

The 2006 ILO Maritime Labor Convention: Prospects for Philippine Ratification

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I. INTRODUCTION

Much has been said about the Philippines being the crewing capital of the world. Out of an estimated 1.2 million merchant sailors in the world, 22% or 261,614 are Filipinos.¹ In 2009, these overseas Filipino seafarers wired home a total of \$3.4 billion, up \$366 million or 12.06% from \$3.034 billion in 2008.² Such growth in remittances was three times faster than the 4.15% increase in cash sent home by land-based Overseas Filipino Workers (OFWs).³

Given the vast Philippine coastline (twice the size of the United States and nearly three times more than China), Filipinos have natural maritime instincts that place them at an advantage over other nationalities. Foreign shipowners are known to prefer Filipino seafarers for equally important qualities: dedication and discipline, industry, flexibility, loyalty, English language fluency, adaptability, positive work attitude, law-abiding, and problem-solving capability.⁴

These same reasons that lead to the hiring of Filipino seafarers can, however, form the backdrop for their exploitation. As Filipinos are flexible, they are subjected to excessive working hours or are ill-treated. As they are hardworking, shipowners refuse to admit responsibility over seafarers'

1. Philippines Overseas Employment Administration (POEA), Deployment of OFWs by Type of Hiring, 2008-2007, *available at* http://www.poea.gov.ph/stats/2008_stats.pdf (last accessed May 22, 2010).

2. Inquirer Global Nation, Filipino Sailors' Remittances up 12% to \$366M, Feb. 28, 2010, *available at* <http://globalnation.inquirer.net/news/breakingnews/view/20100228-255830/Filipino-sailors-remittances-up-12-to-366M> (last accessed May 22, 2010).

3. *Id.*

4. Marine Buzz, 14 Reasons Why Ship Owners Prefer Filipino Seafarers and How They Exploit Them, Oct. 30, 2008, *available at* <http://www.marinebuzz.com/2008/10/30/14-reasons-why-ship-owners-prefer-filipino-seafarers-and-how-they-exploit-them/> (last accessed May 22, 2010).

injuries. As Filipinos are loyal, they fall prey to contract substitution and underpayment of wages and other benefits.⁵

Also, Filipino seafarers are not immune from maritime disasters. In January 1998, the Cypriot bulk carrier *The Flare* sank off the coast of Newfoundland, killing 16 Filipinos.⁶ Eleven months later, the Panamanian cargo ship *Pixy Marjo* disappeared in the Taiwan Strait, along with 19 Filipino seafarers on board.⁷ Between November 1998 to 2001, the International Transport Workers' Federation (ITF)-Philippines recorded 367 casualties among Filipino seafarers. A year later, the number of cases nearly doubled.⁸

On the domestic shipping front, the question of maritime crew and passenger safety surrounds regulation of over 7,118 Philippine-registered vessels. When the wooden-hulled *Catalyn B* sank at the mouth of Manila Bay on Christmas Eve 2009, 27 people went missing and lax enforcement of regulations was brought to the fore.⁹ Alongside a clamor for tighter rules and tougher monitoring, a litany of disasters and bitter name recalls resurfaced — the *Doña Paz*, *Princess of the Stars*, the *Anahanda*, and *Doña Marilyn*.¹⁰

Approaching the dawn of the 21st century, the two men at the helm of government's labor standards and migration management programs considered it imperative to solidify mechanisms that ensure deployment of only competent and qualified Filipino seafarers; to assure the international community of the Philippines' commitment to abide by global standards; and to have specific laws and policies that facilitate the application of international standards to domestic vessels.¹¹

5. *Id.*

6. Alecks P. Pabico, Filipino Seamen Take Their Chances in the World's "Sweatships," July 14-15, 2003, available at <http://www.pcij.org/stories/2003/seafarers2.html> (last accessed May 22, 2010).

7. *Id.*

8. *Id.*

9. Evelyn Macairan & Arnell Ozaeta, 4 dead, 23 missing in sea collision, PHIL. STAR, Dec. 25, 2009, available at <http://www.philstar.com/Article.aspx?articleid=535594> (last accessed May 22, 2010).

10. Marrah Erika Lesaba, Six Dead, 46 Missing as Another Ferry Sinks, INQUIRER.NET, Dec. 27, 2009, available at <http://newsinfo.inquirer.net/breakingnews/regions/view/20091227-244118/Another-ferry-sinks-off-Batangas-25-missing> (last accessed May 22, 2010).

11. Keynote Address of Department of Labor and Employment (DOLE) Secretary Leonardo A. Quisumbing and Opening Remarks by POEA Administrator Felicisimo O. Josen Jr., Proceedings of the National Seminar-Workshop on International Maritime Standards (Feb. 20-21, 1997), at 30-35.

“Global and international standards” generally refer to minimum requirements established by the International Maritime Organization (IMO) and the International Labor Organization (ILO). The International Maritime Organization, a specialized agency of the United Nations (UN) with 169 Member States, is tasked to develop and maintain a comprehensive regulatory framework for shipping, which includes safety, environmental concerns, legal matters, technical cooperation, maritime security, and the efficiency of shipping.¹²

The ILO, created under the Treaty of Versailles in 1919,¹³ is a specialized agency of the UN system which pursues social justice and promotes decent work for men and women everywhere regardless of their race, sex, gender, or social origin. The ILO pursues this aim by a combination of standard-setting, technical cooperation, and sharing of information.¹⁴

One of the ILO’s oldest and most important functions is the adoption of the tripartite International Labor Conference of Conventions and Recommendations which set international labor standards (ILS). These ILS are universal reference points marking levels of achievement in economic and social development. They lay out basic principles, articulate rights and duties of employers and workers, establish policy objectives, outline areas of action, or provide guidance on means and procedures to be employed.¹⁵

Conventions set out the minimum standards that were subject to extensive negotiations and resulting agreement between the ILO governments, employers’ and workers’ organizations from the Member States. Recommendations provide more specific guidance for national law and practice, as well as for international advocacy.¹⁶

The ILO has since adopted more than 180 Conventions and 190 Recommendations covering all aspects of the world of work.¹⁷ Since 1919, it was decided that special questions relating to seafarers should be considered

12. International Maritime Organization, Introduction to IMO, *available at* <http://www.imo.org> (last accessed May 22, 2010).

13. Treaty of Peace between the Allied and Associated Powers and Germany, June 18, 1919, part XIII, L.N.T.S. No. 34 [hereinafter Treaty of Versailles].

14. INTERNATIONAL LABOR ORGANIZATION, INTERNATIONAL LABOR STANDARDS ON MIGRANT WORKERS’ RIGHTS 41 (2008 ed.).

15. *Id.* at 43.

16. *Id.*

17. See ILOLEX: Database of International Labour Standards, List of Conventions *available at* <http://www.ilo.org/ilolex/english/convdisp1.htm> (last accessed May 22, 2010); *see also* ILOLEX: Database of International Labour Standards, List of Recommendations, *available at* <http://www.ilo.org/ilolex/english/recdisp1.htm> (last accessed May 22, 2010).

by special maritime sessions of the ILC devoted exclusively to them. The first session of the Maritime Session of the ILC took place in 1920. Between 1920 and 1996, a total of 39 Conventions, 29 Recommendations, and one Protocol concerning seafarers have been adopted.

In 2006, the ILC approved a single, coherent instrument embodying all up-to-date standards of existing international maritime Conventions and Recommendations, as well as fundamental principles to be found in other international labor conventions. The so-called Consolidated Maritime Labor Convention (MLC)¹⁸ contains a comprehensive set of global standards, based on those that are already found in 68 maritime labor instruments.

The MLC modernizes such standards to: (a) set minimum requirements for seafarers to work on a ship; (b) address conditions of employment, accommodation, recreational facilities, food and catering, health protection, medical care, welfare and social security protection; (c) promote compliance by operators and owners of ships by giving governments sufficient flexibility to implement its requirements in a manner best adapted to their individual laws and practices; and (d) strengthen enforcement mechanisms at all levels, including provisions for complaint procedures available to seafarers, shipowners' supervision of conditions on their ships, the flag States' jurisdiction and control over their ships, and port State inspections of foreign ships.

This Article aims to look into the MLC and discuss prospects for Philippine ratification. Chapter I shall give a general introduction on policy emergence, structure, and enforcement mechanisms of the ILO. Chapters II and III shall provide a discussion on the MLC: its development, nature, and salient features. Chapter IV shall provide a survey of Philippine laws and regulations that reveal compliances, gaps, and issues with regard to possible MLC application. Chapter V shall outline suggested solutions to address such MLC gaps and issues. Chapter VI shall raise the possibility of a route map for future action.

II. THE INTERNATIONAL LABOR ORGANIZATION (ILO)

A. Policy Emergence

The ILO was established in 1919 by Part XIII of the Treaty of Versailles,¹⁹ which contained a labor charter and the ILO Constitution. There were several attempts to regulate conditions of labor by international agreement,

18. Maritime Labour Convention, 2006, International Labor Conference of the International Labour Organization, Feb. 22, 2006 [hereinafter MLC 2006].

19. Treaty of Versailles, part XIII.

but the idea of doing so through a permanent international organization evolved during the period of the First World War.²⁰

There were four motivations behind the formation of the ILO. The initial motivation was humanitarian. The condition of workers, more numerous and exploited with no consideration for their health, their family lives and their advancement, was less acceptable. The second motivation was political. Without an improvement in their condition, the workers, whose numbers were ever increasing as a result of industrialization, would create social unrest, even revolution. The third motivation was economic. Because of the effect of adopting social reform on the cost of production, any industry or country would find itself at a disadvantage vis-à-vis its competitors. The final motivation was world peace.²¹

The original mandate of the ILO was confined to improvement of labor conditions. The “Labor Charter” in the Treaty of Versailles listed nine principles to guide the social policy of the members of the then League of Nations. These included the declaration that labor is not a commodity, the principles of right of association, adequate wage to maintain a reasonable standard of living, equal pay for equal work, eight-hour work days and 48-hour work weeks, a weekly day of rest for at least 24 hours, the abolition of child labor, fair treatment of workers, and a system to ensure enforcement of labor laws.²²

In 1944, at the 26th Session of the ILO Conference in Philadelphia, the “Declaration of Philadelphia” was adopted to join the “new world order,” i.e., the establishment of the UN and the Bretton Woods institutions²³ that defined post-war political and economic systems. The Declaration of Philadelphia emphasized the role of economic and social policies, as opposed to pure labor legislation, for attaining social objectives.²⁴ All national policies of Member States should be systematically directed towards the aims and purposes contained in the Declaration.²⁵ For the 21st century, the ILO has developed a Decent Work Agenda with four strategic objectives:

20. See EBERE OSIEKE, CONSTITUTIONAL LAW AND PRACTICE IN THE INTERNATIONAL LABOUR ORGANIZATION 4 (1985).

21. International Labour Organization, Origins and History, available at http://www.ilo.org/global/About_the_ILO/Origins_and_history/lang--en/index.htm (last accessed May 22, 2010).

22. Eddy Lee, *The Declaration of Philadelphia: Retrospect and Prospect*, 133 INT'L. LAB. REV. 467, 468 (1994).

23. Namely, the International Monetary Fund (IMF), the General Agreement on Tariffs and Trade (GATT), and the World Bank.

24. Lee, *supra* note 22, at 468.

25. *Id.* at 471.

- (1) fundamental principles and rights at work and international labour standards;
- (2) employment and income opportunities;
- (3) social protection and social security; and
- (4) social dialogue and tripartism.²⁶

In June 2009, the ILC approved the Global Jobs Pact, which is a set of balanced and realistic policy measures that countries, with the support of regional and multilateral institutions, can adopt to ease the impact of the global financial crisis and accelerate recovery in employment. The Pact calls on Member States to put decent work opportunities at the core of their crisis responses. It addresses the social impact of the global crisis on employment and proposes job-centered policies for countries to adapt according to their national needs.²⁷

*B. Structure*²⁸

The ILO accomplishes its work through three main bodies, all of which encompass its unique feature — a tripartite framework involving three social partners (i.e., government, employers, and workers).

1. International Labour Conference (ILC)

The Member States of the ILO meet at the ILC in June of every year, in Geneva, Switzerland. Each Member State is represented by two government delegates, an employer delegate, and a worker delegate. They are accompanied by technical advisors who are generally cabinet ministers responsible for labor affairs in the Member State.

It is the ILC that establishes and adopts international labor standards. It acts as a forum where social and labor questions of importance to the world are discussed. The ILC also adopts the budget of the ILO and elects the Governing Body.

26. International Labour Organization, *Decent Work for All*, available at http://www.ilo.org/global/About_the_ILO/Mainpillars/WhatisDecentWork/lang--en/index.htm (last accessed May 22, 2010).

27. International Labour Organization, *Global Jobs Pact*, available at <http://www.ilo.org/jobspact/about/lang--en/index.htm> (last accessed May 22, 2010).

28. See International Labour Organization, *Structure and Programs*, available at http://www.ilo.org/global/Departments___Offices/lang--en/index.htm (last accessed May 22, 2010).

2. Governing Body (GB)

The GB is the executive arm of the ILO and makes decisions on the implementation of ILO policies and programs. There are 14 employer members and 14 worker members who convene three times annually. Ten of the government seats are held by major industrialized countries. The remaining members are elected for three years by governments, workers, and employers, respectively, taking regional distribution into account. The employers and workers elect their own representatives.

3. International Labour Office

The Office is the permanent secretariat of the ILO and focal point for the overall activities that it prepares under the scrutiny of the GB and under the leadership of a Director-General, who is elected for a five-year renewable term. The Office also constitutes a research and documentation center and a printing house that issues a broad range of specialized issues, reports, and periodicals.

4. Regional Structure

There is an intensive regional structure to serve as direct contact with governments, employees, and workers' organizations. For Asia, the Regional Office is located in Bangkok, Thailand, with country offices spread all over the continent, including the Philippines.

C. Enforcement Mechanisms

ILO enforcement mechanisms entail non-contentious and contentious procedures in relation to its standards-setting functions.²⁹

1. Non-contentious procedures

To this first classification belongs the normal reporting systems on ILO Conventions and Recommendations. During the interval between the 1926 and 1927 Sessions of the ILC, the GB established a Committee of Experts (COE), whose main function is to examine and evaluate the reports submitted by Member States on ratified and unratified Conventions.³⁰

The COE consists of 19 legal experts appointed in their personal capacity by the GB, on the proposal of the Director-General. The members are drawn from all parts of the world and are appointed for an initial period of three years, with the possibility of a three-year extension.³¹

29. See generally OSIEKE, *supra* note 20, at 169-235.

30. See Efren Cordova, *Some Reflections on the Overproduction of International Labour Standards*, 14 COMP. LAB. L.J., 1380, 1489-549 (1993).

31. OSIEKE, *supra* note 20, at 173.

Other functions of the COE include examining and evaluating measures taken to bring newly-adopted Conventions before competent authorities for the enactment of legislation, and the action taken by these authorities.³²

The conclusions of the COE are in the form of comments, which may either be in the form of observations or direct requests. Observations are used by the Committee to draw attention of a reporting Member to a serious or longstanding failure to comply with such Member's obligations. These observations are published in the Report of the Committee, which is sent to the ILC for consideration.³³

Direct requests are sent directly to Member States and are not published in the Report of the Committee. These are often used to obtain clarification from Members concerning their reports, or for matters of questions of a technical nature.³⁴

The famous Article 7 of the Standing Orders to the ILC at the time when the COE was established likewise mandated the ILC to appoint a Conference Committee on Application of Conventions and Recommendations to examine the reports of the COE. This Conference Committee is normally composed of government, employers' and workers' representatives who are submitted to the ILC by the COE.³⁵

There are various ancillary measures aside from recourse to the COE and the Conference Committee. *Ad hoc* surveys through a Study Group or ILO missions have sometimes been carried out in special cases. This procedure is supplemented by "quiet diplomacy" and "direct contacts."³⁶ The latter simply means that when a government encounters difficult problems in applying ratified Conventions, the Office, at the request of the government or with its consent, sends an official or an individual expert to discuss the problems with the government and help it arrive at a solution. Since its institution in 1969, this system has been highly successful and is

32. *Id.*

33. *Id.* at 174.

34. *Id.*

35. *Id.* at 175. The Conference Committee normally begins its work with a general discussion and review of a number of broad issues relating to the ratification and application of Conventions and Recommendations, and compliance by Member States in general with their constitutional obligations. The Report of the Conference Committee is submitted to the ILC, which discusses it in one or more plenary sittings. If adopted by the ILC, the Report is dispatched to governments with an indication of points which they should take into account in the preparation of future reports to the ILO.

36. Nicolas Valticos, *The Future of International Labour Standards*, 118 INT'L. LAB. REV. 679, 692 (1979).

often used by governments to resolve problems in order to avoid public criticism.³⁷

2. Contentious procedures

There are representation and complaints mechanisms prescribed by the ILO Constitution.

Under the representation procedure, any industrial association of employers or workers may call the attention of the GB to a failure on the part of a Member State to secure effective observance of any Convention to which it is a party. The GB, in turn, may communicate the representation to the government of the Member State, which may be invited to make such a statement on the subject as it may think fit.³⁸

The Standing Orders provide that when a representation is made to the International Labour Office, the Director-General should acknowledge receipt and inform the government against which it is made. He should also immediately bring the representation before the officers of the GB, who are required to report to the GB on the receivability of the representation.³⁹

After a representation has been declared receivable with regard to form, a Special Committee of the GB examines the substance of the representation. In effect, the Committee decides whether a *prima facie* case has been made out, i.e., that the facts as stated by the complaining organization would, if not contradicted, constitute a violation of the subject Convention.⁴⁰

When all the information from both parties has been received, or if no reply is received within set time limits, the Committee makes its recommendation to the GB. The GB then decides whether it accepts the government's explanations. If the GB decides in favor of the government, the procedure is closed, and the allegations and replies may be published. If the GB decides that such explanations are not satisfactory, it may decide to

37. Lee Swepston, *Human Rights Procedures of the International Labour Organization*, in GUIDE TO INTERNATIONAL HUMAN RIGHTS PRACTICE 74, 77 (1984).

38. Constitution of the International Labour Organization, art. 24 [hereinafter ILO CONST.].

39. OSIEKE, *supra* note 20, at 212. A representation is not receivable unless: (a) it is communicated to the Office in writing; (b) it emanates from an industrial association of employers or workers; (c) it makes reference to Article 24 of the ILO Constitution; (d) it concerns a Member of the ILO; (e) it refers to a Convention to which the same Member State is a party; and (f) it indicates in what respect is the alleged Member has failed to secure the effective observance within its jurisdiction of the said Convention.

40. Swepston, *supra* note 37, at 81.

publish the representation and the government reply, along with the GB discussion of the case.⁴¹

The questions raised in the representation are normally followed up by the regular supervisory machinery, namely the COE and the Conference Committee on the Application of Conventions and Recommendations. Even if the GB is satisfied, these committees may raise questions that they feel require further examination.⁴²

Under the complaints procedure, an obligation of a Member State under a ratified Convention is also the focus of concern. Article 26 of the ILO Constitution states that a complaint may be filed by governments, ILC delegates, and the GB on its own motion. There are no formal requirements as to form and language.

When the GB begins to consider a complaint, it forwards the same to the concerned government for its comments. The GB then normally establishes a Commission of Inquiry to investigate.⁴³

Once the accumulation of evidence is complete, the Commission arrives at a conclusion and makes recommendations to the parties. A report embodying its findings and proper recommendations is prepared and communicated to the GB and published in the Official Bulletin of the ILO. A recommendation, for instance, may suggest changes in national legislation or practical measures to give effect to a Convention's provisions. A recommendation may even address broader questions, such as the necessity of ending a state of emergency in order to promote civil liberties.⁴⁴

In most cases, the COE and Conference Committee on the Application of Conventions and Recommendations will continue to examine the application of the Convention, with reference to the findings of the Commission of Inquiry.⁴⁵

Government-parties shall, within three months, inform the Director-General whether it accepts the recommendations contained in the report; and if not, whether it proposes to refer the complaint to the International Court of Justice.⁴⁶ If a government does not implement the recommendations within the specified time, the GB may recommend to the ILC such action as it may deem wise and expedient to secure compliance.⁴⁷

41. *Id.*

42. *Id.* at 82.

43. *Id.* at 83-84.

44. *Id.*

45. *Id.* at 84.

46. ILO CONST. art. 29 (2).

47. ILO CONST. art 33.

In addition to the representation and complaints procedures, there are Special Procedures on Freedom of Association and Special Surveys on Discrimination, which give due attention to ILO Conventions on the subjects.

III. THE ILO MARITIME LABOR CONVENTION (MLC): AN OVERVIEW

With no votes against, four abstentions, and 314 affirmative votes, delegates from more than 100 Member States to the 94th ILO International Labor Conference adopted the Consolidated Maritime Labor Convention on 22 February 2006.

