



**IMO**

**INTERNATIONAL MARITIME LAW INSTITUTE**

**Established under the auspices of the International Maritime Organization**

**A specialized agency of the United Nations**



**A LAW TO INCORPORATE THE MARITIME LABOUR CONVENTION, 2006 AS  
AMENDED INTO THE LAWS OF MADAGASCAR AND TO PROVIDE FOR THE  
EFFECTIVE IMPLEMENTATION THEREOF**

**A Legislation Drafting Project submitted in partial fulfillment of the requirements for  
the award of the Degree of Master of Laws (LL.M.) in International Maritime Law at  
the IMO International Maritime Law Institute**

**Submitted By: Ms. Fanomezantsoa Igorette Edith RASOLONDRABAO (Madagascar)**

**Supervisor: Ms SABINA DOLIC**

**Academic Year: 2018/2019**



## Table of Contents

CHAPTER I.....	1
EXPLANATORY NOTE .....	1
1.1.introduction.....	1
II. HISTORICAL BACKGROUND OF INTERNATIONAL LABOUR ORGANIZATION AND MARITIME LABOUR CONVENTION.....	4
2.1. Historical background of the first written maritime codes .....	4
2.2. Establishment of ILO .....	4
2.3. Relationship between ILO and MLC: Interest .....	5
III. OVERVIEW AND STRUCTURE OF MLC .....	8
3.1. Purpose and scope of application .....	8
3.1.1. Purpose .....	8
3.1.2. Scope of application of MLC .....	8
3.2. Parts of the MLC: Structure .....	10
3.2.1. The components of the MLC: Articles and Titles .....	11
IV.THE NEED FOR THE INCORPORATION OF TITLE 3 OF MLC INTO MADAGASCAR MARITIME LEGISLATION.....	20
4.1. A general overview on Malagasy Maritime Code: “A gap of legal system for the protection of seafarers on the accommodation, recreational facilities, food and catering” .....	20
4.1.1. Comparison between the Code and the MLC.....	20
4.1.2. A special legal analysis on accommodation, recreational facilities, food and catering.....	22
4.2. Current problems that face Malagasy Seafarers .....	23
4.2.1. Social problems .....	23
4.2.2. Social problems impacts on Madagascar’s Economy .....	24
4.2.3. The MLC 2006 socio-economic impacts on Madagascar .....	25
V. PROCESS TO INCORPORATE THE REGULATION UNDER TITLE III (ACCOMODATION, RECREATIONAL FACILITIES, FOOD AND CATERING) OF THE MARITIME LABOUR CONVENTION, 2006 INTO THE LAWS OF MADAGASCAR AND TO PROVIDE FOR THE EFFECTIVE IMPLEMENTATION THEREOF.....	26

5.1. Requirements of Enacting Regulation in respect of Accommodation and Recreational Facilities on Board Ship.....	26
5.1.1. The need to adopt a Regulation on the accommodation, recreational facilities, food and catering under the article 3.5.10 of the Code.....	26
5.1.2. Regulation to be adopted into the law .....	27
5.2. The drafting and adoption process .....	29
5.3. Purpose of this draft legislation: Adopting Regulation .....	30
VI- BRIEF DISCUSSION OF THE DRAFT LEGISLATION .....	31
6.1. Title .....	31
6.2. Definition.....	31
6.3. Enforcement and Applicability of these Regulations.....	31
6.4. Exemption of the Applicability of the Regulations .....	31
VII- THE PROCESS TO INCORPORATE THE REGULATION OF THE TITLE 3 (ACCOMODATION, RECREATIONAL FACILITIES, FOOD AND CATERING) OF MLC INTO THE LAWS OF THE REPUBLIC OF MADAGASCAR .....	32
APPENDIX A5-III.....	50

## CHAPTER I

### EXPLANATORY NOTE

#### 1.1.introduction

*“In the twenty-first century, commerce has no clear geographical limitations and recognizes no material boundaries.”*<sup>1</sup> The global trade plays an important role in the economic development of all nations. Today, there is an interdependence between countries as no country cannot live by itself. Goods are carried by ships from one port to another one. It emphasizes the important place of shipping which as Desislava Nikolaeva states *“it has always been and will always remain the binding element that connects producers, manufacturers and markets for goods.”*<sup>2</sup> This phenomenon increases the demands of seafarers’ number. It highlights that the development of shipping can only be done through seafarers. Therefore, seafarers have an important role to play, through different operations they are involved in the development of maritime shipping.

However, most of the time and in some parts of the world, seafarers’ rights are abused. In particular, in Madagascar, *“The ancestors of the first Malagasy were in fact seafarers [...] with their ancestral voyagers around 400 A.D.”*<sup>3</sup> As Madagascar is an island, its main economic activities rely mostly on maritime activities. The role that seafarers play is crucial in order to promote Madagascar’s economic development. However, Malagasy seafarers claim that their rights are not respected if they compare themselves with other seafarers that are working on the same vessel in the case of flag of convenience.<sup>4</sup> Especially, they point out to the conditions of employment but also the accommodation, recreational facilities, food and catering on board. Its main consequence at the national level is that it decreases the number of young adults interested in the seafarer’s profession.<sup>5</sup> Considering the huge number of population that is unemployed in Madagascar, it may constitute an alternative solution for the unemployment. Moreover, in its

---

<sup>1</sup> Desislava Nikolaeva Dimitrova, *Seafarers' Rights in the Globalized Maritime Industry: Bulletin of Comparative Labour Relations* (Roger Blanpain tr) 1

<sup>2</sup> Ibid

<sup>3</sup> ethnographica, ‘The Malagasy raffia cloth – A convergence of three historical trajectories’ (12 May 2017) <<https://ethnographica.net/2017/06/12/the-malagasy-raffia-cloth-the-convergence-of-three-historical-trajectories/>> accessed 26 December 2018

<sup>4</sup> Maholy, ‘Convention de travail maritime : travail décent pour les marins malgaches’ (12 November 2014) <<https://latribune.cyber-diego.com/actualites/1434-convention-de-travail-maritime-travail-decent-pour-les-marins-malgaches.html>> accessed 15 November 2018

<sup>5</sup> ibid

survey, the World Bank estimated *the level of unemployment in 2015 at 3.6 percent*<sup>6</sup>, while *underemployment was estimated at 10.2 percent by the Ministry of Labour*.<sup>7</sup> According to the International Labour Organization (ILO), three quarters of the unemployed are under thirty years of age.<sup>8</sup> Thus, having an effective regulation of seafarer's work and protection will increase the number of Malagasy interested in this profession. Compared to the ancient time, the interest that people show to this activity of seafaring has decreased since this work is not well regulated.<sup>9</sup> The lack of young generation's interest in seafarer's profession may result in a huge impact on the development of the shipping industry in Madagascar.<sup>10</sup> Therefore, it will have an impact on its economic development mainly based on maritime activities.

Therefore, Malagasy seafarers need to be provided special protection with specific working conditions. Virtually, every aspect of their activities such as their work, food, recreation, employment, health, sickness and even their death needs to be adequately regulated. Madagascar through the Law n° 99-028 of 03 February 2000, recasting the Maritime Code, has some provisions on seafarers' rights. However, many provisions of this Maritime Code need to be updated in order to promote decent work for seafarers. Such as the minimum age to work on board a ship, the employment agreement and especially the need of accommodation , recreational facilities, food and catering.

Madagascar has not ratified the Maritime Labour Convention, 2006, as amended (MLC)<sup>11</sup> adopted by the International Labour Conference at its 94<sup>th</sup> (Maritime) Session (2006). Amendments were approved by the International Labour Conference at its 103<sup>rd</sup> Session 2014, and later in 2016 and 2018, which meant to promote further seafarers' rights.

The purpose of this explanatory note is to make a case for the incorporation of the Title 3 of MLC into the laws of Madagascar. The explanatory note will show that only through such incorporation and through an effective implementation can Madagascar better protect the

---

<sup>6</sup> The World Bank In Madagascar, 'The World Bank In Madagascar The World Bank is helping the Madagascar government to fight poverty and improve the living standards.' (11 January 2019) <<http://www.worldbank.org/en/country/madagascar/overview>> accessed 18 December 2018

<sup>7</sup> the State Department's Office of Investment Affairs' Investment Climate Statement. 'Madagascar - Labor' (11/7/16) <<https://www.export.gov/article?id=Madagascar-labor>> accessed 15/11/18

<sup>8</sup> 'Madagascar - Labor' (11 July 2017) <<https://www.export.gov/article?id=Madagascar-labor>> accessed 27 December 2018

<sup>9</sup> L'Express de Madagascar, 'La Réunion - Des marins malgaches dans la précarité totale' (6 September 2018) <<https://lexpress.mg/09/06/2018/la-reunion-des-marins-malgaches-dans-la-precarite-totale/>> accessed 3 April 2018

<sup>10</sup> R. Navalona, 'Gens de mer : un métier lucratif et passionnant' (30 June 2015) <<http://www.midi-madagasikara.mg/economie/2015/06/30/gens-de-mer-un-metier-lucratif-et-passionnant/>> accessed 25 February 2019

<sup>11</sup> Maritime Labour Convention, 2006, as amended (International Labour Conference)

seafarers' rights by promoting better conditions of accommodation, recreational facilities, food and catering. The ratification of the MLC will enable Madagascar to show its willingness to implement instruments adopted by the International Labor Organization (ILO) and its commitment to promote conditions for decent work in the maritime sector.

## **II. HISTORICAL BACKGROUND OF INTERNATIONAL LABOUR ORGANIZATION AND MARITIME LABOUR CONVENTION**

### **2.1. Historical background of the first written maritime codes**

Between 1,000 BC and 600 BC, people of Rhodes developed a strong commercial fleet. They were soon everywhere in the Mediterranean, as well as establishing trading colonies along the west coast of Italy, France and Spain.<sup>12</sup>

The first written maritime codes appeared in the 11<sup>th</sup> to 13<sup>th</sup> centuries. At that time, the codes already guaranteed that ship's crews would be repatriated to their home at the end of their voyage. The codes also required that ship's crews be provided decent lodging and sustenance. It has been argued that the purpose of these codes were not based on charitable or human-rights reasons but for the purpose of maritime commercial enterprises.<sup>13</sup>

At the beginning of the 20<sup>th</sup> Century, workers' rights about labour conditions grew in industrialized countries and trade unions gained increasing influence.<sup>14</sup>

### **2.2. Establishment of ILO**

The history of the ILO is a result of the history of workers' claims for protection.<sup>15</sup> The principal reason for creating the ILO was humanitarian since international standards were required to improve labour conditions. The First World War played an important role in the modification of the general political and social context of working conditions in order to reflect the belief that universal and lasting peace can be accomplished only if it is based on social justice.<sup>16</sup> All the belligerents, including those on the side of Germany, acknowledged the suffering and sacrifices of workers during this period and the debt of gratitude they were owed by their countries.<sup>17</sup>

That is the reason why ILO was created on 29 June 1919 in the Hall of Mirrors at the Chateau of Versailles that was devoted to labour and the establishment of a permanent labour

---

<sup>12</sup> Duhaime Lloyd, 'Lex Rhodia: The Ancient Ancestor of Maritime Law - 800 BC' (Monday, 22 September 2008) <[www.duhaime.org/LawMuseum/LawArticle-383/Lex-Rhodia-The-Ancient-Ancestor-of-Maritime-Law--800-BC.aspx](http://www.duhaime.org/LawMuseum/LawArticle-383/Lex-Rhodia-The-Ancient-Ancestor-of-Maritime-Law--800-BC.aspx)> accessed 24 December 2018 25

<sup>13</sup> *ibid*

<sup>14</sup> ILO, 'History of the ILO' (1996-2019 International Labour Organization (ILO))

<<https://www.ilo.org/global/about-the-ilo/history/lang--en/index.htm>> accessed 17 February 2019

<sup>15</sup> Jean-Michel Servais, *International Labour Organization (ILO)* (Kluwer Law International 2011) 11

<sup>16</sup> ILO (n 14)

<sup>17</sup> Jean-Michel Servais (n 15)



organization.<sup>18</sup> It has a tripartite character<sup>19</sup> with the inclusion of employers and workers on equal footing with government representatives.

