

REMARKS ON CONDITIONS OF EMPLOYMENT IN THE CONTEXT OF MARITIME LABOUR CONVENTION 2006

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ÖZET

Bu makale, uluslararası deniz iş hukuku bağlamında, çalışma koşullarını, mevcut deniz iş hukuku sözleşmeleri ve tavsiye metinleri ile Deniz İş Sözleşmesi 2006 arasında karşılaştırmalı hukuk yöntemi ile incelemekte ve değerlendirmektedir. Akabinde, yürürlüğe girmesi öncesinde Deniz İş Sözleşmesi 2006'nun uygulanmasına ilişkin değerlendirmelere yer vermektedir.

Anahtar Kelimeler: *Gemi adamı, gemi adamının hakları, Deniz İş Sözleşmesi, denizcilik sektörü*

ABSTRACT

This paper analyses and evaluates the modifications on conditions of employment in the context of international maritime labour law in a comparative legal methodology, among related existing maritime labour conventions, recommendations with consolidated Maritime Labour Convention 2006. Consecutively this paper addresses conclusion remarks on enforcement of Maritime Labour Convention on the eve of entering into force.

Keywords: *Seafarers, seafarers' rights, Maritime Labour Convention, maritime industry.*

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INTRODUCTION

“No man will be a sailor who has contrivance enough to get himself into a jail; for being in a ship is being in a jail, with the chance of being drowned.

A man in a jail has more room, better food, and commonly better company.”

Dr. Samuel Johnson

Shipping industry comprises many parties particularly, shipowners, ship management companies, ship operators, port operators, port agencies, seafarers, seafarer suppliers etc¹. Even though all aforementioned parties are crucial for maritime industry and maritime affairs, particularly for today, maritime industry cannot be thought without competent seafarers.

Working and living on board a ship has the same meaning with, dangers and threats of sea, loneliness, isolation and restriction. Beside all these matters, seafarers were and still in many circumstances are not available to reach any legal protection². Even though shipping was specially regulated from ancient times to modern period, not many matters were regulated related to seafarers and their rights among those codifications³.

Seafarers' isolation was not limited with physical conditions of ship, in other words, legal systems ended at the edge of the territory they served such as, lakes, rivers, inland waters and at most territorial sea of the State⁴. On high seas, ship and the seafarers are out of the coverage of laws and jurisdiction authority. On the other side, particularly, leading shipping countries met complaints and claims of seafarers from medieval age to industrialization period. Due respect to these complaints and claims, governments take actions and measures to provide legal framework and improve living and working conditions for seafarers on board⁵. To provide legal frameworks and improve the conditions of working and living on board, States took first

¹ Akdoğan, Refik: *Deniz Ticareti*, İstanbul 1988, p. 53; Kender, Rayegan; Çetingil Ergon: *Deniz Ticareti Hukuku*, B.8, İstanbul 2007, ps. 89–97.

² Fitzpatrick, Deirde; Anderson, Michael: *Seafarers' Rights*, Great Britain 2005, Section 2.

³ Çağa, Tahir; Kender, Rayegan: *Deniz Ticareti Hukuku*, C. 1, B.11, İstanbul 2000, ps. 8–26; Tekil, Fahiman: *Deniz Hukuku*, B.6, İstanbul 2001, ps. 12–52.

⁴ Shaw QC, Malcolm N.; *International Law*, Cambridge, United Kingdom 2003, p. 545.

⁵ Christodoulou-Varotsi, Iliana; Pentsov, Dmitry A: *Maritime Work Law Fundamentals: Responsible Shipowners, Reliable Seafarers*, Verlag, Berlin, Heidelberg 2008, ps.10–13.

steps at national levels. At first instance national level legislations particularly provided so-called private law concerns and were set up on contract relations between shipowners/charterers and seafarers. Latter, due respect to the public considerations, the matters were regulated at international level, under authority of international organizations such as ILO⁶ and IMO⁷ and combined with public law⁸.

Here in this article, in first chapter evolution of seafarers' rights, relevant maritime labour conventions will be shortly examined. Second chapter will focus on Maritime Labour Convention, 2006, and will introduce fundamentals of the Convention. The coming third chapter will particularly introduce the conditions of employment in Maritime Labour Convention, 2006, under eight sub-chapters. In this chapter, conditions of employment will be examined in a comparative legal methodology and Maritime Labour Convention, 2006, will be compared to former maritime labour legislations such as conventions and recommendations.

§1. Seafarers' Rights

Albeit the evolution and development in naval architecture and naval technology in shipping industry, yet the competent officers and seamen are essential components for maritime business to carry out voyages on sea-going vessels. After a ship has been acquired and matters relating to her ownership

⁶ The International Labour Organization (ILO), with headquarters in Geneva, Switzerland was created by the Peace Treaty of 1919, then became an United Nations specialized agency in 1946. It is unique as an international organization in that the representation of each member state is tripartite, that is, it includes representatives from government, labour and employers. As its name would indicate, the ILO is also concerned with maritime labour issues. In, 1920, the governing body of the ILO decided at a meeting in Antwerp, Belgium to create a Joint Maritime Commission (JMC) to deal with maritime labour issues. The role of the JMC is, therefore, to prepare the preliminaries for and to advise the maritime session of the ILO. As an advisory body, the JMC presents drafts and recommendations for proposed ILO conventions and recommendations. For further informations see **Mukherjee, Proshanto K.:** *Maritime Legislation*, Malmö, Sweden 2002, ps. 120-121 and **Gold, Edgard; Chircop, Aldo; Kindred, Hugh:** *Essentials of Canadian Law: Maritime Law*, Toronto, Ontario 2003, ps. 81–82.

⁷ The International Maritime Organization (IMO), is one of the most important international organizations. The IMO is specialized agency of the United Nations and headquartered in London, England. Originally called the Inter-Governmental Maritime Consultative Organization, it was established by a convention drawn up at the United Nations Maritime Conference held in Geneva, Switzerland in 1948. The convention entered into force in March 1958, and the first meeting was held in 1959. The name was changed to International Maritime Organization in 1982. For further information see **Gold, Chircop & Kindred**, ps. 77–81 and **Mukherjee**, ps. 119–120.