“We have made maritime labor history today,” declared ILO Director-General Juan Somavia. He referred to the MLC as a Convention that spans continents and oceans, providing a comprehensive labor charter for seafarers and “addressing the evolving realities and needs of a sector that handles 90% of the world’s trade.”⁴⁸

“We have established a socio-economic floor to global competition in the maritime sector,” said Mr. Somavia. “This initiative can also provide the impetus and support for similarly innovative and balanced approaches to addressing the need to make globalization fair in other sectors of the world of work.”⁴⁹

Hailed as a “seafarers’ bill of rights,” the Convention reflects an international tripartite consensus on agreed minimum standards to help secure conditions of decent work for workers and to also ensure fair competition among employers.⁵⁰

The MLC is also intended as a “fourth pillar” to complement three key International Maritime Organization (IMO) Conventions on ship safety and security (International Convention for the Safety of Life at Sea, 1974 (SOLAS)), crew competency (Convention on Standards of Training, Certification, and Watchkeeping for Seafarers, 1978 (STCW), as amended), and marine environmental protection (International Convention for the Prevention of Pollution from Ships, 73/78 (MARPOL 73/78)).⁵¹

It [the MLC] draws upon the practices under the IMO regulatory regime and establishes an enforcement and compliance system based on inspection

48. UN News Centre, New UN treaty guarantees merchant sailors’ labour rights in era of globalization, *available at* <http://www.un.org/apps/news/story.asp?NewsID=17584&Cr=ILO&Cr1=> (last accessed May 22, 2010).

49. *Id.*

50. Cleopatra Doumbia-Henry, Dominick Devlin & Moira L. McConnell, The Maritime Labour Convention, 2006 Consolidates Seafarers’ Labour Instruments, *available at* <http://www.asil.org/insights060913.cfm> (last accessed May 22, 2010).

51. *Id.*

and certification of labour and social conditions of seafarers, which is carried out by the authorities of the State of the flag flown by the ship concerned. This inspection is complemented by inspection that is voluntarily carried out by authorities in ports of other States visited by the ship, to ensure compliance with the requirements of the Convention ('port State control'). The various obligations at the national level for inspection and compliance, including the need to keep proper records to evidence compliance, are also intended to enhance the effectiveness of the ILO's long established and successful supervisory system based on expert review and tripartite discussion of the reports submitted by Members on the implementation of the Conventions that they have ratified.⁵²

A. Development

During the 9th Maritime Session of the ILC in 1996, several maritime labor Conventions were adopted.⁵³ From 1996 to 2001, the Governing Body's activities were primarily in support of their ratification, implementation, and promotion.⁵⁴

In January 2001, the Joint Maritime Commission (JMC) held its 29th Session. Established in 1920, the JMC is yet another manifestation of the special place of seafarers and maritime issues in the work of the ILO, particularly in the promotion of international social dialogue. The Commission, comprising of the shipowner and seafarer representatives nominated by the International Labour Conference and including the two Governing Body employer and worker representatives, is the ILO's one remaining standard industrial committee, and has played and continues to play a central role in guiding the Organization and its Governing Body on

52. *Id.*

53. These Conventions and Recommendations were as follows: Convention (No. 178) Concerning the Inspection of Seafarers' Working and Living Conditions, Oct. 22, 1996, 2108 U.N.T.S. 174 [hereinafter ILO Convention No. 178]; Convention (No. 179) Concerning the Recruitment and Placement of Seafarers, Oct. 22, 1996, 2108 U.N.T.S. 189 [hereinafter ILO Convention No. 179]; and the Convention (No. 180) Concerning Seafarers' Hours of Work and the Manning of Ships, Oct. 22, 1996, 2195 U.N.T.S. 315 [hereinafter ILO Convention No. 180].

54. Other noteworthy activities included the holding of a joint IMO/ILO Working Group to develop standardized guidelines and a format for tables and records of hours of work and rest; minimum wage setting through a JMC Subcommittee and Working Group on Wages of Seafarers; Governing Body-authorized publication of Guidelines for Conducting Pre-Sea and Periodic Medical Fitness Examinations for Seafarers; and the holding of a Joint IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers.

the development of standards and improving social dialogue in the maritime labor sector.⁵⁵

In the 29th Session of the JMC, a report from the Working Party on Policy regarding the Revision of Standards (under the auspices of the Governing Body) recommended the development of a maritime “decent work” Convention. Consequently, the JMC passed a resolution concerning the review of relevant ILO maritime instruments.

Also, the JMC issued a report with a request to convene a Preparatory Technical Maritime Conference in 2004 and a Maritime Session of the ILC in 2005 to adopt the proposed new instrument consolidating the existing ILO maritime instruments. The resolution and report were approved by the Governing Body in March 2001, with a decision to establish a High-Level Tripartite Working Group that will commence the review process.

In March 2003, a report by the International Labour Office and High-Level Tripartite Working Group on the key features of the proposed consolidated Convention, with emphasis on improvements on the ILO supervisory system, was considered by the Governing Body in its 286th Session. The Governing Body decided to convene a Preparatory Technical Maritime Conference (PTMC) to prepare the first draft of the new Convention on the basis of the draft by the High-Level Tripartite Working Group.

The PTMC was held in September 2004, but did not have sufficient time to reach agreement on all provisions of the future consolidated Convention. Hence, in November 2004, the Governing Body endorsed arrangements to have intersessional meetings to address unresolved issues and outstanding proposals for amendments to the draft Convention. The work of the PTMC was then scheduled by the Governing Body for consideration by the ILC in February 2006.

The draft Convention was adopted by the 94th (Maritime) Session of the ILC, in February 2006. At the same time, the ILC adopted 17 Resolutions that aid implementation of the MLC, covering *inter alia* matters on MLC promotion, opportunities for women seafarers, development of guidelines for port State control, development of guidelines for flag State inspection, development of international standards of medical fitness for crew

55. REPORT OF THE CHAIRPERSON OF THE GOVERNING BODY TO THE 94TH (MARITIME) SESSION OF THE INTERNATIONAL LABOUR CONFERENCE 3 (2006). The summary of MLC historical development in this Article was sourced from this document.

members and other seafarers, effects on the industry of piracy and armed robbery, search and rescue capability, and social security.⁵⁶

B. Nature

The MLC consolidates 68 maritime labor instruments (Conventions and Recommendations) adopted by the ILO since 1920.⁵⁷ There are certain

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56. The resolutions shall hereinafter be individually referred to as “MLC Res. No. [number].”
57. The consolidated Conventions are as follows: Convention (No. 7) Fixing the Minimum Age for Admission of Children to Employment at Sea, July 9, 1920, 38 U.N.T.S. 109; Convention (No. 8) Concerning Unemployment Indemnity in Case of Loss or Foundering of the Ship, July 9, 1920, 38 U.N.T.S. 119; Convention (No. 9) for Establishing Facilities for Finding Employment for Seamen, July 10, 1920, 38 U.N.T.S. 129; Convention (No. 16) Concerning the Compulsory Medical Examination of Children and Young Persons Employed at Sea, Nov. 11, 1921, 38 U.N.T.S. 217; Convention (No. 22) Concerning Seamen’s Articles of Agreement, June 25, 1926, 38 U.N.T.S. 295; Convention (No. 23) Concerning the Repatriation of Seamen, June 23, 1926, 38 U.N.T.S. 315 [hereinafter ILO Convention No. 23]; Convention (No. 53) Concerning the Minimum Requirement of Professional Capacity for Masters and Officers on Board Merchant Ships, Oct. 24, 1936, 40 U.N.T.S. 153 [hereinafter ILO Convention No. 53]; Convention (No. 55) Concerning the Liability of the Shipowner in Case of Sickness, Injury or Death of Seamen, Oct. 24, 1936, 40 U.N.T.S. 169; Convention (No. 56) Concerning Sickness Insurance for Seamen, Oct. 24, 1936, 40 U.N.T.S. 187; Convention (No. 58) Concerning Fixing the Minimum Age for the Admission of Children to Employment at Sea (Revised), Oct. 24, 1936, 40 U.N.T.S. 205; Convention (No. 68) Concerning Food and Catering for Crews on Board Ship, June 27, 1946, 264 U.N.T.S. 163; Convention (No. 69) Concerning the Certification of Ships’ Cooks, June 27, 1946, 164 U.N.T.S. 37; Convention (No. 73) Concerning the Medical Examination of Seafarers, June 24, 1946, 214 U.N.T.S. 233; Convention (No. 74) Concerning the Certification of Able Seamen, June 29, 1946, 94 U.N.T.S. 11; Convention (No. 91) Concerning Vacation Holidays with Pay for Seafarers (Revised), June 18, 1949, 605 U.N.T.S. 295; Convention (No. 92) Concerning Crew Accommodation on Board Ship (Revised), June 18, 1949, 160 U.N.T.S. 223; Convention (No. 133) Concerning Crew Accommodation on Board Ship (Supplementary Provisions), Oct. 30, 1970, 1650 U.N.T.S. 361; Convention (No. 134) Concerning the Prevention of Occupational Accidents to Seafarers, Oct. 30, 1970, 859 U.N.T.S. 95; Convention (No. 145) Concerning Continuity of Employment of Seafarers, Oct. 28, 1976, 1136 U.N.T.S. 91; Convention (No. 146) Concerning Annual Leave with Pay for Seafarers, Oct. 29, 1976, 1138 U.N.T.S. 205; Convention (No. 147) Concerning Minimum Standards in Merchant Ships, Oct. 29, 1976, 1259 U.N.T.S. 335 [hereinafter ILO Convention No. 147]; Protocol of 1996 to the Merchant Shipping (Minimum Standards) Convention, 1976, Oct. 22, 1996; Convention (No. 163) Concerning Seafarers’ Welfare at Sea and in Port, Nov. 23, 1989, 1580

Conventions, however, that were not included, i.e., the Seafarers Identity Documents (Revised) Convention, 2003 (No. 185), the Seafarers' Pension Convention, 1946 (No. 71), and the Minimum Age (Trimmers and Stokers) Convention, 1921 (No. 15).

The MLC is not just meant to consolidate such existing maritime labor standards and to bring clarity and coherence into various texts, but also

to meet the serious concerns expressed by both seafarer and shipowner communities, and later endorsed by Governments, that the existing instruments were losing relevance. Their substance was of good quality, but they were unevenly applied and enforced and often were not widely ratified. Moreover, the existing procedures for the revision of international labour Conventions have not allowed the technical aspects to be rapidly updated so as to meet modern conditions in the industry. From a broader systemic perspective the underlying concern was that, with the increasing level of regulation in other aspects of shipping operations and increased international competition, labour would be the one remaining area for cutting costs.⁵⁸

Director-General Somavia noted the following factors necessary to further develop a globally fair maritime industry:

- (1) The necessary balance between labor standards and regulations needed in the sector with the promotion of productivity and competitiveness;
- (2) A first major comprehensive set of global labor standards to be adopted without opposition from any of the tripartite stakeholders;
- (3) Common sense and viable measures for enforcement; and
- (4) The importance of human capacity, intelligence and political will in finding balanced solutions.⁵⁹

Integral to these factors is a strong measure of national accountability. Indeed, each Member State shall exercise jurisdiction and control over ships

U.N.T.S. 161; Convention (No. 164) Concerning Health Protection and Medical Care for Seafarers, Oct. 8, 1987, 1529 U.N.T.S. 13; Convention (No. 165) Concerning Social Security Seafarers (Revised), Oct. 9, 1987, 1690 U.N.T.S. 437; Convention (No. 166) Concerning the Repatriation of Seafarers (Revised), Oct. 9, 1987, 1644 U.N.T.S. 311; ILO Convention No. 178; ILO Convention No. 179; and ILO Convention No. 180.

58. Doumbia-Henry, et al., *supra* note 50.

59. Juan Somavia, A New "Bill of Rights" for the Maritime Sector: A Model for Fair Globalization, available at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_088127.pdf (last accessed May 22, 2010).

that fly its flag⁶⁰ by establishing a system for ensuring compliance with MLC requirements, including inspections, reporting, monitoring, and legal proceedings under applicable laws.⁶¹

A “hierarchy of norms”⁶² has been instituted to reflect the broad tripartite consensus and collective political will embodied under the MLC. The “Explanatory Note” that follows the primary text of the Convention asserts that the MLC is composed of three parts: the Articles, the Regulations, and the Code.⁶³

On the one hand, the Articles and Regulations set out the core rights and principles and the basic obligations of Member States ratifying the Convention. On the other hand, the Code contains details of implementation of the Regulations and allows a considerable degree of flexibility in the way Member States implement those rights and principles. The Code is divided into two parts: Part A (mandatory standards) and Part B (non-mandatory Guidelines).⁶⁴

Each Member State undertakes to respect the rights and principles set out in Part A, unless allowed room for flexibility under the MLC. And while the substantive provisions of Part B (Guidelines) are non-mandatory, there is the requirement for the Member State to give due consideration to implementing its responsibilities in the manner provided for in Part B.⁶⁵ Needless to state, adoption of a Guideline as a law, policy, or regulation of a Member State has one practical advantage — the ILO shall consider such a law, policy, or regulation as compliance with the MLC.

According to the Explanatory Note, there are two main areas of flexibility: one is the possibility for a Member, where necessary, to give effect to the detailed requirements of Part A of the Code through substantial equivalence. Any law, regulation, collective agreement, or other implementing measure shall be considered to be substantially equivalent if the Member State satisfies itself that (1) it is “conducive to the full

60. For purposes of brevity, the general sense of the phrases “ships that fly its flag” or “ships that fly the flag of the Member” shall hereinafter be referred to as “flag ships.”

61. MLC 2006, art. V, ¶ 2.

62. Doumbia-Henry, et al., *supra* note 50.

63. MLC 2006, Explanatory Note, ¶ 2.

64. *Id.*, Explanatory Note, ¶¶ 3, 4 & 7.

65. *Id.* art. VI (2). Note the mandatory language (“shall”) in the Regulations and part A (Standards) of the Code, and the non-mandatory tenor (“should”) in part B (Guidelines). For purposes of the discussion on salient MLC features (Chapter III) in this Article, paragraphs or statements that mention “The Guideline ...” or “Due consideration should be given to ...” pertain to the non-mandatory standards.

achievement of the general object and purpose” of the provisions of Part A; and (2) it “gives effect” to the provisions of Part A.⁶⁶

It is important to note that the option of substantial equivalence applies to the Regulation and the Code, except Title 5 on Compliance and Enforcement.⁶⁷

The other area of flexibility is provided by formulating the mandatory requirements of many provisions in Part A in a more general way, thus leaving a wider scope for discretion as to the precise action to be provided for at the national level.⁶⁸

Alongside the two aforementioned areas of flexibility, exemptions may be granted by Member States:

- (1) In general, through a decision that it would not be reasonable or practicable at a present time to apply certain details of the MLC to a ship or particular categories of ships flying the flag of the Member. The relevant provisions shall not apply to the extent that the subject matter is dealt with differently by national laws or regulations or collective bargaining agreements or other measures. Such a determination may only be made in consultation with the shipowners’ and seafarers’ organizations concerned and may only be *with respect to ships of less than 200 gross tonnage not engaged in international voyages*.⁶⁹
- (2) Specifically, certain MLC requirements leave room for possible exemptions. For instance, while sleeping accommodations on board ships are required, individual sleeping rooms may not be provided in the case of ships of less than 3,000 gross tonnage or special purpose ships, subject to consultation with shipowners’ and seafarers’ organization.⁷⁰

IV. SALIENT FEATURES OF THE MLC

A. Definition of Terms

A perusal of terms defined under Article II of the MLC discloses the stakeholders and basic elements of a globally fair maritime sector.⁷¹ First, there is the “seafarer,” which means any person who is employed or engaged or works in any capacity on board a ship to which this Convention applies.⁷²

66. *Id.* art. VI, ¶ 4.

67. *Id.* title V, Preliminary Provisions, ¶ 2.

68. MLC 2006, Explanatory Note, ¶¶ 8 & 9.

69. *Id.* art. II, ¶ 6 (emphasis supplied).

70. *Id.* title III, stand. A3.1, ¶ 9 (a).

71. Aside from Article II, other MLC provisions define certain terms, such as the Standards on Wages and Hours of work and hours of rest.

72. MLC 2006, art. II, ¶ 1 (f).

This may pertain to an “able seafarer” or one who is deemed competent to perform any duty which may be required of a rating serving the deck department, other than the duties of a supervisor or specialist rating, or who is defined as such by national laws, regulations or practice, or by collective agreement.⁷³ Also, cruise or passenger ship (hotel) personnel fall within the definition.

In the event of doubt as to whether any categories of persons are to be regarded as seafarers, the question shall be determined by the competent authority in each Member State, after consultation with the shipowners’ and seafarers’ organizations concerned with this question.⁷⁴ To assist in the clarification of such categories of persons, MLC Resolution VII enumerates the following permissive principles:

- (a) Persons who regularly spend more than short periods aboard, even where they perform tasks that are not normally regarded as maritime tasks, may still be regarded as seafarers.
- (b) Persons who principally work onshore but spend a short period on a ship may or may not be seafarers. They may be seafarers if they regularly (and not occasionally) spend such a short period, even if their work is not directly concerned with the routine business of the ship.
- (c) The following persons may not be classified as seafarers: harbor pilots, portworkers, guest entertainers, ship inspectors, superintendents, and repair technicians.
- (d) In resolving doubts about whether particular persons are seafarers, account should also be taken of the extent to which their national legal and social system provides protection for the labor standards comparable to that provided under the MLC.⁷⁵

In considering how to resolve such doubts, the following issues should be considered: (a) duration of the stay on board of the persons concerned; (b) the frequency of periods of work spent on board; (c) location of the person’s principal place of work; (d) purpose of the person’s work on board; and (e) protection that would normally be available to the persons concerned with regard to their labor and social conditions to ensure they are comparable to that provided for under the MLC.⁷⁶

Second, a “shipowner” means the owner of a ship or another organization or person, such as the manager, agent, or bareboat charterer, who has assumed the responsibility for the operation of the ship from the

73. *Id.* title 2, guideline B2.2.1, ¶ I (a).

74. *Id.* art. II, ¶ 3.

75. *Id.*

76. Resolution Concerning Information on Occupational Groups, MLC Res. No. 7 (Feb. 22, 2006).

owner and who, on assuming such responsibility, has agreed to take over the duties and responsibilities imposed on shipowners. This is regardless of whether any other organization or persons fulfill certain duties or responsibilities on behalf of the shipowner.⁷⁷

Third, “ship” means a ship other than one which navigates exclusively in inland waters or waters within, or closely adjacent to, sheltered waters or areas where port regulations apply.⁷⁸ The MLC expressly excludes ships engaged in fishing or in similar pursuits, ships of traditional build such as dhows and junks, as well as warships or naval auxiliaries.⁷⁹

In the event of doubt as to whether the MLC applies to a ship or particular category of ships, the question shall be determined by competent authorities in Member States after consultation with shipowners’ and seafarers’ organizations concerned.

Fourth, the “competent authority” means the minister, government department or other authority having power to issue and enforce regulations, orders or other instructions having the force of law in respect of the subject matter of the provision concerned.⁸⁰

Fifth, a “seafarer recruitment and placement service” means any person, company, institution, agency or other organization, in the public or the private sector, which is engaged in recruiting seafarers on behalf of shipowners or placing seafarers with shipowners.⁸¹ Recruitment and placement services ensure that ships are crewed by suitably trained seafarers who have a crucial role in achieving safe, secure, and efficient shipping on clean oceans, especially in the light of the projected shortage of suitably qualified seafarers.⁸²

Sixth, a “seafarers’ employment agreement” includes both a contract of employment and articles of agreement.⁸³

B. Core Rights and Principles

I. Fundamental Rights

77. *Id.* art. II, ¶ 1 (j).

78. MLC 2006, art. II, ¶ 1 (i).

79. *Id.* art. II, ¶ 4.

80. *Id.* art. II, ¶ 1 (a).

81. *Id.* art. II, ¶ 1 (h).

82. Resolution Concerning Recruitment and Retention of Seafarers, MLC Res. No. 11 (Feb. 22, 2006).

83. MLC 2006, art. II, ¶ 1 (g).

Member States should have provisions of law and regulations, in the context of the MLC, that respect the following fundamental rights of seafarers: (1) freedom of association and the effective recognition of the right to collective bargaining; (2) elimination of all forms of forced or compulsory labor; (3) effective abolition of child labor; and (4) elimination of discrimination in respect of employment and occupation.⁸⁴

2. Seafarers' Employment and Social Rights

The following seafarers' employment and social rights shall be fully implemented in accordance with MLC requirements:

- (1) a safe and secure workplace that complies with safety standards;
- (2) fair terms of employment;
- (3) decent working and living conditions on board ship; and
- (4) health protection, medical care, welfare measures and other forms of social protection.⁸⁵

The MLC requirements pertain to the Regulations and the Code, which are organized into general areas under the following Titles: Title 1: Minimum requirements for seafarers to work on a ship; Title 2: Conditions of employment; Title 3: Accommodation, recreational facilities, food and catering; Title 4: Health protection, medical care, welfare and social security protection; and Title 5: Compliance and enforcement.