In 1946, the ILO became the United Nation agency which specializes and deals with labour issues in order to recognize that “*conditions of labour exist involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled.*”<sup>20</sup>

Its main objectives are to promote rights at work, encourage decent employment opportunities, enhance social protection and strengthen dialogue on work-related issues.<sup>21</sup>

### **2.3. Relationship between ILO and MLC: Interest**

Laws that regulate seafarers and protect their rights are derived from the general maritime law<sup>22</sup> and are contained in statutes enacted by maritime nations. The statutes are influenced by the general maritime law and by international conventions. However, the general maritime law could not protect specifically the interests of workers involved in maritime activities.<sup>23</sup> This is primarily because, for seafarers, the ship is both a workplace and a home. Both of these factors are justifying the need for adoption of separate Conventions dealing with a specific group of workers, namely the unique conditions of their work and the necessity for their special protection, are fully applicable in the case of seafarers.<sup>24</sup> That is the reason why the ILO adopted the MLC, at its 94<sup>th</sup> Session, on 23 February. This Convention proposes an innovative and comprehensive approach to the maritime sector. The Convention constitutes a true global labour code for seafarers. The MLC brings together almost all the sixty-eight instruments, which are Conventions and Recommendations<sup>25</sup> that have been adopted by the ILO in a single text which includes effective enforcement innovation.

---

<sup>18</sup> ‘The International Labour Organization (ILO) - Creation’ <<https://www.nationsencyclopedia.com/United-Nations-Related-Agencies/The-International-Labour-Organization-ILO-CREATION.html>> accessed 31 January 2019

<sup>19</sup> Tripartism was created in order to know the real history of ILO and as a result it creates its uniqueness.

<sup>20</sup> ILO (n 14)

<sup>21</sup> *ibid*

<sup>22</sup> The general maritime law is customary international law that developed out of commercial customs and practices that were followed in the ancient times.

<sup>23</sup> International Labour Organization (ILO), ‘Basic facts on the Maritime Labour Convention 2006’ <[https://www.ilo.org/global/standards/maritime-labour-convention/what-it-does/WCMS\\_219665/lang--en/index.htm](https://www.ilo.org/global/standards/maritime-labour-convention/what-it-does/WCMS_219665/lang-en/index.htm)>

<sup>24</sup> Christodoulou-Varotsi Iliana and A. P Dmitry, *Maritime Work Law Fundamentals : Responsible Shipowners, Reliable Seafarers* (Christodoulou-Varotsi Iliana and A. Pentsov Dmitry trs) 9

<sup>25</sup> The major ILO Conventions affecting seafarers are :

- Minimum age (Sea) Convention, 1920 (No. 7)
- Unemployment Indemnity (Shipwreck) Convention, 1920 (No.8)
- Placing of Seamen Convention, 1920 (No.8)

The ILO has produced many important conventions that have produced many positive impacts on international labour law.<sup>26</sup> The MLC is recognized as the most significant development in the long history of seafarers' rights law.<sup>27</sup> It constitutes the foundation of the international labour law, even though, the ILO cannot touch all aspects of international law. ILO conventions recognize that a seafarer is not as equal to a worker on land. Thus, it was emphasized that it needs a special protection.<sup>28</sup>

Moreover, the conditions of employment, especially employment at sea, means danger, isolation and restriction. Seafarers' rights cannot be compared as equal to workers' at land.<sup>29</sup> They live far away from their family. They have to be provided enough accommodation and recreational facilities with sufficient food. It also means that the seafarers have been generally out of reach of any legal system of the flag State which might be used to protect him, even if legal protection of the interests of workers was fairly sufficient at the time in many parts of the world.<sup>30</sup>

Therefore, the Convention provides for comprehensive of seafarers' rights that reflect the rights that they claim but also the modern shipping realities. As it is already stated before, the MLC includes 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, and flag and port State inspection systems.<sup>31</sup>

- 
- Medical Examination of Young Persons (Sea) Convention, 1921 (No.16)
  - Seamen's Articles of Agreement Convention, 1926 (No.16)
  - Repatriation of Seamen Convention, 1926 (No.23)
  - Officers' Competency Certificates Convention, 1936 (No.53)
  - Holidays with Pay (Sea) Convention, 1936 (No.54)
  - Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No.55)
  - Sickness Insurance (Sea) Convention, 1936 (No.56)
  - Hours of Work and Manning (Sea) Convention, 1936 (No.57)
  - Minimum Age (Sea) Convention (Revised), 1936 (No.58)
  - Food and catering (Ships' Crews) Convention, 1946 (No.68)
  - Certification of Ships' Cooks Convention, 1946 (No.69)
  - Social security (Seafarers) Convention, 1946 (No.70)
  - Paid Vacations (Seafarers) Convention, 1946 (No.72)
  - Medical Examination (Seafarers) Convention, 1946 (No.73)

<sup>26</sup> Douglas B Stevenson, *Maritime Labour Law : Introduction to Seafarers' Rights* ( The IMLI Manual on International Maritime Law, Oxford 2016)211

<sup>27</sup> Stevenson Douglas B, 'Introduction to Seafarers' Rights', *The IMLI Manual On International*

<sup>28</sup> Guidelines on fair treatment of seafarers in the event of a maritime accident 2019 (IMO)

<sup>29</sup> Iliana and Dmitry (n 24)

<sup>30</sup> Deirdre Fitzpatrick and Michael Anderson, *Seafarers' Rights* (D. Fitzpatrick and M. Anderson trs, 2005).3

<sup>31</sup> ILO (n 14)



### **III. OVERVIEW AND STRUCTURE OF MLC**

Aiming for wide ratification, it constitutes the fourth pillar of the international regulation of the sector complementing the fundamental conventions of the International Maritime Organization (IMO), which is the International Convention for the Safety of Life at Sea (SOLAS), 1974 as amended, the Convention of the Seafarers' Training, Certification and Watchkeeping Standards (STCW) of 1978 as amended, and the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL) as amended.<sup>32</sup>

#### **3.1. Purpose and scope of application**

##### **3.1.1. Purpose**

The MLC guarantees seafarers decent living and working conditions, as well as the protection of their fundamental rights and freedoms applicable to them first and foremost as a human being and as a seafarer. Its aim also is to secure economic interests through fair competition for quality ship owners.<sup>33</sup> The MLC is intended to provide international labour standards for most of the world's seafarers. Only for a few specific exclusions and areas where flexibility is provided for national authorities. For example they can exempt smaller ships<sup>34</sup> that do not go on international voyages from some aspects of the MLC. However, it applies to all ships whether publicly or privately owned that are ordinarily engaged in commercial activities.<sup>35</sup>

Beyond the maritime sector alone, its implementation and control mechanisms are of interest to the whole of the world of work since the most important ships will have to be certified.

##### **3.1.2. Scope of application of MLC**

The concept of seafarer is not new. It has already existed since the ancient times. It is important to know the seafarer's definition under MLC and the scope of application of MLC.

---

<sup>32</sup> Report I (1 A) Adoption of an instrument to consolidate maritime labour standards, International Labour Conference 94<sup>th</sup> (Maritime Session), 2006, Geneva, 7-23 February 2006, International Labour Office, Geneva, Switzerland, 2006, p.5

<sup>33</sup> Chaumette (C) Patrick, *Seafarers : an international labour market in perspective Gens de mer : un marché international du travail*

<sup>34</sup> 200 gross tonnage and below

<sup>35</sup> International Labour Organization (ILO) (n 23)

### **3.1.2.1 MLC's seafarer definition**

Under the Convention, seafarer is defined as “*any person who is employed or engaged or works in any capacity on board a ship to which this Convention applies*”<sup>36</sup> However, there are some exceptions to this definition such as persons who are working briefly on ship and who normally work ashore, such as port State controls and shipyard repair technicians. Only flag state can attribute to those workers on board ship to whom the MLC is applied or not.<sup>37</sup>

### **3.1.2.2. Mandatory application for large vessels**

It generally applies to all ships, ordinarily engaged in international commercial activities.<sup>38</sup> However, there are limits that exclude some type of vessels such as: ships navigating exclusively in inland waters, close to the coast, in sheltered waters or areas where port regulations apply; fishing vessels; ships of traditional build, such as dhows or junks; warships and naval auxiliaries.<sup>39</sup>

Under the Convention, the possession of a Maritime Labour Certificate and a Declaration of maritime labour compliance are mandatory for large vessels, those of a gross tonnage equal to or greater than 500 engaged in international voyages<sup>40</sup>. Provisions for flag State inspections are covered by Regulation 5.1.4 and the Standard A5.1.4 and those relating to port State inspections correspond to Rule 5.2.1 and Standard A5.2.1.

### **3.1.2.3. Application to the shipowner**

It applies also to the shipowner of the ship or another organization or person that has assumed responsibility for the operation of the ship such as manager, agent, and bareboat charterer.<sup>41</sup>

### **3.1.2.4 Application to the governments**

Governments have an important role to implement the MLC into their national laws and are granted the flexibility in order to make some restrictions to whom categories of seafarers it will apply, to exclude some categories of ships and /or to provide a substantial equivalence.

---

<sup>36</sup> *The IMLI Manual On International Maritime Law: Shipping Law* (Malgozia Fitzmaurice, Norman A Martinez Gutierrez, EZ, Ignacio Arroyo, and Elda Belja trs Volume II, 2016) 214

<sup>37</sup> International Labour Organization, ‘Ratifications for Madagascar’ (1996-2017 International Labour Organization (ILO) )  
<[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200\\_COUNTRY\\_ID:102955](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:102955)>

<sup>38</sup> International Labour Organization (ILO) (n 23)

<sup>39</sup> *ibid*

<sup>40</sup> Rule 5.1.3

<sup>41</sup> Waldron Jonathan K. ‘MLC 2006: Who is the Shipowner and Why Does it Matter?’ (22 August 2013)  
<<https://www.blankrome.com/news/mlc-2006-who-shipowner-and-why-does-it-matter>> accessed 5 January 2019

### 3.1.2.5. Non-favourable treatment clause

Port States have the right to inspect all ships calling at their ports, including those flying the flag of a State which has not ratified the Convention.<sup>42</sup>The Maritime Labour Certificate and the Declaration of Maritime Labour Compliance establish a presumption of compliance by the shipowner with the provisions of the Convention. When a ship is able to submit these two documents, port State inspection is limited to a control of both documents avoiding heavy control, likely to delay the ship. The Convention takes up the principle of the so-called "no more favourable treatment" <sup>43</sup>clause meaning that ratifying the Convention should not be penalized for those who have not ratified it. Thus, during port State control, the vessels of these States will be subject to the same controls and may be if they do not meet the minimum standards of the Convention<sup>44</sup>, they will be subject to further detailed control.

The control system as a whole gives States which have ratified the Convention an important their vessels will benefit from control facilities while vessels from non-ratifying States will be systematically monitored. States are therefore urged to ratify as soon as possible the Convention in order to benefit from the advantages of this scheme.<sup>45</sup>

### 3.2. Parts of the MLC: Structure

The MLC consists of three distinct parts which are Articles, Regulations and a two-part Code. It contains sixteen Articles numbered I to XVI, followed by a Code. The two-parts of the Code are the standards and found in part A. This later contains provisions called -"Standards" which are mandatory. In contrast to the part B that deals with the guiding principles, which are not mandatory as they are optional.

