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DEPARTMENT OF MARITIME STUDIES

MSc. IN SHIPPING MANAGEMENT

**“THE EFFECTIVENESS OF M.L.C. 2006 AS A
PROTECTIVE MECHANISM FOR SEAFARERS IN
THE COVID-19 ERA”**

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Dissertation

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LIST OF ABBREVIATIONS

- B.I.M.C.O.:** Baltic and International Maritime Council
- C.o.C.:** Certificate of Competency
- C.o.P.:** Certificate of Proficiency
- Convention:** the M.L.C. 2006
- COVID-19:** severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) disease 2019
- D.M.L.C.:** (Declaration of Maritime Labour Compliance)
- G.T.:** Gross tonnage
- I.C.S.:** International Chamber of Shipping
- I.L.C.:** International Labour Conference
- I.L.O.:** International Labour Organization
- I.M.O.:** International Maritime Organization
- I.S.M. Code:** International Safety Management Code
- I.S.P.S. Code:** International Ship and Port Facility Security Code 2004
- J.M.C.:** Joint Maritime Commission
- M.L.C.:** Maritime Labour Convention 2006
- M.O.U.:** Memorandum of Understanding
- MAR.POL:** Maritime Pollution Convention. The International Convention for the Prevention of Pollution from Ships 1973/1978
- P&I:** Protection & Indemnity
- P.P.E.:** Personal Protective Equipment
- P.S.C.:** Port State Control
- S.E.A.:** Seafarer Employment Agreement
- S.O.L.A.S.:** Safety of Life at Sea Convention 1974
- S.T.C.:** I.L.O. Special Tripartite Committee
- S.T.C.W.:** Standards of Training, Certification and Watchkeeping for seafarers Convention 1978
- W.H.O.:** World Health Organization

U.N.: United Nations

ABSTRACT

The purpose of this dissertation is to familiarize the potential reader with some of the innerworkings of the maritime industry and the Maritime Labour Convention 2006 provisions indicatively, in order to ascertain whether the Convention is effective at safeguarding the seafarers' labour rights and interests, during the covid-19 pandemic era.

The history, aims, purpose and individual provisions of the M.L.C. 2006 are analyzed, granting solid knowledge background even to an untrained in maritime matters reader. The specific provisions of the M.L.C. 2006 that were most affected by the onset of the pandemic are furtherly scrutinized, by examining the changes brought upon to standard maritime practices, investigating the maritime industry's response to the problems caused, and providing indications of the results from the relevant literature.

A plethora of contemporary sources, ranging from academic articles and published scientific volumes to verified articles published during the covid-19 pandemic era, from news outlets specialized in the maritime industry, have been reviewed and their findings illustrated, so that the reader can acquire a holistic view of the subject matter.

The research concluded that many of the Convention's provisions have managed, through the effective implementation by the industry's stakeholders, to perform adequately while others have exhibited below expectations results, mainly stemming from deeper issues residing in the M.L.C. 2006 that have existed for some time and require actions for improvement, the covid-19 pandemic acting merely as a catalyst for unveiling them.

KEYWORDS

M.L.C. 2006, Covid-19, Seafarers, Seafarers' Welfare, Crew Welfare, M.L.C. provisions

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INTRODUCTION

The maritime trade has been exercised since the ancient times and has been instrumental in the development of the modern civilization. Large quantities of cargoes were able to be moved effectively over long distances, offering greater mobility and safety over land-based routes. Some the greater discoveries of humanity, like the discovery of the Americas, happened in search of establishing new sea trade routes. Throughout history, what we call vessel has changed drastically, from a simple wooden raft, built from a few tree logs roped together to today's towering steel megastructures, bringing along new tools and ways of navigation with them. At the core of maritime history, though, the seafarer has always been the constant and the most important piece, to make use of the available equipment and facilitate the transportation of goods, or passengers, and has continuously done so, with few changes to his/her mentality or composure. (Payne, 2013)

The seafaring profession has always been risky and drew many types of people, those longing for adventure, those not having access to better alternative types of employment ashore, even criminals, wishing to evade the consequences of their actions. Coupled with the fact that seafarers spent the majority of their lives at sea, being away from their homes and families and often being viewed as outsiders and outcasts, they were usually treated inferiorly by their employers. It was a common occurrence to be cheated from their wages, to be abandoned when sick, to be offered stale or rotten food, all in all, to be deprived of some of the basic human rights. After all, there could always more desperate people willing to take their place. (Couper, et al, 1999)

It took a very long time for seafarers to finally be recognized for their importance to the world trade and that actions would need to be taken so as to be protected from malpractice. The first steps were made by the International Labour Organization (I.L.O.), constructing numerous Conventions, as an attempt to impose regulatory practices to the various maritime interdependent forces, including shipowners and government states, regarding seafarer health, safety, and security matters. These regulations were a decent starting point, but were considered scattered and ineffective, thus an established international set of standards would be implemented at the start of the 21st century by the I.L.O., called the Maritime Labour Convention 2006 (M.L.C. 2006). (McConnell, et al, 2011)

The M.L.C. 2006 included numerous innovative features, specifically designed to keep up with ever-changing technology forces and be universally accepted by as many States as possible. Without a doubt, the Convention has greatly succeeded in many of its conceptual targets, yet still remain issues than need to be addressed for the betterment of the seafarer's life and the assurance of their human rights. Interestingly, most of its flaws have been highlighted by the recent onset of the Covid-19 pandemic, as being true to most of the precedent Conventions, the M.L.C. possesses a reactionary nature (Mukherjee, et al, 2020). The unforeseen circumstances imposed a serious threat to the goals set by the M.L.C., jeopardizing the various aspects of seafarers' life onboard and endangering the harmonious function of the maritime industry, which, as characterized by many of the world's leaders, cannot be stopped or slowed, for fear of serious ramifications to many aspects of human life worldwide. (De Beukelaer, 2021)

In this context, the M.L.C. 2006, along with I.L.O. history, its structure, its principles, its goals, its purpose, its recognized flaws will be presented, in rather simple yet comprehensive manner, so that even readers who do not possess a maritime academic background can observe. In that regard, a brief summary of some of the most important functions and active stakeholders of the modern maritime industry is preceding them. Then, in chapters 5 and 6, follows an extended illustration of the issues brought upon by the covid-19 pandemic that significantly affected the lives and labour rights of seafarers and the maritime industry's response to these issues. Commentary as to the degree of the industry's adhering, or not, to the M.L.C. 2006 provisions is provided for each case, in an attempt to ascertain the Convention's efficacy at achieving its purpose. In chapter 7, special mention and analysis is provided for the issue of seafarer welfare, which is quickly gaining traction among maritime academic and industrial circles.

To clarify these queries, relevant data and information had to gathered from a variety of sources, including scientific studies published in volumes, scientific journals from reputable international academic sources, the internet websites of the Conventions under discussion, and in a few cases, newsletters published by representatives of various national legislation bodies. Specifically for the chapter 6, data from various Port State Control annual reports and relevant scientific journals, categorically addressing the covid-19 pandemic, and published from March 2020 to September 2021, were utilized. To supplement them, occasional reference to news stories from internet journalism outlets was needed, as the events discussed are quite recent.

The purpose of this dissertation was to ascertain whether the provisions of the M.L.C. 2006 were found sufficient at safeguarding the seafarers' labour rights and living and working conditions on board ocean-going vessels, as well as highlighting the areas of the M.L.C., that are in need of improvement. It is the author's wish for seafarers and the maritime industry as a whole, to be better educated for the concurrent conditions they are facing and become better prepared for any adverse circumstances the future might hold. The thesis concludes by summarizing the research findings and yielding recommendations the collective relevant literature have culminated in, calling for actions needed to be taken by the maritime stakeholders and to assist subsequent researchers.

CHAPTER 1: INTERNATIONAL ORGANIZATIONS AND INSTITUTIONS IN THE MARITIME INDUSTRY

1.1. I.M.O. – THE INTERNATIONAL MARITIME ORGANIZATION

1.1.1. HISTORY & MISSION OF THE I.M.O.

It was always realized that the seafaring profession is one of the most dangerous professions worldwide and given the international nature of shipping that requires cooperation between many different governments and legal entities, especially for issues related to improving maritime safety, it was deemed necessary that there should exist an agency under the supervision of the United Nations, with authority over maritime matters.¹

Thus, after many meetings between the UN member states, the IMCO (Intergovernmental Maritime Consultative Organization) was established in 1948 within the framework of the United Nations Maritime Conference in Geneva, Switzerland and established its headquarters in London, United Kingdom in 1958. IMCO used to have mainly consulting responsibilities in the promotion of international trade, on board safety, prevention of discrimination, prevention of maritime pollution, and in technical matters like the preparation of international treaties and contract making. It should be noted though that nothing produced by this conference was binding on its Member States. After many years of conferences, during which concerns were expressed mainly about the non-binding nature of the decisions of this organization, it was decided on 23 May 1982 to rename the organization I.M.O. (International Maritime Organization), and its role to be upgraded as its decisions will now be binding on all Member States.²

Nowadays, the main mission and responsibility of the International Maritime Organization are to develop and preserve a comprehensive framework of regulations and policies for the shipping industry and possessing responsibilities in areas like: (Mukherjee & Brownrigg, 2013)

- Navigation
- Ship design, construction and equipment

¹ <https://www.britannica.com/topic/International-Maritime-Organization>

² <https://www.imo.org/en/About/HistoryOfIMO/Pages/Default.aspx>

- Stability and load lines
- Tonnage measurement
- Search and rescue, casualty investigations
- Navigational safety including prevention of collisions
- Life-saving appliances
- Carriage of dangerous goods
- Marine pollution
- Training and certification of seafarers
- Responsibilities of flag states.
- Port state control.
- Piracy and other violent and unlawful maritime acts

It has more than 170 members and is headed by a secretary-general, who serves a four-year term and oversees a Secretariat staff of approximately 300 staff, specialists, scientists, and administrators. All member states are represented in the Assembly, the I.M.O.'s primary policy-making body, which meets once every two years and also elects the members of the Council. The Council, consisting of 40 elected member states, meets twice annually and is responsible for governing the organization between Assembly sessions. Membership on the Council is divided among three groups: (1) the 8 countries with the "largest interest" in providing international shipping services; (2) the 8 countries with the largest interest in providing international seaborne trade; and (3) 16 countries with a "special interest" in maritime transport, selected to ensure equitable geographic representation. In addition, there are the Maritime Safety Committee, Marine Environment Protection Committee, Legal Committee, and the Facilitation Committee, where developments in shipping and other related industries are discussed by Member States. Furthermore, around 70 Intergovernmental Organizations have concluded cooperation agreements with the I.M.O. and participate in the Organization as observers, while 78 NGOs have been granted advisory status.³

³ <https://www.imo.org/en/About/Pages/Structure.aspx>

1.1.2. CREATING AND ADOPTING A CONVENTION⁴

When I.M.O. came into existence in 1958, among its first responsibilities, was to ensure that existing conventions like the International Convention for the Safety of Life at Sea of 1948, the International Convention for the Prevention of Pollution of the Sea by Oil of 1954 were kept up to date and also to develop new conventions when needed, nowadays being responsible for more than 50 international conventions and adopting other protocols and amendments.

There are certain procedures involving the adoption or creation of conventions which concisely include:

- Adopting a convention via the Assembly and council as the main bodies or subcommittees involved in this procedure i.e., the Maritime Safety Committee, Marine Environment Protection Committee, Legal Committee, and the Facilitation Committee. Developments in shipping and other related industries are discussed in these bodies, and the need for a new convention or amendments to existing conventions can be raised in any of them.
- Gathering a defined number of signatures, by a certain percentage of member states expressing their desire to adopt or create a proposed convention
- Ratifying the convention, at which point the treaties come into force and the member states are obliged to reflect them to their respective national laws.
- Enforcing the convention, where contracting governments enforce the provisions regarding vessels flying their flag, establishing means of proof of compliance like certificates and penalties for infringement.
- Amending an existing convention, in order to be kept up to date and following technology, cultural changes or changes to shipping industry practices. The special procedure of “tacit acceptance” is commonly used, meaning proposed changes do not need to be accepted by member states but they must express their objection before a certain amount of time. This has led to greatly speeding up the amendment process.

⁴ <https://www.imo.org/en/About/Conventions/Pages/Default.aspx>

- Flag States are responsible for ensuring that ships under their flag comply with the Conventions' requirements and provisions, giving them the responsibility inspect vessels for monitor successful implementation

1.1.3. NOTABLE CONVENTIONS⁵

The most notable I.M.O. conventions and cornerstones of the modern maritime industry are:

1. International Convention for the Safety of Life at Sea (S.O.L.A.S.) considered to be the most important of all international maritime safety treaties
2. The International Convention for the Prevention of Pollution from Ships (MAR.POL) covering the prevention of marine pollution by ships
3. The International Safety Management (I.S.M.) Code: provides an international standard for the safe management and operation of ships at sea.
4. The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (S.T.C.W.): It seeks to create a benchmark for training of seafarers around the world, with a focus on quality control and competency-based training and establishes a structure that can ensure not only those standards are met, but that they appear to be fulfilled.

The International Convention for the Protection of Marine Life (Safety of Life at Sea-S.O.L.A.S.) is considered to be the most important international treaty, concerning the safety of all vessels. The first version was adopted in 1914, as a reaction to the Titanic accident, with other versions adopted later. In 1974, the tacit acceptance procedure was provision was included in the Convention. As a direct result, the S.O.L.A.S. Convention has received numerous amendments since then. The current S.O.L.A.S. Convention includes Articles setting out general obligations, amendment procedure and so on, followed by an Annex divided into 14 Chapters. (SOLAS, 2009)

⁵ [https://www.imo.org/en/About/Conventions/Pages/International-Convention-for-the-Safety-of-Life-at-Sea-\(SOLAS\),-1974.aspx](https://www.imo.org/en/About/Conventions/Pages/International-Convention-for-the-Safety-of-Life-at-Sea-(SOLAS),-1974.aspx)

The main objective of the S.O.L.A.S. Convention is to specify minimum standards for the construction, equipment and operation of ships, compatible with their safety. Its main purposes are:

- To ensure safety at sea
- To prevent loss of life, injuries on board
- To prevent seaborne damage to the environment

The I.S.M Code was adopted by I.M.O. and became fully integrated to the S.O.L.A.S. Convention as chapter IX -Management for the Safe Operation of Ships, obliging the shipping company to maintain a Safety Management System (SMS) that adheres to the requirements of the Code, constituting an integral part of its operations.

The amendment of December 2002, introduced the chapter XI-2 “Special Measures to Enhance Maritime Security” to S.O.L.A.S, namely the International Code for the Security of Ships and Port Facilities (I.S.P.S.), applying to mobile offshore drilling units, passenger, and cargo vessels over 500 G.T. It came as a response to the increased security incidents during late 20th century and at the start of the 21st and its purpose was to form an international framework through which ships and port facilities can co-operate to deter acts that threaten maritime security. The code has 2 parts, with part A requiring mandatory compliance and part B offering guidance for applying the requirements of Part A.⁶

1.2. THE S.T.C.W. - STANDARDS OF TRAINING CERTIFICATION & WATCHKEEPING CONVENTION 1978

1.2.1. HISTORY & PURPOSE OF THE S.T.C.W.⁷

The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (S.T.C.W.) was adopted on July 7, 1978, and entered into force on April 28, 1984, under the umbrella of the I.M.O. It was a reactionary move, at a time when a high number of

⁶ <https://www.imo.org/en/KnowledgeCentre/ConferencesMeetings/Pages/SOLAS.aspx>

⁷ <https://www.imo.org/en/OurWork/HumanElement/Pages/STCW-Convention.aspx>

maritime accidents occurred, resulting to injuries, loss of life and environmental damage⁸. The large majority of them were attributed to human error.

The main purpose of this Convention is to promote safety of life, property at sea and to protect marine environment by establishing international minimum standards of training, certification and watchkeeping for seafarers, which countries are obliged to meet or exceed. Notably, S.T.C.W. regulates issues such as the seafarer necessary level of education and training, seafarer certifications and how they are granted, effective procedures for certification acceptance between different countries and the mandatory rest time for seafarers on duty. (Christodoulou-Varotsi & Pentsov, 2007)

Before the S.T.C.W. came into effect, the responsibility for monitoring the level of competence of the seafarers, fell under the flag states in questions and their specific regulations, that varied widely and many of which proved to be insufficient and inefficient. While the adoption of S.T.C.W. was considered a move in the right direction by all the interested parties in the maritime industry, it was realized that procedures for keeping the Convention up to date were lacking, in addition to many legal issues arising from some of its provisions being ambiguous. (Christodoulou-Varotsi & Pentsov, 2007)

Thus, with the first major revisions of 1995, which came into effect in February 1, 1997, featured the technical annex divided into specific chapters, citing the certification requirements for the seafarers based on their rank on board the ship (master, chief officer etc.), the department in which they work (deck, engine etc), the specific vessel characteristics (tankers, passenger ships etc.) and on their duties in matters like occupational safety, security, emergency, medical care. In addition, the S.T.C.W. code was created, dividing the regulations to mandatory (Part A) and recommended (Part B).

1.2.2. S.T.C.W. CERTIFICATION⁹

The seafarers are certified based on the level of the desired competency to be achieved for specific tasks and duties on board (competence) and their knowledge and skills necessary to

⁸ <https://www.marinelink.com/news/regulation-disasters371542>

⁹ <https://www.mitags.org/guide-to-stcw-certification/>

perform these tasks. Methods for achieving the desired level of seafarers' competence and knowledge (training), as well as methods and criteria for evaluating them, are also specified in the S.T.C.W. Convention. Furthermore, the vessel's Flag state must issue the Minimum Safe Manning Certificate, specifying the appropriate number, taking into account vessel's type, size, equipment, automation level and seafarer rest hour requirements.