C. Title 1: Minimum Requirements for Seafarers to Work on a Ship

1. Minimum Age

The standing rule is that employment, engagement or work on board a ship of any person under the age of 16 shall be prohibited.⁸⁶ For seafarers under the age of 18, night work shall be prohibited, subject to exceptions with regard to trainees.⁸⁷ Also, employment, engagement or work of seafarers under the age of 18 shall be prohibited where work is likely to jeopardize their health or safety.⁸⁸

84. *Id.* art. III.

85. *Id.* art. IV.

86. *Id.* stand. A1.1, ¶ 1.

87. *Id.* stand. A1.1, ¶ 2. Night work shall cover a period of at least nine hours starting no later than midnight and ending no earlier than 5 a.m.

88. *Id.* stand. A1.1, ¶ 4.

2. Medical Certificate

Seafarers shall not work on a ship unless they are certified as medically fit to perform their duties.⁸⁹ Member States shall prescribe the nature of valid medical examinations and certificates.⁹⁰

MLC requirements with respect to medical certificates include the following: (a) acceptance of the requirements of STCW; (b) issuance by a duly qualified medical practitioner or, in the case of a certificate solely concerning eyesight, by a person recognized by the competent authority as qualified to issue such a certificate; (c) particular statements on the satisfactory hearing and sight of the seafarer, and the color vision in case the seafarer is to be employed in capacities where fitness for the work to be performed is liable to be affected by defective color vision; (d) particular statement that the seafarer concerned is not suffering from any medical condition likely to be aggravated by service at sea or to render the seafarer unfit for such service or to endanger the health of other persons on board; and (e) due consideration to ILO/World Health Organization (WHO) Guidelines for Conducting Pre-Sea and Period Medical Fitness Examinations for Seafarers.⁹¹

Unless a shorter period is required by reason of the specific duties to be performed by the seafarer or is required under the STCW, a medical certificate shall be valid for a maximum period of two years. A certificate of color vision shall be valid for a maximum period of six years.⁹²

There are specific rules on urgent cases when a seafarer may work without a valid medical certificate, and on expiration of a certificate in the course of a voyage.⁹³

3. Training and Qualifications

Seafarers shall not work on a ship unless they are trained or certified as competent or otherwise qualified to perform their duties.⁹⁴ Specifically, seafarers must have successfully completed training for personal safety on board ship.⁹⁵ Training and certification in accordance with mandatory IMO instruments shall be considered as compliance with the above-stated MLC requirements.⁹⁶

89. MLC 2006, reg. 1.2, ¶ 1.

90. *Id.* stand. A1.2, ¶ 2.

91. *Id.* stand. A1.2, ¶ 2, 6; guideline B1.2, ¶ 1.

92. *Id.* stand. A1.2, ¶ 7.

93. *Id.* stand. A1.2, ¶¶ 8 & 9.

94. *Id.* reg. 1.3, ¶ 1.

95. MLC 2006, reg. 1.3, ¶ 2.

96. *Id.* reg. 1.3, ¶ 3.

4. Recruitment and Placement

There should be access to an efficient, adequate and accountable system for finding employment on board ship without charge to the seafarer.⁹⁷ Hence, private recruitment and placement services within a Member State's territory shall be operated only in conformity with a standardized system of licensing or certification or other form of regulation.⁹⁸

At a minimum, the standard system of licensing or certification must:

- (a) Prohibit seafarer recruitment and placement services from using means, mechanisms, or lists intended to prevent or deter seafarers from gaining employment for which they are qualified;⁹⁹
- (b) Require that no fees or other charges for seafarer recruitment or placement or for providing employment to seafarers are borne directly or indirectly, in whole or in part, by the seafarer;¹⁰⁰
- (c) Ensure that seafarer recruitment and placement services operating in its territory: (1) maintain an up-to-date register of recruited or placed seafarers; (2) verify that seafarers' employment agreements are in accordance with applicable laws and regulations and any collective bargaining agreement that forms part of the employment agreement; (3) make sure that seafarers are informed of their rights and duties under their employment agreements, with proper arrangements to examine such agreements; (4) verify that seafarers recruited or placed are qualified and hold the documents necessary for the job concerned, (5) make sure that, as far as practicable, the shipowner has the means to protect seafarers from being stranded in a foreign port; (6) examine and respond to any complaint concerning their activities and advise the competent authority of any unresolved complaint; and (7) establish a system of protection, by way of insurance or an equivalent appropriate measure, to compensate seafarers for monetary loss that they may incur as a result of the failure of a recruitment and placement service or the relevant shipowner under the seafarers' employment agreement to meet its obligations to them.¹⁰¹

The above-stated requirements apply to recruitment and placement services operated by a seafarers' organization in the territory of a Member

97. *Id.* reg. 1.4, ¶ 1.

98. *Id.* stand. A1.4, ¶ 2.

99. *Id.* stand A1.4, ¶ 1.

100. *Id.* stand. A1.4, ¶ 5 (b). The prohibition does not include the cost of the seafarer obtaining a national statutory medical certificate, the national seafarer's book, and a passport or other similar personal travel documents. It does, however, include the cost of visas, which shall be borne by the shipowner.

101. MLC 2006, stand. A1.4, ¶ 5 (c).

State for the supply of seafarers who are nationals of that Member State to ships which fly its flag.¹⁰²

Member States must require shipowners who use recruitment and placement services in non-MLC ratifying countries to conform to the above-stated MLC requirements on recruitment and placement.¹⁰³ In addition, a Member State that has ratified the MLC shall, in so far as practicable, advise its nationals on the possible problems of signing on a ship that flies the flag of a State which has not ratified the MLC.¹⁰⁴

Each Member State should consider requiring seafarer recruitment and placement services, established in its territory, to develop and maintain verifiable operational practices.¹⁰⁵

D. Title 2: Conditions of Employment

1. Seafarers' Employment Agreements

The terms and conditions for employment of a seafarer shall be set out or referred to in a clear written legally enforceable agreement and shall be consistent with standards set out in the MLC.¹⁰⁶

Seafarers' employment agreements shall be agreed to by the seafarer under conditions which ensure that the seafarer has an opportunity to review and seek advice on the terms and conditions in the agreement and freely accepts them before signing.¹⁰⁷

Each Member State shall adopt laws and regulations specifying the matters that are to be included in all seafarers' employment agreements governed by its national laws. Such agreements shall in all cases contain the following particulars: (a) The seafarer's full name, date of birth or age, and birthplace; (b) The shipowner's name and address; (c) The place where and date when the seafarers' employment agreement is entered into; (d) The capacity in which the seafarer is to be employed; (e) The amount of the seafarer's wages or, where applicable, the formula used for calculating them; (f) The amount of paid annual leave, or, where applicable, the formula used for calculating it; (g) The termination of the agreement and the conditions thereof, depending on whether the agreement is made for a definite or indefinite period, or made for a voyage; (h) The health and social security protection benefits to be provided to the seafarer by the shipowner; (i) The

102. *Id.* stand. A1.4, ¶ 3.

103. *Id.* reg. 1.4, ¶ 3.

104. *Id.* stand. A1.4, ¶ 8.

105. *Id.* guideline B1.4, ¶ 2.

106. *Id.* reg. 2.1, ¶ 1.

107. MLC 2006, reg. 2.1, ¶ 2.

seafarer's entitlement to repatriation; (j) Reference to the collective bargaining agreement, if applicable; and (k) Any other particulars which the national law may require.¹⁰⁸

2. Wages

All seafarers shall be paid for their work regularly and in full in accordance with their employment agreements.¹⁰⁹ Each Member shall require that payments due to seafarers working on ships that fly its flag are made at no greater than monthly intervals and in accordance with any applicable collective agreement.¹¹⁰

With respect to their wages, seafarers shall be: (a) given a monthly account of the payments due and the amounts paid;¹¹¹ and (b) able to transmit their earnings to their families, subject to reasonable charges.¹¹²

Specific guidance is made on the manner of calculating overtime for seafarers whose remuneration includes separate compensation for overtime worked, or whose wages are fully or partially consolidated.¹¹³ Member States shall likewise give due consideration to establishing procedures for determining minimum wages of seafarers.¹¹⁴

3. Hours of Work and Hours of Rest

Member States shall ensure that hours of work or hours of rest for seafarers are regulated. Each Member shall establish maximum hours of work or minimum hours of rest over given periods that are consistent with the MLC.¹¹⁵

Each Member acknowledges that the normal working hours for seafarers shall be based on an eight-hour day, with one day of rest per week and rest on public holidays.¹¹⁶ The limits on hours of work or rest shall be as follows: (a) Maximum hours of work shall not exceed 14 hours in any 24-hour

108. *Id.* stand. A2.1, ¶ 4.

109. *Id.* reg. 2.2, ¶ 1.

110. *Id.* stand. A2.2, ¶ 1.

111. *Id.* stand. A2.2, ¶ 2.

112. *Id.* stand. A2.2, ¶¶ 3 & 4.

113. MLC 2006, guideline B2.2.2, ¶¶ 1 & 2.

114. *Id.* guideline B2.2.3, ¶¶ 1 & 2. Due consideration should be given to the minimum basic pay or wages for a calendar month of service for an able seafarer. The ILO Subcommittee on Wages of Seafarers of the Joint Maritime Commission met in February 2006 and agreed that the recommended basic minimum wage of able seamen should be raised to \$515 as of Jan. 1, 2007, \$530 as of Jan. 1, 2008, and \$545 as of Dec. 31, 2008.

115. *Id.* reg. 2.3, ¶¶ 1 & 2.

116. *Id.* stand. A2.3, ¶ 3.

period and 72 hours in any seven-day period; or (b) Minimum hours of rest shall not be less than 10 hours in any 24-hour period and 77 hours in any seven-day period.¹¹⁷

Hours of rest may be divided into no more than two periods, one of which shall be at least six hours in length, and the interval between consecutive periods of rest shall not exceed 14 hours.¹¹⁸

There are provisions to ensure that musters, fire-fighting and lifeboat drills, and drills prescribed by national regulations and by international instruments shall minimize disturbance of rest periods and not induce fatigue. In addition, when a seafarer is on call, such as when machinery space is unattended, the seafarer shall have an adequate compensatory rest period if the normal period of rest is disturbed by call-outs to work. The Member State's competent authority shall determine whether collective agreements, arbitration awards, or policies adequately provide for such protective measures.¹¹⁹

Shipboard working arrangements shall be posted in an easily accessible place.¹²⁰ Also, standardized records of seafarers' daily hours of work or rest shall be maintained to allow monitoring of compliance.¹²¹ There may be certain cases, however, when the master may suspend the schedule of hours of work or rest and require a seafarer to perform any work necessary until the normal situation has been restored.¹²²

4. Entitlement to Leave

Each Member State shall require that seafarers employed on ships that fly its flag are given paid annual leave under appropriate conditions.¹²³ Subject to any collective agreement or laws or regulations providing for an appropriate method of calculation that takes account of the special needs of seafarers in this respect, the annual leave with pay entitlement shall be calculated on the basis of a minimum of 2.5 calendar days per month of employment.¹²⁴

The Guideline gives due consideration to the rule that absence from work to attend an approved maritime vocational training course or for such

117. *Id.* stand. A2.3, ¶ 5.

118. *Id.* stand. A2.3, ¶ 6.

119. MLC 2006, stand. A2.3, ¶¶ 6-8.

120. *Id.* stand. A2.3, ¶ 10.

121. *Id.* stand. A2.3, ¶ 12.

122. *Id.* stand. A2.3, ¶ 14.

123. *Id.* reg. 2.4, ¶ 1.

124. *Id.* stand. A2.4, ¶ 2.

reasons as illness or injury or for maternity should be counted as part of the period of service.¹²⁵

The Guideline likewise states that the following should not be counted as part of annual leave with pay: (a) Public and customary holidays recognized as such in the flag State, whether or not they fall during the annual leave with pay; (b) Periods of incapacity for working resulting from illness or injury or from maternity under conditions as determined by the competent authority or through the appropriate machinery in each country; (c) Temporary shore leave granted to a seafarer while under an employment agreement; and (d) Compensatory leave of any kind, under conditions as determined by the competent authority or through the appropriate machinery in each country.¹²⁶

In principle, seafarers should have the right to take annual leave in the place in which they have a substantial connection, which would normally be the same as the place to which they are entitled to be repatriated.¹²⁷

5. Repatriation

Seafarers have a right to be repatriated at no cost to themselves in the circumstances and under the conditions specified in the Code. In this regard, Member States shall require ships that fly its flag to provide financial security to ensure that seafarers are duly repatriated in accordance with the Code.¹²⁸

The above requirement to repatriate is triggered by the following circumstances: (a) If the seafarers' employment agreement expires while they are abroad; (b) When the seafarers' employment agreement is terminated: (i) by the shipowner; or (ii) by the seafarer for justified reasons; and (c) When the seafarers are no longer able to carry out their duties under their employment agreement or cannot be expected to carry them out in the specific circumstances,¹²⁹

Regulations may impose a requirement of maximum duration of service periods on board, which shall be less than 12 months.¹³⁰

If a shipowner fails to make arrangements for or to meet the cost of repatriation, the competent authority of the flag State shall arrange for repatriation of the seafarers concerned. If it fails to do so, the State from which the seafarers are to be repatriated or the State of which they are a national may arrange for their repatriation and recover the cost from the flag

125. MLC 2006, guideline B2.4.1, ¶ 2.

126. *Id.* guideline B2.4.1, ¶ 4.

127. *Id.* guideline B2.4.2, ¶ 2.

128. *Id.* reg. 2.5, ¶¶ 1 & 2.

129. *Id.* stand. A2.5, ¶ 1.

130. MLC 2006, stand. A2.5, ¶ 2 (b).

State. The flag State may, in turn, recover costs incurred from the shipowner.¹³¹

6. Seafarer Compensation for the Ship's Loss or Foundering

Each Member State shall make rules ensuring that, in every case of loss or foundering of any ship, the shipowner shall pay to each seafarer on board an indemnity against unemployment resulting from such loss or foundering.¹³²

Such indemnity should be paid for the days during which the seafarer remains in fact unemployed at the same rate as the wages payable under the employment agreement, but the total indemnity payable to any one seafarer may be limited to two months' wages. Every Member should ensure that seafarers have the same legal remedies for recovering such indemnities as they have for recovering arrears of wages earned during the service.¹³³

7. Manning Levels

There shall be a requirement for flag ships to have a sufficient number of seafarers on board to ensure that ships are operated safely, efficiently, and with due regard to security. Every ship shall be manned by a crew that is adequate, in terms of size and qualifications, to ensure the safety and security of the ship and its personnel, under all operating conditions, in accordance with the minimum safe manning document or an equivalent issued by the competent authority, and to comply with MLC standards.¹³⁴

When determining, approving, or revising manning levels, the competent authority shall take into account the need to avoid or minimize excessive hours of work to ensure sufficient rest and to limit fatigue, as well as the principles in applicable international instruments, especially those of the International Maritime Organization.¹³⁵

8. Career and Skill Development and Opportunities for Seafarers' Employment

Each Member State shall have national policies to promote employment in the maritime sector and to encourage career and skill development and employment opportunities for seafarers, in order to provide the maritime sector with a stable and competent workforce. The aim is to help seafarers strengthen their competencies, qualifications, and employment opportunities.¹³⁶

131. *Id.* stand. A2.5, ¶ 5 (a) & (b).

132. *Id.* stand. A2.6, ¶ 1.

133. *Id.* guideline B2.6.1, ¶¶ 1 & 2.

134. *Id.* stand. A2.7, ¶ 1.

135. *Id.* stand. A2.7, ¶ 2.

136. MLC 2006, stand. A2.8, ¶¶ 1 & 2.

Among the measures to promote career and skill development opportunities would be the establishment and maintenance of registers of lists of seafarers.¹³⁷ These registers should include all occupational categories of seafarers in a manner determined by national law or practice or by collective agreement.¹³⁸ Seafarers on such a register or list should have priority of engagement for seafaring.¹³⁹

E. Title 3: Accommodation, Recreational Facilities, Food and Catering

Flag ships should provide and maintain decent accommodations and recreational facilities for seafarers working or living on board, or both, consistent with promoting the seafarers' health and well-being.¹⁴⁰ It must be emphasized that the implementing requirements in the Code which relate to ship construction and equipment apply only to ships constructed on or after the date when the MLC comes into force for the Member State concerned.¹⁴¹

1. Accommodation and Recreational Activities

Each Member State shall adopt laws and regulations requiring that flag ships meet minimum standards to ensure that any accommodation for seafarers, working or living board, or both, is safe, decent and in accordance with relevant requirements and are inspected to ensure initial and ongoing compliance with those standards.¹⁴² The general requirements with respect to accommodation and recreational facilities, along with their corresponding areas of flexibility, are listed in paragraphs 6–16.¹⁴³

The aforesaid inspections shall be carried out when a ship is registered or re-registered or the seafarer accommodation on a ship has been substantially altered.¹⁴⁴ Particular attention shall be given to ensuring implementation relating to: the size of rooms and other accommodation spaces; heating and ventilation; noise and vibration and other ambient factors; sanitary facilities; lighting; and hospital accommodation.¹⁴⁵

137. *Id.* guideline B2.8.1, ¶ 1 (b).

138. *Id.* 2006, guideline B2.8.2, ¶ 1.

139. *Id.* guideline B2.8.2, ¶ 2.

140. *Id.* reg. 3.1, ¶ 1.

141. *Id.* reg. 3.1, ¶ 2. A ship shall be deemed to have been constructed on the date when its keel is laid or when it is at a similar stage of construction.

142. MLC 2006, stand. A3.1, ¶ 1.

143. *Id.* stand. A3.1, ¶¶ 6–16, with corresponding guidelines.

144. *Id.* stand. A3.1, ¶ 3.

145. *Id.* stand. A3.1, ¶ 4.

Frequent inspections shall be carried out on board ships to ensure that seafarer accommodation is clean, decently habitable and maintained in a good state of repair. The results of each inspection shall be recorded and be available for review.¹⁴⁶

Fairly applied variations shall be permitted, in cases of seafarers with differing and distinctive religious and social practices. Such variations, however, shall not result in overall facilities less favorable than those which would result from the application of the above-stated requirements.¹⁴⁷

2. Food and Catering

Flag ships shall carry on board and serve food and drinking water of appropriate quality, nutritional value and quantity that adequately covers the requirements of the ship and takes into account the differing cultural and religious backgrounds.¹⁴⁸ Seafarers on board a ship shall be provided with food free of charge during the period of engagement.¹⁴⁹

Seafarers employed as ship's cooks with responsibility for food preparation must be trained and qualified for their position on board ship.¹⁵⁰ There shall be a complementary training course approved or recognized by the competent authority, which covers practical cookery, food and personal hygiene, food storage, stock control, and environmental protection and catering health and safety.¹⁵¹ No seafarer under the age of 18 shall be employed or engaged or work as a ship's cook.¹⁵²

Inspections shall be carried out with respect to supplies of food and drinking water, all spaces and equipment used for the storage and handling of food and drinking water, and galley and other equipment for the preparation and service of meals.¹⁵³

F. Title 4: Health Protection, Medical Care, Welfare and Social Security Protection

1. Medical Care on Board Ship and Ashore

146. *Id.* stand. A3.1, ¶ 18.

147. *Id.* stand. A3.1, ¶ 19.

148. MLC 2006, reg. 3.2, ¶ 1.

149. *Id.* reg. 3.2, ¶ 2.

150. *Id.* reg. 3.2, ¶ 3.

151. *Id.* stand. A3.2, ¶ 4. On ships operating with a prescribed manning of less than 10 which, by virtue of the size of the crew or the trading pattern, may not be required by the competent authority to carry a fully qualified cook, anyone processing food in the galley shall be trained or instructed in areas including food and personal hygiene as well as handling and storage of food on board ship.

152. *Id.* stand. A3.2, ¶ 8.

153. *Id.* stand. A3.2, ¶ 7.

