Neptunus, e.revue
Centre de Droit Maritime et Océanique,
Université de Nantes,
vol. 21, 2015/4
www.cdmo.univ-nantes.fr

Ship Registration, Labour Conditions and the Maritime Labour Convention 2006

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I. Introduction

An essential procedure (namely ship registration), an important value (namely crew conditions), and a fundamental Convention (namely the MLC 2006), constitute the essential ingredients of this chapter. It is the link between the former two, which essentially caused the creation of the latter, because of their limitations and deficiencies.
The precise concept of labour or crew conditions within the shipping industry has been a matter of debate for years, however during that time a central part of the rules within this global industry has hardly been questioned. This is because the industry so far has been well functioning, providing various economic advantages to ship operators; managers and owners, while ensuring better quality of services and greater choices. This, however, has often been at the expense of crew working and welfare conditions. The ability to do so was due to the weaker position of the employees. The industry's view that shipping worked well and had sound rules was supported by the fact that complaints were rare. On the other hand both the IMO and the ILO have been pushing for some reforms. The former providing guiding regulations while the latter receiving consultation for its tripartite concept with regards to distorted crew conditions for seafarers. Consequently, recent years have witnessed the evolution of numerous regulations around the world, with the view of ensuring effective and sufficient protection for the interests of the workforce on board of vessels.

Sea workers have come to have a global significance because they could control a substantial part of the maritime supply chain which can adversely affect not just that industry but world economies generally. Thus, sea workers, constitute an important and valuable position in the industry and in relation to the health of trading life-blood of individual countries. This position has been

[1] Contribution at the European Programme, ERC Advanced Grant 2013, n° 340770, Human Sea, http://www.humansea.univ-nantes.fr

acknowledged in the last couple of decades through trade union campaigning and reforms introduced by the International Labour Organisation, via especially Tripartite Committees (consisting of government, owners' and seafarers' representatives). These have been designed to create and enforce the Maritime Labour Convention 2006 (MLC 2006), which was ratified in August 2013. This Convention, however, limited in its application and scope because it excludes fishing vessels. Alternatively, with regards fishing vessels, the ILO has created the Work in Fishing Convention 2007 (No. 188), which has not yet been ratified, similarly aims to ensure that the fishing industry has respectable working and living conditions on all fishing vessels. A handbook has been introduced by the ILO, to enable States to examine the discussion of the tripartite committees and to encourage States to take tangible steps to ratify and implement the Convention.
Regulations providing some protection and stability with regards to crew conditions for seafarers are of major importance within the global market. Approximately 90% of all goods are traded via ships; there remains little doubt that the shipping industry is placed at the very heart of trade.

The problem of relaxed regulation or lack of enforcement with regards to appropriate crew conditions is justified by a number of arguments. Predominant amongst them has always been the concept of Open Registers or Flags of Convenience (a term created by the ITF) and Open Registries. Trade Unions shifted the blame to owners, with regards to substandard shipping; as those responsible for the lack of protection for better crew conditions due to the preponderance to use poor registration countries. Now, tripartite committees have been set up in order to tackle this problem of substandard shipping. Trade Unions are of the opinion that in general the problem with these registries is their disregard of rights and because these registration States do not mandate their members to compulsorily follow regulations. There is great hope which has been laid down to the MLC especially through the application of the "no favourable treatment" concept. This paper will analyse the History of the ILO; specialised UN Body which deals with labour conditions in general. In this light, that section will offer a description of the various features within the shipping industry. There are two significantly different/contradictory schools within the industry which are progressively involved within the industry- on the one hand the owners' economic advantages and on the other, the seafarers' conditions. This chapter will also address the so called flags of convenience registers. Then, section V considers the labour standards within the shipping industry. The penultimate section addresses the application of the MLC 2006, which constitutes the up to date final "code of conduct" for seafarers' minimum standards. The final section sums up the ways the industry can be more supportive to better enhance the conditions for seafarers.

During the past years, no uniform regulation has been mandatorily implemented by Member states setting out the rights and obligations of both ship owners and seafarers. Professor Lane[2], has stated that if there has been one, then either IMO (International Maritime Organisation) or ILO (International Labour Organisation) would need to change and specify the best practice required of FoC (Flag of Convenience) states on labour questions; this has evidently altered, and does not constitute the correct stance. The stance, which defeats Professor Lane's ideological approach is the newly enforced MLC 2006. It was not until August 2013, when the MLC 2006 has been concluded and ratified that there has been a creation of a consolidated Convention which encapsulates minimum standards whilst ensuring flexibility.
In this context, this chapter will analyse the impact of the Maritime Labour Convention 2006 on employers, seafarers and what are the difficulties faced, which challenge the effective application of the MLC 2006. Specifically, the present paper provides a discussion of how shipping labour laws have evolved within the shipping industry. It was acknowledged, or rather practically accepted, that the shipping industry used to function within its own rules without generally been compatible with the shipping rules applicable to the rest of the economy. This remains questionable.. In the shipping industry, labour conditions have been for many years absent/weakly enforced or have not been followed, and have started to apply within the industry at the beginning of the twenty first century, due to better measures created by the MLC and the important work done by the IMO to eliminate

[2] THE GLOBAL SEAFARERS' LABOUR MARKET: PROBLEMS & SOLUTIONS
Professor Tony Lane, Director/ The Seafarers' International Research Centre/ University of Wales, Cardiff/ October 2000

substandard shipping. Clearly it is submitted that the rules were in existent but have never been properly monitored for strict application. . For many years, the shipping industry used to operate on the basis of certain well-established patterns of conduct and was to a great extent oblivious the impact of the labour crew conditions.

The Maritime Labour Convention (MLC) 2006 provides a set of minimum standards concerning industrial relations, and covers issues as to the health and safety of crew members – updating almost 50 international labour standards, unifying them in a single document. It sets standards relating the rights of freedom of association and collective bargaining, diminishing forced labour, child labour and employment discrimination. It has been described as the "bill of seafarer's rights", however this term embraces the idea of human rights protection, which proved to be quite controversial. This is due to the fact that creators and most of the industry support the idea of implied human rights, whilst various charitable organisations, such as *Human Rights at Sea*, tend to criticise the MLC as lacking protection of labour human rights. It is obvious that there are challenges for flag State implementation of the MLC 2006, the MLC 2006 is to establish the universal level playing field of employment standards for seafarers, engaging the ILO concept of 'Decent Work'. Important matters covered include the *obligations of employers on contractual arrangements with seafarers, inaccuracy of manning agencies, health and safety, work hour limits, crew accommodation, catering standards and seafarers' welfare.* This paper will raise the various areas that the MLC 2006 covers, the important changes which the MLC 2006 introduces to the industry in addition to the various criticisms of the Convention. This will provide an opportunity to the reader to be quite sceptical of the current overly positive reaction to the newly, international ratified MLC 2006.

II. History

The ILO (International Labour Organisation), a UN Specialised body, specialises on labour conditions in general – not exclusively to the shipping industry. There are a number of Conventions in the shipping relating to labour. Since the 1920s, there has been an obvious concern regarding problems of crew conditions as to the enforcement of relevant regulations. Some of the important Conventions are the following, namely, the 1926 Seamen's Articles of Agreement Convention, an important one, due to the fact that its articles constitute the basic labour contract[3]**.** The 1958 Wages, Hours of Work on Board Ship and Manning Convention (Revised) was the ILO's third attempt to regulate the core issue of compensation for international maritime labor[4]. The 1976, Merchant Shipping (Minimum Standards) Convention[5] may be the single most important ILO maritime convention, which is an "umbrella" convention, under which certain basic requirements embodied in the text are supplemented by adoption in whole or in part of other.

