

The Consideration of Maritime Labor Convention Standards for Social Rights and Employment of Seafarers

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Abstract:

According to statistics, More than 80% percent of the world's goods are transferred by merchant ship lines. As reported by the latest statistics in 2020, Some 11 billion tons of goods are transported by ship each year hence global economy is dependent on maritime transport, and its lack causing countries to face a crisis. Therefore the establishment of decent work in environments of merchant ships for seafarers has fundamental importance. Merchant ships of the world that are registered in more than 150 countries employed approximately more than 1.5 million seafarers and this industry also has 10000 seamen In Iran that in general, they considered as marine workers. The findings of this study show that the Maritime Labor Convention enacted minimum standards for living and working environment for seafarers at the international level. This convention is considered the fourth pillar of maritime international regulation that created to help in establishing a situation for decent work. In fact, the convention expresses fundamental rights and principles that seafarers faced in relation to the condition of work and living onboard. Therefore, they have rights that should observe by ship owners and the state flag has to confirm the situation of ships with the requirement of the convention. In addition, in maritime decent work, that seafarers having a job, they will be entitled to have the right of social support and social discourse. In other words, other factors in the work's environment, including freedom of assembly and of association, the prohibition of discrimination in employment, the observance of the minimum age, the prohibition of children under 16, the minimum wage proportional to the minimum subsistence, the existence of social security, unemployment insurance, rehabilitation, empowerment of women through the acquisition of appropriate job opportunities and the existence of social dialogue between the employer, the employee, and the government is also mandatory.

Keywords: Maritime Labor Convention, Decent Work, Seafarer's social rights and employment

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Introduction

The shipping industry is the backbone of the global economy because more than 80% of the world's goods equivalent to 11 billion tons of goods are transported by sea, which shows the importance of ships, sea, and seafarers (International Chamber of Shipping, 2020).

“Manpower” is the most important resources of any industry, and how to use it to achieve maximum efficiency and productivity is one of the most complex problems. In fact, if individual and organizational goals in the industry not matching, manpower will become a preventer. Accordingly, it is necessary to identify and analyze the existing manpower by applying the scientific principles of "human resource planning", growth and development of human resources, and finally to think of appropriate strategies for this issue.

For overcoming this issue social rights and rules for the employment of seafarers must strictly be followed. One of best definition of the seafarer is “Sailors are considered a person who works in the ship and must comply with all international maritime laws and the employment conditions of the employer or ship's owner. They are responsible for the safety of life, maintenance and transport of cargo and keeping the ship safe in accordance with the documentation of the existing safety management system on the ship.” Against all of this responsibility seafarers have rights especially social right must be respected by the ship’s owners according to the Maritime Labor Convention 2006 (MLC-2006), and administrator government must verify the compliance rules and regulations by the ship's owner.

Generally, fundamental rights relating to work are: the right to freedom of association, the right to join a trade union, Effective recognition of the right to collective bargaining, the right of the Union to negotiate a CBA³ on your behalf, elimination of all forms of forced or compulsory labor, effective abolition of child labor, elimination of discrimination in respect of employment and occupation and all seafarers to be treated in the same way as their fellow seafarers doing the same work regardless of race, religion, national origin, gender, or political views, the important point of

³ Collective Bargaining Agreement

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employments of seafarer and social rights include in MLC as follows. In the article, we considered maritime labor convention standards for social rights and employment of seafarers and try to have a glance survey on the accession of IRI.

1. Minimum Requirements and rights for Seafarers to Work on a Ship as per MLC

1.1. Before employments

a. Age:

To ensure that nobody under the prescribed minimum age does not work on-board a ship. Ship-owner only can recruit seafarers from the age of 16 and above.

In Iran All companies, including the National Iranian tanker Company (NITC) and the Company of the Islamic The Republic Shipping line (IRSL) have developed special instructions for the implementation of this convention known as the company MLC manual. The provisions of which are slightly beyond this convention. For example

The National Iranian Tanker Company only employs sailors over the age of 18. It even sets a minimum age of 30 for hiring a captain and an engineer.

