



IMO
INTERNATIONAL MARITIME LAW INSTITUTE
Established under the auspices of the International Maritime Organization
A specialized agency of the United Nations



**SHIPPING DECREE (MARITIME LABOUR CONVENTION 2006,
ENFORCEMENT AND COMPLIANCE) REGULATIONS 2020**

**A Legislative Drafting Project submitted in partial fulfilment of the requirements for
the award of the Degree of Masters of Humanities (M.Hum.) in International
Maritime Legislation at the IMO International Maritime Law Institute**

EXPLANATORY NOTES

SUBMITTED BY:

DJAGOU IKPADON DONKO

(TOGO)

SUPERVISOR: MS. RAMAT JALLOH

Academic Year 2019/2020

PART ONE: GENERAL OVERVIEW OF THE MARITIME LABOUR CONVENTION, 2006

The Maritime Labour Convention, 2006 (MLC, 2006) recognized the need for seafarers special protection due to the danger and hard work related to their profession. To ensure decent working conditions seafarers despite of the earlier conventions taken by the International Labour Organization (ILO), this latter adopted the MLC 2006 which takes more into account several aspects protecting them considering the global nature of the shipping industry.

Part one will look at general description of the MLC 2006 which consist the background, purpose, scope of application of the Convention. It will also take into account especially the fundamental rights and principles of seafarers, their employment and social rights, the implementation and enforcement of the Code and then, the maritime labour certificate and declaration of maritime labour compliance carried and maintain by ships which flying the flag' state that are parties to the convention.

I. The Development Process of Maritime Labour Convention, 2006 (MLC, 2006)

A. The International Labour Organization (ILO), the Joint Maritime Commission (JMC) and the Tripartite Committee

1) The ILO and the JMC

Long before human rights protection began to take shape as a moral imperative guiding all States, it was recognized that seafarers required special protection due to the hardship and danger which were staples of the seafaring profession.¹ The ILO is the only tripartite

¹ Deirdre Fitzpatrick & Mickael Anderson, *Seafarers' Rights* (Oxford University Press, 2005) p. 38.

United Nations (UN) agency, since 1919 the ILO brings together governments, employers and workers of 187 member States, to set labour standards, develop policies and devise programmes promoting decent work for all women and men.²

As specialized agencies of the U.N., the International Labour Organization (ILO) adopted several conventions and recommendations including human and civil rights to address seafarers' working conditions. The ILO was founded in Geneva in 1919, under the Treaty of Versailles, with the fundamental aim of seeking to promote social justice and to cope with the problem of labour conditions involving 'injustice, hardship and privation'.³

Since its inception in 1919, the ILO has adopted more than 180 conventions and 185 recommendations covering many aspects of workers' rights.⁴ Later, during the Second World War, exactly on 17 May 1944, the Declaration of Philadelphia which as an annex to the ILO Constitution had been adopted by Government delegates, employers and workers from 41 countries and set out the key principles including that 'labour is not a commodity' and that 'all human being, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity'.⁵

Issues social and labour are generally treated inside of International Labour Conference (ILC) which is a forum where member states of ILO meet. Moreover, the ILC supports the application of ILO conventions and recommendations.

Special maritime sessions of the ILC were held regularly since 1920 and, as a consequence, during the first decade of ILO activity, more than a quarter of the conventions adopted concerned standards in the maritime sector and conditions of employment of seafarers.⁶

²<https://www.ilo.org/global/about-the-ilo/lang--en/index.htm>. Accessed the 25th January 2020.

³ *Op Cit.* at p. 40.

⁴ *Ibid.* at p. 41.

⁵<https://www.ilo.org/global/about-the-ilo/lang--en/index.htm>. Accessed the 25th January 2020.

⁶ *Supra*, footnote 1 at p. 43.

So, three Conventions of the ILO sought to address specific issues of seafarers: the ILO Minimum Age (sea) Convention 1920 (ILO C7), the ILO Unemployment Indemnity (shipwreck) Convention 1920 (ILO C8), and the ILO Placing of Seamen Convention 1920 (ILO C9), which was replaced by the ILO Recruitment and Placement of Seafarers' Convention 1996 (ILO C179).⁷

Subsequently, at the 86th session of the ILC on 18 June 1998, the ILC adopted the ILO Declaration on Fundamental Principles and Rights at Work. The Declaration commits all ILO member States to respect the principles in four areas, whether or not they have ratified the specific Conventions. Those four areas are: freedom of association and collective bargaining; the elimination of forced labour, the elimination of child labour; and the elimination of discrimination in respect of employment and occupation.⁸

In essence, the fundamental principles cited above deals with maritime issues and have been to the benefit of all seafarers. It is important to add that other several standards have been adopted by ILO, all relating to human rights. Those standards are intended to be ratified and implemented by each State. Due to the issue of non-ratification and lack of uniform implementation of these standards it has led to the ineffectiveness of the said conventions. To combat this situation, the International Maritime Organization (IMO) joined hands with ILO to come up with a consolidated convention, the MLC 2006.

To correct the multiplicity of these instruments, the Governing Body which is the executive body of ILO, upon the recommendation made to it by the Joint Maritime Commission (JMC) at its 29th Session (January 2001), established a High-level Tripartite Working Group to assist with the work of developing the proposed new single instrument which would consolidate the existing body of 69 ILO maritime Conventions and Recommendations and one Protocol.⁹ Besides, the JMC is a bipartite standing body that

⁷*Ibid* at p. 22.

⁸<https://www.ilo.org/declaration/thedeclaration/history/lang--en/index.htm>. Accessed the 05 January 2020.

⁹https://www.ilo.org/global/docs/WCMS_162320/lang--en/index.htm. Accessed the 25 January 2020.

provides advice to the Governing Body on maritime questions including standard setting for the shipping industry.¹⁰

Most important is that the Governing Body of ILO took note of the recommendation made to it by the JMC to convene a preparatory technical conference in 2004 for the first discussion of the proposed new instrument and to convene a Maritime Session of the International Labour Conference in 2005 to adopt the instrument.¹¹ This new instrument was the MLC, 2006.

As a matter of fact, it was in the interest of shipowners, as much as that of their social partners, that seafarers worldwide should benefit from decent working and living conditions, irrespective of their nationality, the ownership of their vessel or the flag it flew.¹²

2) The Tripartite Committee

The Governing Body of the ILO is the executive body of the ILO. It intervenes in the supervision procedure in two important ways; under article 22 of the constitution it determines the form in which the governments' reports are to be drawn up and the particulars they are to supply and on other hand, it plays a potentially important role as regards supervision is in connection with the Committee of Experts.¹³

The Governing Body has two types of functions: on the one hand, those of control over the International Labour Office and, on the other, a number of functions of its own concerning the functioning of the Organization and matters relating to international labour standards.¹⁴

¹⁰ Ibid.

¹¹ Agenda of the 2005 sessions of the International Labour Conference, Preparatory Technical Maritime Conference (2004) and the date, place and agenda of the 94th (Maritime) Session (2005) of the International Labour Conference <https://www.ilo.org/public/english/standards/reim/gb/docs/gb286/pdf/gb-3-2.pdf>. Accessed the 06 January 2020.

¹² Ibid.

¹³ E.A. LANDY, *The Effectiveness of International Supervisors, Thirty Years of I.L.O. Experience* (Stevens Oceana, 1966), p. 34.

¹⁴ Ibid.

In fact, in Article XIII, the Convention established a special Committee of states having ratified it and comprising the representatives of government (2), shipowners and seafarers with special competence in the area of maritime standards. The same Article also refers to the Government representatives of Members which have not yet ratified this Convention may participate in the Committee but shall have no right to vote committee but shall have no right to vote on any matter dealt with in accordance with this Convention.¹⁵

Furthermore, the votes of each Shipowner and Seafarer representative in the Committee shall be weighted as so to ensure that the Shipowners' group and the Seafarers' group each have half the voting power of the total number of governments which are represented at meeting concerned and entitled to vote.¹⁶

Generally speaking, this part point out the role played together by the ILO, the JMC and the Tripartite Committee to develop the new single instrument (the MLC, 2006) which is a landmark Convention. The MLC, 2006 has unified all the previous Conventions relating to seafarers in one Convention with the intention of facilitating the ratification process and ensure the effective implementation of seafarers' rights by States.

The MLC 2006 is the conclusion of ILO's response to the many recommendations which were put forward, including the 2000 Report by the International Commission on shipping, inquiry into ship safety and competition.¹⁷

B. The Seafarers Bill of Rights

The MLC 2006 establishes minimum working and living standards for all seafarers working on ships flying the flags of ratifying countries. It is also an essential step forward in ensuring a level playing field for countries and shipowners who, until now, have paid the price of being undercut by those who operate substandard ships.¹⁸ It consolidates

¹⁵ MLC, 2006, Article XIII, paragraph3.

¹⁶ Ibid, paragraph 4.

¹⁷ McConnell Moira, Delvlin Dominick, Doumbia Cleopatra-Henry, *The Maritime Labour Convention, 2006: A Legal Primer to an Emerging International Regime* (Martinus Nijhoff publishers, 2011), p. 48.

¹⁸ https://www.ilo.org/global/standards/maritime-labour-convention/what-it-does/WCMS_219665/lang-en/index.htm. Accessed on 08th January 2020.

international conventions and recommendations related to seafarers living and working conditions which had been adopted by the ILO since 1919.

As an instrument of ILO, the MLC 2006 was adopted by the 94th session of the ILC on 23 February 2006. It entered into force on 20 August 2013 and has been ratified by 96 states representing more than 91 per cent of the world gross tonnage of ships.¹⁹

The MLC 2006 is set to become the ‘fourth pillar’ in the international maritime regulatory framework, standing alongside International Convention for the Safety of Life at Sea, 1974 (SOLAS)²⁰, International Convention for the Prevention of Marine Pollution from Ships, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78)²¹ and International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW) 1978.²²

The Convention which is intended to be globally applicable, easily understandable, readily updatable and uniformly enforced reflects especially the fundamental rights of seafarers and provides for their rights to decent working and living conditions. These fundamental rights which we will explain later are provided for explain in Article III of the Convention and they are: (a) freedom of association and the effective recognition of the right to collective bargaining, (b) the elimination of all forms of forced or compulsory labour, (c) the affective abolition of child labour and (d) the elimination of discrimination in respect of employment and occupation.

¹⁹<https://www.ilo.org/global/standards/maritime-labour-convention/lang--en/index.htm>. Accessed on 07th January 2020.

²⁰ International Convention for the Safety of Life at Sea (adopted on 1 November 1974, entered into force on 25 May 1980) 1184 UNTS 18961.

²¹ International Convention for the Prevention of Marine Pollution from Ships, as modified by the Protocol of 1978 (adopted on 2 November 1973, entered into force on 2 October 1983) 1340 UNTS 22484.

²² International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (adopted on 7 July 1978, entered into force on 28 April 1984) 1361 UNTS 23001.

(a) Freedom of Association and the Effective Recognition of the Right to Collective Bargaining

This fundamental principle is incorporated in two international labour Conventions, precisely in: the Freedom of Association and Protection of the Right to Organize Convention, 1948 (N°87) and the Right to Organize and Collective Bargaining Convention, 1949 (N°98).

They Conventions are rooted in the ILO Constitution and the Declaration of Philadelphia annexed to the ILO Constitution and their core value has been reaffirmed by the international community, notably at the 1995 World Summit on Social Development in Copenhagen and in the 1998 ILO Declaration on Fundamental Principles and Rights at Work.²³

In fact, concerning the maritime field, it is important for governments to ensure certitude between seafarers and shipowners in order to keep States' economies stable in case where they organize in all ports some activities like strike to defend their interest. It recognized that they have this powerful to do so.

As a consequence, collective bargaining provides a means of building trust between the parties through negotiation and the articulation and satisfaction of the different interests of the negotiating partners.²⁴ Unfortunately, until now, Togo does not have collective bargaining regarding the maritime sector but initiatives are taken presently by technicians to fill this deficiency.

(b) The Elimination of all Forms of Forced or Compulsory Labour

The ILO Declaration on Fundamental Principles and Rights at Work obliges member States to eliminate forced labour.²⁵ Essentially, face this issue, the ILO set minimum standards that fix the bottom line below which individual countries should not fall, they

²³<https://www.ilo.org/declaration/principles/freedomofassociation/lang--en/index.htm>. Accessed the 26 January 2020.

²⁴ Ibid.

²⁵<https://www.ilo.org/declaration/principles/eliminationofchildlabour/lang--en/index.htm>. Accessed the 27 January 2020.

can naturally achieve higher standards of protection of workers²⁶. They are: Forced labour Convention, 1930 (N°29) and Abolition of Forced labour Convention, 1957 (N°105).

As a result, in 2016, an estimated 40.3 million people are in modern slavery, including 24.9 million in forced labour and 15.4 million in forced marriage.²⁷ Out of the 24.9 million people trapped in forced labour, 16 million people are exploited in the private sector such as domestic work, construction or agriculture; 4.8 million persons in forced sexual exploitation, and 4 million persons in forced labour imposed by State authorities.²⁸

(c) The Affective Abolition of Child Labour

Children enjoy the same human rights accorded to all people.²⁹ In fact, the principle of the effective abolition of child labour means ensuring that every girl and boy has the opportunity to develop physically and mentally to her or his full potential.³⁰ Its aim is to stop all work by children that jeopardizes their education and development.³¹ ILO's minimum standards are provided in following Conventions: Minimum Age Convention, 1973 (N°138) and Worst Forms of Child Labour Convention, 1999 (N°182).