⁸ **Mukherjee**, ps. 183–186.

and other proprietary interests and registration process have been dealt with, the ship has to be crewed, manned and made ready for the service⁹.

When a ship has been ready for the service, working and living conditions of seafarers on board a ship should be humanitarian. Seafarers on board a ship have more difficulties rather than employees on ashore; due to these difficulties, decent and suitable working and living conditions should be provided for seafarers on board a ship. However, seafarers, as the crucial element of ship manning, and their rights, conditions of living and working have not been explicitly regulated and protected till the 19th century at national levels and 20th century at international levels¹⁰.

At first instance, due respect to complaints and claims of seafarers, leading shipping countries and industrialized countries such as Great Britain etc. took the first steps to regulate acts, codes, regulations etc. to provide legal framework for seafarers and to protect seafarers' rights. The British Parliament considered the situation of seafarers and adopted relevant chapters in the British Merchant Act 1850. The British Merchant Shipping Act 1850 addressed the few issues related to conditions of employment beside safety, lifeboats, safety in navigation, structural integrity and etc. Aforementioned Act was aimed at raising the levels and improving the conditions of masters, officers and seafarers¹¹. All over the world, States took steps, codified laws, acts, regulations related to maritime labour law, seafarers' rights, working and living conditions on board a ship. Developed countries, countries engaged to international trade and shipping industry, labour supplying countries all considered the conditions of seafarers on board. States took action to regulate seafarers' rights due respect to their national legal systems, such as, some of the States regulated maritime labour matters in an independent maritime labour acts or laws such as Turkish Maritime Labour Code^{12 13}, some of the States regulated these matters in general principles of labour law such as Labour Contract Code of the People's Republic of China^{14 15}, some states

⁹ Akdoğan, p. 53.

¹⁰ Fitzpatrick & Anderson, Sections 1 and 2.

¹¹ <http://www.mariners-l.co.uk/UKLogs,CrewLists.html>, (15.08.2009).

¹² Maritime Labour Code; Code Number: 854; promulgated at 29.4.1967.

¹³ For full text of Maritime Labour Code and relevant maritime legislation documents see **Ataergin, Selim; Caner, Oğuz: *Türk Deniz Mevzuatı, C.1***, İstanbul 2004, ps. 249–442.

¹⁴ Labour Contract Law of the People's Republic of China; Promulgation date 29 June 2007, Effective date 1 January 2008.

¹⁵ **Mo, John Shujian: *Shipping Law in China***, Hong Kong 1999, ps. 53–59 (for further informations, amendments and adoptions of codes see Maritime Code of the People's Republic of China, -Promulgation date 7.11.1992, Effective date 1.7.1993- and Labour Contract Code of the People's Republic of China) .

regulated these matters in a combination of contract law and labour law etc¹⁶.

Steam power started to be used on ships late 19th century and after steam power has been used on ships, international trade spreaded to global world. This also concluded another matter related to maritime labour; crews included more seafarers from China, India, Africa, Somalia, South East Countries and Central America on board a ship. In accordance with this situation global and more complex matters related to maritime labour, took place on board¹⁷.

In 1898, transportation workers formed their international organization, the International Transport Workers' Federation (ITF) and similar to transportation workers, in 1908, the shipowners formed their international organization, the International Shipping Federation (ISF), and in 1919 the International Labour Organization was established. From then on, ILO drafted 47 Conventions¹⁸ and 33 Recommendations¹⁹ relating to maritime labour matters, seafarers' rights (including Fishermen). Aforecited legal instruments promulgated by ILO, covers international standards for maritime labour matters including, particularly: 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.

Beside ILO legal instruments, UN, IMO introduced legal instruments to protect seafarers' rights and improve the level of maritime labour conditions. As humanbeings, seafarers should benefit main human rights promulgated by UN in Conventions particularly: International Covenant on Economic, Social and Cultural Rights, 1966 (CESCR); International Covenant on Civil and Political Rights, 1966 (CCPR) and Protocols thereto; International Convention on the Elimination of All Forms of Racial Discrimination, 1965 (CERD); Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (CEDAW) and Protocol thereto; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

¹⁶ For further informations see **Fitzpatrick & Anderson**.

¹⁷ **Fitzpatrick & Anderson**, Section 1.

¹⁸ <http://www.ilo.org/ilolex/english/convdisp1.htm> (15.08.2009).

¹⁹ <http://www.ilo.org/ilolex/english/recdisp1.htm> (15.08.2009).

1984 (CAT) and Protocol thereto; and Convention on the Rights of the Child, 1989 (CRC) and Protocols thereto²⁰. 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) etc²¹. IMO Conventions' concept is particularly different from ILO legal instruments and human rights treaties etc. While ILO Conventions and human rights treaties intend to create rights for individuals, IMO legal instruments do not intend to create rights for individuals. IMO legal instruments particularly impose obligations on States which have the effect of creating benefits, rather than rights, for seafarers²². After briefly introducing legal instruments relating to maritime labour matters, in the coming chapter, consolidated Maritime Labour Convention, 2006 will be shortly introduced.

§2. An Overview of Maritime Labour Convention, 2006

Legal instruments drafted by international organizations concerned with maritime labour matters and seafarers' rights exists in many different conventions, regulations and circulars. Even though, maritime labour matters and seafarers' rights were and are regulated and drafted; generally maritime industry, particularly seafarers still meet many difficulties. Main reasons for these difficulties are legal position of seafarers: absence of global accepted and readily enforceable regulatory regime²³; very uncertain and often vulnerable circumstances for seafarers; unacceptable working and living conditions; overlapping and sometimes conflicting rules, complex technical enforcement procedures; combinations of contracts involving several different parties. Beside aforementioned matters, shipowners on certain easy flags and some single ship-owners enjoy the legal ambiguity among these legal instruments and find easy to evade their obligations to seafarers. Following to aforementioned matters, some other reasons required changes for international maritime la-

²⁰ For the international conventions promulgated by UN see <http://www2.ohchr.org/english-law/> (15.08.2009).