As illustrated throughout the paper, the ILO plays a crucial role when it comes to the creation of labour standards, however the enforcement mechanism is still questionable. Even though the existence of Article 19(5) of the ILO Convention which mandates states who have already ratified any of the ILO Conventions, need to comply with it, no mention of any measures upon disregard of the Article exist, except the question of the moral element. This is obvious in reports submitted to the Committee of Experts on the Application of the Convention and Recommendations (CEACR), who later account to the tripartite Conference Committee during the International Labour Conference. This can be questioned as the CEACR can act as a "watchdog" of any problems been raised by either employees or employers, due to its application as a judicial body. However, this argument can easily be rebutted due to the fact that CEACR does not have the power to provide any penalties; but rather

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[3] "*Convention Concerning Seamen's Articles of Agreement, June 24, 1926";* **https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:55:0::NO::P55_TYPE,P55_LANG,P55_DOCUMENT,P55_NODE:CON,en,C022,%2FDocument**; "*World Shipping Laws, International Conventions, VII/10/CONV (D. Jackson ed. 1982),(entered into force Apr. 4, 1928)".*

[4] *ILO Convention No. 109, May 14, 1958,, (not yet in force).*

[5] *ILO Convention No. 147, Oct. 29, 1976, (entered into force Nov. 19, 1981).*

only supervise. Instead they expect states to be sanctioned through the publication of their reports (as they will publish existing failures), thus used as a deterrent for other states; due to the fact that the reports are usually been discussed in the Committees' plenary sessions, which is comprised by government, employee's and employer's representatives. It holds the role of promoting transparency within the ILO since they have the ability to ask any of the bodies, the reasons behind such failures. Which aim to tackle the morally unethical division, by impliedly enhancing enforcement.

The ILO has provided complementary services in shipping, by setting standards on the working conditions of seafarers. There are about 50 conventions and guidelines developed or promulgated by the ILO, governing the rights and obligations of seafarers. They are collectively known as the 'International Seafarers' Code.'[6] Via the MLC 2006, the ILO has attempted to codify the relevant employment standards adapted to the maritime sector, which constitute a collection of rights and protection at work for a great number of workers at sea (since it is not applicable to all, namely fishermen), irrespective of their nationalities and residence or the flag of the ship. This has been developed by a Tripartite Committee, encompassing innovative provisions regarding certification in order to ensure compliance with the Convention.

The above devices, however, are inadequate to examine the methods taken by governments and consulting them on how to advance obedience with them. It is a question of certainty as well, taking into account seafarers' benefits from these devices, since they can only be invoked once governments eager to ratify them and implement the changes within their national legislations. The ILO holding on the one hand a variety of ways under which a seafarer can succeed in claiming an enforcement of his rights, which are illustrated in the ILO Constitution such as in Article 24[7] , where any employer or employee representative can bring an action against its government for lack of ratification. On the face of it, this right is seen as ideal for producing a balance via the means created by the ILO, in reality can be described as entailing weaknesses as there is a lack of an economic motivation from the employers perspective, lack of monetary power from the employee's position and an additional hurdle is already included in the ILO Constitution since Article 2[8] of the ILO Standing Orders, defines that a committee should examine the claim and assess its validity and if it is of importance may require the government to account for it. According to Article 25[9] of the ILO Constitution, this can be publicised, hence instead of forcing them implement any of the Conventions, it will rather act upon prevention of further non – compliance, without still upholding any actual sanctioning power.

The already stated mechanisms can be seen as strong *weapons* created by the ILO for better compliance, however this is only a façade since the sole power lies with the state and its willingness of ratifying measures; thus only be used as precautionary measures rather than tools which lead to mandating enforcement. Hence, there is a question as to the weight of its importance in the industry.

All the above are examples that are of use by the ILO with regards to seafarer's conditions and affairs. The current strongest document that the seafarer can rely on is the MLC 2006. This is not a mandatory global legislative document, but rather a Convention, awaiting for ratifying members to *shape* it within their national laws, it is still a strong *shield* for seafarers to invoke upon. The paper points out that the MLC, 2006 is an inclusive code that covers varied and a wider range of issues, compared to previous Conventions. It often demands the great collaboration of the nation state in order to be legally enforced, namely through port state control authorities. Apart from the slow pace of ratification, the MLC has tried to minimise the gap between the demands of the trade unions and the questioned of the strict regulation as claimed by owners and managers.

[6] http://ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/presentation/wcms_230030.pdf
[7] http://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62_LIST_ENTRIE_ID:2453907:NO
[8] http://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62_LIST_ENTRIE_ID:2453907:NO
[9] http://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62_LIST_ENTRIE_ID:2453907:NO

III. Ship Registration

A ship once acquired by a ship owner or a ship manager, needs to be flagged in order to acquire nationality and therefore to become a valuable tool used or reasons of navigation and generally trade, frequently in order to proliferate fiscal assets of her owner. In order for the ship to enter international ports and lawfully trade it needs to have a legal status; hence, it needs to be registered. This is an essential tool which provides rights and responsibilities, by managing the relationship between the labour crew, namely the employees and the ship owner, i.e. the employer. This is rather vague with the registration on open registers, since compliance with regulations is not mandatory in every single open register, which is the reason for having the various flags within the Paris MOU, but also in various other Memorandums of Understanding. The procedure attached to this, is registration which entails the ultimate purpose to promote disclosure of title and identification of the owner and furthermore, helps in attaching to the vessel a "home" for which she can be protected and rely upon (namely, domestic rules and legislations), when a problem occurs. Coles & Watt argue, that various factors are relevant for ship owner when it comes to choosing a flag for his vessel, which for most of the times it is a stand - alone company. These factors have come to be better embraced in a specific form of registration, namely open registers, or as called by few trade unions, Flag of Convenient (as usually referred by the International Transport of Worker's Federation), states as the "evils of rampant capitalism and the disregard of labour rights, safety standards and environmental protection in the pursuit of profit[10]." Registration can occur in various different ways, however, this chapter will deal with the most commonly used registers, namely Open Registers or as otherwise called, Flags of Convenience. Hence, a vessel can be registered into a country with which the owner has a "genuine connection by way of national or economic ties[11]" or register the ship into an open registry, which embraces numerous advantages even though the beneficial interest commonly is an absent requirement for the owner.

Registration is a procedure, an administrative function "by which nationality and collateral rights and duties are conferred to a ship[12]." Although registration is different from nationality, *the former is the most important test for the latter[13]*. Furthermore, registration provides evidence of the owner's title. One should bear in mind that evidence does not equate to proof. Additionally, *the priority between proprietary rights, like mortgages or hypothèques, is given through registration*[14]. Hence, registration deals with private and public law functions[15] that were summarized in the *Liverpool Borough Bank* v *Turner:*

"The Court emphasized two points relating to registration. First, it is the interest of the nations of the world that it should be clearly known and recognized who shall be entitled to the privileges of a British ship, and, secondly, the object is to determine … what should be proper evidence of title to maritime property[16]." In conclusion, one can be of the opinion that registration has implications not only for the flag State, but also for the owners, the mortgagees, and the public.

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[10] R. COLES, E. WATT, *Ship Registration: Law and Practice, Chapter 5: Factors Influencing choice of flag*, in *INFORMA second edition*, 2009, "23".

[11] R. COLES, E. WATT, *Ship Registration: Law and Practice, Chapter 5: Factors Influencing choice of flag*, in *INFORMA second edition*, 2009, "55".

[12] Z. Oya Özçayir, *Liability for oil pollution and collisions*, Lloyds of London Press, Honk Kong, 1998, p. 7.

[13] John Colombos, *The International Law of the Sea*, p.289. *Note* the author's explanation about different scenarios of concurrent jurisdictions and the position of the vessels in territorial waters and ports, p. 6. *Note* that "[i]n international texts and treaties the terms 'registration' and 'nationality' are often apposed. Thus, in the United Nations Convention on the Law of the Sea, the ships of a State are referred … by expressions 'vessel of its registry' 'vessel flying its flag' or 'vessels having the nationality'."

