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Critical Analysis of the Maritime Labour Convention, 2006

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ABSTRACT

The adoption of MLC in 2006 was the merchandise of 5 year's work administrated as a tripartite process involving governments, seafarers' trade unions and shipowners' organisations. The International Shipping Federation (ISF) was accountable for negotiating the text of the Convention on behalf of maritime employers. ISF liaised closely with and its sister organisation, the International Chamber of Shipping (ICS) and national shipowners' associations. The Convention has received wide support from governments, with the European Union also encouraging member states to ratify. There has been a gentle flow of ratifications with 90 States having ratified by the tip of 2019.

MLC may be termed as a consolidation of existing legislations, including not less than 36 Conventions, a number of them dating back to 1920, with the aim of setting global standards for a world industry. The International Chamber of Shipping observed:

"The overwhelming majority of companies mustn't have any difficulty complying with the substance of the Convention, since this can be largely derived from existing ILO maritime standards and accepted good employment practice. However, the enforcement mechanism is new, and it'll be important to avoid teething problems as a number of the more detailed requirements are applied and interpreted."

MLC has been described to be the "fourth pillar" of the international regulatory regime for quality shipping, complementing the key Conventions of the International Maritime Organization (IMO). However, it's structured in an exceedingly efficient way which is kind of different from the IMO Liability Conventions. This Article aims at decoding the Maritime Labour Convention in detail, understanding the rights provided under the convention and the lacuna in the same.

Keywords: *Flag State, Maritime Labour Convention, Seafarer, Shipowner*

I. INTRODUCTION

Seafarers, the labourers who work on freight ships engaged in domestic and international

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trade, compose a significant part of the worldwide economy. Almost 90% of the world's food, fuel, stuff and made goods are delivered by sea. Nearly all things sold-out worldwide are transported through ships, which require skilled seafarers to control, maintain and repair. What would happen to the globe if the ships and seafarers didn't work? Needless to mention, the world would come to a halt and therefore the people will have to give away their basic necessities. It's thanks to these skilled and brave people called seafarers that companies round the world still thrive and other people are able to buy the items they desire from their favourite stores. As a result, the health of the foreign commerce is parallel linked to the work done by the seafarers. Seafaring has been described as a significant support mechanism for the world economy by the International Maritime Organization (IMO).

Earlier we did not have one and dedicated act for seafarers. And seafarers being back bone of this industry needed one act or single window for them. The Maritime Labour Convention ("Convention"), which was adopted by the International Labour Organization ("ILO") on February 23, 2006, aims to enhance labour conditions for seafarers round the world by establishing standard rights for all seafarers and came into force on 20 August 2013. The convention establishes minimum working and living standards for all seafarers functioning on ships and aims to make sure seafarers' rights to decent employment conditions baffled. Each country may have its own laws and policies referring to the implementation of welfare provisions. The Member State's competent authorities might need to adapt these Guidelines to suit their current practices. These Guidelines are designed to supply practical assistance to governments in drafting their own national guidelines. It's hoped that they're going to also contribute to the welfare and morale of seafarers. A Special Maritime Session was held in the state of Geneva for the adoption of the Maritime Labour Convention 2006 by The International Labour Conference. The fundamental aims of the MLC are to make sure comprehensive worldwide protection of the rights of seafarers and to ascertain tier playing field for Member States and ship owners committed to providing decent working and living conditions for seafarers and therefore the strict enforcement of seafarers' rights.³

The MLC is meant to take a seat alongside the International Maritime Organization (IMO) standards on ship safety, security and quality ship management (such as SOLAS, STCW and MARPOL). It is pertinent to note that SOLAS, STCW and MARPOL deal with the Vessel and its operations in the International waters while the Maritime Labour Convention contrastingly deal with the rights and liabilities of a Seafarer. Some parts of the Convention

³<http://www.ics-shipping.org/docs/default-source/resources/welfare-guide.pdf?sfvrsn=3>

are compulsory; other parts take the shape of guidelines. The intention is basically to empower the seafarers and ensure that seafarers are protected without being too specific on how it's done. This is often to encourage the utmost number of States to ratify the Convention. The MLC provides the way of enforcing the standards through a system of certification and inspection by flag State and port State authorities. A key to enforcement will belong the power to detain vessels if they're in breach of the Convention.