It seems that a suitable mechanism should be designed for the entry of interested people in the maritime profession from the age of 16, in countries such as Iran and other developing countries. As mentioned above it is practically not possible to enter the profession at the age of 20. Except for the group of scholarship students in navigation and marine engineering. This is also used as a lever of pressure on this group of officers who have been working for 10 years with very low salaries compared to international standards in order to receive a military Service License. This is actually against the right of seafarers.

b. Medical certificate

Medical fitness of seafarers is ascertained by use of the ILO / WHO Guidelines for Conducting Pre Sea and Periodic Medical Fitness Examinations for Seafarers and with Flag State requirements. The medical certificate is valid for a maximum of two years, unless the seafarers are



under eighteen years of age, in which case the validity of the medical certificate will be for a maximum of one year.

A medical certificate does not guarantee the mental health of seafarers. Because Social isolation, work stress, and sleep disturbance can create negative effects on seafarers' health. The Maritime Labor Convention 2006 is good but not enough (zing, 2020). Therefore, shipping companies need policies to ensure the health and well-being of seafarers would be monitored.

c. Training and qualifications

Marine university will train cadets with the requirement of International Convention on Standards of Training, Certification, and Watch keeping for Seafarers (STCW code) and only certificated seafarers in accordance with national and international requirements will be employed on board of the ships.

According to Regulation 1.3 of the Maritime Labor Convention in order to ensure that seafarers have been trained or qualified for their duties onboard a ship. In addition, Seafarers can only work on a ship if they have completed the necessary training or qualifications or are qualified to perform their assigned duties. As well as Sailors may only work onboard a ship if they have successfully completed, complete personal safety training. To ensure that seafarers are trained or qualified to perform their duties on a ship According to the principles of the Maritime Labor Convention, Article 1.3 must be observed:

1. Seafarers shall not work on a ship unless they have been trained to perform their duties or have a certificate of competency or other qualifications.

2. Sailors are not allowed to work on a ship unless they have successfully completed personal safety training onboard.

3. Training and certification in accordance with the mandatory documents approved by the International Maritime Organization shall be deemed to be in accordance with the requirements of paragraphs 1 and 2 of this Regulation.

4. Any Member which, at the time of ratification of this Convention is bound by the 1946 Maritime Certificate Convention (No. 74) shall

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continue to fulfill its obligations under that Convention unless and until the mandatory provisions covering those matters are addressed by the International Organization. Maritime has been approved and entered into force, or until five years have elapsed from the date of entry into force of this Convention in accordance with paragraph 3 of Article VIII, any of the earlier dates.

1.2.-Conditions of Employment

The aim of this part of the convention concentrate on seafarers Conditions for Employment. This part express that seafarers shall have fair employment agreements. The Conditions of Employment will explain as follows:

a. Seafarers` Employment Agreements

Seafarers should prior be boarding a ship is able to read and well understand their employment agreement needs to be signed by seafarer and ship owner representative.

b. Wages

To ensure that seafarers are paid for the services they are provide. Companies must strictly follow the CBA. In IRI There is a significant difference for salary and mission fee between Iranian and foreign sailors. (Syndicate, 2020) Another important point is that minimum salary also will exchange at the rate of the Central Bank, which is very different from the free market. Feeling that the salaries received by Iranian seafarers are not the same as the salaries and benefits of foreign seafarers caused the sailors to be discouraged and many experienced seafarers working in the fleets of other countries. Therefore it need reform in payment condition and appropriate solutions for equalization of monthly salaries between Iranian seafarer and foreign should be identified and implemented according to the conditions of Iranian companies and the country. As well as In most countries in the world, seafarer who spend more than six months a year abroad are exempt from paying taxes, but in Iran, where mostly sailors spend more than eight months of the year at sea especially permanent employer , this regulation not applied . And sometimes sailors pay more taxes rather than onshore jobs. While according to Article 2 of the Iranian Maritime Law which enactment at 20.sep.1963 by the Joint Parliamentary Commission marine workers are exempt from paying taxes on salaries and



benefits received (Article 2 of the Iranian maritime Law(enactment at 20/sep/1963-) Approved by the Joint Parliamentary Commission) it motivates sailors and brings Currency for the country. In addition paying of seafarer's wages in dollar: in IRI the banking network refuses to pay the wages in dollars and postpones its payment to Iranian currency. According to a referendum conducted by a number of imitation authorities, this act of banks is a betrayal of trust, and not only is it not permissible, but the bank is also a guarantor (<https://kishport.pmo.ir>).

