

UNIVERSITY OF KWAZULU-NATAL
COLLEGE OF LAW AND MANAGEMENT STUDIES
SCHOOL OF LAW- HOWARD COLLEGE

Liability for Injuries to Seafarers- a critical analysis of the extent of shipowner liability under the Maritime Labour Convention.

MIKAELA JAUDEN JOSEPH

215002928

This mini-dissertation is submitted in partial fulfilment of the requirements for the degree of Master of Laws (Maritime Law)

Supervisor: Mrs Deepa Lamb

2022

ABSTRACT

The main aim of this dissertation is to determine whether the Maritime Labour Convention has been successful in ensuring the fair and equal treatment of seafarers in relation to shipowner liability. This dissertation aims to do this by analysing the national legislation in three different jurisdictions (The United States of America, United Kingdom and South Africa) before the implementation of the Maritime Labour Convention. The national legislation in the respective jurisdictions after the implementation of the Maritime Labour Convention will then be analysed to determine whether or not the Convention has been successful in protecting the rights of injured seafarers and whether they are treated fairly and equally in all three of the respective jurisdictions. The dissertation will comprise of desktop-based research and will make use of comparative research methodology. This dissertation will comprise of five chapters. Chapter one introduces the problem topic and provides the background to the problem. Chapter two examines the MLC, it provides information on the aims of the MLC, how it was developed, the implementation of the MLC and the provisions for shipowner liability in respect of injured seafarers. Chapter 3 examines the history of the national laws in the respective three jurisdictions before the implementation of the MLC and analyses the extent to which an injured seafarers' rights were protected and where a shipowner's liability ends. Chapter 4 examines the national laws in the respective three jurisdictions after the implementation of the MLC and analyses the extent to which an injured seafarers' rights are now protected and examines exactly where a shipowner's liability ends. Chapter 5 concludes the dissertation. It restates the key research questions and the resulting conclusions. After analysing the national legislation in the abovementioned jurisdictions, it is evident that the domestic legislation protecting seafarers, even prior to the implementation of the MLC in these jurisdictions, already extensively protected seafarers employed on board vessels registered in the UK and SA. The MLC will however have a substantial effect on the ability of port authorities in member states to inspect and take action against owners of substandard vessels. The MLC is not above criticism and its shortfalls have become apparent in the crew change crisis during the Covid-19 pandemic. Nevertheless, the MLC is still a great step forward in the consolidation and harmonisation of compliance and inspection procedures followed by flag states and port authorities, thus increasing the protection and enforcement of seafarers' rights.

TABLE OF CONTENTS

DECLARATION OF ORIGINALITY	5
ACKNOWLEDGEMENTS	6
LIST OF ABBREVIATIONS	7

CHAPTER ONE: INTRODUCTION

1.1 <u>Introduction</u>	8
1.2 <u>Scope and limitations of the study</u>	11
1.3 <u>Research Objectives and Rationale</u>	12
1.4 <u>Research methodology and limitations</u>	17
1.5 <u>Structure of the dissertation</u>	17

CHAPTER TWO: THE MARITIME LABOUR CONVENTION

2.1 <u>Introduction</u>	19
2.2 <u>The primary aims of the Maritime Labour Convention</u>	21
2.3 <u>The basic structure of the MLC</u>	22
2.4 <u>How the MLC aims to protect more seafarers</u>	23
2.5 <u>Minimum standards for seafarers</u>	24
Minimum Age.....	24
Seafarers' employment agreements.....	25
Wages.....	25
Repatriation.....	26
Compensation for the vessel's loss or foundering.....	27
Medical care on board and ashore.....	27
Shipowner Liability.....	28
2.6 <u>How the MLC aims to protect shipowners</u>	28
2.7 <u>How the MLC is implemented</u>	30
2.8 <u>Advantages of the MLC</u>	32
2.9 <u>Criticism of the MLC</u>	33

CHAPTER THREE: SEAFARER'S RIGHTS PRIOR TO THE MLC

3.1 <u>The United States of America</u>	35
3.2 <u>The United Kingdom</u>	38
3.3 <u>South Africa</u>	41

CHAPTER 4: SEAFARER'S RIGHTS AFTER THE IMPLEMENTATION OF THE MLC

4.1 <u>The United States of America</u>	45
4.2 <u>The United Kingdom</u>	49
Crew Agreements.....	50
Wages.....	51
Obligation of the shipowner in respect of seaworthiness.....	52
Crew Accommodation.....	52
Medical care and expenses.....	53
Repatriation and relief.....	53
4.3 <u>South Africa</u>	54
Crew Agreements.....	54
Minimum Age.....	55
Wages.....	55
Repatriation and relief.....	56
Medical Care.....	57
The Merchant Shipping Bill 2020.....	58

CHAPTER FIVE: CONCLUSION

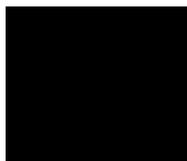
5.1 <u>The Maritime Labour Convention</u>	64
5.2 <u>The United States of America</u>	66
5.3 <u>The United Kingdom</u>	70
5.4 <u>South Africa</u>	72
5.5 <u>Final remarks and observations</u>	74

BIBLIOGRAPHY	76
---------------------------	----

DECLARATION OF ORIGINALITY

I, Mikaela Jauden Joseph, declare that:

- i. The research reported in this dissertation, except where otherwise indicated, is my original work.
- ii. This dissertation has not been submitted for any degree or examination at any other university.
- iii. This dissertation does not contain other persons' data, pictures, graphs or other information, unless specifically acknowledged as being sourced from other persons.
- iv. This dissertation does not contain other persons' writing, unless specifically acknowledged as being sourced from other researchers. Where other sources have been quoted, then:
 - a. their words have been re-written but the general information attributed to them has been referenced;
 - b. where their exact words have been used, their writing has been placed inside quotation marks, and referenced.
- v. Where I have reproduced a publication of which I am author, co-author or editor, I have indicated in detail which part of the publication was actually written by myself alone and have fully referenced such publications.
- vi. This dissertation does not contain text, graphics or tables copied and pasted from the internet, unless specifically acknowledged, and the source being detailed in the dissertation and in the Reference sections.



Mikaela Jauden Joseph (215002928)

Signed at Durban on this 06 day of January 2022.

ACKNOWLEDGEMENTS

I would like to acknowledge and give my warmest thanks to my supervisor Mrs Deepa Lamb who made this work possible. Her guidance, constant support and editorial assistance have carried me through all the stages of my dissertation.

To my parents, thank you for the continuous and unwavering support, love and understanding when undertaking my research and writing of my dissertation. Your prayer, continuous financial and emotional support and sacrifices are what have sustained me this far. Thank you for never giving up on me and never allowing me to give up on my dreams and aspirations.

I would like to give special thanks to Iman Mia and Kiara Philip, true friendship is difficult to find. Thank you for the constant support and motivation throughout this journey. Your moral support is what has helped me push past the many obstacles I have faced.

Finally, I would like to thank the Almighty, for getting me through all the difficulties I have faced. I have experienced your guidance day by day.

LIST OF ABBREVIATIONS

AJRA	Admiralty Jurisdiction Regulation Act 105 of 1983
CCMA	Commission for Conciliation, Mediation and Arbitration (SA)
CMTP	Comprehensive Maritime Transport Policy (SA)
FELA	Federal Employers' Liability Act of 1908 (USA)
ILO	International Labour Organisation
IMO	International Maritime Organization
MARPOL	International Convention for the Prevention of Pollution from Ships, 73/78
MCA	Maritime and Coastguard Agency (UK)
MLC	Maritime Labour Convention
SA	South Africa
SOLAS	International Convention for Safety of Life at Sea, 1974
STCW	International Convention on Standards of Training, Certification and Watchkeeping, 1978
PSC	Port State Control (USA)
UK	United Kingdom
UNCLOS	United Nations Convention on the Law of the Sea, 1982
UNCTAD	United Nations Conference on Trade and Development
USA	United States of America
USCG	United States Coast Guard
WW1	World War I

CHAPTER ONE: INTRODUCTION

1.1 Introduction:

Maritime laws regulating waterborne transportation existed in some form since seafarers first set sail. Over time, these laws have evolved to adequately cater for vast technological advancements and changing global commercial practices. Many international treaties and conventions have been developed to help unify maritime laws. Given the development of maritime laws and the role of seafarers being integral to the operation of the global maritime trade industry, it would be expected that the rights of seafarers and the liability of owners would be clearly established. However, when analysing the extent of shipowner liability for the personal injuries sustained by seafarers there still appears to be some level of uncertainty as to the rights of seafarers and the extent of the shipowner's liability.¹

During their employment, on board a vessel or while carrying out their respective duties, seafarers may be injured in several ways namely:²

- i. A seafarer may be injured in the service of the ship by accident, through no fault of the owners, master or crew.
- ii. A seafarer may be injured through the negligence of another member of the ship's company.
- iii. A seafarer may be injured through the breaking of the rigging, or of some appliance of the ship as a result of its defective condition.
- iv. A seafarer may have his health injured, either temporarily or permanently, through the lack of proper provisions and medicines on board the ship, or as a result of the master's failure to furnish him with the necessary provisions or medication on board.

¹ Fitz- Henry Smith, Jr "Liability in the Admiralty for Injuries to Seamen." (1906) 19 (1) *Harvard Law Review*. P 418.

² Fitz-Henry Smith, Jr "Liability in the Admiralty for injuries to Seamen." (1906) 19 (1) *Harvard Law Review*. P 418.

- v. An original injury to a seafarer may be aggravated or made permanent by the failure of the owners or the officers of the ship to properly care for or treat the injury.
- vi. A seafarer may be injured by a physical act of violence committed upon him by (a) the master, (b) one of the subordinate officers of the ship or, (c) another seafarer.

When a seafarer has been injured in one of the ways mentioned above, and it has been found that the shipowner is liable, the seafarer will be entitled to compensation for his maintenance and cure, as well as to his wages and his repatriation.³ This remedy available to seafarers is one of the earliest remedies available to a seafarer and can be found both in national laws as well as in the maritime codes.⁴ Despite the existence of this remedy, there is some uncertainty and inconsistency in the application of the remedy, namely, in relation to the duration of the right of the seafarer to be cured at the expense of the shipowner.⁵ When looking at some of the earlier treaties and national legislation it appears that the word “cure” was used in the sense of “care” and not healing.⁶ As the law developed it appeared that some jurisdictions would compensate the injured seafarer for a reasonable time after the termination of employment, while other jurisdictions would compensate the injured seafarer for the duration of the voyage and his repatriation.⁷ As a result of these differences in interpretation and the legislation being unclear as to exactly when the shipowner's liability towards the seafarer ends, it appears that some seafarers are in a less favoured position depending on the domestic workmen's compensation legislation within their jurisdiction.⁸ In view of this situation it would seem better policy to require the shipowner to maintain and care for a seafarer who has been injured in his service,

³Fitz- Henry Smith, Jr “Liability in the Admiralty for Injuries to Seamen.” (1906) 19 (1) *Harvard Law Review*. P 419.

⁴ The doctrine of maintenance and cure is rooted in *Article VI* of the *Rolls of Oleron* and have been developed over time to form some of the older maritime conventions such as, the *International Convention relating to the Limitation of Liability of Owners of Sea-Going Ships (Brussels 1957)* as well as the *1979 Protocol Amending the Convention, ILO Convention Concerning the Repatriation of Seafarers (1987)*.

⁵ “Admiralty. Extent of Liability to Injured Seaman.” (1921) 30 (8) *The Yale Law Journal*. P860.

⁶ The earlier national legislation and treaties which were interpreted in this manner is the *Jones Act of 1920* as well as the *International Convention relating to the Limitation of Liability of Owners of Sea-Going Ships (Brussels 1957)*.

⁷ “Admiralty. Extent of Liability to Injured Seaman.” (1921) 30 (8) *The Yale Law Journal*. P860.

⁸ “Admiralty. Extent of Liability to Injured Seaman.” (1921) 30 (8) *The Yale Law Journal*. P860.

not only for a reasonable time after the termination of employment, but until the seafarer is able to return to work or it has been deemed that he is unable to work.

In 2006 the International Labour Organisation (ILO) adopted the Maritime Labour Convention (MLC). The purpose of the MLC is to establish international standards and rules applicable to seafarers to ensure that they are treated in a fair and uniform manner. The MLC has outlined minimum requirements for the entry of seafarers to ships, employment conditions, conditions in relation to crew, welfare facilities, food and logistics, community services, health care and health protection.⁹ The MLC was implemented on August 20, 2013 and one year later had the registration of 30 countries. By November 2016, 80 countries that accounted for 87% of the international shipping community had ratified the Convention.¹⁰

The Convention contains 'soft law' which is a set of obligations that were created by the negotiating parties and are not legally binding. The 'hard law' contained in the Convention is a set of legally binding rules and regulations.¹¹ Through these laws the MLC aims to establish a level playing field for countries and shipowners, ensuring they are committed to providing decent working and living conditions for seafarers, protecting them from unfair competition on the part of substandard ships.¹²

When looking at the MLC it is important to note that the Convention itself cannot be cited as authoritative legislation because the precise requirements of the convention are contained in the national laws or regulations adopted by each country to implement the MLC.¹³ Therefore while the MLC appears to be a promising international convention aimed at ensuring the fair treatment of seafarers, its effectiveness in protecting seafarers can only be established by looking at how it has been applied through the national laws of countries.

