

VIOLATION OF INTERNATIONAL MARITIME LABOR STANDARDS AND THE REACTION OF UN SPECIALIZED AGENCIES

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Abstract

The article aims to present the effects of Sars-CoV-2 on complying with the rights of seafarers. States invoked force majeure and refused to keep to the provisions of the Maritime Labor Convention 2006 and other relevant international instruments such as Seafarers' Identity Documents Convention, 1958 (No. 108) and Seafarers' Identity Documents Convention (Revised), 2003 (No. 185). The rights of seafarers regarding working conditions on board ships, crew changes, recognition of certificates, and access to welfare facilities, medical care, shore leave and repatriation have been violated by the states. The International Labor Organization, along with other specialized agencies of the United Nations, the International Transport Workers' Federation and other stakeholders in the shipping industry, is taking action to restore the violated legal order in the context of an exclusive, without precedent, international framework.

Keywords: seafarer rights, international maritime labor standards, Sars-CoV-2, MLC 2006, ISD conventions, ILO, IMO, UNCTAD.

Rezumat

Articolul își propune să facă o prezentare a efectelor produse de Sars-CoV-2 asupra respectării drepturilor personalului navigant. Statele au invocat forța majoră și au refuzat să se conformeze prevederilor Convenției privind munca maritimă 2006 și a altor instrumente internaționale relevante precum Convenția nr. 108 din 1958 privind actele naționale de identitate pentru personalul navigant și respectiv, Convenția nr. 185 din 2003 privind actele naționale de identitate pentru personalul navigant (revizuită). Drepturile personalului navigant privitoare la condițiile de muncă de la bordul navelor, transferul de echipaje, recunoașterea documentelor, accesul la facilitățile de bunăstare de la uscat, îngrijiri medicale, permisie și repatriere au fost încălcate de către state. Într-o acțiune fără precedent la nivel internațional, Organizația Internațională a Muncii alături de alte agenții specializate a Organizației Națiunilor Unite, Sindicatul internațional al navigatorilor și alte părți interesate în industria transporturilor maritime, adoptă măsuri pentru restabilirea ordinii juridice încălcate.

Cuvinte-cheie: drepturile navigatorilor, standardele internaționale în domeniul muncii maritime, Sars-CoV-2, Convenția privind munca maritimă (MLC 2006), Convențiile ISD, OIM, OMI, UNCTAD.

INTRODUCTORY FEATURES

The Sars-CoV-2 represents one of the greatest challenges experienced by the International Labor Organization (ILO)¹. Hundreds of thousands of seafarers are in the frontline against the Sars-CoV-2 struggle². Their role is essential for a safe trading, for providing medical equipment and goods for supporting life³. In this particular context, the United Nations (UN) has drawn attention to the fact that seafarers continue to face difficult working conditions at sea, which are amplified by the impact of the Sars-CoV-2 and the related measures taken by the states, directly affecting their personal health and safety, the working

¹ International Labour Organization (ILO) (2020) Resolution concerning maritime labour issues and the COVID-19 pandemic, p. 1.

² IMO Circular Letter No.4204/Add.6 27 March 2020, Coronavirus (COVID-19) – Preliminary list of recommendations for Governments and relevant national authorities on the facilitation of maritime trade during the COVID-19 pandemic, p. 2 available at <https://www.imo.org/en/MediaCentre/HotTopics/Pages/Coronavirus.aspx>.

³ Ibidem.

conditions and the possibility of shore leave or joining ships⁴. Difficulties related to seafarers' repatriation and crew changes impose a major impact on international shipping and have been identified as a priority in connection to which the International Maritime Organization (IMO) and other organizations approached governments to intervene⁵. The international maritime transport sector is facing a humanitarian crisis⁶. The International Labor Organization (ILO) identified major problems such as the reduction of employment opportunities for seafarers, the extending of employment agreements beyond the initially agreed period, restrictions regarding access to medical treatment onshore and access limitations to welfare facilities, issues related to the renewal of certificates of competency and medical certificates close to their expiry dates, fatigue, isolation, stress and social pressure for seafarers and their families⁷.

Seafarers' rights are established within the Maritime Labor Convention (MLC 2006), which provides for minimum requirements for almost all aspects of seafarers' working conditions, including employment requirements, periods of work and rest, repatriation, shore leave, shore-based welfare facilities, accommodation, food, medical care, welfare and social security protection⁸. States having ratified the MLC 2006 did not comply during the pandemic with the essential requirements for cooperation, repatriation and medical care⁹. According to the provisions of the international instrument, it is within the responsibility of the Member States to cooperate with each other in order to ensure the effective application of the Convention¹⁰. The MLC 2006 does not stipulate temporary interruption of the implementation of its provisions in crisis situations¹¹.

As a means of protecting themselves against non-compliance with the actual provisions, states having ratified the convention invoked force majeure¹². The ILO Committee of Experts stated that "force majeure may be invoked as a condition precluding wrongfulness for non-observance of a treaty obligation only in the case of unforeseen and unforeseeable event(s) creating an absolute and material impossibility of compliance with that obligation"¹³. The Committee further added that "circumstances rendering observance of an international obligation more difficult or burdensome do not constitute a case of force majeure"¹⁴.