The Articles provide an overall framework of international obligations that each government has agreed to, including seafarers 'rights. They are written in general language and provide legal authority for the regulations and the code. They are followed by Regulations and recommendatory Guidelines. The Regulations set out the Standards to be met. Thus, they are

---

<sup>42</sup> International Labour Organization, 'Tripartite Expert Meeting to Develop Guidelines for Port State Control Officers Carrying out Inspections under the Maritime Labour Convention, 2006'

<[https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---normes/documents/meetingdocument/wcms\\_099069.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/meetingdocument/wcms_099069.pdf)> accessed 04/28/2019

<sup>43</sup> MLC includes a "no more favourable treatment" clause, meaning that Member States will be obligated to ensure that the ships that fly the flag of any State that has not ratified the Convention do not receive more favourable treatment than the ships that fly the flag of any State that has ratified it. As a result, ships registered in, for example, the United States calling in a port in a State that has ratified the Convention, Norway for example, may need to demonstrate that they are effectively in compliance with the Convention's requirements.

<sup>44</sup> MLC, 2006, Regulation 5.2.1

<sup>45</sup> Atty. Dennis R. and Gorecho, 'Sources of Seafarers'Rights' (Monday, 13 March 2017)

<<https://www.sapalovelez.com/2017/03/13/sources-of-seafarers-rights/>> accessed 25 February 2019

more detailed and mandatory Standards. In addition to that, they are inter-related. Each Regulation is followed by provisions of the code that indicate how the rules should be applied.<sup>46</sup>The MLC also contains an Explanatory note. Although it is not a mandatory part, it was established to help countries implement the MLC.<sup>47</sup>

### **3.2.1. The components of the MLC: Articles and Titles**

#### **3.2.1. 1. Articles**

The definition of the scope of the MLC is specified in the Articles. The Convention applies to seafarers, that is to say, all persons working on board ships engaged in commercial activity.<sup>48</sup>

The most important Articles are the following:

- Article III mentions the principles of the fundamental Conventions of the ILO.
- Article IV sets out general rights of seafarers.
- Article V deals, in particular, with implementation and enforcement responsibilities inspections.
- Article VI lays down some principles as to the application of the provisions contained in the Rules and the code.
- Articles VIII to XVI are conventionally devoted to procedural clauses (entry into force, amendments, denunciation, etc.).
- Article XIII creates a tripartite follow-up to the Convention, new modality of the ILO.

The establishment of the Special Tripartite Committee is necessary to give effect to Article XIII of the MLC. It is known as the Governing Body of the International Labour Office that shall keep the working of this Convention under continuous review with special competence in the area of maritime labour standards. These Standing Orders and the Introductory Note were adopted by the Governing Body at its 313th Session (March 2012).<sup>49</sup> As *Corinne Vargha*, Director of the ILO's International Labour Department states: "*Tripartism and social dialogue played a key role in the process of adoption of the amendments.*"<sup>50</sup> In other words, the review

---

<sup>46</sup> MLC,2006, Art XVI, Paragraph 3 and 4

<sup>47</sup> MLC ,2006, Article XVI, Paragraph 1

<sup>48</sup> Article II 2. and 4

<sup>49</sup> ILO (n 14)

<sup>50</sup> 1996-2019 International Labour Organization (ILO), 'Seafarers to continue receiving wages if held by pirates' (10 May 2018) <[https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_628849/lang--en/index.htm](https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_628849/lang--en/index.htm)> accessed 04/22/2019

adopted by this Special Tripartite Committee cover concrete needs of seafarers that were not addressed until now by the MLC. Such review can be the basis for necessary amendments to the MLC which amendments are done through the tacit amendment procedure

#### **a. Tacit amendment procedure**

The MLC has two types of amendment procedures. Amendment of the Articles, Regulations and the amendment of the Code. This later is known as a tacit amendment procedure adopted by ILO. It provides an update which is qualified as a faster amendment procedure comprised into the MLC. This procedure helps to keep the Convention up-to-date in each country that has ratified MLC.

Moreover, instead of requiring that an amendment shall enter into force after being accepted by, for example, two thirds of the Parties, the “tacit acceptance” procedure or, “the tacit amendment” procedure provides that an amendment shall enter into force at a particular time unless before that date, objections to the amendment are received from a specified number of parties

#### **b. Procedure of ratification with its amendments**

According to Article XV Paragraph 12 of the Convention *"[o]nce an amendment has entered into force, the Convention can only be ratified in its amended form"*. The initial amendments came into force in 2014. The first amendments to the MLC provides better protection for seafarers and their families in case of abandonment, death long-term disability entered into force on 18 January 2017.<sup>51</sup> The second amendments of 2016 to the MLC, 2006 came into force on 8 January 2019. It was adopted to amend the Code relating to Regulation 4.3. Guideline B4.3. It provides new provisions on occupational accidents, injuries and diseases. At the end of the Paragraph 1, this following text was added: *"Account should be taken of the latest version of the Guidance on eliminating shipboard harassment and bullying jointly published by the International Chamber of Shipping and the International Transport Workers' Federation."*

In addition to Guideline B4.3.1, the Guideline B4.3.6 concerning Investigations was added. It removed the “and” from the end of subparagraph (g) to the end of the new subparagraph (g) which addresses problems arising from harassment and bullying. The said

---

<sup>51</sup> ILO, ‘Amendments adopted to the Code relating to Regulation 5.1 of the MLC, 2006: Second meeting of the Special Tripartite Committee (Geneva, 8-10 February 2016)’ <[https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---normes/documents/meetingdocument/wcms\\_453876.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/meetingdocument/wcms_453876.pdf)> accessed 1 April 2019



amendment which makes provisions on harassment and bullying aims at ensuring that any such issue giving rise to harassment or bullying are dealt with. The provision further aims at eliminating all forms of harassment and bullying that occurs aboard a ship and levied against seafarers aboard such ship.

The Standard A5.1.3<sup>52</sup> provides the obligation to be in compliance with national laws and regulations after a renewal inspection or other requirements of this convention and that the present certificate is hereby extended, in accordance with paragraph 4 of Standard A5.1.3 not more than five months after the expiry date of the existing certificate to allow for the new certificate to be issued to and made available on board the ship.

The amendments of 2018 to the MLC, 2006 will be expected to enter into force on 26 December 2020.

### **3.2.1.2. Titles**

The Regulations and provisions of the Code are divided into five titles:

- Title 1: Minimum requirements for the work of seafarers on board ships
- Title 2: Conditions of employment;
- Title 3: Housing, Leisure, Food and Table Service;
- Title 4: Health protection, medical care, well-being and social security protection:
- Title 5: Compliance and Enforcement.

#### **a) Title 1: Minimum Requirements for Seafarers to Work on a ship**

Title 1 establishes the minimum age required to be employed or work on a ship. This minimum age is 16 years. It is mandatory to set out a higher minimum age in the circumstances set out in the code.<sup>53</sup> Regulation 1.1 prohibits the employment of seafarers under the age of 18.<sup>54</sup> As well as night work for them. It empowers the flag State to define in accordance with the national law the term “night”. It shall be a period at least nine hours starting no later than midnight and ending no earlier than 5 a.m.<sup>55</sup>

---

<sup>52</sup> MLC,2006, Standard A5.1.3- Maritime Labour Certificate and declaration of Maritime Labour Compliance

<sup>53</sup> MLC,2006, Regulation 1.1, Paragraph 1, 2, 3

<sup>54</sup> MLC,2006, Standard A1.1, Paragraph 1

<sup>55</sup> MLC, 2006, Standard A1.1, Paragraph 2

Under Standard A2.2 the competent authority is required to control at the beginning of the work on a ship if seafarers hold a valid medical certificate attesting that they are medically fit to perform the duties they are to carry out at sea.<sup>56</sup>

- a) The Regulation 1.3 that regulates the training and qualifications has as a purpose to ensure that seafarers are trained or qualified to carry out their duties on board ship. The MLC confirms the principle that all seafarers must be trained and qualified for their duties aboard ship, but it defers to the IMO's International Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1978, as amended in 1995 and again in 2010<sup>57</sup> (STCW) to set training and qualification requirements. For those occupations not covered by STCW standards, the ILO standards previously adopted by an ILO Member nation will continue until standards are established by IMO or until five years after the MLC enters into force, whichever is earlier.
- b) The Recruitment and Placement are regulated under Regulation 1.4 in order to ensure that seafarers have access to an efficient and well-regulated seafarer recruitment and placement system

Recruiting and placement agencies for seafarers must be regulated by countries in which they operate. Flag states cannot regulate placement agencies outside of their territory, but they must require shipowners of ships flying their flag that use placement agencies to use only placement agencies that conform to the requirements of the MLC.

## **b) Title 2: Conditions of employment**

The aim of the Title 2 is to ensure that shipowners enter into a written agreement with the seafarers before any employment.<sup>58</sup> It further provides that: "*Wages of seafarers that shall be paid regularly and in full accordance with the employment agreements.*"<sup>59</sup> The hours of work and hours of rest which each flag State shall ensure are duly observed.<sup>60</sup> The flag State shall also establish maximum hours of work or minimum hours of rest over given periods that are consistent with the provisions in the Code.<sup>61</sup> Finally, the entitlement to leave<sup>62</sup> and repatriation<sup>63</sup> shall be granted to seafarers. These requirements shall be ensured by the flag State.

---

<sup>56</sup> MLC, 2006, Standard A1.2, Paragraph 1

<sup>57</sup> Standards of Training, Certification and Watchkeeping for Seafarers 1978, as amended in 1995 and 1997 (International Transport Workers' Federation)

<sup>58</sup> MLC, 2006, Regulation 2.1. Paragraph 1, 2, 3

<sup>59</sup> MLC, 2006, Regulation A2.2, Paragraph 1

<sup>60</sup> MLC, 2006, Regulation 2.3, Paragraph 1

<sup>61</sup> MLC, 2006, Regulation 2.3, Paragraph 2

<sup>62</sup> MLC, 2006, Regulation 2.4,

<sup>63</sup> MLC, 2006, Regulation 2.5

A member State that has a ship that fly its flag shall ensure that seafarers are entitled to repatriation when the seafarer's agreement expires while abroad or where the employment should the shipowner not meet this obligation. Agreement is terminated or when seafarer fails to carry out his duties.<sup>64</sup> The aim of this Regulation 2.5 is to ensure that seafarers are able to return home. It is the obligation of the shipowner to repatriate the seafarer in these circumstances, the competent authority of the flag State shall do so but when it fails, the State from which the seafarer comes from or to be repatriated shall ensure the repatriation but with compensation or refund of its expenses later.<sup>65</sup> Under Regulation 2.6 the MLC provides indemnity against ship loss or foundering. So that seafarers get compensation if these circumstances occur. Therefore, they are entitled to get an indemnity against unemployment.<sup>66</sup>

### **c) Title 3: Housing, Leisure, Food and Table Service**

Regulation 3.1 under Title 3 ensures that seafarers have a decent accommodation and recreational facilities on board. There is an obligation on the flag State that all ships that fly its flag shall meet the requirements for accommodation, recreational facilities, food, and catering.<sup>67</sup>

It is essential to note that provisions affecting ship construction and equipment do not apply to ships that were constructed before the MLC came into force for the country concerned.<sup>68</sup> Ships under 200 gross tonnage and below are exempted from this specific accommodation requirements.<sup>69</sup>

Food and catering are regulated under the Regulation 3.2 in order to ensure that seafarers have access to good quality food and drinking water provided under regulated hygienic conditions. Flag States are mainly responsible for ensuring that the MLC, 2006 Standards are followed on their ships.<sup>70</sup> As a ship operates under the laws of its flag state, these laws are applicable if the ship is involved in an admiralty case or an important factor when the court makes the decision on the judging. Since the Flag Right Declaration of 1921, it has been recognized that "*all states-including land-locked countries-have a right to maintain a ship*

---

<sup>64</sup> MLC,2006, Regulation 2.5, Paragraph 1,2

<sup>65</sup> MLC,20006, Standard A2.1, Paragraph 4

<sup>66</sup> MLC,2006, Standard A2.6, Paragraph 1 and 2

<sup>67</sup> MLC,2006, Standard A3.1, Paragraph 1 (a) and (b)

<sup>68</sup> 1996-2019 International Labour Organization (ILO), 'Frequently Asked Questions about the ILO's Maritime Labour Convention, 2006' <[https://www.ilo.org/global/standards/maritime-labour-convention/WCMS\\_CON\\_TXT\\_ILS\\_MAR\\_FAQ\\_EN/lang--en/index.htm](https://www.ilo.org/global/standards/maritime-labour-convention/WCMS_CON_TXT_ILS_MAR_FAQ_EN/lang--en/index.htm)> accessed 5 January 2019

<sup>69</sup> MLC, 2006, Regulation 3.1

<sup>70</sup> MLC, 2006, Standard A3.2, Paragraph 1

*register- have a right to maintain a ship register and be a ship's flag state.*"<sup>71</sup> In addition to that, therefore the ship will follow the regulation of the flag state nation's maritime law in the open sea and it will also avail different protections and preferential treatments.