⁹ Maritime Labour Convention, 2006 as amended, (2016) Preamble

¹⁰ <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:80001:0> accessed on 13 August 2022.

¹¹ A Mokhtari, M Lafteh, R Hematjoo "Investigation of the Maritime Labor Convention and its legal effects for countries" (2017) *Research Gate*. P 152.

¹² Maritime Labour Convention, 2006 as amended, (2016) Preamble.

¹³ "Maritime Labour Convention, 2006 Frequently Asked Questions" (2012) *International Labour Organisation*. P 1.

1.2 Scope and limitations of the study

The central objective of this dissertation is to establish whether the MLC has been successful in ensuring the fair and equal treatment of seafarers in relation to shipowner liability for personal injuries sustained by seafarers while in their employ. To determine whether the MLC has been successful in protecting the rights of seafarers, this dissertation will examine the national legislation in three jurisdictions, namely, South Africa (SA), the United Kingdom (UK) and the United States of America (USA). This dissertation will examine the national legislation pertaining to the extent of shipowner liability of injured seafarers in the abovementioned jurisdictions and the extent of shipowner liability in national legislation after the implementation of the MLC in the abovementioned jurisdictions. The legislation and international conventions that will be examined in this dissertation are:

- a) The Maritime Labour Convention¹⁴,
- b) UNCLOS¹⁵,
- c) the Merchant Shipping Act¹⁶ ,
- d) the Merchant Shipping Amendment Act¹⁷,
- e) the Merchant Shipping Act¹⁸,
- f) the Merchant Shipping Act (liability of shipowners and others)¹⁹,
- g) the Merchant Shipping and Maritime Security Act²⁰,
- h) the Jones Act²¹,
- i) the Merchant Marine Act²²

¹⁴ The Maritime Labour Convention, 2006.

¹⁵ United Nations Convention on the Law of the Sea , 1982.

¹⁶ SA Merchant Shipping Act 57 of 1951.

¹⁷ SA Merchant Shipping Amendment Act 12 of 2015.

¹⁸ UK Merchant Shipping Act Commencement no 1 of 1970.

¹⁹ UK Merchant Shipping (liability of shipowners and others) Act 1958.

²⁰ UK Merchant Shipping and Maritime Security Act Of 1997.

²¹ US Jones Act of 1920.

²² US Merchant Marine Act Of 1970.

All other international conventions and national legislation will fall outside the scope of this dissertation.

For the purposes of this dissertation; shipowner liability will be defined as instances in which the shipowner has a responsibility or duty to compensate seafarers injured on board a vessel while in the course and scope of their duties. As mentioned earlier in this chapter, a seafarer may be injured in several ways leading to a shipowner being liable for compensation. An examination of the types of injuries resulting in shipowner liability falls outside the scope of this dissertation. It will focus instead on an examination of the extent and duration of shipowner liability in instances where it has already been established that the shipowner is liable for the personal injuries sustained by seafarers in their employ and have accepted liability for injury. Liability refers to the duty that the shipowner has to compensate a seafarer who has been injured, and it will be presumed that the shipowner has accepted liability for the injury.

For the purposes of this dissertation; injury will refer to the physical harm, including sickness sustained by a seafarer. This will also include instances where a seafarer's health has been injured due to a lack of care or due to improper care (where a prior physical injury or sickness has worsened due to improper care or no care). Psychological harm sustained by a seafarer falls outside the scope of this dissertation.

For the purposes of this dissertation; compensation will refer to the act of providing a seafarer with money or wages, including payment of costs such as medical and disability expenses that arise as a result of their injuries.

Damages for the purposes of this dissertation, will include monetary loss sustained by seafarers, such as loss of wages as a result of being unable to work or to continue working, and funeral costs in the instance of death.

1.3 Research Objectives and Rationale

The main objective of this dissertation is to establish whether the MLC has been successful in ensuring the fair and equal treatment of seafarers in relation to shipowner liability. This dissertation examines national legislation pertaining to the extent of shipowner liability of injured seafarers both prior to, and after the implementation of the MLC. This dissertation aims to establish whether the MLC has been successful in adequately protecting the rights of injured seafarers or whether seafarers in certain

jurisdictions are still being treated unfairly. This dissertation will look at three jurisdictions, namely South Africa, the United Kingdom (UK) and the United States of America (USA). Given South Africa's close relationship with English law, the history and development of South African admiralty law, pertaining to the protection of seafarers, cannot be examined in isolation from English law. Furthermore, this dissertation will examine the national law in the United States of America (USA) because the USA is one of the oldest shipping nations and has played an integral role in the development of admiralty laws pertaining to the protection of seafarers. This dissertation will examine the history of national legislation pertaining to the protection of seafarers in the respective three jurisdictions and the current national legislation pertaining to the protection of seafarers in the respective jurisdictions after the implementation of the MLC. This will determine if the MLC has been successful in bridging the gap that existed and whether it has provided clarity as to when the liability of a shipowner comes to an end.

In order to achieve the objectives of this dissertation several international treaties and conventions as well as domestic legislation listed above under the scope of this study will be examined. The Maritime Labour Convention²³ as well as UNCLOS²⁴ will be examined because these international conventions have been instrumental in the protection of seafarers' rights and have been ratified by most, if not all shipping nations. In addition, these conventions serve as the basis on which domestic legislation is developed in countries which have ratified the conventions.

The domestic legislation of the abovementioned jurisdictions will also be examined. In South Africa the Merchant Shipping Act²⁵ will be the first set of domestic legislation utilised to determine the extent of which the act protected seafarers. This Act will be examined because it was implemented well before the MLC was developed and therefore provides a clear indication of the gap that existed in the protection of seafarers' rights prior to the implementation of the MLC. Thereafter the Merchant Shipping Amendment Act²⁶ will be examined because it was implemented after the MLC and gives effect to it in the Act. These two pieces of domestic South African

²³ The Maritime Labour Convention, 2006.

²⁴ United Nations Convention on the Sea Law, 1982.

²⁵ Act 57 of 1951.

²⁶ Act 12 of 2015

legislation will be examined to ascertain whether the MLC has succeeded in bridging the gap between seafarers' rights and whether these are adequately protected within this jurisdiction.

The United Kingdom (UK) Merchant Shipping Act²⁷ and the Merchant Shipping Act (liability of shipowners and others)²⁸, will be examined in order to establish the shortfalls, gaps and extent of the protection of seafarers' rights prior to the implementation of UNCLOS and the MLC. Thereafter, the more recent UK Merchant Shipping and Maritime Security Act²⁹ pertaining to the protection of seafarers, will be examined. Such examination will ascertain whether previous gaps in the law have been bridged or whether seafarers' rights in the UK are still inadequately protected despite the coming into effect of the MLC.

The United States of America (USA) Jones Act³⁰ and the Merchant Marine Act³¹, will be examined to establish the extent to which seafarers' rights were protected prior to the implementation of the MLC. Thereafter, the current laws pertaining to the protection of seafarers', will be examined to establish whether seafarers' rights in the United States are adequately protected and whether the MLC has been successfully implemented within this jurisdiction.

This dissertation will focus on the extent and duration of shipowner liability and will examine the application and implementation of such liability within the three jurisdictions identified for the purposes of this study.

1.3.1 Presentation of key research questions

This research aims to answer the following key research questions:

1.3.1.1 Key research question 1

To what extent were seafarers' rights protected when they were injured during their employment and at what point did a shipowner's liability end when a seafarer was injured before coming into operation of the MLC?

²⁷ Commencement no 1 of 1970

²⁸ Act 1958.

²⁹ 1997.

³⁰ 1920.

³¹ of 1970.

Sub- research questions

To what extent were seafarers' rights protected when they were injured during their employment under South African legislation before the implementation of the MLC?

At what point did a shipowner's liability end under South African law before the MLC was implemented?

To what extent were seafarers' rights protected when they were injured during their employment under the United Kingdom's legislation before the implementation of the MLC?

At what point did a shipowner's liability end under the legislation in the United Kingdom before the MLC was implemented?

To what extent were seafarers' rights protected when they were injured during their employment under USA legislation before the implementation of the MLC?

At what point did a shipowner's liability end under USA law before the MLC was implemented?

1.3.1.2 Key research question 2

To what extent are seafarers' rights currently protected when they are injured during their employment and at what point does a shipowner's liability end once a seafarer has been injured after the implementation of the MLC?

Sub research questions

To what extent are seafarers' rights currently protected under South African law when they are injured during their employment?

At what point does a shipowner's liability end once a seafarer has been injured under South African law after the implementation of the MLC?

To what extent are seafarers' rights currently protected under English law when they are injured during their employment?

At what point does a shipowner's liability end once a seafarer has been injured under English law after the implementation of the MLC?

To what extent are seafarers' rights currently protected under USA law when they are injured during their employment?

At what point does a shipowner's liability end once a seafarer has been injured under USA law after the implementation of the MLC?

1.3.1.3 Key research question 3

Has the implementation of the MLC been successful in ensuring the protection of seafarer's rights when they are injured, and has the MLC clearly identified the end of a shipowner's liability?

Sub research questions

Has the implementation of the MLC been successful in ensuring the protection of seafarer's rights when they are injured and has the duration of a shipowner's liability been clearly defined under South African law?

Has the implementation of the MLC been successful in ensuring the protection of seafarer's rights when they are injured and has the duration of a shipowner's liability been clearly defined under English law?

Has the implementation of the MLC been successful in ensuring the protection of seafarer's rights when they are injured and has the duration of a shipowner's liability been clearly defined under American law?

1.3.1.4 Key research question 4

Has the MLC been successful in ensuring seafarers are treated fairly and are at an equal playing field and has it created uniformity with regard to their treatment?

Sub research question

After looking at South African law, English law and American law after the implementation of the MLC are seafarers from all three jurisdictions at an equal playing field within the three jurisdictions identified for the purposes of this study?

Does an examination of South African, English and USA laws giving effect to the MLC, indicate fair treatment of seafarers in all three jurisdictions?

1.4 Research methodology and limitations

The research methodology used in this dissertation is predominantly desktop-based and makes use of comparative research methodology. The researcher finds that this method is best suited to this dissertation because it involves the collation of existing national legislation and international conventions as well as journal articles and periodicals. In addition, comparative research methodology is used as the three identified jurisdictions are compared to each other and compared in relation to the Maritime Labour Convention. The researcher has also utilised primary and secondary sources of research. The primary sources of research include the Maritime Labour Convention³², UNCLOS³³, the Merchant Shipping Amendment³⁴ (South Africa), the Merchant Shipping Act³⁵(South Africa), the Merchant Shipping Act³⁶ (United Kingdom), the Merchant Shipping and Maritime Security Act³⁷ (United Kingdom), the Merchant Shipping Act³⁸ (United Kingdom), the Jones Act³⁹ (United States) and the Merchant Marine Act⁴⁰ (United States). The researcher also made use of information from secondary sources which include textbooks and online literature, e- journals, websites, theses and online newspapers.

The researcher has encountered some limitations in the course of this research which may, possibly have affected its outcome. The most challenging of these outcomes is the scarcity of the older national statutes which were utilised before amendments and the implementation of the MLC. For this reason, the researcher has had to rely on journal articles for further explanation on some of the older national legislation.

1.5 Structure of the dissertation

This dissertation is broken down into five chapters. Chapter one introduces the problem topic and provides the background to the problem. It states the research objectives, the key research questions, the research methodology and the limitations.

³² The Maritime Labour Convention, 2006.

³³ United Nations Convention on the Sea Law, 1982.

³⁴ Act 12 of 2015.

³⁵ Act 57 of 1951.

³⁶ Commencement no 1 of 1970

³⁷ 1997.

³⁸ (Liability of shipowners and others) Act 1958.

³⁹ Merchant Marine Act of 1920.

⁴⁰ Of 1970.

Chapter two examines the MLC, it provides information on the aims of the MLC, how it was developed, the implementation of the MLC and the provisions for shipowner liability in respect of injured seafarers.

Chapter 3 examines the history of the national laws in the respective three jurisdictions before the implementation of the MLC and analyses the extent to which an injured seafarers' rights were protected and where a shipowner's liability ends.

Chapter 4 examines the national laws in the respective three jurisdictions after the implementation of the MLC and analyses the extent to which an injured seafarers' rights are now protected and examines exactly where a shipowner's liability ends.