II. IMPLEMENTATION OF THE MARITIME LABOUR CONVENTION 2006 RATIFICATION AND ENFORCEMENT

As of May 2020, over 93 countries across the world has ratified the Maritime Labour Convention. These countries accommodate about 91% of the total shipping fleet in the world. India ratified the Maritime Labour Convention, 2006 (MLC, 2006) on 09.10.2015 and same has acquired force from 09.10.2016.

- Via Notice No. 10 of 2016 dated 10-10-2016, the Government of India has declared all the Statements of Compliance for MLC, 2006 which had been issued to the Indian flag ships under the MLC,2006 should be considered as 'Maritime Labour certificates' issued in accordance with the Maritime Labour Rules and Regulations.
- It was further declared that all such ships will have to obtain a Fresh Maritime Labour Certificate according to the prescribed guidelines within one year from the date of notice or before the termination of validity of the Certificate of Compliance held by them.

III. SINGLE COHERENT INSTRUMENT EMBODYING

The General Conference of the International Labour Organization, Having been convened at Geneva by the governance of the International Labour Office, and having met in its Ninety-fourth Session on 7 February 2006, and aspiring to create one, coherent instrument embodying as far as possible all up-to-date standards of existing international maritime labour Conventions and proposals. Some other Conventions where similar rights are:

- The Forced Labour Convention, 1930;⁴
- The Freedom of Association and Protection of the proper to Organise Convention, 1948;⁵
- The Right to Organise and Collective Bargaining Convention, 1949;⁶

⁴ https://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C029

⁵ https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312232

- The Equal Remuneration Convention, 1951;⁷
- The Abolition of Forced Labour Convention, 1957;⁸
- The Worst types of Child Labour Convention, 1999;⁹ and Mindful of the core mandate of the Organization, which is to market decent conditions of labour, and Recalling the ILO Declaration on Fundamental Principles and Rights at Work, 1998, and mindful also that seafarers are covered by the provisions of other ILO instruments and produce other rights which are established as fundamental rights and freedoms applicable to any or all persons, and Considering that, given the world nature of the shipping industry, seafarers need special protection.
- Recalling that the International organization Convention on the Law of the ocean, 1982,¹⁰ sets out a general legal framework within which all activities within the oceans and seas must be dole out and is of strategic importance because the basis for national, regional and global action and cooperation within the marine sector, which its integrity must be maintained, and recalling that Article 94 of the world organization Convention on the Law of the ocean, 1982,conditions, crewing and social matters on ships that fly its flag.

IV. THE FIVE TITLES OF MARITIME LABOUR CONVENTION

There are five primary Titles within the Convention, each of which serves a definite purpose. Each Title consists of regulations, standards (Part A), and guidelines (Part B). The regulations and standards are mandatory, while the rules are more particularized suggestions for implementation that will or might not be followed at the signing party's discretion.

1. The first title deals with Minimum requirements for seafarers to figure on a ship. Establishes a minimum age of sixteen for seafarers, mandates recruitment and training procedures, and requires each seafarer to provide a medical certificate verifying his health both physical and mental before he's employed.
2. The second Title, Conditions of Employment requires all seafarers to enter into a written employment contract with the ship-owner, entails payment on a minimum of a monthly basis, establishes that the quality work day are eight hours and overtime pay

⁶ https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C098

⁷ https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C100

⁸ https://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C105

⁹ https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182

¹⁰ <http://www.imo.org/en/OurWork/Legal/Pages/UnitedNationsConventionOnTheLawOfTheSea.aspx#:~:text=%E2%80%8B%E2%80%8BThe%20United%20Nations,the%20oceans%20and%20their%20resources.>

must be a minimum of 25 percent greater than the quality rate, and mandates rights to both leave of absence and repatriation.