Seafarers are covered by adequate measures for the protection of their health and shall have access to prompt and adequate medical care while working on board.¹⁵⁴ Such protection and care shall, in principle, be provided at no cost to the seafarers.¹⁵⁵

Seafarers shall have health protection and medical care as comparable as possible to that which is generally available to workers ashore, including prompt access to the necessary medicines, medical equipment and facilities for diagnosis and treatment and to medical information and expertise.¹⁵⁶ Seafarers shall have the right to visit a qualified medical doctor or dentist without delay in ports of call, where practicable.¹⁵⁷ There shall likewise be measures of a preventive character, such as health promotion and health education programs.¹⁵⁸

Due consideration should be given to having at least one designated seafarer with approved medical first-aid training required by the STCW, for ships which are ordinarily capable of reaching qualified medical care and medical facilities within eight hours.¹⁵⁹ All other ships should be required to have at least one designated seafarer with approved training in medical care required by STCW.¹⁶⁰

2. Shipowners' Liability

There shall be measures in place on flag ships to provide seafarers employed on the ships with a right to material assistance and support from the shipowner with respect to the financial consequences of sickness, injury or death occurring while they are serving under a seafarers' employment agreement or arising from their employment under such agreement.¹⁶¹

154. MLC 2006, reg. 4.1, ¶ 1.

155. *Id.* reg. 4.1, ¶ 2.

156. *Id.* stand. A4.1, ¶ 1 (b).

157. *Id.* stand. A4.1, ¶ 1 (d).

158. *Id.* stand. A4.1, ¶ 1 (e).

159. *Id.* guideline B4.1.1, ¶ 1 (a). This guideline provides: Such designated seafarer should be able to take immediate, effective action in case of accidents or illnesses likely to occur on board a ship and to make use of medical advice by radio or satellite communication.

160. MLC 2006, guideline B4.1.1, ¶ 1 (b). This guideline provides:

Training should include practical training and training in life-saving techniques such as intravenous therapy, which will enable the persons concerned to participate effectively in coordinated schemes for medical assistance to ships at sea, and to provide the sick or injured with a satisfactory standard of medical care during the period they are likely to remain on board.

161. *Id.* reg. 4.2, ¶ 1.

The following minimum standards shall be adopted through laws and regulations that require shipowners to be responsible for the health and protection and medical care of seafarers on board:

- (a) [B]ear costs in respect of sickness and injury of seafarers occurring between the date of commencing duty and the date upon which they are deemed duly repatriated, or arising from their employment between those dates;¹⁶²
- (b) [P]rovide financial security to assure compensation in the event of death or long-term disability of seafarers due to an occupational injury, illness, or hazard;¹⁶³
- (c) [D]efray expenses of medical care, including medical treatment and supply of necessary medicines and therapeutic appliances, and board and lodging away from home until the sick or injured seafarer has recovered, or until the sickness or incapacity has been declared of a permanent character;¹⁶⁴ and
- (d) [P]ay cost of burial in the case of death occurring on board or ashore during the period of engagement.¹⁶⁵

Where the sickness or injury results in incapacity for work the shipowner shall be liable: (a) to pay full wages while on board or until repatriation; and (b) to pay wages in whole or in part when the seafarers are repatriated or landed until their recovery or, if earlier, until they are entitled to cash benefits under relevant laws or regulations.¹⁶⁶

Areas of flexibility are as follows:

- (a) National laws or regulations may limit the liability of the shipowner to defray the expense of medical care and board and lodging to a period which shall not be less than 16 weeks from the day of the injury or the commencement of the sickness;¹⁶⁷
- (b) Allowable exclusions in respect of: (i) injury incurred otherwise in the service of the ship; (ii) injury or sickness due to the willful misconduct of the sick, injured or deceased seafarer; and (iii) sickness or infirmity intentionally concealed when the engagement is entered into;¹⁶⁸

162. *Id.* stand. A4.2, ¶ 1 (a).

163. *Id.* stand. A4.2, ¶ 1 (b).

164. *Id.* stand. A4.2, ¶ 1 (c).

165. *Id.* stand. A4.2, ¶ 1 (d).

166. MLC 2006, stand. A4.2, ¶ 3. Due consideration shall be given to full wages as being exclusive of bonuses.

167. *Id.* stand. A4.2, ¶ 2; stand. A4.2, ¶ 4.

168. *Id.* stand. A4.2, ¶ 5.

- (c) Exemption from liability in so far as such liability is assumed by public authorities;¹⁶⁹ and
- (d) Due consideration to cease bearing costs of a sick or injured seafarer from the time at which the seafarer can claim medical benefits under a scheme of compulsory sickness insurance, compulsory accident insurance or workers' compensation for accidents.¹⁷⁰

3. Health and Safety Protection and Accident Prevention

Seafarers on flag ships shall be provided with occupational health protection and live, work and train on board in a safe and hygienic environment.¹⁷¹ Hence, each Member State shall adopt laws and regulations and other measures taking into account international instruments and set standards for occupational safety and health protection and accident protection on flag ships.¹⁷²

The following shall be the subject of the aforesaid laws and regulations on occupational safety and health and accident protection: (a) Effective implementation and promotion of policies and programs, including risk evaluation and training and instruction of seafarers; (b) Reasonable precautions to prevent occupational accidents; (c) On-board programs for prevention of occupational accidents, injuries and diseases and for continuous improvement in occupational safety and health protection; and (d) requirements for inspecting, reporting and correcting unsafe conditions and for investigating and reporting on-board occupational accidents.¹⁷³

169. *Id.* stand. A4.2, ¶ 6.

170. *Id.* guideline B4.2, ¶ 2.

171. *Id.* reg. 4.3, ¶ 1.

172. MLC 2006, reg. 4.3, ¶ 3.

173. *Id.* stand. A4.3, ¶ 1; guideline B4.3.1, ¶ 2. The Guideline requires due consideration of the following matters: (a) general and basic provisions; (b) structural features of the ship, including means of access and asbestos-related risks; (c) machinery; (d) the effects of the extremely low or high temperature of any surfaces with which seafarers may be in contact; (e) the effects of noise in the workplace and in shipboard accommodation; (f) the effects of vibration in the workplace and in shipboard accommodation; (g) the effects of ambient factors in the workplace in shipboard accommodation, including tobacco smoke; (h) special safety measures on and below deck; (i) loading and unloading equipment; (j) fire prevention and fire-fighting; (k) anchors, chains and lines; (l) dangerous cargo and ballast; (m) personal protective equipment for seafarers; (n) work in enclosed spaces; (o) physical and mental effects of fatigue; (p) the effects of drug and alcohol dependency; (q) HIV/AIDS protection and prevention; and (r) emergency and accident response; MLC 2006, guideline B4.3.1, ¶ 3. The assessment of risks and reduction of exposure on the above-stated matters should take into account physical occupational health effects. The necessary measures

The laws and regulations shall clearly specify the obligation of shipowners, seafarers, and others concerned, as well as the duties of the master or designated person, and the seafarers appointed or elected as safety representatives to participate in meetings of the ship's safety committee.¹⁷⁴

The competent authority shall ensure that occupational accidents, injuries, and diseases are investigated and adequately reported, and that comprehensive statistics of such accidents and diseases are kept, analyzed, and published.¹⁷⁵

4. Access to Shore-Based Welfare Facilities

Each Member State shall ensure that shore-based welfare facilities, where they exist, are easily accessible. The Member shall also promote the development of welfare facilities in designated ports to provide seafarers on ships that are in its ports with access to adequate welfare facilities and services.¹⁷⁶

The establishment of welfare boards shall be encouraged. Such boards shall regularly review welfare facilities and services to ensure that they are appropriate in the light of changes in the needs of seafarers resulting from technical, operational, and other developments in the shipping industry.¹⁷⁷

5. Social Security

All seafarers and, to the extent provided by national law, their dependents, shall have access to social security protection, without prejudice to any more favorable conditions referred to in the ILO Constitution.¹⁷⁸ Each Member State undertakes to take steps, according to its national circumstances, individually and through international cooperation, to achieve progressively comprehensive social security protection for seafarers.¹⁷⁹

should take due account, among others, of the preventive principle combating risk at the source and adapting work to the individual.

174. *Id.* stand. A4.3, ¶ 2.

175. *Id.* stand. A4.3, ¶ 5.

176. *Id.* reg. 4.4, ¶ 1.

177. *Id.* stand. A4.4, ¶ 3; guideline B4.4.3, ¶ 2, 3. The Guideline requires due consideration to establishing welfare boards at the port, regional, and national levels. The boards should include among their members representatives of shipowners' and seafarers' organizations and, where appropriate, voluntary organizations and social bodies. Consuls of maritime States and local representatives of foreign welfare organizations should be associated with the work of port, regional, and national welfare boards.

178. *Id.* reg. 4.5, ¶ 1.

179. MLC 2006, reg. 4.5, ¶ 2.

The branches of social security that shall be considered with a view to achieving progressively comprehensive social security protection are: medical care, sickness benefit, unemployment benefit, old-age benefit, employment injury benefit, family benefit, maternity benefit, invalidity benefit, and survivors' benefit, complementing the protection provided for under the above-discussed requirements on Medical Care and Shipowners' Liability.¹⁸⁰

At the time of ratification, the protection to be provided by each Member shall include at least three of the nine branches listed.¹⁸¹ With regard to branches that have not been provided, the Regulation affords Member States "progressive comprehensive" realization of such measures.¹⁸²

The responsibility to provide social security protection could be satisfied through appropriate bilateral or multilateral agreements or contribution-based systems. The resulting protection shall be no less favorable than that enjoyed by shoreworkers resident in the Member State's territory.¹⁸³

Under the seafarers' employment agreement referred to under Title 2 on Conditions of Employment, due consideration should be given to identifying the means by which the various branches of social security protection will be provided to the seafarer, as well as statutory deductions from the seafarers' wages and shipowners' contributions which may be made.¹⁸⁴

G. Title 5: Compliance and Enforcement

Each Member State shall establish an effective system for inspection and certification on maritime labor conditions, ensuring that the working and living conditions for seafarers on flag ships meet MLC standards.¹⁸⁵ In establishing an effective system for inspection and certification, a Member may authorize public institutions or other organizations, which it recognizes

180. *Id.* stand. A4.5, ¶ 1.

181. *Id.* stand. A4.5, ¶ 2.

182. *Id.* reg. 4.5, ¶ 2.

183. *Id.* stand. A4.5, ¶ 3; MLC 2006, guideline B4.5, ¶ 3. The Guideline requires due consideration in the case of seafarers who are subject to more than one legislation covering social security, in which case Members concerned should cooperate in order to determine by mutual agreement which legislation is to apply, taking into account such factors as the type and level of protection under the respective legislations which is more favorable to the seafarer concerned as well as the seafarer's preference.

184. *Id.* guideline B4.5, ¶ 6.

185. MLC 2006, reg. 5.1.1, ¶ 2.

as competent and independent to carry out inspections or to issue certificates, or both.¹⁸⁶

I. Certification System

The MLC introduces a special framework for compliance and enforcement, namely an international certification and inspection system that ensures compliance with MLC requirements. Each Member State shall establish clear objectives and standards covering the administration of its inspection and certification systems, as well as adequate overall procedures for its assessment of the extent to which those objectives and standards are being attained.¹⁸⁷

A maritime labor certificate (MLCert), complemented by a Declaration of Maritime Labor Compliance (DMLC), shall constitute *prima facie* evidence that the ship has been duly inspected by the Member whose flag it flies and that MLC requirements relating to working and living conditions of the seafarers have been met to the extent so certified.¹⁸⁸

The MLCert and DMLC shall be required of “certified ships,”¹⁸⁹ which are ships 500 gross tonnage (GT) or over, engaged in international voyages or those 500 gross tonnage or over, flying the flag of a Member and operating from a port, or between ports, in another country or any other ship covered at the request of the shipowner to the Member State concerned.¹⁹⁰

Where the purpose is to enable certification of a flag ship, the DMLC is the starting point.¹⁹¹ The DMLC is divided into two parts: Part I to be drawn by the competent authority which shall: (i) identify the list of matters to be inspected pursuant to Appendix A5-I of the MLC;¹⁹² (ii) identify the national requirements embodying the relevant MLC provisions by providing

186. *Id.* reg. 5.1.1, ¶ 3.

187. *Id.* stand. A5.1.1, ¶ 1.

188. *Id.* reg. 5.1.1, ¶ 4.

189. A term used under Resolution Concerning the development of guidelines for flag State inspections, MLC Res. No. 13 (Feb. 22, 2006).

190. MLC 2006, reg. 5.1.3, ¶ 1 & 2. “International voyage” means a voyage from a country to a port outside such a country.

191. *Id.* guidelines for Flag State Inspections, ¶ 77, pt. 2.2.2.

192. This Appendix states that the working and living conditions of seafarers that must be inspected and approved by the flag State before certifying a ship are the following: minimum age, medical certification, seafarers’ employment agreements, use of any licensed or certified or regulated private recruitment and placement service, hours of work or rest, manning levels of a ship, accommodation, on-board recreational facilities, food and catering, health and safety and accident prevention, on-board medical care, on-board complaint procedures, and payment of wages.

a reference to the relevant national legal provisions as well as, to the extent necessary, concise information on the main content of the national requirements; (iii) refer to ship-type specific requirements under national legislation; (iv) record any substantially equivalent provisions adopted; and (v) clearly indicate any exemption granted by competent authority under Title 3 on Accommodation, Recreational Facilities, Food and Catering; and Part II to be drawn by the shipowner and shall identify measures adopted to ensure ongoing compliance with the national requirements between inspections and measures proposed to ensure continuous improvement.¹⁹³

The competent authority or recognized organization shall certify Part II and shall issue the DMLC.¹⁹⁴ A full inspection, including a document review,¹⁹⁵ must be completed before the MLCert and attached DMLC can be issued.¹⁹⁶ The list of matters for inspection is listed in Appendix A5-I of the MLC, as follows: minimum age; medical certification; qualifications of seafarers; seafarers' employment agreements; use of any licensed or certified or regulated private recruitment and placement service; hours of work or rest; manning levels for the ship; accommodation; on-board recreational facilities; food and catering; health and safety and accident prevention; on-board medical care; on-board complaint procedures; and payment of wages.

It must be emphasized that this list *does not* represent the total of all of the obligations of the flag State or the shipowner under flag State law implementing the MLC, but are simply an agreed list of matters for the purpose of ship certification systems and for the port State inspection process.¹⁹⁷

Upon passing inspection and issuance of the DMLC, the MLCert shall be issued to a ship by the competent authority or recognized organization, for a period which shall not exceed five years.¹⁹⁸ The validity of the MLCert shall be subject to an intermediate inspection to ensure continuing compliance with the national requirements implementing the MLC. The scope and depth of the intermediate inspection shall be equal to an

193. MLC 2006, stand. A5.1.3, ¶ 10.

194. *Id.*

195. *Id.* guidelines for Flag State Inspections, ¶ 48, pt. 2.1.3. Aside from national DMLC forms, the Member State shall also require other MLC requirements at the point of full inspection, such as standardized shipboard working arrangements, medical certificates, on-board medical and inspection reports.

196. *Id.* guidelines for Flag State Inspections, ¶ 84, pt. 2.2.4.

197. Unresolved issues for the draft consolidated MLC, 2006, Tripartite Intersessional Meeting on the Follow-up of the Preparatory Technical Maritime Conference, 2005, n. 20, ¶ 3, at 34.

198. MLC 2006, stand. A5.1.4, ¶ 1.

inspection for renewal of the certificate. The certificate shall be endorsed following satisfactory intermediate inspection.¹⁹⁹

Nevertheless, an MLCert may be issued on an interim basis, for a period not exceeding six months to new ships on delivery, when a ship changes flag, or when a shipowner assumes responsibility for the operation of a ship which is new to that shipowner.²⁰⁰

A full inspection shall be carried out prior to the expiry of the interim certificate to enable the issuance of a full-term MLCert. No further interim certificate may be issued following the initial six-month period. A DMLC need not be issued for the period validity of the interim certificate.²⁰¹

A current MLCert and DMLC, accompanied by an English-language translation where it is not in English, shall be carried on the ship and a copy shall be posted in a conspicuous place on board where it is available to seafarers. A copy shall be made available, upon request, to flag State inspectors, authorized officers in port States, and shipowners' and seafarers' representatives.²⁰²

A MLCert shall cease to be valid in any of the following cases: (a) if the relevant inspections are not completed within the prescribed periods; (b) if the certificate is not properly endorsed in line with intermediate inspection; (c) when a ship changes flag; (d) when a shipowner ceases to assume responsibility for the operation of a ship; and (e) when substantial changes have been made to the structure or equipment covered in Title 3 on Accommodation, Recreational Facilities, Food, and Catering.²⁰³

2. Inspection and Enforcement

Flag ships, whether or not covered by the Certification System, shall be subject to an inspection and enforcement system instituted by the Member State.

There shall be a sufficient number of appointed and qualified inspectors to verify fulfillment of measures relating to MLC standards and working and

199. *Id.* stand. A5.1.4, ¶ 2. If only one intermediate inspection is carried out and the period of validity of the certificate is five years, it shall take place between the second and third anniversary dates of the certificate. Anniversary date means the day and month of each year which will correspond to the date of expiry of the MLCert.

200. *Id.* stand. A5.1.3, ¶¶ 5 & 6.

201. *Id.* stand. A5.1.3, ¶ 8.

202. *Id.* stand. A5.1.3, ¶ 12. The requirement for an English-language translation does not apply in the case of a ship not engaged in an international voyage.

203. *Id.* stand. A5.1.3, ¶ 14.

living conditions in the Declaration of Maritime Labor Compliance.²⁰⁴ Adequate provision shall be made to ensure that the inspectors have the training, competence, terms of reference, powers, status, and independence necessary or desirable so as to enable them to carry out the verification and ensure compliances.²⁰⁵

Inspections shall take place at intervals not exceeding three years, bearing in mind the periods for inspections required by the Certification System.²⁰⁶

If a Member State: (1) receives a complaint which it does not consider manifestly unfounded; (2) obtains evidence that a flag ship does not conform to MLC requirements or (3) obtains evidence that there are serious deficiencies in the measures set out in the DMLC, necessary steps shall be taken to investigate the matter and ensure that action is taken to remedy any deficiencies found.²⁰⁷

The Guideline requires due consideration to establishing simple procedures that will enable the competent authority to receive confidential information concerning possible breaches of the MLC. Such information may be presented directly by seafarers or by their representatives, and should permit inspectors to promptly investigate.²⁰⁸

Inspectors issued with clear guidelines as to tasks to be performed and provided with the proper credentials shall be empowered to board a ship that flies the Member's flag, carry out any examination, test or inquiry which they may consider necessary in order to satisfy themselves that the standards are being strictly observed, and require that any deficiency is remedied and, where they have grounds to believe that deficiencies constitute a serious breach of the MLC, or represent a significant danger to seafarers' safety, health, or security, to prohibit a ship from leaving port until necessary actions are taken. Any action taken shall be subject to right of appeal to a judicial or administrative authority.²⁰⁹

When there is no clear breach of the MLC requirements that endangers the safety, health or security of seafarers and when there is no prior history of similar breaches, inspectors shall have the discretion to give advice instead of instituting or recommending proceedings.²¹⁰ Inspectors shall treat as confidential the source of any grievance or complaint alleging the danger or

204. MLC 2006, stand. A5.I.4, ¶¶ 1 & 2.

205. *Id.* stand. A5.I.4, ¶ 3.

206. *Id.* stand. A5.I.4, ¶ 4.

207. *Id.* stand. A5.I.4, ¶ 5.

208. *Id.* guideline B5.I.4, ¶ 3.

209. *Id.* stand. A5.I.4, ¶¶ 7 & 8.

210. MLC 2006, stand. A5.I.4, ¶ 9.

deficiency in relation to seafarers' working and living conditions or a violation of laws and regulations and give no intimation to the shipowner that an inspection was made as a consequence of such a grievance or complaint.²¹¹

A copy of the inspection report shall be submitted to the competent authority. One copy of the report in English or in the working language of the ship shall be furnished to the master and another copy shall be posted on the ship's notice board for the information of seafarers and, upon request, sent to their representatives.²¹²

All reasonable efforts shall be made to avoid a ship being unreasonably detained. Compensation shall be payable for any loss or damage as a result of the wrongful exercise of the inspectors' powers. The burden of proof on each case shall be on the complainant.²¹³

Adequate penalties and other corrective measures for breaches of the MLC and for obstructing inspectors in the performance of their duties shall be provided and enforced by each Member State.²¹⁴

3. Authorization of Recognized Organizations

For purposes of recognizing organizations that shall have inspection or certification functions, the competent authority shall determine whether the organization has the necessary expertise and appropriate knowledge of ship operations, has the ability to maintain and update the expertise of its personnel, has the necessary knowledge of MLC requirements, as well as requirements of national laws and regulations and relevant international instruments, and is of the appropriate size, structure, experience, and capability commensurate with the type and degree of authorization.²¹⁵

The Member State shall ensure the adequacy of work of such recognized organizations, and procedures for communication with and oversight over them.²¹⁶ The ILO shall be furnished with a current list of recognized organizations, with details as to functions authorized by the Member State.²¹⁷

211. *Id.* stand. A5.I.4, ¶ 10.

212. *Id.* stand. A5.I.4, ¶ 12.

213. *Id.* stand. A5.I.4, ¶¶ 15 & 16.

214. *Id.* stand. A5.I.4, ¶ 17.