²¹ For the international conventions promulgated by IMO and approved by Republic of Turkey, see **Ataergin, Selim; Caner, Oğuz: Türk Deniz Mevzuatı, C.2, İstanbul 2006** and <http://www.imo.org/> (15.08.2009).

²² **Mukherjee**, ps. 119–120; **Fitzpatrick & Anderson**, Section 2; **Gold, Chircop & Kindred**, ps. 216–221.

²³ **Algantürk – Light, Didem**, “Deniz İş Sözleşmesi 2006 Hakkında İnceleme ve Değerlendirme”, (Erzincan Hukuk Fakültesi Dergisi, 2007, C. XI, S. 1–2, ps. 269–278).

bour legislations such as: extensive structural change in the shipping industry, particularly in the last 25 years; emergence of the world's first genuinely global industry and workforce; changes in ownership, financing and the rise of ship management companies resulting in significant shifts in the labour market for seafarers; development of composed mixed nationality crews in highly organized global network linking shipowners, ship managers, labour supplying agencies and training institutions; many of the existing legal instruments and labour standards need to be updated; low ratification rate for some of the key Conventions²⁴; high level of detail combined with the large number of Conventions led to problems for inspections and enforcement; a need to provide level playing field and avoid exploitation of workers; increased stress and complexity in the maritime work place has an impact on the health and social security of workers; and the expensive and long process of updating ILO maritime conventions need to be revised.

Due respect to the these considerations, ILO developed a legal instrument which brings together into a consolidated text as much of the existing ILO legal instruments as it proves possible to achieve. The new consolidated Maritime Labour Convention, 2006 intend to be globally applicable, easily understandable, readily updatable and uniformly enforced²⁵. Maritime Labour Convention, 2006 consolidated and revised all ILO maritime labour instruments (conventions and regulations), except the Seafarers' Pension Convention, 1946²⁶ and the Seafarer's Identity Documents Convention, 1958²⁷ in to a single super convention. Maritime Labour Convention, 2006, sets out seafarers' rights to decent working and living conditions on board. Consolidated Maritime Labour Convention, 2006 will be the new pillar²⁸ of the international uniform regulatory regime complementing SOLAS, STCW and MARPOL.

The consolidated Maritime Labour Convention, 2006 comprises three parts: the Articles, the Regulations and the Code. The Articles and the Regulations set out the core rights, principles and also basic obligations of Members ratifying the Convention. The Code prescribes the details for the implementa-

²⁴ **Algantürk – Light**, p. 270.

²⁵ For the benefits of Maritime Labour Convention 2006 for maritime and shipping industry parties see www.oit.org/public/english/standards/norm/mlc2006/advantages.htm (15.08.2009) and www.ilo.org/public/-english/bureau/inf/pr/2006/7.htm (15.08.2009); see detailed explanations at **Algantürk – Light**, p. 271.

²⁶ Seafarers' Pension Convention, 1946, Number 71.

²⁷ Seafarers' Identity Documents Convention, Number 108.

²⁸ http://www.ilo.org/global/What_we_do/InternationalLabourStandards/MaritimeLabourConvention/lang--en/index.htm

tion of the Regulations. It comprises Part A (mandatory Standards) and Part B (non-mandatory Guidelines).

The Regulations and the Code, which includes Standards (mandatory) and Guidelines (non-mandatory), are drafted under five Titles: Title 1 “Minimum requirements for seafarers” including requirements of minimum age, medical certificate, training and qualifications, recruitment and placement; Title 2 “Conditions of employment” including requirements of employment agreements, wages, hours of work and rest, entitlement to leave, repatriation, seafarers’ compensation for the ship’s loss or foundering, manning levels, career and skill development and opportunities for seafarers’ employment; Title 3 “Accommodation, recreational facilities, food and catering” including requirements of accommodation, recreational facilities, food and catering; Title 4 “Health protection, medical care, welfare and social security protection” including requirements of medical care on board ship and ashore, shipowner’s liability, health and safety protection and accident prevention, access to shore-based welfare facilities, social security; Title 5 “Compliance and enforcement” prescribes flag State responsibilities, port State responsibilities, labour supplying responsibilities.

In regard to Maritime Convention 2006, seafarer means any person who is employed or engaged or works in any capacity on board a ship to which this Convention applies²⁹.

The Maritime Labour Convention shall come into force 12 months after the date on which there have been registered ratifications by at least 30 Members with a total share in the world gross tonnage of ships of 33 per cent³⁰.

For this study, in fourth chapter, Title 2 “Conditions of employment” will be examined and discussed in a comparative legal methodology.

§3. Conditions of Employment in Maritime Labour Convention, 2006

I. Seafarers’ employment agreements

In accordance with MLC, 2006 Standard A2.1, each Member shall adopt laws or regulations requiring that ships that fly its flag comply with the fol-

²⁹ Maritime Labour Convention 2006, expanded the definition of seafarer. In regard to the new definition, the Maritime Labour Convention 2006 aims to apply Convention to all employees on board a ship in any position on board a ship including cooks, waiters, ironers and etc. especially for Passenger Ships and Cruises and their employees.

³⁰ This article requires two pre-conditions; 1) at least 30 Member State should sign the Convention 2) Member States signed the Convention should represent the total share in the world gross tonnage of 33 per centage. Both conditions should comply at the same time.

lowing requirements: (a) seafarers working on ships that fly its flag shall have a seafarers' employment agreement signed by both the seafarer and the shipowner or a representative of the shipowner (or where they are not employees, evidence of contractual or similar arrangements) providing them with decent working and living conditions on board the ship as required by this Convention; (b) seafarers signing seafarers' employment agreement shall be given an opportunity to examine and seek advice on the agreement before signing, as well as such other facilities as are necessary to ensure that they have freely entered into an agreement with a sufficient understanding of their rights and responsibilities; (c) the shipowner and seafarer concerned shall each have a signed original of the seafarer's employment agreement; (d) measures shall be taken to ensure that clear information as to the conditions of their employment can be easily obtained on board by seafarers, including the ship's master, and that such information, including a copy of the seafarer's employment agreement, is also accessible for review by officers of a competent authority, including those in ports to be visited; and (e) seafarers shall be given a document containing a record of their employment on board the ship³¹.