The I.M.O. takes an active role in the implementation of the Code, as the parties must verify compliance with and implementation of the Convention during regular auditing procedures and forward the detailed findings to I.M.O. for verification. (Christodoulou-Varotsi & Pentsov, 2007)

The operating company possesses certain responsibilities in regard to the seafarers under employment, under the Convention. These include:

- Obligation for appropriate certification of all seafarers and necessary documentation readily available
- Compliance with minimum safe manning number
- Assurance that seafarers are properly trained and familiarized with their duties as per the Convention, including pollution prevention, safety and security procedures
- Assurance that the crew can respond effectively to emergency situations

Certificate of Competency: a certificate issued and endorsed for masters, officers and entitling the lawful holder thereof to serve in the capacity and perform the functions involved at the level of responsibility specified therein

Certificate of proficiency: a certificate issued to a seafarer stating that the relevant requirements of training, competencies or seagoing service in the Convention have been met

Medical certificates: ensuring seafarers satisfy certain established standards of physical and medical fitness including:

- Physical capability to complete the basic training required
- Adequate speech and hearing
- No medical condition likely to get aggravated during service at sea, rendering the seafarer unfit for duty or endangering the health and safety of other persons

- No prescribed medication that may cause side effects that may impair the safe and effective performance of routine onboard

Seafarers holding CoCs and CoPs are required to revalidate their certificates at intervals not exceeding 5 years and medical certificates at intervals not exceeding 2 years.

After the 2010 Amendments, these provisions, as well as the provisions governing the medical certificates (S.T.C.W. I/9), are designed to co-exist in harmony with the M.L.C. 2006 provisions governing minimum hours of rest and medical certificates respectively.

1.2.3. MINIMUM HOURS OF WORK & REST¹⁰

Of particular interest to this dissertation, are the S.T.C.W. watchkeeping provisions that establish minimum hours of work and rest.

These are

- 10 hours in any 24-hour period, not divided in more than 2 periods, one at least 6 hours long
- 77 hours in any 7-day period
- Intervals between periods of rest not exceeding 14 hours,

including some specific exemptions and restrictions to allow some room for flexibility.

1.3. PRIVATE MARITIME ORGANIZATIONS

Private maritime organizations and institutions have been a part of the maritime industry for more than a century. They are concerned internationally with various aspects of shipping and the promotion of common maritime interests of their members by utilizing collaborative working. Their reasons for creation, goals, organizational structure can vary but their effect on the industry through norms and policy setting, is matched only by the international legislature regimes. Listed below are some the most influential associations in existence today. (Mukherjee & Brownrigg, 2013; Branch, 2007)

¹⁰ <https://www.imo.org/en/OurWork/HumanElement/Pages/STCW-Conv-LINK.aspx>

1.3.1. BIMCO – BALTIC & INTERNATIONAL MARITIME COUNCIL

BIMCO (Baltic and International Maritime Council) is the oldest of the international shipping associations, dating back to 1905. It represents shipowners controlling around 65 % of the world's tonnage and other stakeholders with a vested interest in the shipping industry, including ship managers, brokers, and agents.

BIMCO's main objectives are to provide its members with advice and concurrent information on a variety of commercial and operational issues, assist them in contract making by facilitating state of the art contract prototypes, while promoting fair business practices. Its representatives are participating in most I.M.O. committees, partaking actively in the creation and subsequent implementation of the institutional framework. Others are engaged in offering seminars and general education to maritime professionals or engaged in more technical matters, including creating and providing software and access to relevant databases, to the organization members.

1.3.2. I.C.S. – INTERNATIONAL CHAMBER OF SHIPPING

The International Chamber of Shipping (I.C.S.) is the principal international trade association for merchant ship operators, representing all sectors and trades and about 80 % of the world's merchant fleet in tonnage. Based in London, its members are the national shipowner associations in about 40 countries across the world, which are recognized by their respective national governments.

Established in 1921, I.C.S. is concerned with all technical, legal and policy issues that may affect international shipping. The main areas of concern are:

- ensuring ship safety, including loading, and unloading procedures at ports and terminals, accidents prevention and navigational issues troubleshooting
- protection of the marine environment by issuing technical instructions
- standardization and harmonization of the documentation involved in the shipping industry

I.C.S. is actively engaged with all relevant international bodies, including particularly: the U.N.'s I.M.O., and the International Labour Organization (I.L.O.).

Other influential associations in the industry are the Independent Tanker Owners Association (INTERTANKO), The International Association of Dry Cargo Shipowners (INTERCARGO), Cruise Lines International Association (CLIA), representing owners and operators of specific vessel types.

1.3.3. PROTECTION AND INDEMNITY CLUBS – P&I

P&I clubs are non-profit organizations providing insurance for broader, indeterminate risks relating to the use and operation of vessels, which common insurers usually do not cover, or are reluctant to, such as third-party risks. The assured are provided with protection from a variety of liabilities including, loss of/damage to cargo, oil pollution, liability after collision and wreck removal, injury and loss of life of passengers and crew. These liabilities commonly make up the standard P&I package offered, but a shipowner can negotiate and achieve insurance protection against almost any liability he may think of, provided the P&I club board agree to the proposed terms, constituting a way of keeping up to the maritime industry changes, the constantly shifting nature of maritime liabilities and offering a decent degree of flexibility. (Bennett, 2001)

The traditional P&I clubs operate on a mutual basis, in essence, by pooling their resources and liabilities together and are owned and controlled by the shipowner members that have entered vessels into the association. They are organized as separate corporate entities possessing their own governing bodies, namely their own board of directors.

The 13 principal underwriting associations and their affiliated associations, have formed the International Group of Protection & Indemnity Clubs as an unincorporated association, based in London, providing liability cover (protection and indemnity) for approximately 90% of the world's gross tonnage, and a wide variety of other support services to their members. (Petrinović, et al, 2017)

The primary reason for offering services other than insurance is based on the fact that the P&I Club's authority is based on the terms and conditions laid down in the contract of insurance. A prevalent example of a condition present in all the P&I contracts is the Class Warranty requiring the members to comply with the requirements of the ship's classification society and its flag State. Consequently, to make recovery under the contract of insurance, the assured must ensure

the compliance with the aforementioned safety rules and regulations. The maritime industry is becoming more and more heavily regulated and compliance with all the relevant statutory provisions is becoming increasingly more difficult, therefore, it falls to the Clubs to take up the role of shortening this gap and contribute to quality shipping and safety at sea. (Eivindstad & Petrie, 2012)

As a general practice, the clubs within the International Group Of P&I Clubs organize several proceedings each year to facilitate cooperation and form unified decisions. In order to be effective and to properly inform their members, so they are able to standardize their practices, clubs publish circulars, thus communicating the output of these proceedings and their reached decisions and offering their members with guidelines and recommendations on how to address certain issues in the industry. (Bennett, 2001)

CHAPTER 2: THE INTERNATIONAL LABOUR ORGANISATION – I.L.O.

2.1. HISTORY & STRUCTURE OF THE I.L.O.¹¹

The International Labour Organization (I.L.O.) is a United Nations' agency dedicated to the labour sector. Its mandate is the continual improvement of working conditions among its members worldwide, the increase of employment opportunities and the establishment of labour rules. It emerged mostly due to humanitarian, political and economic reasons and to counteract worker exploitation issues.

Founded in 1919, through the integration of its Constitution into the Treaty of Versailles as Part XIII, "Labour" – the I.L.O. is the only surviving institution of the League of Nations system, following the World War I peace negotiations, and was an included topic in the agenda of the peace Conference. From an economic perspective, it was considered that states with poorer labour standards should be prevented from gaining a competitive advantage over the states with higher standards, in addition to being realized the different states were becoming more and more economically interdependent. (Alcock, 1971). Furthermore, the struggle for social justice sought to build the foundation for international peace by strengthening freedom of association and in particular the rights of trade unions. It has also been observed in later years by historians, that it was also a move with global political ramifications, seeking to alleviate the tense situation created by the October Revolution in 1917 and the creation of the communist party-led Soviet Union. (Halonen & Liukkunen, 2021)

The above stated facts are the reason of the I.L.O. unique structure, the principle of tripartism. National delegations contain representatives of governments, employers and workers' organizations, allowing them to participate not only in the discussions but also in decision-making processes. (Christodoulou-Varotsi & Pentsov, 2007)

In its founding year, the I.L.O. had 42 members, by 2021, the number has risen to 187 members. The standard procedure to enter the I.L.O. contains, among others, the obligation of the potential

¹¹ <https://www.ilo.org/global/about-the-ilo/history/lang--en/index.htm>

members to formally accept the I.L.O. Constitution and the Declaration of Philadelphia.
(Halonen & Liukkunen, 2021)

The legislative activity of the I.L.O includes the adoption of international labour standards in the form of Conventions open for ratification and legally non-binding recommendations, both instruments covering all policy areas relating to employment and working conditions. The I.L.O. monitors and controls the application of its standards through supervisory procedures, along with several standing or ad hoc committees responsible for administrative, technical, legal matters.

The Governing Body (GB) is the executive council of the I.L.O. and it is responsible for setting the policy and budget, the preparation of the agenda of the annual International Labour Conference, the following-up to decisions taken at the I.L.C. and the election of the Director-General with a 5-year term, the leader of the International Labour Office which is the permanent secretariat of the I.L.O and the focal point of all I.L.O. activities.

The legislative organ of the I.L.O. is the annual International Labour Conference (I.L.C.), which takes up international labour legislation procedures as well as making declarations, approving the budget, and electing the G.B. Each member state is represented by four delegates - two governmental representatives, one employer representative and one worker representative at the I.L.C, which meets annually in Geneva. The instruments adopted by the I.L.C. can either take the form of a legally binding Convention or a non-legally binding recommendation and both are adopted by a 2/3 majority decision.

A notable development is the adoption of the Declaration on Fundamental Principles and Rights at Work in 1998, which include the freedom of association and collective bargaining, the abolition of forced labour, the elimination of child labour and discrimination in occupation and at work, and are absolutely obligatory for all state members of the I.L.O. (Basu, et al, 2003)

2.2. THE I.L.O. & THE GLOBALIZATION CHALLENGE

The effect of Globalization started coming into effect with the invention and use of new technologies and at first was largely considered to involve a division of labour related to increasing production efficiency, appearing to provide unprecedented opportunities for economic

growth, not to mention improved health and wellbeing for all working citizens. It also was the prevalent cause for the rise and flourishing of multinational enterprises and their drive towards streamlining their operations by outsourcing many of their functions. In addition, they showed a strong desire to seemingly want to form independent communities of their own, outside the jurisdiction of any country. (Orbie & Tortell, 2009)

The role of nation states as defenders of their people became weaker. It was not long before the workers and labour representatives of different countries were becoming concerned that people and their needs would be sidelined by globalization. At the same time, the governments were blamed for not protecting their citizens against problems like rising unemployment and their growing inability to properly check the practices of multinational corporations. (Marzán 2015)

Their size was a challenge not for governments but also for the union movement as the labour force was becoming more and more economically and culturally diverse and spread around the world, making attempts for establishing collective organizations more and more difficult. (Delaney, et al, 2015)

Another point to be made is that although nation states tend not be controlled by individual companies, the financial, and thereby political, influence of multinational corporations has greatly increased in the recent years.

In order to manage this emerging polarized situation, the I.L.O. decided to establish a World Commission to investigate the social dimension of globalization, granting representation to employers, governments, unions, academia, social and economic scientists, and civil society from nations around the world. It made proposals to move away from the previous narrow, production-centric thinking towards a broad-based approach attentive to the needs of the modern workers and making efforts to promote social dialogue via collective bargaining, respect for human rights in working life and good governance according to the I.L.O. labour standards. (Halonen & Liukkunen, 2021)

The World Commission still places faith in the nation states because, at the moment, the state is the largest unit that people can impact, therefore their best chance for the aforementioned issues to be promoted, discussed, and improved upon. It acknowledges that globalization effect is here to stay and grow but requires social justice to be observed in its implementation and offers

suggestions for the states to invest in workers through promotion of education programs and work-related institutions and for the workers to commit life-long learning practices. The basis upon which the Commission bases its proposals stems from the adoption of the idea of “decent work”.

2.3. THE CONCEPT OF DECENT WORK

The globalization has led to an increase in forms of work that are not covered by traditional labour law, giving rise to no contract-based employment, especially in the developing countries. In an attempt to safeguard basic humanitarian principles like social equity and respect for human rights and to uphold labour standards, the I.L.O. has introduced the concept of “decent work”.

The decent work concept emphasizes that the social rights of labour are universal and is constructed from for strategic objectives: (Fish & Turner, 2015)

- Provision of and right to meaningful, gainful employment
- Safeguard and assurance of fundamental working rights like minimum number of wages and decent work-hour schedule
- Right to social protection by access to healthcare, pension etc.
- Right for social dialogue as a way for workers to collectively negotiate on work related matters

The I.L.O. has stressed the need to develop social and economic systems that guarantee basic security and employment rights that also adjust to rapidly changing circumstances in a global market. It remains an arduous process as it requires developing labour policies while at the same time balancing between job creation, employment protection and retaining competitiveness in global scale. (Halonen & Liukkunen, 2021)

With so many developing countries still existing in the world today, the task of safeguarding the humanitarian and labour rights of workers in the advent of globalization, remains of paramount importance for the I.L.O. The effects of these processes may have varying degree of success, but they still contribute to the establishment of the unique economic and employment landscape of

each of these countries, influencing the norms and culture of their people, affecting their perspective on employment and their choices. (Marzán, 2015)

Almost all of the maritime employees on board, or seafarers, are coming from developing countries, and the maritime industry has a globalized scale of operations, so, unsurprisingly, these matters affect them deeply and some insight as to these effects is deemed necessary.

2.4. I.L.O. & SEAFARERS

2.4.1. IMPORTANCE & UNIQUENESS OF THE SEAFARING PROFESSION¹²

Seafarers are one of the most essential trade groups to international trade and the international economic system, seeing as an estimated 90 per cent of world trade passes through maritime or river transport. This number is expected to grow even more in the future due to the fact that vessels are becoming safer, able to transport larger amounts and goods and therefore cheaper, utilizing economies of scales. It is also one of the most unique groups of workers existing worldwide, namely due to the specific conditions of their work.

Primarily, for seafarers, the vessel is both a workplace and a home, and are cut off from the general society for large periods of time. Furthermore, the maritime industry is becoming more and more regulated, and the specific character of these laws and regulations is quite distinct from those of the general land-based types of employment. (Chaumette, 2016)

Additionally, there exist a decent number of inherent risks to the maritime profession, including

- natural risks like ones caused from perils of the sea,
- technical risks, like accidents caused by operating heavy mechanical equipment and most importantly,

¹² <https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/seafarers/lang-en/index.htm>

- “social” risks, historically being victims and targets of various kinds of malpractices, including refusal of payment of wages, repatriation, medical treatment, provision of adequate supplies etc.

Thus, the I.L.O. has realized from the early stages of its existence the importance and the need for adoption of separate Conventions and Recommendations dealing specifically with seafarers and it has been felt necessary to provide them with special protection. The regulation of the conditions of seafarers’ work occupies a unique place in the I.L.O.’s standards by as early as the 1919 Paris Peace Conference, when a resolution that seamen should be dealt with at a special meeting of the I.L.O., devoted exclusively to the affairs of seamen, was adopted. Furthermore, The Joint Maritime Commission (J.M.C.) was established as a bipartite standing body, that provides advice to the Governing Body on maritime questions including standard setting for the shipping industry. (McConnell, et al, 2011)

2.4.2. I.L.O. MARITIME CONVENTIONS

The I.L.O. has adopted over 70 instruments (41 Conventions and the related Recommendations) at special maritime sessions of the International Labour Conference. They can be subdivided into 6 major groups:

- Standards of General Character, establishing general rules applicable to matters relevant to the maritime profession
- Access to employment, establishing regulations for matters like minimum age requirements, standards of medical examinations, training, necessary qualifications, identity document standards, recruitment standards
- Conditions of work and relevant procedures, hours of work, rest, leave, repatriation
- Safety, Health and Welfare and accommodation of seafarers
- Labour Inspection of seafarers working and living conditions
- Social Security

The above-mentioned instruments were consolidated with the Maritime Labour Convention 2006, with the exception of Convention No. 185(standards of seafarer’s identity documents). M.L.C. 2006 will be discussed later in greater length. Convention No. 185 remains till today an

active instrument of I.L.O., establishing a more rigorous identity regime for seafarers with the aim of developing effective security, freedom of movement for the seafarers via ease of international transit and shore leave without visa requirements. It remains independent of the M.L.C. 2006, as many member states may be unwilling to ratify it since it concerns them for national security reasons, not wanting to allow such ease of access to nationals of other certain ratifying member states. (Christodoulou-Varotsi & Pentsov, 2007)

2.4.3. THE NEED FOR CHANGE – ROAD TO THE ADOPTION OF THE M.L.C. 2006

At the start of the 21st century, there were calls from many interested parties in the maritime industry for changes needed to be made in the I.L.O. maritime structure. One of the main concerns for both seafarers and shipowners was that these international standards were still not having a sufficient impact on the working and living conditions experienced by seafarers. Many of the conventions were dealing with a single issue, thus, they were unevenly ratified, implemented and enforced and keeping each and every one of them sufficiently up to date, had proven a major challenge. Furthermore, they were excessively detailed, making many member states uninterested in ratifying them and possessed no legal mechanisms to provide for rapid changes to their standards and to keep pace with developments in the shipping industry. The fact that international conventions such as S.O.L.A.S., S.T.C.W., and MAR.POL at the time had been ratified from the majority of the state members, in contrast to most of the I.L.O. conventions who had been ratified from a very few members, was indicative of the need for change. (McConnell, et al, 2011)

The globalization effect, coupled with the structural developments and emerging trends in the industry, including frequent changes in vessel ownership, the financing and management of shipping fleets, new forms of registers, accelerated shift from traditional maritime registers to alternative registers, shifts in the origin of labour supply, the growth of multinational and multicultural crews, and reduced manning levels had made a major impact on the lives of seafarers. The I.L.O. standards were struggling to keep the pace of these developments, with slow amendment procedures and were inadequately applied and unevenly enforced, creating a burden for operators that wished to provide “decent work” conditions. (Piñeiro, 2015)

It had also become evident that the national regulatory regimes had been weakened and there were attempts to avoid national social regulations, as a means of survival in a highly competitive international environment and due to the requirement of mandatory compliance with an increasing number of technical standards. Many of the Seafarer members considered that the current system provided a financial incentive for substandard operations including conditions of work, while the Shipowner members thought that common labour standards would provide operators with a level playing field in regard to competitiveness based on cost. (Piñeiro, 2015)

In such, it was apparent that there was the need an international regulatory standard applicable to the entire industry. It was their belief that international regulation rather than national regulation of maritime labour standards and a new universal approach to the regulation of working and living conditions of seafarers were urgently needed, accompanied by an appropriate enforcement mechanism. Such regulations were to be up to date, widely accepted, and properly enforced irrespective of the flag of the ship, the nationality of the seafarer, or the visiting port.