Chapter 5 concludes the dissertation. It restates the key research questions and the resulting conclusions.

CHAPTER TWO: THE MARITIME LABOUR CONVENTION

2.1 Introduction

The International Maritime Organisation (IMO): International Maritime Law Institute has noted the importance of international maritime labour law.⁴¹ One of the main difficulties of international maritime labour law is achieving a balance between shipowners and seafarers' interests.⁴² The International Labour Organisation (ILO) has taken on the task of attempting to balance the interests of both parties, an initiative that has engaged the ILO for decades.⁴³

During the period 1920 to 1996, the ILO adopted sixty-six Conventions related to seafarers' working conditions; over the years, the Conventions have been criticised because they have become less relevant.⁴⁴ The Conventions were critiqued because they were enforced irregularly and often not adhered to; thus, the ILO responded by reviewing the maritime labour Conventions to make them relevant to the industry's current needs.⁴⁵ As a result, the ILO adopted the Maritime Labour Convention, 2006 (MLC), an international convention to consolidate the pre-existing legal instruments on maritime labour law.⁴⁶

The MLC is an international labour convention adopted by the ILO in February 2006 during an International Labour Conference held in Geneva.⁴⁷ The MLC encompasses seafarers' rights and ensures that they have satisfactory working conditions; in addition to this, the MLC promotes fair competition between shipowners.⁴⁸ The Convention applies to all "seafarers",⁴⁹ which the Convention defines as any person

⁴¹ Final Report: Joint Maritime Commission (29th Session), Geneva, 22-26 January 2001. 2001. Geneva: ILO. Appendix 2.

⁴² Final Report: Joint Maritime Commission (29th Session), Geneva, 22-26 January 2001. 2001. Geneva: ILO. Appendix 2

⁴³Final Report: Joint Maritime Commission (29th Session), Geneva, 22-26 January 2001. 2001. Geneva: ILO. Appendix 2

⁴⁴ Final Report: Joint Maritime Commission (29th Session), Geneva, 22-26 January 2001. 2001. Geneva: ILO. Appendix 2.

⁴⁵ Final Report: Joint Maritime Commission (29th Session), Geneva, 22-26 January 2001. 2001. Geneva: ILO. Appendix 2

⁴⁶ Final Report: Joint Maritime Commission (29th Session), Geneva, 22-26 January 2001. 2001. Geneva: ILO. Appendix 2

⁴⁷ Maritime Labour Convention, 2006 as amended, (2016) Preamble.

⁴⁸Maritime Labour Convention, 2006 as amended, (2016) Title 1

⁴⁹ Maritime Labour Convention, 2006 as amended, (2016) Article II, Paragraph 1 (f).

employed or engaged in work in any capacity on board a vessel.⁵⁰ The Convention was developed to be used as an international legal instrument complementing preceding international conventions such as the International Convention for Safety of Life at Sea, 1974 as amended (SOLAS), the International Convention on Standards of Training, Certification and Watchkeeping, 1978 as amended (STCW) and the International Convention for the Prevention of Pollution from Ships, 73/78 (MARPOL).⁵¹

The MLC, 2006 is a comprehensive legal instrument that contains a complete set of international standards contained in preceding labour instruments.⁵² The MLC has a modern format that aligns with current conditions and language; it consolidates all but four of the existing maritime labour instruments into a concise convention.⁵³

A new convention was required because many flag states do not exercise adequate jurisdiction or control over the ships that fly their flag, as required by international law.⁵⁴ As a result, seafarers working onboard these vessels are subjected to unacceptable working conditions that are hazardous to their health, well-being and safety, and the safety of the ship itself.⁵⁵ Due to the maritime industry's international nature, many seafarers spend much of their time working outside of their resident countries; in addition to this, their employers are frequently not based in their resident countries.⁵⁶ As a result, there is a need for practical international standards, particularly for seafarers' protection, in the maritime industry.⁵⁷ However, it is not enough to have these standards solely implemented globally; they should also be implemented nationally by flag states.⁵⁸ While it is of utmost importance to protect seafarers' rights, it is vital to recognise flag states and shipowners who ensure that they safeguard

⁵⁰ MLC 2006, Article II, Paragraph 2.

⁵¹ Final Report: Joint Maritime Commission (29th Session), Geneva, 22-26 January 2001. 2001. Geneva: ILO. Appendix 2.

⁵² Maritime Labour Convention, 2006 as amended, (2016) Preamble.

⁵³ The MLC, 2006 does not revise the Convention addressing seafarers' identity documents of 2003 (Convention No. 185) and the 1958 Convention that it revises (Convention No. 108) are not consolidated in the New Convention; nor are the Seafarers' Pension Convention, 1946 (No. 71) and the Minimum Age (Trimmers and stokers) Convention, 1921 (No. 15).

⁵⁴ United Nations Convention on the Law of the Sea, 1982 (UNCLOS), Article 94

⁵⁵ International Labour Organisation. *Maritime Labour Convention, 2006: Frequently asked questions*. (2012) <http://www.ilo.org/mlc>. (Accessed: 25 May 2020).

⁵⁶ International Labour Organisation. *Maritime Labour Convention, 2006: Frequently asked questions* page 4-5.

⁵⁷ International Labour Organisation. *Maritime Labour Convention, 2006: Frequently asked questions* page 4-5.

⁵⁸ International Labour Organisation. *Maritime Labour Convention, 2006: Frequently asked questions*. (2012) <http://www.ilo.org/mlc>. (Accessed: 25 May 2020).

seafarers and ensure decent working conditions.⁵⁹ These shipowners and flag states face unfair competition, as they are unfairly disadvantaged by being undercut by shipowners who operate substandard ships.⁶⁰

As a result of a joint resolution by international seafarers' and shipowner organisations in 2001, the ILO decided to proceed with the MLC.⁶¹ It was noted that the shipping industry is the world's first genuinely global industry and, therefore, the industry, required an appropriate international regulatory response based on applicable global standards.⁶² The multitude of existing maritime conventions made it difficult for governments to ratify and enforce all these conventions, resulting in an ILO initiative to develop an instrument that would consolidate existing maritime instruments.⁶³ The other problems experienced with the existing maritime conventions were that many were outdated and did not adequately address the current working and living conditions onboard vessels.⁶⁴ Additionally, many of the existing conventions had low levels of ratification.⁶⁵ There was also a need to develop effective enforcement and compliance systems that would prevent the use of substandard vessels and efficiently enforce the standards for ship safety and security adopted within the International Maritime Organisation framework (IMO).⁶⁶ The MLC was thus designed to address these concerns.⁶⁷

2.2 The primary aims of the Maritime Labour Convention

There are two basic aims of the MLC, namely:⁶⁸

- I. To ensure comprehensive worldwide protection of the rights of seafarers.

⁵⁹ International Labour Organisation. Maritime Labour Convention, 2006: Frequently asked questions page 4-5.

⁶⁰ *Labour standards: Basic facts on the Maritime Labour Convention 2006.* https://www.iol.org/global/standards/maritime-labour-convention/what-it-does/WCMS_219665/lang--en/index.htm. (Accessed 22 September 2020).

⁶¹ Maritime Labour Convention, 2006 as amended, (2016) Preamble.

⁶² Maritime Labour Convention, 2006 as amended, (2016) Preamble.

⁶³ Maritime Labour Convention, 2006 as amended, (2016) Preamble.

⁶⁴ Maritime Labour Convention, 2006 as amended, (2016) Preamble.

⁶⁵ Maritime Labour Convention, 2006 as amended, (2016) Preamble.

⁶⁶ Maritime Labour Convention, 2006 as amended, (2016) Preamble.

⁶⁷ Maritime Labour Convention, 2006 as amended, (2016) Preamble.

⁶⁸ Maritime Labour Convention, 2006 as amended, (2016) Preamble.

- II. To establish a level playing field for countries and shipowners committed to providing decent working and living conditions for seafarers, protecting them from the unfair competition on the part of substandard ships.

The MLC is a comprehensive convention that sets out seafarers' rights and ensures they have decent working conditions on almost every aspect of their working and living conditions.⁶⁹ The MLC addresses issues such as minimum age of employment, employment agreements, the hours of work and hours of rest, payment of wages, paid annual leave, repatriation at the end of the contract, medical care onboard vessels, accommodation, food and catering, health and safety protections, and accident prevention as well as seafarers' complaint handling.⁷⁰

2.3 The basic structure of the MLC

The MLC contains three parts that are related, namely the Articles, the Code and the Regulations.⁷¹ The Articles and the Regulations set out the basic principles of the Convention and Member States' obligations.⁷² The Code comprises Part A and Part B, containing information on how the Member States implement the Regulations.⁷³ The Regulations and the Code include basic standards and guidelines of implementation and are organised into five Titles.⁷⁴ Title 1, "Minimum requirements for seafarers", encompasses requirements related to minimum age, medical certificates, training and recruitment.⁷⁵ Title 2, "Conditions of employment," contains guidelines on seafarers employment contracts, leave entitlement, wages, repatriation, hours of work, rest, and career and skills development.⁷⁶ Title 3, "Accommodation, recreational facilities, food and catering," deals with the recreational facilities required onboard, the

⁶⁹ *Labour standards: Basic facts on the Maritime Labour Convention 2006.* https://www.iol.org/global/standards/maritime-labour-convention/what-it-does/WCMS_219665/lang--en/index.htm. (Accessed 22 September 2020).

⁷⁰ Maritime Labour Convention, 2006 as amended, (2016) see Regulations 1.1, 2.5, 31 and 3.2

⁷¹ Maritime Labour Convention, 2006 as amended, (2016) see Explanatory Note to the Regulations and Code of the Maritime Labour Convention.

⁷² Maritime Labour Convention, 2006 as amended, (2016) see Explanatory Note to the Regulations and Code of the Maritime Labour Convention.

⁷³ Maritime Labour Convention, 2006 as amended, (2016) see Explanatory Note to the Regulations and Code of the Maritime Labour Convention.

⁷⁴ Maritime Labour Convention, 2006 as amended, (2016) see Explanatory Note to the Regulations and Code of the Maritime Labour Convention.

⁷⁵ Maritime Labour Convention, 2006 as amended, (2016) see Explanatory Note to the Regulations and Code of the Maritime Labour Convention.

⁷⁶ Maritime Labour Convention, 2006 as amended, (2016) see Explanatory Note to the Regulations and Code of the Maritime Labour Convention.

basic standards of accommodation and food and catering requirements.⁷⁷ Title 4, "Health protection, medical care, welfare and social security protection," this title comprises provisions relating to medical care, health and safety protection, shipowner liability, accident prevention and shore-based welfare facilities.⁷⁸ Lastly, Title 5, "Compliance and enforcement," pertains to flag state responsibilities such as maritime labour certificates and compliance, labour supply responsibilities, and Port State responsibilities.⁷⁹

2.4 How the MLC aims to protect more seafarers

The MLC has been designed to achieve a higher level of ratification than the conventions preceding it.⁸⁰ The MLC also aims to protect seafarers' rights who work on vessels registered in states that have not ratified the MLC.⁸¹ Additionally, the MLC extends the scope of its protection to the rights of all persons working onboard a vessel.⁸² Before the coming into operation of the MLC, it was not clear whether people working onboard a ship but not directly involved in the navigation or operation of the vessel would be considered seafarers for preceding conventions.⁸³

The MLC aims to ensure that there is "continuous compliance" with its measures at both an international and national level.⁸⁴ This process of continuous compliance is initiated by ensuring that seafarers are correctly informed of their rights and any remedies available to them in instances of non-compliance with the provisions of the MLC.⁸⁵ In addition to this, shipowners that operate vessels engaged in international voyages are required to develop and implement plans ensuring that national laws and

⁷⁷Maritime Labour Convention, 2006 as amended, (2016) see Explanatory Note to the Regulations and Code of the Maritime Labour Convention.

⁷⁸Maritime Labour Convention, 2006 as amended, (2016) see Explanatory Note to the Regulations and Code of the Maritime Labour Convention.

⁷⁹ Maritime Labour Convention, 2006 as amended, (2016) see Explanatory Note to the Regulations and Code of the Maritime Labour Convention.

⁸⁰ Labour standards: Basic facts on the Maritime Labour Convention 2006. https://www.iol.org/global/standards/maritime-labour-convention/what-it-does/WCMS_219665/lang--en/index.htm. (Accessed 22 September 2020).

⁸¹ ILO: Adoption of an instrument to consolidate maritime labour standards, Report I (1A), at 42.

⁸² L. Christodoulou-Varotsi and D.A Pentsov, *Maritime Work Law Fundamentals: Responsible Shipowners, Reliable Seafarers*. (2008) 301.

⁸³ International Labour Organisation. *Maritime Labour Convention, 2006: Frequently asked questions*. (2012) <http://www.ilo.org/mlc>. (Accessed: 25 May 2020).