MLC, 2006, Standard A2.1 prescribes that, each Member shall adopt laws and regulations specifying the matters that are to be included in all seafarers' employment agreements governed by its national law. These seafarers' employment agreements shall in all cases contain the following particulars: (a) the seafarer's full name, date of birth or age, and birthplace; (b) the shipowner's name and address; (c) the place where and date when the seafarers' employment agreement is entered into; (d) the capacity in which the seafarer is to be employed; (e) the amount of seafarer's wages or, where applicable, the formula used for calculating them; (f) the amount of paid annual leave or, where applicable, the formula used for calculating it; (g) the termination of the agreement and the conditions thereof, including (i) if the agreement has been made for an indefinite period, which shall not be less for the shipowner than for the seafarer; (ii) if the agreement has been made for a definite period, the date fixed for its expiry; and (iii) if the agreement has been made for a voyage, the port of destination and time which has to expire after arrival before the seafarer should be discharged; (h) the health and social security protection benefits to be provided to the seafarer by the shipowner; (i) the seafarer's entitlement to repatriation; (j) reference to the collective bargaining agreement, if applicable; and (k) any other particulars which national law may require³².

³¹ MLC, 2006, Standard A2.1, paragraph 1.

³² MLC, 2006, Standard A2.1, paragraph 4.

In this paragraph, changes which are prescribed by MLC, 2006 into the relevant former Convention's existing standards, as regulated by the "Seamen's Articles of Agreement Convention, 1926, Number 22"³³ will be addressed. First of all, MLC, 2006 in accordance with Standard A2.1 prescribe an explicit requirement³⁴ for the ratifying Members that all seafarers working on ships flying their flags shall have a seafarers' employment agreement whereas Convention No. 22 did not have such an explicit requirement. Second, MLC, 2006 in accordance with Standard A2.1³⁵ prescribes that clear information as to the conditions of employment, including a copy of the seafarers' employment agreement can be easily obtained on board by seafarers and is also accessible for review by officers of a competent authority, including those in ports to be visited whereas former Convention did not have any such requirement. Third, MLC, 2006 requires that, where the language of the seafarers' employment agreement and applicable collective bargaining is not in English, a copy of a Standard form of the agreement and the portions of collective bargaining agreement that are subject to a port State inspection shall be available in English³⁶ (except for ships engaged only in domestic voyages), whereas former Convention did not have any such requirement. Fourth, MLC, 2006 added the health and social security protection benefits to be provided to the seafarer by the shipowner, the seafarer's entitlement to repatriation and reference to the collective bargaining agreement (if applicable) items to the list of particulars to be included into seafarers' employment agreements³⁷. Fifth, MLC, 2006 requires that, the duration of the minimum period of notice for the early termination of a seafarers' employment agreement shall not be shorter than seven days³⁸, whereas under Convention No. 22 the period of notice shall not be less than twenty-four hours³⁹. Last of all, while Convention No. 22 in accordance with Article 14, paragraph 2, provides for the right of the seaman to obtain from the master a separate certificate as to the quality of his work, or a certificate indicating whether he has fully discharged his obligations under the agreement⁴⁰, MLC, 2006 does not provide any such documents.

³³ <http://www.ilo.org/ilolex/english/convdisp1.htm> (15.08.2009)

³⁴ MLC, 2006, Standard A2.1, paragraph 1 (a) and (e).

³⁵ MLC, 2006, Standard A2.1, paragraph 1 (d) and (e).

³⁶ MLC, 2006, Standard A2.1, paragraph 2.

³⁷ MLC, 2006, Standard A2.1, paragraphs 4(h), 4(i), 4(j).

³⁸ MLC, 2006, Standard A2.1, paragraph 5.

³⁹ Seamen's Articles of Agreement Convention, 1926, Number 22, Article 9, paragraph 1.

⁴⁰ Seamen's Articles of Agreement Convention, 1926, Number 22, Article 14, paragraph 2.

II. Wages

Under MLC, 2006, in accordance with Standard A2.2, 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 agreement⁴¹. Furthermore MLC, 2006 prescribes that, each Member shall require that shipowners take measures to provide seafarers with a means of transmitting all or part of their earnings to their families or dependants or legal beneficiaries, including (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 seafarers⁴². In addition to these matters MLC, 2006, Guideline B2.2, contains recommendations due respect to the “calculation and payment”⁴³ of wages, “minimum wages”⁴⁴ and “minimum monthly basic pay of wage figure for able seafarers”⁴⁵.

The periodicity of payment of wages has been prescribed with in the Seafarers’ Wages, Hours of Work and the Manning of the Ships Recommendation, 1996, Number 187⁴⁶ and the transfer of earnings to the families has been prescribed with in the Seamen’s Welfare in Ports Recommendation, 1936, Number 48⁴⁷. MLC, 2006, include these two respective requirements as mandatory standards whereas existing standards related to seafarers’ wages were prescribed as recommendations, not as requirements.

III. Hours of work and hours of rest

MLC, 2006 Standard A2.3, prescribes the term of hours of work and hours of rest such as: (a) hours of work means time during which seafarers are required to do work on account of the ship; (b) hours of rest means time outside hours of work; this term does not include short breaks⁴⁸.

MLC, 2006 Standard A2.3, prescribes the following limits on hours of work or rest: (a) maximum hours of work shall not exceed: (i) 14 hours in any 24

⁴¹ MLC, 2006, Standard A2.2, paragraph 1.