They voiced these concerns during the 2001 J.M.C. convention in Geneva and proceeded to offer a draft of the eight preferred solutions of the seafarers and shipowners, laying the foundation for the discussions that lead to the elaboration, negotiation, and adoption of what was to become the M.L.C. 2006. (McConnell, et al, 2011)

CHAPTER 3: THE MARITIME LABOUR CONVENTION 2006 – M.L.C. 2006

3.1. INTRODUCTION OF THE M.L.C. 2006

3.1.1. HISTORY & PURPOSE OF THE M.L.C. 2006

The M.L.C. 2006 is the outcome of the attempt at updating and consolidation of most of the existing I.L.O. Standards, and Recommendations, concerning the maritime industry, into a single Convention, initially modifying existing standards and updating matters of detail that were not considered to give rise to controversy or to resolving inconsistencies among the Conventions concerned. (McConnell, et al, 2011)

It was adopted on February 26, 2006, and came into effect in August 2013, 12 months after the ratification of the required number of 30 member states with ownership of at least 33% of the world tonnage registered in their registries and is regarded as the “fourth pillar” of the international maritime regulatory regime’, together with three key International Maritime Organization conventions. Being under the umbrella of the I.L.O., it retains its tripartite form of organization. (Adăscăliței, 2014)

Answering the calls for needed change and improvement, it makes an effort to streamline the human, labour, and social rights for seafarers within the maritime industry and provides the “level-playing field” type of competition that no longer unequally burdens shipowners with goodwill to provide the decent work, living conditions on-board. (Zhang, 2016)

The fundamental rights and principles of seafarers i.e., freedom of association, elimination of forced and child labour and elimination of all kinds of discrimination provided in a distinct article of the convention, retaining the I.L.O. provision of “decent work”. The seafarer’s rights to safe and secure workplace, to fair terms of employment, decent working/living conditions, to access to security are also provided in kind, with the Member States being responsible for their implementation. (Articles III, IV)¹³

¹³ <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:91:0::NO::>

The M.L.C. 2006 signals a change in the way that global labour rights are governed in the maritime industry but, even more significantly, ‘it sets a precedent for labour rights at global governance generally’. From a legal and institutional perspective, ‘labour and social rights in the maritime sector uncomfortably straddle both shipping and labour expertise and practice’. Thus exists ‘the challenge for the implementation of international conventions that are at the intersection of maritime and labour law’. (Zhang, 2016)

In part this is because the international maritime regulatory regime is based on the international law of the sea and flag State and port State responsibility, while labour law, even if implementing standards in international conventions, is by contrast, more concerned with domestic regulations. (McConnell, 2011) Still, the M.L.C. allows the national legislations to regulate the working and social position of seafarers in the spirit of their national legal and political system, and thereby meet the highest standards set by the Convention. (Bauer, 2008)

3.1.2. FUNDAMENTAL CONCEPTS OF THE M.L.C. 2006

One the key goals of this move was to combat the aforementioned issues of the I.L.O. standards in (low levels of ratification, slow amendment procedures), aiming instead for ratification and implementation of as many member states as possible. To achieve this, the no more favorable treatment” provision was introduced, by which, vessels flying flags of states that have not ratified the M.L.C. 2006, when inspected from authorities of states that have ratified the M.L.C., they will not obtain more favorable treatment than vessels flying flags of states that have ratified the M.L.C. 2006. The states that do not ratify the M.L.C. 2006 will continue to implement their respective ratified I.L.O. conventions and be subject to enforcement procedures designated by the relevant I.L.O. supervisory system and the respective national laws. (McConnell, et al, 2011)

Furthermore, the Convention set out to state the content of seafarers’ social and labour rights in firm, but “plain” language so that all seafarers can always be properly and sufficiently informed about them. It forces the shipowners to have in place procedures via the use of management systems that ensure the implementation of the Convention provisions on board the ship and provide seafarers documented ways with which they can file complaints, in cases of non-compliance. (Adăscăliței, 2014)

The use of term “Except as expressly provided” is used on many of the convention provisions governing applicability and implementation, and it provides great flexibility by allowing states the freedom in the way in which the M.L.C. 2006 provisions are implemented in the national context and incentivizes the states to enhance them and “build” further upon them, in the way they see fit. Generous compromises are made due to the realization that meaningful implementation requires a great degree of social dialogue, of successful international negotiations, therefore, allowing for use of collective agreements and taking into account the existence of national particularities and distinct features. (Payoyo, 2019)

There is also an allowance for ‘substantial equivalence’, whereby adequate existing pieces of national legislation could be considered to fulfil the purpose of specific provisions of the M.L.C., thus making the ratification process easier. Additionally, a Member State has the potential to delegate a number of its duties under the Convention i.e., issuing certificates and conducting inspections to 3rd party organizations by providing them with the proper authorization documentation. (Payoyo, 2019)

The Convention applies to all seafarers and all ships, whether publicly or privately owned, ordinarily engaged in commercial activities, other than ships engaged in fishing or in similar pursuits and ships of traditional build, warships, or naval auxiliaries. (Articles II (2,4)) and uses specific definitions to firmly establish its coverage and applicability.

seafarers: Any person who is employed or engaged or works in any capacity onboard a ship to which the Convention applies. (Article II (1f)).

Ship: A ship other than one which navigates exclusively in inland waters or waters within, or closely adjacent to, sheltered waters or areas, where port regulations apply (Article II (1i)).

Of note is the definition of shipowner, which was written specifically to cover all the already existing forms of vessel operation while also trying to anticipate every other possible form that may arise in the future. In this way, the seafarer and all interested parties are aware of the entity responsible for implementing the provisions on board under the Convention.

Shipowner: means the owner of the ship or another organization or person, such as the manager, agent or bareboat charterer, who has assumed the responsibility for the operation of the ship from the owner and who, on assuming such responsibility, has agreed to take over the duties and responsibilities imposed on shipowners in accordance with this Convention, regardless of whether any other organization or persons fulfil certain of the duties or responsibilities on behalf of the shipowner. (Article II (1j)).

3.2. THE STRUCTURE OF THE M.L.C. 2006¹⁴

The Convention consists of three different, but interconnected, parts: the Articles, the Regulations and the Code: The first part consists of the 16 Articles that define the broad principles and obligations of the Members. More specifically, these articles regulate the following:

- (a) General obligations of Members,
- (b) Definitions and scope of application,
- (c) Fundamental rights and principles,
- (d) Seafarers' employment and social rights,
- e) Implementation and enforcement responsibilities,
- (f) Manner of application of the Regulations and Part A and B of the Code,
- (g) Consultation of shipowners 'and seafarers' organizations,
- (h) Terms of entry into force of the Convention,
- (i) Terms and procedure for denunciation,
- (j) Effects of the entry into force of the Convention,
- (k) Duties of the Director-General of the I.L.O., as Depositary,
- (l) Responsibilities and modus operati of the Special Tripartite Committee,
- (m) Procedures for amendment the Convention and its Code,
- (n) Set of authoritative languages (English & French)

In the second part there are the Regulations that define the basic requirements regarding the employment of seafarers and how these requirements must be applied. Essentially, they reflect

¹⁴ <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:91:0::NO::>

the provisions of which must be transposed into the national law of each Member State for the purposes of the Ratification of the Convention

In the third part are the provisions of the Code, divided into parts A and B, similarly to the S.T.C.W. code. In Part A are set the mandatory standards, governing the implementation of the Code. In Part B are the Recommendations of the Code with instructions guiding the implementation of the Code and supporting the provisions of Part A. Part B is labeled as non-mandatory guidelines, though, the shipowners are obliged to at least consider implementing these guidelines.

3.2.1. TITLES & PROVISIONS OF THE M.L.C. 2006

The Regulations, Standards and Guidelines are organized into thematic sections and consolidate the pre-existing I.L.O. Conventions and Recommendations into 5 Titles. Notably, these titles are organized via “vertical integration”, meaning each provisional subject is covered in the Regulations, Standards and Guidelines and retains the same numerical designation in each section, in effect each Regulation has to be read in conjunction with the related Standard and Guideline. This is done, primarily, for ease of amendment procedures and secondly, to fulfill the purpose of being relatively “simple” and accessible to all members. (McConnell, et al, 2011; Adăscăliței, 2014)

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

- 1.1 - Minimum Age: ensures the protection of minors, prohibiting work on board for persons under 16 years of age. Seafarers under 18 years of age are prohibited from working at night and undertaking tasks that are considered dangerous for their health and safety.
- 1.2 - Medical certificate: ensures that all seafarers possess active certificates, verifying their medical fitness and thus their ability to perform their duties at sea without endangering their health and the health of other persons on board
- 1.3 - Training and qualifications: ensuring every seafarer is properly trained and possesses the necessary certificates to work on board, with the shipowner being fully responsible

- 1.4 - Recruitment and placement: ensuring all seafarers have access to an efficient and well-organized system for recruitment and placement, meaning shipowners must only employ manning agencies that are adhering to the Convention provisions.

Title 2: Conditions of employment

- 2.1 - Seafarers' employment agreement: ensures that seafarers strike a fair employment agreement, providing them with decent working and living conditions on board. Contractual terms should adhere to the Convention provisions and with the ability to be incorporated under Collective Bargain Agreements.
- 2.2 – Wages: ensures that seafarers are adequately paid for their services at regular intervals (monthly), in the way stipulated in their employment contract, to the seafarers' choice of beneficiary person and currency and makes statements in regard to overtime issues.
- 2.3 - Hours of work and rest: ensures that seafarers have an upper limit of hours of work and lower limit for hours of rest. This issue is also regulated by the S.T.C.W. convention, and it aims at managing seafarers' fatigue levels, a matter very relevant to the safety of vessel, crew, and cargo. Detailed record keeping is mandatory, and records must be readily available.
- 2.4 - Entitlement to leave: ensures that seafarers receive sufficient time of shore-leave, for preserving his/her mental health and well-being. Each is entitled to 2.5 days paid leave per month of employment and an annual leave at a place of their choice
- 2.5 – Repatriation: ensure that seafarers are provided with enough financial resources by the shipowner to return home after his/her contract's expiration or termination and when the seafarer no longer possesses the ability to perform duties on board (accidents etc.).
- 2.6 - Seafarers compensation for the ship' loss or foundering: ensures that seafarers or their relatives are compensated for injuries sustained, loss of life and the resulting unemployment time period, when a ship is lost or foundered
- 2.7 - Manning levels: ensures that sufficient personnel exist on board the vessel at any given time, to avoid excessive hours of work for the safe, and secure operation of the

ship. The number is determined by the vessel's Class and relevant provisions also exist in the S.T.C.W. and S.O.L.A.S. conventions¹⁵

- 2.8 - Career and skill development & opportunities for seafarers' employment: each Member State is required to develop policies to promote employment in the maritime sector, encourage the construction of appropriate career and skills development programs and provide employment opportunities for seafarers. The purposes of these policies are on the one hand, to meet the manning needs of ships with able, stable, and competent personnel and on the other hand, to help seafarers to strengthen their skills, qualifications and their employment opportunities in the maritime industry.

Title 3. Accommodation, recreational facilities, food, and catering

- 3.1 - Accommodation and recreational facilities: ensures that seafarers have decent, adequate, well-maintained accommodation and recreational facilities on board.
- 3.2 - Food and catering: ensures that seafarers have access to drinking water and food of appropriate quality, quantity, and nutritional value, free of charge, while observing the necessary levels of hygiene.

Title 4. Health protection, medical care, welfare, and social security protection

- 4.1 - Medical care on board ship and ashore: ensures readily available access to medical care facilities ashore, appropriate first-aid procedures present on board and right for doctor visits on board on scheduled port calls, for sufficient protection of the seafarers' physical health and well-being
- 4.2 - Ship-owners' liability: ensures that shipowners are obliged to provide adequate remuneration to seafarers in events of sickness, injury or loss of life and for as long as the seafarer is unable to perform his duties
- 4.3 - Health and safety protection and accident prevention: provides instructions on a technical level to ensure the minimizations of factors like seafarers' fatigue, that may potentially lead to accidents

¹⁵ <https://www.imo.org/en/OurWork/HumanElement/Pages/PrinciplesOnSafeManning.aspx>

- 4.4 - Access to shore-based welfare facilities: ensures that seafarers working on board have access to shore-based recreational facilities and services to safeguard their mental health and wellbeing.
- 4.5 - Social security: ensures that member states take measures to construct systems for providing seafarers with access to social security protection including medical care, leave of absence due to sickness-injury, pension, unemployment benefits, maternity leave etc.

Title 5. Compliance and enforcement

- 5.1 - Flag state responsibilities: ensures that each Member State implements its responsibilities under this Convention in regard to vessels in its registry.
- 5.2 - Port State responsibilities: ensures that each Member State implements its responsibilities under this Convention in regard to implementation and enforcement procedures (inspections etc.) of the standards on foreign vessels visiting their national ports.
- 5.3 - Labour-supplying responsibilities: ensure that each Member State implements its responsibilities under this Convention in regard to the provisions governing seafarers' recruitment, placement systems and access to social security.

3.3. AMENDMENT PROCEDURES OF THE M.L.C. 2006

3.3.1. INNOVATION IN AMMENDING A CONVENTION¹⁶

A key issue of the previously in force I.L.O. regime had proven to be the low level of Convention ratifications and the slow and inadequate process of updating the I.L.O. conventions, therefore, a new and improved amendment procedure was required, a fact that was evident to everyone even at the first stages of the discussions that eventually brought about the M.L.C. 2006. (McConnell, et al, 2011)

The first step, naturally, would have to be the ease of ratification process of the M.L.C. 2006 from the Member States, as the primary target of The Convention was to be ratified by as many

¹⁶ <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:91:0::NO::>

States as possible. The article XIV provides in its paragraphs extent descriptions of the ways that a particular State's ratification process of the M.L.C. 2006 will be handled, in case an adoption of an amendment to the Convention, so that the ratification process is not hampered or delayed and mostly requires the amendment communication to them promptly. (Article XIV (2,6,8,9))

The amendment procedure of the Convention remains in par with the framework set by the rules and procedures of the I.L.O for the adoption of Conventions (Article XIV (1)). Amendments are considered accepted when they have been ratified by at least 30 Members with a total share in the world gross tonnage of ships of at least 33 per cent. It's a departure from the I.L.O.

Conventions' requirements of 2/3 of all Member States, making it much easier to reach the required goal, while also taking into account the increased significance of the M.L.C. for the Member States with high numbers of vessels on their registries. The entry into force of the amendment will happen 12 months after the aforementioned acceptance or 12 months after the date of which a member's ratification has been registered, whichever date is later, leaving a decent amount of period of grace for the shipowners to properly adjust their vessels' operations and the states to properly adjust their enforcement procedures.

Another great departure from the I.L.O. norms, comes from the Article XV provisions and it involves specifically the amendment procedure for the Code of the M.L.C. 2006. The Code relates to the technical aspect and to the implementation of the obligations under the Convention and therefore needs more accelerated ways of amendment, coming closer in essence to the amendment procedure provisions of the I.M.O. conventions.

Notably, a proposal from at least 5 ratifying Member states for amendment to the Code, can be considered by the Labour committee and accepted after the relevant voting procedures occur. (Article XV (4)). Ratifying members can express their disagreement within 2 years of the proposal so, as not to be burdened by the amendment, and only if at least 40% of the Member states with at least 40% gross tonnage ownership, express their disagreement, will an accepted proposal be stopped in its tracks. An accepted amendment will come into force 6 months later, although by properly notifying the Director-General, a Member state can achieve postponement to this date, up to a year from date of entry into force. (Article XV (8,9,10)).