⁸⁴ Maritime Labour Convention, 2006 as amended, (2016) see Title 5.

⁸⁵ Maritime Labour Convention, 2006 as amended, (2016) see Title 5.

regulations implementing provisions of the MLC are being complied with.⁸⁶ To ensure that this process is carried out effectively and that shipowners' plans are being implemented, the master of the vessel is mandated to keep a proper record of implementing these plans as evidence of adherence to the MLC.⁸⁷ To ensure 'continuous compliance', responsibility has been placed on the Flag State to ensure that shipowners meet national and international compliance.⁸⁸ Consequently, the Flag State is responsible for reviewing the shipowners' plans and verifying that the master has correctly implemented the plans.⁸⁹

Vessels are further required to carry a Maritime Labour Certificate and a Declaration of Maritime Labour Compliance on board.⁹⁰ Flag states will be required to carry out regular assessments to determine the quality and efficacy of their national systems of compliance.⁹¹ Additionally, the flag state's reports sent to the ILO must contain information on the inspections carried out and methods utilised to do this.⁹²

2.5 Minimum standards for seafarers

2.5.1 Minimum Age

The MLC prohibits the employment and work of a person under the age of 16 onboard a vessel⁹³; furthermore, it prohibits anyone under 18 from working a night shift⁹⁴. The MLC's age requirements are similar to those contained in the Seafarers' Hours of Work and the Manning of Ships Convention 1996 (no. 180).⁹⁵ In addition, the MLC excludes work that may endanger the health or safety of a seafarer under the age of 18; the national laws or competent authority will determine the type of work prohibited.⁹⁶

⁸⁶ Maritime Labour Convention, 2006 as amended, (2016) see Title 5.

⁸⁷ Maritime Labour Convention, 2006 as amended, (2016) see Title 5

⁸⁸ Maritime Labour Convention, 2006 as amended, (2016) see Title 5

⁸⁹ Maritime Labour Convention, 2006 as amended, (2016) see Title 5

⁹⁰ Maritime Labour Convention, 2006 as amended, (2016) see Title 5

⁹¹ Maritime Labour Convention, 2006 as amended, (2016) see Title 5

⁹² International Labour Organisation. *Maritime Labour Convention, 2006: Frequently asked questions*. (2012) <http://www.ilo.org/mlc>. (Accessed: 25 May 2020).

⁹³ MLC, 2006, Standard A1.1, paragraph 1.

⁹⁴ MLC, 2006, Standard A1.1, paragraph 2.

⁹⁵ Convention no 180, Articles 6 and 12.

⁹⁶ MLC, 2006, Standard A1.1, paragraph 4.

Concerning the minimum age requirements, the MLC has not proposed any substantive changes to the pre-existing Conventions.⁹⁷

2.5.2 Seafarers' employment agreements

Under the MLC, each member state must adopt national laws or regulations that ensure that vessels that fly its flag must comply with basic requirements regarding employment agreements.⁹⁸ Standard A2.1 requires: (a) seafarers' must have an employment agreement signed by both the seafarer and shipowner or their representative, (b) seafarers must be allowed to examine and, where necessary, seek advice on the agreement before signing it, (c) both parties to the contract must have a signed copy of such, (d) conditions of employment must be easily accessible to seafarers while onboard and the employment contract must be available to review by officers of a competent authority and (e) seafarers must be given a document recording their employment onboard the vessel.⁹⁹

The MLC has introduced several significant changes to the Seamen's Articles of Agreement Convention, 1926 (No. 22), namely: (a) the MLC explicitly requires member states to ensure seafarers have an employment agreement¹⁰⁰ (b) it requires that the conditions of employment must be available for review¹⁰¹, (c) it added health and social security protection benefits and entitlement to repatriation to the particulars contained in the employment agreement¹⁰² and (d) the minimum notice for early termination of the contract shall not be earlier than seven days.¹⁰³

2.5.3 Wages

The MLC requires that wages are paid to seafarers in no greater than monthly intervals.¹⁰⁴ In addition, the MLC makes it mandatory for shipowners to ensure that

⁹⁷ L. Christodoulou-Varotsi and D.A Pentsov, *Maritime Work Law Fundamentals: Responsible Shipowners, Reliable Seafarers*. (2008) 303.

⁹⁸ MLC, 2006, Standard A2.1.

⁹⁹ MLC, 2006, Standard A2.1 paragraph 1.

¹⁰⁰ MLC, 2006, Standard A2.1 paragraph 1(d).

¹⁰¹ MLC, 2006, Standard A2.1 paragraph 1 (e).

¹⁰² MLC, 2006, Standard A2.1 paragraphs 4(h), 4(i) and 4(j).

¹⁰³ MLC, 2006, Standard A2.1 paragraph 5.

¹⁰⁴ MLC, 2006, Standard A2.2 paragraph 1.

seafarers can transmit their wages to their families.¹⁰⁵ The MLC also contains guidelines as to the calculation and payment of wages¹⁰⁶ and minimum wages.¹⁰⁷

Before implementing the MLC, the period in which wages were to be paid was contained in the Seafarers' Wages, Hours of Work and the Manning of Ships Recommendation, 1996 (No. 187).¹⁰⁸ The Seamen's Welfare in Ports Recommendation states that seafarers must have the ability to transfer their wages.¹⁰⁹ Including these requirements in the MLC has had a substantial change in the standards concerning seafarers' wages because the previous Conventions merely recommended these measures and did not make them mandatory.¹¹⁰

2.5.4 Repatriation

The MLC ensures that member states repatriate seafarers in instances where (a) the employment agreement expires while the seafarer is abroad, (b) the employment agreement is terminated by the shipowner or the seafarer for a justified reason and (c) the seafarer is unable to or cannot be expected to carry out their duties as outlined in the employment agreement.¹¹¹

The MLC has introduced three significant changes to the Repatriation of Seafarers Convention (Revised) 1987 (No. 166), which preceded it.¹¹² The MLC makes it compulsory for member states to ensure that vessels flying their flag provide financial security to guarantee seafarers are repatriated per the MLC.¹¹³ The preceding Convention allowed for repatriation upon expiry of the notice given period, regardless of the reason for termination.¹¹⁴ Conversely, the MLC provides repatriation in similar cases only when the seafarer has terminated the contract for a justified reason.¹¹⁵

¹⁰⁵ MLC, 2006, Standard A2.2 paragraphs 3 and 4.

¹⁰⁶ MLC, 2006, Guideline B2.2.2.

¹⁰⁷ MLC, 2006, Guideline 2.2.3.

¹⁰⁸ Recommendation No. 187, section 6(d).

¹⁰⁹ Recommendation No. 48, section 10 (b).

¹¹⁰ L. Christodoulou-Varotsi and D.A Pentsov, *Maritime Work Law Fundamentals: Responsible Shipowners, Reliable Seafarers*. (2008) 308.

¹¹¹ MLC, 2006, Standard A.2.5, paragraph 1.

¹¹² L. Christodoulou-Varotsi and D.A Pentsov, *Maritime Work Law Fundamentals: Responsible Shipowners, Reliable Seafarers*. (2008) 310.

¹¹³ MLC, 2006, Regulation 2.5, paragraph 1.

¹¹⁴ Convention No.166, Article 2, paragraph 1(b).

¹¹⁵ MLC, 2006, Standard A2.5, paragraph 1(b)(ii).

Lastly, with regard to the MLC, the details of repatriation have been placed in non-mandatory Part B of the Code to guide implementation at a national level.¹¹⁶

2.5.5 Compensation for the vessel's loss or foundering

Under the MLC, each member state must ensure that in instances of loss or foundering, the shipowner must compensate each seafarer for unemployment due to the vessel's loss or foundering.¹¹⁷ In the preceding Conventions, the Unemployment Indemnity (Shipwreck) Convention, 1920 (No. 8), the amount of compensation was stipulated under Article 2, paragraph 2; however, in the MLC, the relating provision is contained in Guideline B.2.6.1 paragraph 1; therefore, it is no longer mandatory.¹¹⁸

2.5.6 Medical care on board and ashore

Under the MLC, member states must ensure that vessels that fly their flag provide adequate protection to seafarers health and ensure seafarers have access to acceptable health care on board the vessel.¹¹⁹ In principle, the health care on board the vessel should be provided at no cost to the seafarer.¹²⁰ As a minimum requirement, the national laws implemented by member states must provide (a) that every vessel carry a medical chest, medical equipment and medical guide, subject to regular inspection by a competent authority, (b) that ships carrying 100 or more people and engaged in international voyages of more than three days have a medical doctor on board and (c) ships that do not carry a medical doctor must have at least one seafarer on board who is in charge of medical care and administering medicine.¹²¹

The Health Protection and Medical Care (Seafarers) Convention, 1987 (No.164), made it compulsory for shipowners to provide medical care and health protection to seafarers onboard the vessel free of charge.¹²² On the contrary, the MLC has made this obligation "more flexible" by adding the words "in principle".¹²³ As a result, unlike

¹¹⁶ L. Christodoulou-Varotsi and D.A Pentsov, *Maritime Work Law Fundamentals: Responsible Shipowners, Reliable Seafarers*. (2008) 310.

¹¹⁷ MLC, 2006, Standard A2.6, paragraph 1.

¹¹⁸ L. Christodoulou-Varotsi and D.A Pentsov, *Maritime Work Law Fundamentals: Responsible Shipowners, Reliable Seafarers*. (2008) 311.

¹¹⁹ MLC, 2006, Regulation 4.1, paragraph 1.

¹²⁰ MLC, 2006, Regulation 4.1, paragraph 2.

¹²¹ MLC, 2006, Standard A4.1, paragraph 4.

¹²² Convention No. 164, paragraph 4(d).

¹²³ ILO: *Adoption of an instrument to consolidate maritime labour standards*, Report I (1A), at 42.

the preceding Convention, the MLC does not prevent shipowners from providing paid medical care and medication to seafarers.¹²⁴

2.5.7 Shipowner Liability

Under the MLC, a member state must ensure that shipowners provide the following minimum standards concerning seafarer health protection and medical care, (a) shipowners are liable to bear the costs for injury and sickness of seafarers working onboard their vessel from the date of commencing duty till they are deemed duly repatriated, (b) shipowners must provide financial security to ensure seafarers are duly compensated in the event of death or long-term disability due to an occupational injury, illness or hazard, (c) the shipowner is liable for medical expenses, and board and lodging while the seafarer is away from home until the seafarer has recovered or the injury has been declared permanent, (d) in the instance of death of a seafarer on board or ashore the shipowner will be liable for the burial expenses for the period of engagement.¹²⁵

Compared to the preceding Convention, the Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No.55), the MLC prescribes an additional liability onto shipowners.¹²⁶ The MLC requires shipowners to provide financial security to ensure that seafarers are compensated in instances of death, long-term disability, occupational injury, illness or hazard.¹²⁷

2.6 How the MLC aims to protect shipowners

The provisions in the 2006 MLC aim to protect seafarers' rights and protect the interests of complying shipowners.¹²⁸ The MLC seeks to safeguard these shipowners' interests by implementing what is known as the "no more favourable treatment clause"

¹²⁴ L. Christodoulou-Varotsi and D.A Pentsov, *Maritime Work Law Fundamentals: Responsible Shipowners, Reliable Seafarers*. (2008) 316.

¹²⁵ MLC, 2006, Standard A4.2, paragraph 1.

¹²⁶ L. Christodoulou-Varotsi and D.A Pentsov, *Maritime Work Law Fundamentals: Responsible Shipowners, Reliable Seafarers*. (2008) 317.

¹²⁷ L. Christodoulou-Varotsi and D.A Pentsov, *Maritime Work Law Fundamentals: Responsible Shipowners, Reliable Seafarers*. (2008) 317.

¹²⁸ International Labour Organisation. *Maritime Labour Convention, 2006: Frequently asked questions*. (2012) <http://www.ilo.org/mlc>. (Accessed: 25 May 2020).

that can be found in Article V, paragraph 7¹²⁹ of the MLC.¹³⁰ The objective of the "no more favourable treatment clause" is to ensure a "level playing field" among shipowners so that ships that operate in countries that have ratified the Convention will not be at a competitive disadvantage to vessels that operate in countries that have not ratified the Convention.¹³¹

At first glance, Article V, paragraph 7, gives the impression that it could be applicable in several scenarios.¹³² In practice, however, it is implemented through port State control under regulation 5.2.1¹³³, in respect of ships that fly a foreign flag and call at a port of a country that has ratified the Convention.¹³⁴ A closer examination of regulation 5.2.1¹³⁵ reveals that the "no more favourable clause" plays an instrumental role in protecting seafarers' rights because the inspections carried out on vessels calling at ports in countries that have ratified the Convention include inspections to ascertain whether seafarers' rights are protected.¹³⁶ As a result, seafarers' working onboard

¹²⁹ 'Each member shall implement its responsibilities under this Convention in such a way as to ensure that the ships that fly the flag of any State that has not ratified this Convention do not receive more favourable treatment than the ships that fly the flag of any State that has ratified it.'