3. The third Title, Accommodation, Recreational Facilities, Food and Catering, establishes specific standards for the dimensions and furnishings of housing, and mandates that each one religious and cultural food requirements be respected and accommodated by the ship-owner.
4. The fourth Title, Health Protection, treatment, Welfare and social insurance Protection, requires that onboard treatment be to seafarers in need at the ship owner's cost, ensures that sick or injured seafarers are going to be paid as long as they continue to be on board the ship, and provides for occupational safety standards.
5. The fifth and final Title, Compliance and Enforcement, requires that ships carry a maritime labour certificate which certifies compliance. It further enforces duty on all the member Nations within whose territorial waters the Vessel Enters to inspect the vessel, ensure the compliance of MLC, 2006 and provide protection to the whistle-blowers if required.

Compliance with the Convention's regulations and standards are policed via two primary avenues. First, Article XIII establishes a committee that may oversee compliance and continually review the Convention for amendment.

This committee will comprise representatives from each ratifying nation, yet as seafarer and ship-owner representatives, to make sure that each one interests are protected.

Second, Article V provides for in-port ship inspections by ratifying nations and declares that member nations are forbidden from favouring ships that fly the flag of non-ratifying states. while these Titles and compliance provisions appear to determine sweeping rights for seafarers, the success of this Convention is way from guaranteed. whether or not the requisite number of states do ratify the present draft and put it into force, key omissions, loopholes, and a scarcity of enforcement could turn the Convention into little over an empty promise.

V. WHY COUNTRIES NEED TO RATIFY THE CONVENTION

(A) RESPONSIBILITY OF FLAG STATES

However, there are some specific actions that require to be taken at the more practical level to support implementation of the national requirements on ships. The guidelines which talk

about Responsibility and duties of the Flag State are:¹¹

- Appointment of flag State inspectors, or ROs if authorized by the flag State to hold out some flag State tasks;
- Inspection, monitoring and other control measures;
- Issuing, renewing and cancelling the Maritime Labour Certificate
- Responding to seafarer complaints;
- Providing information about the vessels to the Port State as and when required.
- taking enforcement action where ships are found to not be in compliance with the wants of the Convention.

(B) FLAG STATE INSPECTION SYSTEMS

The flag State is required to determine a good system for inspection and certification of maritime labour conditions on ships that fly its flag. This involves a good range of matters including:

- Providing a sufficient number of qualified inspectors (training and competence);
- Developing rules or regulations providing for inspectors' powers, status and independence;
- Guidelines regarding inspectors' tasks and confidentiality;
- Identification (credentials) for inspectors;
- Reporting responsibilities;

(C) SIGNIFICANCE AND EFFECTS

The convention has been the missing piece of the worldwide puzzle for two major reasons: First, because it brings together, in one place, international minimum standards that ensure decent work for the estimated over 1.5 million seafarers round the world whose work is important to international trade further on an increasingly important style of tourism and recreational activity. The rights enshrined under the Maritime Labour Convention for the seafarers are:

- Safe and healthy work environment.
- Fair terms of employment.

¹¹www.irclass.org/media/2568/implementation-of-the-maritime-labour-convention-2006-ratification-and-enforcement

- Proper living standards on board the ship.
- Health protection, medical aid, welfare measures and other varieties of social protection

Second, because it'll help to supply grade playing field for quality ship- owners operating under the flag of nations that have ratified the MLC, 2006. The goal is to confirm that decent working conditions go hand in hand with fair competition.

This MLC, 2006 shows how tripartite dialogue and international cooperation can operate constructively for the foremost globalized industries, by concretely addressing the challenges to securing decent working and living conditions for seafarers, while simultaneously helping to confirm fair competition for ship- owners.

Under ILO practice, Conventions usually enter effective (become binding under international law) 12 months later for the countries with registered ratifications. However, the wants for the MLC, 2006's entry-into-force were intentionally made the foremost stringent of any ILO Convention ever adopted within the Organization's 94-year history: This was done to avoid what's called a "paper tiger" in order that it'd lead to real change.