3.3.2. HISTORY OF AMENDMENTS OF THE M.L.C. 2006¹⁷

As of September 2021, 3 amendments to the Code have taken place since the M.L.C. 2006 came into force in August 2013. The amendment procedure transpired in a similar way for all 3 cases, and involved:

1. the proposal of an amendment
2. the voting procedure in the S.T.C. (Special Tripartite Committee) meeting
3. the approval during a session of the I.L.C. (International Labour Conference) 3 to 6 months later
4. the proper notification of the Member States for the approval by the I.L.C. within a month
5. the intended 2 years' time period for Members to formally express their disapproval
6. the 6 months grace period after the end of the 2 years' time period, when the amendments came into force

AMENDMENTS OF 2014¹⁸

Amendment to the Regulation 2.5 and its sections of the Code, involving the issue of repatriation of a seafarer in the case of abandonment, including the provision of financial security, the definition of abandonment, the nature and form of financial security, the nature of certification verifying the existence of financial security.

Amendment to the Regulation 5.2 and its sections of the Code, involving the issue of provision of financial security in the events of seafarer abandonment, loss of life and long-term/permanent disability and the responsibilities of the shipowner in regard to them.

Relevant provisions in regard to the type and nature of the new documentation and certification needed for both amendments, were made available in the Appendix section of the Code.

¹⁷ <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:91:0::NO:::>

¹⁸ https://www.ilo.org/dyn/normlex/en/f?p=1000:51:::NO:51:P51_CONTENT_REPOSITORY_ID:3257890

AMENDMENTS OF 2016¹⁹

Amendment to the Regulation 4.3 and its sections of the Code, supplementing the existing provisions to take into account the issue of shipboard discrimination, harassment and bullying. Amendment to the Regulation 5.1 and its sections of the Code, determining the outcome in the event a vessel exhibits “maritime labour compliance” after inspection but cannot physically receive the corresponding Maritime Labour Certificate. The certificate’s model form is also updated, and the added content is provided in the M.L.C. Appendix section.

AMENDMENTS OF 2018²⁰

Amendment to the Regulation 2.1 and its sections of the Code, involving the issue of the seafarer’s employment agreement fate in the events of piracy, armed robbery and their respective definitions.

Amendment to the Regulation 2.4 and its sections of the Code, involving the issue of wage payment in the events of piracy, armed robbery.

Amendment to the Regulation 2.1 and its sections of the Code, involving the issue of seafarer’s responsibility in promptly claiming his/her repatriation entitlement.

3.4. M.L.C. 2006 & P&I CLUBS

Under the provisions of the M.L.C. 2006, there are numerous events which lead to shipowners’ liability. Even though the M.L.C. does not expressly require insurance, as the text references the use of a ‘financial security system’, leaving it to the Member States to decide the form, after consultation with shipowners’ and seafarers’ associations, it has been observed that insurance is a convenient way of fulfilling some of its requirements, and these can be provided by fixed premium insurers and by P&I clubs. (Petrinović, et al, 2017)

¹⁹https://www.ilo.org/dyn/normlex/en/f?p=1000:51:::NO:51:P51_CONTENT_REPOSITORY_ID:330397

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²⁰https://www.ilo.org/dyn/normlex/en/f?p=1000:51:::NO:51:P51_CONTENT_REPOSITORY_ID:395296

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Representatives of the International Group Of P&I Clubs have always present in the meetings of the S.T.C. (Special Tripartite Committee), since the adoption of the M.L.C. 2006. They have intervened and made suggestions relating to the drafting of several M.L.C. provisions, for instance, the subrogation to seafarers' rights, as well as the definition of 'contractual claim'²¹, showing how their influence extends to the general architecture of the Convention. Many of these suggestions are the product of extensive dialogue with the shipowners and representatives of Member States, so as to attempt to find a common approach in implementing these provisions.

As of 2009, P&I clubs have agreed to cover repatriation costs following insolvency of the shipowner, to provide the financial security needed for the repatriation of seafarers, including those held captive by pirates. Similarly, they have their intention not to apply the rule concerning retrospective withdrawal of coverage for the non-payment of premiums in relation to crew claims for loss of life or long-term disability, with the compensation to be paid without delay. (Petrinović, et al, 2017)

3.5. IMPLEMENTATION & ENFORCEMENT OF THE M.L.C. 2006

3.5.1. FLAG STATE CONTROL

Countries that have ratified the M.L.C. 2006 must ensure that vessels under their registry comply with the Convention's requirements, by providing them with the relevant certifications. They are also responsible for inspecting the foreign ships entering their ports for compliance with the Convention.

Before certifying a vessel, each Flag State must inspect the working and living conditions of seafarers in regard to:

1. Minimum age
2. Medical certification
3. Qualifications of seafarers
4. Seafarers' employment agreements

²¹https://www.thomasmillerspecialty.com/fileadmin/uploads/tms/Documents/Product_Documents/Seafarer_Abandonment/MLC_TERMS_AND_CONDITIONS- TMS_WEBSITE_VERSION.pdf

5. Use of any licensed or certified or regulated private recruitment and placement service
6. Hours of work or rest
7. Manning levels for the ship
8. Accommodation
9. On-board recreational facilities
10. Food and catering
11. Health and safety and accident prevention
12. On-board medical care
13. On-board complaint procedures
14. Payment of wages

Vessels that weigh above 500 G.T. on international voyages or operating between a port in one country and ports in another country are obliged to also be certified under the Convention by the appropriate Authority of an authorized Recognized Organization. (M.L.C. Regulation 5.1.3). The same can apply to vessels without the above-mentioned characteristics, at the request of the shipowner, for voluntary compliance. The Members are to provide and keep updating the list of their approved ROs to the I.L.O., after reviewing the individual R.O. competency (M.L.C. Regulation 5.1.2).

During inspections, the authorities must make sure that these vessels carry the appropriate certifications on board, in the prescribed format under the Convention and that the shipowners have established necessary procedures and systems for ongoing and continuous compliance. (M.L.C. Regulation 5.1.3).

3.5.2. CERTIFICATION UNDER THE M.L.C. 2006²² (Wu & Jeng, 2012)

Maritime Labour Certificate

It is issued after inspection and successful verification of inspect the working and living conditions of seafarers and remains valid for up to 5 years, then subject to the renewal inspection, with an intermediate inspection conducted between the second and third anniversary

²²https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:91:0::::P91_SECTION:MLCA_AMEND_A5

of issuance. During this time, the vessel must exhibit continuous compliance with the Convention and take corrective actions promptly when needed or when deficiencies are observed, at the risk of the certificate's withdrawal. Furthermore, its validity is depended on the on-time and successful completion of the inspections, as specified by the Convention, and when the vessel changes its flag, ownership, or substantial percentage of its structure/equipment.

Interim Maritime Labour Certificate

It is issued to vessels on an interim basis for a period of time not exceeding six months in the cases of newly delivered ships, flag change, ownership/responsibility for operation change. It is the product of verification of certain facts:

- Shipowner has successfully demonstrated the presence of adequate systems and procedures for Convention compliance.
- Master has demonstrated his/her familiarity with the Convention requirements and responsibilities for implementation.
- Relevant information has been submitted to the competent Authority or RO for the production of a declaration of maritime labour compliance.

D.M.L.C. (Declaration of Maritime Labour Compliance)

It consists of two parts. The first is drawn by the competent Authority and identifies the list of matters to be inspected and the requirements under national legislation by referencing the appropriate Convention provisions. It also identifies, again under national legislation, the ship-specific requirements, substantial equivalences, and exemptions to title 3 requirements. The second part is drawn by the shipowner by the and identifies the measures adopted to ensure ongoing compliance with Part I and the measures to ensure continuous improvement.

A current valid Maritime Labour Certificate must always be attached to the D.M.L.C., which must be posted in a conspicuous place on board for ease of access and perusal by seafarers, Port Flag State officials. In the recommendation section of the Code, it is stated that the D.M.L.C. should be drafted in clear terms to promote understanding and reduction of deficiencies, while the Master and Company should keep themselves updated and capitalize on advances in new technologies, which can improve the implementation of ongoing compliance with the Convention.

Quite interestingly, the 5 following items are to be inspected only and are not noted on the D.M.L.C. (McConnell, 2011)

- Entitlement to leave – Regulation 2.4
- Repatriation – Regulation 2.5
- Shipowner’s Liability – Regulation 4.2
- Social Security - Regulation 4.5

3.5.3. P&I CLUBS ON M.L.C. IMPLEMENTATION & CERIFICATION (Petrinović, et al, 2017)

In regard to the seafarers’ rights under the M.L.C., the best way of complying with the provisions on mandatory financial security in case of abandonment, loss of life, disability incurred while working, is through P&I liability insurance, as the seafarer will possess an important and direct claim towards the liability insurer and will require prompt reimbursement.

All Clubs in the International Group of P&I Clubs have jointly addressed the matter of M.L.C. implementation, have issued several Circulars on the M.L.C., Amendments to M.L.C. and have agreed to provide their members with M.L.C. certification as required by the Convention, namely for repatriation and financial security.

They are responsible for issuing announcements informing their members on the application process for M.L.C. Certificates. The application process is common for most clubs and involves the Club members (shipowners) applying for Certificates on a basis of per vessel or per fleet. After submitting the application to the club, it will issue its member the relevant M.L.C. 2006 Certificates.

3.5.4. SHIPBOARD COMPLAINT SYSTEM

Each Member State obliges vessels under its flag to provide on-board procedures for handling seafarer complaints on any alleged breach of M.L.C. requirements in a “fair, effective and expeditious” fashion (M.L.C. Regulation 5.1.5).

The responsibility for investigating and resolving complaints remains with the flag state, therefore, authorized officers must be present in ports to handle potential complaints from

seafarers. Considering the nature of the complaints, the officer shall undertake an initial investigation, followed by an inspection, seeking whenever possible to promote resolution at shipboard level. If resolution is impossible, the flag state is notified and called to action, followed by the officers of the I.L.O., if the issue persists.

Every seafarer, to the lowest rank, will have a right to participate in the complaints procedure, a right for legal representation, and be able to approach the master directly or contact appropriate external authorities. Consequently, all seafarers are provided with a copy of these procedures with all the relevant authorities contact information, to ensure the receipt of impartial assistance. Victimization of seafarers for filing a complaint is strictly prohibited and appropriate safeguards against it must be in place. (Doumbia-Henry, 2017)

3.5.5. PORT STATE CONTROL & DETENTIONS

Each Member must implement its responsibilities under the Convention, in regard to international cooperation in the implementation and enforcement of the Convention Standards on foreign ships. Each of these ships may be subject to inspections for the purpose of reviewing compliance with the requirement of the Convention. Inspections are conducted on a sample basis with priority given to vessels with the existence of pending complaints, ship's risk profile or indications of threats to the safety of the ship.²³ (M.L.C. Regulation 5.2.1)

The presence of a Maritime Labour Certificate and a Declaration of Maritime Labour Compliance on board, is considered as prima facie evidence of vessel's meeting the standards of implementation of the M.L.C. 2006, and the inspector must ensure the documents are properly maintained and contain valid information. The working and living conditions on the ship are to be reviewed for compliance with the Convention and evidence of non-conformity shall give clear grounds for detailed inspection, to ensure the safety, health, and security of seafarers. Any deficiencies found should be brought upon to the master's attention along with a deadline for rectification. In the cases of conditions onboard found to be hazardous to the safety, health and security of seafarers or serious/ repeated breaches of Conventions requirements, the vessels will be detained until the non-conformities are resolved.

²³ https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_696344/lang--en/index.htm

Port State inspections are, for the most part, carried out under the regional Memorandum of Understanding (M.O.U.) on Port State Control. Created as a way to assist, streamline, and accelerate the flow of world trade, it is the official agreement between participating Maritime Authorities implementing a harmonized system of Port State Control. They are geographically based with the biggest and most important ones being the Tokyo M.O.U., Paris M.O.U. and Black Sea M.O.U. (Doumbia-Henry, 2017)

Most common issues regulated in these agreements include²⁴:

- the relevant international conventions
- their inspection commitments
- the principles for the selection of ships for inspection
- the inspection procedures
- the exchange of information on inspections
- the structure of the M.O.U. organization, the Secretariat
- amendment procedures of the Memorandum itself

Before the introduction of the M.L.C. 2006, technical issues relevant to the safe operation of ships and marine pollution used to be the primary tasks during a port State inspection, under the International Maritime Organization (I.M.O.) Conventions, with issues about labour, working and living conditions not seen as important. (Lillie, 2008)

With the entry into force of M.L.C. 2006, M.L.C. 2006 is a ‘relevant instrument’ for the port State control inspections according to Paris M.O.U. The P.S.C. may detain a ship if there are serious deficiencies located: (a) conditions on board are clearly dangerous to safety or health of seafarers; (b) seriously or repeatedly failing to meet the requirements of the Convention (including rights of the seafarer). Most commonly, detainable deficiencies belong to areas “Accommodation, Recreational facilities, Food and Catering” and “Conditions of Employment. (Grbić, et al, 2015)

In practice, detentions only occur in a minority of cases when deficiencies are detected, with shipowners promising to remedy the deficiencies and the vessels being subject to subsequent inspection by next port call. They were rare, even at start, for M.L.C.-related deficiencies,

²⁴ <https://www.parismou.org/inspections-risk/library-faq/memorandum>

accounting to around 7.4% of total detentions and were attributed mainly to poor working and living conditions, absence of seafarers' employment contracts, non-payment of seafarers' wages, inadequate manning levels. (Grbić, et al, 2015)

Further studies have also shown that after a couple of years of M.L.C. implementation, the deficiencies and the detentions attributed to M.L.C. issues were not connected to the flag State of the ships, but proved a meaningful correlation between the age of the ship and the tendency to not comply with Convention's requirements. It is an interesting realization, as shipowners are by far the most responsible for ensuring their crews' welfare, and their strategies in recent years have shifted from relying exclusively in the competitive edge provided from flags of convenience. The Convention using the 'no more favorable treatment' clause has managed to blunt the gap between open and national registries, with more speculative shipowners relying on older ships. (Payoyo, 2019)

The port state control has seen some success in improving standards in the industry but has serious limitations. Vessels nowadays remain in port for limited amount of time thus thorough inspections are impossible to perform. Detentions are the most severe penalty possible for non-compliance and the ramifications call only for corrective and no punitive actions. In essence, the financial hit taken by a delay in operations, resulting from time spent to rectify non-conformities, is the only real deterrent for shipowner substandard practices. Furthermore, in times of high levels of port congestions, the number of inspections tends to be limited, giving the chance to the shipowner for evasion of compliance. (Fotteler, et al, 2020)

On the bright side, by tightening P.S.C. enforcement, some flag States have responded by raising standards and deregistering substandard shipowners, realizing that more rigorous flag state inspections can result in less non-conformities being found by the port state authorities. In this way, responsible shipowners receive less scrutiny, streamlining the inspection process. (Payoyo, 2019)

3.6. M.L.C. SHORTCOMINGS

The M.L.C. may have solved or alleviated, depending on the case, many issues that concerned the livelihood and social, labour rights of all seafarers around the world, but has also faced criticism regarding several matters that seemingly need to be looked upon. Some of these factors are:

- No minimum amount of wages is set. This is an issue with varying ramifications to the various interested parties and has resulted in the growing trend of locating and acquiring crews of nationalities from states with cheaper wage levels. On the one hand, the vessels' operating costs are lowered but on the other hand, it makes seafarers coming from states with high wages, less competitive in the global labour market, thus forcing his/her exit from the maritime industry, therefore diminishing the number of available seafarers, and lowering the overall skill level. (McLaughlin, 2012)
- No right for seafarers to strike. The right to strike is a fundamental right of all workers for centuries, but in the case of seafarers, the matter becomes complicated. Due to the nature of their profession, they are largely isolated from their co-workers, rendering any such efforts of coordinated actions particularly challenging. Furthermore, it has been stated many times already that seafarers are responsible for a very large amount of the world trade, and disruptions to it may have severe consequences for the economic livelihood of billions of people ashore. (Bauer, 2008)
- No limit to minimum duration of seafarers' annual leave. Similarly, to staying for long periods of time onboard, insufficient amount of time spent ashore can have detrimental effect to the seafarer's fatigue level due to consecutive voyages, in addition to their mental state, as they will have insufficient time for socializing and spending time with their relations. (McConnell, et al, 2011)
- Seafarers' Responsibilities are not clearly defined. For the most part, the convention sets about to define the seafarer's rights and the obligations of the rest of the Parties but falls short on determining the responsibilities of seafarers or possible sanctions when they are found liable. The recent amendments have started to address this issue by, for example, setting the responsibility of the seafarer to claim his/her right of repatriation within a

reasonable period of time, although it is apparent that there remain a lot of actions needed to be taken in this direction.

- No clear definition of legal jurisdiction. In various processes that concern the maritime industry, like claims handling, provisions have been introduced in regard to defining the relevant legal jurisdiction, to resolve potential disputes. The M.L.C. 2006 has no such provisions, thus making the disputes resolution an arduous process and forcing the contractual parties to spend a lot of time and effort in contract construction. (Christodoulou-Varotsi, 2012; Lavelle, 2013)

CHAPTER 4: METHODOLOGY

The covid-19 pandemic has emerged abruptly in our lives being classified as such in February 2020. Its recent appearance suggests that available published literature on the dissertation's subject matter is quite scarce. Furthermore, due to travelling restrictions imposed and the international nature of the maritime industry, causing seafarers to be scattered all around the world, researchers acknowledged difficulties in acquiring a diverse sample of research respondents. Even though the M.L.C. 2006 applies to cruise vessels, since no cruise voyages were conducted during the pandemic, only data gathered explicitly from research conducted on cargo vessels, is used.

Information on the nature of the virus, its effects on the health of the carriers, the strategies introduced in an attempt to counter its spread, the maritime industry's response in regard to seafarer matters, and its ramifications on the lives of seafarers was acquired from research published on established scientific journals, specialized in medical and maritime matters, from February 2020 to August 2021.