(d) The Elimination of Discrimination in Respect of Employment and Occupation

ILO's minimum standards which provide this principle are: Equal Remuneration Convention, 1951 (N°100) and Discrimination (Employment and occupation) Convention, 1958 (N°111).

²⁶ Ibid.

²⁷<https://www.ilo.org/global/topics/forced-labour/lang--en/index.htm>. Accessed the 27 January 2020.

²⁸ Ibid.

²⁹<https://www.ilo.org/declaration/principles/abolitionofchildlabour/lang--en/index.htm>. Accessed the 27 January 2020.

³⁰ Ibid.

³¹ Ibid.

Indeed, Discrimination at work can occur in many different setting, from high-rise office buildings to rural villages, and in a variety of forms and can affect anyone regardless the sex, the race, the social origin or political opinions.³² It may be direct or indirect.

Moreover, equality at work means that all individuals should be accorded equal opportunities to develop fully the knowledge, skills and competencies that are relevant to the economic activities they wish to pursue.³³ Furthermore, national laws and practices may well be broader and include more comprehensive approaches for the elimination of discrimination at work.³⁴

Additionally, apart from these fundamental rights explained above, the MLC, 2006 includes also standards for conditions of employment, hours of work and rest, accommodation, recreational facilities, food and catering, health protection, medical care, welfare and social security protection for seafarers, regulating recruitment and placement services, flag and port state inspection system and includes, for the first time in any ILO convention, seafarers' rights to shore leave.³⁵

C. Aims and Purposes of the Convention

The MLC, 2006 aims to ensure that all seafarers have the right to a safe and secure workplace, fair terms of employment, decent working and living conditions on ship, and rights to health protection, medical care and other protection.³⁶

Further, the purposes of the Convention are embodied in the preamble found in it. Indeed, the preamble provides that all seafarers are covered by the provisions of other ILO instruments (all previous standards) and have other rights which are established as

³² <https://www.ilo.org/declaration/principles/eliminationofdiscrimination/lang--en/index.htm>. Accessed the 27 January 2020.

³³ Ibid.

³⁴ Ibid.

³⁵ Douglas B. Stevenson, 'Maritime Labour Law' in David Joseph ATTARD and Malgosia Fitzmaurice, Norman A Martinez Gutiérrez, Ignacio Arroyo, Elda Belja, *The IMLI Manual on International Maritime Law, Volume II: Shipping law* (1stedn, Oxford University, 2016), Chap 8, p. 211.

³⁶ ILO, *Maritime Labour Convention 2006: A Guide for the Shipping Industry*, Prepared by the International Shipping Federation (ISF) (1stedn, 2006) p. 8.

fundamental rights and freedoms applicable to all persons while considering the global nature of the shipping industry that is necessary for the seafarers' special protection. In addition, this instrument is one single document which incorporated around sixty international conventions adopted since 1919; all deal with seafarers' rights and obligations.

D. The Structure of the Convention

The Convention comprises of three different parts: the Articles, the Regulations and the Code. The Articles and Regulations contain the fundamental rights and general principles which are obligations for a State ratifying it.

The requirements of the Regulations are drafted in general way when details of implementation are precise in the Code. The Code which contains the details for implementation of the Regulations comprises two parts namely: Part A (mandatory standards) and Part B (non-mandatory guidelines). The guidelines are not mandatory but government should give due consideration to implement their responsibilities. Additionally, states will have flexibility to apply Part A requirements in a way that is 'substantially equivalent' to the Conventions text.³⁷

The MLC, 2006 provides in Article VI, paragraphs 3 and 4, that in some circumstances a national provision implementing the rights and principles in a manner different from that set out in Part A (Standards) of the code will be considered as substantially equivalent if the member concerned satisfies itself that the relevant legislation or other implementing measures is conducive to the full achievement of the general object and purpose of the provision or provisions of Part A of the Code concerned and give effect to the provision or provisions of Part A of the Code concerned.

³⁷ Ibid.

The Regulations and the Code which are linked together closely, treat all aspects relating to seafarers' working and living conditions. The two elements are organized under five Titles which shall be discussed as follows:

Title 1 - Minimum Requirements for Seafarers to Work on a Ship

Regulation 1.1- Minimum Age

The purpose of the regulation is to ensure that no under-age persons work on a ship. In fact, under the regulation, no person below the minimum age shall be employed or engaged or work on a ship. The minimum age is fixed at 16 years. The employment of a seafarer on board a ship under this age is prohibited by the Convention.

Moreover, paragraph 2 of the Title 1' Standard prohibited night work for seafarers under the age of 18 years. The definition of night depends of the national law and practice. However, it covers a period nine hours starting not later than midnight and ending not earlier than 5 a.m.

Nevertheless, there are exceptions to the rule which may be made by the competent authority when the effective training of the seafarers will be impaired and that the work will not be detrimental to the seafarers' health. This shall be determined by the authority or under national laws or regulation and after consultation with the shipowners' and seafarers' association.

Regulation 1.2- Medical Certificate

The purpose of this regulation which deals with the medical certificate is to ensure that all seafarers are medically fit to perform their duties at sea. Normally, seafarers would not permit to work on a ship unless they are certified as medically fit. The certification is issued by a qualified medical practitioner but in case of eye examination, this is to be done by a professional recognized by the competent authority.

Besides, Standard A1.2 paragraph 3 of the Regulation is without prejudice to the International Convention on Standards of Training, Certification and Watchkeeping for seafarers (STCW)³⁸. A medical certificate issued under the Convention is accepted by the competent authority if in meeting with regulation 1.2.

Paragraph 6 of the Standard state the certificate will attest that the hearing and sight of the seafarers are satisfactory and that the concerned are not suffering from any medical condition likely to be aggravated by the service at sea or to render him unfit or to endanger the health of other persons on board. Under paragraph 7, the maximum period of the medical certificate' validity is two years except for a seafarer who is under 18 years and in which case the maximum period of validity is to be one year. However, the period of validity of colour vision certificate is six years.

But in cases of urgency, the competent authority may permit a seafarer to work without a valid medical certificate until the next port of call where he can obtain a certificate after examination by a medical practitioner. Yet, the period of permission is not more than three months and the seafarer has an expired medical certificate of recent date. Furthermore, the medical certificates for seafarers working on international voyages should be provided in English language.

Regulation 1.3- Training and Qualifications

The purpose of the regulation is to ensure that seafarers are trained or qualified to carry out their duties on board ship. Seafarers shall not work on a ship unless they are trained or certified as competent or otherwise qualified to perform their duties.³⁹ Also, they are not permitted to work on a ship unless they have successfully completed training for personal safety on board ship.⁴⁰ Inevitably, the training and certification in accordance with the relevant IMO mandatory instruments shall be met the purpose of paragraph 1 and 2 of this regulation.

³⁸*Supra*, footnote 22.

³⁹ MLC, 2006, Regulation 1.3, paragraph 1.

⁴⁰ *Ibid*, paragraph 2.

Regulation 1.4- Recruitment and Placement

This regulation has for purpose to ensure that seafarers have access to an efficient and well regulated seafarer recruitment and placement system. Indeed, each Member shall ensure that all seafarers have access to an efficient, adequate and accountable system for finding employment on board ship without charge to the seafarer.⁴¹

In addition, seafarer recruitment and placement services operating in a territory shall conform to the code provided in the regulation. In respect of seafarers working on ships that fly a flag of a State, the Member shall ensure that shipowners, who use seafarer recruitment and placement services of countries not parties to the MLC 2006, are in conformity with the requirement of the Convention.

Title 2 -Conditions of Employment

There are eight regulations under this title. Regulation 2.1 discusses the seafarers' employment agreements whilst regulation 2.2 talks about wages and regulation 2.3 about hours of work and hours of rest. When we talk about regulation 2.4, it discusses about entitlement to leave while regulation 2.5 discusses repatriation. Go in regulation 2.6, it discusses about seafarer compensation for the ship's loss or foundering. Regulation 2.7 talks about manning levels whereas regulation 2.8 discusses Career and skill development and opportunities for seafarers' employment.

The purposes of these regulations are to ensure that seafarers have a fair employment agreement, are paid for their services, have regulated hours of work or hours of rest, have adequate leave, are entitled to return home or to repatriation, are entitled to adequate compensation in the case of injury, loss or unemployment arising the ship's loss or foundering, are sufficient on board for the safe, efficient and secure operation of the ship to avoid their fatigue and to promote their career and skill development and employment opportunities for them.

⁴¹MLC, 2006, Regulation 1.4, paragraph 1.

Title 3 - Accommodation, Recreational Facilities, Food and Catering

They are two regulations under this title. These regulations are the most important provisions of the MLC 2006, for both the seafarers and shipowners, because of the attendant operational cost and design.⁴²

Regulation 3.1- Accommodation and Recreational Facilities

The purpose of this regulation is to ensure that seafarers have decent accommodation and recreational facilities. In particular, the regulation 3.1 states that, the technical requirements such as the nature of the mattress on berths, berth diameters, floor space, locker sizes, and even the nature of flushing systems for toilets.⁴³

Indeed, the Standard A3.1 contains provisions related to general requirements for accommodation (adequate headroom, proper lighting and sufficient drainage); for ventilation and heating; for lighting; sleeping accommodation; hospital accommodation; laundry facilities; space on open deck; separate offices or a common ship's office for use by deck and engine departments; seafarers' recreational facilities, amenities and services; frequent inspections to be carried on board ships by the competent authority.

The provisions of the new Convention dealing with on-board accommodation are primarily drawn from the Accommodation of Crews Convention (Revised), 1949 (No. 92), the Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133), the related Crew Accommodation (Air Conditioning) Recommendation, 1970 (No. 140) and the Crew Accommodation (Noise Control) Recommendation, 1970 (No. 141), but have been updated to reflect the advice of the shipowners, and Seafarers representatives regarding contemporary standards and needs in the sector.⁴⁴

⁴² Supra, footnote 17 at p. 339.

⁴³ Ibid.

⁴⁴ ILO: Adoption of an instrument to consolidate maritime labour standards, Report I (1A) at p. 39.

Regulation 3.2- Food and Catering

The regulation has for purpose to ensure that seafarers have access to good quality food and drinking water provided under regulated hygienic conditions.

In fact, Standard A.3.2, paragraph 1, obligates each member to adopt laws and regulations to provide minimum standards for the quantity and quality of food, drinking water and for the catering standards that apply to meals provided to seafarers on ships and to undertake educational activities to promote awareness and implementation of these standards.⁴⁵ This member shall ensure that ships fly its flag meet the minimum standards such as food and drinking water supplies, religious requirements and cultural practices.⁴⁶ The new Convention has introduced four changes into the existing standards, as prescribed by the Food and Catering (Ships' Crews) Convention, 1946 (No. 68), and the Certification of Ships' Cooks Convention, 1946 (No. 69).⁴⁷

Title 4 - Health Protection, Medical Care, Welfare and Social Security **Protection**

There are five regulations under the title which are relative to:

Regulation 4.1- Medical Care on Board Ship and Ashore

The obligation is imposed to States to protect the health of seafarers and ensure their prompt access to medical care on board ship and ashore. Essentially, the flag State have obligation to provide measures to ensure protection of seafarers' health and that they have access to prompt and adequate medical care whilst working on board the ship. The obligation is also expected when seafarers are ashore requiring medical care.

⁴⁵ MLC, 2006, Standard A3.2, paragraph 1.

⁴⁶ Ibid, paragraph 2.

⁴⁷ Lliana Chistodoulou-Varotsi and Dmitry A. Pentsov, *Maritime Work Law Fundamentals: Responsible Shipowners, Reliable Seafarers* (Springer, 2008) p 314.

Regulation 4.2- Shipowners' Liability

The purpose of the regulation is to ensure that seafarers are protected from the financial consequences of sickness, injury or death occurring in connection with their employment. Under the Standard A4.2, the shipowner is liable to bear the costs for seafarers working on their ships in respect of sickness, injury or death. However, national laws or regulations may exempt the shipowner from liability to defray the expense of medical care and board and lodging and burial expenses in so far as such liability is assumed by the public authorities.⁴⁸

Regulation 4.3- Health and Safety Protection and Accident Prevention

The purpose of the regulation is to ensure that seafarers' work environment on board ships promotes occupational safety and health. States have obligation to adopt laws or regulations under international instruments for the management of occupational safety and health protection and accident prevention on board ships. This regulation form part of the inspection before certificates' issuance (Maritime Labour Certificate and Declaration of Maritime Labour Compliance).

Regulation 4.4- Access to Shore-Based Welfare Facilities

The regulation has for purpose to ensure that seafarers working on board a ship have access to shore-based facilities and services to secure their health and well-being. States have obligation to promote the development of welfare facilities where exist ashore and ensure that the facilities are available for the use of all seafarers, regardless of nationality, race, colour, sex, religion, political opinion, flag State of the ship.

Regulation 4.5- Social Security

The purpose of the regulation is to ensure that measures are taken with a view to providing seafarers with access to social security protection. In fact, States have to ensure

⁴⁸ MLC, 2006, Standard A4.2, paragraph 6.

that all seafarers and their dependants have access to social security protection expected by national law. However, the social security protection is subject to national circumstances.