[14] Christopher Hill, *Maritime Law*, 6th edition, Lloyd's of London Press, Hong Kong, 2003, pp. 28-31.

[15] John Colombos, *The International Law of the Sea*, p.289. *Note* the author's explanation about different scenarios of concurrent jurisdictions and the position of the vessels in territorial waters and ports, p27.. In the United Kingdom, vessels registered under the 'small ship register' do not benefit of the private law functions of registration. In other words, mortgages cannot be registered. *See also infra* p. 10 for a detailed explanation of the functions of registration.

[16] *Liverpool Borough Bank* v *Turner* (1860) 29, Law Journal Reports, Ch, 827.

IV. Open Registers – Flags of Convenience

Great importance has been placed on registration and especially on a specific type of it, namely Open Registers. Open Registers are alternatively been called as Flags of Convenience by the International Transport of Worker's Federation. These FoCs are been accused to be *governed* mainly by *unscrupulous* owners, who disrespect international standards on *fair labour terms and decent working conditions for seafarers.* There is no hesitation that some flag of convenience registry countries, omit or deliberately consent or tolerate ships registered with them to evade international and national requirements, though this is not the case with all. This situation is obvious through PSC annual reports and MOUs publications, and an example of it might constitute Cyprus[17] (which is in the shite list of the Paris MOU, namely it abides and ratified and enforces a great number of Conventions and Regulations). Open Registers tend to be structured in a specific way, featuring relaxed rules which allow owners and operators to disregard international standards with virtual exemption. However, this do not constitute the default rule; rather it creates a concern by the industry as it is the core reason for discussion and disagreement between owners/operators and trade unions/NGOs.

FoCs have heavily been criticised and this also relates in the difficulty of an established uniform definition. Various authors have shown interest towards this, Coles& Watt, argue that it is easy to define a FoC by reference to a "genuine economic link" between the vessel and its country of registration. They support this argument on the findings of the ad hoc Intergovernmental Working Group on the Economic Consequences of the Existence or Lack of a Genuine Link between Vessel and Flag of Registry, which concluded in its Report[18] that there are various elements ("the merchant fleet contributes to the national economy of the country, revenues and expenditure of shipping/purchases and sales of vessels are treated in the national balance-of-payments accounts, the employment of nationals on vessels and lastly the beneficial ownership of the vessel[19]") which are relevant when establishing whether a "genuine link" exists between a vessel and its country of registry. It is obvious from this report that is more tempting for registration to commence in FoC countries to the various economic incentives which these states can provide. This is why FOCs include the word convenience, since these states enable ship owners to avoid tax in the country of establishment, "lower crewing costs", as the ship owner has unrestricted choice of crew and he is not obliged to abide any "national wage scales". In addition to avoidance of economic incentives, the Rochdale Report in fact has identified further reasons to that, namely the lack of strict regulatory controls. A final consideration is the usage of bearer shares[20], in flag states, which enhance anonymity. Ship owners, prefer to register in FOCs where anonymity is enhanced, therefore the capital of the shipowning company, which may possess no asset other than the ship, may be disguised in states with few public filing requirements or where bearer shares are permitted. These constitute some of the main criticisms which enhance the opposing arguments against FoCs, especially by trade unions. Professor T. Lane in his article[21] states his views-not the collective views of the Centre- in terms of the labour weaknesses faced under the shipping industry now, and during the flagging out and the creation of second registries. He states in the introduction and supports of being widely accepted that "the twin process of flagging out and deregulation[22]", caused the radical problems for the world seafaring force. Even though the global crisis it has not yet created one uniform standard for

[17] https://www.parismou.org/sites/default/files/WGB%202011-2013.pdf
[18] TD/B/C.4/177-TD/B/C.4/AC.1/3 annex.
[19] R. COLES, E. WATT, *Ship Registration: Law and Practice, Chapter 5: Factors Influencing choice of flag*, in *INFORMA second edition*, 2009, "25".
[20] As cited online:"*An equity security that is wholly owned by whoever holds the physical stock certificate. The issuing firm neither registers the owner of the stock, nor does it track transfers of ownership. The company disperses dividends to bearer shares when a physical coupon is presented to the firm".*
[21] THE GLOBAL SEAFARERS' LABOUR MARKET: PROBLEMS & SOLUTIONS
Professor Tony Lane, Director/ The Seafarers' International Research Centre/ University of Wales, Cardiff/ October 2000
[22] THE GLOBAL SEAFARERS' LABOUR MARKET: PROBLEMS & SOLUTIONS
Professor Tony Lane, Director/ The Seafarers' International Research Centre/ University of Wales, Cardiff/ October 2000, p.2

"training and certificating" seafarers. Because if done so, as proposed by Lane, either the IMO or the ILO would need to specify "the best practice required of flag states on labour questions."

FoCs, have brought a lot of confusion in terms of nationality of the ship, per *The Chiquita: "*the flag under which a merchant ship sails is prima facie proof of her nationality, if not registered still that of the owner". This enables the ship owners to easily evade taxation, due to the vagueness of the ship's nationality. Another hardship that is been created is the great opposition concerning labour interests, since there will be "a decline in the need for crews from the countries where the vessels had previously been registered". An unratified yet way, as examined above, which will enable to clear the path and remove the blurring of waters comes from the term "genuine link", which is was "enshrined" in the 1958 Convention on the High Seas("ships have the nationality of the state whose flag they are entitled to fly. There must exist a genuine link between the State and the ship") but still undefined since nowhere in the convention attempts to describe what is meant since no preconditions for the grant of nationality; nor are there any sanctions indicated in cases where nationality is granted in the absence of a "genuine link", whatever the expression may mean. However, this requirement has been put forward by the 1986 UN Convention on Conditions for Registration of Ships[23], but still remains unratified.

Ready[24] states that, flags of convenience nowadays is been defined by "reference to the existence/genuine economic link between a vessel and its country of registry". An UNCTAD Report on the Economic Consequences of the Existence or Lack of a Genuine Link between Vessel and Flag of Registry, stated some elements which are relevant when evaluating whether a "genuine link" is in existence between a vessel and its country of registry. The Report[25] states that:

1. "the merchant fleet contributes to the national economy of the country;
2. Revenues and expenditure of shipping, as well as purchases and sales or vessels, are treated in the national balance –of-payments accounts;
3. The employment of nationals on vessels;
4. The beneficial ownership of the vessel".

However, these four arguments even though promising cannot be supportive of the argument that "genuine link" has universally accepted as Art.91 of the 1982 UN Convention of the Law of the Sea[26] has not yet been ratified, for this to come into force it needs 40 signatories, which until 2006 only 14 countries have signed to the 1986 United Convention for it to be ratified. Therefore, no striking results have been produced after the introduction of this requirement.