#### **d) Title 4: Health protection, medical care, well-being and social security protection**

The Medical Care on board ship and ashore is established under Regulation 4.1. Aiming to protect the health of seafarers and ensure their prompt access to medical care on board ship and ashore. Flag States must ensure that all seafarers working on their ships have health coverage and prompt access to medical care on vessels and ashore. Port States must provide access to its medical facilities to all seafarers on ships in its territory. Seafarers must be provided levels of health protection and medical care that is comparable to that available to workers ashore. National regulations must establish standards for on-board hospital and medical care facilities and equipment. Requirements for medical chests, medical doctors on ships carrying 100 or more persons, medical qualifications for persons on ships that do not carry a doctor, and 24/7 radio or satellite medical advisory systems are specified.<sup>72</sup>

Regulation 4.2 sets out shipowner's liability in ensuring that seafarers are protected from the financial consequences of sickness, injury or death in conjunction with their employment. Shipowners are obligated to pay for medical care expenses, including housing and subsistence during recuperation for seafarers' illnesses or injuries incurred between the times when they began duty until they are repatriated. National laws can exclude shipowner's liability to pay medical expenses to not less than 16 weeks from the day the injury or commencement of the sickness. Shipowners are liable to pay burial expenses for seafarers who die on board or ashore during the period of employment. Especially, the 2014 amendments to the MLC added additional requirement to the shipowner which relates to financial security of seafarers in cases of abandonment<sup>73</sup> and contractual claims for compensation in the event of a seafarer's death or long term disability due to an operational injury, illness or hazard.<sup>74</sup>

---

<sup>71</sup> Chopra Karan, 'What are Flag States in the Shipping Industry And What's Their Role?' (11 November 2018) <<https://www.marineinsight.com/maritime-law/what-are-flag-states-in-the-shipping-industry-2/>> accessed 04/22/2019

<sup>72</sup> MLC,2006, Standard A4.1, Paragraph 1(c)

<sup>73</sup> MLC,2006, Regulation 2.5

<sup>74</sup> MLC,2006, Regulation 4.2

### **e) Title 5: Compliance and Enforcement**

Under Title 5, one finds an innovative and comprehensive system of compliance and enforcement mechanisms for flag States, port States and Labour Supplying States that include inspections, certification, grievance procedures, and investigations. A fundamental tenet of this Title is that seafarers and shipowners, like all other persons, are equal before the law and are entitled to equal protection of the law. As such, they should not be subject to discrimination in their access to courts, tribunals or other dispute resolution mechanisms. The MLC is enforced by the seafarers' complaint procedures, shipowner's and shipmasters' supervising conditions on their ships, flag States exercising jurisdiction and control over their ships, and port states inspecting foreign ships.<sup>75</sup>

The flag State will issue a five-year maritime labour certificate<sup>76</sup> by ensuring that the working conditions on board the vessel comply with the regulations giving effect to the Convention. In addition to that, it will have to require that the owners of ships flying its flag establish a declaration of conformity<sup>77</sup> in which they detail the measures taken to ensure permanent compliance with the national regulations implementing the Convention.

#### **(i) The duties of flag States Parties to the Convention**

Each flag State must ensure that its ships<sup>78</sup> operate in accordance with the requirements of the Convention. Under international law, the laws of a flag State apply to a ship regardless of its location. Therefore, with regards to the seafarer, flag States have an obligation to protect the seafarers and to govern their rights under the laws of the flag State wherever the ship is and regardless of the nationality of this seafarer.<sup>79</sup>

With regards to the ship, when a flag State has made a full survey, the flag State authority will grant it a Maritime Labour Certificate if all requirements by the MLC are noticed successful. This is followed by a Declaration of Maritime Labour Compliance (as already stated before) in which all of States that have ratified the MLC are registered. There are some areas that the State has to inspect such as minimum age; medical certification, qualification of seafarers; use of private recruitment agencies; work and rest hours; manning levels;

---

<sup>75</sup> International Labour Organization (n 42) 9

<sup>76</sup> Regulations 5.1.1 and 5.1.3, standard A5.1.3

<sup>77</sup> Maritime Labour Standard A.5.1.3, Regulation 5.1.3

<sup>78</sup> A ship that has the nationality of the flag that it flies

<sup>79</sup> Atty. Dennis R. and Gorecho (n 45)

accommodation; recreational facilities; health and safety; medical care; complaints procedures and payment of wages.

Each flag State has also to ensure that if it finds that the ship does not comply with MLC standard, it has to arrest the ship when it leaves its territory port.

There are also some cases that it receives complaints from other State parties to the Convention, it has to make an investigation about this particular claim.

### **(ii)Port States Control**

Port States may but are not required to inspect foreign ships in its port for compliance with the MLC. However, there is a presumed obligation that ships from countries that did not ratify the Convention are subject to port State control and sometimes detention if some conditions required by the Convention are not satisfied by the ships such as the minimum standards.<sup>80</sup>

There are two types of inspection: The first one is limited to the inspection of the different certificates that the ship has to carry out on board a vessel. These are generally the Vessel's Maritime Labour Certification or Declaration of Labour Compliance. If one document is missing among those documents required and/or invalid.<sup>81</sup>

The second one which is a detailed inspection that goes beyond the limited inspection of Maritime Labour Certification which may lead to the case mentioned above (detention of the ship). These circumstances are the non-properly maintenance of the ship; the inconformity with the minimum Standard imposed by the Convention.

### **(iii)Onshore seafarer Complaint-handling Procedure**

Seafarers should have the right to make a complaint to any relevant provisions of an applicable collective agreement in close consultation with shipowners' and seafarers' organizations for all ships that fly the Member's flag.<sup>82</sup>

A seafarer has the right to report a complaint alleging a breach of the MLC to an authorised officer in the port at which the ship calls. This is in addition to the right anyone has to complain to the inspecting authority in the ship's flag country. Moreover, this authorized officer must undertake an initial investigation. In addition to that, if a seafarer's complaint is general in nature and involves everyone on the ship, the authorised officer may conduct a

---

<sup>80</sup> International Labour Organization (n 42)

<sup>81</sup> *ibid*

<sup>82</sup> MLC,2006, Regulation 5.1.5

detailed inspection in port. If it is a complaint relating to an individual case, the authorised officer will establish if the on board complaint procedure has been used. If not, the officer should suggest that the on board complaint procedure has been used. If not, the officer should suggest that the on board procedure be explored before an on shore complaint is pursued.

Any seafarer who submits their complaint to an authorized port officer has the right to prompt and practical means of redress; the right to confidentiality; and to make known his views. If the complaint is not resolved, the port authority must transmit a copy of the authorised officer's report accompanied by any reply from the flag state, to the Director General of the International Labour Organisation.<sup>83</sup>

#### **(iv) On board Complaint Procedure**

Every seafarer has a right to make a complaint on board if there is a non-compliance with legal dispositions, regulations or agreements made under the MLC.

This right to report a complaint alleging a breach of the MLC to an authorised officer in the port at which the ship calls. This is in addition to the right anyone has to complain to the inspecting authority in the ship's flag country.

A formal and appropriate complaint procedure for a fair, effective and expeditious handling of seafarer complaints shall be made available on board by the Shipowner. Seafarers lodging a complaint may be accompanied or represented during the procedure. The complaint system must include safeguards against victimisation.

#### **(v) Labour-Supplying Responsibilities**

Under Regulation 5.1.3, it is the obligation of each Member under this Convention as pertaining to seafarer recruitment and placement and the social protection of its seafarers.

The MLC recognizes that flag States have primary responsibility for regulating seafarers 'working and living conditions on their ships. The Convention's provisions relating to regulating seafarers 'recruiting and placement agencies as well as some of its social security requirement' must be enforced by labour-supplying countries. The MLC requires labour-supplying Members to establish an effective inspection and monitoring system for enforcing its labour-supplying responsibilities.

---

<sup>83</sup> MLC, 2006, Regulation 5.2.2

The entry into force of the 2014 amendments to MLC on 18 January 2017 that regulates this later raised a novel question: If a ship is registered in a State that has not ratified the MLC and the ship calls at a port in the jurisdiction of a State that has, the ship's Master may be required to produce evidence of financial security arrangements that are equivalent to, and consistent with, the requirements established under Standards A2.5.2.<sup>84</sup>

#### **IV.THE NEED FOR THE INCORPORATION OF TITLE 3 OF MLC INTO MADAGASCAR MARITIME LEGISLATION**

##### **4.1. A general overview on Malagasy Maritime Code: “A gap of legal system for the protection of seafarers on the accommodation, recreational facilities, food and catering”**

Based on a Resolution that seafarers in Madagascar deserve a decent work<sup>85</sup>, the Malagasy government during the seminar held in Antsiranana,<sup>86</sup> from October 30th to November 1st in 2014, stated that it is essential for Madagascar to ratify two main conventions, the MLC and the Work in fishing Convention, 2007.<sup>87</sup> It means that it has an intention to create a legal system to protect seafarers' rights.

Moreover, whereas Law n° 99-028 of 03 February 2000 recasting the Maritime Code contains provisions about seafarers' rights but also seafarers' working conditions. They are not fully in compliance with the MLC. On the other hand, when looking at the general Labour Code for workers,<sup>88</sup> this Labour Code does not provide any provisions about seafarers.

To sum up, these two codes do not provide special provisions for seafarers. They put on an equal footing the workers on land and at sea.

##### **4.1.1. Comparison between the Code and the MLC**

With regards to the minimum requirements for seafarers to work on a ship, there is a difference between Code and the MLC. The minimum age that requires MLC to work on board is 16 years although for Madagascar it is 15 years.<sup>89</sup> As far as the seafarer's medical certification is concerned, there is any provision that addresses it in the Code as well as the qualification of seafarers and the use of private recruitment agencies.

---

<sup>84</sup> MLC, 2006, point 3 of the amended Standard A2.5.2 states that the “financial security system may be in form of a social security scheme or insurance”.

<sup>85</sup> A decent work means productive work in which rights are protected, which generates an adequate income, with adequate social protection.

<sup>86</sup> A province in the North of Madagascar

<sup>87</sup> A verbal declaration made by the President of Assembly: Jean Max Rakotomamonjy during this seminar.

<sup>88</sup> Law n° 2003-044 on the Labour Code

<sup>89</sup> (Loi n° 99-028 du 3 Fevrier 2000 portant refonte du Code maritime) Art. 3.2.03.