C. the Number of ship working and of rest hour's base on Maritime Labor Convention and STCW⁴ 2010

According to the Maritime Labor Convention hours of work "means the time during which seafarers are required to do work on account of the ship" (I. L.C, 2006, p. 31); base on the Convention the number of ship working hours should be as follows (Marineinsight, 2010):

- Eight hours a day, under normal circumstances, with one day as a rest day.
- A maximum of 14 hours in any 24 hour period.
- A maximum of 72 hours in any seven day period.
- Provided with a minimum of 10 hours of rest in any 24 hours period.

In Maritime Labor Convention the minimum hours of rest, as per the ILO maritime convention should be:

- A minimum of ten hours in any 24 hour period
- A minimum of 77 hours in any seven day period

The hours of rest can be divided in a maximum of two periods, one of which should be at least six hours in length. Two such consecutive periods should not be separated by more than 14 hours. A seafarer must be granted a compensatory rest period in case he/she is required to be on call during rest hours. Operations like lifeboat drills, firefighting drills, and drills prescribed by national laws and regulations should be conducted in a manner to ensure minimum disruption of the rest period. A number of ship working hours and hours of rest for crew members in all positions must be displayed in a place of easy accessibility for purpose of informing the

⁴ International Convention on Standards of Training, Certification and Watch keeping for Seafarers (STCW), 1978 sets minimum qualification standards for masters, officers and watch personnel on seagoing merchant ships and large yacht

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seafarers in due time. A log recording number of hours of work and rest for every crew member must be maintained at all times. However, an exception can be made to all the above-mentioned clauses in case the master of the ship deems it necessary to require the services of a seafarer in lieu of maintaining the safety of the ship, especially on an emergency basis. Master can suspend the schedule of work hours and hours of rest in situations of vessel distress and require a seafarer to perform necessary duties until normal conditions are restored. In return to normal conditions, seafarers involved in work during the period of distress should be granted a rest period to prevent the buildup of fatigue on the ship. Deck and engineer officers, along with apprentices and cadets may be required to work in excess of the above-mentioned limits, all of which shall be considered as overtime. For each hour of overtime work, the officer would be entitled to compensatory hours of rest and overtime remuneration.

It should be noted that all the above-mentioned provisions shall vary for seafarers below 18 years of age (International Labour Conference, 2006, p. 32). For all such crew members, how many hours to work on ships shall be governed by a separate set of rules which express as bellow?

- Working hours on ships should not exceed eight hours per day or 40 hours per week
- Overtime above these limits is allowed only under unavoidable circumstances and under no conditions, can be allowed on a regular basis.
- Sufficient time shall be provided for purpose of meals, with at least an hour for the main meal of the day
- A 15 minutes' rest period shall be allowed after a period of 2 hours of continuous work
- Exceptions in the above-mentioned provisions can be made if they hinder effective training schedules or pose problems with watch keeping duties especially in the deck, engine room, and catering departments.
- Any exceptions made shall be duly recorded and compensated



- Young seafarers, by orders of the master of the ship, may be needed to work during hours of emergency

According to ILO Maritime Labor convention, 2006, these conditions of ship working hours shall be followed by all member nations of the convention by means of setting the maximum number of work hours or a minimum number of rest hours, a limit which shall not be exceeded in a given period of time.

