

WHAT ACTIONS NEED TO BE TAKEN TO SAFEGUARD SEAFARERS' RIGHTS?

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ABSTRACTS

This essay delves into the distinctive employment circumstances confronted by seafarers within the maritime industry, with a particular focus on the challenges and regulations surrounding the safeguarding of their rights. The document explores the implications of economic efficiency on the adherence of ship-owners to regulations, underscores the significance of shore leave for the well-being of seafarers, and elucidates the roles played by flag states, port states, and ship-owners in ensuring the rights of seafarers.

Additionally, it addresses concerns related to non-compliance by flag of convenience states, the imperative need for independent ship inspections, and the unresolved issues pertaining to shore leave and the right to strike for seafarers. The essay concludes by putting forth recommendations to enhance the enforcement of seafarers' rights, including the establishment of an international independent body for ship inspections. It provides valuable insights into the intricacies of safeguarding the rights of seafarers within the framework of international maritime regulations and advocates for further action to address these challenges.

Key Word: Seafarers, rights, Law of the Sea Convention, Maritime Labor Convention, protection.

A. INTRODUCTION.

Regulations of seafarers' rights and the enforcement are two kinds of issues that still interesting to be discussed. The unique employment circumstances such as confiscated working area within a ship that has multi-functions such as: accommodation, recreational

place and health-care services cause some special laws. The fact that shipping is inevitably become global business bring some consequences and difficulties for fulfilling seafarers' rights because the problems of international insufficiency of prosecutions of global shipping regulation itself. The inter-connection among port states, flag states and ship-owners with their respective interests makes the problems become complicated. A specialized set of labour regulations is absolutely needed to protect seafarers' rights.

Answering this demand, International Labour Organization (ILO) conducted some conferences and adopted Maritime Labour Convention 2006 (MLC) at a maritime session in Geneva in February 2006.¹ This convention covers some subjects that considered wide enough but still doesn't tackle all the problems.

Open registries states are believed to do nothing in enactment of all stipulated regulations in this convention although they are ratifying states and the non-ratifying states must disobey the regulations for many reasons. International community actually can rely on port states inspection scheme as second layer after flag states authority toward ships. However, economic benefit by ignoring fulfilment of seafarers' rights often becomes consideration to conduct bad cooperation between flag states and port states.

Another recognized issue is shore leave right for seafarers. There are many cases that seafarers cannot go further beyond perimeter of port area when their ship is berthing. Mandatory prior entry visa for seafarers is often the reason in some countries. In this case, ship-owners intention is very essential because they need to manage and coordinate with all stakeholders for fulfilling the one of their seafarers' rights. Unfortunately, there is no channel for seafarers to strike or sue their rights. MLC has not given clear explanation how is legal action that they can take for struggling their rights.

Because of those facts, some actions by international community are still needed. Eloquent breakthrough must be promoted in order to get more supports. Additional regulations in MLC and stringent enforcement are two things that can be discussed. **This essay will discuss more the unique circumstances that seafarers face, what are necessitated regulations that have been made, what are the problems in ensuring protection of seafarers' safety and human rights, and other provisions and actions are still demanded.**

¹ American Society of International Law (ASIL), *The Maritime Labour Convention, 2006 Consolidates Seafarers' Labour Instruments*, <https://www.asil.org/insights>, at 15 September 2017.

B. METHODOLOGY

The methodology employed in the preparation of this essay follows a literature review approach, which is commonly used in academic research to gather and analyze existing information on a specific topic. In this study, the data collection process involved a thorough examination of relevant literature, including books, scholarly journals, and online sources. To ensure the validity and reliability of the data, a systematic search strategy was implemented, utilizing keywords and search terms that were pertinent to the research question.

The selected sources were critically evaluated based on their credibility, relevance, and currency, allowing for the inclusion of the most up-to-date and reliable information in the analysis. Once the data was collected, a meticulous process of data synthesis and analysis was carried out. The collected information was carefully reviewed, organized, and categorized to identify common themes, patterns, and trends. Through this process, the key findings and insights emerged, which were then presented in a descriptive manner.

The descriptive presentation of the data involved the use of clear and concise language to effectively convey the information to the readers. The findings were structured in a logical manner, highlighting the main points and supporting evidence. Additionally, appropriate citations and references were provided to acknowledge the original sources of the data. Overall, the literature review method employed in this essay allowed for a comprehensive and in-depth exploration of the chosen topic. The systematic collection and analysis of data from various sources contributed to the robustness and credibility of the findings presented.