VIOLATION OF THE RIGHTS PROVIDED BY THE MLC 2006

International labor standards, in particular the Maritime Labor Convention (MLC 2006), represent the foundation for safe working and decent living conditions of seafarers in the context of the actual crisis¹⁵. The

⁴ United Nations. A/75/L.37. General Assembly. International cooperation to address challenges faced by seafarers as a result of the COVID-19 pandemic to support global supply chains available at <https://www.undocs.org/en/A/75/L.37>.

⁵ Crew changes: A humanitarian, safety and economic crisis available at <https://www.imo.org/en/MediaCentre/HotTopics/Pages/FAQ-on-crew-changes-and-repatriation-of-seafarers.aspx>.

⁶ IMO Circular Letter No.4204/Add.30 (11 September 2020), Coronavirus (COVID-19) – Joint Statement calling on all Governments to immediately recognize seafarers as key workers, and to take swift and effective action to eliminate obstacles to crew changes, so as to address the humanitarian crisis faced by the shipping sector, ensure maritime safety and facilitate economic recovery from the COVID-19 pandemic available at <https://www.imo.org/en/MediaCentre/HotTopics/Pages/Coronavirus.aspx>.

⁷ ILO Sectorial Brief COVID-19 and maritime shipping & fishing, p.02, available at https://www.ilo.org/sector/Resources/publications/WCMS_742026/lang-en/index.htm

⁸ ILO News room Treat seafarers with "dignity and respect" during COVID-19 crisis https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_740307/lang-en/index.htm.

⁹ International Labour Organization (ILO) (2020) General observation on matters arising from the application of the Maritime Labour Convention, 2006, as amended (MLC, 2006) during the COVID-19 pandemic, p. 2.

¹⁰ Article 1 paragraph 2 MLC 2006.

¹¹ International Labour Organization (ILO) (2020) "Information note on maritime labour issues and coronavirus (COVID-19), including a joint statement of the Officers of the Special Tripartite Committee of the Maritime Labour Convention, 2006, as amended, p. 7.

¹² *Idem*, p. 5.

¹³ *Ibidem*.

¹⁴ *Ibidem*.

¹⁵ International Labour Organization (ILO) (2020) Resolution concerning maritime labour issues and the COVID-19 pandemic, p. 1.

MLC 2006 states that each seafarer has the right to a safe and secure workplace that complies with safety and health standards, medical care, welfare measures and other forms of social protection¹⁶. Seafarers hold the right to a fair employment agreement¹⁷. The individual employment agreement must be approved by the seafarer, provided that the person concerned is free to examine the terms and conditions, to be advised on and to accept them voluntarily before signing¹⁸. Following the outbreak of the present health crisis, measures taken by the governments have forced hundreds of thousands of seafarers to remain on board ships and continue operating beyond their schedule initially agreed in the employment agreement¹⁹. These employment agreements have been extended for more than 17 months and seafarers are now facing fatigue, physical and mental health issues²⁰.

From the joint interpretation of Standard A2.4, paragraph 3 provisions on annual leave, and Standard A2.5.1, paragraph 2 (b), on repatriation, which both refer to the maximum period during which a seafarer may work continuously on board ships, it follows that, in principle, it must not exceed 11 months²¹. The extension of the contractual period may be carried out only in accordance with the applicable national regulations and relevant international conventions²². Provisions of the MLC 2006 are further violated. Hundreds of thousands of seafarers are still on board ships, exceeding the initial period from the individual employment agreement and, in many cases, exceeding the maximum period of 11 months' service at sea established in accordance with the provisions of the MLC 2006²³. Exceptions to this situation may be approved by competent authorities provided that the MLC 2006 does not impose an absolute prohibition on the possibility of their existence²⁴. In the absence of any other clarifications in the Convention text, the nature and purpose of such exceptions remain vague²⁵. As a rule, the 11-month period may be exceeded in cases of force majeure, but any extension of the seafarers' individual employment agreement must be accompanied by warranties to prevent abuse and protection of their rights²⁶.

At global level, more than 400,000 seafarers find themselves in the situation that has been described as equivalent to forced labor²⁷. Many seafarers have expressed their concern on the possibility of losing future employment opportunities (blacklisting) if they allude to the effect that fatigue might have on them, on the

¹⁶ Article IV of the Maritime Labour Convention, 2006 (MLC, 2006), as amended (MLC, 2006), paras. 1 and 4.

¹⁷ Regulation 2.1 MLC 2006.

¹⁸ Regulation 2.1 paragraph 2 MLC 2006.

¹⁹ International Labour Organization (ILO) (2020) "Information note on maritime labour issues and coronavirus (COVID-19), including a joint statement of the Officers of the Special Tripartite Committee of the Maritime Labour Convention, 2006, as amended, p. 6.