215. *Id.* stand. A5.I.2, ¶ 1.

216. MLC 2006, stand. A5.I.2, ¶ 3.

217. *Id.* stand. A5.I.2, ¶ 4.

Under the Guideline, the competent authority should conclude a written agreement with any organization that it recognizes for purposes of an authorization, with specified elements.²¹⁸

4. On-board Complaint Procedures

Flag ships shall have on-board procedures for the fair, effective, and expeditious handling of seafarer complaints alleging breaches of MLC requirements.²¹⁹ Such procedures shall seek to resolve complaints at the lowest levels possible, reserving the right of seafarers to complain directly to the master or appropriate external authorities.²²⁰

The procedure shall include the following components: (1) the right of the seafarer to be accompanied or represented; (2) safeguards against the possibility of victimization for filing complaints; (3) provision of a copy of such procedure to all seafarers, with contact information for the flag State or country of residence.²²¹ The Guideline contains an on-board complaint procedure for consideration by Member States.²²²

5. Marine Casualties

There shall be an official inquiry into any serious marine casualty, leading to injury or loss of life that involves a flag ship, with the final report to be normally made public. Member States shall cooperate in this regard.²²³

H. Port State Responsibilities

Every foreign ship calling, in the normal course of its business or for operational reasons, in the port of a Member *may* be the subject of inspection for purposes of reviewing compliance with the MLC.²²⁴

Each Member State shall accept the MLCert and DMLC as *prima facie* evidence of compliance with the MLC. Accordingly, port inspection shall generally be limited to a review of the MLCert and DMLC.²²⁵ Inspections shall be carried out by authorized officers in accordance with the MLC and other applicable international arrangements governing port State control inspections. Any such inspection shall be limited to verifying that the matter

218. *Id.* guideline B5.1.2, ¶ 3.

219. *Id.* reg. 5.1.5, ¶ 1.

220. *Id.* stand. A5.1.5, ¶ 2.

221. *Id.* stand. A5.1.5, ¶¶ 3 & 4.

222. MLC 2006, guideline B5.1.5, ¶ 2.

223. *Id.* reg. 5.1.6, ¶¶ 1 & 2.

224. *Id.* reg. 5.2.1, ¶ 1 (emphasis supplied).

225. *Id.* reg. 5.2.1, ¶ 2.

inspected is in conformity with the relevant requirements set out in the Articles, Regulations, and Part A (Standards) of the MLC.²²⁶

Just as important would be the responsibility of a Member State to ensure that ships that fly the flag of any State that has not ratified the MLC do not receive *no more favorable treatment* than the ships that fly the flag of any State that has ratified it.²²⁷ This measure neutralizes anomalous, cutthroat advantages for ships registered in non-ratifying Member States.

1. More Detailed Inspection (MDI)

A more detailed inspection shall be undertaken by the port state control officer (PSCO) when it is found that the required documents are not produced or maintained or are falsely maintained or that the documents produced do not contain the information required by the MLC or are otherwise invalid, there are clear grounds for believing that the working and living conditions on the ship do not conform to MLC requirements, there are reasonable grounds to believe that the ship has changed flag for the purpose of avoiding compliance with the MLC, or there is a complaint alleging that specific working and living conditions on the ship do not conform to MLC requirements.²²⁸

Such an inspection shall *in any case* be carried out where the working and living conditions believed or alleged to be defective could constitute a clear hazard to the safety, health or security of seafarers, or where the authorized officer has grounds to believe that the deficiencies constitute a serious breach of MLC requirements.²²⁹

The MDI shall cover the matters listed in Appendix A5-III of the MLC.²³⁰ It must be emphasized that this list *does not* represent the total of all of the obligations of the flag State or the shipowner under flag State law implementing the MLC, but are simply an agreed list of matters for the

226. *Id.* reg. 5.2.1, ¶ 3.

227. *Id.* art. V, ¶ 7 (emphasis supplied).

228. MLC 2006, stand. A5.2.1, ¶¶ 1 & 2. “Complaint” means information submitted by a seafarer, a professional body, an association, a trade union, or generally, any person with an interest in the safety of the ship, including an interest in safety or health hazards to seafarers on board.

229. *Id.* stand. A5.2.1, ¶ 1 (emphasis supplied).

230. The covered areas of port State control inspection are as follows: minimum age, medical certification, qualifications of seafarers, seafarers’ employment agreements, use of any licensed or certified or regulated private recruitment and placement service, hours of work or rest, manning levels for the ship, accommodation, on-board recreational facilities, food and catering, health and safety and accident prevention, on-board medical care, on-board complaint procedures, and payment of wages.

purpose of ship certification systems and for the port State inspection process.²³¹

2. Rectification or Detention

Where following an MDI, the working and living conditions on the ship are found not to conform to the MLC, the PSCO shall forthwith bring the deficiencies to the attention of the master of the ship, with required deadlines for rectification. The appropriate shipowners' and seafarers' organizations, or a representative of the flag State or competent authorities of the next port of call, may be notified of such deficiencies if they are considered significant.²³²

On the other hand, the PSCO shall take steps to ensure that the ship shall not proceed to sea if the ship is found not to conform and, in addition, conditions on board are clearly hazardous to the safety, health, and security of seafarers; or the non-conformity constitutes a serious or repeated breach of MLC requirements.²³³

The ship shall be detained until any above-stated non-conformities have been rectified, or until the PSCO has accepted a plan of action to rectify and is satisfied that the plan will be implemented in an expeditious manner. If the ship is prevented from sailing, the PSCO shall notify the flag State and invite a representative of the flag State to be present and, if possible, request the flag State to reply within a prescribe deadline. Also, the PSCO shall inform the appropriate shipowners' and seafarers' organizations in the port State in which the inspection was carried out.²³⁴ If a ship is found to be unduly detained or delayed, compensation shall be paid for any loss or damage suffered. The burden of proof in each case shall be on the complainant.²³⁵

3. Onshore Seafarer Complaint-Handling Procedures

Each Member State shall ensure that seafarers on ships calling at a port in the Member's territory who allege a breach of MLC requirements have the right to report such a complaint in order to facilitate a prompt and practical means of redress.²³⁶

231. Unresolved issues for the draft consolidated MLC, 2006, Tripartite Intersessional Meeting on the Follow-up of the Preparatory Technical Maritime Conference, 2005, n. 20, ¶ 3, at 34 (emphasis supplied).

232. MLC 2006, stand. A5.2.1, ¶ 4.

233. *Id.* stand. A5.2.1, ¶ 6.

234. *Id.*

235. *Id.* stand. A5.2.1, ¶ 8.

236. *Id.* reg. 5.2.2, ¶ 1.

A complaint by a seafarer alleging a breach of MLC requirements may be reported to an authorized officer in the port at which the seafarer's ship has called. In such cases, the authorized officer shall undertake an initial investigation upon seeking to promote a resolution of the complaint at the shipboard level.²³⁷

The authorized officer shall look into the applicability of the requirements for MDI, rectification, or detention.²³⁸ The Guideline states that if the complaint is of a general nature, i.e., concerning all seafarers on the ship, consideration should be given to undertaking an MDI.²³⁹

4. Labor-Supplying Responsibilities

Each Member State shall enforce the MLC requirements applicable to the operation and practice of seafarer recruitment and placement services established on its territory through a system of inspecting and monitoring and legal proceedings for breaches of licensing and other operational requirements provided in Title 1 on Minimum Requirements for Seafarers to Work on a Ship (Recruitment and Placement).

5. Entry Into Force

The MLC shall be binding only upon Member States whose ratifications have been registered by the Director-General.²⁴⁰ The Convention shall come into force 12 months after the date on which there have been registered ratifications by at least 30 Members with a total share in the world gross tonnage of ships of 33%.²⁴¹

Thereafter, the MLC shall come into force for any Member State 12 months after the date on which its ratification has been registered.²⁴² At present, seven Member States representing nearly 45% of the world fleet by gross tonnage have ratified the MLC: Liberia, Panama, the Republic of Marshall Islands, Bahamas, Norway, Bosnia and Herzegovina, and Spain.²⁴³

237. *Id.* stand. A5.2.2, ¶¶ 1 & 3.

238. MLC 2006, stand. A5.2.2, ¶¶ 4 & 5.

239. *Id.* guideline B5.2.2, ¶¶ 1 & 2.

240. *Id.* art. VIII, ¶ 2.

241. *Id.* art. VIII, ¶ 3.

242. *Id.* art. VIII, ¶ 4.

243. International Labour Organization, EU Presidency Holder Spain Becomes First EU State to Ratify Key ILO Maritime Labour Convention, *available at* http://www.ilo.org/global/About_the_ILO/Media_and_public_information/Press_releases/lang--en/WCMS_122065/index.htm (last accessed May 22, 2010).

6. Tripartite Consultations and Review

Typical of ILO standards-setting endeavors, domestic MLC ratification and policy-making processes require consultation with tripartite social partners. Specifically, the MLC contains requirements to consult shipowners' and seafarers' organizations with regard to any derogation, exemption or other flexible application of the Convention.

In addition, a Special Tripartite Committee has been instituted to maintain a continuous MLC review. The Committee shall consist of two representatives nominated by the government of each Member which has ratified the Convention, and the representatives of shipowners and seafarers appointed by the Governing Body after consultation with the Joint Maritime Commission.²⁴⁴

7. Amendments

Through Article XIV of the MLC, amendments to the Convention may be undertaken by the General Conference of the ILO pursuant to Article 19 of the Constitution and ILO rules and procedures for adoption of Conventions. An amendment shall be deemed to have been accepted on the date when there have been registered ratifications of the amendment or of the MLC as amended, as the case may be, by at least 30 Members with a total share in the world gross tonnage of ships of at least 33 per cent.²⁴⁵

With regard to amendments on details of implementation (Part A [Standards] and Part B [Guidelines]), a "tacit acceptance" procedure has been instituted in Article XV of the Convention. This means that any amendment to the Code approved by the Conference shall be deemed to have been accepted unless, by the end of the prescribed period, formal expressions of disagreement have been received by the Director-General from more than 40% of the Member States which have ratified the Convention and which represent not less than 40% of the gross tonnage of ships of the Members which have ratified the MLC.

An amendment deemed to have been accepted shall come into force six months after the end of the prescribed period for all ratifying Members except those which had formally expressed their disagreement in accordance with the above-stated process. At this point, however, there are still options available to Member States in terms of the binding effect of such an amendment, through specific notification and acceptance requirements.²⁴⁶

244. MLC 2006, art. XIII, ¶¶ 1 & 2.

245. *Id.* art. XIV, ¶¶ 1 & 4.

246. *Id.* art. XV, ¶¶ 7-10. There are two such optional modes: (a) before the end of the prescribed period imposed by the Governing Body to transmit observations or suggestions, any ratifying Member may give notice to the Director-General

The “accelerated amendment” procedure is meant to allow for rapid updating of more technical detailed provisions in the Code. It is a good example of how an IMO procedure has been adapted to a tripartite environment and to the specificity of international labor Conventions.²⁴⁷

V. PHILIPPINE MLC COMPLIANCES, GAPS, AND ISSUES

This Chapter outlines various Philippine laws, policies, and regulations that pertain to specific MLC provisions and mandates.²⁴⁸ In general, the Philippine regulatory framework is consistent with substantial provisions of the MLC. There are, of course, vital exceptions which shall be discussed

At the outset, it must be established that the Philippines has ratified all of the core ILO Conventions, namely: Forced Labour Convention, No. 29 (1930), ratified 15 July 2005; Freedom of Association and Protection of the Right to Organise Convention, No. 87 (1948), ratified 29 December 1953; Right to Organise and Collective Bargaining Convention, No. 98 (1949), ratified 29 December 1953; Equal Remuneration Convention, No. 100 (1951), ratified 29 December 1953; Abolition of Forced Labour Convention, No. 105 (1957), ratified 17 November 1960; Discrimination (Employment and Occupation) Convention, No. 111 (1958), 17 November 1960; Minimum Age Convention, No. 138 (1973), ratified 4 June 1998; and Worst Forms of Child Labour Convention, No. 182 (1999), ratified 28 November 2000.

A. Coverage

that it shall be bound by the amendment only after a subsequent express notification of its acceptance; and (b) before the date of entry into force of the amendment, any ratifying Member may give notice to the Director-General that it will not give effect to that amendment for a specified period.

247. Doumbia-Henry, et al., *supra* note 50, at 2.

248. The survey of laws and regulations was undertaken through a Technical Working Committee created by then DOLE Secretary Arturo D. Brion pursuant to Administrative Order No. 56, series of 2007, with this writer as Chairperson. The Committee was vice-chaired by the Bureau of Working Conditions, with the following agencies as members: the Occupational Safety and Health Center (OSHC), Employees Compensation Commission (ECC), National Maritime Polytechnic (NMP), Bureau of Labor Relations (BLR), Legal Service (LS), International Labor Affairs Service (ILAS), Philippine Overseas Employment Administration (POEA), and the Maritime Training Council (MTC). Representatives from the Maritime Industry Authority (MARINA) and Philippine Coast Guard (PCG) were also in active participation. The Committee was tasked to identify gaps or inconsistencies between Philippine laws and regulations and the MLC, upon consultation with maritime stakeholders.

The matter on coverage mainly entails the kind of ships and seafarers to be covered by Philippine national laws, policies, and regulations that shall implement the MLC.

1. Ships

(a) Outright Exclusions

In 2007, a Guideline sent by the ILO High-Level Tripartite Mission identified exclusion from MLC consideration as an initial approach towards Philippine ratification.²⁴⁹ One of two core issues on exclusion of ships pertains to a determination of outright exclusions, to wit: (a) ships which navigate exclusively in *inland waters* or waters within, or closely adjacent to, sheltered waters or areas where port regulations apply; (b) ships not ordinarily engaged in commercial activities; (c) ships engaged in fishing or similar pursuits; (d) ships of traditional build such as dhows and junks; and (e) warships and naval auxiliaries.²⁵⁰

A perusal of four Maritime Industry Authority (MARINA) issuances reveals that four of five outright exceptions are traditional areas of policy exclusion.²⁵¹ Indeed, with respect to Philippine stakeholders' forums

249. Guideline of the ILO High-Level Tripartite Mission, attached in a Jan. 5, 2007 letter from Cleopatra Doumbia-Henry, Director of the ILO International Labour Standards Department, to DOLE Undersecretary Danilo P. Cruz, ¶ 2 [hereinafter Guideline of the ILO High-Level Tripartite Mission]. This Guideline of the Mission is not to be confused with the Guideline constituting part B of the Code.

250. The other core issue involves the exercise of the permitted exclusion on ships below 200 gross tonnage that are not engaged in international voyages.

251. Under the Philippine Merchant Marine Rules and Regulations (PMMRR) of 1997 issued by the Maritime Industry Authority, the following are excluded: ships of war and troop ships, ships and barges of 3 GT and below (not engaged in towing or pushing and carriage of goods and/or passengers for hire), pleasure crafts not engaged in any activity with pecuniary benefits, wooden ships of primitive build, sailing ships, and government ships not engaged in commercial operation. In Memorandum Circular No. 159 on the National Safety Management Code, the exclusions pertain to fishing boats, non-propelled barges, sailing ships, pleasure crafts not engaged in commercial trading, government-owned ships not engaged in commercial trade, and naval warships. In Memorandum Circular No. 163 on Issuance of Seafarer's Identification and Record Book (SIRB), the exclusions are personnel on board warships/naval vessels/naval auxiliaries, and personnel on board ships below 35 GT. Finally, in Memorandum Circular No. 164 on Qualification Document Certification System (QDC) in the Domestic Trade, exclusions pertain to ships at least 100 GT or of propulsion of at least 200kW operating primarily in domestic waters, warships, naval auxiliaries or other ships owned or operated by a State and

attended by the High-Level Tripartite Mission in November 2006, all but “ships which navigate exclusively in inland waters” were not objects of contentious discussion. In this regard, the High-Level Tripartite Mission carefully distinguishes between “inland waters” and “internal waters” as referred to in the constitutional provision on the Philippine National Territory.²⁵²

The Domestic Shipping Development Act²⁵³ defines domestic shipping as “transport of passengers and cargo ... between Philippine ports and within Philippine territorial or internal waters,” rendering it fair to conclude that “internal waters” encompass a broader territorial expanse.

In deliberations of the acknowledged framers of the 1987 Constitution, the Constitutional Commission created by then President Corazon Aquino, the phrase “consisting of its terrestrial, fluvial, and aerial domains” was added by Commissioner Azcuna in the Article that shall define Philippine national territory. He noted that “fluvial domain includes the *inland waters*: bays and rivers, streams, as well as internal waters or waters of the sea, landwards from the baselines.”²⁵⁴

The Philippine Merchant Marine Rules and Regulations (PMMRR) of 1997 issued by MARINA include Regulation I/5 on Categories and Classes of Ships. The species of outright exceptions (on ships not engaged in commercial activities, ships engaged in fishing, ships of traditional build, warships) coincide with Classes of Ships under Regulation I/5, Paragraph 4.1 of the PMMRR, while the exclusion of ships exclusively navigating inland waters befits Categories of Ships under Paragraph 4.1 of the same Regulation.

engaged only on governmental non commercial service, fishing vessels, pleasure yachts not engaged in trade, and wood ships of primitive build.

252. PHIL. CONST. art. I, § 1. The section provides:

Section 1. The national territory comprises the Philippine archipelago, with all the islands and waters embraced therein, and all other territories over which the Philippines has sovereignty or jurisdiction, consisting of its terrestrial, fluvial, and aerial domains, including the territorial sea, the seabed, the subsoil, the insular shelves, and other submarine areas. The waters around, between, and connecting the islands of the archipelago, regardless of their breadth and dimensions, form part of the internal waters of the Philippines.

253. An Act Promoting the Development of the Philippine Domestic Shipping, Shipbuilding, Ship Repair and Ship Breaking, Ordaining Reforms in Government Policies Towards Shipping in the Philippines and for Other Purposes [Domestic Shipping Development Act of 2004], Republic Act No. 9295 (2004).

254. I RECORD OF THE CONSTITUTIONAL COMMISSION 305 (1986).

In the Guideline sent by the November 2006 ILO High-Level Tripartite Mission, it was clarified that “inland waters” is not to be confused with “internal waters” as referred to in the 1987 Constitution. The Mission also noted that the subject exclusionary phrase in the MLC was lifted from the definition of “seagoing ship” in the STCW.²⁵⁵ It must be emphasized that the PMMRR, including Regulation I/5 on Categories and Classes of Ships, were formulated in consonance with international standards such as the STCW.

(b) Permitted Exclusions

There are two types of permitted exclusions for ships of less than 200 GT. The first involves a possible “blanket” exclusion in Article II, paragraph 6 of the MLC, with the following requisites: (a) it would not be reasonable or practicable at the present time to apply certain details of the MLC Code; (b) such unreasonableness or impracticability involves a ship or particular categories of flag ships; (c) such determination is made by the competent authority and only upon consultation with shipowners’ and seafarers’ organizations concerned; and (d) ships possibly excluded shall be less than 200 GT and not engaged in international voyages.

This “blanket” exclusion means that relevant Code provisions shall not apply to the extent that the subject matter is dealt with differently by national laws or regulations or collective bargaining agreements or other measures. The phrase “at the present time” also implies that the exclusion will be temporary in nature.

The second exclusion pertaining to ships of less than 200 GT is found in Title 3 on Accommodation, Recreational Facilities, Food and Catering. Certain accommodation requirements may not involve ships of less than 200 GT, with the following requisites: (a) where it is reasonable to make the exemption; and (b) taking into account the size of the ship and the number of persons on board.

Based on 2008 data from the MARINA Vessel Information System, 2,926 out of 4,233 registered vessels under the Philippine domestic merchant fleet are below 200 GT. This means that, theoretically, 69% of the domestic merchant fleet may be exempted from Philippine laws and regulations implementing the MLC.

With the possible exclusion of 2,885 fishing vessels, it is theoretically possible that 5,811 vessels or 82% of the Domestic Operating Fleet may be excluded from Philippine laws and regulations implementing the MLC. But it cannot be overemphasized that such exclusions must be subjected to consultation with the social partners.

255. Guideline of the ILO High-Level Tripartite Mission, *supra* note 249, at n. 2.

2. Seafarers

As discussed in Chapter III of this Article, there should be a determination as to types of seafarers who may or may not be excluded from laws and regulations implementing the MLC. Examples of workers in the doubtful category are scientists, researchers, divers, specialist offshore technicians, harbor pilots, inspectors, superintendents, guest entertainers, repair technicians, surveyors and portworkers. The suggested means to resolve doubtful categories are outlined in MLC Resolution VII and cited in Chapter III of this Article.