Furthermore, the provisions of the regulation provide the branches to be considered with a view to achieving progressively comprehensive social security protection under Regulation 4.5; complementing the protection provided for under Regulations 4.1 and 4.2, and under other titles of the Convention.⁴⁹

Title 5 - Compliance and Enforcement

This title constitutes the main part of the MLC 2006 because it is related to the obligations of the all other titles. According to the title, States have obligation to fully implement and enforce the principles and rights as well as obligations provided in Titles 1, 2, 3 and 4 of the Convention.

The title establishes, for the first time, a certification system for labour and social conditions and its provisions are built on the provisions in the Merchant Shipping (Minimum Standards) Convention, 1976 and the Labour Inspection (Seafarers) Recommendation, 1996 (No 178) and the related the Labour Inspection (Seafarers) Recommendation, 1996 (No 185).⁵⁰ According to *M.L. McConnell et al.*, the title contains one of the most important developments in any ILO convention.

The new certification system to the inspection system for labour and social conditions is particularly related to IMO conventions which are SOLAS, MARPOL and International Safety Management (ISM)⁵¹ Code.

The title is divided in three regulations whose the two first comprise sub-regulations which will be discuss further. The title deals also with three Appendices.

⁴⁹ MLC, 2006, Standard A4.5, paragraph 1.

⁵⁰ *Supra*, footnote 17 at p. 477.

⁵¹ International Safety Management (adopted in 1993, entered into force on 1 July 1998).

Regulation 5.1- Flag State Responsibilities

The regulation comprises six sub-regulations divided in the Code, Part A (Standard) and Part B (Guidelines). The purpose of the regulation is to ensure that each Member implements its responsibilities under the Convention with respect to ships that fly its flag.

Regulation 5.1.1- General Principles

Under paragraph 1 of this regulation, it is confers to States the responsibilities to ensure that the working and living conditions for seafarers on board ships fly it flag, are compliance with national laws implementing the Convention' requirements. Paragraph 2 and 3 oblige States to establish an effective system for the inspection and certification of maritime labour conditions and in establishing this system, States are allowed to authorize public institutions or other organizations to issue certificate or to carry out labour inspections. Nevertheless, those States remain fully responsible for the inspection and certification of working and living conditions on board the ships fly their flag. Paragraph 4 refers to Maritime Labour Certificate and Declaration of Maritime Labour Compliance which constitute prima facie that the shipowner complies with requirement relating to working and living conditions of the seafarers.

Standard A5.1.1 of the regulation states that each States has obligation to establish clear objectives and standards covering the administration of its inspection and certification systems as well as adequate overall procedures for the assessment. Moreover, States shall require all ships that fly its flag to have a copy of the Convention available on board.

Furthermore, according to the guidelines B5.1.1, the competent authority should make appropriate arrangements to promote effective cooperation between public institutions and other organizations. Then, it should consult the shipowners' and seafarers' organizations at regular intervals.

Regulation 5.1.2- Authorization of Recognized Organizations

Under paragraph (1) of the regulation, the public institutions or other organizations recognized as competent and independent, by the competent authority to carry out inspections or issue certificates.

Standard A5.1.2 of the regulation states for the purpose of recognition as required, the competent authority will determine if the recognized organization satisfied the requirements relative to its competency and independence, necessary for carrying out its activities. These requirements concern their expertise in the relevant aspects of the Convention and an appropriate knowledge of ship operations including for example the minimum requirements for seafarers to work on a ship, accommodation, food and catering, health protection, medical care.

It concerns also their ability to maintain and update the expertise of its personnel, necessary knowledge of the requirement of MLC 2006, national laws, regulations and relevant international instrument. Further, if it is of the appropriate size, structure, experience and capability commensurate with the type and degree of authorization.

Authorization granted to the recognized organization empowers him to require the rectification of deficiencies identified in seafarers' working and living conditions and to carry out inspections on this regard, where port State made it request.

States has obligation to establish, on the one hand, a system to ensure the adequacy of recognized organization work (monitoring) including applicable national laws, regulations and relevant international instrument and, on the other hand, procedures for communication with and oversight of these organizations.

States should provide the ILO with a current list of the recognized organization authorized and update it. The list should specify the function and that list should be publicly available. However, it is relevant to indicate that although the recognized organization are authorized by the flag State, the latter remains responsible, under the

Convention, for the inspection and certification of seafarers' working and living conditions.

Regulation 5.1.3- Maritime Labour Certificate and Declaration of Maritime Labour Compliance

The regulation is linked to regulation 5.1.4 which deals with inspection and enforcement. This regulation covers certification procedures. Its provisions apply to ships of 500 gross tonnages or over, engaged in international voyages (a voyage from a country to a port outside such a country) and ships of 500 gross tonnages or over, flying the flag of a State and operating from a port, or between ports, in another country.

The regulation also applies to any ship not covered by those which are above cited, at the shipowner' request to ships flying the flag of a State.

States has obligation to ensure that ships flying it flag carry and maintain a Maritime Labour Certificate certifying that the working and living conditions of seafarers on the ships have been inspected and meet the requirements of national laws or regulations or other measures implementing the Convention.

Further, States has obligation to carry and maintain a Declaration of Maritime Labour Compliance stating the national requirements implementing the Convention for seafarers' working and living conditions and setting out the measures adopted by the shipowner to ensure compliance with the requirement on the ship.

The two documents shall conform to the model prescribed by the Code. The list of the matters which must be inspected and approved by the competent authority or a recognized organization duly authorized before issuing certificates concern what we call the 14 areas. The 14 areas as follow as: minimum age, medical certification, qualifications of seafarers, seafarers' employment agreements, use of any licensed or certified or regulated private recruitment and placement service, hours of work or rest, manning levels for the ship, accommodation, on-board recreational facilities, food and

catering, health and safety and accident prevention, on-board medical care, on-board complaint procedures and payment of wages.

The purpose of the inspection is to ascertain if the ship that flies a State flag meets and continues to meet the standards of the Convention. It shall issue or renew a Maritime Labour Certificate to that effect and maintain a publicly available record to that certificate. Indeed, the Maritime Labour Certificate constitutes prima facie the evidence that the ship comply with national requirements.

Moreover, the regulation in its standard A5.1.3 provides the period of validity of Maritime Labour Certificate. Essentially, under paragraph (2) of the standard, the validity of the Maritime Labour Certificate shall not exceed five years. This validity, however, is subject to an intermediate inspection carry out by the competent authority or by a recognized organization to ensure continuing compliance. Also, if only one intermediate inspection is carried out and the period of validity of the certificate is five years, this inspection shall take place between the second and third anniversary dates of the certificate.

The anniversary date means the day and month of each year which will correspond to the date of expiry of the Maritime Labour Certificate. The scope and depth of the intermediate inspection shall be equal to an inspection for renewal of the certificate.

In addition, paragraph (5) of the standard provides the issuance of an Interim Maritime Labour Certificate when the ship is new, changes flag or when a shipowner assumes responsibility for the operation of a ship which is new to the shipowner.

The interim Maritime Labour Certificate may be issued for a period not exceeding six months by the competent authority or recognized organization and only after satisfactory inspection as far as reasonable and practicable, the shipowner has demonstrated that the ship has adequate procedures to comply with the Convention, the Master is familiar with the requirements of that Convention and the responsibilities for implementation and the

relevant information has been submitted to the competent authority or recognized organization to produce a Declaration Maritime Labour Compliance.

A full inspection shall be carried out prior to expiry of the interim certificate to enable issue of the full-term Maritime Labour Certificate. Further, a Declaration Maritime Labour Compliance need not be issued for the period of validity of the interim certificate.

Besides, paragraph (9) of the standard of the regulation states that the Maritime Labour Certificate, the Interim Maritime Labour Certificate and the Declaration of Maritime Labour Compliance should be drawn up in the form corresponding to the models given in Appendix A5-II of the Convention.

Under paragraph (10), the standard provides that the Declaration Maritime Labour Compliance should be attached to the Maritime Labour Certificate. The Declaration should have two parts:

a) Part I which should be drawn by the competent authority should:

- Identify the list of matters to be inspected in accordance with the standard;
- Identify the national requirements embodying the relevant provisions of the Convention by providing a reference to the relevant national legal provisions as well as, to the extent necessary, concise information on the main content of the national requirements;
- Refer to ship-type specific requirements under national legislation;
- Record any substantially equivalent provisions adopted pursuant to paragraph (3) of Article VI;
- Clearly indicate any exemption granted by the competent authority as provided in Title 3.

- b) Part II which shall be drawn up by the shipowner and shall identify the measures adopted to ensure ongoing compliance with the national requirements between inspections and the measures proposed to ensure continuous improvement.

The results of all subsequent inspections or other verifications carried out with respect to the ship and significant deficiencies found shall be recorded and the date when the deficiencies were found to have been remedied and shall be inscribed or appended to the Declaration of Maritime Labour Compliance.

A current valid Maritime Labour Certificate and Declaration of Maritime Labour Compliance, accompanied by an English-language translation, shall be carried on the ship and a copy shall be posted in a conspicuous place on a board where it is accessible to seafarers.

A copy must also be available, upon request, to seafarers, flag State inspectors, authorized officers in port States, and shipowners' and seafarers' representatives. However, when a ship is not engaged in an international voyage, the requirement for an English-language translation does not apply.

Furthermore, paragraph (14) of the standard states that certificates (Maritime Labour Certificate, Interim Maritime Labour Certificate or Declaration of Maritime Labour Compliance) shall cease to be valid in any of the following situations:

- a) If the relevant inspections are not completed within the periods specified;
- b) If the certificate is not endorsed;
- c) When a ship changes flag;
- d) When a shipowner ceases to assume the responsibility for the operation of a ship and;
- e) When substantial changes have been made to the structure or equipment covered in Title 3 of the Convention.

In the case of above mentioned in paragraph (4) (c), (d) or (e), a new certificate should be issued when the competent authority or the recognized organization is fully satisfied that the ship is compliance with the requirement of the standard.

Unless paragraph (16), a Maritime Labour Certificate may be withdrawn by the competent authority or recognized organization, if there is evidence that the ship concerned does not comply with the requirements of the Convention and any required corrective action has not been taken.

Further, paragraph (17) provides that when considering whether a Maritime Labour Certificate should be withdrawn, the competent authority or the recognized organization shall consider the seriousness on the frequency of the deficiencies.

Regulation 5.1.4- Inspection and Enforcement

The regulation detailed the process of inspection of all ships flying a State' flag for determining seafarers' conditions on that ships, and its corollaries (certification and inspectors). Indeed, States have obligation under paragraph (1), to verify, through an effective and coordinated system of regular inspections and other control measures, if ships flying its flag comply with requirements of the Convention as implemented in national laws and regulations of the State.

Standard A5.1.4, paragraph (1) of the regulation oblige States to maintain a system of inspection of the conditions for seafarers on ships that fly its flag including verification of measures relating to working and living conditions set out in the Declaration of Maritime Labour Compliance are been met with Convention' requirements.

For this purpose, paragraph (2) states that a sufficient number of qualified inspectors should be appoint by the competent authority to fulfil their responsibilities. Similarly to recognized organisations which must be competent and independents to carry out inspections and provided them with the necessary legal authority to perform their duties.

Under paragraph (3), to carry out the verification and ensure the compliance, flag State-inspectors should be necessary trained, have the competence, have powers and terms of reference, status and independence. It provides in paragraph (4) that inspections should take place at the intervals required and not exceed three years.

The paragraph (5) states that when a State receives a complaint that a ship flying its flag does not meet the Convention' requirements, that State has obligation to take the steps necessary to investigate the matter and ensure that action is taken to remedy any deficiencies found. In addition, in paragraph (6), it states that a State has obligation to ensure that the inspectors are independent but that State have to guarantee the status and condition of service.

Under paragraph (7) of the standard, the inspectors should be empowered (a) to board a ship that fly a State' flag; (b) to carry out any examination, test or inquiry which they may consider necessary; (c) to require that any deficiency is remedied and in case of serious breach of the Convention' requirements (including seafarers' rights), to prohibit a ship from leaving port until necessary actions are taken.

Also, adequate penalties and other corrective measures for breaches of the requirements of the Convention and for obstructive inspectors in the performance of their duties should be provided for and effectively enforced.

When all measures are taken after inspection, the inspectors have the obligation to avoid a ship being unreasonably detained or delayed. If, a ship is unreasonably detained or delayed, compensation will be pay to shipowner for any loss or damage upon the burden of proof by the complaint. However, the shipowner is subject to any right of appeal to a judicial or administrative authority.

Nevertheless, inspectors have the obligation to give shipowner advice at their discretion when there is no clear breach or prior history of similar breaches of the Convention' requirements. This is provided in paragraph (9) of the standard. Under paragraph (10), inspectors should treat as confidential the source of any grievance or complaint relating to

violation laws including seafarers' working and living conditions while not intimating to the shipowner that an inspection was made due to such a grievance or complaint.

In addition, inspectors should, under paragraph (11) (a) be prohibited from having any direct or indirect interest in any operation which they are called upon to inspect and, (b) subject to appropriate sanctions or disciplinary measures, not reveal, even after leaving service, any commercial secrets or confidential working process, or information of a personal nature in the course of their duties.

Inspectors have an obligation to submit a report of each inspection to the competent authority; one copy in English or in the working language of the ship should be furnished to the master of the ship and another copy, posted on the ship's notice board for the information of the seafarers and, upon request, sent to their representatives.