Because of the excellent nature of the MLC, 2006 and therefore the time needed to consult, implement and develop capacity to examine ships and certify people who have to be certified, the delegates in 2006 expected that it'd take about five years to attain the 30/33 formula. the priority was to confirm that that this Convention had the strong backing of the maritime sectors especially flag States - before it came into force.

The ratifying countries currently represent quite 50 per cent of the world's seafarers and quite three quarters of the world's gross tonnage of ships. Importantly, many of the countries that have ratified also are home to the seafarers who comprise the world's seafaring hands. The pace of ratification is increasing daily and also the maritime industry is additionally actively implementing the Convention, often well prior governments. it's foreseeable that the Convention will eventually receive nearly universal ratification from relevant ILO Member countries.

The definition of Seafarers under the MLC,2006 is and exhaustive definition and does not only include the crew involved in navigating or operating the ship but also, as an example, persons working in hotel positions that provide a spread of services for passengers on cruise ships or yachts. It applies to a large range of ships operating on international and national or domestic voyages. It covers all ships aside from those which navigate exclusively in inland waters or waters within, or closely adjacent to sheltered waters or areas where port

regulations apply. The Convention applies to all or any those ships, whether publicly or privately owned, that are ordinarily engaged in commercial activities, except:

- Fishing Ships
- Ships of traditional build like dhows and junks
- Warships or naval auxiliaries

VI. LIABILITY OF THE SHIPOWNER

In addition to providing for health protection and treatment on board and ashore, the MLC, 2006 also, under Regulation 4.2, requires flag States to make sure that every seafarer employed on their ships have material assistance and support from the ship-owner with relevancy the financial consequences of sickness, injury or death occurring while they're serving under a seafarers 'employment agreement or arising from the use under such agreement. These financial consequences include loss of wages and also medical and other costs. These provisions complement the protection taken off in Regulation 4.1 regarding treatment on board ship and ashore and also the future protection under Regulation 4.5 regarding Social Security. Paragraph 1 of the MLC,2006 sets out the final principle that seafarers have a right to material assistance and support from the ship-owner with regard to the financial consequences of sickness, injury or death occurring while they're serving under a seafarer employment contract or arising from their employment under such agreement. The question of what are considered financial consequences could be a matter for national laws and regulations.

Regulation 4.2, paragraphs 1 to 4 and seven of the MLC, 2006 requires the subsequent costs to be covered as a minimum: the expense of medical aid, including medical treatment and also the supply of medicinesv and therapeutic appliances, and board and lodging aloof from home until the sick or injured seafarer has recovered or until the sickness or incapacity has been declared of a permanent character where sickness or injury ends up in incapacity for work, full wages as long because the sick or injured seafarers remain on board or until the seafarers are repatriated; and wages in whole or partly, as prescribed by national laws or regulations or as provided for in collective agreements, from the time when the seafarers are repatriated or landed until their recovery or, if earlier, until they're entitled to cash benefits under the legislation of the country concerned, financial security to assure compensation within the event of the death or long-termv disability of seafarers because of an occupational injury, illness or hazard, as commenced in national law, the seafarers' employment contract

or a collective agreement; the price of burial services within the case of death on board or ashore during the amount of engagement.

(A) HEALTH AND SAFETY PROTECTION & ACCIDENT PREVENTION

The primary obligations under Regulation 4.3, paragraphs 1 to three, regarding what's usually called marine or maritime occupational safety and health (MOSH), are directed to the flag State. A major level of technical details and guidance on the topic is ready get in Standard A4.3 and Guideline B4.3. These provisions are linked to those under Standard A3.1 regarding accommodation and recreational facilities on board ship. Standard A4.3 specifies the areas within which occupational safety and health policies and programmes are to be adopted, effectively implemented and promoted on ships and which FAQ 35 also are to be the topic of legal standards covering occupational safety and health protection and accident prevention. Such policies and programmes and legal standards may exist already for ships within the country concerned or that country may have global policies and programmes covering these subjects, which is able to must be supplemented or adapted so as also to hide conditions on board ship.