C. DISSCUSSION

1. The unique employment circumstances that seafarers face.

The unique working environment of seafarers if compare to their counterparts, land-dwelling labours, for accessing health and justice system service, necessitate special set of labour regulations.² In getting health and medical care, mostly seafarers depend on the services that provided by shipowners because they works in the secluded place, a ship, and often spending long period of time in foreign ports.³ In the matter of justice system service, most seafarers are hired through recruiting agencies that may or may not locate in the

² Paul J Bauer, *The Maritime Labour Convention: An Adequate Guarantee of Seafarer Rights, or an Impediment to True Reforms?* (2007-2008) 8 *Chicago Journal of International Law* 643, 644.

³ See *ibid*, 644.

seafarer's home country, which probably introduces another nation's law into the fray.⁴ The Flag of Convenience system that give opportunity for owners of ships to register their ships determines in which nation's law will be applied for seafarers also make more complicated these problems.⁵ Based on those facts, there are some difficulties for seafarers to get the two kinds of services especially for them who are working far away from their home country.

Secondly, seafarers generally work at isolated place. Due to this fact, working hour must be considered profoundly because they live at a place both for accommodation and workplace.⁶ There must be differentiation whether they are on duty or on free time. While they are on free time means they are fully free from any task and the number hour for this time must be regulated. It is crucial that strict maximum working or on duty hour laws be imposed and mandatory rest periods or free time be provided.⁷

Declining effectiveness of on-board training because of difficult condition such as multinational crews with divergent language and cultural background is another concern.⁸ Same as other jobs, all trainings before joining real work in school or training centre usually are not enough to give all needed professional skills. There must be an opportunity for them to practice all knowledges they get in the real working situation. That is why on-board training is essential for a seafarer because there are many specials thing that probably new for him or her as a new crew. Communication barriers because of divergent background of crews in a ship will cause lack needed skills for a new crew that probably will endanger safety both the ship and himself or herself.⁹

2. The necessitated regulations that have been made.

Maritime Labour Convention 2006 (MLC) that adopted during the Tenth Maritime Session of the International Labour Convention (ILC) consolidates nearly an entire sector of older ILO Conventions which would benefit all stakeholders in the maritime community and provides seafarers Bill of Rights.¹⁰ This Convention is an answer from international community to handle demands because of the unique employment circumstances that all seafarers all around the world encounter. It is also to ensure the standard of maritime labours rights in all States. The desires of this Convention are to create single, coherent instrument embodying as

⁴ Ibid, 645.

⁵ Ibid, 646.

⁶ See *ibid*, 644.

⁷ Ibid, 644.

⁸ Ibid.

⁹ See *ibid*, 645.

¹⁰ John Isaac Blanck Jr, Reflections on the Negotiation of the Maritime Labor Convention 2006 at the International Labor Organization (2006) *Tul. Mar. LJ* 31 : 35, 36.

far as possible all up-to-date standards of existing international maritime labour Conventions and Recommendations, as well as the fundamental principles to be found in other international labour Conventions.¹¹ It is widely hoped that the MLC will become the “fourth pillar” of international law to make shipping safer and more humane to complete the three other pillars: The International Convention for the Safety of Life at Sea (SOLAS), the International Convention for the Prevention of Pollution from Ship (MARPOL) and the International Convention on Standards of Training, Certification, and Watch-keeping for Seafarers (STCW).¹²

In addition, MLC also regulates all in detail about: 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; and compliance and enforcement.¹³ It can be concluded that MLC is quite adequate regulations to answer special demands for protection of seafarers’ human rights.

The MLC came into force internationally on 20 August 2013, and as of August 2017, the Convention has been ratified by 84 states representing 91 per cent of global shipping.¹⁴ It amended first time in 2014 (approved by the conference at its one hundred and third sessions) and date of entry into force for the amendment was on 18 January 2017.¹⁵ The amendments intended to better address abandonment of seafarers and to further clarify matters related to claims for compensation in the case of a seafarer’s death or long-term disability due to an occupational injury or illness.¹⁶ Second amendment was in 2016 and expected date of entry into force for this amendment will be on 08 January 2019.¹⁷ The amendments are related to provisions on occupational accidents, injuries and diseases; harassment and bullying; and maritime labour certificate and declaration of maritime labour compliance.¹⁸

3. The problems in ensuring protection of seafarers’ rights.

There are three main actors that decide whether all the provisions in MLC are implemented or not. They are Flag States, Port States, and Shipowners. Whatever the articles

¹¹ *The ILO Maritime Labor Convention, 2016*, Adopted in Geneva during 94th ILC session on 23 February 2006 (entered in to force on 20 August 2013), Preamble, (‘MLC’).