Therefore, the competent authority of the State has an obligation to maintain records of inspections of the conditions for seafarers on ships flying its flag and that records should be published in an annual report on inspection activities in a period of six months, after the end of the year.

When there is an investigation pursuant to a major incident, the report of inspections shall be submitted to the competent authority in a period no later than one month following the conclusion of the investigation.

Regulation 5.1.5- On-Board Complaint Procedures

The regulation provides that States should require that ships flying its flag have on-board procedures for the fair, effective and expeditious handling of seafarers' complaints alleging breaches of the Convention's requirements. States should also prohibit and penalize any kind of victimization of a seafarer for filing a complaint. The term victimization covers any adverse action taken by any person with respect to a seafarer for lodging a complaint which is not manifestly vexatious or maliciously made.

The on-board procedures may be used by seafarers to lodge complaints relative to any matter that is alleged to constitute a breach of the Convention' requirements without prejudice to any wider scope that may be given in national laws or regulations or collective agreements. In this context, States shall ensure that, in its laws or regulations, appropriate on board complaint procedures are in place to meet the requirements of this regulation. Such procedures should seek to resolve complaints at the lowest level possible. However, in all cases, seafarers should have a right to complain directly to the master and, where they consider it necessary, to appropriate external authorities.

Further, the on-board complaint procedures should include the right of the seafarer to be accompanied or represented during the complaint procedure and safeguards against the possibility of victimization of seafarers for filing complaints.

In addition to a copy of their seafarers' employment agreement, all seafarers should provide with a copy of the on-board complaint procedures applicable on the ship as well as the contact information for the competent authority in the flag State and, where different, in the seafarers' country of residence. Seafarers should also provide the name of a person (s) on board the ship who can, on a confidential basis, provide seafarers with impartial advice on their complaint and otherwise assist them in following the complaint procedures available to them on board the ship.

Regulation 5.1.6- Marine Casualties

According to the regulation, States have obligation to hold an official inquiry into any serious marine casualty, leading to injury or loss of life that involves a ship that flies its flag. The final report of an inquiry should normally be made public.

Moreover, States should cooperate with each other to facilitate the investigation of serious marine casualties. Further, it is relevant to emphasize that the Convention does not provide provisions relating for regulation' standard and guideline.

Regulation 5.2- Port State Responsibilities

The purpose of this regulation is to enable States to implement its responsibilities under the Convention regarding international cooperation in the implementation and enforcement of the Convention Standards.

Regulation 5.2.1- Inspections in Port

The regulation empowers a State to make inspection over foreign ships calling in that State port for the purpose of reviewing compliance with the requirements of the Convention relating to the working and living conditions of seafarers on the ship. The State should accept the Maritime Labour Certificate and the Declaration of Maritime Labour Compliance, required by the Convention, as prima facie evidence of compliance with the requirements of the Convention.

Further, a State has obligation to develop an effective port State inspection and monitoring system in order to ensure that foreign ships entering a State port comply with the Convention' requirements. Nevertheless, information about the system including the method used for assessing its effectiveness should be included in that State' reports.

For the purpose of the inspection, the port State control officers (authorized officers) has obligation to inspected the 14 areas such as accommodation, payment of wages, manning levels for the ship. However, the latter cannot inspect certificate and declaration of foreign ships whose are not parties to MLC 2006.

Nevertheless, concerning the foreign ships which are parties to MLC 2006, where an authorized officer found that either the required documents are not conform with the Convention or conditions on board are clearly hazardous to the safety, health or security of seafarers or the non-conformity constitutes a serious breach of Convention' requirements or the ship has changed flag for the purpose of avoiding compliance with the Convention or there is a complaint alleging that specific working and living conditions on ship do not conform with the Convention' requirements, a more detailed

inspection may be carried out over the matters of 14 areas in order to determine the working and living conditions on board that ship.

Such inspections should be carried out where authorized officers believe there are deficiencies which constitute a serious breach of the Convention' requirements. Further, in the case of complaint, the inspection should generally be limited to matters within the scope of the complaint.

Complaint means information submitted by a seafarer, a professional body, an association, a trade union or, generally, any person with an interest in the safety of the ship, including an interest in safety or health hazards to seafarers on board.

Where authorized officers found that the master does not comply with the Convention' requirements, following a more detailed inspection, it should bring the deficiencies to the master' attention with required deadlines for the rectification. If these deficiencies are considered to be significant, the authorized officer should bring them to the attention of the appropriate seafarers' and shipowners' organizations in a State in which the inspection is carried out, and may: notify a representative of the flag State and provide the competent authorities of the next port of call with the relevant information. However, that authorized officer should ensure the ship should not proceed to sea until any non-conformity has been rectified or until the latter has accepted a plan of action to rectify such non-conformity.

Yet, the State in which the inspection is carried out should have the right to transmit a copy of the officer's report, which must be accompanied by any reply received from the competent authorities of the flag State within the prescribed deadline, to the Director-General of the International Labour Office.

Furthermore, a State should ensure that its authorized officers are given guidance as to the kinds of circumstances justifying detention of a ship in case of serious breach of the Convention' requirements. In this respect, a State when implementing its responsibilities under the Convention should make all possible efforts to avoid a ship being unduly

detained or delayed. If it has been done so, compensation should be paid for any loss or damage suffered but the burden of proof should be on the complaint.

Regulation 5.2.2- Onshore Seafarer Complaint-Handling Procedures

According to this regulation, States have obligation to ensure that seafarers on ships calling at a port in a State' territory who allege a breach of the requirements of the Convention have the right to report such a complaint in order to facilitate a prompt and practical means of redress.

A complaint by a seafarer may be reported to an authorized officer in the port at which the seafarers' ship has called. When it so, the authorized officer should undertake an initial investigation and where appropriate, given the nature of the complaint, this initial investigation should include consideration of whether the on-board complaint procedures have been explored. Nevertheless, the authorized officer should, where appropriate, seek to promote a resolution of the complaint at the ship-board level. Where the complaint has not been resolved at the ship-board level, the authorized officer should forthwith notify the flag State, seeking, within a prescribed deadline, advice and a corrective plan of action.

However, where the complaint has not been resolved following action taken above mentioned, the port State has obligation to transmit a copy of the authorized officer's report to the Director General and that report must be accompanied by any reply received from the competent authorities of the flag State within the prescribed deadline.

In addition, statistics and information regarding complaints that have been resolved should be regularly submitted by the port State to the Director-General. Further, appropriate steps should be taken to safeguard the confidentiality of complaint made by seafarers.

Regulation 5.3 Labour-supplying responsibilities

The purpose of the regulation is to ensure that each State implements its responsibilities under the Convention as pertaining to seafarer recruitment and placement and the social protection of its seafarers.

According to this regulation, State has a responsibility to ensure the implementation of the requirements of the Convention regarding the recruitment and placement of seafarers as well as the social security protection of seafarers that are its nationals or are resident or are otherwise domiciled in its territory.

Therefore, States should establish an effective inspection and monitoring system and legal proceedings for enforcing its labour-supplying responsibilities under the Convention. Information about the system including the method used for assessing its effectiveness should be included in those States' reports.

Clearly, private seafarer recruitment and placement services established in a State's territory and securing the services of a seafarer for a shipowner, wherever located, should be required to assume obligations to ensure the proper fulfilment by shipowners of the terms of their employment agreements concluded with them.

II. Scope of application, fundamental and seafarers' rights

The Convention provides certain Articles which are relevant for shipowners and seafarers. Essentially, it took into account the fundamental rights of seafarers.

A. Application to all seafarers and ships

Article two of the Convention provides the scope of application. Indeed, the MLC, 2006 applies to all seafarers.⁵² Seafarer means any person who is employed or engaged or works in any capacity on board a ship to which this Convention applies.⁵³ Then, persons

⁵² MLC, 2006, Article II, paragraph 2.

⁵³ Ibid, paragraph 1(f).

who regularly spend more than short periods on board, even where they perform tasks that are not normally regarded as maritime tasks may still be regarded as seafarers for the purpose of this Convention regardless of their position on board.⁵⁴

The Convention also applies to 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 such as dhows and junks. Moreover, it does not apply to warships or naval auxiliaries.⁵⁵ Ship means 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.⁵⁶

B. Fundamental and Seafarers' Rights

The MLC, 2006 requires states to ensure the respect of fundamental rights while implementing and enforcing the Convention. States' law and regulations shall respect fundamental rights to:⁵⁷

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

Additionally, the Convention requires states to implement fully the following rights:⁵⁸

- (a) Every seafarer has the right to a safe and secure workplace that complies with safety standards.
- (b) Every seafarer has a right to fair terms of employment.
- (c) Every seafarer has a right to decent working and living conditions on board ship.

⁵⁴*Supra*, footnote 36 at p. 21.

⁵⁵*Supra*, footnote 52, paragraph 4.

⁵⁶ *Ibid*, paragraph 1(i).

⁵⁷ MLC, 2006, Article III.

⁵⁸ *Ibid*, Article IV.

(d) Every seafarer has a right to health protection, medical care, welfare measures and other forms of social protection.

Clearly, the concept of the human element in the shipping sphere is traditionally associated with the ILO; however, the IMO has demonstrated an increasing interest, especially in recent years, in seafarers.⁵⁹

The IMO's vision is to significantly enhance maritime safety and the quality of the marine environment by addressing human element issues to improve performance. According to him, the human element is a complex multi-dimensional issue that affects maritime safety and marine environmental protection. It involves the entire spectrum of human activities performed by ships' crews, shore based management, regulatory bodies, recognized organizations, shipyards, legislators, and other relevant parties, all of whom need to cooperate to address human element issues effectively.⁶⁰

III. Implementation, Enforcement and Amendment of the Convention

A. Implementation and Enforcement Procedure

To achieve effective implementation of MLC, 2006, every State which ratify the Convention, need to understand it firstly before its enforcement. Then, it is relevant for States to understand the legal structure of the Convention due to the flexibility in its application. This flexibility arises from the consolidation of ILO Convention in one single instrument. The flexibility of implementation is related to the basic rights of seafarers to decent work in sight of their protection. It is based especially on the tripartism (workers, employers and government).

The implementation of the Convention, depending the willing of the government and to comply with the Convention, is possible through national laws or regulations, collective

⁵⁹ Supra, footnote 47 at p. 419.

⁶⁰ <http://www.imo.org/en/OurWork/HumanElement/VisionPrinciplesGoals/Pages/Default.aspx>. Accessed the 07 January 2020.

agreement or other measures or practice used by a state. This resolves the question of the implementation of the Convention ways to improve seafarers' conditions. Then, the MLC is flexible because it gives possibility to each state, take into account to their national circumstances, to implement provisions in a national law.

Besides, in certain circumstances, implementation of the mandatory standards in Part A of the Code (other than Title 5) may also be achieved through measures which are substantially equivalent.⁶¹

Indeed, according to the Article VI, paragraph 3 and 4, the member has obligation to satisfy itself following the necessary procedure of implementation but also carrying out this procedure in good faith in view to ensure that the objective and purpose of the implementation of principles and rights are achieved.

On the other hand, the MLC, 2006 gives power to States to impose effective compliance and enforcement mechanisms of certifications and inspections of the ships (Title 5 of the Convention referring to compliance and enforcement). Furthermore, one of the biggest achievements of the Convention is the cooperation among all ratifying states using comprehensive enforcement and compliance mechanisms.⁶²

Title 5 confers also the obligation through an effective and coordinated system of regular inspection, to verify that ships that fly its flag comply with the requirement of the international labour standards.⁶³ Moreover, it provides that each flag state shall require ships flying its flag to carry and maintain a Maritime Labour Certificate valid for a period of five years and complemented by a Declaration of Maritime Labour Compliance, certifying that the working and living conditions on board the ship meet the requirements of national laws and the MLC.⁶⁴

⁶¹ MLC, 2006, Article IV, paragraph 3&4. See also Maritime Labour Convention, 2006 (MLC, 2006) *Frequently Asked Questions (FAQ)* (4thedn, Geneva, 2015).

⁶² Desislava Nikolaeva Dimitrova and Roger Blanpain, *Seafarers' Rights in the Globalized Maritime Industry*, (Kluwer Law International, 2010) p 83.

⁶³ Ibid.

⁶⁴ Ibid.

When the Maritime Labour Certificate and the Declaration of Maritime Labour Compliance are delivered to the shipowners, this it is evidence that the latter is in compliance with the requirements of the Convention related to living and working conditions of seafarers or labour condition.

B. Amendments to the Convention

Firstly, it is in the best interest of a State to accept the amendments to the Convention to improve seafarers' working conditions. MLC provides different methods of amendment. Recently, the Convention has introduced a new procedure of amending the Code which is the tacit amendment procedure.

Under the tacit or accelerated amendment procedures, the power is given to the Committee to amend the Convention. Then, it has the capacity to observe the compliance of the Convention. The amendment to the Code is provided by Article XV of the MLC 2006.