¹³⁰ International Labour Organisation. *Maritime Labour Convention, 2006: Frequently asked questions*. (2012) <http://www.ilo.org/mlc>. (Accessed: 25 May 2020).

¹³¹ *Labour standards: Basic facts on the Maritime Labour Convention 2006*. https://www.iol.org/global/standards/maritime-labour-convention/what-it-does/WCMS_219665/lang--en/index.htm. (Accessed 22 September 2020).

¹³² L. Christodoulou-Varotsi and D.A Pentsov, *Maritime Work Law Fundamentals: Responsible Shipowners, Reliable Seafarers*. (2008) 322.

¹³³ "1. 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 in accordance with paragraph 4 of Article V for the purpose of reviewing compliance with the requirements of this Convention (including seafarers' rights) relating to the working and living conditions of seafarers on the ship.

2. Each Member shall accept the maritime labour certificate and the declaration of maritime labour compliance required under Regulation 5.1.3 as prima facie evidence of compliance with the requirements of this Convention (including Seafarers' rights). Accordingly, the inspection in its ports shall, except in the circumstances specified in the Code, be limited to a review of the certificate and declaration.

3. Inspections in a port shall be carried out by authorised officers in accordance with the provisions of the Code and other applicable international arrangements governing port State control inspections in the Member. Any such inspection shall be limited to verifying that the matter inspected is in conformity with the relevant requirements set out in Articles and Regulations of this Convention and in Part A of the Code.

4. Inspections that may be carried out in accordance with this Regulation shall be based on an effective port State inspection and monitoring system to help ensure that the working and living conditions for seafarers on ships entering a port of the Member concerned meet the requirements of this Convention (including seafarers' rights).

5. Information about the system referred to in paragraph 4 of this Regulation, including the method used for assessing its effectiveness, shall be included in the Members reports pursuant to article 22 of the Constitution."

¹³⁴ International Labour Organisation. *Maritime Labour Convention, 2006: Frequently asked questions*. (2012) <http://www.ilo.org/mlc>. (Accessed: 25 May 2020).

¹³⁵ See footnote 22.

¹³⁶ L. Christodoulou-Varotsi and D.A Pentsov, *Maritime Work Law Fundamentals: Responsible Shipowners, Reliable Seafarers*. (2008) 323.

vessels whose flag State have not ratified the Convention are protected when calling at ports that are member states of the Convention.¹³⁷

2.7 How the MLC is implemented

As an international instrument, the MLC relies on its member countries to implement its regulations through their national laws.¹³⁸ A country's national laws and regulations would apply to seafarers, shipowners and vessels.¹³⁹ There are two key areas for flexibility in implementing the MLC; the first is a member state's ability to effect Part A of the Code's requirements through substantial equivalence.¹⁴⁰ The second area of flexibility is provided by framing the mandatory requirements in Part A of the Code in a more general manner, allowing a Member state to use its discretion.¹⁴¹

The MLC stipulates minimum standards that its member states must implement. The standards set by the MLC must be mirrored in the national standards of its member states and are subject to oversight by the Committee of Experts under the ILO supervisory system.¹⁴²

Article IV, paragraph 5¹⁴³ of the MLC stipulates that seafarers' employment and their rights protected under the Convention may be implemented through national laws or regulations, collective bargaining agreements, through other measures or in practice, unless stipulated otherwise.¹⁴⁴ As a result, each member state is permitted to adopt the MLC's provisions in its law (as an Act of Parliament or Congress), in regulations

¹³⁷ International Labour Organisation. Maritime Labour Convention, 2006: Frequently asked questions. (2012) <http://www.ilo.org/mlc>. (Accessed: 31 May 2020).

¹³⁸ International Labour Organisation. Maritime Labour Convention, 2006: Frequently asked questions. (2012) <http://www.ilo.org/mlc>. (Accessed: 31 May 2020).

¹³⁹ *Labour standards: Basic facts on the Maritime Labour Convention 2006*. https://www.iol.org/global/standards/maritime-labour-convention/what-it-does/WCMS_219665/lang--en/index.htm. (Accessed 22 September 2020).

¹⁴⁰ L. Christodoulou-Varotsi and D.A Pentsov, *Maritime Work Law Fundamentals: Responsible Shipowners, Reliable Seafarers*. (2008) 302.

¹⁴¹ L. Christodoulou-Varotsi and D.A Pentsov, *Maritime Work Law Fundamentals: Responsible Shipowners, Reliable Seafarers*. (2008) 302.

¹⁴² International Labour Organisation. *Maritime Labour Convention, 2006: Frequently asked questions*. (2012) <http://www.ilo.org/mlc>. (Accessed: 31 May 2020).

¹⁴³ "Each Member shall ensure, within the limits of its jurisdiction, that the seafarers' employment and social rights set out in the preceding paragraphs of this Article are fully implemented in accordance with the requirements of this Convention. Unless specified otherwise in the Convention, such implementation may be achieved through national laws or regulations, through applicable collective bargaining agreements or through other measures or in practice."

¹⁴⁴ Maritime Labour Convention, 2006 as amended, (2016) see Article IV Paragraph 5.

or through other subsidiary legislation.¹⁴⁵ In instances where the MLC does not require its measures to be implemented through legislation, a member state is permitted to allow certain matters to be dealt with through the use of collective bargaining agreements or alternative legal measures.¹⁴⁶ In some instances, a member state may elect not to take any further legal measures because a seafarer's rights that are protected under the MLC, are already adequately protected by the general law applied by a member state's national courts.¹⁴⁷

Article VI, paragraph 3¹⁴⁸ and 4¹⁴⁹ of the MLC, stipulate that a national provision of a member state may be considered "substantially equivalent" to a provision contained in Part A of the Code if the member state "satisfies itself" that the legislation or measure "is conducive to the full achievement of the general object and purpose of the provision or provisions of Part A of the Code concerned" and "gives effect to the provision or provisions of Part A of the Code concerned."¹⁵⁰

It is evident that the Member State's obligation is to "satisfy itself"; however, it is pertinent to note that this does not imply total autonomy of the member state because it is compulsory for the authorities responsible for monitoring implementation of the MLC at a national level to determine whether the required procedure of "satisfying themselves" has been carried out.¹⁵¹ This responsibility includes determining whether the process of "satisfying themselves" has been carried out in good faith and in a manner that ensures the objectives of implementing the principles and rights set out

¹⁴⁵ International Labour Organisation. *Maritime Labour Convention, 2006: Frequently asked questions*. (2012) <http://www.ilo.org/mlc>. (Accessed: 31 May 2020).

¹⁴⁶ L. Christodoulou-Varotsi and D.A Pentsov, *Maritime Work Law Fundamentals: Responsible Shipowners, Reliable Seafarers*. (2008) 301.

¹⁴⁷ International Labour Organisation. *Maritime Labour Convention, 2006: Frequently asked questions*. (2012) <http://www.ilo.org/mlc>. (Accessed: 31 May 2020).

¹⁴⁸ "A Member which is not in a position to implement the rights and principles in the manner set out in Part A of the Code may, unless expressly provided otherwise in this Convention, implement Part A through provisions in its laws and regulations or other measures which are substantially equivalent to the provisions of Part A."

¹⁴⁹ "For the sole purpose of paragraph 3 of this Article, any law, regulation, collective agreement or other implementing measure shall be considered to be substantially equivalent, in the context of this Convention, if the Member satisfies itself that:

- a) It is conducive to the full achievement of the general object and purpose of the provision or provisions of Part A of the Code concerned; and
- b) It gives effect to the provision or provisions of Part A of the Code concerned."

¹⁵⁰ International Labour Organisation. *Maritime Labour Convention, 2006: Frequently asked questions*. (2012) <http://www.ilo.org/mlc>. (Accessed: 31 May 2020).

¹⁵¹ L. Christodoulou-Varotsi and D.A Pentsov, *Maritime Work Law Fundamentals: Responsible Shipowners, Reliable Seafarers*. (2008) 302.

in the MLC is adequately achieved in a way other than that indicated in Part A of the Code.¹⁵²

This is how member States should evaluate their national provisions when attempting to determine substantial equivalence, identifying the general purpose and object of Part A of the Code and determining whether or not the proposed national legislation could, in good faith, be considered as giving effect to Part A.¹⁵³ Any substantial equivalence that a Member State has adopted must consequently be stated in Part I of the Declaration of Maritime Labour Compliance, carried onboard vessels that have been certified.¹⁵⁴

2.8 Advantages of the MLC

The MLC has improved the social dialogue at all levels and has ensured uniform compliance and verification of its implementation.¹⁵⁵ As a result, it is advantageous to seafarers, shipowners and governments alike.¹⁵⁶

In the governments' case, the MLC has simplified their reporting obligations, requiring governments to conform to one Convention instead of several conventions.¹⁵⁷ Governments have more expansive powers of enforcement on all vessels, including foreign vessels calling at their ports and additional flexibility with the firmness of rights and implementing them.¹⁵⁸ This flexibility makes the Convention capable of broader ratification.¹⁵⁹

¹⁵² International Labour Organisation. *Maritime Labour Convention, 2006: Frequently asked questions*. (2012) <http://www.ilo.org/mlc>. (Accessed: 31 May 2020).

¹⁵³ International Labour Organisation. *Maritime Labour Convention, 2006: Frequently asked questions*. (2012) <http://www.ilo.org/mlc>. (Accessed: 31 May 2020).

¹⁵⁴ International Labour Organisation. *Maritime Labour Convention, 2006: Frequently asked questions*. (2012) <http://www.ilo.org/mlc>. (Accessed: 31 May 2020).

¹⁵⁵ L. Christodoulou-Varotsi and D.A Pentsov, *Maritime Work Law Fundamentals: Responsible Shipowners, Reliable Seafarers*. (2008) IV.

¹⁵⁶ International Labour Organisation. *Maritime Labour Convention, 2006: Frequently asked questions*. (2012) <http://www.ilo.org/mlc>. (Accessed: 31 May 2020).

¹⁵⁷ International Labour Organisation. *Maritime Labour Convention, 2006: Frequently asked questions*. (2012) <http://www.ilo.org/mlc>. (Accessed: 31 May 2020).

¹⁵⁸ L. Christodoulou-Varotsi and D.A Pentsov, *Maritime Work Law Fundamentals: Responsible Shipowners, Reliable Seafarers*. (2008) 301.

¹⁵⁹ *Advantages of the Maritime Labour Convention, 2006*. https://www.ilo.org/global/standards/maritime-labour-convention/what-it-does/WCMS_153450/lang--en/index.htm. (Accessed 17 September 2020).

The MLC will ensure a more level playing field for shipowners to provide fair competition and marginalise substandard vessels' operation.¹⁶⁰ The MLC prescribes minimum standards within the current industry practice, thereby making it easier for shipowners to comply with.¹⁶¹ Implementation of the MLC will ensure a more socially responsible industry and a more efficient and better-protected workforce.¹⁶² The MLC will also ensure that ships operate safely and securely with fewer delays in port.¹⁶³

In respect of seafarers, the MLC stipulates their fundamental employment rights in straightforward language and in one Convention; it also ensures seafarers are better informed of their rights and the remedies available to them when their rights are infringed.¹⁶⁴ Seafarers have improved enforcement of their minimum working and living conditions and have the right to make complaints both onboard the vessel and ashore.¹⁶⁵

2.9 Criticism of the MLC

Despite the MLC being a comprehensive Convention that protects the rights of seafarers, including those on-board vessels that are flagged in non-member states through the “no more favourable treatment clause”, the MLC is not above criticism. In addition to being criticised about the guidelines contained in Part B which are not mandatory, and can be implemented at a lower standard, the MLC has been criticised for not addressing matters such as the protection of seafarers right to strike and the issuing of visas for shore leave.¹⁶⁶

The crew change crisis of the Covid-19 Pandemic has illustrated the vulnerability of seafarers and how important their right to strike is. Since the Covid-19 Pandemic,

¹⁶⁰ *Advantages of the Maritime Labour Convention, 2006*. https://www.ilo.org/global/standards/maritime-labour-convention/what-it-does/WCMS_153450/lang--en/index.htm. (Accessed 17 September 2020).

¹⁶¹ L. Christodoulou-Varotsi and D.A Pentsov, *Maritime Work Law Fundamentals: Responsible Shipowners, Reliable Seafarers*. (2008) 315.

¹⁶² International Labour Organisation. *Maritime Labour Convention, 2006: Frequently asked questions*. (2012) <http://www.ilo.org/mlc>. (Accessed: 31 May 2020).

¹⁶³ *Advantages of the Maritime Labour Convention, 2006*. https://www.ilo.org/global/standards/maritime-labour-convention/what-it-does/WCMS_153450/lang--en/index.htm. (Accessed 17 September 2020).