⁴² MLC, 2006, Standard A2.2, paragraphs 3 and 4.

⁴³ MLC, 2006, Guideline B.2.2.2.

⁴⁴ MLC, 2006, Guideline B.2.2.3.

⁴⁵ MLC, 2006, Guideline B.2.2.4.

⁴⁶ Seafarers’ Wages, Hours of Work and the Manning of the Ships Recommendation, 1996, Number. 187, section 6(d).

⁴⁷ Seamen’s Welfare in Ports Recommendation, 1936, Number. 48, section 10(b).

⁴⁸ MLC, 2006, Standard A2.3, paragraph 1.

hour period; (ii) 72 hours in any seven day period; or (b) minimum hours of rest shall not be less than: (i) ten hours in any 24 hour period; and (ii) 77 hours in any seven day period⁴⁹.

By virtue of Standard A2.3, hours of rest maybe divided into no more than two periods, one of which shall be at least six hours in length, and the interval between consecutive periods of rest shall not exceed 14 hours⁵⁰.

MLC, 2006 provides special articles for young seafarers about hours of work and hours of rest⁵¹. In accordance with Guideline B2.3.1, at sea and in port the following provisions should apply to all young seafarers under the age of 18: (a) working hours should not exceed eight hours per day and 40 hours per week and overtime should be worked only where unavoidable for safety reasons; (b) sufficient time should be allowed for all meals, and a break of at least one hour for the main meal of the day should be assured; and (c) a 15 minute rest period as soon as possible following each two hours of continuous work should be allowed.

IV. Entitlement to leave

MLC, 2006 prescribes that, each Member shall adopt laws and regulations determining the minimum standards for annual leave for seafarers serving on ships that fly its flag, taking proper account of the special needs of seafarers with respect to such leave⁵². By virtue of paragraph 2, subject to any collective agreement or laws or regulations, providing for appropriate method of calculation that takes account of the special needs of seafarers in this respect, the annual leave with pay entitlement shall be calculated on the basis of a minimum of 2.5 calendar days per month of employment. The manner in which the length of service is calculated shall be determined by the competent authority or through the appropriate machinery in each country. Justified absences from work shall not be considered as annual leave. Standard A2.4 prescribes that, any agreement to forgo such minimum annual leave with pay, except in cases provided for by the competent authority, shall be prohibited⁵³.

MLC, 2006, takes the monthly equivalent of the annual 30 days as the basis and provides for calculation on the basis of a minimum of 2.5 calendar days per month of employment, whereas the Seafarers' Annual Leave with Pay

⁴⁹ MLC, 2006, Standard A2.3, paragraph 5.

⁵⁰ MLC, 2006, Standard A2.3, paragraph 6.

⁵¹ MLC, 2006, Guideline B2.3.1.

⁵² MLC, 2006, Standard A2.4, paragraph 1.

⁵³ MLC, 2006, Standard A2.4, paragraph 3.

Convention, 1976, No. 146 provides that the leave shall in no case be less than 30 calendar days for one year of service⁵⁴.

V. Repatriation

In accordance with MLC, 2006, Standard A2.5, paragraph 1, each Member shall ensure that seafarers on ships flying its flag are entitled to repatriation in the following circumstances: (a) if the seafarers' employment agreement expires while they are abroad; (b) when the seafarers' employment agreement is terminated: (i) by the shipowner; or (ii) by the seafarer for justified reasons; and also (c) when the seafarers are no longer able to carry out their duties under their employment agreement or cannot be expected to carry them out in the specific circumstances⁵⁵.

By virtue of MLC, 2006 each Member shall prohibit shipowners from requiring that seafarers make an advance payment towards the cost of repatriation at the beginning of their employment, and also from recovering the cost of repatriation from the seafarers' wages or other entitlements except where the seafarer has been found, in accordance with national laws or regulations or other measures or applicable collective bargaining agreements, to be in serious default of the seafarer's employment obligations⁵⁶.

Due respect to Standard A2.5, if a shipowner fails to make arrangements for or to meet the cost of repatriation of seafarers who are entitled to be repatriated: (a) the competent authority of the Member whose flag the ship flies shall arrange for repatriation of the seafarers concerned; if it fails to do so, the State from which the seafarers are to be repatriated or the State of which they are a national may arrange for their repatriation and recover the cost from the Member whose flag the ship flies; (b) costs incurred in repatriating seafarers shall be recoverable from the shipowner by the Member whose flag the ship flies; (c) the expenses of repatriation shall in no case be a charge upon the seafarers, except where the seafarer has been found to be in serious default of the seafarer's employment obligations⁵⁷.

MLC, 2006 has introduced changes comparatively into the existing standards prescribed with in the relevant former Convention, Repatriation of Seafarers Convention (Revised), 1987, Number 166⁵⁸. First of all, MLC, 2006 obligates each Member to require that ships that fly its flag provide some form of financial security to ensure that seafarers are duly repatriated

⁵⁴ Seafarers' Annual Leave with Pay Convention, 1976, Number 146, Article 3, paragraph 3.

⁵⁵ MLC, 2006, Standard A2.5, paragraph 1.

⁵⁶ MLC, 2006, Standard A2.5, paragraph 3.

⁵⁷ MLC, 2006, Standard A2.5, paragraph 5.

⁵⁸ <http://www.ilo.org/ilolex/english/convdisp1.htm> (15.08.2009)

in accordance with MLC, 2006⁵⁹, whereas former Convention has no such requirements. Second, MLC, 2006 provides for the entitlement to repatriation only when the seafarers' employment agreement is terminated by the seafarer for justified reasons⁶⁰ whereas former Convention prescribes that, among other things for seafarers' entitlement to repatriation upon expiry of the period of notice given in accordance with the provisions of articles of agreement or the seafarer's contract of employment⁶¹. MLC, 2006 prescribes the costs to be born by the shipowner for the repatriation under "non-mandatory" Part B of the MLC, 2006⁶², whereas former Convention prescribed aforementioned details as "requirements" under Convention 166⁶³.