These facilities, which are located in or near ports, are important thanks to provide seafarers, who could also be on extended voyages put off, with access to health and welfare services in a very foreign country likewise as a social environment. Under Regulation 4.4, countries must make sure that shore-based welfare facilities, where they exist on their territory, are easily accessible to any or all seafarers, no matter nationality, race, colour, sex, religion, political opinion or social origin and regardless of the flag State of the ship on which they're employed or engaged or work. they have to also encourage the event of welfare facilities in appropriate ports of their country and determine, after consultation with the shipowners' and seafarers' organizations concerned, which ports are to be thought to be appropriate. they need to encourage the establishment of welfare boards to regularly review welfare facilities and services to make sure that they're appropriate within the light of changes within the needs of seafarers resulting from technical, operational and other developments within the shipping industry.

(B) SOCIAL SECURITY

The notion of Social Security because it is usually used within the ILO covers all measures providing benefits, whether in cash or in a similar way, to secure protection, inter alia, from lack of or insufficient work-related income caused by sickness, disability, maternity, employment injury, unemployment, old age, or death of a family member; lack of access or

unaffordable access to health care; insufficient family support, particularly for kids and adult dependants; general poverty and social exclusion. Social Security schemes is of a contributory (social insurance) or non-contributory nature. FAQ 37 Social protection is spoken because the set of public measures that a society provides for its members to guard them against economic and social distress that may be caused by the absence or a considerable reduction of income from work as a results of various contingencies (sickness, maternity, employment injury, unemployment, invalidity, old age, and death of the breadwinner); the availability of health care; and, the availability of advantages for families with children. this idea of social protection is additionally reflected within the various ILO standards. By definition, social protection is broader and more inclusive than social insurance since it incorporates non-statutory or private measures for providing social insurance, but still encompasses traditional social insurance measures like supplementary benefit, social welfare and universal Social Security benefits. it should be noted that there are significant differences among societies and institutions round the world of how they define and approach social protection.

The MLC, 2006 requires that every seafarer be given social protection. This covers variety of complementary requirements including prevention-based approaches in reference to occupational safety and health, medical examinations, hours of labor and rest and catering. Social protection is principally addressed in Title 4 with reference to medical aid (Regulation 4.1); Shipowners' liability (Regulation 4.2) and social insurance (Regulation 4.5). Regulation 4.5 and also the related Standard A4.5 reflect an approach that recognizes the wide selection of national systems and schemes and differing areas of coverage with regard to the supply of Social Security. Under Standard A4.5, paragraphs 1, 2 and 3, a ratifying country is required to —take steps in step with its national circumstances to supply the complementary social insurance protection, in a minimum of three to any or all seafarers ordinarily resident in its territory. The resulting protection must be no less favourable than that enjoyed by shore workers resident in its territory. If a country's social insurance system for seafarers a minimum of meets these two basic conditions, the country is in a very position to ratify the MLC, 2006 as far as its obligation to supply Social Security to seafarers is worried. Flexibility is provided to facilitate the fulfilment of this obligation Although the aim of Regulation 4.5 is that every one seafarers, regardless of their nationality or residence and whatever the flags of the ships they work on, should be protected by comprehensive Social Security protection, the undertaking under the MLC, 2006 of every ratifying country isn't to supply such comprehensive coverage outright, but rather to progress towards it: to

require steps, in line with its national circumstances to realize progressively" comprehensive social insurance protection for seafarers.¹²

VII. PROBLEMS FACED BY SEAFARERS

Labour laws that dictate employment relationships toward land aren't perfectly applicable to the seafaring industry, as seafarers on ships don't enjoy the identical immediate resources (such as hospitals and lawyers) and recourses (namely, the courts and mediators) as do their land-dwelling counterparts.

A primary concern for seafarers is their own health and well-being. Because workers are generally isolated on their ships or are spending brief periods of your time in foreign ports round the world, it's essential that their health and any necessary treatment be provided for by the ship-owners for whom they work. Additionally, since they're isolated on the ship, which, in essence, is their office, it's crucial that strict maximum hour laws be imposed and mandatory rest periods be provided.