The special Committee which is responsible for the supervision procedure has already carried out since 2014, three amendments which are:

- amendments of 2014 to the code implementing Regulation 2.5- Repatriation and 4.2- Shipowners' liability of the MLC, 2006 adopted on 11 April 2014 and entered into force on 18 January 2017. The first amendments relatives to Regulation 2.5, are intended to better address the specific problems faced in cases of abandonment of seafarers whilst the second amendments which concerns the Regulation 4.2, address the details of the obligation for shipowners to provide financial security to assure compensation in the event of the death or long-term disability of seafarers due to an occupational injury, illness or hazard;
- amendments of 2016 to the code relating to Regulation 4.3- Health and safety protection and accident prevention of the MLC, 2006 expected to enter into force on 8 January 2019. Fortunately, it is on this date during the celebration of the ILO

Centenary. The amendments was brought about, to better protect seafarers against shipboard harassment and bullying;

- amendments of 2018 to the code of the MLC 2006 relating to Regulation 2.1- Seafarers' employment agreements, to Regulation 2.2- Wages and to Regulation 2.5- Repatriation adopted on 27 April 2018. They two first amendments are intended to protect seafarers' wages when they are held captive in certain circumstances (piracy or robbery). The last amendment was brought again in order to replace Paragraph 8 of the Guideline B 2.5.1 by a new paragraph with regard to the entitlement to repatriation.

IV. The Need for Togo to Ensure Effective Implementation of the MLC 2006

It is obvious that 90% of international trade is carried out by sea. The maritime industry plays an important role in the economic development of a State. The main actors which control the maritime industry are seafarers. They are also a key factor for ship security. For this reason, they should be protected against dangers especially accidents or casualties. Unfortunately, it has been the case that for decades, seafarers' fundamental rights are not respected by certain shipowners and by their governments.

Indeed, seafarers do not have a decent working condition. Their working and living conditions are not usually taken into account by their employers. These one whose human dignity and rights are not respected, despite the joint effort of IMO, ILO and certain private international organizations incurred more hazards on seagoing or on board of ships.

These hazards are: fatigue (main factor causing accident), collision, foundering, and unseaworthiness of the ship, hard work in engine room, human errors (inadequate accommodation and inadequate training for example), fire and explosion. In brief, seafarers are considered as slaves. This has been conclude in the International Shipping Commission Report, 2001 and supported by an author which declare that: *'For thousands*

of today's international seafarers life at sea is modern slavery and their workplace is a slave ship'.

Preoccupied by these urgent situations, the ILO adopted since 1919, around sixty international Conventions relative to seafarers' rights improving their working and living conditions on board ships. However, with IMO support, the ILO adopted in 2006, the Maritime Labour Convention (MLC, 2006) which consolidated all these standards in one single document. Based on the tripartite principle (representatives government, shipowner and seafarers), the ILO succeeded its bet because several countries having ratified it.

In theory, usually, the ratification of international treaty does not automatically bind the States; it involves its incorporation into national law for it to have enforcement. In practice, many of several countries that ratified conventions do not implement it. It is the Togolese' State case, which has especially ratified the MLC, 2006 on 14 March 2012⁶⁵ but has not totally implemented the convention's provisions on a national level.

Subsequently, to comply effectively with IMO's requirements, Togo has firstly adopted on 11 October 2016 the Merchant Navy Code n° 2016-028. This legislative instrument which is a law repealed the Ordinance N°29 of 12 August 1971 Merchant Navy Code which did not contain provisions related for to seafarers' working conditions on board ships and social welfare of seafarers.

However, although the 2016 Merchant Navy Code took into account many aspects relating to seafarers as expected by the MLC 2006, deficiencies are still noted in, the question of measures implementing effectively the requirements of the Convention regarding the working and living conditions of seafarers on ships.

Only composed of three Articles, Title VI of the 2016 MN Code dealing with seafarers' working conditions on board of ships provides for the establishment of an effective system of inspection and certification of working conditions on board ships flying the

⁶⁵https://www.ilo.org/dyn/normlex/fr/f?p=1000:80021:0::NO:80021:P80021_COUNTRY_ID:103050. Accessed the 11 January 2020.

Togolese flag, the definition of objectives and standards for the administration of the inspection and certification system as well as a control or monitoring procedure and the inspection by authorized officials of all foreign vessels calling at a port of Togo.

Further, one of those articles provides the adoption of decrees in the Council of Ministers determining the procedures for applying the provisions relating to the certification of working conditions, inspections and complaints treated on board.

After analysis of these provisions, it appears that the actions planned by the legislator have not been undertaken until now by the competent maritime authority (the minister in charge of maritime affairs) who should do so through its technical service, namely the maritime administration (the Directorate of Maritime Affairs).

Moreover, it is relevant to state that the 2016 MN Code through its provisions does not provided the establishment of an effective inspection and monitoring system for enforcing its labour supplying responsibilities especially regarding the recruitment and placement of seafarers and the definition of status of inspectors to ensure compliance.

Apart from the issues above mentioned, there are also many other measures which should be taken by the competent authority (the counsellor for the sea) and the competent maritime authority. These measures are: implementation of the maritime policy of Togo by the competent authority and the further implementation of guidelines for flag State inspections by the competent maritime authority.

Further, the competent maritime authority should also promote cooperation between inspectors, shipowners and seafarers, to appoint a sufficient number of qualified inspectors and to ensure their independence while providing sufficient resources, to establish procedure to enable him to receive information in confidence concerning possible breaches of the MLC requirements. In addition, it should develop a model for fair, expeditious and well-documented on-board complaint-handling procedures for all ships flying a flag of a State.

It is submitted that, more labour measures have to be taken by the competent maritime authority or the government in order to promote seafarers' working and living conditions and to be in conformity with requirements under the MLC 2006. Unfortunately, it is not the case because firstly, the maritime administration does not undertake its responsibilities due to insufficient inspectors or due to lack of the necessary resources (financial, technical and logistic) not put on its disposal by the competent maritime authority. Furthermore, one of the issues which trouble the maritime institutions in Togo is the issue of overlap of duties between some of them and much interference leading to the limitation in the work of the maritime administration.

It is important for Togo to take into account the effective implementation and enforcement of the Convention where one notes that the 2016 MN Code still incomplete due to the lack of application texts. This insufficiency is relevant insofar as one wonders if the inspections are correctly carried out without the existence of application texts in order to determine the quality of seafarers' living and working on board the ships flying the Togolese flag and to ensure their rights. However, in the practice, Togo as a coastal, port and flag state carry on regularly inspections before it issues certificates to shipowners.

In view of the concerns raised, in order to attract more ships to our waters, to ensure safety and for competitiveness reasons, it would be desirable for the Togolese State to clean up its flag, given the great investments that have been made in recent years to develop the 'Port Autonome de Lomé'.

Indeed, the Port plays an essential role for the Togolese economy and for the landlocked States (Burkina Faso, Mali, and Niger). For this reason, the government aims to make Togo a logistics hub of excellence in the sub-region, in particular through the improvement of existing port infrastructure. This measure will have a positive impact on the Togolese economy namely the increase in activities at the port, job creation and the development of maritime transport. To ensure balance, the flag State must ensure compliance with international and national rules by shipowners.

It is therefore important for Togo which has a deep water port to be more interested in the human element by taking adequate measures which will improve seafarers' working and living conditions.

In light of the above, Togo should promote minimum protection for its seafarers by performing inspections properly by qualified inspectors over seafarers' working and living conditions. This will be done before granting certificates (the Maritime Labour Certificate and the Declaration of the Maritime Labour Compliance) to shipowners. These measures pass by the elaboration of application texts in order to ensure effective implementation and enforcement of the MLC, 2006.

According to the Convention, each Member shall require ships that fly its flag to carry and maintain a Maritime Labour Certificate certifying that the working and living conditions of seafarers on the ship, including measures for ongoing compliance to be included in the Declaration of Maritime Labour Compliance, have been inspected and meet the requirements of national laws or regulations or other measures implementing this Convention.⁶⁶

Furthermore, the same Convention provides that each Member shall require ships that fly its flag to carry and maintain a Declaration of Maritime Labour Compliance stating the national requirements implementing the Convention for the working and living conditions for seafarers and setting out the measures adopted by the shipowner to ensure compliance with the requirements on the ship or ships concerned.⁶⁷

These documents which shall conform to the model prescribed by the Code are important in order to reduce losses or maritime accidents due to the fact that the majority of these accidents arising is arisen from human errors especially seafarers' fatigue. The Maritime Labour Certificate and the Declaration of the Maritime Labour Compliance prima facie

⁶⁶ MLC, 2006, Regulation 5.1.3, paragraph 3.

⁶⁷ Ibid, paragraph 4.

are evidence that the shipowner comply with the requirements of the MLC, 2006 related to labour conditions.

Also, considering that Togo became a member of IMO since 1983⁶⁸, it has ratified and implemented several conventions whose the most important is the 1969 Vienna Convention on the Law of Treaties (VCLT).⁶⁹The accession of this Convention had been done by Togo on 28 December 1979.⁷⁰Inevitably, under International Law, Togo has obligation to implement adequately Conventions.

V. How the Togolese Government Should Ensure an Effective Implementation and Enforcement of the Provisions in Title V of the MLC 2006?

Togo has already ratified the MLC 2006 on 14 March 2012. It has a monism system. It postulates that national and international law form one single legal order, or at least a number of interlocking orders which should be presumed to be coherent and consistent.⁷¹

Article 137 of Title XI of the Constitution of the Fourth Republic promulgated on the 14 October 1992 relating to treaties and international agreements stipulates that the Head of State negotiates and ratifies the international treaties and agreements.

According to Article 138, peace treaties, commercial treaties, treaties relative to the international organizations, those that engage the finances of the State, those that modify the provisions of a legislative nature, those which are relative to the status of persons and to Human Rights, those that involve cession, exchange or addition of territory, may only be ratified by virtue of a law.

⁶⁸<http://www.imo.org/fr/About/Membership/Pages/MemberStates.aspx>. Accessed the 11 January 2020.

⁶⁹ Vienna Convention on the Law of Treaties (signed 23 May 1969, entered into force 27 January 1980) 1155 UNTS 18232.

⁷⁰https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXIII1&chapter=23&Temp=mtdsg3&clang=_en. Accessed the 25 January 2020.

⁷¹ James Crawford, *Brownlie's Principles of Public International Law* (9thedn, Oxford University Press, 2019) p 45.

This article provides also that, the above listed treaties may only take effect after having been ratified and published.

Because the MLC 2006 falls under the Human Right protection, it can only become part of the law of Togo when ratified by virtue of a law.

Also, because the MLC 2006 is not self-executing, it has to be implemented by a provision. Togo has not implemented effectively Title V of the Convention regarding compliance and enforcement.

In this regard, Article 363 of the 2016 MN Code gives power to the competent maritime authority (the minister in charge of maritime affairs), through the maritime administration, to make decrees concerning certification of working conditions, inspections and complaints treated on board.

These decrees are sent to the General Secretary of the Government which will introduce them to the Council of Ministers. Once deliberations have been done by the Council of Ministers, the Head of State proceed with the signature of the decree. After, the decree is published in the national daily in the Gazette.

Indeed, in application of Article 69 of the Constitution of the Fourth Republic promulgated on the 14 October 1992 provides the Head of State signs ordinances and decrees deliberated in Council of Ministers. Article 80 of the same Constitution stipulates certain acts of Head State are countersign by the Prime Minister or if applicable, by Ministers responsible for their execution.

As a matter of fact, based on the power given to the competent maritime authority, the regulation regarding on the Title 5 of the Convention will be drafted. To ensure effective implementation and enforcement of the Convention, the regulation will reflect the flag State, the port State and the labour-supplying responsibilities of Togo in the following manner:

A. Flag State responsibilities

The flag State have to ensure provisional measures for compliance with the Convention. Although, the 2016 MN Code provides in its Article 361 for the establishment of an efficient inspection and certification system of working conditions on board of ships flying Togolese' flag, there is a lack of that MN Code to achieve full compliance with the MLC 2006, full implementation and oversight of the maritime labour measures.

Therefore, these regulations will designate the maritime administration as the competent authority for the procedure of inspections and delivering of certificates. The maritime administration, under the competent maritime authority responsibilities, will establish and develop an efficient inspection and certification system of working conditions on board of ships flying Togolese' flag.

According to Article 5 of the 2016 MN Code, the maritime administration is responsible for the administrative matters of the maritime professions and seafarers and then, for the participation in the application of maritime labour regulations. However, it is placed under control of the minister in charge of maritime affairs.⁷²

As a consequence, this Article constitutes a legal basis for the maritime administration to oversee the effectiveness of these regulations in accordance with the standard of MLC 2006. The review, under the competent maritime authority, will be conduct each two years by the maritime administration or if there is a need, with the ILO assistance, before reporting to IMO/ILO.

Further, the maritime administration will be empowered by these regulations to promote cooperation between public institutions and other organizations especially with shipowners' and seafarers' organizations.

⁷² The Merchant Navy Code n° 2016-028 adopted on 11 October 2016, Article 4.

B. Port State Responsibilities

Ships flying the Togolese' flag and foreign ships calling in the Togolese' ports would be inspected by authorized officers. Indeed, the Article 362 of the 2016 MN Code refers to inspection of foreign ships by authorized officers related to accommodation, food and catering, minimum age, qualification of seafarers; whether the 14 areas expected by the Convention should be inspected by the Port State Control Officers (PSCO).

Then, subject to successful inspection, a Maritime Labour Certificate and a Declaration of Maritime Labour Compliance will be issued by the flag State. Both documents constitute prima facie evidence of compliance with the requirements of the Convention. However, the PSCO cannot inspected the certificates of ships whose States are not parties to the MLC 2006.

In addition, during inspections, when deficiencies or serious breach relating to one of the 14 areas are detected by PSCO or relating to the violation of fundamental rights and principles of seafarers, these regulations will make provisions for that authorized officers to inform the flag State of vessel in order to take appropriate measures such as detention of the ship concerned.