VI. Seafarer compensation for the ship's loss or foundering

By virtue of MLC, 2006, each Member shall make rules ensuring that, in every case of loss or foundering of any ship, the shipowner shall pay to each seafarer on board an indemnity against unemployment resulting from such loss or foundering⁶⁴. Standard A2.6 prescribes that, aforementioned rules shall be without prejudice to any other rights a seafarer may have under the national law of the Member concerned for losses or injuries arising from a ship's loss or foundering⁶⁵.

Calculation of indemnity against unemployment has been prescribed under Guideline B2.6.1⁶⁶, in other words that is no longer mandatory rules whereas these matters were introduced in the Unemployment Indemnity (Shipwreck) Convention, 1920, Number 8 as mandatory rules⁶⁷.

VII. Manning levels

By virtue of MLC, 2006, each Member shall require that all ships that fly its flag have a sufficient number of seafarers on board to ensure that ships are operated safely, efficiently and with due regard to security. Every ship shall be manned by a crew that is adequate, in terms of size and qualifications, to ensure the safety and security of the ship and its personnel, under all operating conditions, in accordance with the minimum safe manning document or

⁵⁹ MLC, 2006, Regulation 2.5, paragraph 1.

⁶⁰ MLC, 2006, Standard A2.5, paragraph 1(b)(ii).

⁶¹ Repatriation of Seafarers Convention (Revised), 1987, Number 166, Article 2, paragraph 1(b).

⁶² MLC, 2006, Guideline B2.5.1, paragraph 3.

⁶³ Repatriation of Seafarers Convention (Revised), 1987, Number 166, Article 4.

⁶⁴ MLC, 2006, Standard A2.6, paragraph 1.

⁶⁵ MLC, 2006, Standard A2.6, paragraph 2.

⁶⁶ MLC, 2006, Guideline B2.6.1, paragraphs 1 and 2.

⁶⁷ Unemployment Indemnity (Shipwreck) Convention, 1920, Number 8, Article 2.

an equivalent issued by the competent authority, and to comply with the Standards of this Convention⁶⁸. In accordance with Standard A2.7, when determining, approving or revising manning levels, the competent authority shall take into account the need to avoid or minimize excessive hours of work to ensure sufficient rest and to limit fatigue, as well as the principles in applicable international instruments, especially those of the International Maritime Organization, on manning levels⁶⁹.

MLC, 2006 has introduced an additional requirement that, the competent authority, when determining manning levels, shall take into account all the requirements within Regulation 3.2 and Standard A3.2 concerning food and catering⁷⁰ whereas Seafarers' Hours of Work and the Manning of Ships Convention, 1996, Number 180 did not have any such requirements⁷¹.

VIII. Career and skill development and opportunities for seafarers' employment

By virtue of MLC, 2006, each Member shall have national policies to encourage career and skill development and employment opportunities for seafarers, in order to provide the maritime sector with a stable and competent workforce⁷². Furthermore, aforesaid policies shall aim to help seafarers strengthen their competencies, qualifications and employment opportunities⁷³. MLC, 2006, Standard A2.8 prescribes that, each Member shall, after consulting the shipowners' and seafarers' organizations concerned, establish clear objectives for the vocational guidance, education and training of seafarers whose duties on board ship primarily relate to the safe operation and navigation of the ship, including ongoing training⁷⁴.

While MLC, 2006 addresses the aim of national policies to encourage career skill development and employment opportunities for seafarers and help seafarers strengthen their competencies, qualifications and employment opportunities⁷⁵, Continuity of Employment (Seafarers) Convention, 1976, Number

⁶⁸ MLC, 2006, Standard A2.7, paragraph 1.

⁶⁹ MLC, 2006, Standard A2.7, paragraph 2.

⁷⁰ MLC, 2006, Standard A2.7, paragraph 3.

⁷¹ Seafarers' Hours of Work and the Manning of Ships Convention, 1996, Number 180, Article 11.

⁷² MLC, 2006, Standard A2.8, paragraph 1.

⁷³ MLC, 2006, Standard A2.8, paragraph 2.

⁷⁴ MLC, 2006, Standard A2.8, paragraph 3.

⁷⁵ MLC, 2006, Standard A2.8, paragraphs 1 and 2.

145 prescribes the aim of the national policies as encouraging all concerned to provide continuous or regular employment for qualified seafarers⁷⁶.

CONCLUSION

International organizations, particularly, the UN and its agencies, the ILO and the IMO effort to create and protect rights, provide standards for seafarers due respect to the conditions on board a ship. States have signed up aforesaid standards, conventions, recommendations etc. and committed to grant protection to seafarers on board a ship against to 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, ILO drafted a single super convention, Maritime Labour Convention, 2006, which will replace the existing conventions and recommendations relating to seafarers' rights and maritime affairs. Systematic of the new consolidated Maritime Labour Convention, 2006 provides a practical approach and a vertical structure to regulate mandatory Standards and non-mandatory Guidelines both in one text. The new consolidated Maritime Labour Convention, 2006 intends to be globally applicable, easily understandable, readily updatable and uniformly enforced.

Maritime Labour Convention, 2006 comprises five Titles under the Regulations and the Code. Here, in this study, second chapter, conditions of employment, of the Regulations and the Code has been examined. This chapter introduces noteworthy changes into the existing standards, as prescribed in former relevant conventions and recommendations relating to seafarers' rights and maritime affairs, particularly: seafarers' employment agreements, wages, entitlement to leave, repatriation and career and skill development and opportunities for seafarers' employment. Aforesaid changes aims to provide improvement for seafarers' rights and intend to be easily and globally enforced.