Google Scholar was utilized as a meta-research tool in locating the aforementioned sources on various academic online databases. A variety of keywords was used to facilitate this search including, covid-19 maritime, covid-19 seafarers, covid-19 crew, maritime labour, M.L.C., M.L.C. provisions. For the issue of seafarer welfare, the same tool was used, but with the timeframe extended to the last 10 years and keywords including crew welfare, seafarer welfare, seafarer lives, seafarer health.

The sources selected for use were chosen on the basis of their contents aligning with the dissertation's purpose and the dissertation's keywords. Those with low relevance to the subject matter were ultimately discarded.

In matters where research was deemed inadequate, it was supplemented by including newsletters published from representatives of national legislation bodies, citing emergency measures taken during the pandemic era. Furthermore, annual reports from public organizations like maritime M.O.U.s were reviewed, cataloguing their findings related to M.L.C. 2006 provisions. Lastly, journalism pieces published in various news outlets were utilized, found from internet searches and published during the same timeframe. Credibility was of paramount importance when

assessing them, so I opted for those that have existed for at least 10 years and possess a proven track record at reporting maritime matters.

CHAPTER 5: THE COVID-19 VIRUS & THE NEW MARITIME REALITY

5.1. THE VIRUS

The novel coronavirus disease, or COVID-19, as it was officially named by the World Health Organization (W.H.O.) on February 11, 2020²⁵, has become a severe health crisis, in the last 1.5 years. First identified on December 31, 2019 in Wuhan city, Hubei Province, China, it has managed to spread all over the world, at a very fast pace, which led to the W.H.O. declaring it a pandemic on March 12 2020.

Epidemiologically, patients present symptoms like fever, cough, and shortness of breath, resembling the pneumonia disease and very rarely gastrointestinal symptoms like nausea, although most patients do not show any symptoms whatsoever. Furthermore, the virus incubation period is usually at 5-7 days, which means patients are asymptomatic carriers for this period and therefore can spread the disease easily, without their knowledge. (Battineni, et al, 2021)

The covid- 19 virus mainly transmits between hosts through the respiratory route with high efficacy. Droplet transmission through inhaling-exhaling is the main recognized route, making the use of facemasks the most effective way to limit exposure to the virus. It has also been detected that droplets on inanimate surfaces like door handles, tables, cell phone surfaces have been a prevalent way of transmission, so frequent sterilizing of commonly used areas has become a necessity. (Ciotti, et al, 2020)

Worldwide, as of September 18, 2021, there have been 228,534,964 cases reported worldwide, and 4,695,290 of deaths²⁶, rising steadily since the start of the outbreak, which made many governments around the world take several measures to limit the spread of the virus, including closing their borders and imposing travel restrictions. This resulted in ports, airports and train stations being closed, while allowing only the trade of goods to continue, meaning it was extremely hard for seafarers to travel to and from the maritime vessels. (Doumbia-Henry, 2020)

²⁵ https://www.who.int/docs/default-source/coronaviruse/transcripts/who-audio-emergencies-coronavirus-full-press-conference-11feb2020-final.pdf?sfvrsn=e2019136_2

²⁶ <https://www.worldometers.info/coronavirus/>

Since December 2020, vaccines have started being administered to the general public every day, slowing down the spread of the virus and allowing talks of returning to normal, pre pandemic conditions by some country leaders.²⁷ It has to be pointed out though that the vaccinations rates vary wildly between countries, with the most advanced being at around 90% of total population, while at the developing counties it can be a low as 2%.²⁸ Also, some governments are keener to lift the restrictions imposed than others, meaning there is still a long way to go before humanity can surpass this crisis.²⁹

5.2. OUTBREAK EFFECTS ON SEFARERS' LIVES

5.2.1. EARLY DAYS – THE CASE OF MV DIAMOND PRINCESS (Dahl, 2020)

During the first month after the outbreak, the cruise industry was still going strong, as no restrictions had been imposed yet and the virus was still believed to exist only inside the Chinese borders.

Cruise liners, in general, have limited medical resources and medical reaction capabilities, lots of crowded areas and enclosed spaces, shares sanitary facilities, as well as air-conditioning systems that recycle the existing air. Consequently, due to the ease of infectious diseases being transmitted aboard, it was not long before several cruise ships were reporting covid-19 infections on board. The most known case was that of the MV Diamond Princess. (Yazir, et al, 2020)

The cruise liner Diamond Princess had departed Yokohama on January 20, 2020, scheduled to visit Hong Kong, Vietnam, and Taiwan, before returning to Yokohama. It was found that during the vessel's stay at Hong Kong, a small number of passengers were infected with the virus and was decided for the vessel to return to Yokohama, where the port Authorities detained the vessel and prohibited the disembarkation of the passengers and crew on board, numbering 2666 and 1045 respectively, allowing only the confirmed infected persons to be hospitalized ashore.

During detention, tests by Japanese Health officials were conducted which showed that around 20% of the passengers were infected. All passengers were ordered to be quarantined in their

²⁷ <https://www.bbc.com/news/uk-55227325>

²⁸ <https://ourworldindata.org/covid-vaccinations>

²⁹ <https://ig.ft.com/coronavirus-lockdowns/>

cabins, but the crew had to continue working, many times taking on additional duties to those they were contracted for, to serve food and clean the cabins while also sharing crowded cabins between themselves. Necessary health measures like wearing face masks, maintaining proper distances were not always followed, shortages of protective equipment and the lack of crew training in facing quarantine circumstances, were among the factors that further helped the spread of the virus. After a certain period of time quarantined, several crew members reported having feelings of anxiety and showed signs of physical and mental exhaustion from countless hours of work, and most of them had to stay quarantined ashore for an additional period of 15 days, after the passengers had fully disembarked on February 20.

The case of the Diamond Princess provided many insights in handling the breakout of a virus, but also highlighted the inadequacy of the cruise industry to handle a health crisis on board and to safeguard the welfare of the passengers and the crew. As of September 18, 2021, no other cruises have taken place, leaving cruise liner vessels berthed indefinitely. (Yazir, et al, 2020) The same thing, though, cannot happen for the cargo vessels, as 90% of the worldwide trade is dependent on them on the seafarers stationed aboard them, and so the maritime industry would have to adapt in this newfound reality. (Battineni, et al, 2021)

5.2.2. MARITIME INDUSTRY RESPONSE TO SEAFARERS' MATTERS

Due to the epidemic and its ramifications, the UN agencies have come together, even making joint declarations on occasion to address the challenges lying within their respective missions and to provide appropriate assistance to states and the maritime industry. Their cooperation has been satisfactory, some authors going as far to call it exceptional, and may be considered as a positive outcome of the whole ordeal. On February 24, 2020, the WHO published guidelines for handling COVID-19 cases aboard ships, based on the Handbook for the Management of Public Health Events on Board Ships. (Doumbia-Henry, 2020)

One of the main principles of the M.L.C. 2006 is supported by the WHO International Medical Guide for Ships (WHO 2007)³⁰, namely that seafarers be provided with adequate health

³⁰http://apps.who.int/iris/bitstream/handle/10665/43814/9789240682313_eng.pdf;jsessionid=551625CE4730B2AE9D74FE3E4DB4F715?sequence=1

protection, including prompt access to medicinal facilities and medical care by certified professionals.

Since the initial response of most governments worldwide were border closures, to contain the virus spread, movement of crews to and from ships became very difficult. Consequently, contract extensions were signed unilaterally, sometimes without the consent of the seafarers, though most of them acknowledged that contract extensions and delays in scheduled crew changes would naturally arise as a result of the border restrictions. The Republic of Panama issued a statement on March 23, 2020, allowing the extension of duration of all contracts and licenses for 90 days, and in June of the same year, it permitted a further 90 days extension. This meant, that it was possible for a seafarer to be on board for 17 months. Being the world's biggest open registry, it became a paradigm setter for other registries, which endorsed the same policies and set the number of stranded seafarers to skyrocket. It was not until August 14, that the registry made public its intentions of requiring full compliance with the M.L.C. 2006 by September 14. (De Beukelaer, 2021)

In his April 2020 letter addressed to all the Member States, the I.M.O. Secretary-General, stated that seafarers should be recognized as "key workers," and the travel restrictions imposed to them must be removed. He did so, while emphasizing the importance of the seafaring profession to the smooth flow of commerce and the preservation of the environment. At this time it was becoming increasingly clear where the most serious problems in the maritime industry due to the onset of the pandemic laid, namely repatriation and access to shore facilities. The rights of seafarers for maximum tour of duty duration, sick leave, shore leave, could not be guaranteed, thus constituting non-compliance with the M.L.C. Convention. Understandably, shipowners' representatives, seafarer organizations and governments were asking for guidance, citing the unprecedented nature of the situation. In response, the I.L.O. issued the Information Note on Maritime Labour Issues and Coronavirus (COVID-19) on April 7, intending to provide guidance, taking into consideration the provisions of the M.L.C. 2006 and the complexities of the current situation. According to the Information Note, for States that have ratified the M.L.C. 2006, non-compliance with the M.L.C. 2006 is only permissible under "force majeure situations"³¹,

³¹ <https://www.mondaq.com/litigation-contracts-and-force-majeure/1036912/analysing-the-force-majeure-clause-in-maritime-contracts>

characterizing the current circumstances as such, due to the high probability of rendering compliance with certain provisions impossible. (Dolumbia-Henry, 2020)

After consulting the shipping sector and maritime unions, the I.M.O. approved on May 5th, 2020 a "suggested Framework of Protocols for guaranteeing safe ship crew changes and travel during the Coronavirus (COVID-19) pandemic". By 25 June 2020, I.M.O. had published 23 Circular Letters on the consequences of the pandemic, in response to requests from member states and shipowner representatives for the provision of suggestions and guidelines on how to manage specific concerns. A Seafarer Crisis Team had also been created to guarantee that all these guidelines and information are distributed globally. (De Beukelaer, 2021)

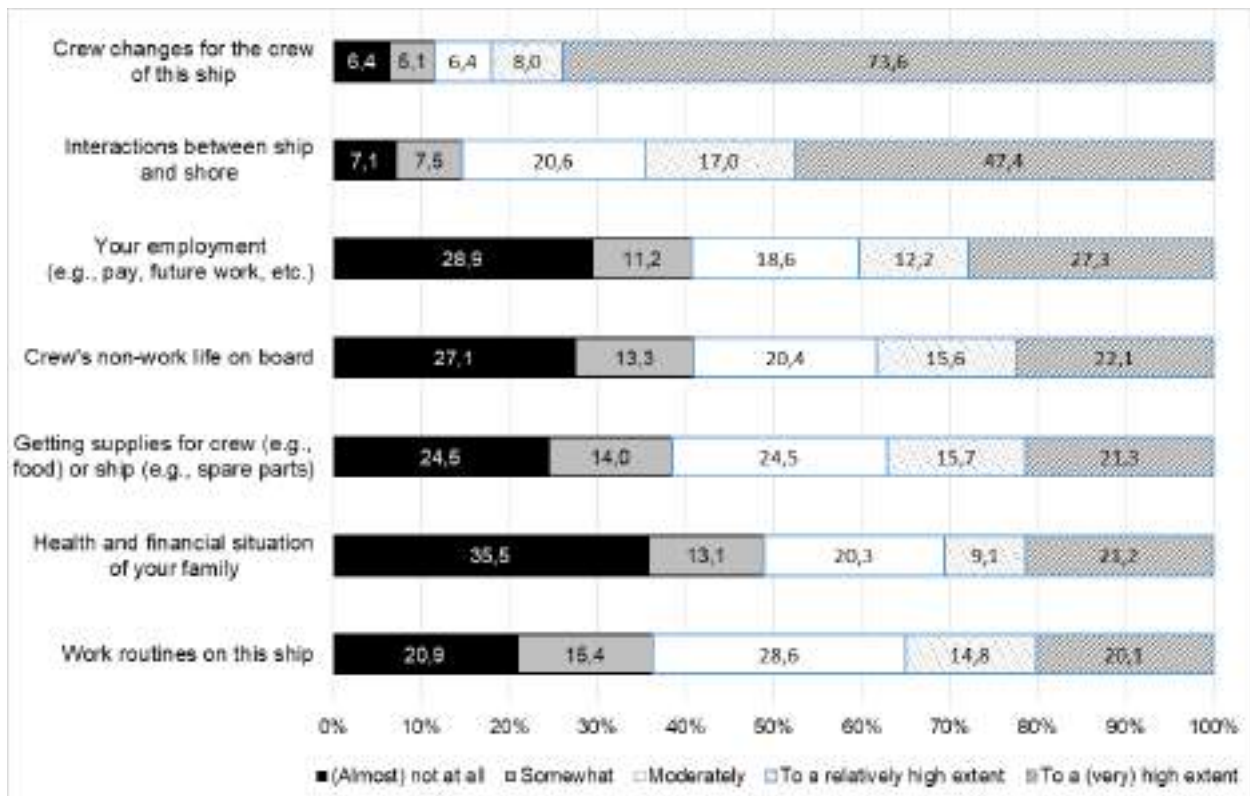
The maritime industry's efforts to alleviate the situation bore fruit during July 2020, when many governments being pressured to act, participated virtually in the International Maritime Summit on Crew Changes, hosted by the UK government. During the proceeds, the continuous functionality of the maritime transportation was found critical to the preservation of the international economy, so much so, that crew changes must be conducted regardless of the restrictions imposed by the governments and adequate plans made to facilitate these changes in several major ports worldwide. Crew change became possible shortly after, putting an end to the "force majeure" situation but with many issues still hampering the whole process, as international flights were limited and almost all seafarers on board vessels worldwide were eligible for change, thus many of them would have to stay longer and "wait their turn". Sadly, some charterers have continued to ask for the "no crew change clause", a clear violation of the M.L.C regulations, although this was found to be an uncommon occurrence, rather than the rule. Furthermore, some shipowners have also been reluctant to repatriate some of their employees, as the process required deviation to ports open to crew change procedures, and to arrange for their seafarers to board chartered flights, which are more expensive than regular flights. (De Beukelaer, 2021)

There still exist challenges in completing crew changes and pressing occupational health and safety concerns, as Flag States, port States and labour supplying nations have not been able to address effectively. In its fourth meeting, from 19th to 23rd April, 2021, the I.L.O. Special Tripartite Committee (S.T.C.), of the Maritime Labour Convention concluded its Resolution on the obligations of the ratifying States pursuant to Articles I(2), III and V(6) of the M.L.C., 2006,

and for them to collaborate with each other, ensuring that the Convention is successfully utilized and implemented, to protect basic rights and principles, and to prevent the violations of the Convention's provisions. The S.T.C. resolution underlines the necessity for further measures within the existing international legal framework that have been suspended due to the underlying circumstances, as social dialogue seems to be focused on remedying some of the most serious but temporary breaches of the M.L.C., while ignoring issues like underreporting hours of work/rest, that have existed for a long time. (Piñeiro, et al, 2021)

5.2.3. OUTBREAK EFFECTS AS PERCEIVED BY SEAFARERS

Since the aim of this study is to ascertain the effectiveness of the M.L.C. 2006 as a defensive mechanism for seafarers, firstly, it would be prudent to find out more about how the seafarers perceived the effect of the Covid- 19 outbreak on their lives. The pandemic breakout of COVID-19 in March 2020 put seafarers in an extremely vulnerable position, despite the M.L.C. of the International Labour Organization (I.L.O.) defining seafarers' rights as well as their working and living conditions on board.



The above picture compiled after research conducted during the lockdown months (June-September 2020) on 671 seafarers of various nationalities onboard, (Pauksztat, et. al, 2020) portrays the amount of effect of the pandemic on seafarers' life as perceived by them, with the most affected areas clearly being by far the crew changes and ship to shore interactions, and the rest yielding generally neutral results.

When the same seafarers were asked about their perceived safety on board in regard to their state of health, almost 85% agreed that they felt safe while at sea. In contrast, only 42% stated that they feel safe during port calls.

Doumbia-Henry(2020) found on their research that crew changeover and repatriation for seafarers was the by far the most critical issue affecting international shipping during the pandemic period, followed by licensing and certification, and to a very small extent, cases of seafarer abandonment.

Hebbar & Mukesh (2020) focus specifically on the seafarers' rights of shore leave, repatriation and medical assistance, recognized as the most affected and most challenging to be observed, as an immediate consequence of the pandemic.

Quite a number of researchers have produced pieces on the state of the well-being and mental state of seafarers during the pandemic. (Lucas, et al, 2021; Qin, et al, 2021; Coutroubis, et al, 2020) These constitute issues that, even before the pandemic, were gathering traction among academics, among the apparent lack of relevant provisions in the M.L.C. (Exarchopoulos, et al, 2018; Abaya, et al, 2018)

Sliškovi'c (2020) have also included seafarers stuck at home during the pandemic in their research of seafarer physical, mental and economic wellbeing, highlighting the apparent difference of perspective in regard to the problems and threats seafarers faced during this period.

CHAPTER 6: EFFECTIVENESS OF M.L.C. 2006 PROVISIONS IN THE COVID-19 ERA

6.1. CREW CHANGES

The numerous calls from the international organizations, (I.L.O., I.M.O.) the most critical problem the maritime industry faced during the pandemic was the crew changes. (Lucas, et al, 2020). The M.L.C. 2006 does not provide a specific regulation regarding crew changes, instead it is a matter that affects a few Regulations.