B. Title 1: Minimum Requirements for Seafarers to Work on a Ship

1. Minimum Age

The Philippines has ratified two core Conventions on child labor, namely the Minimum Age Convention²⁵⁶ and Worst Forms of Child Labour Convention.²⁵⁷ Since the minimum age specified in the former is 15 years old, Philippine labor laws allow employment of minors between 15 and 18 years of age.²⁵⁸ A “working child” may refer to someone between 15 and 16 years of age (below the MLC minimum age of 16 years), as long as the child is not subjected to work or economic activity that is a form of exploitation or is harmful to his/her health and safety or physical, mental or psychosocial development.²⁵⁹

On the other hand, an applicant for a Seafarer’s Identification and Record Book (SIRB) shall at least be 18 years old at the time of application, except for an engine or deck cadet applying for the issuance for a SIRB for shipboard apprenticeship training who must be at least 16 years old at the time of application.²⁶⁰ All maritime enterprises operating Philippine-

256. Convention (No. 138) Concerning Minimum Age for Admission to Employment, June 26, 1973, 1015, U.N.T.S. 297.

257. Convention (No. 182) Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor, June 17, 1999, 2133 U.N.T.S. 161.

258. A Decree Instituting a Labor Code Thereby Revising and Consolidating Labor and Social Laws to Afford Protection to Labor, Promote Employment and Human Resources Development and Insure Industrial Peace Based on Social Justice [LABOR CODE], Presidential Decree No. 442, as Amended, art. 139 (1974).

259. Department of Labor and Employment, Rules and Regulations Implementing Republic Act No. 9231, Amending Republic Act No. 7610, as Amended, DOLE Department Order No. 65-04, § 3 (b) & (c) (July 26, 2004).

260. Maritime Industry Authority, Revised Rules on the Issuance of Enhanced Seafarer’s Identification and Record Book (SIRB), MARINA Memorandum Circular No. 10, part IV, ¶ 6 (Mar. 23, 2009).

registered ships shall ensure that seafarers on-board their ships possess valid SIRBs.²⁶¹

In addition, there shall be mandatory repatriation of underage overseas seafarers, defined as those who are below 18 years or below the minimum age requirement for overseas employment as determined by the Secretary of Labor and Employment.²⁶²

With the minimum age of seafarers pegged at 16 years in the MLC, there is a necessity to reconcile definitions of a “working child” under existing child labor laws and the MLC. Also, there is a need to assess whether the SIRB and overseas employment minimum age of 18 years hurdles the MLC requirement. As for the prohibition on night work for seafarers below 18 years, it appears that the definition of “night work” under existing child labor laws²⁶³ — between 10:00 p.m. to 6:00 a.m. of the following day, or an eight-hour period — falls short of the nine-hour period mandated by the MLC.

2. Medical Certificate

Under the PMMRR, masters, officers, and ratings on-board Philippine-registered ships shall be duly qualified, competent, certificated and medically fit.²⁶⁴ The Qualification Document Certification System imposes the submission of medical certificates for Deck and Engine Department officers and ratings. The certification pertains to physical and medical fitness, particularly good eyesight and hearing from a hospital or clinic accredited by the Department of Health (DOH).²⁶⁵

Seafarers shall be subjected to pre-employment medical examinations (PEME), which shall include (for new seafarers) complete physical examination and medical history taking, chest x-ray, complete blood count,

261. *Id.* part IV, ¶ 2.

262. An Act to Institute the Policies of Overseas Employment and Establish a Higher Standard of Protection and Promotion of the Welfare of Migrant Workers, Their Families and Overseas Filipinos in Distress, and For Other Purposes [Migrant Workers and Overseas Filipinos Act of 1995], Republic Act No. 8042 (1995); Omnibus Rules and Regulations Implementing the Migrant Workers and Overseas Filipinos Act of 1995, § (k) (1995).

263. An Act Providing a Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes [Special Protection of Children Against Abuse, Exploitation and Discrimination Act], Republic Act No. 7610, as Amended, § 12-A (1992).

264. PMMRR, reg. XVIII/2, ¶ 2.

265. Maritime Industry Authority, Rules Governing the Adoption and Implementation of a Qualification Document Certification System in the Domestic Trade, MARINA Memorandum Circular No. 164, part V (Mar. 15, 2001).

blood typing, routine urinalysis and fecalysis, dental examination, psychometric evaluation, visual acuity and color perception test, hearing and audiometric testing, hepatitis B screening, HIV testing, and an electrocardiograph examination.²⁶⁶

On the assessment of fitness, one of three duty status designations shall be given: Fit for Sea Duty, Unfit for Sea Duty, or Temporarily Unfit for Sea Duty.²⁶⁷ A past incarnation of the DOH rules states that all seafarers declared Unfit for Duty by the medical examiner have the right to appeal to an independent medical referee or committee designated by the Secretary of Health, based on the recommendation of the Bureau of Health Facilities and Services.²⁶⁸ Under the current rules, the right to appeal appears to be present only for serving seafarers.²⁶⁹

The medical certificate shall be valid for a maximum period of two years while on board, unless the seafarer is below 18 years of age, in which case the validity shall be for a period of one year.²⁷⁰ The validity of a certification of color vision appears to be subsumed with this two-year PEME certificate validity period.

There are also rules on urgent cases when a seafarer may work without a valid medical certificate, and on expiration of a certificate in the course of voyage.²⁷¹ For overseas seafarers, the manning agency shall ensure that the medical examination conducted is in accordance with the prescribed and acceptable international standard, and the requirements of the employer.²⁷² The above-cited DOH rules and regulations shall apply.

3. Training and Qualifications

266. Department of Health, Guidelines for Conducting Medical Fitness Examinations for Seafarers, DOH Administrative Order No. 25, part VI (B) (2) (July 27, 2007), along with related documents on Minimum PEME Test Requirements.

267. *Id.* part VI (C).

268. Department of Health, Standard Guidelines for Conducting Medical Fitness Examinations for Seafarers, DOH Administrative Order No. 176, part IV, ¶ 3 and part V, ¶ 4 (b) (2000).

269. DOH A.O. No. 25, part VI (C) (1) (g).

270. *Id.* part VI (B) (4) (a) (i).

271. *Id.* part VI (B) (4) (c) (d).

272. Philippine Overseas Employment Administration, POEA Rules and Regulations Governing the Recruitment and Employment of Seafarers, part II, rule VI, (May 23, 2003) [hereinafter POEA Rules and Regulations].

The Philippines has ratified the ILO Officers' Competency Certificates Convention,²⁷³ and the International Convention on Standards of Training, Certification, and Watchkeeping for Seafarers (STCW). Seafarers are qualified through Certificates of Proficiency or Documentary Evidence in line with Chapters V and VI of the STCW. There are various requirements for new entrants and existing seafarers in general tanker, specialized oil tanker, specialized chemical tanker, and specialized liquefied gas tanker operations,²⁷⁴ as well as a framework for accreditation of maritime training centers to maintain the highest standards and quality of training.²⁷⁵

Various courses are required for completion, in accordance with regulations issued by the Technical Education and Skills Development Authority (TESDA), which established the occupational requirements, curriculum and assessment tests for the Seafarers (Ratings) Course.²⁷⁶

The PMMRR states that masters, officers, and ratings on board Philippine-registered ships shall, *inter alia*, be duly qualified, competent, and certificated.²⁷⁷ To ensure the greater safety of life and property at sea and protection of the marine environment, the adoption of a qualification document certification (QDC) system is prescribed, with minimum qualification requirements for officers and ratings.²⁷⁸

273. ILO Convention No. 53, Concerning the Minimum Requirement of Professional Capacity for Masters and Officers on Board Merchant Ships, as modified by the Final Articles Revision Convention, 1946, Oct. 24, 1936, 40 U.N.T.S. 153.

274. Maritime Training Council, Revised Standards in the Issue of Certificates or Documentary Evidences Under Chapter V and VI of the STCW Convention, as Amended for New Entrants and Existing Seafarers, MTC Resolution No. 1 (2001).

275. Maritime Training Council, Revised Standards and Procedures in the Accreditation and Monitoring of Course Programs Conducted by Maritime Training Centers, MTC Resolution No. 3 (1998).

276. For instance, TESDA, Resolution No. 9 (1998), established occupational requirements, curriculum and assessment tests for the Seafarers (Ratings) Course.

277. PMMRR, reg. XVIII/2.

278. Maritime Industry Authority, Rules Governing the Adoption and Implementation of a Qualification Document Certification System in the Domestic Trade, MARINA Memorandum Circular No. 164, part V (A) (B) (2001). The minimum requirements are as follows:

(a) Deck Department — Minimum Requirements for Officers and Ratings Serving On-board Ships of not less than 100 GT:

REQUIREMENTS	OFFICERS	RATINGS
Age	At least 20 years old	At least 18 years old

Medical	Certified physically fit, particularly regarding good hearing and eyesight from a DOH-accredited clinic	Certified physically fit, particularly regarding good hearing and eyesight from a DOH-accredited clinic
License/Examination	PRC License	--
Training (from centers accredited by the Maritime Training Council [MTC])	Basic safety course Deck watchkeeping course (for non-graduate of maritime courses) Collision regulation (for non-graduate of maritime courses) ROC/SSROC, if applicable	Basic safety course Deck watchkeeping course (for non-graduate of maritime courses)
Sea Service	--	Must have served on-board ship of not less than 100 GT for at least 6 months in deck department

(2) Engine Department – Minimum requirements for officers and rating serving on-board ships powered by Main Propulsion Machinery of not less than 200kW Propulsion Power:

REQUIREMENTS	OFFICERS	RATINGS
Age	At least 20 years old	At least 18 years old
Medical	Certified physically fit, particularly regarding good hearing and eyesight from a DOH-accredited hospital or clinic	Certified physically fit, particularly regarding good hearing and eyesight from a DOH-accredited hospital or clinic
License/Examination	PRC License	--
Training (from centers accredited by the Maritime Training Council [MTC])	Basic safety course	Basic safety course

There are also competency and training requirements for major patrons, minor patrons, boat captains, and marine diesel mechanics to wit: (1) competency — Quality Document Certificate issued by MARINA or STCW Endorsement Certificate issued by the Technical Education and Skills Development Authority (TESDA); and (2) training — if applicable: (i) deck watchkeeping course; (ii) ROC/SRROC; (iii) ship radio mobile operator's course; and (iv) engine watchkeeping course.²⁷⁹

Lastly, every overseas manning agency applying for a license to recruit must submit a written application and a verified undertaking to ensure, *inter alia*, that any seafarer recruited or deployed by them is qualified and holds the documents necessary for the job concerned.²⁸⁰

4. Recruitment and Placement

The Philippines has ratified the ILO Recruitment and Placement of Seafarers Convention.²⁸¹ There is a legal framework under the Labor Code that regulates recruitment of seafarers for domestic or overseas employment. For domestic employment, a more specific set of rules is embodied in Private Recruitment and Placement Agency (PRPA) Rules and Regulations.²⁸² For overseas employment, the prevailing policies and regulations are in the Migrant Workers' and Overseas Filipinos Act of 1995, as well as POEA rules and regulations.

The Labor Code establishes the regulatory foundation for recruitment and placement of seafarers. The provisions of the Code include a prohibition on the part of travel agencies to recruit, a citizenship requirement where only Filipino corporations, partnerships or entities at least 75% of the authorized and voting capital stock of which is owned and controlled by

Service	--	Must have served vessels powered by main propulsion of not less than 200kW propulsion power for 6 months in the engine department
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279. Maritime Industry Authority, Rules on the Conduct of Examination and Issuance of License to Major Patrons, Minor Patrons, Boat Captains and Marine Diesel Mechanics, MARINA Memorandum Circular No. 170, part V (2007).

280. POEA Rules and Regulations, part II, rule II, § 1 (e), ¶ 2.

281. ILO Convention No. 179.

282. Department of Labor and Employment, Rules and Regulations Governing Private Recruitment and Placement Agency for Local Employment (June 5, 1997) [hereinafter PRPA Rules].

Filipino citizens shall be permitted to participate in recruitment, and a provision on substantial capitalization of agencies, and so forth.²⁸³

In addition, to discourage undue proliferation of manning agencies, the issuance of a new license is conditioned on the existence and servicing of a new market. An applicant for a manning license shall undertake to deploy at least 50 seafarers to its new market within one year from issuance of the license, under pain of cancellation of such license.²⁸⁴

As for payment of fees by seafarers, the Labor Code states that any person applying with a private fee-charging employment agency for employment assistance shall not be charged any fee until he has obtained employment through its efforts or has actually commenced employment.²⁸⁵ For domestic employment, the PRPA Rules allow licensed PRPAs to charge workers a placement fee which shall not exceed 20% of the worker's first month basic salary, and in no case shall such fee be charged prior to the actual commencement of employment.²⁸⁶ On the other hand, rules on overseas employment prohibit manning agencies from charging fees from seafarers for recruitment and deployment services.²⁸⁷

C. Title 2: Conditions of Employment

The Labor Code generally covers working conditions on-board Philippine registered-ships. The Code does not make any distinctions between land or sea-based employees within the Philippine legal jurisdiction. The most relevant provisions are located in Book III on Labor Standards, with minimum requirements for hours of work, overtime work, weekly rest periods, holiday pay, service incentive leave, service charges, minimum wage rates, payment of wages, and provides prohibitions regarding wages.²⁸⁸

Other labor standards are located in other statutes, to wit: 13th Month Pay;²⁸⁹ Maternity Leave;²⁹⁰ Paternity Leave;²⁹¹ and Solo Parents' Leave.²⁹²

283. LABOR CODE, arts. 25-35.

284. POEA Rules and Regulations, part II, rule II, § 1 (e) (11).

285. LABOR CODE, art. 32.

286. PRPA Rules, § 29.

287. *Id.* part V, rule II, § 2 (a).

288. LABOR CODE, title I, book III.

289. Requiring All Employers to Pay Their Employees a 13th-Month Pay, Presidential Decree No. 851, § 1 (1976).

290. An Act Further Strengthening the Social Security System Thereby Amending for this Purpose, Republic Act No. 1161, As Amended, Otherwise Known as the Social Security Law [Social Security Act of 1997], Republic Act No. 8282 (1997).

Over and above labor standards, the Constitution and Labor Code uphold the primacy of the free and responsible exercise of the right to self-organization and collective bargaining as the mode of settling wages and other terms and conditions of employment.

1. Seafarers' Employment Agreements

In general, there is no requirement to put employment contracts or agreements in writing. In fact, wages are payable by an employer to an employee under a written or unwritten contract of employment for work done or to be done, or for services rendered or to be rendered.²⁹³

For overseas employment, however, there is a standard employment contract (SEC) in accordance with international standard and maritime practice, which comprise the minimum requirements for every individual contract approved by the POEA.²⁹⁴ A manning agency shall ensure that seafarers are informed of their rights and duties under their contracts of employment and the articles of agreement prior to and in the process of engagement.²⁹⁵

The POEA-SEC contains the following mandatory provisions which cover: duties of the employer/agency/master; duties of the seafarer; commencement and duration of the contract; free passage from the point of hire to the port of embarkation; baggage allowance; hygiene and vaccination; wages; payment on board; allotments and remittances; Account of wages and certificate of employment; overtime and holidays; leave pay; shore leave; victualling, vessel stores, and provisions; repatriation; compensation and benefits; and termination of employment.²⁹⁶

With regard to termination of employment, the MLC allows agreements for a definite or indefinite period of employment, or for a voyage.²⁹⁷ While the Supreme Court may have validated fixed-term arrangements for overseas

291. An Act Granting Paternity Leave of Seven (7) Days with Full Pay to All Married Employees in the Private and Public Sectors for the First Four (4) Deliveries of the Legitimate Spouse With Whom He is Cohabiting and for Other Purposes [Paternity Leave Act of 1996], Republic Act No. 8187 (1996).

292. An Act Providing for Benefits and Privileges to Solo Parents and Their Children, Appropriating Funds Therefor and for Other Purposes [Solo Parents' Welfare Act of 2000], Republic Act No. 8972 (2000).

293. LABOR CODE, art. 97 (f).

294. POEA Rules and Regulations, part IV, rule I, § 1 [hereinafter POEA-SEC].

295. *Id.* part II, rule II, § 1 (e) (4).

296. POEA-SEC.

297. MLC 2006, stand. A2.1, ¶ 4 (g).

seafarers,²⁹⁸ the general regular employment framework under Book VI of the Labor Code²⁹⁹ still applies in the case of domestic seafarers. Hence, the parameters for valid fixed-term arrangements enunciated in *Brent School v. Zamora*³⁰⁰ and its progeny would have to be taken into consideration.

2. Wages

The Labor Code contains provisions on the following: minimum wage rates, payment of wages, prohibitions regarding wages, wage studies, wage agreements and wage determination, and administration and enforcement.³⁰¹ Wages shall be paid at least once every two weeks, or twice a month at intervals not exceeding 16 days.³⁰² In addition, every employer shall pay his employees by means of payroll with required details or information contained therein.³⁰³

There are also requirements with regard to forms and place of payment of wages.³⁰⁴ Under the Wage Rationalization Act, upon written permission of the majority of the employees or workers concerned, all private establishments, companies, businesses, and other entities with 25 or more employees and located within a one kilometer radius of a commercial, savings, or rural bank shall pay the wages and other benefits of their employees through any of the said banks and within the period of payment of wages fixed by the Labor Code.³⁰⁵ In addition, there is a specific policy with regard to payment of wages through automated teller machines (ATMs).³⁰⁶

The Wage Rationalization Act also amended the Labor Code to establish an elaborate framework for minimum wage-fixing undertaken at the level of Regional Tripartite Wages and Productivity Boards (RTWPBs).

298. *Millares v. NLRC*, 385 SCRA 306 (2002).

299. LABOR CODE, arts. 278-82.

300. *Brent School v. Zamora*, 181 SCRA 702 (1990).

301. LABOR CODE, title II, book III.

302. *Id.* art. 103.

303. Department of Labor and Employment, DOLE Rules Implementing Book III, rule X, §§ 6 & 7.

304. LABOR CODE, arts. 102-04.

305. An Act to Rationalize Wage Policy Determination by Establishing the Mechanism and Proper Standards therefor, Amending for the Purpose of Article 99 of, and Incorporating Articles 120, 121, 122, 123, 124, 126 and 127 into Presidential Decree No. 442, As Amended, Otherwise Known as The Labor Code of the Philippines, Fixing Wage Rates, Providing Wage Incentives For Industrial Dispersal to the Countryside, and for Other Purposes [Wage Rationalization Act], Republic Act No. 6727, § 7 (1989).

306. Department of Labor and Employment, DOLE Labor Advisory, Nov. 25, 1996.

For overseas employment, there are specific provisions in the POEA-SEC on the following: intervals on payment of wages,³⁰⁷ written account of wages upon discharge,³⁰⁸ mandatory allotment and remittance,³⁰⁹ and overtime and holidays.³¹⁰ Also, given the ILO-recommended minimum monthly basic wage for able seamen at \$545.00, the POEA has pegged the overseas able seafarer's minimum monthly basic wage at \$465.00.³¹¹

3. Hours of Work and Hours of Rest

The Labor Code provides the framework for determining hours of work and prescribed rest periods.³¹² Hours worked shall include (a) all the time during which an employee is required to be on duty or to be at a prescribed workplace, and (b) all time during which an employee is suffered or permitted to work. Rest periods of short duration during working hours shall be counted as hours worked.³¹³

The normal hours of work shall not exceed eight hours a day.³¹⁴ It shall be the duty of every employer to provide employees a rest period of not less than 24 consecutive hours after every six consecutive normal work days.³¹⁵ There are no stipulated maximum hours of work or minimum hours of rest under Philippine labor standards laws.

4. Entitlement to Leave

Every employee who has rendered at least one year service shall be entitled to yearly service incentive leave of five days with pay.³¹⁶ Other laws grant mandatory leaves with pay subject to certain conditions, to wit: (a) Social Security Law — 60 days for normal delivery, 78 days for caesarian delivery, given to every pregnant employee whether married or unmarried for the first 4 deliveries; (b) Paternity Leave Act — seven days for married male employees; and (c) Solo Parents' Act — seven days parental leave.

For overseas employment, leave shall not be less than two and a half days for each month of service and pro-rated. Leave pay shall be settled on-board

307. POEA-SEC, § 6.

308. *Id.* § 9.

309. *Id.* § 8.

310. *Id.* § 11.

311. POEA Governing Board Resolution No. 1 (2008).

312. LABOR CODE, arts. 82-93.

313. *Id.* art. 84.

314. *Id.* art. 83.

315. *Id.* art. 91.

