came back to Myanmar on 8 April

⁹⁸ Department of Marine Administration: "General Agreement", (Part- G), October, 1973.

2007. Even though he was under the medical treatment when he got back to Myanmar, he did not recover up to now. His performance on the ship was only three months, and he did not get any adequate allowances to take medical treatment for his suffering. Besides, as he did not get his salaries in full his family was facing with difficulties to give him medical treatment and it was submitted to the authorities concerned.⁹⁹

The seafarer, U Soe Moe Win (CDC 34184), performed his duties on MV Karine Bulker on 22 May 2010 owned by the Orient Marine Co., Ltd., as a Chief Officer. As the freight loaded at the Boston port in America exceeded 3000 tons the Spring Mooring Line was cut down due to the over weight of the freight at the shifting time. As a result Spring Mooring hit U Soe Moe Win's head, ear, and chest severely and he was under conscious less for three days in coma. He was hospitalizing to the Massachusetts General Hospital at the Boston town due to the fracture of the right side skull, the hemorrhage as to the bust of the blood vessels in the brain, and the blockage of the right side blood vessel. On 22 July 2010 he came back from Boston, USA to Myanmar. But, it was found out that the foreign shipping companies under the name of Orient Marine Co., Ltd., and Local Agent under the name of Selly's Art Marine Services did not disburse the medical treatment expenses and medical treatment as well. In addition to that while he was in Boston at the Massachusetts General Hospital he did not enjoy sick wages during his treatment. Up to now he did not get any information from the shipping company side. Being so, it was found out that sick wages were claim as to the SD contract.¹⁰⁰

As to compensation, the Company shall pay to the Seamen, workmen compensation in accordance with the schedule of compensation mentioned in Annexure F¹⁰¹ of the agreement for any case of death and also for total or partial incapacity during the course of his employment with the Company. It shall not cover injury or death which is self inflicted. In order to pay such compensation the Company shall be responsible to keep insurance policies to cover with effect from the date of Seamen's departure from the port of engagement or signing on board the vessel whichever is earlier, until the date of his arrival at the original port of

⁹⁹ *MV SDL MAYA vs U Thet Nyunt (3/E)*. 23 January 2007.

¹⁰⁰ *MV Karine Bulker vs U Soe Moe Win (CDC 34184)*, 22 May 2010.

¹⁰¹ Department of Marine Administration: "General Agreement", Part- G (Attach at Annex- 3).

engagement, if repatriated after completion of agreement or until the date of signing off the vessel, (or) if repatriated at his own request.

A sailor who belonged to Base Com Co; (Malaysia) was hit by a log on 3 April 2005 while he was performing his duties on the Malaysian Government owned MV-HENG SUNG LEE and he was expired at Sarawak Port, Malaysia. Regarding this case an E mail was send to the Malaysia Marine Department on 4 February 2009. One of the sailors in Thailand rang up and informed that money was in Malaysia and to collect accordingly. The deceased sailor's mother and elder brother were facing with difficulties and even though they know that the compensation for the deceased was in labourer's office at Seboo town in Malaysia, they face difficulty to collect the money was submitted as to the finding.¹⁰²

On 26 November 2004 MV BAWISUN was sunk near YAKANAT PORT in Japan as to the oceanic storm. Nine Myanmar seamen were lost in the incident, out of nine Myanmar seamen three performed their duties on MV BAWISUN owned by DAE-UN SHIPPING CO, LTD. at Fusun in Korea. On 24 January 2005, the company gave compensation salaries and the compensation for the death as well. Nevertheless, the amount sent by the shipping company was less than US \$25,000 which was the least prescribed by the Directorate of Marine Administration.¹⁰³

The incidents are in contradiction with the part-G of the General Agreement of DMA.

The agreement¹⁰⁴ contains the requirements to be implemented by the Company as follows:

1. The company shall pay to SD account the fees of U.S. \$ 4.00 per crew member per month from date of engagement till the date of expiration of the contract for administrative charges such as processing formalities for selection, disbursement of family allotments, and keeping and updating individual records for crew member of the company.
2. The company shall pay to SD account in addition to the above, the incidental charges for telexes, telephone, postage and sending and

¹⁰² *MV- HENG SUNG LEE vs Myo Zayar Min (CDC 54659)*, 3 April 2005.