6.1.1. SEAFARER EMPLOYMENT AGREEMENTS – S.E.A.

It is required under Regulation 2.1 of the M.L.C. that employers draw out legally enforceable employment agreements with each seafarer, which outline their working capacity on board (job title and expected work schedule), their health and social security coverage, specifying their wages by amount and currency, their contract length, the amount of paid annual leave, termination details and their preferred means of repatriation.³² Nowadays, the majority of shipowners choose to employ seafarers on time-limited voyage-based contracts via manning agencies, with no obligation for re-employment, especially for the lower crew ranks, but for high-ranking officers, permanent employment is sometimes preferred, meaning the seafarer is being paid even when being ashore. The standard duration of contracts is also different depending on rank, with higher ranks duration being 5 months on average and the lower ranks 8 months. References to any present collective bargaining agreements and his/her entitlement to repatriation, made active after 52 weeks on board at the most, must also be made. Extensions to the contract duration of up to a month are also possible, so as to provide flexibility in events of unforeseen operational circumstances causing difficulties in crew changes. (Chaumette, 2016)

Shipowners have to consider maintaining appropriate manning levels on their vessels, as per M.L.C. Standard A2.7. Consequently, during the covid-19 era, contract extensions were viewed as the only logical way forward. Hebbar & Mukesh (2020) have shown that contracts were extended gradually every month, in a few cases for a duration of up to 4 months, and half the

³²https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:91:0:::::P91_SECTION:MLCA_AMEND_A_2

time were against the free will of the seafarer, which is against the M.L.C. A2.1 Standard of the Code and, in the concept of common law, renders the contract unenforceable. Some shipowners have decided to give extra financial incentives, in the form of increment to wages or bonuses or even both, to seafarers that had their contracts extended, while about 30% of seafarers did not receive any change to their remuneration. Thankfully, there have not been reported cases of non-payment of wages, specifically attributed to the onset of the pandemic, with M.O.U. latest data showing better lower deficiencies found regarding wage payment, in comparison to previous years³³.

6.1.2. REPATRIATIONS

Regulation 2.5 of the M.L.C. was drafted to guarantee that seafarers are entitled to return home. This entitlement constitutes a vital element of seafarers' rights and must be exercised either at regular intervals during a contract or at the end of a contracted period.

It states that seafarers have an absolute right to be repatriated under the conditions outlined in the Code, and that Member States must require ships flying their flag to provide financial security to ensure this right. To comply with the Code, seafarers must be repatriated when their employment agreement contract ends while they are overseas, when the contract is terminated and when they are no longer able to perform their tasks as stipulated in the employment agreement contract.

Notably, the M.L.C. stipulates that if the shipowner fails to meet their responsibilities, the vessel's flag State is responsible for arranging the repatriation of the seafarers, and if they fail too, then the destination State (seafarer's nationality) is responsible. The expenses may be collected from the Flag State, which may then collect from the shipowner, having the right to arrest the vessel until reimbursement has been made. Seafarers cannot be held responsible for the expenditures incurred by any state.³⁴

Member States cannot refuse to repatriate seafarers when the shipowner is financially incapable or generally unwilling. Thus, the Code views the repatriation matter being more about who is

³³<https://www.parismou.org/2020-paris-mou-annual-report-%E2%80%9Cdealing-pandemic%E2%80%9D>

³⁴https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:91:0:::P91_SECTION:MLCA_AMEND_A_2

responsible for carrying the financial burden and which are the specific circumstances and requirements that must be met to facilitate repatriation. Being so specific, the M.L.C. evidently fails to provide for the non-facilitation of repatriation when any other unforeseen circumstances are to blame.

Inability to perform seafarers' repatriations and embarkations effectively from March 2020 and onwards have resulted in the process of crew changes being severely hampered, as already discussed when examining the industry's response. Seafarers had to face a variety of difficulties including border closures, different travel bureaucratic requirements for each country and each port, visa restrictions and flight cancellations. Furthermore, about 8% of the seafarers were on board for more than 12 months, violating standard A2.5 and only 14.5% of the seafarers being repatriated after contract completion. BIMCO (2020) has issued a new clause in their time charter templates regarding crew changes, making great allowances for deviation, to better facilitate crew changes. (Hebbar & Mukesh, 2020)

The Singapore Shipping Tripartite Alliance Resilience (SG-STAR) Fund Task Force (SFTF), which was established by the Singapore Shipping Association (SSA), the Maritime and Port Authority of Singapore (MPA), Singapore Maritime Officer's Union (SMOU) and the Singapore Organization of Seamen (SOS) has created the CrewSafe program, aimed to facilitate the crew change process, by providing quarantine/holding, medical, and swabbing facilities in Singapore and the two biggest seafarer providing nations, the Philippines and India. Many seafarers will be funneled through this network, regularly inspected, and audited, assuring greater quality control and providing greater confidence to the maritime stakeholders and safe corridors for crew change.³⁵

The secondary effect of the inability to facilitate crew changes, often overlooked, is the high number of seafarers at home unable to start their next tour of employment. Concerning seafarers employed in the cargo industries, around 67% have stated on vacation for more than the customary 3 months, with 55% of seafarers seeing their employment delayed due to the onset of the pandemic. Some states, i.e., the Philippines have issued financial assistance programs to

³⁵<https://shipinsight.com/articles/dnv-takes-major-role-in-singapores-crewsafe-crew-change-programme/>

seafarers displaced by the pandemic, to the amount of 200 USD, one-time deposit. (Coutroubis, et al, 2020)

A few shipping companies have also made some contributions, according to their respective social responsibility programs, but in general these actions seem to be mostly symbolic in nature. Only 4% of seafarers ashore have stated that they are not actively looking for alternative sources of income, highlighting their precarious financial situation and that of their immediate families. (Mukesh, 2020)

Lastly, for seafarers coming onboard, a period of 14 days quarantine is observed, which makes the completion of tasks and assignment more difficult and most likely creates an additional burden of work on the remaining crewmembers, as they have to fulfil some of these tasks themselves. (Yazir, et al, 2020)

6.2. HOURS OF WORK & REST

The M.L.C. Regulation 2.2³⁶, along with the relevant provisions of S.T.C.W., define the maximum hours of work and minimum hours of rest in a very extensive way, along with details for possible extensions when the need arises, taking into account the issue of fatigue its detrimental effects of the safe operations. Each seafarer is also entitled a day of rest for every 7-day period and rest on public holidays. To cover these provisions, shipowners use appropriate software to publish work schedules. The globalization, the fast turnover of vessels during loading/unloading operations among other factors have caused intensive work schedules to be common in the later years (Zhao, et al, 2016).

Lamentably, a well-documented phenomenon in the maritime industry remains the falsification of work/rest records onboard by the seafarers themselves. Many shipowners, under pressure reducing operating costs, ask for seafarers to work excessive hours without stop for rest and then submit falsified records, even going as far as keeping duplicate records for the P.S.C. inspections. To make matters worse, this malpractice phenomenon seems to be tolerated by a

³⁶https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:91:0:::P91_SECTION:MLCA_AMEND_A_2

sizable number of the maritime industry and the seafarers, who seem to lack the initiative of launching complaint procedures, for fear of being stigmatized in the labour market and therefore endangering their professional status. (Zhang, et al, 2020; Baulmer, et al, 2021)

During the epidemic, when crew change was impossible, many seafarers had to undertake additional tasks and cover for indisposed shipmates. Research has shown that around half have reported increased workload, adding this to the already strained work hours from before the pandemic, we can surmise that crew fatigue must have become a serious factor to consider for all the interested parties. (Hebbar & Mukesh, 2020) The only redeeming factor was the seafarers could rest at anchorage, mainly due to delays for free pratique procedures lasting for a week on average, when the standard before the epidemic was only 12 hours. (Exarchopoulos, et al, 2018)

6.3. EXTENTION OF DURATION OF SEAFARERS' MEDICAL CERTIFICATES

The M.L.C. 2006 requires seafarers to hold valid medical certificates, issued by approved medical practitioners, attesting to their apparent medical fitness for seaboard employment. Capable seafarers are expected to have good hearing, sight and color vision capabilities and no medical conditions that may aggravate at sea or poses danger to the health of others on board. A medical certificate is valid for up to 2 years, or a year for seafarers under the age of 18. Any medical certificates issued in accordance with the requirements of the S.T.C.W. convention, are accepted as adequate by the M.L.C. Standard A1.2. In the case of medical certificate expiring while the seafarer is onboard, then it remains in force until next port call with an available, recognized by the flag State, medical practitioner and for a maximum period of 3 months after the expiration date.³⁷

The flag State bears responsibility to make sure that seafarers are adequately certified before commencing their tour of duty, to prescribe the nature of the medical examination and certificate needed as per the Code, to qualify the appropriate medical practitioners responsible for

³⁷https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:91:0:::P91_SECTION:MLCA_AMEND_A1

conducting the examinations and provide extension to medical certificates up to 3 months in urgent cases. (McConnell, et al, 2011)

As a result of the COVID-19 pandemic, seafarer medical certificates, as well as the certificates provided as per the S.T.C.W. Convention, had been continuously expiring, while seafarers were still on board or at home waiting for their next employment. Seafarers on board that had their employment contracts extended, were not capable to submit applications and participate in medical examinations, in order to revalidate their certificates. Seafarers ashore had to cope with movement and travel restrictions imposed worldwide, preventing them from participating in medical examinations. (Stannard, 2020). Concerning the S.T.C.W. certificates, refresher training courses required for revalidation were mostly unavailable due to the halt of daily operations of training institutions.³⁸

Flag Administrations were expected to find a solution for the problem of certificate expirations and renewals, as on March and April 2020, the I.M.O. released circular letters addressing the issue and urging the Flag administrations to take “a practical and pragmatic approach” to it, as well as provide guidance to seafarers and shipowners, though the letter did not recommend specific actions to be taken.³⁹

In light of these developments, most of the Administrations chose to follow the A1.2.8 and A1.2.9 provisions of the Code and issue a general extension of duration of all expired or close to expired medical certificates for a period of 1 to 3 months and also specify a deadline date, until which said certificates had to have become expired, in order to be eligible for extension. A few Administrations (like the United Kingdom and Norway Flag Administrations) have taken the decision to extend the limit to 6 months, citing the unprecedented nature of the situation requiring urgent measures, and proceeded to notify all relevant Authorities and organizations of these national decisions, in order to minimize problems arising for their vessels on foreign Port States.⁴⁰

³⁸<https://www.ics-shipping.org/publication/coronavirus-covid-19-managing-ship-and-seafarer-certificates-during-the-pandemic/>

³⁹<https://www.imo.org/en/MediaCentre/HotTopics/Pages/Coronavirus.aspx>

⁴⁰<https://www.sdir.no/en/news/news-from-the-nma/extending-the-validity-of-personal-certificates/>

The S.T.C. have been discussing about a system of electronic certificates and documents according to the M.L.C. 2006 framework, and in order to avoid disruptions to certification procedures, flag states and recognized organizations have introduced remote monitoring and document inspection systems, highlighting the importance of digitalization and automation in facilitating efficient maritime operations. (Piñeiro, et al, 2021)

6.4. SHORE LEAVE

Regulation 2.4 of the M.L.C. aims to ensure the right of seafarer to shore leave, as a means of preserving his/her well-being and mental state and take some time away from the monotony and routine of life on board. Apart from it, a seafarer can use the time ashore to visit welfare facilities to socialize with others or visit the local seafarer clubs. Additionally, he/she may purchase various comfort items like souvenirs, cigarettes or items intended for communication with his/her loved ones (SIM cards), and importantly, use monetary services for currency exchange or transferring money to personal relations. (Zhao, 2020) The availability or frequency of shore leave is not specified in the M.L.C. but it is a common term in many Collective Bargaining Agreements.

It has become progressively difficult for seafarers especially of lower ranks to acquire shore leave in recent years, especially due to the onset of the I.S.P.S. code, so shipping companies have taken it upon themselves to at least provide some of the everyday items needed by seafarers with their catering procedures or allow entry of a salesperson onboard in a few ports. (Coutroubis, et al, 2020)

Mukesh (2020) has shown that during the pandemic, the vast majority of seafarers (95%) were not allowed shore leave at all. These restrictions were imposed across the board, by shipowners, by flag administrations and port state authorities via urgent port/terminal regulation and guidelines, not to mention the quarantine lockdown/transit restrictions imposed by the majority of governments. The very few shore leaves allowed were attributed to medical or other emergency reasons. This is not surprising, considering that historically, vessels and seafarers have been responsible for facilitating unwillingly to the spread of epidemic diseases. (Tognotti, 2013)

Consequently, viewing that even the general population was restricted from movement outside except for the bare necessities, the majority of seafarers accepted these circumstances, with 75% wishing not to leave the ship even at the event of being granted shore leave, for fear of contracting the disease or bringing it onboard. It was up to the shipowners to improve their procedures and provide all the necessary items that seafarers could expect to purchase during their shore leave, while minimizing the risk of exposure to the virus during the delivery process.

Considering that thousands of ships roam the seas at any given time, the restrictions could be considered to have yielded successful results, as the cases on covid-19 infections onboard were minimal. Seafarers may largely have accepted and bore the burden of the restrictions, but at the cost of their welfare, reporting to feel unhappy, stressed and fatigued, mental states that in the maritime industry are grave causes of concern, greatly affecting seafarers' performance and work output, as well as being well-documented reasons of shipborne accidents. As counter measure, many shipowners have taken note of the issue and provided their vessels with additional recreational facilities. (Lucas, et al, 2021)

6.5. ACCESS TO MEDICAL CARE & ASSISTANCE

Regulation 4.1 of the M.L.C. requires that seafarers are provided with adequate access to medical care both on board and ashore. This access must be comparable to the one available for the general population and be provided free of charge. The right to visit a qualified doctor in ports of call cannot be denied and can be exercised without delay.⁴¹

Cargo vessels do not fulfill the necessary number of passengers and crew on board at any given time, necessary for the presence of a qualified medical doctor on board. Therefore, they have to make do with seafarers that possess only some rudimentary medical knowledge and first aid expertise, certified as per the S.T.C.W. Convention. Additionally, only the presence of a comfortable medical facility with ease of access is required as per the M.L.C. 2006(Standard A3.1.12), without specifying dimensions or layout. Shipyards and shipping companies, when designing this hospital accommodation, have certainly not attributed for the possibility of long-

⁴¹https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:91:0:::P91_SECTION:MLCA_AMEND_A4

term hospitalization of a patient, or a patient suffering from a highly infectious disease. The chance of receiving proper and effective treatment for sudden diseases or injuries onboard is slim, given the inadequate medical skills of ship officers and the limited range and supply of medical products and equipment available on hand.

Consequently, the denial of medical assistance of a seafarer is appalling by humanitarian standards. Even when a vessel is situated a great distance of a nearby port, a seafarer must have access to medical specialist advice, 24 hours a day via satellite communication, also free of charge. The case of the rescue of a gravely ill seafarer in the middle of the Pacific Ocean goes to demonstrate the effectiveness and the necessity of this M.L.C. provision. (Kulkarni, 2019).

Access to medical facilities had become challenging for almost every citizen worldwide during the onset of the pandemic. Unsurprisingly, some seafarers were denied access to them, even in cases of emergency, constituting a violation of their rights. As displayed earlier, there were minimal cases of covid infections onboard, so almost all of these emergency cases were not related to covid 19 infections, still the I.M.O., I.L.O. and other U.N. institutions had to intervene for numerous such incidents.^{42 43}

For the same reasons, access to pre-employment medical examinations for seafarers has also proven to be a challenge for the industry. (Stannard, 2020) Regardless, a seafarer, whether he/she has contracted the covid virus or suffers for something else unrelated, has an unequivocal right to medical assistance and no Authority is capable of denying that right despite the fact that many states had declared a state of emergency, having the ability to deny access on terms of protection of national security. Disembarkation of persons in distress at sea constitutes an ancient international obligation and prominent feature of the law of the sea. (Desmonda, 2020)

Hebbar & Mukesh (2020) showed that around 58% of participating owners, charterers would accept a deviation for medical care of a covid-infected seafarer, with 15,5% denying it, even though it constitutes non-compliance with the M.L.C. Standards.