316. *Id.* art. 95.

or settled within the two weeks after arrival of the seafarer at the point of hire.³¹⁷

5. Repatriation

The Philippines has ratified the ILO Repatriation of Seamen Convention.³¹⁸ While there are no provisions under labor laws on repatriation of seafarers, overseas employment laws and regulations are replete with provisions on repatriation. Insofar as overseas seafarers are concerned, their repatriation and transport of personal belongings shall be the primary responsibility of the principal and/or manning agency which recruited or deployed the seafarer. All costs attendant to the repatriation shall be borne or charged to the principal and/or manning agency concerned.³¹⁹

The principal or agency shall advance the cost of plane fare without a prior determination of the cause of the termination of the seafarer's employment. However, the principal or agency may recover the cost of repatriation from the seafarer upon return to the Philippines, if termination of employment is due solely to the seafarer's fault.³²⁰

When the need for repatriation arises and the principal fails to provide for the costs, the Philippine Embassy/Consulate/Overseas Labor Office at the worksite shall simultaneously notify the Overseas Workers Welfare Administration (OWWA) of such need. The POEA shall require the agency to provide the plane ticket or pre-paid ticket advice to the Philippine Embassy/Consulate/Overseas Labor Office and to report compliance to the POEA, which shall advise the OWWA accordingly.³²¹

If the employment agency fails to provide the ticket or pre-paid ticket advice within 48 hours from receipt of the notice, the POEA shall suspend the documentary processing of the agency or impose such sanctions as it may deem necessary. The POEA may request OWWA to advance the cost of repatriation with recourse to the agency and/or employer.³²² There are also provisions on repatriation when a vessel arrives at a convenient port before the expiration of the employment contract.³²³

6. Seafarer's Compensation for the Ship's Loss or Foundering

317. POEA-SEC, § 12.

318. ILO Convention No. 23, Concerning the Repatriation of Seamen, June 23, 1926, 38 U.N.T.S. 315.

319. The Migrant Workers and Overseas Filipinos Act of 1995, § 15.

320. POEA Rules and Regulations, part VII, rule II, §§ 1-3.

321. *Id.*

322. *Id.*

323. POEA-SEC, § 19.

There are no specific provisions under Philippine labor laws on compensation for ship's loss or foundering. In addition, there is no indemnity against unemployment available under prevailing mandatory social insurance schemes. The closest kind of entitlement would be mandatory separation pay for closure or cessation of operations of an establishment, assuming a termination of employment situation.³²⁴

For overseas employment, there is a one-month separation pay benefit in case of shipwreck and reimbursement for loss or damage to personal effects of seafarers.³²⁵

7. Manning Levels

The PMMRR contains requirements for minimum safe manning of ships, which takes cognizance of the length and nature of voyage and trading route, construction and technical equipment of ships (degree of automation), number, size (KW) and type of main propulsion units and auxiliary, size of ships, tonnage and type; care of passengers' safety, radio and health personnel regulations, and alternation, job-combination or overlapping competence.³²⁶

The Principles of Safe Manning under IMO Resolution No. A.481 (XII) have been taken into consideration, with a specific subset of principles and guidelines adopted to ensure minimum safe manning for seagoing ships in the international and domestic trade.³²⁷ For instance, there should be a sufficient number of qualified personnel to meet the peak work-load situations and conditions with due regard to the number of hours of shipboard duties and rest periods that may be assigned to a seafarer; the bridge watch shall consist of at least one officer and one deck rating qualified to take navigational watch.³²⁸

In addition, there are Safe Manning Scales for Deck and Engine Departments for Seagoing Ships in International Trade — passenger or cargo ships, tankers, and tug and anchor handling or Ships in the Domestic Trade (Coastwise Voyage and Ships Engaged in Harbor, Bay, Lake and River

324. LABOR CODE, art. 283.

325. POEA-SEC, §§ 22, 27.

326. PMMRR, reg. XVIII/3.

327. Maritime Industry Authority, Amendments to Chapter XVIII of the Philippine Merchant Marine Rules and Regulations (PMMRR) 1997 on Minimum Safe Manning for Seagoing Ships in International Trade, MARINA Memorandum Circular Nos. 137 (Sep. 17, 1998); Maritime Industry Authority, Amendments to Chapter XVIII of the Philippine Merchant Marine Rules and Regulations (PMMRR) 1997 on Minimum Safety Manning for Ships in the Domestic Trade, MARINA Memorandum Circular No. 148 (June 3, 1999).

328. *Id.*

voyage) — passenger ships, cargo ships, tankers, dredgers and anchor handling and tugs, fishing vessels, pleasure, and high speed crafts.³²⁹

8. Career and Skill Development and Opportunities for Seafarers' Employment

There are at least three government institutions that cater to developing skills and opportunities for seafarers' employment: (a) The Maritime Training Council (MTC) established through Letter of Instruction No. 1404, series of 1984, shall, *inter alia*, undertake special programs or projects in furtherance of the objectives of training and upgrading of seafarers; (b) The National Maritime Polytechnic (NMP) created by virtue of Presidential Decree No. 1369 offers specialization and upgrading courses for both licensed officers and ratings, and shall conduct research and studies on the latest maritime technology and other related matters for the maritime industry; and (c) The Technical Education and Skills Development Authority established under Republic Act No. 7796 (1994) promotes and strengthens the quality of technical education and skills development programs to attain international competitiveness.

In addition, the OWWA has a Seafarers' Upgrading Program for seafarers upon payment of three membership contributions, with each contribution amounting to \$25. The Program aims to enhance the competitive advantage of Filipino seafarers in meeting IMO competency standards.³³⁰

D. Title 3: Accommodation, Recreational Facilities, Food, and Catering

There are no labor laws directly related to accommodation and recreational facilities of seafarers. There are, however, existing regulations on ship construction to enhance the safety of life and property at sea. The PMMRR contains provisions on construction and equipment, stability, machinery installations, electrical installations, fire protection and extinction, fire safety, life-saving appliances, and safety of navigation. Such requirements are patterned after the IMO Model Code.

With respect to sanitation, food, and catering, there are measures on Vessel Sanitation under the Sanitation Code.³³¹ Basically, ships operated for

329. *Id.*

330. OWWA Omnibus Policies, Board Resolution No. 135 (2003), art. VIII, § 2.

331. Code of Sanitation [CODE ON SANITATION], Presidential Decree No. 856, § 67, ch. XV (1975).

public patronage that call on ports within Philippine territory are required to have a sanitary permit.³³²

No person shall operate or be employed in the vessel without first securing a health certificate issued by the city or municipal health officer of the locality where the establishment is located or the quarantine medical officer in designated ports of entry.³³³ Sanitary requirements for vessels include the following:³³⁴ (1) regulations on water supply, with minimum rates of consumption of domestic water; (2) drinking water facilities, with specifications on drinking fountains, water supply pipes, and water service containers; (3) disinfection of the distribution system and treatment of water; (4) food safety on decks, bulkheads and deck-heads, piping in deck-heads, and equipment and utensils; (5) toilet facilities, with minimum toilet requirements; (6) hand-washing facilities; (7) sewage disposal and drainage, with specifications on deck drains and gutters; (8) solid waste management and vermin control; (9) lighting, with specifications on illumination; and (10) ventilation.

E. Title 4: Health Protection, Medical Care, Welfare and Social Security Protection

1. Medical Care on Board Ship and Ashore

Alongside benefits and entitlements afforded Filipino workers under the National Health Insurance Act,³³⁵ there are provisions in the Labor Code that pertain to first-aid treatment, emergency medical and dental services, qualifications of health personnel and forms of assistance of the employer.³³⁶

There are requirements with respect to furnishing employees free medical and dental attendance and facilities consisting of: the services of a full-time registered nurse when the number of employees exceeds 50 but not more than 200; the services of a full-time registered nurse, a part-time physician

332. Department of Environment and Natural Resources, Implementing Rules and Regulations of Chapter XV — “Port, Airport, Vessel and Aircraft Sanitation” of the Code on Sanitation of the Philippines (P.D. 856), § 3.1 [hereinafter Sanitation Code Rules].

333. *Id.* § 4.1.

334. *Id.* § 8.

335. An Act Instituting a National Health Insurance Program for all Filipinos and Establishing the Philippine Health Insurance Corporation for this Purpose [National Health Insurance Act of 1995], Republic Act No. 7875 (1995). National Health Insurance or “Philhealth” Program entitlements consists of subsidy for room and board and operating room fees, and allowances for drugs and medicines, laboratories and doctor’s professional fees, including those of surgeon and anesthesiologist fees.

336. LABOR CODE, arts. 156-61.

and dentist, and an emergency clinic, when the number of employees exceeds 200 but not more than 300; and the services of a full-time physician and a full-time registered nurse as well as a dental clinic, and an infirmary or emergency hospital with one bed capacity for every 100 employees when the number of employees exceeds 300.³³⁷

Admittedly, these are general requirements that do not pertain to ships or seafarers. There are more ship-specific requirements under the Sanitation Code, which are: Medical Manpower — for voyages in excess of twelve-hour duration, every vessel carrying 500 to 2,000 passengers shall carry one qualified and registered medical practitioner; Hospital Arrangement — every vessel carrying 500 or more passengers making trips more than 12 hours shall be provided with sick bay accommodation, depending on a specific number of passengers; Life-Saving Appliances — consistent with the PMMRR; Protection Against Noise — consistent with the PMMRR; and Shipment of Cargo by Sea — requirements for animals, plants, hazardous materials or dangerous cargo.³³⁸

There are also specific requirements for on-board medical personnel and hospital arrangements under the PMMRR.³³⁹ While the Sanitation Code and PMMRR regulations are ship-specific and passenger safety-oriented, they do not, however, directly cater to needs and entitlements of seafarers for overseas employment, as there is no provision in the POEA-SEC pertaining to medical care on-board a ship.

2. Shipowners' Liability

There is an Employees' Compensation and State Insurance Fund regime that ensures adequate income and medical benefits for employees and their dependents, in the event of work-connected death or disability.³⁴⁰ The State Insurance Fund depends on contributions of employers, and shall be liable for compensation to the employee or his dependents, except when the death or disability was occasioned by the employee's intoxication, willful intention to injure or kill himself or another, notorious negligence, or otherwise provided in Title II, Book IV of the Labor Code.

For overseas employment, there are rules on determining compensation for injury, sickness, or death of a seafarer.³⁴¹

3. Health and Safety Protection and Accident Prevention

337. *Id.* art. 157.

338. Sanitation Code Rules, § 9.

339. *Id.* reg. XVIII/2, ¶¶ 5 & 6 and reg. I/11.

340. LABOR CODE, arts. 166, 168 & 172.

341. POEA-SEC, § 20.

The Secretary of Labor shall, by appropriate orders, set and enforce mandatory occupational safety and health standards to eliminate or reduce occupational safety and health hazards in all workplaces and institute new, and update existing, programs to ensure safe and healthful working conditions in all places of employment.³⁴²

There are Occupational Safety and Health Standards³⁴³ that enumerate standards and measures for safe and healthful working conditions, including: Special Inspection, Investigation, and Review, as well as Abatement of Imminent Danger, Suspension, and description of Hazardous Workplaces as the enforcement component (Rules 1000, 1010); Registration of businesses (Rule 1020); Training of Personnel in Occupational Safety and Health (Rule 1030); Health and Safety Committee (Rule 1040); Notification and Keeping of Records of Accidents and/or Occupational Illnesses (Rule 1050); Premises of Establishments (Rule 1060); Occupational Health and Environmental Control (Rule 1070); Personal Protective Equipment and Devices (Rule 1080); Hazardous Materials (Rule 1090); Gas and Electric Welding and Cutting Operations (Rule 1100); Hazardous Work Processes (Rule 1120); Explosives (Rule 1140); Materials Handling and Storage (Rule 1150); Boiler (Rule 1160); Unfired Pressure Vessels (Rule 1170); Machine Guarding (Rule 1200); Electrical Safety (Rule 1210); Elevators and Related Equipment (Rule 1220); Identification of Piping System (Rule 1230); Construction Safety (Rule 1410); Logging (Rule 1420); Fire Protection and Control (Rule 1940); Pesticides and Fertilizers (Rule 1950); Occupational Health Services (Rule 1960); Fees (Rule 1970); Authority of Local Government (Rule 1980).

The Health and Safety Committee has required for every place of employment shall, *inter alia*, plan and develop accident prevention programs for the establishment.³⁴⁴ Since such a committee plays very important roles in eliminating work hazards, developing workers' interest and participation in the planning and development of the safety program is the responsibility of the employer.³⁴⁵

The employer must exercise leadership and provide support to make the safety program work. The principal duties of the employer, *inter alia*, are to: (a) establish and adopt in writing administrative policies on safety in conformity with the Standards; (b) report to the enforcing authority the

342. LABOR CODE, art. 162.

343. Department of Labor and Employment, Amending Certain Provisions of the Occupational Safety and Health Standards, DOLE Department Circular No. 2 (June 2, 2008). Ships and sea transport have been covered by virtue thereof, thereby repealing the exemption under rule 1003.03.

344. Department of Labor and Employment, Occupational Safety and Health Standards, rules 1041 & 1043.01.

345. *Id.* rule 1045.

policies adopted and health and safety organization established to carry out the program; and (c) act on recommended measures of the health and safety committee. Workers and the “safety man” so designated to assist the employer have listed duties as well.³⁴⁶

There are various types and composition of the Health and Safety Committee, depending on the number of workers in a workplace.³⁴⁷ The above-stated measures complement existing requirements for seaworthiness and ship safety. In the implementation of the International Safety Management Code (ISM),³⁴⁸ the MARINA has issued guidelines on recognition of organizations in the implementation of the ISM for Philippine shipping companies.³⁴⁹ In addition, there is a National Safety Management Code that fosters a culture of safety in domestic shipping operations through a Safety Management System (SMS) by shipping companies.³⁵⁰ For overseas employment, there are no provisions on health and safety protection and accident prevention.

4. Access to Shore-Based Welfare Services

There are no express policies or regulations that ensure accessibility and promote the development of shore-based welfare facilities. The closest would be for overseas seafarers, who may avail of the counseling and legal services, as well as welfare assistance and medical services, provided in a Migrant Workers and other Overseas Filipinos’ Resource Center managed by the DOLE.³⁵¹

5. Social Security

The Philippines has ratified the ILO Social Security (Seafarers) Convention.³⁵² Under the Social Security Law,³⁵³ members or their

346. *Id.*

347. *Id.* rule 1042.

348. The ISM was adopted by the IMO (Resolution A.741 [18]) for the safe operation of ships and for pollution prevention.

349. Maritime Industry Authority, Guidelines on the Recognition of Organizations Acting on Behalf of the Administration in the Implementation of the ISM Code for Philippine Shipping Companies and Their Ships, MARINA Memorandum Circular No. 155 (Dec. 16, 1999).

350. Maritime Industry Authority, Adoption of a National Management Code and Providing Rules and Regulations for its Implementation in the Domestic Shipping, MARINA Memorandum Circular No. 159 (Dec. 2000).

351. Migrant Workers and Overseas Filipinos Act of 1995, § 19.

352. Convention (No. 165) Concerning Social Security for Seafarers (Revised), Oct. 9, 1987, 1690 U.N.T.S. 437.

353. Social Security Act of 1997.

dependents may avail of the following benefits: sickness, maternity, disability, retirement, death, funeral grant, supplemental disability allowance, 13th month pension, and dependents' pension. Loan privileges are likewise available.

For employees' compensation (work-related injury or illness), the following benefits are available: medical services, appliances and supplies, rehabilitation services, disability, sickness, death, funeral grant, supplemental disability, 13th month pension, and dependents' pension. The above-stated benefits more than comply with the MLC requirement to include at least three of the nine branches listed in Standard A4.5, paragraph 1. With regard to protections that are not provided, such as the unemployment benefit, these could be covered by the "progressive comprehensive" realization provision in the Standard.

With respect to bilateral agreements on social security, the Philippines has concluded agreements with the following countries: Austria, Belgium, Canada, France, Spain, Switzerland, and the United Kingdom. These represent steps taken to provide complementary social security for overseas seafarers. It should be noted, however, that the POEA-SEC is yet to incorporate a standard provision on social security.

F. Title 5: Compliance and Enforcement

1. Flag State Responsibilities

At the outset, figures must be established. As of January 2007, at least 158 of "certifiable" Philippine-registered ships that comprise the overseas fleet are expected to be covered by the MLC certification system (MLCert and DMLC).³⁵⁴ More than 50% of the ships are bulk carriers and general cargo vessels, in terms of number and gross tonnage.³⁵⁵

While such a certification system is understandably yet to be developed in the Philippine context, there is an inspection system for working conditions already in place. This inspection system is founded upon the visitorial and enforcement power of the Secretary of Labor and Employment, to wit:

The Secretary of Labor and Employment or his/her duly authorized representatives, including labor regulation officers, shall have access to employer's records and premises at any time of the day or night whenever work is being undertaken therein, and the right to copy therefrom, to question any

354. The source of the data is the MARINA-MISO list of ships comprising the Philippine-registered overseas fleet. "Certifiable ships" are those that shall be covered by the certification (MLCert and DMLC) system pursuant to reg. 5.1.3,

¶ 1.

355. *Id.*

employee and investigate any fact, condition, or matter which may be necessary to determine violations or which aid in the enforcement of this Code and of any labor law, wage order or rules and regulations issued pursuant thereto.³⁵⁶

Pursuant to the Labor Standards Enforcement Framework (LSEF), the DOLE ensures compliance with labor standards through the following: (a) Self-assessment. This voluntary mode shall be encouraged in establishments with at least 200 workers. It shall also apply to unionized establishments with registered collective bargaining agreements, regardless of the number of workers. Employers will be provided with a checklist for this purpose; (b) Inspection. This approach shall be undertaken in workplaces with 10 to 199 workers and effect restitutions or corrections if there are violations; and (c) Advisory services. This approach shall be undertaken in workplaces with less than 10 workers and those registered in Barangay Micro-Business Enterprises (BMBEs).³⁵⁷

To carry out the LSEF, a Revised Labor Inspection Manual was formulated in 2004, with provisions on the following: Scope of inspection; Types of inspection (routine, complaint or referral, imminent danger investigation, accident investigation, spot check as a result of self-assessment and technical advisory cases); Priorities for inspection — complaints, imminent danger, accidents, hazardous workplaces, construction sites, establishments employing women and child workers; organizational and functional structure of the labor inspectorate; qualifications and competency requirements for inspectors; functions and duties of inspectors; conduct of inspection; procedures in conduct of actual inspection; report of findings and documentation; and monitoring and evaluation.

The essential document insofar as inspections are concerned would be the Inspection Results, which shall include the inspector's findings together with the amount to be restituted in the prescribed form.³⁵⁸ This is the document that triggers the process of restitution, compromise, summary hearings, or the issuance of a compliance order, as the case may be. There are also special procedures for health and safety cases, as well as simple money claims.³⁵⁹

With regard to ship seaworthiness and safety, the Domestic Shipping Development Act vests MARINA with the power to inspect vessels and all

356. LABOR CODE, art. 128 (a) (emphasis supplied).

357. Department of Labor and Employment, Department Order No. 57, § 1 (Jan. 7, 2004).

358. Department of Labor and Employment, Rules on Disposition and Settlement of Labor Standards Cases (2004), part II (B), ¶ 5.

359. *Id.* part II (B), ¶¶ 15 & 17.

equipment on board to ensure compliance with safety standards.³⁶⁰ In order to foster a systematic, uniform, and effective conduct of ship safety inspection of all registered domestic ships, a Ship Safety Inspection System (SSIS) and a Manual for its implementation were adopted.³⁶¹ Pursuant to the SSIS, all Philippine-registered ships operating in Philippine waters shall be required to secure ship safety-related certificates.³⁶²

With regard to authorized organizations for enforcement, the existing DOLE visitorial and enforcement framework does not delegate inspection duties to such organizations. Inspections are carried out by a corps of labor inspectors trained and supervised by the Bureau of Working Conditions and Regional Offices.

The MARINA, on the other hand, issued Guidelines on the Recognition of Organizations Acting in on Behalf of the Administration in the Implementation of the ISM Code For Philippine Shipping Companies and Their Ships.³⁶³ The issuance provides policies, guidelines, and procedures on the recognition of organizations that shall perform certification in compliance with the provisions of the ISM Code. It also aims to define the minimum conditions and specific requirements for all organizations applying for said recognition, through provisions on general qualifications, documentary requirements, and recognition.³⁶⁴

Also, for ships in the domestic trade, there are Rules on Accreditation of Classification Societies and Entities for the Purpose of Classification.³⁶⁵ A

360. Promoting the Development of Domestic Shipping, § 9.

361. MARINA Rules and Regulations Implementing Republic Act No. 9295, rule VI, § 4. The SSIS and its Manual shall serve as the guiding framework and reference to be used by MARINA's inspectors in the conduct of all ship inspections to be undertaken prior to issuance of the appropriate ship certificates.

362. MARINA Memorandum Circular No. 203 (2005), pt. IV. The pertinent certificates are the following: Passenger Ship Safety Certificate (PSSC), Cargo Ship Safety Certificate (CSSC), Cargo Ship Safety Construction Certificate (CSSCC), Cargo Ship Safety Equipment Certificate (CSSEC), High-Speed Craft Safety Certificate (HSCSC), Exemption Certificate (EC), Minimum Safe Manning Certificate (MSMC), Fishing Vessel Safety Certificate (FVSC), Certificate of Fitness (CF), and other safety-related as may be required by MARINA.