¹⁰³ *MV BAWISUN vs Nine Myanmar Seafarers*, 26 November 2004.

¹⁰⁴ Department of Marine Administration: "General Agreement", (Part- J), October 1973.

meeting crew incurred by SD in connection with the company's interest.

3. For current expenditure U.S. \$ 5000.00 or equivalent of one month's wages whichever is more to be deposited to Shipping Master's account as impress money. This contract is valid for one year and reviewable after one year if either party so requests.
4. The company undertakes to co-operate for the training of Deck and engineering personnel in accordance with the requirements of department of marine administration and agreed to select suitable trainees through SD.

The Seamen shall keep their quarters and communal spaces clean and tidy to the satisfaction of the Master. This work is to be performed outside normal working hours and no over-time shall be admissible. The Seamen shall submit to the regulations of the port of call to have such vaccination or inoculation or to take such medicine or precautionary measures for safeguarding the health of himself and other crew members.¹⁰⁵

The Company will also be responsible for repatriation of the Seamen to the original port of engagement due to illness or injury, if so recommended by the Company Doctor. The Seamen shall be responsible for his own repatriation if he should refuse treatment at the port of call.¹⁰⁶

The Company will be responsible for accommodating the Seamen ashore after leaving the vessel prior to repatriation according to arrangements made by the Company. However, if the Seamen should wish to remain ashore beyond this date with the approval of the Immigration authorities, he shall bear all such expenses from the date he should have repatriated.¹⁰⁷

The functions of the SD are as follows;

- (a) Selection of seafarers and entering into bonds.
- (b) Registration for the seafarers and certification for the passport.
- (c) Inspection and recommendation for the foreign exchange brought by the seafarers into the State.

¹⁰⁵ Department of Marine Administration: "General Agreement", (Part- E, para-9), October, 1973.

¹⁰⁶ Ibid, Part- F, para-2.

¹⁰⁷ Ibid., Part- F, para-7.

- (d) Arranging for the necessary bonds and documents when seafarers enter into agreement with the companies, conducting the departure activities, and insurances.

The SD provides legal provisions in the agreement as contractual rights for seafarers and the company concerned as well as undertakes activities of social protection for seafarers.

Currently, the DMA stands for social protection for the seafarers as a government executive body with regard to the Myanmar Merchant Shipping Act. The SD also conducts functions of social protection for seafarers in Myanmar. Even though SD and the seafarers' unions stand to guarantee the rights of seafarers, some requirements have existed in the implementation of the social protection for seafarers in line with MLC.

As of April 2016, the Convention has been ratified by 72 states* representing 80 per cent of global shipping, among which are only four ASEAN Member States (Malaysia, Philippines, Singapore and Vietnam). The Convention has been ratified by most of the EU member states. At ASEAN level, many of the member countries have their national maritime laws in accordance with the ILO maritime labour standards which they have ratified. However, ASEAN member states are necessary to review all of their national maritime labour laws in line with MLC, 2006. In contrast with EU and ASEAN, EU has the European Community Shipowners' Associations (ECSA) and European Transport Workers' Federation (ETF). Although the ASEAN has Federation of ASEAN Shipowners' Associations (FASA), it has not the Association for seafarers like EU.

* Annex 4.

Conclusion

The provisions relating to protection for seafarers emerged in ancient times. Nevertheless, the changing nature of international shipping, with focus on safety, working and living conditions and on the "human element" issues, has led to more attention being given to the need for a wider range of stronger international standards, including those relating to labour issues. Moreover, the large number of International Labour Organization (ILO) Conventions which led to problems in inspections and enforcement brought the realization that the ILO needed to modernize the procedures relating to the adoption, implementation and revision of its maritime standards to reflect the needs of a more internationalized shipping industry. Therefore, the ILO decided to consolidate the entire body of its international maritime labour standards in a single instrument. Thus, ILO adopted unanimously the Maritime Labour Convention (MLC) 2006 in Geneva.