⁴²<https://www.maritime-executive.com/article/ics-seafarers-denied-medical-care-due-to-covid-19-restrictions>

⁴³<https://www.imo.org/en/MediaCentre/PressBriefings/Pages/21-medical-care-seafarers.aspx>

As access to medical care becomes more difficult, shipping companies try to compensate by use of telemedicine. Telemedicine onboard differs significantly from ashore services, given that communication services are onboard are usually lackluster. Various means of communication, such as telephone, telefax, radio, email via satellite, are used nowadays in cases of telemedicine needs but direct patient/doctor communication (videoconferencing) is rare, thus quality of health services can be questionable. Nevertheless, seafarers who have chronic ailments and use prescribed medicine on a regular basis, can have the capacity to maintain regular sessions of teleconsultation with doctors that are already aware of their medical condition, as well as regular renewal of their prescribed medicine, when needed. (Sagaro & Amenta, 2020)

6.6. SEAFARERS' TRAINING & EDUCATION

Regulation 2.8 requires Members to construct policies aiming at encouraging employment opportunities and career development for seafarers.⁴⁴

A seafarer in training, or cadet – a student at a maritime university reaching the 4th year of his/her education curriculum, must participate in shipboard training lasting cumulatively for 12 months, in order to graduate. The complete halt of operations of the cruise industry and the serious reduction of passenger/ferry shipping operations have temporarily reduced the need for seafarers and cadets on board, resulting in cadets not being able to complete their training and graduate. Lower year students at maritime universities have also faced various problems, especially in high crew source countries i.e., the Philippines, where the majority have not been able to participate in their curriculum, being taught exclusively online, due to not having access to a computer at home or access to internet connectivity.^{45 46}

After March 2020, reportedly 50% of the facilities providing skill training for seafarers have ceased operations, and many of the seafarers stuck ashore cannot reliably access the training services of the facilities that remained open, due to the need of a paradigm change in the training

⁴⁴https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:91:0:::P91_SECTION:MLCA_AMEND_A_2

⁴⁵<https://files.eric.ed.gov/fulltext/EJ1277930.pdf>

⁴⁶<https://blogs.lse.ac.uk/seac/2020/09/22/futures-on-hold/>

methods from face-to-face to remote.⁴⁷ Private organizations have emerged, offering remote training services to shipowners as States still have not managed to come up with adequate solutions.⁴⁸ On a positive note, the increasing use of cloud-based simulators and virtual reality applications, can be viewed as step towards achieving adequate seafarer qualifications or at least for seafarers to train particular skills and keep their competencies up to date, with adequate remote assessment tools being reportedly on the stages of development. (Piñeiro, et al, 2021)

6.7. SEAFARERS' HEALTH & SAFETY PROTECTION

Regulation 3.3 of the M.L.C. requires Members to ensure adequate measures are taken on board ships for the prevention and minimization of accidents, injuries and spread of diseases.⁴⁹ In the covid 19 era, this title has been more prevalent than ever, with Flag administrations and maritime institutions advising and providing guidelines to shipowners so that the spread of the virus is avoided on board vessels, or at least reduced to a minimum. The I.C.S. has published guidelines for shipowners promoting guidelines to counter the spread of the virus on board, including but not limited to physical distancing, regular hand washing and use of facial masks and other personal protective equipment. (Mohammad Danil, 2020)

Adequate and effective training and familiarization are important for the effective implementation of personal safety measures on board, and shipowners had taken the brunt of this responsibility since the onset of the pandemic, with assistance from their respective governments. Results have been positive, as the large majority of seafarers have exhibited satisfactory knowledge of the covid-19 virus symptoms and procedures needed to safeguard against it, resulting in the very low number of covid confirmed cases on board. (Battineni, et al, 2021; Obiageli, et al, 2021)

Furthermore, the W.H.O. have been giving online seminars to seafarers, shipowners and competent authorities for health and transport, aiming to educate seafarers throughout their

⁴⁷<https://www.ship-technology.com/features/how-are-maritime-careers-expected-to-change-after-covid-19/>

⁴⁸<https://shipinsight.com/articles/digital-training-proposed-to-help-plug-seafarer-shortage/>

⁴⁹https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:91:0:::P91_SECTION:MLCA_AMEND_A3

journey on board, home to vessel and vice-versa, and shipowners on drafting adequate management plans for potential outbreaks onboard vessels.⁵⁰

Except from issues in providing adequate P.P.E. during the onset of the pandemic, the whole industry has been successful at ensuring the physical health of seafarers on board vessels, as most seafarers have stated that they felt much safer onboard at sea, in contrast to being at port or ashore.⁵¹

Most recently, guidelines concerning the vaccination process of seafarers have been published, offering support for shipowners, manning agencies, and flag Administrations, with some of them already implementing their own vaccination program for their vessels.^{52 53 54}

6.8. M.L.C. IMPLEMENTATION & ENFORCEMENT IN THE COVID-19 ERA

6.8.1. SURVEYS - AUDITS

The presence of a safety management system being existent on board to ensure the adhering of the M.L.C. provisions is indirectly required by the Convention, as part of the D.M.L.C. certification process. Naturally, it has become standard practice for shipowners to perform regular inspections of the areas affected by the M.L.C. provisions, to ensure compliance and avoid detentions or other ramifications to standard vessels operations, when inspected by flag state or port state control. As a time and cost saving measure, M.L.C. inspections are performed concurrently with I.S.M./I.S.P.S. audits. (Wu & Jeng, 2012)

Certain workers employed by the shipowner - or freelancers or workers of a third-party company authorized by the shipowner – the “auditors”, travel at regular intervals onboard vessels to inspect for I.S.M./I.S.P.S. implementation, compliance and recommend improvements upon

⁵⁰<https://safety4sea.com/who-provides-free-e-learning-covid-19-courses-for-seafarers/>

⁵¹<https://www.ics-shipping.org/publication/coronavirus-covid-19-guidance-fourth-edition/>

⁵²<https://www.ics-shipping.org/publication/coronavirus-covid-19-vaccination-practical-guide/>
⁵³<https://www.ics-shipping.org/publication/coronavirus-covid-19-roadmap-for-vaccination-of-international-seafarers/>

⁵⁴<https://www.mondaq.com/cyprus/operational-impacts-and-strategy/1100150/the-seafarers39-vaccination-programme-of-cyprus-flag>

existing practices, and effect necessary changes where and when needed, also conducting M.L.C. surveys during the very same processes.

The covid-19 era instilled severe travel restrictions, rendering many auditors to be unable to physically conduct the surveys, giving rise to the possibility of conducting remote audits. The capability of conducting this kind of audits was existing before the pandemic, but not commonly used. Classification Societies, shipowners and flag States are beginning to view some of the benefits of this process, so seafarers were not used to this new routine.⁵⁵ Normally, the auditors would inspect the various areas and converse with the relevant crew members responsible for the particular areas. With remote audits, seafarers must provide documentation, images, video, and other inputs via satellite connections, and a few of them must operate the necessary equipment to capture the needed evidence, therefore further burdening their already excess workload during this time.⁵⁶

Sufficient research has not been conducted on this field, as of yet, but remote inspection is anticipated to become more prevalent in the future.⁵⁷ On the one hand, regular inspections by competent shipowners can only mean that seafarer problems can be addressed faster, cheaper and in a more frequent manner, making their life onboard better. On the other, it is yet another task needed to be undertaken by them, so extra care for crew members actively participating in these audits, should be receive extra care when being addressed for their hours of work and rest.

6.8.2. PORT STATE CONTROL INSPECTIONS

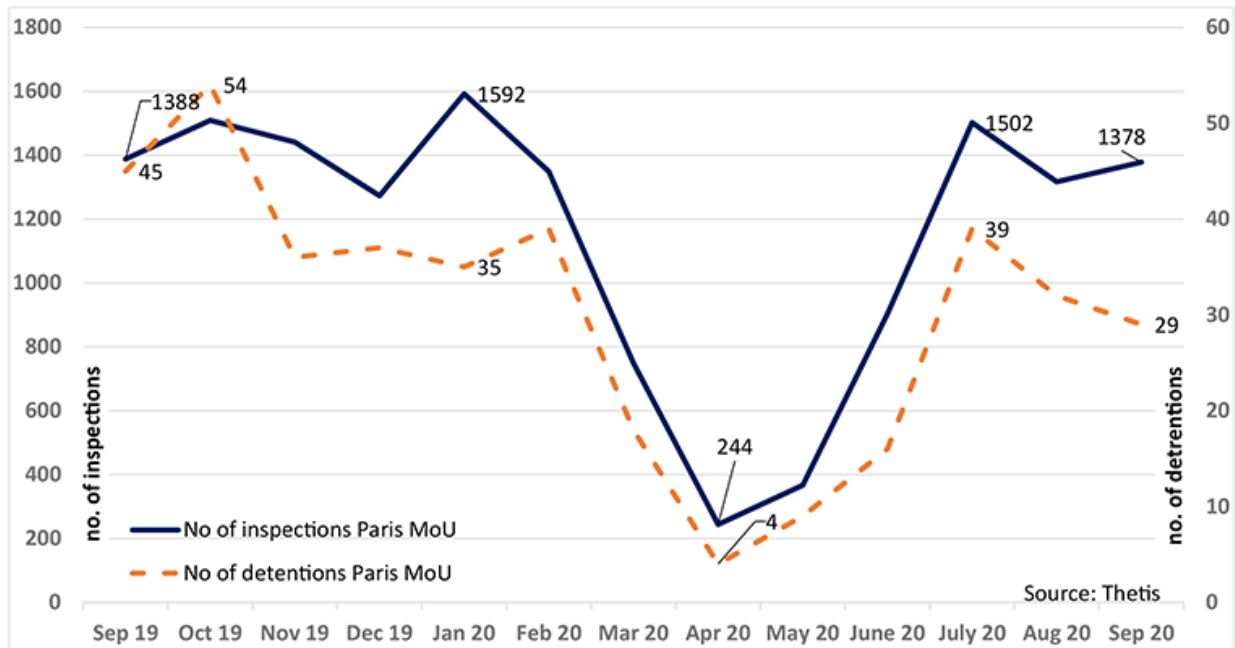
Port state control inspections have been significantly lower in 2020, by around 30%, compared to each of the last 6 years on average, as guidelines were issued by the majority of the M.O.U. organizations to their member states, calling the inspectors to exercise flexibility, when inspecting for all Conventions compliance. The lack of sufficient knowledge, and preparedness for crises situation have led these organizations to advice minimization of inspections to Port Authorities, targeting mainly vessels carrying flags of high risk. (Akyurek & Bolat, 2020)

⁵⁵<https://www.liscr.com/blog/liberia-conducts-first-ever-remote-flag-inspection>

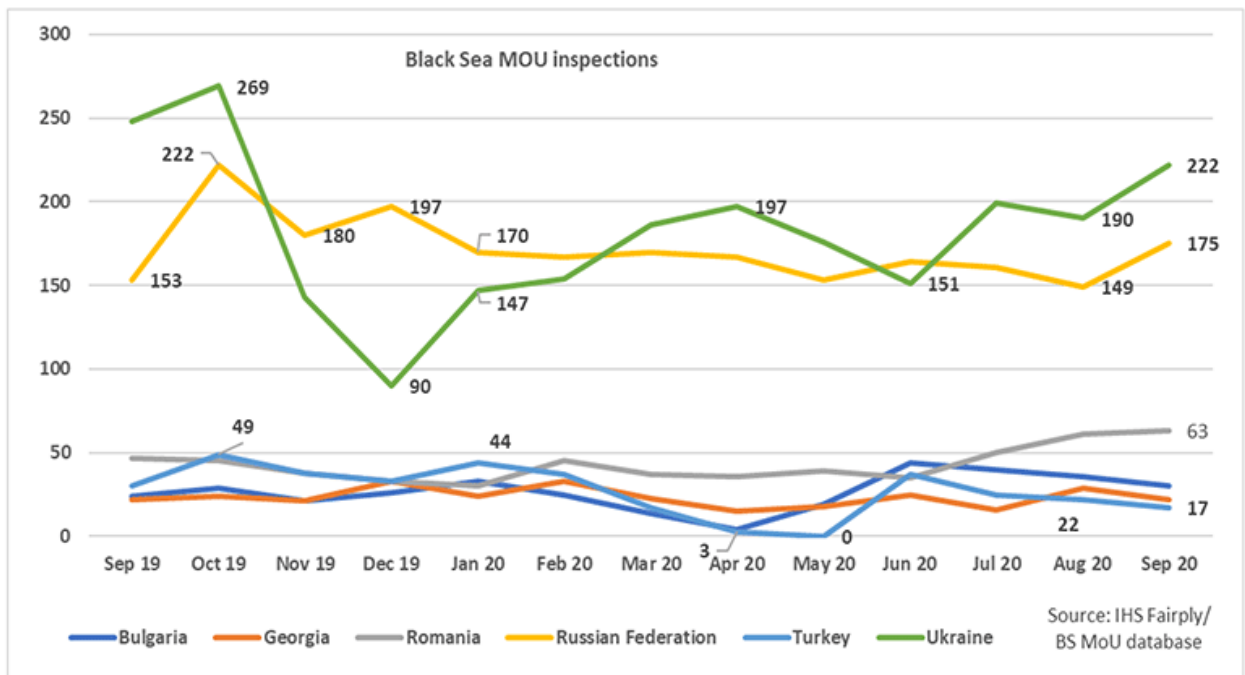
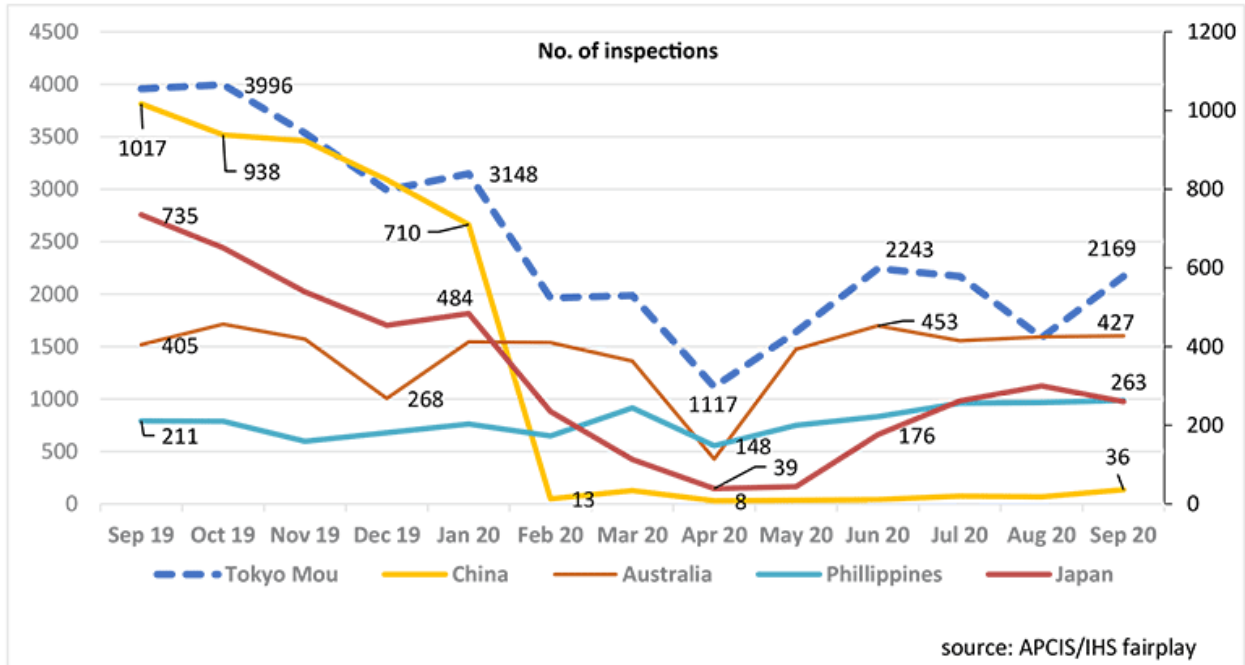
⁵⁶<https://www.sdir.no/en/shipping/legislation/directives/increasing-the-possibility-of-performing-remote-audits-and-inspections/>

⁵⁷<https://www.offshore-energy.biz/shipping-industry-sees-growth-in-remote-surveys-in-times-of-coronavirus-crisis/>

The low number of inspections lasted from March 2020 to around October 2020, as data released at the end of 2020 have showed that Port States from all the major M.O.U.s have managed to mitigate the situation and return to relatively similar number of monthly inspections compared to previous years.⁵⁸



⁵⁸ <https://www.dnv.com/news/psc-inspections-during-covid-19-are-we-back-to-normal--188091>



Concerning the provisions of the M.L.C. 2006, this flexibility was witnessed, as also stated before, in cases of Seafarer Employment Agreement deficiencies by extending contracts beyond

the 12-month threshold of continuous employment on board and seafarer medical certifications expirations. The force-majeure situation, coupled with the low number of inspections from March 2020 to September 2020, when the farce-majeure measure was lifted, have skyrocketed the number of seafarers awaiting repatriation to 400.000 by the end of the year, falling to 200.000 by March 2021. (De Beukelaer, 2021)

As expected for 2020, the majority of deficiencies found in the Paris M.O.U. region, concerned the titles Health and safety and accident prevention (44.2%), Seafarers' employment agreements (10%) and Hours of Works or rest (7.4%), with detainable deficiencies relevant with Manning levels for the ship (44.4%) of Seafarers' employment agreement (SEA) provisions(12.7%), more than doubling the 2019 number.⁵⁹ The Black Sea M.O.U. does not publish data categorized by M.L.C. title, yet found: Health Protection, Medical Care, Social Security deficiencies (12%), Working Conditions deficiencies (5.27%) and Conditions of Employment (only 0.14%), relatively to the total number of deficiencies regarding all categories and conventions.⁶⁰

Notably, even in 2021, a degree of flexibility is being exercised in cases of extended contracts of employment, allowing for shipowners to produce evidence witnessed by their Flag Administration, that specifies a rectification plan being already in place, to facilitate the repatriation of seafarers exceeding 12 months on board, by next port call. Normally, this would constitute a detainable detention for noncompliance with the M.L.C. 2006. 14. Expired Medical certificates are also accepted by P.S.C., in cases of flag states producing evidence of awareness and acknowledgement of the specific case in question.⁶¹

To keep up with its rising obligations for adequate inspections, some Port Authorities have started conducting remote P.S.C. inspections as early as June 2020, to minimize the risk of virus spread and thus seafarer's health onboard. The Tokyo M.O.U. has launched a guidance program for remote P.S.C. inspections, only in cases when a physical P.S.C. inspection is not feasible, starting from April 1st, 2021.⁶²

⁵⁹<https://www.parismou.org/2020-paris-mou-annual-report-%E2%80%9Cdealing-pandemic%E2%80%9D>

⁶⁰<http://www.bsmou.org/downloads/annual-reports/BSMOU-AR-2020.pdf>

⁶¹<https://www.parismou.org/sites/default/files/PSCIRC97%20-%20TEMPORARY%20GUIDANCE%20RELATED%20TO%20COVID-19%20REV.6%20FINAL.pdf>

⁶²<http://www.tokyo-mou.org/doc/Press%20Release%20on%20remote%20PSC%20inspection-f.pdf>

CHAPTER 7: SEAFARERS' WELFARE

Welfare on board can be described as the summary of all the necessary needs in order the seafarers to be healthy and happy and seems to play an important role in crew retention. Modern shipping companies are increasingly willing to invest in their seagoing personnel's wellbeing, as it is considered a main source of productivity and the quality of working and living conditions are essentials for the effective and safe operation of ships Nevertheless, the theme of seafarers' welfare has not been sufficiently addressed in the M.L.C., and by extension, in the maritime industry. (Exarchopoulos, et al, 2018)

