

Investigation of the Maritime Labor Convention and its legal effects for countries

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Abstract

The Maritime Labor Convention (MLC) is an international convention adopted by the International Labor Organization (ILO) in 2006. The purpose of this convention is to establish standards and rules for the work of seafarers and to provide them the highest level of satisfaction. Considering that the globalization of the shipping industry makes special needs and supports for seafarers. Article 94 of the United Nations Convention on the Sea Law in 1982, defines the obligations of the flag state, including on working conditions, crew affairs, and social issues in ships carrying flag of the country. The convention sets minimum requirements for entry of seamen to ships, employment conditions, crew members, welfare facilities, food and logistics, community services, health care, and health protection. The convention also discusses the terms of its acceptance and implementation. This paper attempts to analyze each of the rights of seafarers. It will also be discussed in this article on how this convention will be developed in order to maximize acceptance among ship-owners, seafarers, and governments that are committed to the principles. At the end, it will be noted that what responsibilities and legal effects, the convention will be put on the members.

Keywords: Maritime Labor Convention; Shipping industry; Seafarers Rights, Legal effect.

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1. Introduction

Maritime transportation has long been the basis for the growth and development of civilizations and has led to the maturity of human horizons. Years ago, from 6000 BC, the Egyptians had rig ships and sailboats and from 3000 BC, the ships named Galleys were used in the Nile. During the period of the Prophet Solomon (about 961 to 922 BC), the Phoenician Galley carried copper, Egyptian paper (papyrus), elephant teeth (ivory elephant), gold and slave from Cyprus, Egypt, Africa and other lands. In all times of Iranian history, since the Darius period, ships, shipping and sea transportation have always been one of the main political, economic, social and security issues of the country. Nowadays, maritime transportation is the main source of import and export of goods in Iran, and undoubtedly, the smallest interruption and slowness in it will put our country in a lot of bottlenecks (Safarzadeh *et al.*, 2006).

Each industry needs three basic elements to be generated, completed, and developed; human resources, equipment and devices, and commodities and materials. Among the above factors, “human resources” is the most important investment of the industry, which is how it is used to achieve maximum efficiency from the most complex problems. Indeed, if there is no counterpart between individual and organizational goals in the industry, the human resources will become a deterrent factor. Therefore, it is necessary to identify, and analyze the human resources by applying the scientific principles of “human resource planning” or “development, and improvement of human resources”, and ultimately appropriate strategies defined for this issue (Rashidi *et al.*, 1996).

Shipbuilding industry is one of the most economical and important industries for every country. As the success of an industry requires human resources, it is important to pay attention to the issue of wages and salaries for ship crews. Due to the specific nature of the shipping industry and its difficulties, few people can work on the ship. Therefore, if measures are taken to increase their salaries, it can be effective for this job. Hence, the World Labor Organization adopted a Maritime Labor Convention (MLC) in 2006, at its 90th meeting of its Board of Directors in Geneva, to establish a series of standards and rights for seafarers. This convention is considered as the fourth pillar of international maritime law (McConnell *et al.*, 2011).

In general, shipping is referred to the transportation in sea by ship. Particular attention to the ship is due to the fact that it has large dimensions and sufficient power for sailing operations and this is why it is distinguished from other operating vessels in small rivers or small canals (Najafi Asfad, 2008).

The human safety protocols at sea discuss about safety for the ships construction, safety and firefighting equipment, and machines for dealing with marine accidents. Obeying the rules can keep safe the ship and the people who work on the ships. A protocol for preventing collisions at sea are intended to avoid collisions of ships in relation to the use of navigation signs and the use of various lights on ships.

The International Convention on Standards of Training, Certification and Maritime Guard was signed in 1978 with the aim of unifying and introducing a single and new model as the minimum standards for training seafarers. The Marine Labor Convention (MLC) was implemented on August 20, 2013 and one year

after the registration of 30 countries, which owns more than 33 percent of gross tonnage of ships in the world. By November 2016, 80 countries that accounted for 87% portion of the international shipping in the world joined the convention (ILO, 2012).

In the general obligations of this convention, which is ratified by each member of the convention, some actions should be taken to secure all the rights of seafarers for a decent employment. Furthermore, the members should also work together to ensure the effective implementation of this agreement.