²⁰ IMO Circular Letter No.4204/Add.30 (11 September 2020), Coronavirus (COVID-19) – Joint Statement calling on all Governments to immediately recognize seafarers as key workers, and to take swift and effective action to eliminate obstacles to crew changes, so as to address the humanitarian crisis faced by the shipping sector, ensure maritime safety and facilitate economic recovery from the COVID-19 pandemic, p. 1 available at <https://www.imo.org/en/MediaCentre/HotTopics/Pages/Coronavirus.aspx>.

²¹ Direct Request (CEACR) - adopted 2020, published 109th ILC session (2021) Maritime Labour Convention, 2006 (MLC, 2006) - Japan (Ratification: 2013); The ILO Standards Department, MLC, 2006 frequently asked questions. Fourth edition (revised) 2015 - Question C2.4.c., p. 43.

²² International Labour Organization (ILO) (2020) "Information note on maritime labour issues and coronavirus (COVID-19), including a joint statement of the Officers of the Special Tripartite Committee of the Maritime Labour Convention, 2006, as amended, p. 6.

²³ International Labour Organization (ILO) (2020) General observation on matters arising from the application of the Maritime Labour Convention, 2006, as amended (MLC, 2006) during the COVID-19 pandemic, p. 4.

²⁴ International Labour Organization (ILO), Application of International Labour Standards 2019, Report of the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference, 108th Session, 2019, p. 31.

²⁵ Idem.

²⁶ IMO, Crew changes: A humanitarian, safety and economic crisis, available at <https://www.imo.org/en/MediaCentre/HotTopics/Pages/FAQ-on-crew-changes-and-repatriation-of-seafarers.aspx>.

²⁷ ITF Beyond the limit of safe shipping - ITF General Secretary's UN address, available at <https://www.itfglobal.org/en/news/beyond-limit-safe-shipping-itf-general-secretarys-un-address>.

crew, ship, and cargo safety²⁸. This represents another gross violation of the MLC 2006 provisions, which stipulate for member states to ensure that dispositions of their national law comply with the removal of any form of forced or compulsory labor²⁹.

In the context of the pandemic, seafarers face extreme difficulties with disembarking and transiting for repatriation³⁰. Due to national level restrictions, the impossibility for crew change, which is essential for seafarers 'welfare and the safety of international trade, has led to the extension of the employment agreement³¹. By complying with the requirement to have a minimum safety crew, the safe operation of ships cannot be achieved in the absence of crew changes. In accordance with the provisions of the MLC 2006, each ship must hold a proper crew in terms of number and qualifications, to ensure the safety and security of the ship, by complying with all operating conditions, based on the document referring to the minimum safe manning or an equivalent one issued by the competent authority³². Some port authorities have reduced the minimum manning levels as a possible solution to the difficulties encountered by ship owners in complying with the number of seafarers needed on board ships³³.

The MLC 2006 includes provisions on the repatriation of seafarers, access to welfare facilities, paid annual leave and medical care, whose compliance with is called into question by measures taken due to the global pandemic. Permission granted to seafarers to travel under proper conditions to State's territories represents a *sine qua non* condition for adhering to the international obligations arising from the signing of the MLC 2006³⁴. In the alternative, failure to comply with crew change requirements and the repatriation of seafarers will have an adverse impact on their rights, including the right at work and fundamental principles³⁵.

According to the MLC 2006 provisions, seafarers on ships flying the flag of a Member State are entitled to repatriation without having to bear the related costs³⁶. Member States shall enable the repatriation of seafarers working on ships calling at their ports or passing through their territorial or inland waters, as well as the embarkation of their replacements³⁷. In many situations, port restrictions are notified shortly in advance, making it impossible to plan the ship's route, while the uncoordinated implementation of the MLC 2006 provisions increases the risk of travel ban for crews and ships, and leads to ships detentions in ports³⁸. Failure to comply with the obligation of repatriating seafarers at the end of their employment agreement induces the forced extension of their contractual period or in other circumstances, proceeding to work without a contract³⁹.

Another relevant international instrument for the transiting and repatriation of seafarers is represented by Convention 108 on Seafarers' Identity Documents⁴⁰. States for which the Convention is in force have the

²⁸ Ibidem.

²⁹ Art. III MLC 2006;

³⁰ International Labour Organization (ILO) (2020) General observation on matters arising from the application of the Maritime Labour Convention, 2006, as amended (MLC, 2006) during the COVID-19 pandemic, p. 2.

³¹ Doumbia-Henry, C., Shipping and COVID-19: protecting seafarers as frontline workers, WMU Journal of Maritime Affairs, 2020 19, p. 281.

³² Standard A 2.7 paragraph 1 MLC 2006;

³³ International Labour Organization (ILO) (2020) "Information note on maritime labour issues and coronavirus (COVID-19), including a joint statement of the Officers of the Special Tripartite Committee of the Maritime Labour Convention, 2006, as amended, p. 18.