Maritime Labour Convention's first advantage is, convention comprises all matters relating to maritime labour matters and seafarers' rights such in a vertical structure. This structure enable that, member States, ratified the Maritime Labour Convention, provide fundamental rights for seafarers on board a ship in every aspect. Latter, the other advantage is the amendment process of convention. Tacit amendment process of Convention provides to be updated easily and this concludes shorter times to amend and/or change Convention rather than former conventions relating to maritime labour affairs

⁷⁶ Continuity of Employment (Seafarers) Convention, 1976, Number 145, Article 2, paragraph 1.

and seafarers rights for coming situations. Last of all, in accordance with the rules relating to flag State responsibility, port State responsibility, labour supplying responsibility, enforcement of Convention will provide acceleration to improve standards of maritime labour and set up higher levels for seafarers.

Beside the advantages of MLC, 2006, the Convention itself and enforcement of Convention have some disadvantages. Initially, the Convention comprises a very specific and long text body and this may cause ambiguities for the enforcement authorities. Secondly enforcement of the Convention requires the harmonization with other relevant regulatory Conventions. Particularly amendments on other regulatory Conventions requires the harmonization in an appropriate way and time with Maritime Labour Convention, 2006. The very new Maritime Labour Convention, 2006 brings paper works for masters, officers, companies and port authorities. Even though Maritime Labour Convention, 2006 intends to be globally applicable, it has not been yet in force and efficiency of convention depends on leading shipping countries' ratifications⁷⁷. ILO member States' considerations on Maritime Labour Convention will determine the Convention's future.

As a sum up, beside the disadvantages of the Maritime Labour Convention, the Convention aims to achieve globally applicable high standards for seafarers and should be supported by leading maritime States and organizations to be enforced effectively.

ANNEX I

INTERNATIONAL LABOUR LAW INSTRUMENTS RELATING TO SEAFARERS AND SEAFARERS' RIGHTS

I. Conventions

Number:	Name and Year
7	Minimum Age (Sea) Convention, 1920.
8	Unemployment Indemnity (Shipwreck) Convention, 1920.
9	Placing of Seamen Convention, 1920.
15	Minimum Age (Trimmers and Stokers) Convention, 1920.
16	Medical Examination of Young Persons (Sea) Convention, 1921.

⁷⁷ For the ratifications of Maritime Labour Convention 2006 by 25.08.2009 see <http://www.ilo.org/ilolex/cgi-lex/ratifce.pl?C186>.

22	Seamen's Articles of Agreement Convention, 1926.
23	Repatriation of Seamen Convention, 1926.
27	Marking of Weight (Packages Transported by Vessels) Convention, 1929.
53	Officers' Competency Certificates Convention, 1936.
54	Holidays with Pay (Sea) Convention, 1936.
55	Shipowners' Liability (Sick and Injured Seamen) Convention, 1936.
56	Sickness Insurance (Sea) Convention, 1936.
57	Hours of Work and Manning (Sea) Convention, 1936.
58	Minimum Age (Sea) Convention (Revised), 1936.
68	Food and Catering (Ships' Crew) Convention, 1946.
69	Certification of Ships' Cooks Convention, 1946.
70	Social Security (Seafarers) Convention, 1946.
71	Seafarers' Pensions Convention, 1946.
72	Paid Vacations (Seafarers) Convention, 1946.
73	Medical Examination (Seafarers) Convention, 1946.
74	Certification of Able Seamen Convention, 1946.
75	Accommodation of Crews Convention, 1946.
76	Wages, Hours of Work and Manning (Sea) Convention, 1946.
91	Paid Vacations (Seafarers) Convention (Revised), 1949.
92	Accommodation of Crews Convention (Revised), 1949.
93	Wages, Hours of Work and Manning (Sea) Convention (Revised), 1949.
108	Seafarer's Identity Documents Convention, 1958.
109	Wages, Hours of Work and Manning (Sea) Convention (Revised), 1958.
112	Minimum Age (Fishermen) Convention, 1959.
113	Medical Examination (Fishermen) Convention, 1959.
114	Fishermen's Articles of Agreement Convention, 1959.
125	Fishermen's Competency Certificates Convention, 1966.
126	Accommodation of Crews (Fishermen) Convention, 1966.
133	Accommodation of Crews (Supplementary Provisions) Convention, 1970.
134	Prevention of Accidents (Seafarers) Convention, 1970.
145	Continuity of Employment (Seafarers) Convention, 1976.
146	Seafarers' Annual Leave with Pay Convention, 1976.
147	Merchant Shipping (Minimum Standards) Convention, 1976.
163	Seafarers's Welfare Convention, 1987.
164	Health Protection and Medical Care (Seafarers) Convention, 1987.
165	Social Security (Seafarers) Convention (Revised), 1987.
166	Repatriation of Seafarers Convention (Revised), 1987.
178	Labour Inspection (Seafarers) Convention, 1996.
179	Recruitment and Placement of Seafarers Convention, 1996.
180	Seafarers' Hours of Work and the Manning of Ships Convention, 1996.

- 185 Seafarers' Identity Documents Convention (Revised), 2003.
Maritime Labour Convention, 2006 (This Convention does not have a number)