¹² *Ibid.*, above n. 5, 37.

¹³ MLC, Regulation 1, 2, 3, 4 and 5.

¹⁴ *Ratifications of MLC, 2006*, <http://www.ilo.org> at 15 September 2017.

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ *Ibid.*

say about seafarers' right and the protections, all those things will be meaningless and useless without good intention and commitment from the three bodies.

Firstly, flag States have responsibility to inspect certifications of seafarers are working at ships fly their flag. Flags States also have obligation to guarantee the implementations of all provisions mentioned in MLC. To fulfil the designated tasks, flag States shall establish an effective system for the inspection and certification of maritime labour conditions, ensuring that the working and living conditions for seafarers on ships that fly its flag meet, and continue to meet, the standards in this Convention.¹⁹

Furthermore, to give more complete and detail guidance in practical level for all States, ILO has issued the Guidelines for all flag States to do inspections toward ships fly their flag. It had been stipulated in that guidelines what are needed things to do as flag States' responsibilities during and for the inspection that consist of: appointment of flag State inspectors to carry out some flag State tasks; inspection, monitoring and other control measures; issuance, renewal and withdrawal of the Maritime Labour Certificate; responding to seafarer complaints; responding to requests for information about its ships from port State control authorities; and taking enforcement action where ships are found not to be in compliance with the requirements of the Convention.²⁰

Related to those regulations, one thing that can be considered as a main problem in implementation of all MLC provisions is the reality that there are still a lot of countries are categorized as open registries (flag of convenience) States. There will be a lot of doubts in the system of open registries (flag of convenience) States. Under the flag of convenience system, the country of registry has neither the power nor the administrative machinery effectively to impose any government or international regulations; nor has the country even the wish to control the companies themselves.²¹ The owners of ships that intend to not fulfil all conditions mentioned in MLC regarding rights of their seafarers tend to register their ship in flag of convenience States. Due to that fact, it is difficult to guarantee the fulfilment of seafarers' rights who work under open registries (flag of convenience) States.

Secondly, port States' roles are essential in efforts for protection of seafarers' rights. It has been stipulated in MLC that every foreign ship in the port of a member may be the subject

¹⁹ MLC, Regulation 5.1.1.

²⁰ *The Guidelines for flag State inspections under the Maritime Labour Convention, 2006* (MLC, 2006), adopted by the ILO in September 2008, Art 28.

²¹ George C Kasoulides, *The 1986 United Nations Convention on the conditions for registration of vessels and the question of open registry* (1989) 20 (6) *Ocean Development & International Law* 543, 545.

of inspection for reviewing compliance with the requirements of this Convention (including seafarers' rights) relating to the working and living conditions of seafarers on the ship.²² A more detailed inspection may be carried out to ascertain the working and living conditions on board the ship.²³

Furthermore, following a more detailed inspection by an authorized officer, the ship is found not to conform to the requirements: the conditions on board are clearly hazardous to the safety, health or security of seafarers; or 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 non-conformities that fall within 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.²⁴ If the ship is prevented from sailing, the authorized officer shall 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.²⁵ The authorized officer shall also inform the appropriate shipowners and seafarers' organizations in the port State in which the inspection was carried out.²⁶

Besides open registries (flag of convenience), another problem related to registration of ships is the big number of non-ratifying states that still exist. The ship-owners of ships that intend to ignore MLC regulations probably register their ships in open registries states or non-ratifying states. Therefore, to ensure that ships do not obtain advantages by flying the flag of a non-ratifying state, if a port State has a policy of inspecting all ships that come into its ports flying the flags of ratifying Member States, it must do the same for ships flying the flags of non-ratifying states.²⁷ It is absolute right of Port States to inspect all ships come to their port because ports are part of internal water and under full sovereignty of respective states.²⁸

Based on those facts, compliance of all regulations in MLC highly depends on actions taken by both port states and flag states.²⁹ Protection of seafarers' rights can be more guaranteed for seafarers are working in ships fly flag of national registries system states. On the other hand, protection of seafarers' rights cannot be guaranteed for seafarers are working

²² MLC, Regulation 5.2.1.1.