³⁴ Idem, p. 15

³⁵ International Labour Organization (ILO) (2020) Resolution concerning maritime labour issues and the COVID-19 pandemic, p. 1.

³⁶ Regulation 2.5 paragraph 1 MLC 2006.

³⁷ Idem Standard A 2.5 paragraph 7.

³⁸ International Labour Organization (ILO) (2020) General observation on matters arising from the application of the Maritime Labour Convention, 2006, as amended (MLC, 2006) during the COVID-19 pandemic, p. 4.

³⁹ Ibidem.

⁴⁰ Seafarers' Identity Documents Convention, 1958 (No. 108) available at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C108; The Seafarers' Identity Documents Convention 108, adopted in the

obligation to allow seafarers holding a valid national identity document to enter their territory for the purpose of crew change, travelling to reach a ship, for repatriation, or any other purpose approved by the authorities of the Member State⁴¹. The denial to allow seafarers to reach shore for transit or transfer, as well as for crew changes, even in pandemic conditions, is contrary to the provisions of the international instrument⁴².

Seafarers hold the right to access shore-based welfare facilities and to paid annual leave, which may not be achieved without the possibility of disembarking from ships. All seafarers on board ships flying the flag of a Member State shall be granted paid annual leave⁴³.

Paid annual leave is calculated on the basis of a minimum of 2.5 calendar days per month of employment⁴⁴. The maximum time of service on board a ship after which the seafarer has the right to be repatriated - such periods shall not exceed 12 months⁴⁵. The Member States must ensure that seafarers working onboard ships have access to shore-based welfare facilities and services onshore in order to maintain their health and well-being⁴⁶.

According to the MLC 2006, seafarers are granted shore leave for the benefit of their health and well-being, provided that the operational requirements of their posts are met⁴⁷. Maritime administrations must comply with this obligation, without prejudice to specific measures taken to minimize the risk of contamination with Sars-CoV-2⁴⁸. During the pandemic, as far as possible, access to port-based welfare services must also be ensured⁴⁹.

Two international instruments, the Convention 108 from 1958 on Seafarers' Identity Documents and respectively, Convention 185 from 2003 on Seafarers' Identity Documents (revised), provide for the right to enter the territory of the signatory states when entry is requested for temporary shore leave while the ship is in port⁵⁰. The right is granted to any seafarer holding a relevant seafarer's identity document⁵¹.

Due to measures adopted by the states in the context of the pandemic, seafarers are denied the access to medical care, annual and shore leave or are deprived of the right to repatriation, all provided by the MLC 2006, in a significant number of cases⁵². Many of the ships do not hold qualified medical personnel on board and consequently, when access to medical care on shore is denied by the authorities, seafarers have no medical care whatsoever⁵³. In accordance with the MLC 2006, port States have the obligation to ensure that seafarers found on board ships on their territory, and who require immediate medical care, must have access to medical facilities on shore⁵⁴.

Geneva General Conference of the International Labor Organization of 13th May 1958, was ratified by Romania by Decree 25/1976.

⁴¹ Article 6 Seafarers' Identity Documents Convention, 1958 (No. 108).

⁴² Cleopatra Doumbia-Henry, Shipping and COVID-19: protecting seafarers as frontline workers, WMU Journal of Maritime Affairs, 2020 19, p. 281.

⁴³ Regulation 2.4 paragraph 1 MLC 2006.

⁴⁴ Standard A 2.4 paragraph 2 MLC 2006.

⁴⁵ Standard A 2.5 MLC 2006.

⁴⁶ Regulation 4.4 paragraph 1 MLC 2006.

⁴⁷ Regulation 2.4 paragraph 2 MLC 2006.

⁴⁸ International Labour Organization (ILO) (2020), "Information note on maritime labour issues and coronavirus (COVID-19), including a joint statement of the Officers of the Special Tripartite Committee of the Maritime Labour Convention, 2006, as amended, p. 21.

⁴⁹ Ibidem.

⁵⁰ Article 6 paragraph 1 Seafarers' Identity Documents Convention, 1958 (No. 108) and Article.6 paragraph 4 Seafarers' Identity Documents Convention (Revised), 2003 (No. 185).

⁵¹ Ibidem.

⁵² International Labour Organization (ILO) (2020) General observation on matters arising from the application of the Maritime Labour Convention, 2006, as amended (MLC, 2006) during the COVID-19 pandemic, p. 3.

⁵³ Ibidem.

⁵⁴ Regulation 4.1 paragraph 3 MLC 2006.

According to ILO, exclusive measures adopted by some governments to limit the effects of the pandemic cannot be used to justify the non-compliance with the requirements of the MLC 2006⁵⁵. The obligation is reinforced by the provisions of other relevant international maritime conventions. The International Convention on Maritime Search and Rescue (SAR) 1979⁵⁶, the International Convention for the Safety of Life at Sea (SOLAS) 1974⁵⁷ or the United Nations Convention on the Law of the Sea (UNCLOS)⁵⁸ stipulate the obligation of giving assistance to people in danger at sea, including medical care.