In the case seafaring, it may include the personal comfort and health of the individual seafarer, the level of job satisfaction and the prosperity of his/her family, and the crew welfare while being onboard and at ports, ensuring the wellbeing and safety of the crew. The crew welfare, as it is presented by M.L.C. 2006, highlights the importance of the presence of facilities and services aiming at boosting seafarers' social and psychological wellbeing onboard, including recreational facilities, like gym, library, playrooms with board or electronic games and communication services. (Progoulaki, et al, 2013) Seafarers themselves often point those recreational facilities onboard have significantly contributed to the betterment of their well-being, irrespective of their quality. (Zhang, et al, 2020)

7.1. SEAFARER WELFARE NEEDS

The seafaring profession is among the most demanding professions and seafarers are required to lead a tough lifestyle. Being away from home for a long time, working and living within confined spaces is taxing to their socialization prospect. The need for communications is often found to be really important for seafarers. M.L.C. 2006 states that seafarers should have "reasonable access to ship-to-shore telephone communications, and email and Internet facilities, where available". However, this is only a recommended provision of the Convention, resulting in the majority of shipping companies having email and internet access mostly for business use only, or are too expensive and limited for use by the average seafarer. (Progoulaki, et al, 2013) Additionally, making an international phone call, purchasing, or topping up sim cards for

subsequent on-board use and accessing broadband internet services, are considered by seafarers the most important need, when venturing for shore leave. (Zhang, et al, 2020)

Nowadays they are found to be more socially distant with each other, mere acquaintances, as the usage of internet telecommunications, therefore the ability to communicate with their families, makes them more likely to spend their time likewise, rather than socialize with each other. Still, being absent from the family home continues to take its toll especially for married seafarers, as problems arising in the family cannot be solved by the seafarer and place a burden on his/her mental state. Feelings of longing to be together with the family, especially the offspring, are very common, although cultural differences in regard to its severity, have been observed.⁶³

In the second Title of M.L.C. 2006, it is required that “seafarers should be granted shore leave to benefit their health and wellbeing”, acknowledging the necessity to visit port welfare facilities. Nowadays, most ports operate 24/7, requiring intensive work schedules on board. As a result of staying for shorter time in ports, most seafarers do not have a chance to go ashore. The few seafarers who can have shore leave only have a few hours at their disposal. (Oldenburg & Jensen, 2020) Furthermore, modern ports are operating with high degree of automation, meaning only a few people are present at a given time, and are commonly situated a great distance away from the closest town centers and lack sufficient public transportation infrastructure. (Graham, 2009; Zhao, et al, 2021)

Lastly, due to the introduction of International Ship and Port Facility Security (I.S.P.S.) Code, that has imposed very strict port security requirements, the availability of shore leave depends on the port State, rather than the shipowners. This results in many international ports refusing to issue shore passes to seafarers at all. (Bauer, 2008)

7.2. THE ISSUE OF FATIGUE

Stemming from the desire to save labour costs, reduction of the average crew size, coupled with use of increasingly larger vessels, have had a significant impact on seafarers’ living and working conditions. To cope with these new trends and the 24/7 nature of the maritime industry, seafarers

⁶³<https://devpolicy.org/seafarers-in-a-covid-world-20210603/>

usually work long and highly irregular hours, over extended periods of time. Some of them, must also occasionally undertake a multi-task role onboard to counteract problems arising by a seafarer being indisposed due to sickness, injury etc.

Seafarer fatigue comes as a natural consequence as vessels keep maintaining the minimum manning level required by international legislature. Fatigue is defined by I.M.O. as “a reduction in physical and/or mental capability as the result of physical, mental or emotional exertion which may impair nearly all physical abilities including strength, speed, reaction time, coordination, decision making, or balance” and remains an exemplified concern as shown by the 2019 Guidelines on Fatigue (MSC.1/Circ.1598). (Baumler, et al, 2021)

The most common causes of fatigue known to seafarers are lack of sleep, poor quality of rest, stress, excessive workload and low vessel manning levels, noise volume and the constant movement of the sea. It is credited in the subsequent reports as the most common reason for maritime accidents by far. (Progoulaki, et al, 2013)

The M.L.C. 2006, addresses the issue of fatigue by defining maximum work hours or minimum rest hours for all seafarers onboard, although according to the findings of the Concentrated Inspection Campaign by Paris M.O.U. on ‘Rest Hours’ in 2014, “there is a general lack of compliance in the maritime industry”, noticing seafarers present false hours of rest records to port State control officers. (Grbić, et al, 2015) Another trend found in the maritime industry long tours of duty, which are more than six months, may lead to increased sleepiness, loss of sleep quality and reduced motivation. (Abaya, et al, 2018)

A seafarer, according to most common forms of Employment Agreement, shall be engaged for six months and that this period may be extended to seven months or reduced to five months for operational convenience, while the M.L.C. states that the seafarer is entitled to repatriation when reaching tour of duty duration of no more than 12 months. Interestingly, it is not stated that the seafarer must be repatriated, rather he/she is entitled to repatriation.⁶⁴

⁶⁴<https://www.amsa.gov.au/about/regulations-and-standards/172016-maximum-period-shipboard-service-seafarers>

7.3. SEAFARERS' STRESS & MENTAL STATE

In recent years, in order to adhere to the rising number of regulations, the profession has been burdened with a large amount of administrative and bureaucratic tasks, leading to monotonous routines and fatigue due to very high workload. (Exarchopoulos, et al. 2018) There is limited time to do anything else other than work, even less to “see the world, and live an adventurous life”, as some seafarers were falsely promised when they were cadets. They merely exercise it for “bread-winning” purposes, securing an important source of income, in some cultures and places like the Philippines, necessary for the livelihood of many family members. (Ljung, & Widell, 2014) It has been accepted that being indifferent to any profession a person is conducting, may lead to long term mental issues down the way, and that is also true for seafaring, the profession being a host to a lot of additional stressors. (Slišković, 2017)

Fatigue and sleep loss are viewed as problems of paramount importance in the industry, yet research suggests that they are still prevalent today, especially in vessels operated with lower standards. They are a common stressor, especially among seafarers with watchkeeping duties and seafarers of higher ranks. The rank brings about a measure of authority, along with managerial responsibilities like time and decision-making pressure, and pressure considering mistakes in this industry can have severe repercussions to the environment and to the safety and health, economic livelihood and wellbeing of seafarers and shipowners. (Ismail, et al, 2021) Captains are found to suffer from fatigue and stress more than the lower ranks, which is very troubling, as they possess overriding authority and responsibility for matters related to the safety of the vessel, crew and cargo.

Although normal fatigue is not stress, the inability to deal effectively with fatigue for prolonged periods can become a source of stress. Furthermore, fatigue at sea, stress and excessive workload are found to be the main problems for seafarers along with the long duration of social isolation, all of which potentially leading to serious threats to their physical health, mental health, and wellbeing. (Lucas, et al, 2021)

Social isolation is one of the main causes of psychological problems of seafarers and result in feelings of boredom, exclusion, anger, depression and despair. Some seafarers may use excessive

smoking or alcohol consumption as a coping mechanism, resulting in additional health problems. (Qin, et al, 2021)

Even though high amounts of stress have been linked with negative long-term effects on health, the M.L.C. provides limited exposure to the matter, viewing it adequate to provide for recreational facilities on board, but no provisions as to ways of counteracting cases of seafarers suffering from high stress. Unfavorable business relations are much more difficult to manage when working and living within limited space, especially in view of the multicultural structure of the shipping industry. (Slišković, 2017)

7.3.1. SEAFARERS' MENTAL STATE DURING THE COVID-19 ERA

Ismail, et al, (2021) have found a few correlations between the level of stress and some certain personal characteristics, during the covid-19 era. Contract extensions and absence of repatriation and shore leave were the dominant issues plaguing the industry, straining the seafarers coping mechanisms. Seafarer age, followed by seaborne experience is shown to be beneficial - the higher they are, the more resilient to stressors. Furthermore, access to the newer communication technologies is advantageous, when available, especially in newer technology vessels. In contrast, marital status is an unfavorable factor for maintaining serviceable levels of stress but is not as significant as expected. What is disheartening though, was the fact that an impressive 75% of the seafarers examined, showed signs of high stress.

Repatriation and shore leave are among the few ways for a “way out” for a seafarer, a slight pause for his/her routine, problems, fatigue, stress, frustrations. (Ljung, & Widell, 2014) Access to shore leave and repatriation remains for some seafarers a very important motivator, and the recent uncertainty regarding the issue is detrimental to them maintaining the desirable business composure for increasing amounts of time, inducing feelings of anxiety, hopelessness, and despair for many. The worst feeling, as was reported, was the uncertainty of when this situation would be remedied, if at all, and also the notion that the organizations and institutions mandating the protection of seafarers, have largely abandoned them to their fate. Fear of contracting the virus was a stressor for some seafarers, though most felt safer on board, as long as the personal protection guidelines were adhered to by everyone on board. (Slišković, 2020)

Single, voyage-based tours on board have become staple in the last few decades, leading to the precarious state of employment that many seafarers face. The fact that their employment is not secure and may change many times during their careers, presents itself as a serious source of stress. The M.L.C. 2006 provides for employment contract making but not much for security between jobs. (De Beukelaer, 2021) Seafarers onboard during the covid-19 era were reported to have been feeling privileged, being able to work and earn, while those at home were suffering from lack of employment. Especially from the cruise industry, which as of September 2021 has still not restarted, exhibit feelings of anxiety and fear for their lack of income, the uncertainty of when the industry will recover, and their inability to maintain their certificates due to the closure of training institutions, hampering their future career growth. (Pesel, et al, 2020; Slišković, 2020)

High levels of stress do not only cause physical health problems but also exert a negative influence on the seafarers' mental state, willingness/motivation to work and ability to concentrate on difficult and demanding tasks. Their high fatigue is perpetuated as sleep becomes a problematic endeavor, possibly leading to insomnia, which contributes to loss of mental health resources. (Abaya, et al, 2018) Some seafarers that fail to adequately deal with their hardships may soon find themselves facing much more severe problems like post-traumatic stress disorder, depression, and suicidal thoughts. (Lucas, et al, 2021)

The International Chamber of Shipping has lately called for attention to the mental health of seafarers, after a chain of suicide cases onboard, although their relatively poor mental status has been academically registered before the onset of the pandemic. Qin, et al, (2021) showed in his study of Asian seafarers during the covid era, that a staggering 41% has reported depression symptoms, with 9% of them being severe, contributing their findings to poor sleep quality, constant overtime work, monotonous tasks, social isolation, boredom. They recommended that the seafarer's mental health need more attention at this time, while also pointing the idea of seafarers receiving mental health education, to better prepare against job-specific stressors and learn/implement appropriate coping strategies.

Recent studies of confidential psychological phone consultations of seafarers in the covid-19 era, have shown a spike in the number reporting P.T.S.D. symptoms and psychological exhaustion. They concluded that the covid-19 pandemic has brought to light the severely limited resources spent by the maritime industry on seafarers' mental health prevention. The I.M.O.'s Seafarer

Crisis Action Team has been established to resolve individual problematic cases with assistance from other organizations like the I.L.O., to guide seafarers towards the most suitable solution, and it is bringing promising results. (Lucas, et al, 2021)

Talks for possible amendments to the M.L.C. 2006, to provide for the mental health preservation of seafarers, could be a natural next step, if the appropriate support is gathered. Established classification societies have also proceeded to include specific measures taken during the safety management audits, addressing crew fatigue, and seafarer's physical and mental health.⁶⁵

⁶⁵<https://www.dnv.com/news/dnv-safety-management-audits-target-crew-well-being-199664>

CONCLUSION – FUTURE OF THE M.L.C. 2006

The adoption and entry into force of the M.L.C. 2006 has been without doubt a very welcome occurrence for all the maritime industry stakeholders. It manages to incorporate the most important labour rights and needs of seafarers into a comprehensive yet simple and effective provisions, while at the same time providing shipowners the benefit of fair competition, and the ratifying states with efficient tools to manage the enforcement and implementation of these provisions on board vessels flying their flag and at vessels visiting their ports. Older seafarers have already witnessed improvement in their working and living conditions and an enhancement of their rights, compared to the time before the adoption of the M.L.C. (Zhang, et al, 2020) Yet, as in all things in life, there is always room for further refinement, and some of the M.L.C. shortcomings have been steadily coming into light, accelerated by the onset of the global pandemic of the covid-19 virus.

So, has the M.L.C. managed to offer adequate protections to seafarers in these trying times or has it failed? As it turns out there is no simple answer to this question. Data and research from this period are still relatively scarce or unavailable to the general public, although some early deductions can already be made.

Protection of health and safety onboard have been seen as matters of paramount importance by the entire maritime industry. Judging by the very low number of confirmed covid infections registered onboard vessels, it can be characterized as a success story. Early into the pandemic, there have been cases of seafarers being refused access to medical facilities ashore, yet with the intrusion of the I.M.O. and I.L.O., they managed to be resolved and be fewer in number as time went on.

The next serious issue met with a lot of attention were the crew changes and repatriations. Since maritime companies were unable to efficiently perform them, due to international travelling restrictions, seafarers witnessed their contracts being extended indefinitely, causing further fatigue and stress to the already strained seafarers, imperiling their personal safety and the safety of the vessel and cargo. Reduced crew sizes and excessive work hours were already existing phenomena, and the onset of the pandemic came to further “fuel the fire”. Exarcopoulos, et al, (2018) has argued that a remedy to these issues, as well as, to the diminishing number of

seafarers being allowed shore leave, would be the reduction of the maximum limit of a seafarers' tours of employment from 12 months to 6, an opinion that the writer agrees to, and proposes a revision of the relevant Title at the next M.L.C. amendment procedures. Granted, crew changes could not be performed at first, but the situation improved over time, and it would improve further if seafarers were finally categorized as "key workers", a movement started by the I.M.O. back in May 2020 but until now, September 2021, this has not been achieved. Consequently, as a preventive measure for future unforeseen circumstances and seeing that maritime transportation will always need to be fully functional, the writer suggest that the seafarers classification of "key worker" should at least be discussed in the I.L.O. committees, aiming at the M.L.C. 2006 being amended to explicitly provide for ratifying nations to acknowledge seafarers as "key workers" and possess preferential treatment when travelling between home and the port of coming onboard/ashore.

Furthermore, the M.L.C. 2006 may provide for the physical health of the seafarer but remains inadequate at addressing their mental health. The onset of the pandemic has caused many seafarers to be isolated onboard for a very long time, which has taken a toll on their mental capacity. To reduce their loneliness, access to internet facilities onboard ocean venturing vessels should become mandatory and free for all seafarers, which will cover their need of frequent communication with their personal relations, in addition to providing better quality personal entertainment opportunities and access to a vast amount of information, to remain up to speed with the world's happenings. Progoulaki, et al, (2013) have specified that welfare facilities ashore are not subject to any inspections, but at least as a first step after the pandemic, seafarers must have access to services for covering some of their basic needs, like shopping for basic consumer items and currency transfers, within port terminal boundaries. Wireless internet connectivity inside terminals must also be available, as it already is in most airports and cruise terminals, and all of these services must be liable to independent inspections.

It is encouraging to see that matters that used to plague the industry years ago, like wage payment, abandonment of seafarers and inadequate provision of food, catering, have not resurfaced during the pandemic. Even as logistics chains worldwide became strained, access to provisions was not reportedly hindered at any stage. Seafarers onboard were also happy to be able to work and earn when so many people worldwide were stuck at home, unable to earn

income. Seafarers ashore faced this problem, as the M.L.C. does not provide for states or shipowners to provide money stipends to seafarers that are unable to work, except when injured at work and unable to continue.⁶⁶ Naturally, this seems more like an issue of the maritime industry rather than the M.L.C., which makes extensive use of single voyage contracts, (Bartulović & Aflič, 2018) and going against industry practices and banning them from use, would be counterintuitive. After all, the M.L.C. cannot be panacea for every single issue that affects seafarers.

Finally, seafarers' certificates had to be extended for durations way above the limitations provided by the M.L.C., and Flag states and Port States would have to find safe ways to properly inspect and enforce the Convention provisions. It may have been a slow process at first, but the use of new remote technologies has for the most part proved effective at achieving the desired outcome. Electronic certificates, remote medical examinations, including those for acquiring certificates, remote audits, and inspections, have been concepts only existing in research books or in development/early stages before the pandemic, but quickly rose in prominence. Shipowners and States have witnessed the benefits of digitalization, that has been slow in the maritime industry compared to others and are ready to continue utilizing them after the pandemic is over, most of which can greatly improve the everyday lives and fulfill the needs of seafarers.

The M.L.C. 2006 has been designed with the concept of “change” in mind, being able to quickly rise to the occasion, follow the constant industry and technology changes and adapt accordingly. (McConnell, et al, 2011) It has managed to protect the seafarers in some areas but, due to its weak points, have evidently failed them in others, and it this has been true from time of its inception. The covid-19 pandemic has surely acted as a serious crash test and has brought upon glaringly the Convention's strengths and weaknesses. Consequently, the lessons learned from this year and a half should serve as staging point for the M.L.C. committees to capitalize on the innovative and flexible nature of the Convention and proceed to expedite some much-needed amendments, so that appropriate changes to the maritime workplace occur, for the betterment of the seafarers' lives, and by extension, the whole maritime industry.

⁶⁶ https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:91:0::NO::P91_SECTION:MLCA_AMEND_A4

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