¹⁶⁴ International Labour Organisation. *Maritime Labour Convention, 2006: Frequently asked questions*. (2012) <http://www.ilo.org/mlc>. (Accessed: 31 May 2020).

¹⁶⁵ *Advantages of the Maritime Labour Convention, 2006*. https://www.ilo.org/global/standards/maritime-labour-convention/what-it-does/WCMS_153450/lang--en/index.htm. (Accessed 17 September 2020).

¹⁶⁶ *The Maritime Labour Convention: a review*. *Lexology*. Available at <https://www.lexology.com/library/detail.aspx?g=59d3bdd3-03f1-4a58-b6cd-5692ebe845f0> (Accessed on 16 December 2021).

many seafarers were stranded at sea due to the inability to facilitate crew changes.¹⁶⁷ As a result many international efforts were made to afford seafarers with some relief, this included a “call to action” to invoke the relevant sections of the MLC, however, the situation continued to deteriorate and reports from 2020 indicate that there were up to 300 000 seafarers stuck at sea.¹⁶⁸ The Covid-19 Pandemic has clearly illustrated the weaknesses in the labour regulatory regimes where workers are unable to take effective action at a workplace level.¹⁶⁹ Early criticism of the MLC highlighted the lack of provisions allowing seafarers to strike. Without some enabling provisions, the other rights offered by the MLC become meaningless.¹⁷⁰ Despite international input in the drafting of the MLC, seafarers do not have a work environment that allows them to take the type of action at shipboard level that would bring relief in a crisis of this nature.¹⁷¹

Nevertheless, the MLC is a great step forward in both consolidating the rights of seafarers and harmonising compliance and inspection procedures to be followed by flag states and port authorities.¹⁷²

¹⁶⁷ ‘Why the MLC is failing as a regulatory response to the Covid-19 pandemic’ *Splash*, 27 January 2021. Available at <https://splash247.com/why-the-mlc-is-failing-as-a-regulatory-response-to-the-covid-19-global-pandemic/> (Accessed 05 January 2022).

¹⁶⁸ ‘Why the MLC is failing as a regulatory response to the Covid-19 pandemic’ *Splash*, 27 January 2021. Available at <https://splash247.com/why-the-mlc-is-failing-as-a-regulatory-response-to-the-covid-19-global-pandemic/> (Accessed 05 January 2022).

¹⁶⁹ ‘Why the MLC is failing as a regulatory response to the Covid-19 pandemic’ *Splash*, 27 January 2021. Available at <https://splash247.com/why-the-mlc-is-failing-as-a-regulatory-response-to-the-covid-19-global-pandemic/> (Accessed 05 January 2022).

¹⁷⁰ ‘Why the MLC is failing as a regulatory response to the Covid-19 pandemic’ *Splash*, 27 January 2021. Available at <https://splash247.com/why-the-mlc-is-failing-as-a-regulatory-response-to-the-covid-19-global-pandemic/> (Accessed 05 January 2022).

¹⁷¹ ‘Why the MLC is failing as a regulatory response to the Covid-19 pandemic’ *Splash*, 27 January 2021. Available at <https://splash247.com/why-the-mlc-is-failing-as-a-regulatory-response-to-the-covid-19-global-pandemic/> (Accessed 05 January 2022).

¹⁷² The Maritime Labour Convention: a review. *Lexology*. Available at <https://www.lexology.com/library/detail.aspx?g=59d3bdd3-03f1-4a58-b6cd-5692ebe845f0> (Accessed on 16 December 2021).

CHAPTER THREE: SEAFARERS' RIGHTS PRIOR TO THE MLC

The previous chapter examined the aims, development and implementation of shipowner liability under the MLC. In this chapter, the history of the national laws in the relevant three jurisdictions prior to implementing the MLC, will be analysed in order to determine the extent to which the law protected the rights of injured seafarers and where a shipowner's liability ended.

3.1 The United States of America

The seafarers' rights to recover damages for injuries have developed extensively from the initial remedies, restricting shipowner liability to maintenance, cure and unearned wages.¹⁷³ The 1903 USA Supreme Court decision in *The Osceola*¹⁷⁴ is an example of one of the first times, a court declared that a seafarer could recover damages for injuries sustained due to a ship's unseaworthiness or a shipowner's failure to provide equipment.¹⁷⁵ The *Osceola* decision had far-reaching consequences and confirmed that a seafarer could not claim damages due to the negligence of the master or a member of the crew.¹⁷⁶ The USA Congress later passed the Jones Act,¹⁷⁷ which was ground-breaking legislation of its time, aimed at extending the rights of seafarers'.¹⁷⁸ One of the significant changes that the Jones Act¹⁷⁹ brought about, was a seafarers ability to claim damages for injuries sustained due to negligence of the employees of the shipowner, including the master of the vessel.¹⁸⁰

Prior to the enactment of the Jones Act, upon the request of the Secretaries of Labour and Commerce, Congress responded to *The Osceola* judgement by adding the following provision to the Seamen's Act of 1915:¹⁸¹

¹⁷³ Louis J Gusmano, 'Seamen's Rights to Recover for injury against Either Shipowner or Charterer' (1980-1981) 55 Tul L Rev 1029.

¹⁷⁴ *The Osceola* 198 U.S 158 (1903) at 175.

¹⁷⁵ Louis J Gusmano, 'Seamen's Rights to Recover for injury against Either Shipowner or Charterer' (1980-1981) 55 Tul L Rev 1029.

¹⁷⁶ *The Osceola* 198 U.S 158 (1903) at 175.

¹⁷⁷ of 1920 also known as the Merchant Marine Act of 1920.

¹⁷⁸ Louis J Gusmano, 'Seamen's Rights to Recover for injury against Either Shipowner or Charterer' (1980-1981) 55 Tul L Rev 1029.

¹⁷⁹ of 1920.

¹⁸⁰ George W Stumberg, 'The Jones Act. Remedies of Seamen' (1956) 17 *Ohio State Law Journal* 484.

¹⁸¹ Steven F Friedell, 'The Interplay of the Jones Act and the General Maritime Law' (2017) 48 *Journal of Maritime Law & Commerce* 371.

"*Provided*, that in any suit to recover damages for any injury sustained on board vessel or in its service seamen having command shall not be considered fellow-servants with those under their authority."

Despite Congress' intention through this provision, to allow for seafarers to recover damages for injuries sustained due to the masters' negligence,¹⁸² in *Chelentis v Luckenbach S.S Co*,¹⁸³ the court held that under the *Osceola*, a shipowners' duty was determined "without regard" to the relationship between a seafarer and other crewmembers.¹⁸⁴ Thereby rendering irrelevant, the Seaman's Act of 1915.¹⁸⁵

As a result of the court's finding that the Seamen's Act¹⁸⁶ was irrelevant, the President of the International Seaman's Union of America testified before Congress to remedy the Act's nullity.¹⁸⁷ He stated that the court had found the Act irrelevant because it referred to the common law; however, the common law was not applicable onboard a vessel.¹⁸⁸ The President of the International Seaman's Union of America suggested that section 20 of the Seamen's Act be amended, Congress accepted this, and the amendment became Section 33 of the Jones Act of 1920.¹⁸⁹

This amendment, leading to the enactment of the Jones Act,¹⁹⁰ extends the protection provided to railway employees under the Federal Employers' Liability Act¹⁹¹ (FELA),

¹⁸² Steven F Friedell, 'The Interplay of the Jones Act and the General Maritime Law' (2017) 48 *Journal of Maritime Law & Commerce* 376.

¹⁸³ *Chelentis v Luckenbach S.S Co*, 247 U.S 372 (1918). The Court of Appeals and the District Court had come to the same conclusion.

¹⁸⁴ Steven F Friedell, 'The Interplay of the Jones Act and the General Maritime Law' (2017) 48 *Journal of Maritime Law & Commerce* 377.

¹⁸⁵ Steven F Friedell, 'The Interplay of the Jones Act and the General Maritime Law' (2017) 48 *Journal of Maritime Law & Commerce* 377.

¹⁸⁶ of 1915.

¹⁸⁷ Steven F Friedell, 'The Interplay of the Jones Act and the General Maritime Law' (2017) 48 *Journal of Maritime Law & Commerce* 378.

¹⁸⁸ Steven F Friedell, 'The Interplay of the Jones Act and the General Maritime Law' (2017) 48 *Journal of Maritime Law & Commerce* 378.

¹⁸⁹ "any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located."

¹⁹⁰ of 1920.

¹⁹¹ of 1908.

to seafarers.¹⁹² Initially, seafarer who became ill or suffered an injury during their service were entitled to maintenance, cure and wages for the duration of the voyage.¹⁹³ Since the Jones Act did not change the pre-existing maritime law, an injured seafarer had two avenues he could pursue to recover damages.¹⁹⁴ If the seafarer suffered an injury due to the crew's negligence, the seafarer could recover damages under the Jones Act; however, if the seafarer sustained an injury due to unseaworthiness, he could recover damages under the traditional maritime law.¹⁹⁵

Interpreting the Jones Act in this manner would substantially limit the intended effects of the Act.¹⁹⁶ A seafarer seeking damages under the Act, would be required to show negligence, causation and damages suffered, with a risk of damages being reduced if the seafarer was found to be negligent. In addition, the ability to recover damages under general maritime law would add little to the protection of seafarers' rights under the Jones Act.¹⁹⁷ The Jones Act covered unseaworthiness,¹⁹⁸ and while maintenance and cure remedies were essential, it offered less recovery of damages in some instances.¹⁹⁹ In addition, any claims that were brought under general admiralty law would be heard without the use of a jury. As a result, the ability of the Jones Act to further protect the interests of seafarers was criticised.²⁰⁰ Because of this Congress ultimately improved upon and rewrote the Jones Act so that it could be used as a hybrid remedy, which added to the rights of seafarers related to unseaworthiness, maintenance and cure.²⁰¹

¹⁹² The Jones Act of 1920.

¹⁹³ George W Stumberg, 'The Jones Act. Remedies of Seamen' (1956) 17 *Ohio State Law Journal* 484.

¹⁹⁴ George W Stumberg, 'The Jones Act. Remedies of Seamen' (1956) 17 *Ohio State Law Journal* 484.

¹⁹⁵ George W Stumberg, 'The Jones Act. Remedies of Seamen' (1956) 17 *Ohio State Law Journal* 484.

¹⁹⁶ Steven F Friedell, 'The Interplay of the Jones Act and the General Maritime Law' (2017) 48 *Journal of Maritime Law & Commerce* 381.

¹⁹⁷ Steven F Friedell, 'The Interplay of the Jones Act and the General Maritime Law' (2017) 48 *Journal of Maritime Law & Commerce* 381.

¹⁹⁸ See TJ Schoenbaum. *Admiralty and Maritime Law*. 5th Hornbook ed. (2001) 297. FELA covered unseaworthiness to the extent that was required for the reasonable care in providing a safe vessel. The requirement of providing reasonable care in relation to a competent crew formed part of the common law obligation which FELA absorbed.

¹⁹⁹ Steven F Friedell, 'The Interplay of the Jones Act and the General Maritime Law' (2017) 48 *Journal of Maritime Law & Commerce* 381.

²⁰⁰ George W Stumberg, 'The Jones Act. Remedies of Seamen' (1956) 17 *Ohio State Law Journal* 489.

²⁰¹ Steven F Friedell, 'The Interplay of the Jones Act and the General Maritime Law' (2017) 48 *Journal of Maritime Law & Commerce* 382.

In *Panama R.R Johnson*,²⁰² the court rejected the notion that a seafarer could only sue 'at law' under the Jones Act and stated that a suit could be brought 'in admiralty'. In *Pacific S.S v Peterson*,²⁰³ the court held that a seafarer could claim for maintenance and cure in conjunction with a claim for unseaworthiness or a claim under the Jones Act. In *Romero v International Terminal Operating Co*,²⁰⁴ the court ultimately held that a claim under the Jones Act, unseaworthiness and maintenance and cure, could be decided in the same suit provided that the claimant did not have a double recovery.²⁰⁵ Therefore it is proposed that the Jones Act, as well as the doctrine of unseaworthiness, maintenance and cure, can be regarded as a single source containing an injured seafarers' full remedies.²⁰⁶

Under this law, as a general rule, an injured seafarer could recover damages in the form of wages for the period of the voyage, a maintenance allowance for the out-patient and recovery period, costs of items such as medication, and hospitalisation and compensation for pain and suffering, loss of future earnings due to impairment and occasionally loss of wages.²⁰⁷

3.2 The United Kingdom

The protection of seafarers has always been a priority in maritime law, and admiralty courts have always exercised care to safeguard seafarers' interests. It has been established that a seafarer is entitled to maintenance and cure, his wages and passage back to port.²⁰⁸ In England, the rights of a seafarer are protected through statute and case law.²⁰⁹

The regulatory measures to protect seafarers, developed in the 1960s due to years of concern regarding seafarers health and safety and the occasional action taken to

²⁰² 264 US 375, AMC 551 (1924).