Measures taken by the national administrations have affected the possibility of further training of seafarers, the revalidation of their certificates, and the issuing of endorsements attesting recognition of certificates in accordance with the provisions of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW)⁵⁹. In accordance with the provisions of the MLC 2006, seafarers must not engage in any activity on board a ship without having undergone a training course, without holding a certificate of competency, or being qualified by other means to perform their duties⁶⁰. Training and certification shall be carried out in accordance with the mandatory instruments adopted by the IMO⁶¹.

MEASURES IN RESTORING SEAFARERS RIGHTS BASED ON THE PROVISIONS OF RELEVANT INTERNATIONAL CONVENTIONS

Several relevant international conventions aim at reducing formalities and documents required for seafarers, facilitating and simplifying crew changes including repatriation, traveling and embarkation, as well as the regulation regarding the issuance and conformity of seafarers' identity documents for improving port security⁶². The Governing Body of the International Labor Office urged the states having ratified the MLC 2006 to take the necessary measures to implement without any delay the convention during the pandemic, by coordination and cooperation with the agencies from the national administrations, with other states that have also ratified the convention, and by consulting with their social partners⁶³. Member States should take the necessary measures in consulting with the seafarers and shipowners' representative organizations, to improve cooperation and ensure the implementation of the MLC 2006⁶⁴.

The measures to be adopted are different according to the quality of the states, as either port states, flag states, or states with labour-supplying responsibilities.

The ILO Committee of Experts has urged the signatory states, in their capacity as flag states, to adopt or enhance without delay the existing measures, including more frequent inspections on board ships to

⁵⁵ IMO, Crew changes: A humanitarian, safety and economic crisis, available at <https://www.imo.org/en/MediaCentre/HotTopics/Pages/FAQ-on-crew-changes-and-repatriation-of-seafarers.aspx>; see also International Labour Organization ILO Standards and COVID-19 (coronavirus), FAQ - Key provisions of international labour standards relevant to the evolving COVID-19 outbreak available at https://www.ilo.org/global/standards/WCMS_739937/lang-en/index.htm.

⁵⁶ Regulation 5.7.5. SAR Convention.

⁵⁷ Regulation 21 paragraph 5.5.1. SOLAS Convention.

⁵⁸ Article 98 United Nations Convention on the Law of the Sea (UNCLOS).

⁵⁹ International Labour Organization (ILO) (2020) "Information note on maritime labour issues and coronavirus (COVID-19), including a joint statement of the Officers of the Special Tripartite Committee of the Maritime Labour Convention, 2006, as amended, p. 19.

⁶⁰ Regulation 1.3 paragraph 1 MLC 2006.

⁶¹ Regulation 1.3 paragraph 3 MLC 2006.

⁶² Anila Premti and Regina Asariotis, Article No. 72 [UNCTAD Transport and Trade Facilitation Newsletter N°89 - First Quarter 2021], Facilitating crew changes and repatriation of seafarers during the COVID-19 pandemic and beyond, available at <https://unctad.org/news/facilitating-crew-changes-and-repatriation-seafarers-during-covid-19-pandemic-and-beyond>.

⁶³ International Labour Organization (ILO) (2020) Resolution concerning maritime labour issues and the COVID-19 pandemic, p. 3.

⁶⁴ International Labour Organization (ILO) (2020) General observation on matters arising from the application of the Maritime Labour Convention, 2006, as amended (MLC, 2006) during the COVID-19 pandemic, p. 4.

ensure that all ships under their flag comply with the relevant requirements of the MLC 2006⁶⁵. The respective measures must ensure that: the extension of the individual employment agreements is made only with the consent of seafarers; fees for the recruitment and placement of seafarers, including the costs of quarantine before joining a ship, shall not be borne by the latter; any agreement to waive the minimum paid annual leave shall be prohibited, except as provided by the competent authority; seafarers are granted shore leave for the benefit of their health and well-being, provided that the measures applicable to the local population for ensuring public health are complied with; seafarers shall be repatriated free of charge under the conditions set out in the MLC 2006, without exceeding the 11 months on board service period; seafarers on ships flying flag shall be provided with appropriate measures to protect their health and shall have access to prompt and adequate medical care while working on board, including access to vaccination; seafarers on ships flying their flag are provided with occupational health and safety, working and training on board the ship being conducted in a safe and sanitary environment; measures are taken to ensure the well-being of seafarers on board, especially during extended periods of activity⁶⁶.

The Committee of Experts has drawn attention to the need to comply with the obligations assumed by the Member States as port States. According to the MLC 2006, foreign ships calling at a Member State's port may be subject to inspection to check compliance with the provisions of the Convention concerning seafarers working and living conditions on the ship, including compliance with their seafarers' rights⁶⁷. In case authorized inspectors discover that the ship has committed serious or repeated infringements, including against seafarers' rights, the authorized officer shall take necessary measures to ensure that the ship will not leave port until the non-compliances are remedied or an action plan is submitted to rectify these non-conformities⁶⁸. Among the most common violations identified is the exceeding of the 11-month period for the seafarers' employment agreement, having as consequence the endangering of their 'health and the safety of navigation'⁶⁹.