If taking into account that FoCs stem from or could only be abolished via the genuine link requirement, then it is fair to assert that the system still obtains and will be in existence as the 1986 Convention has not yet met its required signatories, placing the threshold too high. Various weaknesses emanate from using this definition of FoCs. It can be argued that there are weaknesses in this use of the phrase, and this rises from the continuing attempts of the UN Convention on Conditions for Registration of Ships in 1986 to define "genuine link", so as to make it clear that there are "economic links". The most essential definition is the one of the ITF (International Transport Workers Federation), in which they provided no "legal basis" to the definition. ITF argues that FoC system is not in existence, and that FoC can be attached to any country which allows on its register ships which "are beneficially owned and/or controlled

There was an effort made by various conventions to create a mandatory international "genuine link" requirement when registration takes place, namely "Ships have the nationality of the State whose flag

[23] UN Doc. No. TD/RS/CONF/23 adopted by the United Nations Conference on Conditions for Registration of Ships on 7 February 1986; on the background and effects of the Convention, see McConnell, "Business as Usual: An Evaluation of the 1986 United Nations Convention on Conditions for Registration of Ships", 18 J.Nar, L. & Comm. 435 (1987) and Wefers Bettink, "Open Registry, the Genuine Link and the 1986 Convention on Registration Conditions for Ships", Netherlands Yearbook of International Law 1987, pp. 70-119.
[24] N.P. READY, SHIP REGISTRATION 1 (1991), p.18
[25] TD/B/C.4/177-TD/B/C.4/AC.1/3 annex.

they are entitled to fly. There must exist a genuine link between the State and the ship[27]". Namely, steps should be taken by ship owners in ensuring that that the ship provides all the information to the state on which it ensigns fly, "in order to enable it to identify/contact the personal responsible regarding matters relating to maritime safety[28]". The ILO has struggled to successfully *fight* against PanLibHon (Panama, Liberia, Honduras), even though its several attempts (in 1956, during the Maritime Conference in Geneva or later in 1958, with the International Law Commission of the United Nations and the International Conference on the Law of Seas at Geneva which also had the support of the OEEC). A later but still unsuccessful attempt has been made in 1982 and 1986, by the United Nations Convention for the Registration of Ships 1986, to diminish flag states enabling registration without the owner having any beneficial or economic ties with the country of registry. Coles &Watt argue that there are no socio-economic and political aims behind the introduction of the requirement of "connecting factor", as the true nexus between owner and flag States is created by "administrative decision rather than a positive motivation and bond of attachment". The "genuine link" term faced a further destruction as in the 1960, the IMCO (now IMO), dealt with the establishment of the "largest ship owning nations[29]", which finalised their decision stating that this depended "solely upon the tonnage registered in the countries in question". The 1986 UN Convention on Conditions for Registration of Ships[30], tries to emphasise not on the "jurisdiction and control", as done by the previous Convention, but rather tries to explain and define the term from an economic perspective. Namely providing for the "participation by nationals of the flag State in the ownership, manning and management of ships". The relevant articles are 7 (ownership), 8 (manning requirement), 9 ("officers and crew of ships flying its flag be nationals or persons domiciled or lawfully in permanent residence in that State".) It is worth stating that due to its complex procedural requirements which need to be satisfied in order to come into force, the convention has not been yet ratified[31].

The OECD has tried to establish also few arguments which are much against of these FoCs, however these arguments do not place emphasis on the labour aspect but rather on tax law relaxation. In order for the traditional maritime countries to gain the interest by the ship owners register their ships there, they sought to undermine their standards by eliminating the fiscal regimes on the shipping sector, such as "tax rebates or deferrals, investment grants and accelerated writing-off of assets on account of depreciation[32]". As UNCTAD Secretariat Report stated: "…most of the [traditional maritime countries] allow ship owners various concessions…to defer or eliminate tax liability, which reduce the effective tax level below the statutory rate level, and in many cases are reported to result in an effective rate of zero…
…in Western Europe the concessions are believed to be particularly liberal, and ship owners who not only operate ships, but also buy and sell on a large scale do not appear to have any difficulty in minimising their taxes to a low level or even avoiding taxes altogether…
…The effects of fiscal regimes in influencing ship owners to operate under open registry flags appear to be relatively minor…".

Moving towards operating costs ,this can be a compelling factor that attracts vessel owners, as registering vessels in "traditional maritime nations", generally restrict the owner in employing nationals of that state as crew members and most of the times, per Coles & Watt, this involves a negotiation between the beneficial owner and "local" trade unions concerning salaries, benefits etc.

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[27] Article 91(1) of the United Nations Convention on the Law of the Sea, 1982
[28] IMO resolution, A.441(xi)
[29] "Constitution of the Maritime Safety Committee of the Inter-governmental Maritime Consultative Organization" Advisory Opinion of 8June 1960: I.C.J. Reports 1960, "150"
[30] UN Doc. No. TD/RS/CONF/23 adopted by the United Nations Conference on Conditions for Registration of Ships on 7 February 1986; on the background and effects of the Convention, see McConnell, "Business as Usual: An Evaluation of the 1986 United Nations Convention on Conditions for Registration of Ships", 18 J.Nar, L. & Comm. 435 (1987) and Wefers Bettink, "Open Registry, the Genuine Link and the 1986 Convention on Registration Conditions for Ships", Netherlands Yearbook of International Law 1987, pp. 70-119.
[31] https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XII-7&chapter=12&lang=en
[32] Ship Registration: Law and Practice, Coles & Watt, "51"

The final link to this discussion regards the labour's opposition to open registries under the FoC, which began in the 1930s in US due to the American ships transferred to Panama and Honduran, in order to flag their ships. This movement gathered a lot of support after the Second World War and especially after the creation of the ITF, which adopted a "resolution threatening the boycott of ships transferred to the Panamanian flag. In July 1058, ITF resolved upon a world-wide boycott of open registry ships, and the main two objective of the campaign were: 1. To strive for a creation and establishment of the genuine link between the owner and place of registration, achieving the end goal of eliminating flags of convenience and 2. To ensure if seafarers serve ship FoC vessels, then to ensure that the crew is not been exploited by ship owners.

There are obvious economic and financial considerations, which enable ships to register in FoC countries. As illustrated in the OEEC report: "there are two main motive actuating those ship owners who have adopted the practice of registering under flags of convenience, viz. opportunities for avoiding taxation on the earnings of ships registered under these flags and in some cases relief from high crew standards and consequent operating costs[33]." These are some of the threads founded on the roots of criticizing the system. Other limbs of the criticisms are the insufficient regulations which are not fully enforced due to the economically inconvenient results. Even though one can describe this as a revolutionary and innovative, protective act by these states as they tried to protect their economy by *keeping* their fleet, in order to give these ship owners the chance to operate in the competitive market, it is still the argument of overweighting the economic benefit, without taking into account the labour condition for the crewmen. Therefore, countries in their despair to keep energetic into the market playing game, they have faithfully imitate open registries, as they have even sequencing some of the disadvantages. This is proven in Italy due to the labour opposition but it has attracted the Italian ship-owning establishment, even before the implementation of the law, during its life as a bill, as announced by Publio Fiori ("the statement was welcomed by the ship owners' association, Confitarma, even before the details of the bill were made public[34]"). In particular, it is notable that the reasoning behind Open Registers(or as some refer to them as FoC), is not limited just to the relaxed regulations but to the tax advantages accruing which impact not only to the limited sphere of economic disadvantage of the crew but also to health and safety violations. As illustrated in ITF reports[35], the risk of labour violations are quite high due to the ability of ship owners in open registries to employee crew, without taking into account the *genuine link* requirement, therefore enabling them to embark on a venue shop, by the use of a flag of convenience. This results in offering the labour crew little protection either being seafarers or on-board employees. Especially this becomes a larger disadvantage to seafarers because some ships under open registers, do not always obey international regulations.

V. Crew Conditions/Standards

Seafarers are regularly open to harsh working conditions and precise work-related risks. Lacking the safety of the home, makes them become vulnerable and easily exposed to become victims of exploitation; namely from abandonment in foreign ports when ship owners deny fulfilling their obligations but also financially unprotected; i.e. unpaid wages.
Labour is of high importance in the industry; since it is an ingredient upholding the supply chain. Globalization succeeded in making the industry financially unbeatable due to the increase of purchasing power, therefore economically beneficial to the ship owner but negatively impacts the seafarers. Ship owners select to register their vessels in light to their economic advantages, and proceed with business as usual "without considering the ethics behind the decision[36]". This situation,

[33] OEEC. MTC, "Study" (1958), "4"
[34] Second Registers: Maritime Nations Respond to Flags of Convenience, 1984-1998, Rodney Carlisle, "15"
[35] http://www.itfglobal.org/en/transport-sectors/seafarers/in-focus/flags-of-convenience-campaign/
[36] Flags of Convenience: The Development of open registries in the global maritime business and implications from modern seafarers. A thesis submitted to the faculty of the School of Continuing Studies and of The Graduate School of Arts and

impacts on seafarers as some ship owners do not take into account that the mechanism which keeps them strong is not only the fiscal exemptions, but rather their employees. Therefore, some decide to outsource registration which "places profit over labor relations[37]".