2. Materials and methods

As stated the MLC defines the responsibilities and duties of each member to improve the status of seafarers' employment. One of the first legal documents adopted by the International Labor Organization (ILO) was the National Recommendation on Seafarers in 1920, which sets out the rights and duties in this area. Subsequently, large-scale legal activities of seafarers began and included more than 68 conventions and recommendations at the ILO. These conventions on the natural, technical and social risks of maritime occupation explain the need for specific standards for seafarers to be adhered to (Adascalitei, 2014).

In the late 1990s, discussions began with mariners and ship-owners' representatives to improve seafarers' rights, but these discussions were characterized by multiple misunderstandings and inability on both sides and the agreement was really difficult and impossible. The MLC is considered as a genuine achievement in international oversight policy for the following reasons: First, the convention is a combination of hard law and

soft law approaches in a single legal instrument. The soft law is a set of obligations and treaties created by the negotiating parties, and are not legally binding. The hard law is a set of legally binding rules and regulations. In the international law, the hard law of labor includes protocols that are automatically enforceable or enforce international agreements that are recognized as customary. From the perspective of ratification of the treaty, the MLC is an outstanding international agreement, since it sets the standards of labor for the whole maritime industry, not only for governments, but also for government partners in the shipping industry (Adascalitei, 2014).

The MLC in 2006 sets out integrated regulations to improve living and working conditions in the seas. Undoubtedly, one of the important aspects of the convention is to create an effective mechanism for controlling the maritime laws. The control of these flagship states enforces the rules, carries out inspections on the ships concerned, and is an important step towards improving the working conditions, as evidenced by the implementation of the convention. In parallel, the controls carried out by the port state governments are essential to ensure these working conditions.

3. Results and Discussion

As stated earlier, any member accepting the MLC undertakes to respect the rights and principles contained in the regulations. In addition, the member must pay due attention to his responsibilities. Fundamental principles and rights state that each member must persuade himself to consider the provisions of the laws and regulations in the country in accordance with the provisions of this convention.

These fundamental rights include freedom in association and the effective recognition of the right of social negotiations, the elimination of all forms of forced labor, the effective exclusion of child labor, and elimination of discrimination in employment and occupation.

In the convention and in the part of seafarers' employment and their social rights, it is discussed in which each sailing vessel has the right to work in a safe and secure environment that complies with safety standards. In addition, each seafarer has the right to have fair conditions of employment, suitable living and work conditions on ships. Each seafarer has also the right to health protection, medical hygiene, healthcare, welfare and other forms of social protection. In the employment of seafarers' issues and their social rights, each member of the convention shall ensure that the social rights and employment of seafarers contained in the above paragraphs are fully implemented in accordance with the requirements of this convention.

In the case of the execution and implementation of the responsibilities of the members, each member shall carry out the laws, regulations or other measures adopted by the parties in pursuance of this agreement in relation to ships and seafarers in their area of competence in order to fulfill their obligations. Each member should also, through the establishment an arranged system, to ensure compliance with the requirements of this convention, including regular inspections, reporting, monitoring and other legal actions, in accordance with applicable laws, to effectively control over ships carrying flag of the country. Each member shall ensure that the ships carrying the flag of the country have a maritime certificate as stipulated by this agreement. Any ship to

which this convention is applied, in accordance with international law, maybe examined by a member state other than the flag state when the ship is located in one of its ports, in order to determine the ship's compliance with the requirements of this convention. Each member must effectively control their employment and recruitment of seafarers if they are in the territory of that country. In this section, each member should also avoid violations of the conditions of this convention and impose penalties in accordance with international law, or to make corrective actions in accordance with its own laws, that are appropriate to prevent such violations. Each Member shall be required to fulfill its obligations under this agreement in such a way as to ensure that ships carrying flag states of the countries that have not ratified this convention have a more favorable action than those carrying flag states that have ratified it.

In the context of consultation with maritime organizations and ship-owners, this convention states that any reduction, exemption or flexible function of this convention, which setting up consultation agreement with seafarers' organizations and ship-owners in the absence of representative seafarers' organizations and ship-owners within a country, can decide only through consultation with the member of the working group on the article 13 of the agreement.