2. Crew changes and repatriation of seafarers

Seafarers have a right to be repatriated at no cost to themselves in the circumstances such as employment agreement expires while they are abroad and employment agreement is terminated by the ship-owner or by seafarer for justified reasons and entitled to repatriation and other circumstances which specified in the MLC convention. Each ratifying Member of maritime labor convention provides financial security to ensure that seafarers are duly repatriated in accordance with the Code. Crew change is important because are vital to prevent fatigue and protect seafarers' health, safety, and wellbeing – thereby ensuring the safe operation of maritime trade. They cannot be postponed indefinitely. ILO's 2006 Maritime Labor Convention (MLC) states that the maximum continuous period that a seafarer should serve on board a vessel without leave is 11 months (International Labor Conference, 2006, p. 35).

It's recommended that the executive guarantee of the convention should be examined and specified in different conditions. One of the important social seafarers' rights is to return home after the end of the contract but in the event of a crisis such as COVID-19 pandemic it will be ignored. However, IMO is working with governments at a diplomatic level to encourage local and national travel restrictions to be lifted for seafarers. It has also issued a number of circular letters providing guidance and key information on issues such as ensuring safe ship crew changes (CL.4204/Add.14), personal protective equipment (CL.4204/Add.15), seafarers certificates (CL.4204/Add.19) and ensuring a safe shipboard interface between ship and shore-based personnel (CL.4204/Add.16) but the right and life of seafarer will only rely on recommendation and circular. (Shipping, 3 March 2020)

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4. Accommodation, Recreational Facilities, Food and Catering

Title 3 of ILO express the Accommodation, recreational facilities, food and catering express that each country the ratified the convention shall ensure that ships that fly its flag provide and maintain decent accommodations and recreational facilities for seafarers working or living on board or both, consistent with promoting the seafarers' health and well-being.

5. Glance review on Health Protection, Medical Care, Welfare and Social Security Protection

1.5. Medical care on board and ashore

According to Regulation 4.1 part 1 of Maritime Labor Convention, 2006 (MLC, 2006) that entry into force on 20 Aug 2011, "Each Member shall ensure that all seafarers on ships that fly its flag are covered by adequate measures for the protection of their health and that they have access to prompt and adequate medical care whilst working onboard. As well as according to section 2 of 4.1 article of Maritime Labor Convention the protection and care for seafarers should be provided at no cost and be free for them. Also Each Member shall ensure that seafarers on board ships in its territory who are in need of immediate medical care are given access to the Member's medical facilities on shore. In addition "the requirements for onboard health protection and medical care set out in the Code includes standards for measures aimed at providing seafarers with health protection and medical care as comparable as possible to that which is generally available to workers ashore.

The ship carries who have completed medical care training in compliance with STCW standards. And hospital facilities are on each ship and outfitted in accordance with WHO⁵& flag State requirements regarding medicines and medical supplies. (ILO, 2013).In marine guidance note (MGN 482 (M)) which issued by maritime and coastguard agency, where seafarers suffer illness or injury onboard or arising from the work onboard, ship owners must also meet the costs of medical care until the seafarer recovers or are declared permanently unfit, for a period of up to 16 weeks. (ILC, 2006)

⁵ World health organization



6. Freedom of association and right of organizing:

An organization is a covenant in which the brass winds of those many individuals, with common interests and aspirations, regulate their activities and take a common position continuously, without pursuing an ambitious economic interest. In this definition, three elements are observed for organization and population:

1.6. Safeguarding seafarer rights

Compliance and Enforcement

Flag state responsibilities, port state responsibilities, labor-supplying responsibilities, and maritime labor certificate/ DMLC inspection and enforcement on-board complaint procedures all have responsibilities in respect of seafarer rights.

There are several ways to address problems of non-compliance with the MLC. If the problem is with the flag State, i.e. it has not put in place adequate regulations to implement the Convention, the issue would have to be raised with the International Labor Organization through official channels. If the problem is with a ship-owner then the matter can be raised with the flag State or with the port State. There is a mechanism for Flag State inspectors and another for Port State Control (PSC) Officers; these are regular official requirements to ensure initial and ongoing compliance.