Moreover, the maritime administration, under the competent maritime authority responsibilities, will develop, on the one hand, an effective port State inspection and monitoring system in order to ensure that ships entering ports comply with the Convention requirements and on the other hand, an on-board complaint procedures in order to resolve complaints on-board.

C. Labour-Supplying Responsibilities

The maritime administration as authorized by the competent maritime authority or maritime authority will oversee and monitor all recruitment and placement of seafarers' agencies operating in its territory. Further, according to Article 230 of the 2016 MN Code, it ensures that there are appropriate mechanisms and procedures for complaints relating to the activities of seafarer recruitment and placement services.

Indeed, there is many recruitment agencies operating under Togolese law. Unfortunately, the 2016 MN Code does not determine the system of inspection and monitoring and legal proceedings for breaches of licensing.

To fulfil this obligation, the maritime administration would by these regulations, develop a system of inspection of local agencies, either physical inspection or local agencies provides report every three month regarding a number of seafarers recruited for example.

A system of monitoring of those local agencies will also be developed. However, if a local agency fails to meet the above obligations, it will be deemed as an offence. Such local agency may be condemned to pay a fine or may be withdrawn from the list of operating recruiting agencies.

For the purpose of this legislative drafting project, Maritime Authority means the minister in charge of maritime affairs and officials of authority to which he has delegated all or part of his powers. Abroad the maritime authority designs the embassy or consular authority; however in foreign ports where Togo does not have an embassy or consulate, the maritime authority may delegate its powers in accordance with the international conventions in force.⁷³

In contrast, Competent Authority means Councillor for the sea, the minister in charge of maritime affairs, the maritime prefect.⁷⁴

Further, maritime administration means all maritime services and affairs placed under the supervision of the minister in charge of maritime affairs.⁷⁵

These regulations are made from the ILO Guidelines on implementing the MLC 2006 model national provisions.

⁷³ Supra, footnote 72 at Article 3, paragraph 15.

⁷⁴ Ibid, paragraph 16.

⁷⁵ Ibid, paragraph 4.

PART TWO: OVERVIEW OF THE DRAFT REGULATIONS

As above mentioned the exercise of the seafarers' function requires the shipowner to ensure a good living and working conditions for them as provided by the MLC, 2006. Indeed, the seafarers' health is fundamental for the safety of navigation and sanitary of ports touched by seafarers. Thus, the latter must work in good conditions of hygiene, housing, accommodation.

Given that all these aspects are related to the safety of ships and navigation, it is extremely important to subject the ship for inspection. The inspection should be carried out by the flag State or an organization which is recognized as competent and independent, ensuring that ships flying the flag of that State in question comply with international conventions requirements i.e. those ships ensure to seafarers a good working and living conditions. Certificates (a Maritime labour certificate and a Declaration of Maritime Labour Compliance) will then be issued after the inspection, which will constitute prima facie evidence that the said ships met standards.

Furthermore, the MLC, 2006 provides in Regulation 5.1.1 (paragraph 3) that the establishment of an effective system for the inspection and certification of maritime labour conditions by administration or other organization recognized to carry out inspections or to issue certificates or to do so.

This method is provided by Article 361 of the MN Code n° 2016-028 adopted on 11 October 2016. The same Code provides also in its Article 362 the inspection of all foreign ships calling in Togolese' ports by qualified inspectors in order to verify their conformity with the Convention' requirements relating to seafarers' working and living conditions as well as the seafarers' rights. Further, the MN Code stipulates in the Article 363 the adoption of application texts (Decrees) relating to the certification of working conditions,

inspections and complaint treat on board. These decrees refer to the title 5 of the Convention namely: Compliance and enforcement.

In this perspective, the current project of decree had been elaborated in order to comply effectively and fully with international standards relating to seafarers' working and living conditions. It is organized as follows:

- the first chapter is relative to preliminary. It includes definitions and application. In this part of the chapter, after to have defined some terminologies, we will discover the scope of application of the regulation.
- the chapter II covers the flag State responsibilities which point out the general principles, the authorized recognized organisms; the certification system documents (the Maritime labour certificate, the Interim maritime labour certificate and the Declaration of maritime labour certificate); the inspection and enforcement; the on-board complaint procedure and the marine casualties. Therefore, it will be allowed to determine how provisions of this chapter can empowered the maritime administration to establish an inspection system and other measures to verify and certify the implementation of the obligations on board ships.
- the chapter III refers to port State responsibilities. The chapter deals with the inspections in ports and the on-shore seafarers' complaint handling procedures. It will be treat the matter of the establishment of an effective port State inspection and monitoring system by the maritime administration under the maritime authority responsibilities.

- the chapter IV is relative to labour-supplying responsibilities. It will be discuss the manner whose the maritime administration under the maritime authority responsibilities will establish an effective system for enforcing the requirements of the regulation in order to enforce obligations of Togo with the subject matter.
- the chapter V take into account the miscellaneous and final provisions which provides identity card for inspector, criteria for detention a ship, repeal of decree and implementation of the decree by the maritime authority.

It also provides at the end of the drafting project as appendixes, the Maritime Labour Certificate (Appendix I), the Part I of the Declaration of Maritime Labour Certificate (Appendix II), the Part II of the same Declaration (Appendix III) as provided by the MLC 2006, the identity card for inspector (Appendix IV) and the criteria for detention of a ship (Appendix V).

This legislative drafting project, relating to ‘Shipping Decree (Maritime Labour Convention 2006, Enforcement and Compliance) Regulations 2020’ submitted by author of this draft as a partial fulfilment of the requirements for the Award of the Degree of Master of Humanities (M.Hum) in International Maritime Legislation to the IMO International Maritime Law Institute in 2020, have for purpose to ensure effective implementation and enforcement of the principles and rights as well as obligations provided by the Convention in order to promote and improve seafarer’s working and living conditions.

Presidency of the Republic

Togolese Republic

Work-Freedom-Fatherland

DECREE N° _____/PR

on the certification of working conditions, inspections and complaints treat on board.

THE PRESIDENT OF THE REPUBLIC,

The council of ministers heard,

DECREED:

CHAPTER I: PRELIMINARY

Article 1: Definitions

(1) For the purposes of this regulation, unless the context otherwise requires:

- (a) “the Convention” means the Maritime Labour Convention, 2006 adopted by the International Labour Organization on the 23rd February, 2006 and ratified by The Togolese Government;
- (b) “declaration of maritime labour compliance” means the declaration stating the national requirements implementing the Convention for seafarers’ working and living conditions and setting out the measures adopted by the shipowner to ensure compliance with the requirement on the ship;
- (c) “foreign ship” means a ship that is flying the flag of a country other than Togo;
- (d) “maritime administration” means all maritime services and affairs placed under the supervision of the minister in charge of maritime affairs;
- (e) “maritime authority” means the Minister in charge of maritime affairs;
- (f) “maritime labour certificate” means the certificate certifying that the working and living conditions of seafarers on the ships have been inspected and meet the requirements of national laws or regulations or other measures implementing the Convention;
- (g) “seafarer” means any person who is employed or engaged or works in any capacity on board a ship;
- (h) “seafarers’ employment agreement” means any contract of employment for seafarers including articles of agreement;
- (i) “seafarer recruitment and placement service” means any person, company, institution, agency or other organization, which is engaged in recruiting seafarers on behalf of shipowners or placing seafarers with shipowners;
- (j) “ship” means 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;

(k) “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 the Convention, regardless of whether any other organizations or persons fulfil certain of the duties or responsibilities on behalf of the shipowner;

(2) The words used in these regulations and not defined, but defined in the Convention shall have the meaning as assigned to it in the Convention.

Article 2: Scope of application

(1) Unless provided otherwise these regulations apply to all seafarers and to all ships, whether publicly or privately owned, ordinarily engaged in commercial activities, other than ships engaged in fishing or in similar pursuits, ships of traditional build such as dhows and junks and pleasure ships. It does not apply to warships or naval auxiliaries.

(2) The maritime administration may, in the event of doubt, as to the application of this regulation make a determination after consultation with the shipowners’ and seafarers’ organizations as to whether or not a person or a category of persons comes within the definition of “seafarer” and as to whether or not a ship or a category of ships comes within the definition of “ship”.

- (3) Where the maritime administration determines that it would not be reasonable or practicable at the present time to apply certain details in provisions of this regulation to a ship or particular categories of ships, those details will not apply to seafarers on the ship or ships concerned to the extent that those seafarers are covered by other provisions relating to those details and that the other provisions fully implement the relevant provisions of the Regulations of the Convention. Such a determination may only be made in consultation with the shipowners' and seafarers' organizations and may only be made with respect to ships of less than 200 gross tonnage not engaged in international voyages.
- (4) Any determinations made under paragraph 2 or 3 above must be communicated by the maritime administration to the Director-General of the International Labour Office.

CHAPTER II: FLAG STATE RESPONSIBILITIES

Article 3: General principles

- (1) The maritime administration shall establish an effective system for the inspection and certification of maritime labour conditions, in accordance with Article 5 and Article 6 of these regulations on ships that fly the flag of Togo.
- (2) The maritime administration may, where appropriate in accordance with Article 4, authorize public institutions or other organizations which it recognizes as competent and independent to carry out inspections or to issue certificates or to do both.

(3) The maritime administration shall establish clear objectives and standards covering the administration of the inspection and certification system referred to paragraph 1 above, as well as adequate overall procedures for its assessment of the extent to which those objectives and standards are being attained.

(4) Ships must have a copy of the Convention available on board.

Article 4: Authorized Recognized Organizations

(1) The maritime administration may recognize public institutions or other organizations as competent and independent, for the purpose of carrying out inspections or certification of ships to determine compliance with the provisions of these regulations.

(2) Before recognizing an organization under paragraph 1 above, the maritime administration shall review the competency and independence of the organization concerned and determine whether the organization has demonstrated, to the extent necessary for carrying out the activities covered by the authorization conferred on it, that the organization:

(a) has necessary knowledge of the requirements of the Convention as well as of applicable national laws and regulations and relevant international instruments; and has necessary expertise in the relevant aspects of the Convention and an appropriate knowledge of ship operations, including the minimum requirements for seafarers to work on a ship, conditions of employment, accommodation, recreational facilities, food and catering,

accident prevention, health protection, medical care, welfare and social security protection;

(b) is of the appropriate size, structure, experience and capability commensurate with the type and degree of authorization; the organization seeking recognition must demonstrate the technical, administrative and managerial competence and capacity to ensure the provision of timely service of satisfactory quality; in this respect, the maritime administration must determine whether the organization:

- (i) has adequate technical, managerial and support staff;
- (ii) has sufficient qualified professional staff to provide the required service, representing an adequate geographical coverage;
- (iii) has proven ability to provide a timely service of satisfactory quality;
- (iv) is independent and accountable in its operations;

(c) has the ability to maintain and update the expertise of its personnel; recognized organizations must develop a system for the qualification of staff employed by them as inspectors to ensure the timely updating of their knowledge and expertise.

(3) The maritime administration shall conclude a written agreement with any organization that it recognizes for purposes of an authorization. The agreement shall include the following elements:

- (a) scope of application;
- (b) purpose;
- (c) general conditions;
- (d) the execution of functions under authorization;
- (e) legal basis of the functions under authorization;

- (f) reporting to the maritime administration;
 - (g) specification of the authorization from the maritime administration to the recognized organization;
 - (h) the maritime administration's supervision of activities delegated to the recognized organization.
- (4) Any authorizations granted with respect to inspections must, as a minimum, empower the recognized organization to require the rectification of deficiencies that it identifies in seafarers' working and living conditions and to carry out inspections in this regard at the request of a port State.
- (5) Recognized organizations must maintain records of the services performed by them such that they are able to demonstrate achievement of the required standards in the items covered by the services.
- (6) The maritime administration shall establish:
- (a) a system to ensure the adequacy of work performed by recognized organizations, which includes information on all applicable national laws and regulations and relevant international instruments; and
 - (b) procedures for communication with and oversight of such organizations that take into account the guidelines for the authorization of organizations acting on behalf of the maritime administration, adopted in the framework of the International Maritime Organization.
- (7) The maritime administration shall make appropriate arrangements to promote effective cooperation between public institutions and other organizations concerned with seafarers' shipboard working and living conditions.

- (8) The maritime administration shall provide the International Labour Office with a current list of any recognized organizations authorized to act on its behalf and shall keep the list up to date. The list shall specify the functions that the recognized organizations have been authorized to carry out.