²³ MLC, Regulation 5.2.1.5.

²⁴ MLC, Regulation 5.2.1.6.

²⁵ MLC, Regulation 5.2.1.6.

²⁶ MLC, Regulation 5.2.1.6.

²⁷ Ibid, above n. 5, 48.

²⁸ *United Nations Convention on the Law of the Sea* (UNCLOS), opened for signature 10 Dec 1982, 1835 UNTS 3, (entered into force 16 Nov 1994) art 2 (1), ('LOSC').

²⁹ See *ibid*, above n. 1, 649.

in ships fly flag of open registries (flag of convenience) system states and non-ratifying states. Stringent inspection from port states' authority will be the second layer of protection of seafarers' rights after flag states' authority as the first layer. Briefly, the improvement of maritime working conditions might come from effective "on board" inspection by Port State Control (PSC).³⁰ To make better understanding, there are available port State guidelines that should be read by Port State administrations in conjunction with the guidelines for flag State inspections under the MLC, will also be helpful to personnel carrying port State control inspections.³¹

Third important stakeholders for fulfilment of seafarers' rights are ship-owners. Ship-owner means the owner of the ship or another organization or person, such as the manager, agent or bareboat charterer.³² Good intention of ship-owners is the first step from some other phases in this effort. Unfortunately, economic efficiency often becomes a reason for them to run their business and ignore some regulations including the protection of seafarers' rights. And there is always available way to ignore some rules for the reason of optimizing profit.

There are some exemptions for ships in this Convention because of the weights are less than gross tonnage threshold. Where the competent authority determines that it would not be reasonable or practicable at the present time to apply certain details of the provisions, the relevant provisions shall not apply for the ships less than 200 gross tonnage and the subject matter is dealt with differently by national laws or regulations or collective bargaining agreements or other measures.³³ In addition, labour certificate and declaration of maritime labour compliance only needed for ships with weight more than 500 gross tonnages, engaged in international voyages, flying the flag of a member and operating from a port, or between ports, in another country.³⁴ Because of those facts, ship-owners may resort to the use of smaller ships specifically to avoid the mandates of the Convention.³⁵

Another concern that closely related to the intention of the ship-owners is policy for seafarers during shore leave. Shore leave is very important for all seafarers to release some stresses during sailing and to give opportunity for them to overcome some problems that only can be managed on land. Seafarers shall be granted shore leave to benefit their health and

³⁰ Piniella, Francisco, José María Silos, and Francisca Bernal, who will give effect to the ILO's Maritime Labour Convention, 2006? (2013) 152 (1) *International Labour Review* 59, 79.

³¹ *Guidelines for port State control officers carrying out inspections under the Maritime Labour Convention, 2006* (MLC, 2006) adopted by the ILO in September 2008, Introduction 1.1.3.

³² MLC, Art II. 1 (j).

³³ MLC, Art II. 6.

³⁴ MLC, Regulation 5.1.3.1.

³⁵ *Ibid*, above n. 1, 653.

well-being and with the operational requirements of their positions.³⁶ Unfortunately, the Convention fails to recognize that the availability of shore leave is sometimes dependent on more than the shipowner's discretion.³⁷ Shore leave is an example case that depicts the important role of ship-owners in the fulfilment of seafarers' rights.

4. Other provisions and actions are still demanded.

Although MLC consolidates nearly an entire sectors of older ILO Conventions, but there are still some demanded regulations and actions to give more guarantee of fulfilment seafarers' rights. There are some important matters that have not be regulated in this Convention such as provision for shore leave and protection of seafarers' right to strike.³⁸ Some provisions of this Convention also stimulate the increasing costs of shipping and negative cooperation between a flag state and a port state to ignore mandates in this convention is possible for reducing cost reason.³⁹ All those things cannot be fixed soon because further reforms will be pursued reopening the MLC to renegotiation and possibly will risk the whole Convention being called into question.