II. Recommendations

- | Number: | Name and Year |
|----------------|--|
| 7 | Hours of Work (Fishing) Recommendation, 1920. |
| 9 | National Seamen's Codes Recommendation, 1920. |
| 10 | Unemployment Insurance (Seamen) Recommendation, 1920. |
| 26 | Migration (Protection of Females at Sea) Recommendation, 1920. |
| 27 | Repatriation (Ship Masters and Apprentices) Recommendation, 1926. |
| 28 | Labour Inspection (Seamen) Recommendation, 1926. |
| 48 | Seamen's Welfare in Ports Recommendation, 1936. |
| 49 | Hours of Work and Manning (Sea) Recommendation, 1936. |
| 75 | Seafarers' Social Security (Agreements) Recommendation, 1946. |
| 76 | Seafarers' (Medical Care for Dependants) Recommendation, 1946. |
| 77 | Vocational Training (Seafarers) Recommendations, 1946. |
| 78 | Bedding, Mess Utensils and Miscellaneous Provisions (Ships' Crews) Recommendation, 1946. |
| 105 | Ships' Medicine Chests Recommendation, 1958. |
| 106 | Medical Advice at Sea Recommendation, 1958. |
| 107 | Seafarers' Engagement (Foreign Vessels) Recommendation, 1958. |
| 108 | Social Conditions and Safety (Seafarers) Recommendation, 1958, |
| 109 | Wages, Hours of Work and Manning (Sea) Recommendation, 1958. |
| 126 | Vocational Training (Fishermen) Recommendation, 1966. |
| 137 | Vocational Training (Seafarers) Recommendation, 1970. |
| 138 | Seafarers' Welfare Recommendation, 1970. |
| 139 | Employment of Seafarers (Technical Developments) Recommendation, 1970 |
| 140 | Crew Accommodation (Air Conditioning) Recommendation, 1970. |
| 141 | Crew Accommodation (Noise Control) Recommendation, 1970. |
| 142 | Prevention of Accidents (Seafarers) Recommendation, 1970. |
| 153 | Protection of Young Seafarers Recommendation, 1976. |
| 154 | Continuity of Employment (Seafarers) Recommendation, 1976. |
| 155 | Merchant Shipping (Improvement of Standards) Recommendation, 1976. |
| 173 | Seafarers' Welfare Recommendation, 1987. |
| 174 | Repatriation of Seafarers Recommendation, 1987. |
| 185 | Labour Inspection (Seafarers) Recommendation, 1996. |
| 186 | Recruitment and Placement of Seafarers Recommendation, 1996. |

- 187 Seafarers' Wages, Hours of Work and the Manning of Ships Recommendation, 1996.

ANNEX II

OTHER INTERNATIONAL LABOUR LAW INSTRUMENTS (APPLICABLE TO MARITIME LABOUR LAW)

I. Conventions

Number:	Name and Year
1	Hours of Work (Industry) Convention, 1919.
14	Weekly Rest (Industry) Convention, 1921.
29	Forced Labour Convention, 1930.
30	Hours of Work (Commerce and Offices) Convention, 1930.
81	Labour Inspection Convention, 1947.
87	Freedom of Association and Protection of Right to Organize Convention, 1948.
88	Employment Service Convention, 1948.
94	Labour Clauses (Public Contracts) Convention, 1949.
95	Protection of Wages Convention, 1949.
96	Fee-Charging Employment Agencies Convention (Revised), 1949.
98	Right to Organize and Collective Bargaining Convention, 1949.
100	Equal Remuneration Convention, 1951.
102	Social Security (Minimum Standards) Convention, 1952.
103	Maternity Protection Convention (Revised), 1952.
105	Abolition of Forced Labour Convention, 1957.
106	Weekly Rest (Commerce and Offices) Convention, 1957.
111	Discrimination (Employment and Occupation) Convention, 1958.
115	Radiation Protection Convention, 1960.
118	Equality of Treatment (Social Security) Convention, 1962.
119	Guarding of Machinery Convention, 1963.
121	Employment Injury Benefits Convention, 1964 (Schedule I amended in 1980).
127	Maximum Weight Convention, 1967.
128	Invalidity, Old-Age and Survivors' Benefits Convention, 1967.
130	Medical Care and Sickness Benefits Convention, 1969.
131	Minimum Wage Fixing Convention, 1970.
132	Holidays with Pay Convention (Revised), 1970.
135	Workers' Representatives Convention, 1971.
136	Benzene Convention, 1971.

137	Dock Work Convention, 1973.
138	Minimum Age Convention, 1973.
139	Occupational Cancer Convention, 1974.
144	Tripartite Consultation (International Labour Standards) Convention, 1976.
148	Working Environment (Air Pollution, Noise and Vibration) Convention, 1977.
152	Occupational Safety and Health (Dock Work) Convention, 1979.
155	Occupational Safety and Health Convention, 1981.
157	Maintenance of Social Security Rights Convention, 1982.
158	Termination of Employment Convention, 1982.
162	Asbestos Convention, 1986.
168	Employment Promotion and Protection against Unemployment Convention, 1988.
170	Chemicals Convention, 1990.
173	Protection of Workers' Claims (Employer's Insolvency) Convention, 1992.
174	Prevention of major Industrial Accidents Convention, 1993.
181	Private Employment Agencies Convention, 1997.
183	Maternity Protection Convention, 2000.
187	Promotional Framework for Occupational Safety and Health Convention, 2006.

II. Recommendations

No:	Name and Year
8	Hours of Work (Inland Navigation) Recommendation, 1920.
81	Labour Inspection Recommendation, 1947.
82	Labour Inspection (Mining and Transport) Recommendation, 1947.
114	Radiation Protection, Recommendation, 1960.
116	Reduction of Hours of Work Recommendation, 1962.
118	Guarding of Machinery Recommendation, 1963.
128	Maximum Weight Recommendation, 1967.
144	Benzene Recommendation, 1971.
145	Dock Work Recommendation, 1973.
146	Minimum Age Recommendation, 1973.
147	Occupational Cancer Recommendation, 1974.
150	Human Resources Development Recommendation, 1975.
152	Tripartite Consultation (Activities of the International Labour Organization) Recommendation, 1976.
156	Working Environment (Air Pollution, Noise and Vibration) Recommendation, 1977.
160	Occupational Safety and Health (Dock Work) Recommendation, 1979.
164	Occupational Safety and Health Recommendation, 1981.

- 167 Maintenance of Social Security Rights Recommendation, 1983.
172 Asbestos Recommendation, 1986.
177 Chemical Recommendation, 1990.
180 Protection of Workers' Claims (Employer's Insolvency) Recommendation, 1992.
181 Prevention of Major Industrial Accidents Recommendation, 1993.
188 Private Employment Agencies Recommendation, 1997.
191 Maternity Protection Recommendation, 2000.
194 List of Occupational Diseases Recommendation, 2002.
195 Human Resources Development Recommendation, 2004.
197 Promotional Framework for Occupational Safety and Health Recommendation, 2006.
198 Employment Relationship Recommendation, 2006.

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