This problem, but also the general issue; namely the disregard of labour crew standards has being attempted to be tackled by the MLC2006. The 2006 Convention targets on the fact that seafarers need to be aware that they have rights and through this set of regulations, they have an indication of standard set of framework of rights that governments need to ratify within their national legislations. Schindler - president of the MLC2006 – states that the MLC is coherent set of rules providing global minimum framework with regards to seafarer's rights. Thus described as a comprehensive example of regulation being impacted by globalisation.

One example of controversial labour conditions for which the industry has claimed that the MLC 2006 will diminish or rather totally eliminate, relates to wages. *Rhone*[38] is used as an ideal example for illustrating the "unethical behaviour by an owner focussed on dollars and not on people", as William R. Gregory[39], described in a similar context. Turning to the facts, the *Rhone,* was empty but for the fourteen ship seafarers who sailed on it. The ship sailed into Ceuta on September 2009. Once limbed to the port, the ship was damaged, in poor condition and with very low supplies. The port authority inspected it and detained the ship on the safety grounds. The result was that the crew needed to spend five months without been paid, forced to rely on charity. However, the biggest concern of the seafarers, were their families, who have gone six months with no money. The crew at that point was owed approximately $233 817, and they felt that they were bound to stay on board to ensure payment. However, after several months of negotiations, the vessel was arrested for the crew wages. The crew had been repatriated at the cost of the Spanish authority and their expenses. The tension and, at the same time, huge concern is whether seafarers will appropriately be compensated , since the ship once arrested has started to deteriorate. Therefore, the value of the ship will reduce dramatically.

VI. Goals of MLC 2006; Uncertainty in the Industry

During the past years, no uniform regulation has been mandatorily implemented by Member states setting out the rights and obligations of both ship owners and seafarers. Professor Lane, states that if there has been one, then either IMO (International Maritime Organisation) or ILO (International Labour Organisation) would need to change and specify the fittest practice required of FoC (Flag of Convenience) states on labour questions, which this is not the case at the moment. This constitutes such an important route within the industry which shapes substantially the global market. Stability in the labour market it is a vital requirement in the developing globalised market in order to ensure protection of the employees and an excellent move of trade. The industry has been accelerated because of globalisation and the free-market philosophy border is porous. It is not up until August 2013, when the MLC 2006 has been concluded and ratified upon; where there has been a creation of a

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Sciences in partial fulfilment of the requirements for the degree of Master of Arts in Liberal Studies, William R. Gregory, B.A., Georgetown University, Washington, D.C. November 1, 2012, "61"

[37] Flags of Convenience: The Development of open registries in the global maritime business and implications from modern seafarers. A thesis submitted to the faculty of the School of Continuing Studies and of The Graduate School of Arts and Sciences in partial fulfilment of the requirements for the degree of Master of Arts in Liberal Studies, William R. Gregory, B.A., Georgetown University, Washington, D.C. November 1, 2012, "61"

[38] Seafarers' Rights International*, "Case Study – 'Rhone,"* 09 December 2011, https://www.seafarersrights.org/seafarers_subjects/abandonment_topic/case_study__rhone

[39] https://repository.library.georgetown.edu/bitstream/handle/10822/557688/Gregory_georgetown_0076M_11950.pdf?sequence=1

consolidated Convention which encapsulates aspects of maritime labour providing minimum standards for a unified application within the industry whilst ensuring flexibility.

In an effort not to move away from the already established method that other UN Bodies are using, namely UNCLOS and the IMO, there is the contest of persuasively forcing all states to apply the same standards in order to effectively improve safety and accountability across the industry. The flag state has to assess the plans of the ship owners and verify that they are being applied with. It also has to guarantee that each vessel carries a marine labour certificate and declaration of maritime labour compliance. Further to that, the MARPOL clause of "no more favourable treatment" applicable via the means of port state control, is still anticipated to apply in order to remove the imbalance within the industry, namely between flag states that have ratified and the non-signatory ones; likewise producing fairness within the systm. Correspondingly, the state providing the labour has to guarantee that seafarers are employed in a manner that is fair and in accordance with the MLC; whist shareholders taking into account the MLC 2006 rules with regards to the crew employment process. Hence, inference of coherent internal schemes and management processes between port states, flag states of those countries outsourcing crews.

As illustrated in MLC 2006[40], there is a need for enforcement of a system that would eliminate "substandard ships" and will work well with standards for ship safety and security and environmental protection. With the introduction of acceptable standards, unfair competition by those adopting sub standards will be abolished, as these will not be based on one country but rather implemented in an international level, by complying with MLC's requirement, namely ship owners would be required to gain authorisation from the state wanted to fly their ships (e.g. by educating the crew on board).

MLC 2006, is been categorised as the fourth pillar and it utilises under the same way of the other three. An example is the clause of "no favourable treatment", which is also applicable in SOLAS- one of the four pillars- namely, once a ship enters into a port, port state control can embark on board and inspect the ship, irrespective of whether the flag state has ratified the Convention. A further example concerns the flexibility of the MLC 2006. As MARPOL and SOLAS, the MLC 2006 (the first ILO tool), can have a partial amendment every year once the tripartite International Labour Committee approves. Therefore, this constitutes a convenient aspect for the owner who can react with all four pillars in the same way and will be aware of his obligations, with regards to compliance. The only distinction that these pillars have is of the essence; namely the exact content that each encompasses – the MLC deals with labour crew conditions, MARPOL with the environment, etc. This has also been dealt this and last year's (2014) June during the Committee's meeting at the ILO.

The MLC 2006, has been intended to constitute a human rights document, however this is quite questionable. It prescribes a variety of seafarers' protections in terms of work and living conditions, terms of employment, health care, social security, and related matters. All present employment contracts will become null and avoid on MLC 2006 implementation. They will have to be replaced by seafarers' employment agreements, with mandatory prescribed particulars of conditions of employment.

The MLC has created a platform which encapsulates issues relating labour and employment conditions and social protections, however lacking the human rights issues; which are essential as this thesis argues. The MLC has promoted a two-fold mandatory, non-binding application of the recommended standards, remedying any shortcomings and weaknesses. States hold the duty to ensure recognition and implementation of these obligations, in undertaking the provisions of the MLC ensuring rights of seafarers who "fall under each of their jurisdictions to decent employment[41]". The duty of States to ensure the due recognition of their respective obligation in undertaking, to give

[40] Maritime Labour Convention, 2006 (MLC 2006), online revised Edition, 2012: **www.ilo.org/mlc**, International Labour Office, Geneva

[41] *Imposing of Responsibility on States' to Guarantee LabourStandards forSeafarers Underthe MLC 2006: Can the ILOAchieve Its Goal?;* Dan Malika Gunasekera

complete effect of its provisions in order to secure the right of all seafarers who fall under each of their jurisdictions to decent employment[42]. Evidently, the seafarers have been granted the fundamental labour rights including the "right to safe and secure workplace, right to fair terms of employment, right to decent working and living conditions on board, right to health protection, medical care, welfare measures and other forms of social protection while strictly imposing the onus on States to guarantee their fulfilment[43]."