One important issue addressed by the MLC is the social protection of seafarers who perform an essential service for society. Social protection is wider in range than social security which usually covers matters such as unemployment, medical, disability benefits, etc., whereas, social protection provides coverage of safety, security, social, working and living standards of protection.

Social protection is perhaps one of the most essential aspects of decent work, but also one of the most complex issues to implement, particularly in a globalized sector such as the maritime sector where workers and employers are often based in different countries, often with differing approaches to the provision of social protection and often very different levels of economic and social development. According to ILO estimates, 80 percent of the world population is still without any access to social security. Like most workers worldwide, seafarers lack social security protection.

Through the long history of social protection for seafarers, the MLC represents the most significant development instrument. It provides comprehensive rights and protection at work for the seafarers. The MLC sets out seafarers' rights to decent conditions of work and helps to create conditions of fair competition for quality shipowners. The new labour standard consolidates and updates more than 68 international labour standards related to the Maritime sector adopted over the last 80

years. The Convention does not apply to shipowners, ships or seafarers but it relies on implementation by states through their national laws or other measures.

In the maritime sector, the adoption, implementation and enforcement of safety, security, labour and social and environmental international standards are complex because different jurisdictions, responsibilities, international organizations, states and governments of flag states, port states and labour supplying states are concerned. The various international organizations such as ILO, IMO adopt the basic international maritime standards and conditions that have to be implemented and enforced at a national level. Nevertheless, they have no legal power over their enforcement at the national level. Their jurisdictions cover only the monitoring of flag state compliance and indicating problems and gaps in national legislation. As a result, the states bear full responsibility for implementation of the international maritime standards. But they are not willing to implement them.

As the MLC prescribes the non-favourable treatment clause for ships of non-ratifying members, each member state of the ILO should implement the MLC. Moreover, the MLC came into force on August 20, 2013. As of this writing, the MLC has been ratified by 72 states, among which most of the European Union (EU) member states are included. At the EU level, national legislation on social protection provides comprehensive protection for seafarers under the requirements of MLC, 2006. Currently, in the Association of Southeast Asia Nations (ASEAN), the Convention has been ratified by four member states (Malaysia, Philippines, Singapore and Vietnam). Many ASEAN member states are already taking steps to harmonize their national maritime labour laws with ILO core maritime labour standards, especially for those Conventions which they have ratified. However, in order to achieve a more comprehensive and inclusive approach, the ASEAN governments' challenge is to undertake a review of all their national labour laws and regulations related to seafarers and they are necessary to make progressive revisions to harmonize those laws to be in line with the MLC, 2006. An additional challenge for ASEAN governments is to provide mechanisms for effective implementation of the newly updated Convention.

Myanmar is currently a party to the International Convention for the Prevention of Pollution from ships (MARPOL) Annex I, II and is in the process of becoming a party to Annex III, IV, and V which are key instruments for sewage and garbage dumping and other environmental protection. Moreover, Myanmar is a party

to the United Nations Convention on the Law of the Sea (UNCLOS, 1982), the International Convention for the Safety of Life at Sea (SOLAS) and the International Convention on Standards of Training, Certification and Watchkeeping for seafarers (STCW).

Also Myanmar has acceded to and ratified the international instruments and ILO Conventions. The government executive bodies: DMA, SD promulgate rules, regulations, instructions and notifications in accordance with the existing legislation whenever required and perform the implementation and enforcement of regulatory functions. Although Myanmar has not ratified the Food and Catering Convention, 1946 (No.168); the Shipowners' Liability Convention, 1936 (No.55); Accommodation of Crews Convention, 1987 (No.133); Health Protection and Medical Care (Seafarers) Convention, 1987 (No.164), Social Security (Seafarers) Convention (Revised), 1987 (No.165); the Myanmar Merchant Shipping Act, 1923 contains certain legal provisions regarding social protection for seafarers: complaints provisions or water, allowance for short or bad provisions; medicines to be provided and kept on certain ships; expenses of medical attendance in case of illness, weight and measures and accommodation. But a specific maritime labour law does not exist in Myanmar.