Concerning the conditions of employment, the provisions about the hours of work and hours of rest; manning levels; accommodation; recreational facilities, health and safety; medical care; complaints procedures and payment of wage, the Code omits many provisions that are set up in the MLC. Though some provisions are in line with the MLC such as stated from Articles 3.5.01 to Articles 3.5.16.

Standards that concern seafarer's accommodation and welfare facilities, medical care, indemnity against unemployment, protection against abandonment, exercise of port state control and flag state control, maritime labour certificates and labour compliance declarations, financial security certificates are provided in the Code. The Code does not provide a better protection of seafarers' rights under the Title 3. Therefore, Madagascar needs to incorporate the Regulation under Title 3 related to accommodation, recreational facilities, and food and catering, shipowners will take benefit from it.

The problems that they face is always attributed to the employers and shipowners. However, these bad conditions of working result also to the lack of implementation and enforcement of regulations into domestic law. As a result, seafarers' employers and shipowners take advantage of this lack of effective legislation at the disadvantage of seafarers. Harinony Lucien Razafindraibe, *Secretary General of Syndicat Général Maritime de Madagascar SYGMMMA*, stated that these violations of Malagasy seafarers' rights are not only observed on Malagasy vessels<sup>90</sup> but also to other vessels which belong to foreign countries and are employed under flags of other countries.<sup>91</sup> When there is a matter on an employment agreement, the question can arise, which jurisdiction will be competent to protect seafarers' rights? For the first case, if the seafarers have the same nationality, the vessel is registered under the same Flag State, the jurisdiction under the flag State is competent. Thus, Malagasy court will be competent to the case. This is stated under the article 3.11.06 Chapter 11 of the Malagasy Maritime Code.

For the second case, the problem of jurisdiction arises and is complex because there are seafarers' policy implications such as nationality, working and living conditions on board ships and the standards that should apply. Moreover, there is tendency actually that seafarers under a particular State work on ships of foreign countries and are employed on flags of other countries.

---

<sup>90</sup> Vessels that enjoy the nationality of Madagascar.

<sup>91</sup> Maholy, 'Journée mondiale de la mer : les marins demandent le respect' <<https://latribune.cyber-diego.com/actualites/1397-journee-mondiale-de-la-mer-les-marins-demandent-le-respect.html>> accessed 14 October 2018

In addition to that, Madagascar has even adopted the system of “open-registry” and “flag of convenience”.<sup>92</sup>

In this situation, the problem arises when there is a dispute concerning the employment agreement between these parties. It has to be determined which jurisdiction will apply when there is a failure to meet obligations under the contract of agreement. Usually, the jurisdiction will be bound on the nationality of the shipowner or the seafarer or the State under which the vessel has been registered.

#### **4.1.2. A special legal analysis on accommodation, recreational facilities, food and catering**

In the *Hooper v Gumm* Case, Turner LJ said *in a ship is not like any ordinary personal chattel. It is the workplace and home of those on board.*<sup>93</sup> Such concept is defined as “a place of residence and work where a large number of like-situated individuals, cut off from the wider society for an appreciable period of time, together lead an enclosed formally administered round of life”.<sup>94</sup> As a result, work on board ship at sea, without the possibility of going on shore for prolonged periods of time, requires the establishment of certain standards, such as crew accommodation, food and catering.

According to the Code in its Article 3.1.01, the term seafarer designates “any individual (...) signed to a maritime contract serving a shipowner or on the seas of his own volition, for the purpose of manning a vessel and performing a duty relative to ship navigation, operations, maintenance and missions.” Seafarers are “all persons employed or self-employed practising a professional activity on-board a ship.” This notion of a seafarer also encompasses all on-board crew, e.g. scientists working on research ships, engineers on cable vessels, cruise ship programme coordinators, etc.

This has the same meaning as the seafarer under the MLC. However, throughout looking at all the provisions related to seafarers, less or even any provisions deal with the accommodation, recreational facilities, food and catering. Nevertheless, during periods at sea, the ship serves as both a workplace and the seafarer’s residence. The seafarer can board a vessel for voyages lasting from several days (short routes) to several months (long haul). Upon returning ashore, the seafarer enjoys a break. Life on board the ship is split between working time and periods of leisure or rest. Here again, the durations may vary (within the limits

---

<sup>92</sup> Law n° 99-028 recasting the Maritime Code, Art 2.3.03

<sup>93</sup> (1866-7) LR 2 Ch App 282, 290

<sup>94</sup> Christodoulou-Varotsi Iliana and A.Pentsov Dmitry, *Maritime Work Law Fundamentals : Responsible Shipowners, Reliable Seafarers* (Springer 2008) 9

established by international rules), depending on the country, company or sector of activity facilities, food and catering. Nevertheless, all of these requirements are not satisfied by the internal legislations nor by the shipowners. These later take advantage of this situation.

With regard especially to accommodation, food and recreational facilities, the Code does provide only one Article that deals with Many Malagasy seafarers claim that shipowners or operators or ship managers do not provide not only a ship that is built to Class requirements but also seafarers accommodations are not designed and constructed in accordance with Flag State requirements for size rooms. Such as floor space, head room, number of berths. while looking at the legislation which requires the provision of accommodation requirements, not only most of the requirements imposed by the flag States are not satisfied by the shipowners but also these requirements do not comply with the requirements imposed under the MLC. Since the Code in its article 3.5.10 just provides that “Seafarers *are entitled to food or an equivalent allowance for the duration of their registration as crew members. Seafarers are entitled to the supply of sleeping and flat equipment.*” It is found that there are a lot of missing provisions in the Code with regards to all of these requirements. In addition to that, any provisions related to the right that has a seafarer to report a complaint has been provided under the Convention.

Thus, it is necessary to take into consideration this special Title 3 under MLC since as stated before the voyage may take longer time than previously stated in the contract. Moreover, not only the MLC prescribes that internal legislation has to take into account the requirement of the Convention concerning food and water supply and catering, but also it prescribes detailed requirements in respect of its location; ventilation; lighting; floor area per person of sleeping rooms and their equipment; mess room accommodation; recreation accommodation; sanitary accommodation; and hospital accommodation.

## **4.2. Current problems that face Malagasy Seafarers**

### **4.2.1. Social problems**

Considering the geopolitical situation of Madagascar, an island which is located in the Indian Ocean off the coast of Mozambique, seafarer’s profession can promote social development to the young generation because seafaring can create jobs. Therefore, seafarer as a profession will be more attractive to young adults if it is well-regulated by the government.

However, concerning the case of Madagascar, the interest that shows people to this activity of seafaring has decreased if it has to be compared with in the ancient time. There are

many factors that do not motivate people to enter into this activity. Especially, the problem of conditions of employment and their concern about accommodation, recreational facilities, food and catering. Despite difficult and dangerous working conditions, Malagasy seafarers feel that their rights are not respected. For instance, one Malagasy seafarer stated that: *“the shipowners subtract large sums from our salary under the pretext that they will pay them for the payment of the tax on the salary income and to contribute for the retirement or we never received document justifying these payments”*.<sup>95</sup>

Futhermore, they claim about the food since they have to feed themselves with the 7euros of compensation a day.<sup>96</sup> It means that even if seafaring activity represents danger to the seafarer such as isolation and restriction, their rights are not respected either by the shipowner or by the employers in those specific points enumerated. Moreover, today, Malagasy seafarers are working on ships that belong to Madagascar or belong to foreign countries and are employed on flags of countries face these problems.

As both the International Labour Organization and the International Maritime Organization share the same point of view to recognize a seafarer as a specific type of worker. It can give insurance not only to Malagasy seafarers that have had bad experiences at their work but also those who would like to do it as a profession.<sup>97</sup> Therefore, seafarers will feel more secure and also their families.

#### **4.2.2. Social problems impacts on Madagascar’s Economy**

Madagascar is the world's fourth-largest island (more than twice the size of Great Britain), located in the Indian Ocean off the coast of Mozambique.<sup>98</sup> It is therefore a natural port for seafarers sailing from Africa or Indonesia.<sup>99</sup>

The world trade is carried by ships. The carriage of goods by sea is manned and operated by seafarers. They play an important role to promote the development of maritime industry by managing different operations on board of a vessel.<sup>100</sup>

---

<sup>95</sup> JIR, ‘La Réunion- Un marin malgache raconte son calvaire’ (06/15/2018) <<https://lexpress.mg/15/06/2018/la-reunion-un-marin-malgache-raconte-son-calvaire/>> accessed 12 December 2018

<sup>96</sup> *ibid*

<sup>97</sup> Deirdre Fitzpatrick and Michael Anderson (n 30) 32

<sup>98</sup> D. Blethen Adams Levy, ‘The Maritime Heritage Project: Madagascar’ (Home n° 2017) <As Madagascar is the world's fourth-largest island (more than twice the size of Great Britain), is located in the Indian Ocean off the coast of Mozambique. It was a natural port for seafarers sailing from Africa or Indonesia.> accessed 26 December 2018

<sup>99</sup> *ibid*

<sup>100</sup> Desislava Nikolaeva Dimitrova (n 1)

Moreover, its economic development relies mainly on maritime shipping even though it can rely on other activities also. Most of the population has their main work at sea. However, the conditions of employment and accommodation, recreational facilities, food and catering of seafarers are not well respected.

#### **4.2.3. The MLC 2006 socio-economic impacts on Madagascar**

Labour is important to promote the development of an industry. The implementation of MLC will generate many positive impacts to all parties involved in the shipping industry such as the shipowners, governments and mainly the seafarers.

Especially, the industry will be moving forward, perhaps because, like most major regulatory changes, it generates a new market for some services or technologies, irrespective of the rather slow pace of the mechanics of legal implementation and ratification

## **V. PROCESS TO INCORPORATE THE REGULATION UNDER TITLE III (ACCOMODATION, RECREATIONAL FACILITIES, FOOD AND CATERING) OF THE MARITIME LABOUR CONVENTION, 2006 INTO THE LAWS OF MADAGASCAR AND TO PROVIDE FOR THE EFFECTIVE IMPLEMENTATION THEREOF**

### **5.1. Requirements of Enacting Regulation in respect of Accommodation and Recreational Facilities on Board Ship**

While looking at the provisions of the Code in the **6.1.3**, it is observed that almost all of the provisions of MLC have been addressed by the Code. Though they are not fully in compliance with this MLC. They could touch to some extent some areas under MLC. However, only one provision<sup>101</sup> addresses the accommodation and recreational facilities on board ship in the Code.

From the above analysis, it will be prudent if the Regulation of Title III to the Seafarer's accommodation, recreational facilities, food and catering is ratified and incorporated to bring the country up to line with the latest International standard on the rights of the seafarers in Madagascar. Therefore, seafarers who are working on board a vessel registered under its flag can benefit this special favour granted to them.

#### **5.1.1. The need to adopt a Regulation on the accommodation, recreational facilities, food and catering under the article 3.5.10 of the Code**

Madagascar has already a primary maritime legislation called 'law N° 99-028 on 3 February 2000 revising the Maritime Code. This Maritime Code contains forty five (45) articles related to the rights and working conditions of seafarers. However, it does not emphasize seafarers' accommodation, recreational facilities, food and catering. Unfortunately, the new Maritime Code that is being developed at the moment presents the same situation.

Considering the obligations imposed on the Member States to adopt national legislation to implement the provisions of the accommodation, recreational facilities, food and catering, it is essential to adopt a national law for the incorporation and implementation of the provisions of the said Convention. Therefore, adopting a law to authorise the ratification of the Regulation under Title 3 of the Convention and to incorporate this specific Regulation is appropriate rather than amending all existing laws concerning seafarers. Such Regulation will govern only seafarers' accommodation, recreational facilities, food and catering on board international

---

<sup>101</sup> Article 3.5.10 of the Malagasy Maritime Code that deals with the Regulations under Title 3

commercial vessels and subsequent subsidiary laws may be drafted to supplement provisions stipulated on the Convention under the Code.