²⁰³ 264 US 375, AMC 1932 (1928).

²⁰⁴ 358 US 354, AMC 832 (1959).

²⁰⁵ Steven F Friedell, 'The Interplay of the Jones Act and the General Maritime Law' (2017) 48 *Journal of Maritime Law & Commerce* 382.

²⁰⁶ Robert M Mallano, 'Seamen's Injuries: The Jones Act, Unseaworthiness, and Maintenance and Cure- The Siamese Triplets' (1963) 51 *California Law Review* 412.

²⁰⁷ Max D Kossoris and Joseph Zisman, 'Workmen's Compensation for Seamen' (1946) 62 *Monthly Labour Review* 851.

²⁰⁸ Fitz-Henry Smith, "Liability in the Admiralty for Injuries to Seamen." (1906) 19(6) *Harvard Law Review* 419.

²⁰⁹ Fitz-Henry Smith, "Liability in the Admiralty for Injuries to Seamen." (1906) 19(6) *Harvard Law Review* 423.

safeguard them.²¹⁰ By the medieval period, several codes that made provision for crew members' illness had been established; the code that directly affected English ships were the *Rolls of Oleron*.²¹¹ Part seven of the *Rolls of Oleron* placed a significant duty on the master of a vessel to ensure the continued care and financial support of an ill or injured seafarer.²¹² This duty is still present in current international conventions.²¹³

While the *Rolls of Oleron* placed an inherent duty on the master of a vessel to ensure seafarer care, by 1867, several articles appeared in the *British Medical Journal* exposing the poor living conditions and neglect faced by seafarers.²¹⁴ This exposure ultimately led to the development of the *Merchant Shipping Act of 1867*,²¹⁵ which was the starting point to a cohesive approach to the health and care of British seafarers.²¹⁶ Therefore, the *Merchant Shipping Act of 1867* ultimately laid the foundation for many of the provisions used today to safeguard the health and safety of seafarers, ensuring that they can safely perform their duties.²¹⁷

New developments in health care inevitably resulted in higher costs for shipowners; however, this also resulted in better health care for seafarers.²¹⁸ Despite the improvement in healthcare provided to seafarers, shipowners viewed this as an additional cost. Shipowners overlooked the benefits of the improvements in health care and only implemented these developments if a failure to do so would result in the

²¹⁰ Tim Carter. *Merchant Seamen's Health, 1860-1960: Medicine, Technology, Shipowners and the State in Britain*. (2014).

²¹¹ The Rules of Oleron, c. 1266. www.admiraltylawguide.com/documents/oleron.html (accessed 11 May 2020).

²¹² Tim Carter. *Merchant Seamen's Health, 1860-1960: Medicine, Technology, Shipowners and the State in Britain*. (2014).

²¹³ ILO Maritime Labour Convention 2006, Geneva; International Labour Conference. Standard A 4.1 Medical care on board ship and ashore.

²¹⁴ Tim Carter. *Merchant Seamen's Health, 1860-1960: Medicine, Technology, Shipowners and the State in Britain*. (2014).

²¹⁵ Section 4(2) stated that ships carry medical stores in a specified scale and an approved guide to the use of the medical stores. Section 5 placed a duty on suppliers of medical stores to ensure their quality and placed penalties on suppliers. Section 7 placed liability on the shipowner or master to pay wages for up to three months and for the cost of treating any illnesses that arises from their neglect to provide proper food, water and medicine.

²¹⁶ Tim Carter. *Merchant Seamen's Health, 1860-1960: Medicine, Technology, Shipowners and the State in Britain*. (2014).

²¹⁷ Tim Carter. *Merchant Seamen's Health, 1860-1960: Medicine, Technology, Shipowners and the State in Britain*. (2014).

²¹⁸ Tim Carter. *Merchant Seamen's Health, 1860-1960: Medicine, Technology, Shipowners and the State in Britain*. (2014).

shipowner being criticised.²¹⁹ While the *Merchant Shipping Act of 1867* protected seafarers, ensuring their health care and safety at sea, the Act did not extend this protection to seafarers while they were ashore.²²⁰ As a result, seafarers health and safety while ashore became a pressing issue that needed to be addressed.²²¹

After World War I (WW1), the need for international collaboration was at the fore; seafarers were recognised as the most international group of workers, as a result bodies such as the ILO focused their early work on the wellbeing of workers in the maritime sector.²²²

Admiralty law intrinsically has its own rights and remedies applicable within a particular area that cannot be utilised outside its operation area.²²³ An example of this is the maritime lien and the action in rem.²²⁴ Statutes are the principal legal source in maritime law; statues also play an instrumental role in judicial development and English law.²²⁵ Court integration and statutes have had a significant effect on resolving conflicts. However, English "maritime law" is rooted in statutes, procedural rules and the judicial doctrine of Admiralty, common law and equity.²²⁶ The consolidation in *The Merchant Shipping Act 1995* of the preceding Merchant Shipping Acts goes far to provide a code of substantive rules; however, it does not refer to maritime issues that appear in other statutes.²²⁷

The recent developments in English law, particularly *The Merchant Shipping Act of 1995*, have their roots in International Conventions.²²⁸ Some of these developments are because of the United Kingdoms' membership with the European Union, the United Nations Conference on Trade and Development (UNCTAD), the International

²¹⁹ Tim Carter. *Merchant Seamen's Health, 1860-1960: Medicine, Technology, Shipowners and the State in Britain*. (2014).

²²⁰ Tim Carter. *Merchant Seamen's Health, 1860-1960: Medicine, Technology, Shipowners and the State in Britain*. (2014).

²²¹ A Kennerley. *British Seamen's Missions and Sailors' Homes 1815-1970: voluntary welfare provision for serving seafarers*. PhD thesis. University of Plymouth, (1989). 102-104.

²²² Tim Carter. *Merchant Seamen's Health, 1860-1960: Medicine, Technology, Shipowners and the State in Britain*. (2014).

²²³ DC Jackson. *Enforcement of Maritime Claims*. 4th ed. (2005) 221.

²²⁴ DC Jackson. *Enforcement of Maritime Claims*. 4th ed. (2005) 221.

²²⁵ DC Jackson. *Enforcement of Maritime Claims*. 4th ed. (2005) 222.

²²⁶ DC Jackson. *Enforcement of Maritime Claims*. 4th ed. (2005) 223.

²²⁷ DC Jackson. *Enforcement of Maritime Claims*. 4th ed. (2005) 224.

²²⁸ The Rules of Oleron, United Nations Convention on the Law of the Sea 1982, International Convention for the Safety of Life at Sea (SOLAS) 1974.

Maritime Organisation (IMO) and the International Labour Organisation (ILO).²²⁹ The law of the European Union governs its member states' laws; therefore, regulations, directives, and decisions made by the Union will be binding on its member states.²³⁰ In the United Kingdom, international regulations, directives and decisions are implemented through domestic legislation, such as *The Merchant Shipping Act of 1995*.²³¹

Before implementing the MLC in the UK, an injured seafarers' rights and right of recourse against a shipowner was consolidated in *The Merchant Shipping Act of 1995*. The Act protects seafarers by ensuring they are paid wages monthly or in full when they leave the ship.²³² A seafarers wages must be paid when a UK ship has been wrecked or lost, thereby terminating employment before the termination date or where the vessel has been sold and is no longer a UK ship, thereby terminating employment before the agreed date.²³³ Minimum requirements for crew accommodation are stipulated to ensure satisfactory living conditions.²³⁴ Seafarers are entitled to medical treatment at the shipowners' expense while onboard the vessel and ashore while outside the UK.²³⁵ If a seafarer dies at sea or ashore outside the UK, the shipowner will be liable for the deceased's costs of the burial or cremation.²³⁶ Seafarers are entitled to relief, maintenance and return to the UK at the end of a voyage or in the instance of a shipwreck.²³⁷

3.3 South Africa

South African admiralty law has a strong link to English law; therefore, South African admiralty law can never be considered without reference to the history of admiralty law in the UK.²³⁸ South African admiralty law is a hybrid system that comprises statute

²²⁹ DC Jackson. *Enforcement of Maritime Claims*. 4th ed. (2005) 223.

²³⁰ DC Jackson. *Enforcement of Maritime Claims*. 4th ed. (2005) 224.

²³¹ DC Jackson. *Enforcement of Maritime Claims*. 4th ed. (2005) 225.

²³² Section 30 (1) (a) and (b).

²³³ Section 38 (1) and (2).

²³⁴ Section 43.

²³⁵ Section 45.

²³⁶ Section 45 (2) and (3).

²³⁷ Section 73.

²³⁸ s6 of the Admiralty Jurisdiction and Regulation Act 105 of 1983 (AJRA) obliges a South African court, when faced with most marine matters to apply English law as at 1983. See *Transol Bunker v MV Andrico Unity and Others* 1989 (4) SA 325 (A) at 334H-336C.

and common law.²³⁹ The South African system of law is precedent based whereby courts pronounce on issues by interpreting and enforcing statutes and developing the common law.²⁴⁰

The origins of South African shipping law can be traced back to the laws of the first European settlers in the Cape in 1652.²⁴¹ The Dutch settlement inevitably resulted in the application of Dutch law, which was applied under the Dutch-Estates General's authority.²⁴² Dutch occupation of the Cape continued until 1806 when the British occupied the Cape during this period, the law in South Africa falling under Dutch rule developed alongside the law in Europe.²⁴³

South African common law is a combination of Roman-Dutch and English law; the British established the court system, and British judges presided over matters.²⁴⁴ British rule brought colonial status to the Cape in 1815, and in 1827 the Cape Supreme Court was established with three British Judges being appointed.²⁴⁵ English practices and admiralty law was introduced to the South African legal system through the *Colonial Courts of Admiralty Act 1890*, which gave every court within British possession admiralty jurisdiction.²⁴⁶

Before enacting The Admiralty Jurisdiction Regulation Act (AJRA), English statutes relating to admiralty matters as of 1891 were applicable in South Africa; therefore,

²³⁹ A Practical Overview on Enforcement and Defence of Maritime Claims in South Africa: Including Casualties and Carriage of Goods by Sea. (2014) *Shepstone & Wylie Attorneys*. <http://wylie.co.za/wp-content/uploads/Admiralty-Jurisdiction-and-Practice-in-South-Africa-05.12.2014.pdf>. (Accessed 30 May 2020).

²⁴⁰ A Practical Overview on Enforcement and Defence of Maritime Claims in South Africa: Including Casualties and Carriage of Goods by Sea. (2014) *Shepstone & Wylie Attorneys*. <http://wylie.co.za/wp-content/uploads/Admiralty-Jurisdiction-and-Practice-in-South-Africa-05.12.2014.pdf>. (Accessed 30 May 2020).

²⁴¹ Origins of Admiralty Jurisdiction & Shipping Law in South Africa: The Anglo -Dutch juxtaposition- common law in a civilian system. (2009) *Juta and Company (Pty) Ltd*. [http://jutastat.juta.co.za/nxt/gateway.dll/ship/2/7/8?f=templates\\$fn=default.htm](http://jutastat.juta.co.za/nxt/gateway.dll/ship/2/7/8?f=templates$fn=default.htm). (Accessed 10 June 2020).

²⁴² See Fagan, *Roman-Dutch Law in its South African Historical Context* in *Southern Cross- Civil law and Common Law in South Africa* (1996) 33-64.

²⁴³ Origins of Admiralty Jurisdiction & Shipping Law in South Africa: The Anglo -Dutch juxtaposition- common law in a civilian system. (2009) *Juta and Company (Pty) Ltd*. [http://jutastat.juta.co.za/nxt/gateway.dll/ship/2/7/8?f=templates\\$fn=default.htm](http://jutastat.juta.co.za/nxt/gateway.dll/ship/2/7/8?f=templates$fn=default.htm). (Accessed 10 June 2020).

²⁴⁴ A Practical Overview on Enforcement and Defence of Maritime Claims in South Africa: Including Casualties and Carriage of Goods by Sea. (2014) *Shepstone & Wylie Attorneys*. <http://wylie.co.za/wp-content/uploads/Admiralty-Jurisdiction-and-Practice-in-South-Africa-05.12.2014.pdf>. (Accessed 30 May 2020).

²⁴⁵ Origins of Admiralty Jurisdiction & Shipping Law in South Africa: The Anglo -Dutch juxtaposition- common law in a civilian system. (2009) *Juta and Company (Pty) Ltd*. [http://jutastat.juta.co.za/nxt/gateway.dll/ship/2/7/8?f=templates\\$fn=default.htm](http://jutastat.juta.co.za/nxt/gateway.dll/ship/2/7/8?f=templates$fn=default.htm). (Accessed 10 June 2020).