In article 8 of this convention, it is stipulated that the instruments of ratification of this convention should be forwarded to Director General of the International Labor Office for registration, and this agreement is only required for the members in this office. It is a fact that the documents were approved by Director General of the International Labor Office. This agreement will be finalized within 12 months

after the date of registration of the approval of at least 30 members, which together account for 33% of the global gross contribution of ship capacity. Then this convention is obligated for each member, 12 months after the date on which the member ratifies it.

Article 9 of the convention, which is related to the membership withdrawal, stipulates that the member which has ratified this convention, may extract from the agreement after the expiration of 10 years from the date on which the agreement for the first time becomes required, by sending a request to Director General of the ILO. The membership withdrawal will take effect one year after its submission. Also, any member who within one year of the expiration of the 10-year period shall implement the right of withdrawal provided for in this article, otherwise another 10-year period will be required for its membership.

The Director General of the ILO will provide a full description of all the cases of approval, acceptance, and withdrawal of registration filed under this convention for registration in accordance with Article 102 of the Charter of the United Nations to the Secretary-General of the United Nations.

Article 13 states that the board of directors of the International Labor Office, through the establishment of a working group that has a special competence in the field of maritime labor standards, will permanently review the functioning of this unit. For matters governed by this convention, the working group shall consist of two elected representatives from the government of each member who has approved the agreement, and representatives of mariners and ship-owners who, after consulting the Joint Commission on Maritime Affairs, will be represented by the board of the

International Labor Office. Representatives of the government members who have not yet ratified these conventions may be present at the working group, but will not have the right to vote in any of the matters covered by this convention. The board of directors may invite other organizations or other entities to the working group as an observer. The votes of each group of seafarers or ship-owners in the should be calculated in such a way as to ensure that the voting power of each of the two maritime and ship-owners groups is equal to half of the total number of states present at the meeting, which has the right to vote.

Article 14, concerning the amendment of this agreement, provides that revisions to each of the provisions of the convention may be made through the ILO's universal conference, in the framework of the article 19 of the constitution of the ILO, and the rules and procedures of the organization are approved for the agreement of the protocols. Amendments to the total rules may also be approved in accordance with the article 15 of this agreement.

Conclusion

The MLC adopted by the ILO in 2006, and aims to establish standards for the promotion of the lives and social rights of seafarers. The convention is one of the main pillars of international maritime law and is the fourth pillar. If the International Convention on Maritime Labor becomes a law in countries where there is a good contribution in shipping, it will further enhance the safety and rights of seafarers. Under the MLC, the vessels flying the flag of non-member countries of the convention after the entry into force of this convention in respect of compliance with its requirements will

not at all be received by the port inspectors of the Member States for favorable considerations beyond the ships of the Member States. With this distinction, in other words, the non-adherence to the convention by some countries will not exclude ships under the flag of those countries from complying with them. In such a situation, it is obvious that the requirements and necessities of the MLC are more than well regarded by governments in the interest of the maritime industry including the owners of shipping companies and seafarers' unions.

The MLC has come into force on the eve of the three years since its adoption. Following the accession of Liberia to this convention on June 7, 2006, as the first country, three other countries of the FOGs, the Bahamas, the Marshall Islands and Panama, joined in 2007-2009, and the last major development in this area Norway became the first European country to join the MLC later on. The announcement of the accession of Norway to the MLC will naturally be preceded by the announcement of the accession of other EU states to the convention. Under article 8 of the MLC, this convention will enter into force twelve months after the accession of at least 30 countries, which hold 33% of the world's gross tonnage. The combination of the five countries that have so far joined the convention is a good indication that the accession of other EU Member States, including Malta and Greece, will enter into force soon after this convention. It's worth mentioning that only three countries, Liberia, the Bahamas, and the Marshall Islands, account for 17% of the world's total tonnage. It was stated in fundamental rights and principles that each member should persuade himself to consider the provisions of the laws and regulations of that country in accordance with the provisions of this convention.

These fundamental rights include freedom of association and the effective recognition of collective bargaining, the elimination of all forms of forced labor and forced labor, the effective abolition of child labor, the elimination of discrimination in employment and occupation.

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