## **5.1.2. Regulation to be adopted into the law**

### **5.1.2.1. Accommodation Design**

There are some requirements that have to be taken into consideration under the Regulation A.3.1.6 of the MLC with regards to the headroom in all seafarer accommodation:

- (a) There shall be adequate headroom in all seafarer accommodation that:
  - (i) is reasonable; and
  - (ii) will not result in discomfort to the seafarers;
- (b) the accommodation shall be adequately insulated;
- (c) in ships other than passenger ships, and in special ships, the allocation of the sleeping rooms shall follow the load line amidships or aft subject to exceptional cases;
- (d) in passenger ships, and in special ships constructed, satisfactory arrangements are made for lighting and ventilation, permit the location of sleeping rooms below the load line;
- (e) there shall be no direct openings into sleeping rooms from cargo and machinery spaces or from galleys, storerooms, drying rooms or communal sanitary areas;
- (f) the materials used to construct internal bulkheads, panelling and sheeting, floors and joining shall be suitable for the purpose and conducive to ensuring a healthy environment;
- (g) proper lighting and sufficient drainage shall be provided; and
- (h) accommodation and recreational and catering facilities shall meet the requirements in Regulation 4.3 (Health and safety protection and accident prevention)

### **5.1.1.2. Vibration**

Regulation A.3.1.7 of MLC requires that:

- (a) sleeping rooms and mess rooms shall be adequately ventilated;
- (b) ships, except those regularly engaged in trade where temperate climatic conditions do not require this, shall be equipped with air conditioning for seafarer accommodation, for any separate radio room and for any centralized machinery control room;

(c) all sanitary spaces shall have ventilation to the open air, independently of any other part of the accommodation; and

(d) adequate heat through an appropriate heating system shall be provided;

#### **5.1.1.3. Lighting**

Regulation A.3.1.8 of MLC requires that regulation sleeping rooms and mess rooms shall be lit by natural light and provided with adequate artificial light.

#### **5.1.1.4. Sleeping rooms**

Regulation A.3.1.9 of MLC requires that when sleeping accommodation on board ships:

- (a) in ships other than passenger ships, an individual sleeping room shall be provided for each seafarer;
- (b) separate sleeping rooms shall be provided for men and for women;
- (c) sleeping rooms shall be of adequate size and properly equipped so as to ensure reasonable comfort and to facilitate tidiness;
- (d) a separate berth for each seafarer shall in all circumstances be provided;
- (e) the minimum inside dimensions of a berth;
- (f) requirements of single berth seafarers' sleeping rooms

#### **5.1.1.5. Mess Rooms**

Under Regulation A.3.1.10 of MLC, there are some mandatory requirements that have to be followed:

(a) mess rooms shall be located apart from the sleeping rooms and as close as practicable to the galley;

(b) mess rooms shall be of adequate size and comfort and properly finished and equipped

#### **5.1.1.6. Recreation Accommodation**

Regulation A.3.1.14 and A.3.1.17 of MLC require that:

- (a) All ships shall have a space or spaces on open deck to which the seafarers can have access when off duty, which are of adequate area having regard to the size of the ship and the number of seafarers on board.



- (b) Appropriate seafarers' recreational facilities, amenities and services, as adapted to meet the special needs of seafarers who must live and work on ships, shall be provided on board for the benefit of all seafarers.

#### **5.1.1.7. Sanitary Facilities**

Regulation A.3.1.11 of MLC provides that:

- (a) all seafarers shall have convenient access to sanitary facilities;
- (b) meeting minimum standards of health and hygiene and reasonable standards of comfort;
- (c) separate sanitary facilities being provided for men and for women;
- (d) a minimum of one toilet, one wash basin and one tub or shower or both for every six persons or less who do not have personal facilities shall be provided at a convenient location;
- (e) with the exception of passenger ships, each sleeping room shall be provided with a washbasin having hot and cold running fresh water, except where such a washbasin is situated in the private bathroom;
- (f) hot and cold running fresh water shall be available in all wash places

#### **5.1.1.8. Hospital Accommodation**

It is provided under the Regulation A.3.1.12 of MLC: it provides that ship carrying 15 or more seafarers and engaged in a voyage of more than three days' duration shall provide separate hospital accommodation to be used exclusively for medical purposes.

### **5.2. The drafting and adoption process**

The Maritime Code was adopted in a legal form of law. The ratification or the approval of the treaties or the accession [...] must be authorized by the law.<sup>102</sup> Therefore, its subsidiary law related to a specific regulation under the Code has to be also in the same legal form with adequate authorisation procedure to be taken in place. The process to be followed for its adoption is described in Article 96 of the Constitution.<sup>103</sup>

As Madagascar is a monist country, to implement the Regulation under Title 3 of MLC effectively into the national legislation, the consent of the Malagasy Government needs to be obtained. The proposed Regulation to the article 3.5.10 to the *LIVRE III (BOOK III)* of the

---

<sup>103</sup> Article 98 states that the Government, by engaging its responsibility [...] may demand of each one of the Assemblies to pronounce themselves by a sole vote on all or on part of the provisions of the texts in discussion.

Malagasy Maritime Code will be submitted to the two chambers of the Parliament - the National Assembly and the Senate. For its adoption and admission as an effective Regulation of Madagascar, a vote of Parliament is necessary.<sup>104</sup> According to Article 138 Paragraph 4 of the Constitution, the publication of the law in the Official Journal of the Republic of Madagascar will render it enforceable and binding before the courts.

According to the organizational structure of Madagascar's Government, the minister responsible for Labour and Social Security is competent for the issues related to the private workers. However, since it is not related to the private workers but specifically to seafarers, it is advisable that this draft is prepared by the Port Maritime and Waterways Agency (the *Autorité Portuaire Maritime et Fluviale* or APMF) under the Ministry of Transport and Meteorology. Since the administrative maritime authority knows more about seafarers' working conditions. In the next phase, it will be defended by the Ministry of Transport before the Government.

If it obtains the approval of the Government, it will become a draft legislation proposal and pass to the two chambers of Parliament which are the National Assembly and Senate. To be adopted as a Regulation in Madagascar, it needs to obtain the 2/3 of vote in the Parliament<sup>105</sup>. When it requires this latter, it should be inserted into the Official Journal of the Republic to become enforceable and binding before the courts.

### **5.3. Purpose of this draft legislation: Adopting Regulation**

This draft legislation will provide a Regulation to the existing provisions dealing with seafarers' rights under the Article 3.5.10 related to Accommodation, recreational facilities, food and catering. There is a choice between a separate and a unique enactment.

However, it is more useful to draft this legislation into a separate enactment, since the Maritime Code is being developed at the moment and it may take a long time to be adopted. It is advisable that the *Port, Maritime and Waterways Agency* (APMF)<sup>106</sup> will be empowered by the Ministry of Transport to draft to incorporate the Regulation under Title 3 of MLC into the Laws of Madagascar and to provide for the Effective Implementation Thereof.

---

<sup>104</sup> Article 68 of the Constitution

<sup>105</sup> Constitution de la IV<sup>e</sup> République (11 décembre 2010) (République de Madagascar) Article 68

<sup>106</sup> Agence Portuaire, Maritime et Fluviale de Madagascar

## **VI- BRIEF DISCUSSION OF THE DRAFT LEGISLATION**

### **6.1. Title**

The draft legislation will cover the Regulation of accommodation and recreational spaces in recognized ships registered under Malagasy flag.

This draft legislation will implement only Regulation 3.1 of the MLC that comes under Title 3 of the Convention. It will incorporate into Malagasy laws under the Chapter III of the Maritime Code by an additional amendment .It is not yet known under which number of articles it will fall since the Code is still in total reform .

These Regulations do not repeal but subsidise additionally the Article 3.5.10 of Maritime Code due to the missing provisions about it.

### **6.2. Definition**

This draft legislation will provide definitions of all stakeholders involved in this particular standard.

### **6.3. Enforcement and Applicability of these Regulations**

This Regulation will be enforced in all Malagasy ships that are engaged in international commercial activities.

### **6.4. Exemption of the Applicability of the Regulations**

The fishing vessels, crafts or ships that are not engaged in trade or owned by the Government or performing the Government's service or used by the Malagasy Coast Guard are exempted from the application of these Regulations.

**VII- THE PROCESS TO INCORPORATE THE REGULATION OF THE TITLE 3  
(ACCOMODATION, RECREATIONAL FACILITIES, FOOD AND CATERING) OF  
MLC INTO THE LAWS OF THE REPUBLIC OF MADAGASCAR**

The Regulation enumerates the general principles to be applied to the improved seafarers' rights and to provide them decent working conditions:

PART I- DEFINITIONS AND SCOPE

PART II- ACCOMODATION AND RECREATIONAL FACILITIES

PART III- FOOD AND CATERING

PART VI- FINAL PROVISIONS

Appendix A5 III



## MINISTRY OF TRANSPORT AND METEOROLOGY

-----

### DRAFT LEGISLATION

**authorizing the ratification of the Title 3 of the Maritime Labour Convention 2006  
(MLC 2006), as  
amended**

### INTRODUCTORY MEMORANDUM

-----

Mr President of the Republic,  
Prime Minister, Head of Government,  
Ladies and Gentlemen Ministers,  
Mr Secretary of State,

The International Labour Conference (ILC) adopted, at its 94th Session, on 23 February 2006, the Maritime Labour Convention. This convention proposes an innovative and global approach to the maritime sector. The Convention guarantees decent living and working *conditions* for seafarers, better information on their rights and enhanced means of enforcing them.

The Maritime Labour Convention brings together almost all the Conventions and Recommendations of Maritime Labour, i.e. sixty-eight instruments, in a single text that includes innovative effective enforcement mechanisms. Aiming for wide ratification, it constitutes the

fourth pillar of the international regulation of the maritime sector, complementing the fundamental conventions of the International Maritime Organization (IMO), the 1974 International Convention for the Safety of Life at Sea (SOLAS) the 1978 International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW) and the 1973 International Convention for the Prevention of Pollution from Ships (MARPOL). Beyond the maritime sector alone, its implementation and control systems are of interest to the entire world of work, since the most important vessels will have to be certified socially. For the Contracting States, this instrument integrates the human dimension into the controls and thus contributes to the improvement of safety at sea. Ratification of this Convention will enable Madagascar to show its willingness to implement instruments adopted within the framework. International Labour Organization and its commitment to promote all conditions for decent work in the maritime sector.

The first amendments to the Maritime Labour Convention, 2006 (MLC, 2006) which provide better protection for seafarers and their families in case of abandonment, death and disability entered into force on 18 January 2017. Under article XV (12) of the Convention "once an amendment has entered into force, the Convention may be ratified only in its amended form. As the 2014 amendments came into force at the time of the adoption of this ratification act, Madagascar will have to ratify the version of "MLC 2006, as amended". In 2016, amendments were also made to the Code, relating to MLC Rule 4.3; they concern harassment and intimidation on board ships. At the end of the period of formal disagreement on 08 July 2018, the 2016 amendments came into force on 08 January 2019. Nothing prevents Madagascar from accepting these amendments as well, so no specific declaration should be submitted by Madagascar when depositing the instrument of ratification.

Such is, Mr President of the Republic, Prime Minister, Head of Government, Ministers, Secretary of State, the subject of this note which I have the honour to submit to your approval.

Antananarivo, the .....