2.6. Seafarers' rights which is required to include in MLC

a) Merchant Mariners Syndicate (IMMS)

Iranian Merchant Mariners Syndicate (IMMS) is a non-governmental organization with Collective Bargaining Agreements with shipping companies and manning agencies trying to defending the right of seafarers to a decent working conditions and fair wages. This goal does not seem to be fully achievable because its need forming a syndicate from independent individuals, not the syndicate members themselves being the employees of the companies in which they are responsible for Inspection.

b) Shore leave

Seafarers' rights to shore leave emphasize in Convention on Facilitation of International Maritime Traffic (FAL Convention). It's recommended MLC amendments for this matter. And proved this right without any

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discrimination on grounds of nationality, race, color, sex, religion, political opinion, or social origin for all seafarers. In some ports and the seafarers are imposed with fines, if they land on the berth to perform their regular duties such as reading drafts or receiving ship's stores. An additional constraint is that some terminals are distantly located from the nearest city so the seafarers may be discouraged to visit the town due to expensive transportation.

C) On-board Complaint Handling Procedure

There must be a procedure in place onboard enabling seafarers to make a complaint about breaches of the Convention and rights, including the right to live and work in decent conditions. It must be handled fairly, effectively, and promptly. Make sure seafarers get a clear understanding of the time limits for dealing with the complaint, especially if the matter is serious. If seafarers have been forced to sign a contract against themselves everyone can start the onboard complaints procedure. The seafarers have the right to be accompanied as part of the complaints procedure or be referred to the ITF to be represented, in order to avoid victimization the complaint should be handled by the flag State and they cannot ignore it. Seafarers should receive the result of their complaint in writing, so that they have proper evidence that their case has been discussed and handled accordingly.

One of the issues of this MLC, the implementation of which may face a serious challenge in Iran is the need to establish a codified system to handle the complaints of seafarers on the ship by the ship's managers and receive and handle seafarers' complaints in ports by a government representative. Because there are now cases where helpless sailors are abandoned in a port far from home or neglected by the ship-owners to realize their rights (Transportation Industry News-Analytical Database, Teen News, 2014).

d) Removing sanction on seafarer

IMO must try to remove sanction on shipping the industry of countries for seafarer because they have to work for low-paid in domestic companies and will suffer their rights. And due to sanction of countries, they force to buy the improper spare part and will result in collusion and affect the world environment and trade and loss of life of seafarers.

7. The Implementation of Maritime Labor Convention in Iran



According to the latest statistics, about ten thousand seamen in Iran are active in the field of maritime transport. In I.R.I, offshore jobs are considered as hard work, and this has been achieved in the Parliament of the I.R.I for the marine sector .In the discussion of the Maritime Labor Convention, the main problem is the complexity of the Convention, which is multi-dimensional .It means that the implementation of MLC requires various economic, legal, and labor disputes. During the implementation of this convention, the issue will first be changed from the jurisdiction of the maritime authority of IRI (Ports and Maritime Organization) and, in particular, the role of the Ministry of Labor will be inevitable. Secondly, legal infrastructure is needed, which naturally goes to the judiciary power and the inspection authorities, which must be entered and provide the interpretation When it is required. The presence of the mentioned organization has some consequences. Each of them may have certain views or somewhat cognizant of the sea basin, in which case it would be difficult to reform their views with regard to the working conditions of the maritime industry and the shipping industry as an international industrial organization. Iranian shipping companies did implement the convention in 2013.

In the internal sphere, the Maritime Organization and the Ministry of Labor have held different meetings and have tried to take into account the requirements of the Convention and, according to their expertise and missions form the division of labor.

In order to educate and familiarize with this convention, the Ministry of Labor also invited three experts of the World Labor Organization to Iran for a week, and, by holding a workshop, the industry tried to get acquainted with the complexities and demands of the Maritime Labor Convention, but It seems that with the speed and the current process, there is a long way to operational and operationalization of this issue.

This is especially More tangible in the legislative branches, because, however, the legislative process in Iran is very timely but the Islamic parliament has had good interactions with the adoption of maritime laws related to maritime conventions, with regards their importance.