Moreover, the agreement between SD and the ship company concerned, as to contractual rights, creates legal provisions on hygiene & vaccination, repatriation on medical grounds, medical examination, medical treatment, dental treatment, medical leave & sick pay, burial or cremation, and compensation which are not sufficient to ensure social protection for seafarers. Myanmar requires to adding provisions relating to health protection and medical care on board ship and ashore; safety protection and accident prevention; access to shore based facilities and social security to catch up with the MLC.

The MLC is based on a tripartite structure (government, shipowners and seafarers). To obtain on optimum standard of social protection, regulatory bodies such as a Seafarers Association and a Shipowners Association should be made responsible for handling all aspects of social protection for seafarers. This is necessary since one overarching representative body would be more effective than varying standards of social protection by individual entities. However, the shipowners association does not exist in Myanmar. Given this situation, measures should be taken for this establishment with the participation of governmental bodies, non governmental organizations such as the Myanmar Seafarers Federation (MSF) representing

seafarers, qualified persons and legal consultants for a more socially responsible shipping industry; and a better protected and more efficient workforce.

As above mentioned, if Myanmar implements labour standards and develops policies and programme at a national level, by particularly taking together governments, employers and workers, Myanmar would effectively and efficiently bring about social protection for seafarers.

By implementing the MLC, 2006, seafarers will receive legal interests and rights with the better protection conditions, especially in the field of labour contract, wages, accommodation condition, recreation, health care and social welfare when they work on international ships.

However, in Myanmar, the system of relevant legal documents has not been sufficient to ensure the implementation of commitments under the MLC's provisions. Currently, Myanmar has only the Five Star shipping company as shipowner. Therefore, 90% of the shipping companies are foreign company. Among these companies, some are reputable company which fully compliance with the MLC, 2006. But, some can't give full rights to seafarers. On the other hand, Myanmar is one of the labour supply countries. So, the compensation scale for seafarers can't be promoted because Myanmar seafarers may not get the employment opportunity.

Therefore, this research will be a suggestion for Myanmar policy makers to consider the law which adjust the seafarers' legal system in line with the international laws as well as the conditions of labour supply protection and the financial consequences of sickness, injury or death occurring while seafarers are working and insurance for them. It will provide an impetus for maritime development and also protect the legitimate rights and benefits of Myanmar seafarers.

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Annex1

Table 1: Previous ILO Conventions included in MLC, 2006

Convention	Ratified	Denounced	Replaced	Status
Minimum Age (Sea), 1920 (N° 7)	53	52	138	1
Unemployment Indemnity (Shipwreck), 1920 (N° 8)	60	27		3
Placing of Seamen, 1920 (N° 9)	41	20	179	1
Medical Examination of Young Persons (Sea), 1921 (N° 16)	82	30		3
Seamen's Articles of Agreement, 1926 (N° 22)	60	24		3
Repatriation of Seamen, 1926 (N° 23)	47	21	166	1
Officers' Competency Certificates, 1936 (N° 53)	37	18		2
Holidays with Pay (Sea), 1936 (N° 54)	6	2	91	1
Shipowners' Liability (Sick and Injured Seamen), 1936 (N° 55)	18	10		3
Sickness Insurance (Sea), 1936 (N° 56)	20	12	165	1
Hours of Work and Manning (Sea), 1936 (N° 57)	3	2	180	1
Minimum Age (Sea) (Rev.), 1936 (N° 58)	51	39	138	2
Food and Catering (Ships' Crews), 1946 (N° 68)	25	13		3
Certification of Ships' Cooks, 1946 (N° 69)	38	20		3
Social Security (Seafarers), 1946 (N° 70)	7	1	165	1
Paid Vacations (Seafarers), 1946 (N° 72)	5	4	91	1
Medical Examination (Seafarers), 1946 (N° 73)	46	26		3
Certification of Able Seamen, 1946 (N° 74)	29	16		3
Accommodation of Crews, 1946 (N° 75)	5	4	91	1
Wages, Hours of Work and Manning (Sea), 1946 (N° 76)	0	0		1
Paid Vacations (Seafarers) (Rev.), 1949 (N° 91)	25	7	146	1
Accommodation of Crews (Rev.), 1949 (N° 92)	47	23		2
Wages, Hours of Work and Manning (Sea) (Rev.), 1949 (N° 93)	5	0		1
Wages, Hours of Work and Manning (Sea) (Rev.), 1958 (N° 109)	15	4	180	1
Accommodation of Crews (Supp. Prov.), 1970 (N° 133)	32	17		2
Prevention of Accidents (Seafarers), 1970 (N° 134)	29	13		3
Continuity of Employment (Seafarers), 1976 (N° 145)	17	10		4
Seafarers' Annual Leave with Pay, 1976 (N° 146)	17	11		4
Merchant Shipping (Minimum Standards), 1976 (N° 147)	56	31		4
Protocol 1996 to the Merchant Shipping, 1976 (N° 147P)	24	18		4
Seafarers' Welfare, 1987 (N° 163)	18	11		5
Health Protection and Medical Care (Seafarers), 1987 (N° 164)	15	10		5
Social Security (Seafarers) (Rev.), 1987 (N° 165)	3	3		5
Repatriation of Seafarers (Rev.), 1987 (N° 166)	14	8		5
Labour Inspection (Seafarers), 1996 (N° 178)	15	11		5
Recruitment and Placement of Seafarers, 1996 (N° 179)	10	9		5
Seafarers' Hours of Work and the Manning of Ships, 1996 (N° 180)	21	18		5