**ANNEX TO DECREE N ° .....OF.....**

-----\*\*\*

**DRAFT LEGISLATION**

authorizing the ratification of the Maritime Labour Convention of the International Labour Organization (MLC 2006), as amended

**EXPLANATORY MEMORANDUM**

The International Labour Conference (ILC) adopted, at its 94th Session, on 23 February 2006, the Maritime Labour Convention.

This Convention proposes an innovative and global approach to the maritime sector. With the Labour in Fishing Convention adopted the following year by the International Labour Organization (ILO), it is a true global labour code for seafarers.

The Maritime Labour Convention brings together almost all the Conventions and Recommendations of Maritime Labour, i.e. sixty-eight instruments, in a single text that includes innovative effective enforcement mechanisms.

Aiming for wide ratification, it constitutes the fourth pillar of the international regulation of the maritime sector, complementing the fundamental conventions of the International Maritime Organization (IMO), the 1974 International Convention for the Safety of Life at Sea (SOLAS) the 1978 International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW) and the 1973 International Convention for the Prevention of Pollution from Ships (MARPOL). The Convention provides seafarers with decent living and working conditions, better information on their rights and enhanced means of enforcing them. It has the advantage for shipowners to prevent unfair competition by introducing competition based on common and controlled rules and by rejecting out-of-the-ordinary vessels in the margins.

Beyond the maritime sector alone, its implementation and control systems are of interest to the entire world of work, since the most important vessels will have to be certified socially. For the Contracting States, this instrument integrates the human dimension into controls and thus contributes to the improvement of safety at sea. Indeed, it is recognized that 80% of maritime accidents result from human errors and the non-respect of social norms generally go hand in hand with non-compliance with technical standards.

The Convention consists of three distinct parts, sixteen articles numbered I to XVI, rules and a code. The articles at the beginning of the text set out general obligations and procedural provisions. The rules set out the standards to be met. Each rule is followed by code provisions that indicate how the rules should be applied. The code consists of part A (provisions - "standards" - mandatory) and part B (guiding principles, not mandatory).

The rules and provisions of the code are divided into five titles:

Title 1: Minimum requirements for the work of seafarers on board ships

Title 2: Conditions of employment;

Title 3: Housing, leisure, food and table service;

Title 4: Health protection, medical care, well-being and social security protection:

Title 5: Compliance and Enforcement.

The definition of the scope of application of the Maritime Labour Convention is specified in the Articles. The Convention applies to seafarers, that is to say all persons working on board vessels engaged in commercial activity (Article II 2. and 4.)

Article III mentions the principles of the fundamental conventions of the International Labour Organization.

Article IV sets out general rights of seafarers.

Article V deals, in particular, with inspections

Article VI lays down some principles as to the application of the provisions contained in the rules and code.



Articles VIII to XVI are conventionally devoted to procedural clauses (entry into force, amendments, denunciation, etc.), Article XIII establishing a tripartite follow-up to the Convention, a new modality of the ILO.

The rules and the code set minimum standards on conditions of employment, work and life on board. These minimum standards include, in particular, the minimum age (Rule 1.1 and Standard A1.1 of the Code), the recruitment system (Rule 1.4 and Standard A1.4 of the Code), the payment of wages (Rule 2.2 and Standard A2.2 of the Code), repatriation (Rule 2.5 and Standard A2.5 of the Code), accommodation on board (Regulation 3.1 and Standard A3.1 of the Code), health and safety at work (Rule 4.1 to 4.4, Standards A4.1 A4.4), social protection (Rule 4.5, Standard A4).

Original mechanisms for monitoring the effective implementation of its provisions involving shipowners, the flag State and the port State are provided for.

The flag State will issue a five-year maritime labour certificate (Rules 5.1.1 and 5.1.3, Standard A5.1.3) ensuring that the conditions of work on board the vessel are in accordance with the national regulations giving effect to the Convention. In addition, it shall require that owners of vessels flying its flag shall draw up a declaration of conformity (Seafarer Standard A5.1.3, Regulation 5.1.3 in which they detail the measures taken to ensure the permanent observance of national legislation applying the Convention.

Under the Convention, the possession of a maritime labour certificate and a declaration of maritime labour compliance is mandatory for large vessels, those of 500 gross tonnage or more assigned to international shipping (Rule 5.1.3)

Provisions for flag State inspections are covered by Regulation 5.1.4 and A5.1.4, and those relating to port State inspections correspond to Rule 5.2.1 and the Standard. A5.2.1. The port State has the right to inspect all ships calling, including those flying the flag of a State that has not ratified the Convention.

The Maritime Labour Certificate and the Declaration of Maritime Labour Compliance establish a presumption of compliance by the shipowner with the provisions of the Convention. Once a vessel is able to present both documents, the inspection in the port State is limited to a check of both documents avoiding heavy control, which may delay the ship.

The Convention reiterates the principle of the “no more favorable treatment” clause meaning that ratifying States should not be penalized for those who have not ratified it. Thus,

during port State control, ships from these States will be subject to the same controls and may be detained if they do not meet the minimum standards of the Convention.

The control system as a whole gives States ratifying the Convention an important advantage, since their vessels will have control facilities, while the vessels of non-ratifying States will be systematically and thoroughly scrutinized. States are therefore encouraged to ratify the Convention as soon as possible in order to benefit from the advantages of this mechanism.

According to Article XV, paragraph 12, of the Convention "once an amendment has entered into force, the Convention may be ratified only in its amended form. “ The Maritime Labour Convention, as originally drafted, entered into force on August 20, 2013. The first amendments to the Maritime Labour Convention, 2006 (MLC, 2006), which provide better protection for seafarers and their families in the event of on death penalty, death and long-term disability entered into force on 18 January 2017. As the 2014 amendments entered into force at the time of the adoption of this ratification act, Madagascar will have to ratify the version of "MLC", 2006 as amended ».

In addition, in 2016, amendments to the Code relating to Rule 4.3 of the MLC 2006 were also made. They are about harassment and intimidation on board ships. At the end of the formal disagreement period on 08 July 2018, the 2016 amendments entered into force on 08 January 2019.Nothing prevents Madagascar from accepting these amendments to the Code, as the country adopts the various international conventions on the protection of social rights and also those against violence against women and children -no declaration of disagreement of the 2016 amendments should be submitted by Madagascar when depositing the instrument of ratification

Ratification of this Convention, covering the maritime sector, will enable Madagascar to show its willingness to implement instruments adopted within the International Labour Organization and its commitment to promote all conditions for decent work in the maritime sector.

That, is the subject of this Regulation.

Antananarivo, the.....

The Minister of Transport and Meteorology.



## PRESIDENCY OF THE REPUBLIC

-----

**LAW No ....**

**authorizing the ratification of the Maritime Labour Convention 2006 (MLC 2006)**

The National Assembly and the Senate adopted in their respective plenary sessions on ...  
and...

**THE PRESIDENT OF THE REPUBLIC,**

- Considering the Constitution,
- Considering the Decision n° ... on ... of the High Constitutional Court,

**PROMULGATE THE FOLLOWING LAW:**

**Article 1.** The ratification by the Republic of Madagascar of the Title 3 of the Maritime Labour Convention 2006 (MLC 2006), as amended.

**Article 2.** This Regulation shall be published in the Official Gazette of the Republic.

It shall be executed as national legislation.



## NATIONAL ASSEMBLY

-----  
Law No-----

**In order to provide a Regulation to the provisions of the article 3.5.10  
of the Book III of the Law No 99-028 of 03 February 2000 recasting the Malagasy  
Maritime Code**

### PART I

#### GENERAL PROVISIONS

##### Article 1. - Definition of Terms

The following terms shall have the meaning assigned to them unless the context otherwise requires:

- a) **“Convention”** means Maritime Labour Convention, 2006 as amended
- b) **“Competent authority”** means the Agence Portuaire, Maritime et Fluviale
- c) **“Director”** means the Director General of the Competent Authority
- d) **“Seafarer accommodation”** includes such sleeping rooms, mess rooms, sanitary accommodation, hospital accommodation and recreation accommodation as are provided for the use of the seafarers;
- e) **“Date of construction”** means on the date when its keel is laid or when it is at a similar stage of construction;
- f) **“Existing ship”** means a ship that is not a new ship;
- g) **“Fishing vessel”** means a boat or ship used to catch fish in the sea, or on a lake or river;
- h) **“T”** means gross tonnage of the ship in accordance to the provisions of Section 37 of the Malagasy Maritime Code of Madagascar;

- i)“Master”** means the seafarer who is registered at the Malagasy Registry or the seafarer who has assumed the responsibilities on behalf of the master in command, control or charge of a ship;
- j) “Member”** means the other States parties to the Convention;
- k)“Mess room”** means the dining room of the ship;
- l)“Minister”** means the Minister of Transport and Meteorology;
- m)“New ship”** means a ship the keel of which is laid or which is at a similar stage of construction on or after the entry into force of these regulations;
- n)“Passenger ship”** means a passenger ship as defined in the International Convention for the Safety of Life at Sea, 1974 (SOLAS), as amended;
- o)“Seafarer”** means any person who is employed or engaged or works in any capacity on board a ship excluding persons providing non-scheduled or ancillary services to a ship to assist it in its maritime voyage such as shore based engineers, bunker crew, pilots, members of the Armed Forces of Madagascar;
- p)“Ship”** means vessel registered under the Malagasy registry
- q)“Ship owner”** means the owner of the ship or any other organization or person, such as the manager, agent or bareboat charter, who has assumed the responsibility for the operation of the ship from the owner and who, on assuming such responsibilities, has agreed to take over the duties and the responsibilities imposed on the ship owners.

## **Article 2. - Scope of application**

1. Unless expressly otherwise provided, this Law shall apply to:

- a) All ships entitled to fly the Malagasy flag designed or constructed to ordinarily engage in commercial activities to provide and maintain decent accommodation and recreational facilities for seafarers working or living on board;
- b) All other commercial ships constructed on or after this law comes into force while operating in waters under Malagasy jurisdiction.

2. This Law shall not apply to:

- a) Ships engaged in fishing or in similar pursuits and ships of traditional build;
- b) Warships or naval auxiliaries

3. Ships flying flags of States which are not Parties to the Convention shall not be accorded more favourable treatment than ships belonging to States Parties.

## **PART II**

### **ACCOMODATION AND RECREATIONAL FACILITIES**

Ship shall only provide and maintain decent accommodation and recreational facilities in accordance with the provisions of this Part II:

#### **Article 3. - Design and construction**

1. The ship is built to Class requirements of acceptable noise and vibration levels.

Seafarers are instructed in the vibration and in the proper use of noise protection devices and equipment.

Approved hearing protection equipment is provided for use in such places.

In the case of high levels of noise and/or vibration in the accommodation, catering and recreational facilities, the ships management investigates the reason and initiates appropriate measures to reduce the noise/ vibration levels.

If this is not possible, a deficiency report is issued by the inspector and corrective actions are agreed with the shipowner. In case of hazardous levels of noise and/or vibration, the ships speed and/or trim is adjusted immediately as a temporary measure until other effective measures are implemented.

2. Separate sleeping room facilities for male and female seafarers are provided, if required. Crew accommodation spaces are regularly inspected by the master, or a representative of the master at intervals not exceeding one week to ensure that accommodation spaces are maintained in a safe, clean and hygienic condition at all times and records of inspections are maintained in a safe, clean and hygienic condition at all times and records of inspections are maintained for a period of at least one year.

Article.- Ventilation  
Ventilation, heating, and air conditioning systems are regularly maintained and cleaned in accordance with manufacturer's instructions and ships as to maintain the atmosphere within the accommodation at a satisfactory temperature compared to the outside temperatures likely to be experienced.

#### **Article 4. - Heating**

Seafarer accomodation should be in operation at all times when seafarers are living or working on board and conditions require its use.