So that the Islamic parliament accepted the ratification of the Maritime Labor Convention at a time when its stages finished in the government

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cabinet and specialized agencies such as the Ports and Maritime Administration, the Ministry of Labor, Welfare and Social Security.

The ILO's has a triangular structure, one of the structures which is the governmental (governments), the second form of employers (shipping companies and corporations) and the third elements is a form of workers (seamen). Perhaps the most important discussion to focus on in joining Iran to the MLC is to give the Seafarers' Association as a specialized civil society and participate in meetings and negotiations and have the right to vote. On the other hand, the weight of the government and the right to vote is expanded in decision making, therefore the rationale is that the government do not interfere in the working relationships between the worker and the employer and try to be a supervisor government that its duty is supervision on this kind of relationships.

Conclusion

According to statistics, More than 80% percent of the world's goods are transferred by merchant ship lines. As reported by the latest statistics in 2020, Some 11 billion tons of goods are transported by ship each year hence global economy is dependent on maritime transport, and its lack causing countries to face a crisis. Therefore the establishment of decent work in environments of merchant ships for seafarers has fundamental importance. Merchant ships of the world that are registered in more than 150 countries employed approximately more than 1.5 million seafarers and this industry also have 10000 seamen In Iran that in general, they considered marine workers.

The findings of this study show that the Maritime Labor Convention enacted minimum standards for living and working environment for seafarers at the international level.

Maritime Labor Convention is intended to complement three key maritime conventions, SOLAS, MARPOL, and STCW as well as to become the fourth pillar of an international regulatory the regime for quality shipping that created to help to establish a situation for decent work. In fact, the convention expresses fundamental rights and principles that seafarers faced in relation to the condition of work and living onboard.

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Therefore they have rights that should observe by ship owners and the state flag have to confirm the situation of ships with the requirement of the convention. In principles as the skilled and experiment, the crew is one of the requirements of successful operation in modern ships the process of shortage and unsatisfied crew can hard effects on this industry especially on the secure operation of the ship.

In maritime decent work, in addition, that seafarers having a job, they will be entitled to have the right to social support and social discourse. In other words, other factors in the work's environment, including freedom of assembly and of association, the prohibition of discrimination in employment, the observance of the minimum age, the prohibition of children under 16, the minimum wage proportional to the minimum subsistence, the existence of social security, unemployment insurance, rehabilitation, empowerment of women through the acquisition of appropriate job opportunities and the existence of social dialogue between the employer, the employee and the government are also mandatory. Finally, it can be concluded that the convention has some problems and challenges such as it is not mandatory for a vessel less than 500 GRT and fishing vessels need more paid leave for seafarers and exception from paying taxes, lack of guarantees, and obligation for countries to have maritime courts and independent unions.

Recommendations:

1. Shipping companies need policies to ensure the health and well-being of seafarers be monitored when they are working onboard due to Social isolation, work stress, and sleep disturbance characteristics of the job.
2. Subjects of the training which is not included in the STCW code such as time management, prioritization of tasks, and compatibility with the environment and Balance of social and professional life and financial management and Cyber security knowledge and How to deal with people of different nationalities and Life outside the sea, and etc. for protection of rights of seafarers must be included in the MLC convention.
3. Appropriate solutions for equalization of monthly salaries between Iranian seafarer and foreign and Paying of seafarer's wages in the dollar should be identified and implemented according to the conditions of Iranian companies and the country.

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4. Perform law for Seafarer who spend more than six months a year abroad are exempt from paying taxes,
5. Executive guarantee of the convention should be examined and specified in different conditions for preventing of ignoring seafarer rights in crisis such as the COVID-19 pandemic to prevent the right and life of seafarers will only rely on recommendations and circulars of administrations and IMO.
6. Some other important rules for enhancing seafarers' rights must include in MLC such as Supervising the independence of merchant Mariners, Syndicate, Having and giving shore leave to all seafarer in all country in the worlds and removing sanction on seafarer.

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