Article 5: Maritime Labour Certificate and Declaration of Maritime Labour Compliance

- (1) These regulations apply to every ship that flies the flag of Togo and is:
 - (a) 500 gross tonnage or over and engaged in international voyages;
 - (b) 500 gross tonnage or over and operates from a port, or between ports, in a country other than Togo;
 - (c) For the purpose of these paragraphs, “international voyage” means a voyage from a country to a port outside such a country.
- (2) These regulations also apply to a ship not covered by paragraphs 1(a) or (b) above, at the request of the shipowner to the maritime administration.
- (3) Every ship to which these regulations apply must carry and maintain a current valid Maritime Labour Certificate issued to the ship by the maritime administration, or by a recognized organization duly authorized for this purpose, which shall complete the form
for this certificate that is contained in Appendix I, and affix to the form their signature and the seal or stamp of the issuing authority.
- (4) A Declaration of Maritime Labour Compliance must be attached to the Maritime Labour Certificate. The declaration consists of two parts:

- (a) Part I summarizes, in accordance with Standard A5.1.3, paragraph 10(a) of the Convention, the requirements of Togo laws or regulations or other measures implementing the requirements of the Convention regarding the working and living conditions of seafarers on ships; it is drawn up by the maritime administration using the form contained in Appendix II;
- (b) Part II identifies the measures adopted by the shipowner to ensure ongoing compliance on the ship with the national requirements and the measures proposed to ensure that there is continuous improvement; it must be drawn up by the shipowner based on the form contained in Appendix III and certified by the maritime administration or recognized organization duly authorized for this purpose; the following requirements apply:
 - (i) the measures drawn up by the shipowner, must, in particular, indicate the occasions on which ongoing compliance with particular national requirements will be verified, the persons responsible for verification, the records to be taken, as well as the procedures to be followed where noncompliance is noted;
 - (ii) Part II may take a number of forms and may make reference to other more comprehensive documentation covering policies and procedures relating to other aspects of the maritime sector, for example documents required by the International Safety Management (ISM) Code or the information required by Regulation 5 of the SOLAS Convention, Chapter XI-1 relating to the ship's Continuous Synopsis Record;
 - (iii) the measures to ensure ongoing compliance must include general international requirements for the shipowner and master to keep themselves informed of the latest advances in technology and scientific findings concerning workplace design, taking into account the inherent dangers of seafarers' work, and to inform the seafarers' representatives accordingly.

- (5) A Maritime Labour Certificate, complemented by a Declaration of Maritime Labour Compliance, constitutes prima facie evidence that the ship has been duly inspected and that the requirements of the Convention relating to working and living conditions of the seafarers have been met to the extent so certified.
- (6) The Maritime Labour Certificate may be issued only where the maritime administration or a recognized organization duly authorized for this purpose has ascertained through inspection, as provided for in Article 6 below, that the ship concerned meets the standards of these regulations.
- (7) The Maritime Labour Certificate is issued for a period of five years or any shorter period that may be considered appropriate by the maritime administration or recognized organization in a particular case.
- (8) The validity of the Maritime Labour Certificate is subject to an intermediate inspection by the maritime administration, or by a recognized organization duly authorized for this purpose, to ensure continuing compliance. If only one intermediate inspection is carried out and the period of validity of the certificate is five years, it must take place between the second and third anniversary dates of the certificate. Anniversary date means the day and month of each year which will correspond to the date of expiry of the maritime labour certificate. The scope and depth of the intermediate inspection must be equal to an inspection for renewal of the certificate. A certificate must be endorsed following satisfactory intermediate inspection.
- (9) The Maritime Labour Certificate may be renewed subject to a new inspection in accordance with paragraph 6 above to ascertain that the ship concerned continues

to meet the standards of these regulations. When the renewal inspection has been completed within three months before the expiry of the existing Maritime Labour Certificate, the new Maritime Labour Certificate is valid from the date of completion of the renewal inspection for a period not exceeding five years from the date of expiry of the existing certificate. When the renewal inspection is completed more than three months before the expiry date of the existing Maritime Labour Certificate, the new Maritime Labour Certificate is valid for a period not exceeding five years starting from the date of completion of the renewal inspection.

(10) A Maritime Labour Certificate may be issued on an interim basis:

- (a) to new ships on delivery;
- (b) when a ship changes flag;
- (c) when a shipowner assumes responsibility for the operation of a ship which is new to that shipowner.

(11) An Interim Maritime Labour Certificate may be issued for a period not exceeding six months by the maritime administration or a recognized organization duly authorized for this purpose following verification that:

- (a) the ship has been inspected, as far as reasonable and practicable, for the matters covered by the 14 items listed in the Declaration of Maritime Labour Compliance, taking into account verification of items under subparagraphs (b), (c) and (d) of this paragraph;
- (b) the shipowner has demonstrated to the maritime administration or recognized organization that the ship has adequate procedures to comply with the standards of these regulations;

- (c) the master is familiar with the requirements of these regulations and the responsibilities for implementation; and
 - (d) relevant information has been submitted to the maritime administration or recognized organization to produce a Declaration of Maritime Labour Compliance.
- (12) An inspection in accordance with paragraph 6 above shall be carried out prior to expiry of the interim certificate to enable issue of the full-term Maritime Labour Certificate. No further interim certificate may be issued following the initial six months. A Declaration of Maritime Labour Compliance need not be issued for the period of validity of the interim certificate.
- (13) The results of all subsequent inspections or other verifications carried out with respect to the ship concerned and any significant deficiencies found during any such verification must be recorded, together with the date when the deficiencies were found to have been remedied. This record, accompanied by an English-language translation where it is not in English, must be inscribed upon and appended to the Declaration of Maritime Labour Compliance or made available in some other way to seafarers, flag State inspectors, authorized officers in port States and shipowners' and seafarers' representatives.
- (14) A current valid Maritime Labour Certificate and Declaration of Maritime Labour Compliance, accompanied by an English-language translation where it is not in English, shall be carried on the ship and a copy shall be posted in a conspicuous place on board where it is available to the seafarers. A copy shall be made available upon request, to seafarers, flag State inspectors, authorized officers in port States, and shipowners' and seafarers' representatives.

- (15) The requirement for an English-language translation in paragraphs 13 and 14 does not apply in the case of a ship not engaged in an international voyage.
- (16) A Maritime Labour Certificate, including an Interim Certificate where applicable, will cease to be valid in any of the following cases:
- (a) if the relevant inspections are not completed within the periods specified under paragraph 9 above;
 - (b) if the certificate is not endorsed in accordance with paragraph 8;
 - (c) when a ship changes flag;
 - (d) when a shipowner ceases to assume the responsibility for the operation of a ship;
 - (e) when substantial changes have been made to the structure or equipment covered in Regulation 3.1 of Title 3 of the Convention.
- (17) In the case referred to in paragraph 16(c), (d) or (e), a new certificate may only be issued when the maritime administration or a recognized organization issuing the new certificate is fully satisfied that the ship is in compliance with the requirements set out above.
- (18) A Maritime Labour Certificate shall be withdrawn by the maritime administration or a recognized organization duly authorized for this purpose, if there is evidence that the ship is not in compliance with the requirements of these regulations and any required corrective action has not been taken.
- (19) When considering whether a Maritime Labour Certificate should be withdrawn in accordance with paragraph 18 the maritime administration or the recognized

organization shall take into account the seriousness or the frequency of the deficiencies.

Article 6: Inspection and enforcement

- (1) The maritime administration shall maintain a system of inspection of the conditions for seafarers on ships that fly the flag of Togo, including verification that the measures relating to working and living conditions as set out in the Declaration of Maritime Labour Compliance, where applicable, are being followed.
- (2) The maritime administration shall develop a compliance and enforcement policy to ensure consistency and otherwise guide inspection and enforcement activities related to these regulations. Copies of this policy shall be provided to all inspectors and relevant law enforcement officials and shall be made available to the public and shipowners and seafarers.
- (3) Inspections shall take place at the intervals required under Article 5 of these regulations, where applicable. Intervals shall in no case exceed three years. Inspections of seafarer accommodation must be carried out when:
 - (a) a ship is registered or re-registered; or
 - (b) the seafarer accommodation on a ship has been substantially altered.
- (4) If the maritime administration receives a complaint which it does not consider manifestly unfounded or obtains evidence that a ship that flies the flag of Togo does not conform to the requirements of these regulations or that there are serious

deficiencies in the implementation of the measures set out in the Declaration of Maritime Labour Compliance, the maritime administration shall investigate the matter and ensure that action is taken to remedy any deficiencies found.

- (5) The maritime administration shall establish simple procedures to enable it to receive information in confidence concerning possible breaches of these regulations presented by seafarers directly or by representatives of the seafarers, and permit inspectors to investigate such matters promptly, including:
 - (a) enabling masters, seafarers or representatives of the seafarers to request an inspection when they consider it necessary; and
 - (b) supplying technical information and advice to shipowners and seafarers and organizations concerned as to the most effective means of complying with the requirements of these regulations and of bringing about a continual improvement in seafarers' on-board conditions.
- (6) The maritime administration shall appoint a sufficient number of qualified inspectors to fulfil the responsibilities in paragraph (1) above.
- (7) The maritime administration shall adopt adequate rules that are effectively enforce to guarantee that inspectors have the status and conditions of service to ensure that they are independent of changes of government and of improper external influences.
- (8) Inspectors must not undertake duties which might, because of their number or nature, interfere with effective inspection or prejudice in any way their authority or impartiality in their relations with shipowners, seafarers or other interested parties. In particular, inspectors:

- (a) are prohibited from having any direct or indirect interest in any operation which they are called upon to inspect; and
 - (b) subject to appropriate sanctions or disciplinary measures, must not reveal, even after leaving service, any commercial secrets or confidential working processes or information of a personal nature which may come to their knowledge in the course of their duties.

- (9) The maritime administration shall have the resources necessary to fulfil their functions. In particular:
 - (a) duly qualified technical experts and specialists may be called upon, as needed, to assist in the work of inspectors; and
 - (b) inspectors shall be provided with conveniently situated premises, equipment and means of transport adequate for the efficient performance of their duties.

- (10) Inspectors must have qualifications and adequate training to perform their duties and where possible must have a maritime education or experience as a seafarer. They must have adequate knowledge of seafarers' working and living conditions and of the English language and must be fully trained and sufficient in numbers to secure the efficient discharge of their duties with due regard to:
 - (a) the importance of the duties which the inspectors have to perform, in particular the number, nature and size of ships subject to inspection and the number and complexity of the legal provisions to be enforced;
 - (b) the resources placed at the disposal of the inspectors; and
 - (c) the practical conditions under which inspections must be carried out in order to be effective.

(11) Inspectors, with proper credentials acting in accordance with the policy referred to in paragraph 2 above have the following powers:

- (a) to board a ship that flies the flag of Togo freely and without previous notice; when commencing the ship inspection, inspectors must provide notification of their presence to the master or person in charge and, where appropriate, to the seafarers or their representatives;
- (b) to carry out any examination, test or inquiry which they may consider necessary in order to satisfy themselves that the standards are being strictly observed, including the following:
 - (i) to question the master, seafarer or any other person, including the shipowner or the shipowner's representative, on any matter concerning the application of the requirements under laws and regulations, in the presence of any witness that the person may have requested;
 - (ii) to require the production of any books, log books, registers, certificates or other documents or information directly related to matters subject to inspection, in order to verify compliance;
 - (iii) to enforce the posting of notices as required;
 - (iv) to take or remove, for the purpose of analysis, samples of products, cargo, drinking water, provisions, materials and substances used or handled; when a sample is being taken or removed, the shipowner or the shipowner's representative, and where appropriate a seafarer, must be notified or must be present at the time the sample is taken or removed and the quantity of such a sample must be properly recorded by the inspector;
- (c) to require that any deficiency is remedied and, where they have grounds to believe that deficiencies constitute a serious breach of the requirements of this regulation, or represent a significant danger to seafarers' safety, health

or security, to prohibit a ship from leaving port until necessary actions are taken.

(12) Inspectors should also at a minimum have the power:

- (a) following an inspection, to bring immediately to the attention of the shipowner, the operator of the ship or the master, deficiencies which may affect the health and safety of those on board ship;
- (b) to alert the maritime administration and, if applicable, the recognized organization to any deficiency or abuse not specifically covered by existing laws or regulations and submit proposals to them for the improvement of the laws or regulations; and
- (c) to notify the maritime administration of any occupational injuries or diseases affecting seafarers in such cases and in such manner as may be prescribed by laws and regulations.

(13) Inspectors have the discretion to give advice instead of instituting or recommending proceedings when there is no clear breach of the requirements of these regulations that endangers the safety, health or security of the seafarers concerned and where there is no prior history of similar breaches.

(14) Inspectors must treat as confidential the source of any grievance or complaint alleging a danger or deficiency in relation to seafarers' working and living conditions or a violation of laws and regulations and give no intimation to the shipowner, the shipowner's representative or the operator of the ship that an inspection was made as a consequence of such a grievance or complaint.

(15) Inspectors must submit a report of each inspection to the maritime administration. One copy of the report in English or in the working language of the ship must be

provided to the master of the ship and another copy must be posted on the ship's notice board for the information of the seafarers and, upon request, sent to their representatives.

(16) The maritime administration shall maintain records of inspections of the conditions for seafarers on ships of Togo.

(17) The annual report on inspection activities will be published within a reasonable time, not exceeding six months after the end of the year. It will contain the following information:

(a) a list of laws and regulations in force relevant to seafarers' working and living conditions and any amendments which have come into effect during the year;

(b) details of the organization of the system of inspection;

(c) statistics of ships or other premises subject to inspection and of ships and other premises actually inspected;

(d) statistics on all seafarers subject to the laws and regulations of Togo;

(e) statistics and information on violations of legislation, penalties imposed and cases of detention of ships;

(f) statistics on reported occupational injuries and diseases affecting seafarers.

(18) In the case of an investigation pursuant to a major incident, the report must be submitted to the maritime administration as soon as practicable, but not later than one month following the conclusion of the investigation.

(19) When an inspection is conducted or when measures are taken, all reasonable efforts must be made to avoid a ship being unreasonably detained or delayed.