MLC already stipulated clearly that Seafarers shall be granted shore leave to benefit their health and well-being and with the operational requirements of their positions.⁴⁰ Unfortunately, because of entry visa condition that imposed in some nations for seafarers, they only spend their time at the perimeter of port while their ship is berthing at wharfs of those nations. ILO should pressure these countries, such as USA and Australia, to abandon or to rework these visa requirements if want to guarantee shore leave right of seafarers.⁴¹

Secondly, protections of seafarers' right to strike have not been addressed explicitly in this Convention. Seafarers' ability to uphold their rights through lawful strikes will be the most effective way to ensure the fulfilment of their rights. Some countries such as: USA, China, Liberia and UK, passed domestic rules that make seafarers find difficulties, if not impossible, to strike.⁴² The matter should be addressed by the Convention to clarify this area for shippers and seafarers around the world.

Thirdly, some provisions in this Convention are going to make the shipping business costlier to ship-owners. Symbiotic relationships between a port state as importing nation,

³⁶ MLC, Regulation 2.4.2.

³⁷ Ibid, above n. 1, 653.

³⁸ See Ibid, above n. 1, 644.

³⁹ See ibid, 650.

⁴⁰ MLC, Regulation 2.4.

⁴¹ See ibid, above n. 1, 655.

⁴² See ibid, 656.

which has no interest in maintaining a ship registry or protecting the welfare of native seafarers, is dealing with a flag state.⁴³ The importing nation's greatest interest is reducing price on imported goods and the flag state's primary concern is increasing its registry via the appeal of lax standards.⁴⁴ Combining the interests, both nations probably will ignore the Convention's mandates, and there are no provisions to prevent them from doing so.⁴⁵ Anticipating this possibility, there is an idea from some experts to make independent body conduct ship inspections and report the results to all ratifying nations.⁴⁶ By this idea, international community can examine the result and consider further steps based on the report to protect seafarers' rights.

D. CONCLUSION

Since seafarers work in special working environment, confiscated place and mostly far away from their home country, special regulations and provisions are required for protecting their rights. The ILO Maritime Labour Convention that adopted in 2006 and entered into force in 2013 can be considered as adequate answer from international community for those demands. However, there are still some problems in fulfilling seafarers' rights related to both available regulations and the enforcement.

There are three key stakeholders in protection of the seafarers' rights that have been stipulated clearly within the Maritime Labour Convention. They are flag states, port states and ship-owners. Flag states and port states inspection become first and second layers to ensure compliance of the mandates. Stringent inspection from port states can minimize the impact because of the negligence of flag states.

In line with those facts, open registry system (flag of convenience) is crucial problem for ensuring seafarers' rights. Flag of convenience states cannot be guaranteed to take compulsory steps, especially during the inspection both in registration process and regular inspection, to comply all the mandates because two possible factors: they do not intend or they are not capable to do that. It can be concluded that protection of seafarers' right is in big doubt for ships fly flags of open registries states.

⁴³ See *ibid*, 650.

⁴⁴ *Ibid*.

⁴⁵ *Ibid*.

⁴⁶ *Ibid*, 650.

In addition, possible problems also come out from non-ratifying states. There are still some countries have not ratified this convention for some reasons. Incapability to follow stipulated regulations and economic consideration could be the two main reasons.

To tackle possible disobedience both from flag of convenience and non-ratifying states, port state inspectors' actions are very essential. Unfortunately, because obedience of the provision tends to make shipping industry costlier, some port states and open registry states might ignore these regulations to gain economy benefits. Problems will be more severe for ships under open registries administration and only enter ports of non-ratifying states. Independent international body that conducts ship inspection to guarantee seafarers' rights is a good idea proposed by some experts.

Besides those problems, shore leave is an issue has not been regulated clearly within the convention. Although the convention had stipulated the right for seafarers to get shore leave, some countries impose entry visa condition for them. It is a big problem when the ship-owner of a ship where they are working does not support them because it is difficult to get prior entry visa while they are on sailing. Shore leave is likely the ship-owners discretion rather than seafarers' right.

Another problem is the right for seafarers to strike. Domestic law of some countries makes the fulfilment of this right is impossible. The convention is also has not mentioned yet the channel for right to strike. It is a big question in enforcement of regulations while there is no channel for stakeholders to strike.

To conclude, ILO needs to consider deeply some necessary steps to guarantee seafarers' rights as follows: creating of international independent body for inspection of ships; tackling shore leave problems; and channelling right to strike for seafarers. There must be some other conferences under ILO framework to overcome these issues.

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F. BIOGRAPHY



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