An utmost requirement to make sure that ships under their respective jurisdiction carry a 'maritime labour certificate' and a 'declaration of maritime labour compliance' as required by the Convention[44]. The latter has however been renamed from its original 'declaration of compliance' in order to avoid confusion with ISM Code requirement pursuant to ship owners' proposal thereby introducing two new formats for the latter as well as the former documents stated up in the Appendix to the Code without leaving any possibility for unilateral creation by a State. Nevertheless, the inspection feature was given much more power and strength with regards to determining the finest proper wording due to *its' wings spread over the non-States' Parties beyond the application to ones who ratify*.

Even though the MLC 2006, is the strongest set of document that has been created up until this point regarding labour crew conditions, it is strongly been criticised as producing some confusion and upholding weaknesses with regards to definitional terms. Therefore, there are obvious difficulties and weaknesses within the MLC 2006, perhaps as to the word of defining what a seafarer is. The discussion evolves around as to who should be entitled to the rights of a seafarer. Thus, who can be defined as a seafarer, the person working on board during a long period of time or also the person on an offshore vessel which is situated on the high seas but does not sail? Even though these claims that might be proved problematic, the NAUTILUS INTERNATIONAL claims that the MLC "is making a real difference". This can be rightly stated, since right after 2006, the date of implementation, the convention argued to establish the responsibilities for countries as flag States, port States, and, to a lesser degree, coastal States. It also introduces a new "face[45]" for State responsibility, under the framework of international law of the sea, the State with labour-supplying responsibilities. Sometimes described as the "Seafarers' bill of rights", however this is again questionable as nowhere in the Convention there is a clear indication of human rights. As stated above, many engaged in works on board of ship can be classified as seafarers. However, each flag state may implement a different definition with regards to what a seafarer is; namely there are certain categories of workers, who are only on board of the ship for a short period of time and who normally work on land, for example flag State or port State control inspectors, who clearly could not be considered as working on the ship concerned. In other cases, the situation may not be clear, for example when a performer has been engaged to work on a cruise ship for the whole of the cruise or to carry out on going ship maintenance or repair or other duties on a voyage. The Convention sets out minimum requirements for seafarers to work on a ship (e.g. minimum age, medical fitness, training, regulated seafarer recruitment and placement). It is significant to raise the point that the MLC 2006 is intended to establish decent work for seafarers and a level-playing field for ship owners. This is also central to the idea, new for an ILO convention, of certifying labour standards in the maritime sector.

Moreover, there is a great deal of confusion when it comes to defining a ship owner and a seafarer. For the Convention an owner equals to any person or organisation that manages or acts as an agent or

[42] files/publications/23556/SBoR_English_inside_small.pdf ; Art. II.1(f) states that "Seafarer means any person who is employed or engaged or works in any capacity on board a ship to which this Convention applies"; See Art. I.1

[43] See Art. IV

[44] See Art. V.3.

[45] " This idea is expressed in the MLC, 2006, Article IV which provides inter alia, that: Seafarers' employment and social rights"

1. "Every seafarer has the right to a safe and secure workplace that complies with safety standards;
2. Every seafarer has a right to fair terms of employment;
3. Every seafarer has a right to decent working and living conditions on board ship;
4. Every seafarer has a right to health protection, medical care, welfare measures and other forms of social protection;" - IFLOS 2011

charters the ship and therefore assumes responsibility for the operation of the ship, assuming that this third party has agreed to be acting upon such responsibilities, regardless of whether any other third party might fulfil some of the responsibilities. Therefore, one can state that this allows a lot of flexibility for various ship owners to neglect the various responsibilities that they should handle.

There needs to be raised here the fact that the MLC 2006 is still under an experimental state since it has only been two years of its ratification. It has been almost the second year through which the Convention has come to be in existence, and which compliance and enforcement of it, lies greatly in port state control, via member states implementing national regulations, in alignment with IMO instruments and exercise it through flag State inspection and "t*he PSC MOU approaches under the wider maritime regime*[46]". There is a greater difficulty with the MLC 2006, and that difficulty constitutes an internal struggle within countries. This is the fact as to which government department should handle the implementation of the MLC 2006. Which authority constitutes the most competent to implement the MLC 2006. On the other hand, many of the topics such as social security or occupational safety and health and the possibility of implementation through collective bargaining agreements are not within the usual practice or Jurisdiction of most maritime administrations. National flexibility also needs to be in existence in order for flag states to be able to engage and embrace more with this convention, otherwise the Convention will be disregarded and this will impact seafarers, especially in countries where there are no trade unions.

Although there are countries in which the labour department and labour inspectors will play a dominant role, in many countries, implementation has happened via cooperative activities between the relevant departments. This is of great importance due to the fact that some themes may be matters on which the maritime administration cannot develop legislation. An example is that of Canada where, "the majority of the MLC, 2006 provisions are addressed in a regulation under the Canada Shipping Act, 2001[47]",a statute dealt with by Transport Canada.
A further difficult problem encountered by some flag States is the fact that the exercise of the national flexibility which exists under the Convention. There are the situations which this can only be exercised through national flexibility or consultation of seafarers' and ship owners' organisations. However, there are countries that this cannot be achieved since there are no representatives for seafarers. This problem was, however, foreseen. When the Convention enters into force, or at least achieves the entry into force formula, the ILO's Governing Body is expected to establish the Special Tripartite Committee (under Article XIII). This Committee, in addition to considering amendments and reviewing how the Convention is working, has a special role, under Article VII, whereby it can act as the relevant consultative organization for countries that do not yet have social partners. "There is an obvious gap until the Committee is established. However, in 2010, at a meeting of the Preparatory MLC, 2006 Committee, the establishment of a transitional arrangement was not accepted[48]". Therefore, allowing them to constitute with a gap filling role.

A difficulty for various countries, especially in "low developed economies, is the issue of capacity to undertake the legal burden for drafting the involved tasks involved in implementing the MLC, 2006[49]". The IMO recognising the difficulty of implementation emanating from this Convention, has created various workshops in assisting for a smoother implementation. In this effort the ILO has also proven to be effective and helpful in assisting this goal by helping 40 countries to move forward. Government organisations, even employment contracts for seafarers have been advanced and included

[46] As cited;"In the late 1990s, Edgar Gold wrote about this issue in connection with national implementation of the law of the sea and the trend to what he described as "departmental chauvinism" Gold 1999".
[47]" <http://www.tc.gc.ca/eng/acts-regulations/acts-2001c26.htm> Marine Personnel Regulations, Part 3, http://laws-lois.justice.gc.ca/eng/regulations/SOR-2007–115/"
[48] " Final report, Preparatory Tripartite MLC, 2006 Committee, September 2010, IL0 Doc. No. PTMLC/ 2010/4, at Appendix, "Outcomes" at page 29 and see also paragraph 131. Available at: <http://www.ilo. org/wcmsp5/groups/public/@ed_norm/@normes/documents/meetingdocument/wcms_150401.pdf"
[49] As cited;"Based on advice received at these seminars and at a meeting of the Preparatory Tripartite MLC, 2006 committee in September 2010, as noted above supra note 34 model national legal provisions are now under development with a workshop planned for September 2011 at the Maritime Labour Academy, ILO ITC, Turin, Italy".

various regulations as set out in the MLC. It is fair to be stated that many points within the MLC were been followed before its submission, however now are mandatorily put into practice. Even though paper work and bureaucracy might be enhanced, leaving ship owners with a dissatisfied feeling due to the fact that the MLC is seen as the "seafarer's bill of rights", there are still loopholes for owners to disregard it; namely the fact that the MLC is fairly lenient with setting minimum standards, this can produce ambiguity in its terms, leaving a lot of scope for debate. The MLC however, not just impacted but also enforced and enhanced the power of other IMO regulations such as the STCW which changed in 2012, embracing some other requirements, specifically relating to medical examinations and certificates, minimum age and hours of rest and training will already be mandatory for seafarers covered by the STCW.