Seafarers should inform the master in case of non-operation of the heating

#### **Article 5. - Lighting**

- 1) In all malagasy ships, electric light should be provided in the seafarer accomodation

If there are not two independent sources of electricity for lighting, additional lighting should be provided by properly constructed lamps or lighting apparatus for emergency use

- 2) In sleeping rooms an electric reading lamp should be installed at the head of each berth
- 3) Suitable standards of natural and artificial lighting should be fixed by the competent authority.

#### **Article 6. - Sleeping rooms**

- 1) There should be adequate berth arrangements on board, making it as comfortable as possible for the seafarer and any partner who may accompany the seafarer;
- 2) Where the size of the ship, the activity in which it is to be engaged and its lay-out make it reasonable and practicable, sleeping rooms should be planned and equipped with a private bathroom, including a toilet, so as to provide reasonable comfort for the occupants and to facilitate tidiness;
- 3) As far as practicable, sleeping rooms of seafarers should be so arranged that watches are separated and that no seafarers working during the day share a room with watchkeepers;
- 4) In the case of seafarers performing the duty of petty officers there should be no more than two persons per sleeping room;
- 5) Consideration should be given to extending the facility to the sleeping rooms to the master and to the second engineer officer when practicable;
- 6) Space occupied by berths and lockers, chests of drawers and seas should be included in the measurement of the floor area. Small or irregularly shaped spaces which do not add effectively to the space available for free movement and cannot be used for installing furniture should be excluded,
- 7) Berths should not be arranged in tiers of more than two; in the case of berths placed along the ship's side, there should be only a single tier where a sidelight is situated above a berth;
- 8) The lower berth in a double tier should be not less than 30 centimetres above the floor; the upper berth should be placed approximately midway between the bottom of the lower berth and the lower side of the deckhead beams;

9) The framework and the lee-board, if any, of a berth should be of approved material, hard, smooth, and not likely to corrode or to harbour vermin;

10. If tubular frames are used for the construction of berths, they should be completely sealed and without perforations which would give access to vermin.

11. Each berth should be fitted with a comfortable mattress with cushioning bottom or a combined cushioning mattress, including a spring bottom or a spring mattress. The mattress and cushioning material used should be made of approved material. Stuffing of material likely to harbour vermin should not be used.

12. When one berth is placed over another, a dust-proof bottom should be fitted beneath the bottom mattress or spring bottom of the upper berth.

13. The furniture should be of smooth, hard material not liable to warp or corrode.

14. Sleeping rooms should be fitted with curtains or equivalent for the sidelights.

15. Sleeping rooms should be fitted with a mirror, small cabinets for toilet requisites, a book rack and a sufficient number of coat hooks.

#### **Article 7. - Mess rooms**

1. Mess room facilities may be either common or separate. The decision in this respect should be taken after consultation with seafarers' and shipowners' representatives and subject to the approval of the competent authority. Account should be taken of factors such as the size of the ship and the distinctive cultural, religious and social needs of the seafarers.

2. Where separate mess room facilities are to be provided to seafarers, then separate mess rooms should be provided for:

- (a) master and officers; and
- (b) petty officers and other seafarers.

3. On ships other than passenger ships, the floor area of mess rooms for seafarers should be not less than 1.5 square metres per person of the planned seating capacity.

4. In all ships, mess rooms should be equipped with tables and appropriate seats, fixed or movable, sufficient to accommodate the greatest number of seafarers likely to use them at any one time.

5. There should be available at all times when seafarers are on board:

- (a) a refrigerator, which should be conveniently situated and of sufficient capacity for the number of persons using the mess room or mess rooms;



- (b) facilities for hot beverages; and
- (c) cool water facilities.

6. Where available pantries are not accessible to mess rooms, adequate lockers for mess utensils and proper facilities for washing utensils should be provided.

7. The tops of tables and seats should be of damp-resistant material.

#### **Article 8. – Sanitary accommodation**

1. Washbasins and tub baths should be of adequate size and constructed of approved material with a smooth surface not liable to crack, flake or corrode.

2. All toilets should be of an approved pattern and provided with an ample flush of water or with some other suitable flushing means, such as air, which are available at all times and independently controllable.

3. Sanitary accommodation intended for the use of more than one person should comply with the following:

- (a) floors should be of approved durable material, impervious to damp, and should be properly drained;
- (b) bulkheads should be of steel or other approved material and should be watertight up to at least 23 centimetres above the level of the deck;
- (c) the accommodation should be sufficiently lit, heated and ventilated;
- (d) toilets should be situated convenient to, but separate from, sleeping rooms and wash rooms, without direct access from the sleeping rooms or from a passage between sleeping rooms and toilets to which there is no other access; this requirement does not apply where a toilet is located in a compartment between two sleeping rooms having a total of not more than four seafarers; and
- (e) where there is more than one toilet in a compartment, they should be sufficiently screened to ensure privacy.

4. The laundry facilities provided for seafarers' use should include:

- (a) washing machines;
- (b) drying machines or adequately heated and ventilated drying rooms; and
- (c) irons and ironing boards or their equivalent.

#### **Article.9 – Hospital accommodation**

1. The hospital accommodation should be designed so as to facilitate consultation and the giving of medical first aid and to help prevent the spread of infectious diseases.

2. The arrangement of the entrance, berths, lighting, ventilation, heating and water supply should be designed to ensure the comfort and facilitate the treatment of the occupants.
3. The number of hospital berths required should be prescribed by the competent authority.
4. Sanitary accommodation should be provided for the exclusive use of the occupants of the hospital accommodation, either as part of the accommodation or in close proximity thereto. Such sanitary accommodation should comprise a minimum of one toilet, one washbasin and one tub or shower.

**Article 10. – Other facilities**

1. Where separate facilities for engine department personnel to change their clothes are provided, they should be:
  - (a) located outside the machinery space but with easy access to it; and
  - (b) fitted with individual clothes lockers as well as with tubs or showers or both and washbasins having hot and cold running fresh water.

**Article 11. – Bedding, mess utensils and miscellaneous provisions**

1. The competent authority should consider applying the following principles:
  - (a) clean bedding and mess utensils should be supplied by the shipowner to all seafarers for use on board during service on the ship, and such seafarers should be responsible for their return at times specified by the master and on completion of service in the ship;
  - (b) bedding should be of good quality, and plates, cups and other mess utensils should be of approved material which can be easily cleaned; and
  - (c) towels, soap and toilet paper for all seafarers should be provided by the shipowner.

**Article 12. – Recreational facilities, mail and ship visit arrangements**

1. Recreational facilities and services should be reviewed frequently to ensure that they are appropriate in the light of changes in the needs of seafarers resulting from technical, operational and other developments in the shipping industry.
2. Furnishings for recreational facilities should as a minimum include a bookcase and facilities for reading, writing and, where practicable, games.
3. In connection with the planning of recreation facilities, the competent authority should give consideration to the provision of a canteen.
4. Consideration should also be given to including the following facilities at no cost to the seafarer, where practicable:
  - (a) a smoking room;

- (b) television viewing and the reception of radio broadcasts;
- (c) showing of films, the stock of which should be adequate for the duration of the voyage and, where necessary, changed at reasonable intervals;
- (d) sports equipment including exercise equipment, table games and deck games;
- (e) where possible, facilities for swimming;
- (f) a library containing vocational and other books, the stock of which should be adequate for the duration of the voyage and changed at reasonable intervals;
- (g) facilities for recreational handicrafts;
- (h) electronic equipment such as a radio, television, video recorders, DVD/CD player, personal computer and software and cassette recorder/player;
- (i) where appropriate, the provision of bars on board for seafarers unless these are contrary to national, religious or social customs; and
- (j) reasonable access to ship-to-shore telephone communications, and email and Internet facilities, where available, with any charges for the use of these services being reasonable in amount.

5. Every effort should be given to ensuring that the forwarding of seafarers' mail is as reliable and expeditious as possible. Efforts should also be considered for avoiding seafarers being required to pay additional postage when mail has to be readdressed owing to circumstances beyond their control.

6. Measures should be considered to ensure, subject to any applicable national or international laws or regulations, that whenever possible and reasonable seafarers are expeditiously granted permission to have their partners, relatives and friends as visitors on board their ship when in port. Such measures should meet any concerns for security clearances.

7. Consideration should be given to the possibility of allowing seafarers to be accompanied by their partners on occasional voyages where this is practicable and reasonable. Such partners should carry adequate insurance cover against accident and illness; the shipowners should give every assistance to the seafarer to effect such insurance.

### **Article 13. – Prevention of noise and vibration**

1. Accommodation and recreational and catering facilities should be located as far as practicable from the engines, steering gear rooms, deck winches, ventilation, heating and air-conditioning equipment and other noisy machinery and apparatus.
2. Acoustic insulation or other appropriate sound-absorbing materials should be used in the construction and finishing of bulkheads, deckheads and decks within the sound-producing spaces as well as self-closing noise-isolating doors for machinery spaces.
3. Engine rooms and other machinery spaces should be provided, wherever practicable, with soundproof centralized control rooms for engine-room personnel. Working spaces, such as the machine shop, should be insulated, as far as practicable, from the general engine-room noise and measures should be taken to reduce noise in the operation of machinery.
4. The limits for noise levels for working and living spaces should be in conformity with the ILO international guidelines on exposure levels, including those in the ILO code of practice entitled Ambient factors in the workplace, 2001, and, where applicable, the specific protection recommended by the International Maritime Organization, and with any subsequent amending and supplementary instruments for acceptable noise levels on board ships. A copy of the applicable instruments French or the working language of the ship should be carried on board and should be accessible to seafarers.
5. No accommodation or recreational or catering facilities should be exposed to excessive vibration.

### **PART III**

#### **FOOD AND CATERING**

##### **Article 14. - Inspection, education, research and publication**

1. The competent authority should, in cooperation with other relevant agencies and organizations, collect up-to-date information on nutrition and on methods of purchasing, storing, preserving, cooking and serving food, with special reference to the requirements of catering on board a ship. This information should be made available, free of charge or at reasonable cost, to manufacturers of and traders in ships' food supplies and equipment, masters, stewards and cooks, and to shipowners' and seafarers' organizations concerned. Appropriate forms of publicity, such as manuals, brochures, posters, charts or advertisements in trade journals, should be used for this purpose.
2. The competent authority should issue recommendations to avoid wastage of food, facilitate the maintenance of a proper standard of hygiene, and ensure the maximum practicable convenience in working arrangements.

3. The competent authority should work with relevant agencies and organizations to develop educational materials and on-board information concerning methods of ensuring proper food supply and catering services.

4. The competent authority should work in close cooperation with the shipowners' and seafarers' organizations concerned and with national or local authorities dealing with questions of food and health, and may where necessary utilize the services of such authorities.

**Article 15. – Ships' cooks**

1. Seafarers should only be qualified as ships' cooks if they have:

(a) served at sea for a minimum period to be prescribed by the competent authority, which could be varied to take into account existing relevant qualifications or experience;

(b) passed an examination prescribed by the competent authority or passed an equivalent examination at an approved training course for cooks.

2. The prescribed examination may be conducted and certificates granted either directly by the competent authority or, subject to its control, by an approved school for the training of cooks.

3. The competent authority should provide for the recognition, where appropriate, of certificates of qualification as ships' cooks issued by other Members, which have ratified this Convention or the Certification of Ships' Cooks Convention, 1946 (No. 69).

**PART IV**

**FINAL PROVISIONS**

**Article 16. - Final provision**

This law shall enter into force 30 days after its promulgation.

Antananarivo, the ....

The President of the Senate  
Assembly

The President of the National

## **APPENDIX A5-III**

General areas that are subject to a detailed inspection by an authorized officer in a port of a Member carrying out a port State inspection pursuant to Standard A5.2.1:

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

Payment of wages

Financial security for repatriation