- (20) Compensation shall be payable in accordance with the law of Togo for any loss or damage suffered as a result of the wrongful exercise of the inspectors' powers. The burden of proof in each case is on the complainant.
- (21) Any person who breaches the requirements of these regulations and obstructing inspectors in the performance of their duties shall be liable to a fine of not more than five hundred thousand francs CFA and a prison sentence of not more than six months or one of these two sentences.
- (22) Any action taken pursuant to paragraph 11 (c) above is subject to a right of appeal to a judicial or administrative authority.

Article 7: On-board complaint procedure

- (1) Ships must have an approved on-board complaint procedures for the fair, effective, well documented and expeditious handling of seafarer complaints alleging breaches of the requirements of these regulations.
- (2) Any adverse action taken by any person with respect to a seafarer for lodging a complaint, which is not manifestly vexatious or maliciously made, is considered victimization and is prohibited.
- (3) Shipowners must provide all seafarers working on a ship with a copy of the approved onboard complaint procedures applicable on the ship.
- (4) On-board complaint procedures that are approved by the maritime administration must:

- (a) seek to resolve complaints at the lowest level possible; however, in all cases, seafarers must have a right to complain directly to the master and, where they consider it necessary, to appropriate external authorities;
 - (b) include the right of the seafarer to be accompanied or represented during the complaints procedure, as well as safeguards against the possibility of victimization of seafarers for filing complaints; in order to help avoid problems of victimization of seafarers making complaints, the procedures should encourage the nomination of a person on board who can advise seafarers on the procedures available to them and, if requested by the complainant seafarer, also attend any meetings or hearings into the subject matter of the complaint;
 - (c) include contact information for the maritime administration and, where different, the maritime administration in the seafarers' country of residence, as well as the name of a person or persons on board the ship who can, on a confidential basis, provide seafarers with impartial advice on their complaint and otherwise assist them in following the complaint procedures available to them on board the ship.
- (5) Subject to any relevant provisions of an applicable collective agreement, the maritime administration shall, in close consultation with the shipowners' and seafarers' organizations, develop a model for fair, expeditious and well-documented on-board complaint-handling procedures; the following procedures must, at a minimum, be among those discussed during this consultative process:
- (a) complaints should be addressed to the head of the department of the seafarer lodging the complaint or to the seafarer's superior officer;
 - (b) the head of department or superior officer must then attempt to resolve the matter within prescribed time limits appropriate to the seriousness of the issues involved;

- (c) if the head of department or superior officer cannot resolve the complaint to the satisfaction of the seafarer, the latter may refer it to the master, who must handle the matter personally;
 - (d) seafarers must at all times have the right to be accompanied and to be represented by another seafarer of their choice on board the ship concerned;
 - (e) all complaints and the decisions on them must be recorded and a copy provided to the seafarer concerned;
 - (f) if a complaint cannot be resolved on board, the matter must be referred ashore to the shipowner, who must be given an appropriate time limit for resolving the matter, where appropriate, in consultation with the seafarers concerned or any person they may appoint as their representative; and
 - (g) in all cases seafarers must have a right to file their complaints directly with the master and the shipowner and the maritime administration.
- (6) Any act of victimization as defined in paragraph 2 is subject to a fine of not more than two million francs CFA and a prison sentence of not more than two years or one of these two sentences.
- (7) The paragraphs set out above are without prejudice to a seafarer's right to seek redress through whatever legal means the seafarer considers appropriate.

Article 8: Marine Casualties

- (1) The maritime administration shall hold an official inquiry into any serious marine casualty, leading to injury or loss of life that involves a ship that flies the flag of Togo. The final report of an inquiry must normally be made public.

- (2) The maritime administration shall cooperate with the competent authorities in other countries to facilitate the investigation of serious marine casualties.

CHAPTER III: PORT STATE RESPONSIBILITIES

Article 9: Inspections in ports

- (1) Every foreign ship calling, in the normal course of its business or for operational reasons, in the port of Togo may be subject to an inspection, carried out by authorized officers, to review compliance with the requirements of the Convention (including seafarers' rights) relating to the working and living conditions of seafarers on the ship.
- (2) A valid Maritime Labour Certificate and Declaration of Maritime Labour Compliance shall be accepted as prima facie evidence of compliance with the requirements of the Convention (including seafarers' rights). Accordingly, inspection in ports shall, except in the circumstances specified below in paragraph (4), be limited to a review of the certificate and declaration.
- (3) The maritime administration shall establish an effective port State inspection and monitoring system to help ensure that the working and living conditions for seafarers on foreign ships entering a port of Togo meet the requirements of the Convention (including seafarers' rights). In particular the maritime administration shall develop an inspection policy for authorized officers carrying out inspections under paragraph (1). The objective of the policy must be to ensure consistency and to otherwise guide inspection and enforcement activities related to the requirements of the Convention (including seafarers' rights) and must provide authorized officers with guidance, as to the kinds of circumstances justifying

detention of a ship under paragraph (9) below. Copies of this policy must be provided to all authorized officers and must be available to the public and to shipowners and seafarers.

(4) Where an authorized officer, having come on board to carry out an inspection and requested, where applicable, the Maritime Labour Certificate and the Declaration of Maritime Labour Compliance, finds that:

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

(5) Where a more detailed inspection is carried out on a foreign ship in the circumstances set out in paragraph (4) (a), 4(b) or 4(c), it shall in principle cover

the matters listed in Appendix A5-III of the Convention, which correspond to the 14 items listed in the Declaration of Maritime Labour Compliance.

(6) In the case of a complaint under paragraph (4) (d), the inspection shall generally be limited to matters within the scope of the complaint, although a complaint, or its investigation, may provide clear grounds for a detailed inspection in accordance with paragraph (4) (b). For the purpose of paragraph (4) (d), complaint means information submitted by a seafarer, a professional body, an association, a trade union or, generally, any person with an interest in the safety of the ship, including an interest in safety or health hazards to seafarers on board.

(7) Where, following a more detailed inspection, the working and living conditions on the ship are found not to conform to the requirements of the Convention, the authorized officer shall forthwith bring the deficiencies to the attention of the master of the ship, with required deadlines for their rectification. In the event that such deficiencies are considered by the authorized officer to be significant, or if they relate to a complaint made in accordance with paragraph (4) (d), the authorized officer shall bring the deficiencies to the attention of the seafarers' and shipowners' organizations and may:

(a) notify a representative of the flag State;

(b) provide the maritime administration of the next port of call with the relevant information.

(8) A copy of the officer's report, which must be accompanied by any reply received from the relevant authorities of the flag State within the prescribed deadline, may be transmitted to the Director-General of the International Labour Office with a view to such action as may be considered appropriate and expedient in order to ensure that a record is kept of such information and that it is brought to the

attention of parties which might be interested in availing themselves of relevant recourse procedures.

(9) Where, following a more detailed inspection by an authorized officer, the ship is found not to conform to the requirements of the Convention and:

(a) the conditions on board are clearly hazardous to the safety, health or security of seafarers; or

(b) the non-conformity constitutes a serious or repeated breach of the requirements of the Convention (including seafarers' rights); the authorized officer shall take steps to ensure that the ship does not proceed to sea until any non-conformities that fall within the scope of subparagraph (a) or (b) of this paragraph have been rectified, or until the authorized officer has accepted a plan of action to rectify such non conformities and is satisfied that the plan will be implemented in an expeditious manner. If the ship is prevented from sailing, the authorized officer shall forthwith notify the flag State accordingly and invite a representative of the flag State to be present, if possible, requesting the flag State to reply within a prescribed deadline.

The authorized officer shall also inform forthwith the shipowners' and seafarers' organizations.

(10) All possible efforts shall be made to avoid a ship being unduly detained or delayed. If a ship is found to be unduly detained or delayed, compensation shall be paid for any loss or damage suffered. The burden of proof in each case shall be on the complainant.

Article 10: On-shore seafarer complaint handling procedures

(1) Seafarers on foreign ships who allege a breach of the requirements of the Convention (including seafarers' rights) have the right to report such a complaint in order to facilitate a prompt and practical means of redress.

- (2) A complaint by a seafarer alleging a breach of the requirements of the Convention (including seafarers' rights) may be reported to an authorized officer in the port at which the seafarer's ship has called. In such cases, the authorized officer shall undertake an initial investigation, taking account of the following principles:
- (a) the authorized officer should first check whether the complaint is of a general nature which concerns all seafarers on the ship, or a category of them, or whether it relates only to the individual case of the seafarer concerned;
 - (b) if the complaint relates to an individual case, the authorized officer must ascertain whether the ship's onboard complaint procedures required under Regulation 5.1.5 and the Code of the Convention have been explored and an examination of the results of any on-board complaint procedures for the resolution of the complaint concerned should be undertaken;
 - (c) if such procedures have not been explored, the authorized officer should suggest that the complainant take advantage of any such procedures available; there should be good reasons for considering a complaint before any on-board complaint procedures have been explored; such reasons would include the inadequacy of, or undue delay in, the internal procedures or the complainant's fear of reprisal for lodging a complaint;
 - (d) if the complaint is of a general nature, the authorized officer should consider conducting a more detailed inspection in accordance with Article 9 of these regulations.
- (3) In any investigation of a complaint, the authorized officer must give the master, the shipowner and any other person involved in the complaint a proper opportunity to make known their views.

- (4) The authorized officer shall, where appropriate, seek to promote a resolution of the complaint at the shipboard level.
- (5) In the event that the investigation or an inspection reveals a non-conformity that falls within the scope of paragraph (9) of Article 9 of these regulations, the provisions of that paragraph shall be applied.
- (6) Where the provisions of paragraph (5) do not apply, and the complaint has not been resolved at the ship-board level, the authorized officer must forthwith notify the flag State, seeking, within a prescribed deadline, advice and a corrective plan of action.
- (7) In the event that the flag State demonstrates, that it will handle the matter, and that it has in place effective procedures for this purpose and has submitted an acceptable plan of action, the authorized officer may refrain from any further involvement with the complaint.
- (8) Where the complaint has not been resolved following action taken in accordance with paragraph (6), the port State shall transmit a copy of the authorized officer's report to the Director-General. The report must be accompanied by any reply received within the prescribed deadline from the relevant authority of the flag State. The seafarers' and shipowners' organizations shall be similarly informed. In addition, statistics and information regarding complaints that have been resolved shall be regularly submitted by relevant authority to the Director-General. Both such submissions are provided in order that, on the basis of such action as may be considered appropriate and expedient, a record is kept of such information and is brought to the attention of parties, including shipowners' and seafarers' organizations, which might be interested in availing themselves of relevant recourse procedures.

(9) Appropriate steps shall be taken to safeguard the confidentiality of complaints made by seafarers.

CHAPTER IV: LABOUR-SUPPLYING RESPONSIBILITIES

Article 11: Labour-supplying responsibilities

The maritime administration shall establish an effective system for enforcing the requirements of these regulations applicable to the operation and practice of seafarer recruitment and placement services established on its territory, through inspection and monitoring and legal proceedings for breaches of licensing and other operational requirements provided for under regulation 1.4 of the Convention.

CHAPTER V: MISCELLANEOUS AND FINAL PROVISIONS

Article 12: Identity card for inspector

Inspector shall carry a personal document in the form of an identity card issued by the maritime administration in accordance with Annex IV of these regulations, indicating that the inspector is authorized to carry out an inspection.

Article 13: Criteria for detention a ship

When the inspector exercising its professional judgment as to whether or not a ship should be detained, that inspector shall apply the criteria set out in Annex V of these regulations.

Article 14: Repeal of decree

Are repealed the previous provisions contrary to this decree.

Article 15: Implementation

The minister in charge of maritime affairs is responsible for the implementation of this decree which will be published in the Gazette of the Togolese republic.

Made in Lomé,.....

The President of Republic

The Prime minister

The minister in charge of maritime affairs

For amplification,

The Secretary General
of the presidency of the Republic

Appendix IV- Identity card for inspector

(as referred to in Article 12)

(1) The identity card for inspector (hereinafter called “the identity card”), shall comply with the following requirements and shall contain at least the following information:

(a) name of the maritime administration issuing the identity card;

(b) full name of the holder of the identity card;

(c) an up-to-date picture of the holder of the identity card;

(d) a statement to the effect that the holder of the identity card is authorized to carry out inspections in accordance with these regulations.

(2) If the main language used on the identity card is not English, it must include a translation into English language.

(3) The format of the identity card is left to the discretion of the maritime administration.

Appendix V- Criteria for detention of a ship

(as referred to in Article 13)

The following criteria may be the reason for detention of a ship:

- (1) insufficient food for voyage to next port;
- (2) insufficient potable water for voyage to next port;
- (3) excessively unsanitary conditions on board;
- (4) no heating in accommodation of a ship operating in areas where temperatures may be excessively low;
- (5) excessive garbage, blockage by equipment or cargo or otherwise unsafe conditions in passageways/accommodations;
- (6) failure of seamen to hold a certificate, to have an appropriate certificate, to have a valid dispensation or to provide documentary proof that an application for an endorsement has been submitted to the flag State Administration;
- (7) failure to comply with the applicable safe manning requirements of the flag State Administration;
- (8) failure of navigational or engineering watch arrangements to conform to the requirements specified for the ship by the flag State Administration;
- (9) absence in a watch of a person qualified to operate equipment essential to safe navigation, safety radio communications or the prevention of marine pollution;
- (10) failure to provide proof of professional proficiency for the duties assigned to seafarers for the safety of the ship and the prevention of pollution;
- (11) inability to provide for the first watch at the commencement of a voyage and for subsequent relieving watches persons who are sufficiently rested and otherwise fit for duty.