The MLC 2006, is aimed also in offering an equal playing field for quality ship - owners functioning under the flag of countries that have ratified it. The goal is to ensure that decent working conditions go hand in hand with fair competition. Therefore, the MLC can be seen as a great tool for both owners (maximising profits by avoiding lengthy inspections in case of non-compliance) and for seafarers, since their conditions will be protected through certification procedures. However, the question tends to remain the same, namely whether the MLC constitutes a tick-box culture or does indeed go further? This MLC, 2006 illustrates how tripartite dialogue and international cooperation can function beneficially for the greatest globalized of industries, by concretely addressing the challenges to securing decent working and living conditions for seafarers, while simultaneously helping to ensure fair competition for ship- owners.
These documents will provide prima facie evidence that the ships are in compliance with the requirements of the Convention, including areas such as minimum age, seafarers' employment agreements, hours of work or rest, payment of wages, on board medical care, the use of licensed private recruitment and placement services, accommodation, and food and catering and health and safety protection and accident prevention.

Various clarifications and amendments have commenced during the ILO's Tripartite's Committee meeting in June 2014 on the 103rd session where the Conference approved them[50]. The major two amendments[51] (which impliedly establish the argument of how new the Convention is) relies on seafarer's abandonment and the second upholds claims of compensating seafarers for death or injury, long term disability due to occupational injury, illness. These amendments have been made with the consent of the Special Tripartite Committee, and relate to Regulations 2.5 and 4.2. Standard A.2.5., has been replaced by A.2.5.1 which established financial security to seafarers in case of abandonment, where each member states needs to ensure this when flagging a vessel , which can either take the form of social security schemer or national fund or a form (after seafarer and shopwoner consultation, by each member state) and the document needs to be written in English or translated in English as well A.2.5.2, further states that documents should include all details, of shipowner (such as contracts, IMO number, etc), hence supporting transparency. Turning to the second amendment, this relates to Standard A.4.2.1, which substituted A.4.2 and regards compensation to a seafarer, supporting financial security industry[52].

Substantial equivalence "is conducive to the full achievement of the general object and purpose of the provision or provisions of Part A of the Code concerned" and "gives effect to the provision or provisions of Part A of the Code concerned" - satisfy itself",- but this does not mean that they have a total autonomy; rather - since it is incumbent on the authorities responsible for monitoring implementation at the national and international levels to determine not only whether the necessary procedure of "satisfying themselves" has been carried out, but also whether it has been carried out in

[50] http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_248905.pdf ; International Labour Conference - AUTHENTIC TEXT; TEXTE AUTHENTIQUE; AMENDMENTS OF 2014; TO THE MARITIME LABOUR CONVENTION, 2006, APPROVED BY THE CONFERENCE; AT ITS ONE HUNDRED ND THIRD SESSION, GENEVA, 11 JUNE 2014

[51] http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_248905.pdf

[52] **http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_248905.pdf** International Labour Conference

good faith in such a way as to ensure that the objective of implementing the principles and rights set out in the Regulations is adequately achieved in some way other than that indicated in Part A of the Code. *It is in this context that ratifying Members should assess their national provisions from the point of view of substantial equivalence, identifying the general object and purpose of the provision concerned (in accordance with paragraph 4(a) of Article VI) and determining whether or not the proposed national provision could, in good faith, be considered as giving effect to the Part A of the Code provision as required by paragraph 4(b) of Article VI. Any substantial equivalences that have been adopted must be stated in Part I of the DMLC that is to be carried on board ships that have been certified. As stated in the practical guidance (paragraph 7) at the beginning of the national report form for the MLC, 2006, explanations are required where a national implementing measure of the reporting Member differs from the requirements of Part A of the Code. In connection with the adoption of a substantial equivalence, the Committee will normally need information on the reason why the Member was not in a position to implement the requirement in Part A of the Code, as well as (unless obvious) on the reason why the Member was satisfied that the substantial equivalence met the criteria set out in paragraph 4 of Article VI*. Therefore, substantial equivalence is not an administrative issue bur rather for the member state to decide and ensure that cannot in any way comply with according to paras 3&4, with Part A and then create national instruments compatible to that.

With regards to seafarer's recruitment and ratification; *the Committee has also noted that a number of countries rely on certification of recruitment and placement services, and in some cases appear to equate ratification of the Recruitment and Placement of Seafarers Convention, 1996 (No. 179), with the ratification and implementation of the MLC, 2006. The Committee recalls that the MLC, 2006 does not contain exactly the same provisions as Convention No. 179, particularly with respect to the requirements in paragraph 5(b) and (c)(vi) of Standard A1.4 of the MLC, 2006*.
With regards to social security the burden is always with the member state, per the Committee, in which the seafarer is ordinarily resident, under paragraph 6 of Standard A4.5 *Members also have an obligation to give consideration to the various ways in which comparable benefits will, in accordance with national law and practice, be provided to seafarers in the absence of adequate coverage in the nine branches of social security. As noted above, in accordance with paragraph 7, this can be provided in different ways, including laws or regulations, in private schemes, in collective bargaining agreements or a combination of these*[53]. This constitutes a great illustration of the high burden a member state holds.

The ILO through its special Tripartite Committee assures the well questionable criticisms as to whether there is an institutional and continuous guarantee of protection of labour standards. The ILO, has strived to produce transparency in the system and this has been illustrated in the newly dedicated website and database which contains information provided by governments in accordance with the Convention. This is a useful tool that can be used by all three, namely owners, member states and seafarers as it will ensure that national information is kept and tracked up to date. Even though the MLC 2006 can be described as a novel creation relating to both on-board and on-shore procedures, there is a lot of scope to go further.

There are various weaknesses within the Convention, as the non-inclusion of abandoned seafarers; however the uneven application of standards within the various different states is aimed to be tackled by the MLC 2006, producing maritime safety culture, strengthening the human element and by limiting the existence of complaints from trade unions of adverse labour conditions. However, there is a still a huge scope for improvements with regards to enforcement. In 2016, the ILO will arrange a new STC, which will be the second, emphasising on the financial amendments. This need has been

[53] http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_248905.pdf

created at the MLC 2006 meeting this June, where the ILO has held the 104 Observation's meeting[54], where the various problems have been raised. For example, as also illustrated in this paper, some states do not yet have representative organizations to assist in national implementation, therefore the question lies as to which body needs to be in charge, would this need to be a government or a special union. This has tried to be dealt with by the ILO, through the establishment of the Tripartite Committee in 2014, via XIII Article and in consultation with Article VII, with both opposing bodies; namely the seafarers and the ship owners. The Committee's Observations varied, as they tried to find ways to avoid that, through national reports and mandating states to implementing various measures, via the examples provided by the DMLC (Declaration of maritime labour compliance), which have been relied by some governments. However, various difficulties have been created on this, as to the sufficiency of information for the purposes of national reports. This is being embraced on the fact that Part I[55], only lists references and titles of implementation and sometimes embracing wrong or false information. A further illustration has been the fact that it fails to address all areas of MLC, with regards to which countries should ratify. Finally, it restricts partial application of national law, when concerns seafarers and an exclusion is only being allowed if there is no clear "seafarer" or "ship" definition, or doubts of the definition, or provisions in relevant legislation is not being covered by the MLC. Therefore, all draws down to the definitions but what will the outcome be if no clear definition is in existence, is still questionable.