The Member States, as port States, must take measures to fully comply with the requirements of the 2006 MLC: facilitating the repatriation of seafarers working on board ships calling at ports or passing through their territorial or inland waters; facilitating the replacement of landed seafarers and hence ensuring the safe manning of the ships by providing non-discriminatory treatment to new crew members entering the territory of the State for the purpose of joining a ship; refrainment from the adoption of the recurring amendment of restrictive national measures or other port regulations which may hinder ship voyage planning and may avoid the inconsistent implementation of the 2006 MLC provisions in relation to the other Contracting States⁷⁰.

The Committee of Experts called on the Member States with labour-supplying responsibilities - to take urgent steps to ensure they dispose of the necessary facilities for transporting, testing, and placing in quarantine seafarers from abroad⁷¹.

The Committee of Experts emphasized the need for the Member States to consider accepting seafarers internationally recognized documents, including identity documents submitted in accordance with the Seafarers' Identity Documents Convention, 1958 (No. 108)⁷². Additional provisions on seafarer's identity

⁶⁵ International Labour Organization (ILO) (2020) "Information note on maritime labour issues and coronavirus (COVID-19), including a joint statement of the Officers of the Special Tripartite Committee of the Maritime Labour Convention, 2006, as amended, p. 8.

⁶⁶ International Labour Organization (ILO) (2020) General observation on matters arising from the application of the Maritime Labour Convention, 2006, as amended (MLC, 2006) during the COVID-19 pandemic, p. 5-6;

⁶⁷ Regulation 5.2.1 paragraph 1 MLC 2006.

⁶⁸ Standard A 5.2.1 paragraph 6 MLC 2006.

⁶⁹ International Labour Organization (ILO) (2020) "Information note on maritime labour issues and coronavirus (COVID-19), including a joint statement of the Officers of the Special Tripartite Committee of the Maritime Labour Convention, 2006, as amended, p. 9.

⁷⁰ International Labour Organization (ILO) (2020) General observation on matters arising from the application of the Maritime Labour Convention, 2006, as amended (MLC, 2006) during the COVID-19 pandemic, p. 6-7.

⁷¹ *Idem*, p. 7.

⁷² Anila Premti and Regina Asariotis, Article No. 72 [UNCTAD Transport and Trade Facilitation Newsletter N°89 - First Quarter 2021], Facilitating crew changes and repatriation of seafarers during the COVID-19 pandemic and beyond.

documents are contained in ILO Convention No. 185 on Seafarers Identity Documents (Revised) 2003, as amended in 2016. The use of identity documents issued under the latter convention facilitates seafarers' transit when joining a ship, landing in ports, and crossing international borders, increasing thus security by using an internationally recognized document⁷³. The port States, flag States, and states with labour-supplying responsibilities must become parties and implement the amendments to the relevant international instruments concerning seafarer's identity documents⁷⁴.

THE ACTIVITY OF THE SPECIALISED UN AGENCIES IN KEEPING SEAFARERS RIGHTS

For approaching the pandemic risks on seafarers' rights in a joint manner, an exceptional activity has been carried out by the International Labor Organization (ILO), the International Maritime Organization (IMO), the International World Health Association (WHO), and other representative actors for international maritime transport⁷⁵. The International Transport Workers Federation (ITF), the International Chamber of Shipping Chamber (ICS) have engaged in social dialogue and coordinated action to address present issues, including the development of recommended framework protocols and guidance for international maritime transport stakeholders⁷⁶.

The International Transport Workers Federation (ITF) issued a series of recommendations for seafarers regarding pandemic outbreak⁷⁷. The International Maritime Organization (IMO) issued a significant number of circulars, providing guidance and essential information on ensuring safe ship crew changes (CL.4204 / Add.14)⁷⁸, personal protection equipment (CL.4204 / Add.15)⁷⁹, proper inspections and renewal of certificates by flag States (CL.4204 / Add.19)⁸⁰, ensuring a safe shipboard interface between ship and shore-based personnel (CL.4204/ Add.16)⁸¹, recommendations for port and coastal States on the prompt disembarkation of seafarers for medical care ashore during the COVID-19 pandemic (CL.No.4204 / Add.23)⁸², the seafarers' medical certificates, the ships health certificates and medical care for seafarers⁸³. The IMO has established the Seafarer Crisis Action Team (SCAT) to assist them in a variety of critical situations⁸⁴. The IMO condemned the

⁷³ Ibidem.

⁷⁴ Ibidem.

⁷⁵ Cleopatra Doumbia-Henry, op. cit., p. 280.

⁷⁶ International Labour Organization (ILO) (2020) Resolution concerning maritime labour issues and the COVID-19 pandemic, p. 2.

⁷⁷ International Labour Organization (ILO), ILO Standards and COVID-19 (coronavirus), FAQ - Key provisions of international labour standards relevant to the evolving COVID-19 outbreak, p. 34 available at https://www.ilo.org/global/standards/WCMS_739937/lang-en/index.htm.