Legend for current status:

1: outdated instrument

2: other instrument

3: instrument to be revised

4: up-to-date instrument

5: up-to-date instrument. This Convention was adopted after 1985 and is considered up to date.

Source: www.ilo.org

Annex 2

Table 2: Previous ILO Recommendations included in MLC, 2006

Recommendation	Status
National Seamen's Codes, 1920 (N° 9)	2
Unemployment Insurance (Seamen), 1920 (N° 10)	3
Migration (Protection of Females at Sea), 1926 (N° 26)	1
Repatriation (Ship Masters and Apprentices), 1926 (N° 27)	4
Seamen's Welfare in Ports, 1936 (N° 48)	1
Hours of Work and Manning (Sea), 1936 (N° 49)	1
Seafarers' Social Security (Agreements), 1946 (N° 75)	3
Seafarers (Medical Care for Dependants), 1946 (N° 76)	3
Vocational Training (Seafarers), 1946 (N° 77)	4
Bedding, Mess Utensils and Miscellaneous Provisions (Ships' Crews), 1946 (N° 78)	5
Ships' Medicine Chests, 1958 (N° 105)	1
Medical Advice at Sea, 1958 (N° 106)	1
Seafarers' Engagement (Foreign Vessels), 1958 (N° 107)	2
Social Conditions and Safety (Seafarers), 1958 (N° 108)	2
Wages, Hours of Work and Manning (Sea), 1958 (N° 109)	4
Vocational Training (Seafarers)n, 1970 (N° 137)	5
Seafarers' Welfare, 1970 (N° 138)	1
Employment of Seafarers (Technical Developments), 1970 (N° 139)	5
Crew Accommodation (Air Conditioning), 1970 (N° 140)	2
Crew Accommodation (Noise Control), 1970 (N° 141)	2
Prevention of Accidents (Seafarers), 1970 (N° 142)	5
Protection of Young Seafarers, 1976 (N° 153)	6
Continuity of Employment (Seafarers), 1976 (N° 154)	6
Merchant Shipping (Improvement of Standards), 1976 (N° 155)	6
Seafarers' Welfare, 1987 (N° 173)	7
Repatriation of Seafarers, 1987 (N° 174)	7
Labour Inspection (Seafarers), 1996 (No. 185)	7
Recruitment and Placement of Seafarers, 1996 (N° 186)	7
Seafarers' Wages, Hours of Work and the Manning of Ships, 1996 (N° 187)	7

Legend for current status:

1: outdated instrument

2: other instrument

3: instrument to be revised

4: Replaced document

5: instrument subject to a request for information

6: up-to-date instrument

7: up-to-date instrument. This Convention was adopted after 1985 and is considered up to date.