Hence, even though the MLC 2006, is enforced and embraced by a huge number of states, and enforced by the various Memorandums of Understanding (i.e. Paris MOU) and Port State Control(i.e. a factor ensuring enforcement and contributing to the avoidance of "more favourable treatment"), there are also quite a substantial amount of situations where is proved to be problematic. These regard the body of adoption in few states, where not being in existence producing great confusion. Then the ambiguity emanating from the definition, as to who can constitute a seafarer and especially an owner, since it implies a definition of an owner, instead of the company (which is one of the most important elements, as owners are rarely been disclosed or can be substituted by someone else, namely an agent; Standard A.2.1)[56]. The great question mark as to whether human rights are being covered since no clear non-implied reference is being made to them and finally the hardship created by inspections since there is a long way that one needs to go in order to substantially understand the inspection regime. According to Regulation 2.8, if during an inspection a deficiency is being drawn to the attention of the inspector, then a proposal should be put forward by a government to act in a specific way. As a result there is a great scope for an improvement of the MLC 2006, such as on Regulations 5&4 which refer to financial security, and also to create an easier non-overriding uniform Code that will lie standards, within seafarer employment contracts, which will be more member – state, ship owner and seafarer - friendly, by keeping the balance since at the end of the day, it all lies down to national law implementation.

[54] International Labour Conference, 104th Session, 2015, Application of International Labour Standards 2015 (I) / (II) – Geneva; Provisional Record 104th Session, Geneva, June 2015

[55] International Labour Conference, 104th Session, 2015, Application of International Labour Standards 2015 (I) / (II) – Geneva; Provisional Record 104th Session, Geneva, June 2015

[56] International Labour Conference, 104th Session, 2015, Application of International Labour Standards 2015 (I) / (II) – Geneva; Provisional Record 104th Session, Geneva, June 2015

There is a need for a creation of a penalty system. An example which can be proved effective is through mandating countries to issue certificates. This can take the method of withdrawing the right of a member state to issue the required certificates and putting it on a black list. A way to strengthen this is through the IMO in order to enforce and strengthen the Convention's power, should assign to a reputable entity, i.e. a Classification Society, the duty to check that the same standards and strictness are applied in all member states. Moreover, an important study held by the ITF in September 2014, which should further be enhanced by the IMO, is the production of chart illustrating the black list of countries, (perhaps companies or vessels) that do not comply with the requirements of the Convention in order to prevent any unfounded attempts by member states to prevent certain ships, carrying flags of certain states, from entering their ports. However, this can be seen as an early stage for the MLC to have illustrative, substantial results, which can be used as a model regarding the application of the MLC of the ratifying members. These have been the numerous ways by which the industry has tried to go around this.

Finally, this draws our attention to the fact that there is a great confusion over the lines of responsibility in the MLC 2006, which can disrupt its implementation as ship manager's request for more legal clarity with regards to the definitional sections. In respect of ship managers, the problematic definition is what constitutes an owner. An illustrative example is when in fact the ship owner employs a third-party manager, in most cases the ship manager will be the ISM Document of Compliance (DOC)[57] holder, which causes problems as certain ship managers are unwilling to be identified as the MLC ship owner. Ship managers argue differently, for example some stated that "We fail to understand how anybody can consider how a service provider, such as a third-party manager, can come under the definition of MLC ship owner.

On the other hand, there is the opposing view, which supports the fact that there is no ambiguity in the definition," said V.Ships group director Matt Dunlop. The International Labour Organisation's definition makes it clear that *the owner of the vessel cannot escape from his or her obligations under MLC*[58]. The ILO has provided complementary services *aid*. Mr Dunlop said IACS' guidance that the ship owner under MLC should be the entity that holds the ISM DoC had only added to the confusion. "This is clearly incorrect under the definition and imposes great financial responsibilities on the third-party manager that the ILO originally intended for the true ship owner[59]," he said.
Ship owner are of the view that inconsistency in interpretation infects them. Some flag states insist that the DoC holder is the ship owner; others indicate that the DoC holder and the registered ship owner might be jointly named on the certificate, International Maritime Employers' Council chief executive Giles Heimann said. "These challenges are primarily caused by the requirements of the ISM Code vis-à-vis those of the MLC as there are different roles and responsibilities encompassed by the two conventions," he said. "Ultimately the interpretation and definition of ship owner will be down to individual flag-state legislation; however, this interpretation does vary." "The owner of the vessel, if declared as the MLC ship owner, may delegate part of the responsibilities to the ISM DoC holder but remain generally responsible for this part also," he said.
"However, in my view, as confirmed by ILO guidance, it would appear that the intention of the MLC is to have one entity assume the responsibility of ship owner regarding seafarer living and working conditions. This entity can be the ship owner itself or the ship manager, but not both[60]*."*

It is obvious that there are challenged for flag State implementation of the MLC 2006, the MLC 2006 is to establish the universal level playing field of employment standards for seafarers, engaging the ILO concept of 'Decent Work'. Important matters covered include the *obligations of employers on contractual arrangements with seafarers, inaccuracy of manning agencies, health and safety, work hour limits, crew accommodation, catering standards and seafarers' welfare.* This is not a mandatory global legislative document, but rather a Convention, awaiting for ratifying members to *shape* it

[57] http://www.imo.org/blast/mainframe.asp?topic_id=478
[58] http://www.blankrome.com/index.cfm?contentID=31&itemID=2850
[59] http://www.blankrome.com/index.cfm?contentID=31&itemID=2850
[60] http://www.blankrome.com/index.cfm?contentID=31&itemID=2850

within their national laws, it is still a strong *shield* for seafarers to invoke upon. The paper points out that the MLC, 2006 is an inclusive code that covers varied issues and a wider range of both ships and seafarers than previous Conventions. It often demands the great collaboration of the nation state in order to be legally enforced, namely through port state control authorities. Apart from the slow pace of ratification, the MLC has tried to minimise the gap between the demands of the trade unions and the questioned of the strict regulation as claimed by owners and managers.

VII. Conclusion

In conclusion, there is uncertainty as to how a balance can be produced between competing economic and financial concepts and activities and the particular rights and needs of various stakeholders in those activities. There is still an imbalance between profit making or the economic efficiency and the universally supported rights for better than minimum working conditions of the crews of ships. This has been identified by, and to some extent tackled by the MLC 2006. Now, however, there is a lack of an effective regulation of international labour markets, despite the MLC 2006. Countries continue to compete to provide the lightest regulatory (at the lowest cost) producing confusion for both owners and the crew and more difficult problems for deprived crews if they need to seek legal redress or help.

In recent macroeconomic history, countries were less willing to work towards competitive markets but rather through "state planning and management of the economy". This phenomenon has changed during the 21st century, after the emergence and support of privatisation, liberalisation, etc. Whish and Bailey state that, a useful way for one to stress the importance of competition, is through a comparative analysis between the results emanating from competition and of market monopoly.
The systems of flag of convenience and open registers have therefore facilitated international integration because they have proved to be very profitable for both the vessels' owners using them and the states with lax registration procedures. This has in turn raised some very difficult issues as regards how to hold these ships and ship owners accountable. Given that it is the flag state that is responsible for regulating the ship, it is uncertain how the state of origin of the ship owner or the state supplying labour to the ship may be able to impose mandatory policies on ship owners that will promote and protect the welfare of affected stakeholders in addition to protecting the interests of the shareholders in a healthy competitive market. The notion of open registers in maritime law also continues to raise many general, wide-ranging questions as regards scope and extent of corporate social responsibility because many of the popular flag states such as Panama and Liberia have been found to have lax controls.

Failure to enforce is often excused due to the need for a central regulatory agency to harmonise efficiency in a cost efficient way.
There is a call for reform for enforcing a better balance. If such a balance is not produced maybe there will be a rise (as in the corporate field) of stakeholder activism. This movement is having a major influence on transnational boards in USA, Canada and Australia. MLC 2006, might have created a way forward but it has still a long way to go, in order to create a platform for advancing, monitoring and maintaining increasingly better work and welfare conditions for sips' crews. The mere existence of the various efforts of these UN specialised body, trade unions and owners' concerns provide indications of a widening emphasis for regulatory implementation.