⁷⁸ IMO Circular Letter No.4204/Add.14/Rev.1 5 October 2020, Coronavirus (COVID-19) – Recommended Framework of Protocols for ensuring safe ship crew changes and travel during the Coronavirus (COVID-19) pandemic, available at <https://www.imo.org/en/MediaCentre/HotTopics/Pages/Coronavirus.aspx>

⁷⁹ IMO Circular Letter No.4204/Add.15 6 May 2020, Coronavirus (COVID 19) - Personal protective equipment, available at <https://www.imo.org/en/MediaCentre/HotTopics/Pages/Coronavirus.aspx>.

⁸⁰ IMO, Circular Letter No.4204/Add.19/Rev.3 (8 February 2021) - Coronavirus (COVID-19) – Guidance for flag States regarding surveys and renewals of certificates during the COVID-19 pandemic, available at <https://www.imo.org/en/MediaCentre/HotTopics/Pages/Coronavirus.aspx>

⁸¹ IMO, Circular Letter No.4204/Add.16 (6 May 2020) - Coronavirus (COVID 19) – COVID-19 related guidelines for ensuring a safe shipboard interface between ship and shore-based personnel available at <https://www.imo.org/en/MediaCentre/HotTopics/Pages/Coronavirus.aspx>.

⁸² IMO, Circular Letter No.4204/Add.23 (1 July 2020) - Coronavirus (COVID-19) – Recommendations for port and coastal States on the prompt disembarkation of seafarers for medical care ashore during the COVID-19 pandemic available at <https://www.imo.org/en/MediaCentre/HotTopics/Pages/Coronavirus.aspx>.

⁸³ IMO Circular Letter No.4204/Add.10 22 April 2020 Joint Statement IMO-WHO-ILO on medical certificates of seafarers, ship sanitation certificates and medical care of seafarers in the context of the COVID-19 pandemic available at <https://www.imo.org/en/MediaCentre/HotTopics/Pages/Coronavirus.aspx>.

⁸⁴ IMO, Supporting seafarers on the frontline of COVID-19 available at [mo.org/en/MediaCentre/HotTopics/pages/support-for-seafarers-during-covid-19.aspx](https://www.imo.org/en/MediaCentre/HotTopics/pages/support-for-seafarers-during-covid-19.aspx).

use of *no crew change* clauses within the chartering contracts and stressed that such clauses undermine the application of the 2006 MLC provisions and endanger the safety of crews⁸⁵. The shipping industry recommended to the IMO framework protocols, which settle the measures and procedures to be implemented by states to facilitate crew changes⁸⁶. The IMO issued a circular in which the specialized agencies of the UN-United Nations Conference on Trade and Development (UNCTAD), the International Labor Organization (ILO), the United Nations High Commissioner for Human Rights (OHCHR) issued a joint statement for the urgent recognition of seafarers as key workers⁸⁷.

In order to address the situation of seafarers within the pandemic, the International Labor Organization (ILO) adopted a Resolution concerning maritime labour issues and the COVID-19 pandemic⁸⁸. By taking into consideration the recommended framework protocols to designate seafarers as key workers and facilitate their safe movement, the resolution urges Member States to identify the restraints within this context and establish action plans for ensuring safe crew changes for embarkation, disembarkation and fast landing; to accept seafarers internationally recognized documents; to ensure access to medical facilities on shore for seafarers in need of immediate medical care, regardless of their nationality⁸⁹. Addressing several issues related to the implementation of the MLC 2006 in the context of the pandemic, and urging for the restoration of seafarers' rights, the ILO published an Information note on maritime labor issues and coronavirus (COVID-19), including a Joint Statement of the Officers of the Special Tripartite Committee of the Maritime Labor Convention 2006⁹⁰. Within the Sectoral brief on COVID-19 and maritime shipping and fishing, the ILO presents a comprehensive picture of the actions undertaken by governments, social partners, and international organizations to deal with the present crisis⁹¹. In order to restore due respect for seafarers' rights, as set out in the MLC 2006, the ILO published General Observations on Matters Arising from the Application of the Maritime Labor Convention, 2006, as amended, encouraging the Member States to recognize seafarers as an essential workforce⁹². As stipulated within the Statement of the Officers of the STC 1 on the coronavirus disease, the officers from the Special Tripartite Commission⁹³ urged that seafarers be

⁸⁵ IMO Circular Letter No.4204/Add.36/Rev.1 (23 December 2020), p. 1 available at <https://www.imo.org/en/MediaCentre/HotTopics/Pages/Coronavirus.aspx>.

⁸⁶ IMO, Msc.1/Circ.1636 2 December 2020 Industry Recommended Framework Of Protocols For Ensuring Safe Ship Crew Changes And Travel During The Coronavirus (Covid-19) Pandemic available at <https://www.imo.org/en/MediaCentre/HotTopics/Pages/Coronavirus.aspx>.