Source: www.ilo.org

Annex 3

Annexure (F)

Addendum to Agreement Between and the Seamen Employment Control Division
Yangon Myanmar

This addendum covers compensation for permanent injury or death to Myanmar Seamen occurring during the course of contract.

It shall not cover injury or death which is self-inflicted.

Shipping Company will at all times keep covered insurance policies to pay such compensation according to the following rank.

Schedule of Compensation	Maximum Compensation
Rank	(U.S. Dollars)
1. Master and Chief Engineer	U.S.\$ 75,000.00
2. Chief Officer and 2nd Engineer	U.S.\$ 62,500.00
3. Other Officers	U.S.\$ 50,000.00
4. Ratings	U.S.\$ 25,000.00

Compensation shall be paid to a Seaman as follows:-

Result of Injury	% of Maximum Compensation Payable
1. Death	100 %
2. Total and Permanent Disablement	100 %
3. Total Paralysis or Injuries	
Resulting in being Permanently bedridden	100 %
4. Dismemberment	100 %
a. Loss of two limbs	100 %
b. Loss of both hands or of all fingers and both thumbs	100 %
c. Total loss of sight of both eyes	100 %
d. Loss of arm at shoulder	100 %
e. Loss of arm between shoulder & elbow	100 %
f. Loss of arm at elbow	100 %
g. Loss of arm between elbow & wrist	100 %
h. Loss of hand at wrist	100 %
i. Loss of Leg	
- at hip	100 %
- between knee & hip	100 %
- below knee	100 %



Result of Injury		% of Maximum Compensation Payable
j.	Eye : Loss of	
	- whole eye	100 %
	- sight of	100 %
	i. sight of except perception of light	50 %
	ii. lens of	50 %
k.	Loss of four fingers & thumbs of one hand	50 %
l.	Loss of four fingers	40 %
m.	Loss of thumb	
	- both phalanges	25 %
	- one phalanx	10 %
n.	Loss of index finger	
	- three phalanges	10 %
	- two phalanges	8 %
	- one phalanx	4 %
o.	Loss of middle finger	
	- three phalanges	6 %
	- two phalanges	4 %
	- one phalanx	2 %
p.	Loss of ring finger	
	- three phalanges	5 %
	- two phalanges	4 %
	- one phalanx	2 %
q.	Loss of little finger	
	- three phalanges	4 %
	- two phalanges	3 %
	- one phalanx	2 %
r.	Loss of metacarpals	
	- first or second (additional)	3 %
	- third, fourth or fifth (additional)	2 %
s.	Loss of toes	
	- all	15 %
	- great, both phalanges	5 %
	- great, one phalanx	2 %
	- other than great, if more than one toe lost, each	1 %
t.	Loss of hearing	
	- both ears	75 %
	- one ear	15 %
u.	Loss of speech	50 %
v.	Permanent disabilities not mentioned above shall be compensated in accordance with seriousness as compared with that of these mentioned, the occupation of the Assured not being taken into consideration.	
w.	Permanent total loss of use of member shall be treated as loss of member.	



- x. The total compensation payable in respect of several disablements due to the same accident is arrived at by adding together the various sums, but shall not exceed the capital sum insured.
- y. The aggregate of all percentages payable in respect of any one accident shall not exceed 100 %.
- 5. The insurance cover is to be in force 24 hours each day.

6. **DISAPPEARANCE**

If the insured Seaman disappears and his body is not found within one year after his disappearance and sufficient evidence is produced that leads to the conclusion that he sustained accidental bodily injury and that such injury caused his death, compensation under this insurance shall be paid provided that the person or persons to whom such payment is made shall sign an undertaking to refund the sum if the insured Seaman is subsequently found to be living.

7. **BENEFICIARIES**

The S.E.C.D shall determine for each case in accordance with Myanmar Laws the identity of the heir/s of dead Seaman and shall inform Shipping Company the identity of the beneficiary or beneficiaries and the division of the compensation due to each beneficiary. The Company shall pay compensation in accordance with such information and recommendation.