363. MARINA Memo. Cir. No. 155.

364. *Id.* parts I, V & VI.

365. *Id.* part IV, ¶ 3. Maritime Industry Authority, Rules on the Accreditation of Classification Societies and Entities for the Purpose of Classification of Ships in the Domestic Trade, MARINA Memorandum Circular No. 165 (Mar. 15, 2001). "Vessel classification" is the process being performed by classification societies to ensure that a ship is properly designed, constructed and maintained

classification society must be a non-stock, non-profit organization composed of committees represented by the shipbuilder, shipowner, engine builder and underwriters.³⁶⁶

Such an organization must take into consideration certain factors to undertake survey and certification functions, as follows:³⁶⁷ Management functions; Technical appraisal of hull structures, machinery systems and subdivision and stability, load lines, tonnage, structural fire protection, safety equipment, oil pollution prevention, radio, carriage of dangerous chemicals in bulk, and carriage of liquefied gases in bulk; competence, capability, and capacity to perform required surveys; and general qualifications for organization personnel.

With regard to on-board complaint procedures, while grievance mechanisms are usually expected in collective bargaining agreements, there is a default grievance procedure in cases of collective agreements with no grievance machinery, or when an establishment is non-unionized.³⁶⁸ For overseas employment, there is a prescribed grievance procedure under the POEA-SEC.³⁶⁹

2. Port State Responsibilities

Port State inspections are undertaken by the Philippine Coast Guard (PCG), who has the duty to enforce or assist in the enforcement of applicable laws upon the high seas and territorial waters of the Philippines, including all ports, customs zones, waterways and other inland waters.³⁷⁰

The PCG conducts port State control inspections upon all foreign flagged vessels engaged in international trade that call upon any Philippine

in a safe condition through the imposition of rules governing vessel construction, carrying out of surveys during the building and/or alteration and repair of a ship and through the vessel's subsequent trading life.

366. *Id.* part V, ¶ 1.

367. *Id.* part V, ¶ 5 and corresponding Annex.

368. Department of Labor and Employment, Rules Implementing Book V, DOLE Department Order No. 40-03, rule XIX (Feb. 17, 2003). The procedure entails elevating a grievance to the levels of the shop steward, immediate supervisor, and a grievance committee.

369. POEA-SEC, § 16. The procedure entails elevating a grievance to the levels of the head of the department, Master, Philippine overseas labor office (POLO) or consular officials, and voluntary arbitration.

370. Providing for the Revision of Republic Act Numbered 5173 Commonly Known as the Coast Guard Law, Consolidating Fragmented Function and for Other Purposes [Revised Coast Guard Law of 1974], Presidential Decree No. 601, § 2 (1974).

port. There are policies and procedures designed to strengthen enforcement of port State control by infusing recent developments and innovations adopted by the Tokyo Memorandum of Understanding on Port State Control in the Asia-Pacific.³⁷¹

There are procedures for port State control outlined by the PCG, as follows: (1) coordination with local port authority on daily or weekly shipping schedule; (2) ascertain year of build and size of ship to be inspected; (3) check condition of mooring lines, gangway arrangements, and general condition of the hull and if the load line is properly marked on ship's sides; (4) upon boarding, notify the Master; (5) view previous inspection reports, if any; (6) previous deficiencies, if any, should be rectified; (7) if ship does not carry valid certificates, or if there are clear grounds to believe that the ship does not correspond to particulars in certificates, or if the Master is not familiar with essential shipboard procedures, a more detailed inspection shall be carried out; (8) require deficiencies to be corrected before a specified time and impose operational restrictions in the interim or continuously detain the ship until major deficiencies are corrected; (9) establish guidelines for detention of ships; (10) coordinate with Philippine Ports Authority (PPA), for the latter to hold departure of a detained vessel; (11) special rules for ships carrying dangerous goods; and (12) the Master to accomplish Certificate of Orderly Inspection.³⁷²

There are specific guidelines for detention that include documentation and assessment procedures.³⁷³ Both the HCPG Procedures and Tokyo MOU recognized international instruments as references for port State control, with particular mention of the ILO Merchant Shipping (Minimum Standards) Convention.³⁷⁴ While the Philippines has not ratified this Convention, the Tokyo MOU asserts that no more favorable treatment is given to ships entitled to fly the flag of a non-party to that instrument.³⁷⁵

371. Headquarters of the Philippine Coast Guard, Port State Control, Memorandum Circular No. 1 (Sep. 28, 2000) [hereinafter HCPG Procedures]. The Tokyo MOU is an agreement between maritime authorities in the following countries: Australia, Canada, Chile, China, Fiji, Hong Kong (China), Indonesia, Japan, Republic of Korea, Malaysia, New Zealand, Papua New Guinea, Philippines, Russian Federation, Singapore, Solomon Islands, Thailand, Vanuatu, and Vietnam. The Tokyo MOU seeks, *inter alia*, to improve and harmonize systems of port State control and strengthen cooperation and exchange of information.

372. HCPG Procedures, part IX.

373. *Id.* part IX (H).

374. Convention (No. 147) Concerning Minimum Standards in Merchant Ships, Oct. 29, 1976, 1259 U.N.T.S. 335.

375. Tokyo MOU, § 2.5.

With regard to on-shore complaint procedures, there appears to be no specific law or regulation that outlines such procedures. As for labor-supplying responsibilities, POEA rules and regulations outline legal proceedings for breaches of licensing and other operational requirements³⁷⁶ that are discussed in the sub-chapter on Philippine recruitment and placement laws and regulations.

VI. ASSESSMENT OF PHILIPPINE LAWS, POLICES, AND REGULATIONS

A. Point System

While Philippine laws, policies, and regulations generally adhere to the principles, mandates, and guidelines of the MLC, there are various gaps and inconsistencies that require adjustment. To quantify difficulty levels with regard to developing laws and regulations consistent with the MLC, certain values have been assigned to the needed adjustments in the Philippine setting. Assuming ten points represent a difficulty level of 100% for adjustments that require legislative and administrative action, the following values have been assigned to other courses of action: Legislative and administrative action — 10. Development of seafarer-specific administrative measures — 7. Adjustment of existing seafarer-specific administrative measures — 4. Either minor or no adjustments necessary — 0.

B. Areas of Concern

1. Coverage of Ships — Difficulty value: 8.5

Legislation or administrative issuances that require proper implementation of the MLC must establish the kinds of ships excluded from coverage. A definition of “inland waters” in the outright exclusion pertaining to ships which navigate “exclusively in inland waters” must be articulated.

Also, there must be a determination as to whether ships of less than 200 GT and not engaged in international voyage shall be excluded, alongside a determination as to: (1) the duration of the exclusion; and (2) the relevant MLC provisions excluded. Yet another finding should be made with respect to the exclusion of certain vessels (e.g., ships below 3,000 GT) from the Regulations and Standards on accommodation and recreational facilities.

2. Coverage of Seafarers — Difficulty value: 8.5

Doubts that may surround certain types of workers (e.g., onshore personnel, harbor pilots, guest entertainers, inspectors, repair technicians) must be resolved through legislation and administrative issuances that shall adhere to the MLC. The criteria in MLC Resolution VII could prove useful.

376. POEA Rules and Regulations, part V.

3. Minimum Age — Difficulty value: 5.5

While laws and regulations on the SIRB and overseas employment impose a more protective minimum age of 18 years, anti-child labor laws allow employment for those from 15 to below 16 years old. An administrative issuance to reconcile the disparities must be developed. The special rule on ship's cooks (at least 18 years of age) should likewise be considered.

Also, the eight-hour night work prohibition for child workers falls an hour short of the nine-hour MLC requirement. An administrative issuance may, however, determine whether the deficiency can be addressed through any of the exceptions to strict compliance with the night work restriction under the MLC.³⁷⁷

4. Medical Certificate — Difficulty value: 4

Recent DOH regulations have taken the MLC into account, along with the STCW and 1998 ILO/WHO Guidelines.³⁷⁸ Perhaps an amendment could be made in terms of setting a six-year maximum period of validity for a certification of color vision, unless any of the MLC exceptions are available.³⁷⁹ The right of appeal for new seafarers declared Unfit for Sea Duty should also be clarified.

5. “No Recruitment or Placement Fee” Policy — Difficulty value: 4

While POEA regulations expressly disallow the charging of recruitment or placement fees, national PRPA rules set an allowable ceiling of not more than 20% of one month's salary. While the Labor Code does allow the charging of fees (until employment has been obtained or has commenced), it is submitted that an amendment to the PRPA rules will be enough to impose such a recruitment or placement fee prohibition.

6. Clear Written Legally Enforceable Agreement — Difficulty value: 7

The Labor Code does not expressly require a written contract of employment due to established statutory labor standards and statutory

377. MLC 2006, stand. A1.1, ¶ 3. The two exceptions are as follows: (a) the effective training of the seafarers concerned, in accordance with established programs and schedules, would be impaired; or (b) the specific nature of the duty or a recognized training program requires that the seafarers covered by the exception perform duties at night and the authority determines, after consultation with the shipowners' and seafarers' organizations concerned, in accordance with relevant international standards.

378. DOH A.O. No. 25, part I.

379. MLC 2006, stand. A1.2, ¶ 7. The exceptions are the following: “Unless a shorter period is required by reason of the specific duties to be performed by the seafarer concerned or is required under STCW”

security of tenure provisions. A DOLE policy and procedural framework similar to the POEA-SEC may be instituted. This framework shall include documentation and processing of domestic seafarers prior to commencing work on a Philippine-registered ship.

7. Employment for a Definite Period — Difficulty value: 3

While the MLC opens the door for fixed-term arrangements, the matter of fixed-term employment is well-settled only for overseas seafarers. For domestic seafarers, regular employment for “work that is usually necessary and desirable to the usual trade and business of the employer” is still the norm. Nevertheless, the social partners may choose to evaluate scenarios while in the process of developing a standard employment contract for domestic seafarers.

8. Domestic Seafarers’ Labor Standards — Difficulty value: 7

While general labor standards laws and regulations clearly apply to domestic seafarers, perhaps a specific set of regulations could be developed specifically for them. In developing these seafarer-specific standards, due consideration shall be given to Guidelines expressed in the MLC. For instance, in terms of policies on wages, the definitions modes of calculation and payment, and minimum wage-fixing should be factored into the discussions.

9. Hours of Work or Hours of Rest — Difficulty value: 7

While there are standard hours of work and a day of rest guaranteed by the Labor Code, there is no specific rule pertaining to domestic seafarers’ maximum hours of work or minimum hours of rest, as well as divided hours of rest. An administrative issuance may address this predicament.

10. Entitlement to Leave — Difficulty value: 10

The Labor Code provision provides for a statutory service incentive leave of five days per year, way below the MLC requirement of two-and-a-half calendar days per month. It appears that legislation is necessary to comply with this requirement. For overseas seafarers, the Leave Pay provision in the POEA-SEC complies exactly with the MLC requirement.

11. Unemployment Indemnity for Ship’s Loss or Foundering — Difficulty value: 8

Social insurance laws do not guarantee an unemployment benefit. The closest would be mandatory separation pay on account of closure or cessation of operations, assuming a termination of employment situation. Otherwise, legislation may be necessary to establish such an indemnity for unemployment. Considering the “progressive comprehensive” realization

provision in the Regulation on Social Security, however, fulfillment of this indemnity requirement may be attained on a specific target date or period.

12. Accommodation and Recreational Facilities — Difficulty value: 7

Existing regulations directly address ship seaworthiness and safety and comfort of passengers. Hence, seafarer-specific regulations that comply with Title 3 of the MLC may be developed, bearing in mind the prospective nature of the requirements.

13. Medical Care and Safety — Difficulty value: 7

While there are general labor laws and regulations on medical care and safety, not to mention maritime laws and regulations pertaining to ship and passenger safety, a set of seafarer-specific regulations are in order. Also, a review of vessel sanitation regulations may be undertaken. The POEA-SEC may contain provisions on medical care and occupational safety and health standards.

14. Ensuring Accessibility to Shore-Based Welfare Facilities — Difficulty value: 5.5

While there is no prohibition to establish shore-based welfare facilities for seafarers, there is no written policy ensuring access to, and promotion of, such shore-based facilities. DOLE or PPA regulations may be issued, which shall include the encouragement to establish welfare boards that shall regularly review welfare facilities and services.

15. Social Security — Difficulty value: 4

A provision on Philippine social security coverage for overseas seafarers needs to be incorporated into the POEA-SEC.

16. On-Shore Complaint Procedures — Difficulty value: 7

There is no specific written policy or regulation in this regard. An administrative issuance from relevant agencies (Department of Foreign Affairs, DOLE, PCG) may be forthcoming.

17. Monitoring and Enforcement Procedures — Difficulty value: 7

The DOLE has the inspection authority to enforce labor standards pursuant to the visitorial and enforcement power lodged with the Secretary of Labor and Employment. The MARINA has the authority to inspect ships with respect to ship and passenger safety. With respect to monitoring and enforcement of laws and regulations consistent with the MLC a DOLE-led governmental effort to develop an elaborate inspection and certification system may be undertaken. Such a system shall consider, *inter alia*:

- (1) Recognizing training programs and authorizing inspectors;
- (2) Recognizing authorized organizations;
- (3) Developing appropriate forms and procedures;
- (4) Creating joint or composite inspection teams that shall cover the “soft” (labor standards and human resources) component and the “hard” (ship construction, design, facilities, food and catering) component;
- (5) Issuance of inspection results and the MLCert and DMLC; and
- (6) Submission of required reports to the ILO.

MLC Resolution XVII must also be factored into the equation. The said Resolution requests governments to develop plans that will ensure the phasing in of certification requirements starting with bulk carriers and passenger ships no later than 12 months after the date on which there have been registered ratifications by at least 30 Members with a total share in the world gross tonnage of ships of at least 33%.³⁸⁰

18. Exercise of Port State Control Authority — Difficulty value: 4

The PCG may issue the corresponding guidelines that shall cater to MLC port State control inspections. Coordination at the Tokyo MOU level may also be necessary.

19. Gender Matters — Difficulty value: 7

Consistent with MLC Resolution II, which concerns the promotion of opportunities for women seafarers, future laws and regulations to implement the MLC must consider such opportunities and welfare of women seafarers.

In developing the legal infrastructure in line with the MLC, two other endeavors must be undertaken. The first, a consideration of flexibilities — substantial equivalencies, exemptions, variations, specified parameters (e.g., duration of voyage for some accommodation requirements), discretion as to precise action (for generally-worded mandates); and the second, a consultation with social partners and stakeholders, in the spirit of social dialogue and the ILO Convention on Tripartite Consultation (International Labour Standards).³⁸¹ Applying the difficulty values for the 19 aforementioned areas, an average of 6.4 points means a 64% difficulty level for all the proposed MLC measures of adjustment.

380. Resolution concerning the practical implementation of the issuance of certificates on entry into force, MLC Res. No. 17 (Feb. 22, 2006).

381. Convention (No. 144) Concerning Tripartite Consultations to Promote the Implementation of International Labor Standards, June 21, 1976, 1098 U.N.T.S. 355.

VII. ROUTE MAP FOR FUTURE ACTION

Before traversing the path towards possible MLC ratification, the basic inquiry is whether it is advantageous to tread the route in the first place. The following lists advantages of the MLC for governments, shipowners, and seafarers, according to the ILO:³⁸²

The advantages of the MLC for government may be summed up as follows: a simplification of reporting obligations, wider powers of enforcement on all ships, improved quality of shipping services, improved protection of the environment, additional flexibility with firmness of rights and flexible as to implementation (making the Convention easier to ratify and implement), certification system mandatory only for ships over 500 GT, protection against unfair competition from substandard ships through “no more favorable treatment” for ships of non-ratifying countries, implementation of mandatory requirements through measures that are substantially equivalent (except for Title V), and advantages given to ships of ratifying countries.

The advantages for shipowners are: that there is a more level playing field to ensure fair competition and to marginalize substandard operations, benefits from a system of certification (including a certification system possible for ships less than 500 GT — if the shipowner so requests), a more social responsible shipping industry, a better protected and more efficient workforce, that the convention can help ensure that ships are operated safely and securely with few problems and few delays in ports, and that the new convention contains minimum standards and should easily be met by most shipowners.

The advantages for seafarers include: that there is a comprehensive set of basic maritime labor principles and rights as well as ILO fundamental rights, the Convention spells out in one place and clear language seafarers’ basic employment rights, seafarers better informed of their rights and of remedies available, improved enforcement of minimum working and living conditions, a right to make complaints both on board and ashore, and clear identification as to who is the shipowner with overall responsibility.

Another area of concern for a crewing country such as the Philippines is the provision on recruitment and placement services that belong to a non-ratifying Member State. Each Member State that has ratified the MLC shall require that shipowners of ships that fly its flag who use seafarer recruitment and placement services based in countries or territories in which the MLC does not apply, ensure, as far as practicable, that those services meet the

382. International Labour Organization, *Advantages of the Maritime Labour Convention*, 2006, available at http://www.ilo.org/global/What_we_do/InternationalLabourStandards/MaritimeLabourConvention/Advantages/lang--en/index.htm (last accessed May 22, 2010).

requirements of the Standards on Recruitment and Placement.³⁸³ This may render recruitment and placement of Filipino seafarers procedurally more difficult, in the event that the Philippines opts for non-ratification of the MLC.

Notwithstanding these advantages (or disadvantages), the Director of the ILO International Labour Standards Department and a foremost expert on the MLC stated that “a country can ratify the Convention only if it is in a position to implement it.”³⁸⁴ This means two things: (a) a country must have the necessary laws already in place or approved in accordance with its constitutional processes; and (b) it must also be sure that it will have the necessary administrative and technical infrastructures for implementing those laws and for ensuring that they are being properly implemented.³⁸⁵

The Philippines must, therefore, have the necessary legal infrastructure to implement the MLC prior to ratification. In so doing, questions must be raised with respect to Philippines-registered ships at this most appropriate time: (a) What will be the over-all effect of MLC application on the Philippine maritime industry? On Philippine socio-economic development? (b) What will be the effect of MLC application on specific sub-sectors, such as general cargo, tanker, bulk carrier, wood chip carrier, passenger, or ferry operations? (c) Will application of the MLC benefit Philippine seafarers, whether in the short, medium, or long-term?(d) What are the options and flexibilities available to social partners in terms of MLC application? (e) Should the Philippines ratify the MLC? If yes, may the social partners agree on an action plan and time table towards ratification?

There is an ILO Action Plan which sets compliance with the “30-33” ratification rule by 2011. This means entry into force by 2012 (12 months after the relevant ratification). By 2010, the Plan resolves complete development of the ILO database to record country reports on flexibility determinations and to record problems and complaints arising in the context of port State inspections.³⁸⁶ The ILO likewise resolves to provide assistance in response to assessed needs, as well as assistance to Member States to

383. MLC 2006, stand. Ar.4, ¶ 9.

384. Introductory Speech by Cleopatra Doumbia-Henry to the ILO Tripartite Seminar for South American Countries on the Maritime Labour Convention, 2006, available at http://www.trabajo.gov.ar/seminarios/2007/maritimo/files/intro_Doumbia-Henry_ingles.pdf (last accessed May 22, 2010).

385. *Id.*

386. International Labour Organization, Maritime Labour Organization 2006: Action Plan 2006-2011, available at http://www.ilo.org/global/What_we_do/InternationalLabourStandards/MaritimeLabourConvention/lang--en/docName--WCMS_088034/index.htm (last accessed May 22, 2010).

identify funding sources for administrative costs needed to create and strengthen national capacity.³⁸⁷

Also in 2010, there is a strong possibility of attainment of the “30-33” ratification target, in light of a 2007 European Union (EU) Council Decision authorizing EU Member States to ratify, in the interest of the European Community, before 31 December 2010. With seven ILO Member States having ratified the MLC representing 45% of the world fleet by gross tonnage, the EU Member States’ ratification of the MLC will clinch the 30-ratifying countries requirement, and thereby enter the Convention into force.

As the foremost seafarer-supplying country and a flag State with a registered fleet comprising around 1.4% of total world tonnage,³⁸⁸ it behooves upon Philippine social partners and stakeholders to determine the passage most beneficial to our national interests. While this Article assesses capabilities of laws and regulations, the propellers of genuine consultation and social dialogue must be set in motion to achieve a developmental consensus.

387. *Id.* part V, third and fourth years (24-48) months of the action plan.

388. International Labour Organization, Updating the ILO’s minimum basic wage of able seamen, Report JMC/29/2001/2, available at http://www.ilo.org/global/What_we_do/Publications/ILOBookstore/Orderonline/Books/lang—en/doc Name—WCMS_PUBL_9221122360_EN/index.htm (last accessed May 22, 2010).