⁸⁷ IMO Circular Letter No.4204/Add.30 (11 September 2020), Coronavirus (COVID-19) – Joint Statement calling on all Governments to immediately recognize seafarers as key workers, and to take swift and effective action to eliminate obstacles to crew changes, so as to address the humanitarian crisis faced by the shipping sector, ensure maritime safety and facilitate economic recovery from the COVID-19 pandemic available at <https://www.imo.org/en/MediaCentre/HotTopics/Pages/Coronavirus.aspx>;

⁸⁸ International Labour Organization (ILO) (2020) Resolution concerning maritime labour issues and the COVID-19 pandemic, p. 2.

⁸⁹ Idem, p. 3.

⁹⁰ International Labour Organization (ILO) (2020) "Information note on maritime labour issues and coronavirus (COVID-19), including a joint statement of the Officers of the Special Tripartite Committee of the Maritime Labour Convention, 2006, as amended; see also ILO Sectoral Brief COVID-19 and maritime shipping & fishing, p. 7.

⁹¹ ILO Sectoral Brief COVID-19 and maritime shipping & fishing available at https://www.ilo.org/sector/Resources/publications/WCMS_742026/lang--en/index.htm; see also International Labour Organization (ILO), ILO Standards and COVID-19 (coronavirus), FAQ - Key provisions of international labour standards relevant to the evolving COVID-19 outbreak available at https://www.ilo.org/global/standards/WCMS_739937/lang--en/index.htm.

⁹² International Labour Organization (ILO) (2020) General observation on matters arising from the application of the Maritime Labour Convention, 2006, as amended (MLC, 2006) during the COVID-19 pandemic, p. 4.

⁹³ The Special Tripartite Committee is established according to Article XIII of the Maritime Labor Convention, 2006. The Committee holds special competence in the field of international labor standards. The Commission consists of 2 representatives appointed by the Government of each ratifying Member State of the 2006 MLC, and ship owners and seafarers' representatives appointed by the Governing Body, approved by the Joint Maritime Commission.

recognized as key workers⁹⁴ and should be granted exemptions from any travel restriction, as to allow them to leave or join ships without any restraints while complying with good practices in disease control⁹⁵. In situations when the period of the employment agreement is exceeded, a practical approach is suggested to allow seafarers to remain onboard ships for a reasonable period of time, beyond their originally scheduled duties⁹⁶.

The UN General Assembly adopted the Resolution on International Cooperation to Address Challenges Faced by Seafarers as a result of the COVID-19 pandemic, which urges for the designation of seafarers as key workers and the facilitation of crew changes⁹⁷. The European Commission issued Guidelines on health protection, repatriation, and travel arrangements for seafarers, passengers, and other people on board ships, including recommendations on repatriation procedures of anyone on board ships, cruise ships, crew changes, and medical suggestions⁹⁸.

CONCLUSIONS

Upon the outbreak of the global pandemic, compliance with the requirements of relevant international instruments for seafarers has been constantly tested. Measures taken by states in the present context proved to have a negative effect on seafarers' rights, including fundamental principles and the right to work. Under the pretext of diminishing health risks, non-compliance with these requirements and fundamental principles, as set out in the MLC 2006, has led to the situation of converting it into an irrelevant instrument. Consequently, the seafarers' rights regarding the normally scheduled period for the employment contract, the employment conditions, access to medical care and welfare facilities, requirements related to shore leave and paid annual leave, repatriation, or recognition of international documents, have been infringed. Related to this context, two other international instruments – Convention no. 108 from 1958 on Seafarers' Identity Documents and, respectively, Convention no. 185 of 2003 on Seafarers' Identity Documents (Revised), have not been complied with by the Member States, although these instruments facilitate the right to shore leave and the crew change. The Member States, in their capacity as flag States, port States, or States with labour-supplying responsibilities, have failed completely in performing their obligation to cooperate for the implementation of the MLC 2006 provisions. They failed to adhere to their obligations regarding ship inspections that would have identified and remedied deficiencies, including those representing a breach of seafarers' rights. Therefore, the consequences of infringing the fundamental rights of seafarers resulted in a serious humanitarian crisis at sea. The IMO has closely worked with the ITF, ICS, and other specialized UN agencies to restore recognized seafarer's rights.

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⁹⁴ International Labour Organization, Special Tripartite Committee of the Maritime Labour Convention, 2006, as amended, Statement of the Officers of the STC 1 on the coronavirus disease (COVID-19) available at https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/statement/wcms_740130.pdf.

⁹⁵ *Idem*, p. 2.

⁹⁶ *Ibidem*.

⁹⁷ United Nations. A/75/L.37. General Assembly. International cooperation to address challenges faced by seafarers as a result of the COVID-19 pandemic to support global supply chains available at <https://www.undocs.org/en/A/75/L.37>.

⁹⁸ European Commission - Guidelines on protection of health, repatriation and travel arrangements for seafarers, passengers and other persons on board ships available at [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020XC0414\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020XC0414(01)).

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