Another concern shared by seafarers and ship owners alike is that the declining effectiveness of onboard training. due to reductions within the number of crew members per ship, faster turnarounds on shipping jobs, more frequent crew changes, and multinational crews with divergent language and cultural backgrounds, such training has become considerably tougher. This negatively impacts seafarers because they're unprepared to accomplish the tasks expected of them and will be more likely to suffer injury as a result. It also adversely impacts shipowners because untrained crews are less capable of skilfully and efficiently performing required tasks.

The greatest difficulty faced by seafarers is that the incontrovertible fact that their legal rights are often hard to discern, as are the jurisdictions within which these rights are often enforced.

In concert commentator has stated: it's commonplace for a seafarer to figure on a vessel registered in a very foreign country, sailing on the high seas and calling at ports in countries apart from that of her flag, owned by citizens of yet other countries, insured in other countries, perhaps chartered by interests in other countries, managed by an organization in another country, and carrying cargo owned by citizens of other countries. To further complicate matters, most seafarers are hired through recruiting agencies which can or might not be located within the seafarer's home country, which potentially introduces another nation's laws into the fray.' Under such convoluted circumstances, it's a frightening task for a seafarer to grasp his rights, including make sure that they're upheld.

¹²http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_541924/lang--en/index.htm

This difficulty is further compounded because international seafarer rights are currently spread throughout dozens of related but distinct agreements, all of which can or might not be ratified by the relevant country or countries.

While not the only source of the issues faced by seafarers, the first basis for several of those difficulties is that the "flag of convenience" ("FOC") system. Under this method, nations permit ship-owners from other nations to sail under their flags for a fee. This is often of great significance because the flag under which a ship sails often determines which nation's laws apply thereto ship.

VIII. CONCLUSION

The MLC provides a collection of comprehensive rights and protection at work for seafarers and aims to realize minimum on-board working conditions which include a catena of issues from working hours, safety and health of seafarers, maintaining proper living standards, work agreements etc. The new labour standards contained within the Convention consolidate and update quite 68 international labour standards associated with the maritime sector adopted over the last 80 years. All the Shipowners are under the obligation of submitting a Declaration of Maritime Labour Compliance to their respective Nations when such a Nation is the State Party to the Convention. The Flag State will then issue an MLC certificate to ships flying their flag which should be posted on-board during a conspicuous place that's accessible to seafarers.

Earlier labourers went to face several problems like financial security for repatriation, death or long run disabilities, improper compensations, occupational hazards etc. But today these problems are resolved by this convention by entitling seafarers to repatriation, including repatriation in cases of a shipowner's insolvency (effectively abandonment) and that financial security should be in situ and compensation within the event of death or long run disability thanks to an occupational injury, illness or hazard as taken off in national law, the seafarer's employment contract or labour agreement and that financial security must be in situ.

The MLC also provides that seafarers are entitled to social insurance resulting from a ship's loss or foundering for every day the seafarer remains unemployed, although there's no requirement to possess financial security in situ. The full sum of such compensation is also limited to 2 months wages. Claims for repatriation following illness or injury and claims under (b) above have generally been covered within the past under a Member's P&I Club entry for normal P&I cover subject to the Club Rules, but repatriation in cases of

insolvency. so as to help owners in complying with these financial security requirements, all thirteen International Group (IG) Clubs have agreed to increase the scope of normal P&I cover to incorporate repatriation in cases of insolvency and in other circumstances listed within the MLC where seafarers should be entitled to repatriation.

The MLC 2006 introduces for the primary time a unifying legal regime for the rights of the seafarers from the double perspective of labour law and international admiralty law. Many of its provisions are innovative elements like the rapid actualization of the technical parts of the Convention, the introduction of a 3rd variety of maritime responsibility – labour supplying responsibilities or the popularity of the ROs role within the operation of the flag state inspections. Despite its innovative character, the amount to which the enforcement of the Convention will lead to a change of the working and therefore the living conditions on board will remain a problem to be verified both in practice and in time. the tough imposed ratification conditions were a mirrored image of the very fact that the introduced system needs a broad international cooperation to be effective.