Annex 4

Ratifications of Maritime Labour Convention, 2006 (MLC, 2006)

Sr.	Country	Date	Status	Note
1	Antigua and Barbuda	11 Aug 2011	In force	
2	Argentina	28 May 2014	In force	
3	Australia	21 Dec 2011	In force	
4	Bahamas	11 Feb 2008	In force	
5	Bangladesh	06 Nov 2014	In force	
6	Barbados	20 Jun 2013	In force	
7	Belgium	20 Aug 2013	In force	
8	Belize	08 Jul 2014	In force	
9	Benin	13 Jun 2011	In force	
10	Bosnia and Herzegovina	18 Jan 2010	In force	
11	Bulgaria	12 Apr 2010	In force	
12	Cabo Verde	06 Oct 2015	Not in force	The Convention will enter into force on 06 Oct 2016.
13	Canada	15 Jun 2010	In force	
14	China	12 Nov 2015	Not in force	The Convention will enter into force on 12 Nov 2016.
15	Congo	26 Mar 2014	In force	
16	Croatia	12 Feb 2010	In force	
17	Cyprus	20 Jul 2012	In force	
18	Denmark	23 Jun 2011	In force	
19	Fiji	10 Oct 2014	In force	
20	Finland	09 Jan 2013	In force	
21	France	28 Feb 2013	In force	
22	Gabon	25 Sep 2014	In force	
23	Germany	16 Aug 2013	In force	
24	Ghana	16 Aug 2013	In force	
25	Greece	04 Jan 2013	In force	
26	Hungary	31 Jul 2013	In force	
27	India	09 Oct 2015	Not in force	The Convention will enter into force on 09 Oct 2016.
28	Iran, Islamic Republic of	11 Jun 2014	In force	
29	Ireland	21 Jul 2014	In force	
30	Italy	19 Nov 2013	In force	
31	Japan	05 Aug 2013	In force	
32	Kenya	31 JUL 2014	In force	
33	Kiribati	24 Oct 2011	In force	
34	Korea, Republic of	09 Jan 2014	In force	
35	Latvia	12 Aug 2011	In force	
36	Liberia	07 Jun 2006	In force	

37	Lithuania	20 Aug 2013	In force	
Sr.	Country	Date	Status	Note
38	Luxembourg	20 Sep 2011	In force	
39	Malaysia	20 Aug 2013	In force	
40	Maldives	07 Oct 2014	In force	
41	Malta	22 Jan 2013	In force	
42	Marshall Islands	25 Sep 2007	In force	
43	Mauritius	30 May 2014	In force	
44	Mongolia	01 Sep 2015	Not in force	The Convention will enter into force on 01 Sep 2016.
45	Montenegro	03 Feb 2015	In force	
46	Morocco	10 Sep 2012	In force	
47	Netherlands	13 Dec 2011	In force	
48	New Zealand	09 Mar 2016	Not in force	The Convention will enter into force on 09 Mar 2017.
49	Nicaragua	20 Dec 2013	In force	
50	Nigeria	18 Jun 2013	In force	
51	Norway	10 Feb 2009	In force	
52	Palau	29 May 2012	In force	
53	Panama	06 Feb 2009	In force	
54	Philippines	20 Aug 2012	In force	
55	Poland	03 May 2012	In force	
56	Romania	24 Nov 2015	Not in force	The Convention will enter into force on 24 Nov 2016.
57	Russian Federation	20 Aug 2012	In force	
58	Saint Kitts and Nevis	21 Feb 2012	In force	
59	Saint Vincent and the Grenadines	09 Nov 2010	In force	
60	Samoa	21 Nov 2013	In force	
61	Serbia	15 Mar 2013	In force	
62	Seychelles	07 Jan 2014	In force	
63	Singapore	15 Jun 2011	In force	
64	South Africa	20 Jun 2013	In force	
65	Spain	04 Feb 2010	In force	
66	Sweden	12 Jun 2012	In force	
67	Switzerland	21 Feb 2011	In force	
68	Togo	14 Mar 2012	In force	
69	Tuvalu	16 Feb 2012	In force	
70	United Kingdom	07 Aug 2013	In force	
71	Vietnam	08 May 2013	In force	
72	Slovenia	15 Apr 2016	Not in force	The Convention will enter into force on 15 Apr 2017.

Source: www.ilo.org/dyn/normelex (1.5.2016)