²⁴⁶ A Practical Overview on Enforcement and Defence of Maritime Claims in South Africa: Including Casualties and Carriage of Goods by Sea. (2014) *Shepstone & Wylie Attorneys*. <http://wylie.co.za/wp-content/uploads/Admiralty-Jurisdiction-and-Practice-in-South-Africa-05.12.2014.pdf>. (Accessed 30 May 2020).

South African courts were to apply English admiralty law and precedents.²⁴⁷ The enactment of AJRA has broadened the ambit of South African courts as it has introduced the application of English common law, which was in force up till November 1983.²⁴⁸

The laws applicable to the employment of the master and crew are a combination of private rights and obligations and statutory controls.²⁴⁹ In South Africa today, the High Court exercises its admiralty jurisdiction when hearing claims of crew members.²⁵⁰ While the High Court exercising its admiralty jurisdiction has the authority to hear these claims, the law that is to be applied to the claims is not as straight forward.²⁵¹ In 1891 the English admiralty court had jurisdiction:

"Over any claim by a seaman of any ship for wages owed by him on board the ship, whether the same be due under a special contract or otherwise, and also over any claim by the master of any ship for wages earned by him on board the ship, and for disbursements made by him on account of the ship" ²⁵².

The jurisdiction of the 1861 *Admiralty Court Act* applied only to the collection of wages.²⁵³ Generally, matters that were not related to wage claims and, in some instances, complaints of ill-treatment were heard by the common law courts.²⁵⁴ The application of s6 of The Admiralty Jurisdiction Regulation Act (AJRA)²⁵⁵ would result in wage claims in South Africa being subject to English law as it were in 1883; however,

²⁴⁷ A Practical Overview on Enforcement and Defence of Maritime Claims in South Africa: Including Casualties and Carriage of Goods by Sea. (2014) *Shepstone & Wylie Attorneys*. <http://wylie.co.za/wp-content/uploads/Admiralty-Jurisdiction-and-Practice-in-South-Africa-05.12.2014.pdf>. (Accessed 30 May 2020).

²⁴⁸ A Practical Overview on Enforcement and Defence of Maritime Claims in South Africa: Including Casualties and Carriage of Goods by Sea. (2014) *Shepstone & Wylie Attorneys*. <http://wylie.co.za/wp-content/uploads/Admiralty-Jurisdiction-and-Practice-in-South-Africa-05.12.2014.pdf>. (Accessed 30 May 2020).

²⁴⁹ Chapter 5, Master and Crew: Jurisdiction and applicable law. (2009) *Juta and Company (Pty) Ltd*. [http://jutastat.juta.co.za/nxt/gateway.dll/ship/2/29/44?f=templates\\$fn=default.htm](http://jutastat.juta.co.za/nxt/gateway.dll/ship/2/29/44?f=templates$fn=default.htm). (Accessed 25 May 2020).

²⁵⁰ Admiralty Jurisdiction Regulation Act, s1 (1)(s).

²⁵¹ Chapter 5, Master and Crew: Jurisdiction and applicable law. (2009) *Juta and Company (Pty) Ltd*. [http://jutastat.juta.co.za/nxt/gateway.dll/ship/2/29/44?f=templates\\$fn=default.htm](http://jutastat.juta.co.za/nxt/gateway.dll/ship/2/29/44?f=templates$fn=default.htm). (Accessed 25 May 2020).

²⁵² Admiralty Court Act, 1861, s10. The word 'seaman' was interpreted at the time to include all paid persons on board, other than the Master. Williams and Bruce, *Jurisdiction and Practice of the English Courts in Admiralty Actions and Appeals*. (1986) 201.

²⁵³ Chapter 5, Master and Crew: Jurisdiction and applicable law. (2009) *Juta and Company (Pty) Ltd*. [http://jutastat.juta.co.za/nxt/gateway.dll/ship/2/29/44?f=templates\\$fn=default.htm](http://jutastat.juta.co.za/nxt/gateway.dll/ship/2/29/44?f=templates$fn=default.htm). (Accessed 25 May 2020).

²⁵⁴ Chapter 5, Master and Crew: Jurisdiction and applicable law. (2009) *Juta and Company (Pty) Ltd*. [http://jutastat.juta.co.za/nxt/gateway.dll/ship/2/29/44?f=templates\\$fn=default.htm](http://jutastat.juta.co.za/nxt/gateway.dll/ship/2/29/44?f=templates$fn=default.htm). (Accessed 25 May 2020).

²⁵⁵ Act 105 of 1983.

other claims relating to employment would be subject to South African Roman-Dutch law.²⁵⁶

Therefore, a seafarer right to wages would have been protected under English law and applied in South Africa. Any other rights and claims of a seafarer would be protected in South African law under the *Merchant Shipping Act*.²⁵⁷ The Act ensures that a seafarer is entitled to his wages and that he will be paid the full amount or the balance thereof upon discharge of the vessel.²⁵⁸ If a seafarers services are terminated before the contemplated date, through wreck²⁵⁹ or if he has been left behind at a foreign port due to illness or injury,²⁶⁰ he will be entitled to his wages until he has arrived at the agreed port.²⁶¹ Should a seafarer be left behind at a foreign port, he is entitled to his wages and repatriation expenses.²⁶² The seafarer will be entitled to his maintenance, the provision of necessaries such as clothing and all costs necessary to return him to the intended port.²⁶³ A seafarer is entitled to proper accommodation.²⁶⁴ The master of the vessel must provide a seafarer with bedding, towels and any other articles for personal use that may be required.²⁶⁵ A seafarer is entitled to medical care on board the vessel; the master or shipowner must ensure an adequate supply of medication and equipment to treat any illness or injury.²⁶⁶

Each country has its own statutes containing and protecting the rights of seafarers. However, due to the international nature of shipping and the early developments of doctrine such as the *Rolls of Oleron*, it is evident that seafarers' basic protection covers their right to wages, health care on board the vessel, maintenance and cure.

²⁵⁶ Chapter 5, Master and Crew: Jurisdiction and applicable law. (2009) *Juta and Company (Pty) Ltd.* [http://jutastat.juta.co.za/nxt/gateway.dll/ship/2/29/44?f=templates\\$fn=default.htm](http://jutastat.juta.co.za/nxt/gateway.dll/ship/2/29/44?f=templates$fn=default.htm). (Accessed 25 May 2020).

²⁵⁷ Act 57 of 1951.

²⁵⁸ Section 120 amended by s19 of Act 30 of 1959 and substituted by s12 of Act 42 of 1969.

²⁵⁹ Section 140 (1) (a) substituted by s5 (a) of Act 3 of 1981.

²⁶⁰ Section 140 (1) (b) amended by s21 (a) of Act 30 of 1959.

²⁶¹ Section 140 (1).

²⁶² Section 154.

²⁶³ Section 154 (b).

²⁶⁴ Section 161.

²⁶⁵ Section 160.

²⁶⁶ Section 167.

CHAPTER 4: SEAFARER'S RIGHTS AFTER THE IMPLEMENTATION OF THE MLC

The preceding chapters examined the MLC, its development, aims, implementation, and the history of the laws protecting seafarers in the respective jurisdictions. These chapters provide a clear indication of the level of protection afforded to seafarers prior to the introduction of the MLC. This chapter will examine the laws in the respective jurisdictions after the introduction of the MLC in order to assess the extent to which the MLC has been implemented and whether it has been effective in protecting seafarers' rights.

4.1 The United States of America

Despite being at the forefront of seafarer protection through the enactment of regulations such as the Jones Act,²⁶⁷ the USA has experienced difficulty protecting the rights of foreign seafarers entering its ports.²⁶⁸ However, by ratifying the MLC,²⁶⁹ the USA will be in a better position to protect foreign seafarers' rights and promote seafarer protection of vessels that call at USA ports. Relying on the powers conferred by the MLC to its member states, the USA would be able to inspect foreign flagged vessels of other member states, to ensure compliance with MLC provisions including fair living and working conditions of seafarers manning such vessels.²⁷⁰

Ports and waterways in the USA are heavily occupied by USA flagged vessels and American seafarers due to the requirement that only USA flagged vessels may travel within its domestic ports.²⁷¹ The Jones Act has significantly protected American seafarers within the USA, however, USA-flagged merchant vessels only make up 2% of the global cargo tonnage.²⁷² In light of the USA not ratifying the MLC, the Jones Act currently only protects American seafarers because USA Port State Control cannot

²⁶⁷ The Jones Act- the Foundation of the Merchant Marine. *American Maritime Congress*. (2012). <http://www.americanmaritime.org/about/jonesact.pdf>. (Accessed 5 May 2020).

²⁶⁸ "ILO Convention No. 147, Student Guide" (2010) *Int'l Labour Org.* 13.

²⁶⁹ As of 16 February 2021, the United States of America has not ratified the MLC, <http://skuld.com/topics/people/mlc-2006/ratification-of-mlc-convention/>. (Accessed 15 March 2021).

²⁷⁰ P Link, "One Small Step for the United States, May Be One Giant Leap for Seafarers' Rights". (2015) 33 *Hofstra Lab& Emp LJ*. 168.

²⁷¹ P Link, "One Small Step for the United States, May Be One Giant Leap for Seafarers' Rights". (2015) 33 *Hofstra Lab& Emp LJ*. 168.

²⁷² P Link, "One Small Step for the United States, May Be One Giant Leap for Seafarers' Rights". (2015) 33 *Hofstra Lab& Emp LJ*. 173.

inspect and hold foreign flagged vessels to the standards prescribed in the MLC.²⁷³ At face value, it may appear that ratifying the MLC would not be of significant value to the USA because of the protection already offered in the Jones Act. However, there are certain notable benefits to the USA ratifying the MLC.²⁷⁴

The first consideration of value to stakeholders in the USA, would be the acquisition of certificates or declarations, in compliance with the inspection protocols set out in the MLC. Were these within the ambit of the MLC, USA flagged vessels could relatively easily obtain MLC compliance certificates due to these vessels already having complied with the requirements set out in the Jones Act and general labour laws applicable within the USA. Which are highly compatible with the provisions of the MLC.²⁷⁵ However, failing to ratify the MLC, would subject USA flagged vessels that are not in possession of these compliance certificates, to enhanced scrutiny and inspection by other MLC member port states.²⁷⁶

While there is limited risk of any significant non-compliance being detected on USA flagged vessels within other port states, these in-depth inspections leave less time for seafarers to go ashore and enjoy recreational breaks,²⁷⁷ especially when a vessel is only in port for twelve to twenty-four hours. Being MLC compliant would mean less inspections, allowing seafarers who spend long periods at sea with little social interaction, more time to go ashore and break the monotony of life at sea.²⁷⁸

The second notable consideration would be the future of American seafarers on foreign flagged vessels.²⁷⁹ While it is rare to find American seafarers on foreign-flagged vessels, policies have been proposed to the Senate, which could make this a

²⁷³ P Link, "One Small Step for the United States, May Be One Giant Leap for Seafarers' Rights". (2015) 33 Hofstra Lab& Emp LJ. 173.

²⁷⁴ P Link, "One Small Step for the United States, May Be One Giant Leap for Seafarers' Rights". (2015) 33 Hofstra Lab& Emp LJ. 197.

²⁷⁵ P Link, "One Small Step for the United States, May Be One Giant Leap for Seafarers' Rights". (2015) 33 Hofstra Lab& Emp LJ. 197.

²⁷⁶ P Link, "One Small Step for the United States, May Be One Giant Leap for Seafarers' Rights". (2015) 33 Hofstra Lab& Emp LJ. 197.

²⁷⁷ P Link, "One Small Step for the United States, May Be One Giant Leap for Seafarers' Rights". (2015) 33 Hofstra Lab& Emp LJ. 198.

²⁷⁸ P Link, "One Small Step for the United States, May Be One Giant Leap for Seafarers' Rights". (2015) 33 Hofstra Lab& Emp LJ. 198.

²⁷⁹ P Link, "One Small Step for the United States, May Be One Giant Leap for Seafarers' Rights". (2015) 33 Hofstra Lab& Emp LJ. 198.

more frequent future occurrence.²⁸⁰ Currently under the Jones Act only vessels owned by American citizens, operating with a predominantly American crew and built in the USA, can operate within USA domestic ports.²⁸¹ The late Senator John McCain proposed changes to the Jones Act extending its protective measures to seafarers on foreign flagged vessels and allowing such vessels to operate between USA ports. The amendments to the Jones Act submitted to the Senate, ultimately failed because these amendments would end the preferential treatment of vessels built in the USA, severely prejudicing the shipbuilding industry and seafarers employed within the USA.²⁸² Had the proposed amendments been successful, USA seafarers could have found themselves in a position where they were forced to work on foreign-flagged vessels.²⁸³ By adopting the MLC, the United States Port State Control would be in a position to carry out compliance inspections and hold foreign-flagged vessels accountable to the standard of labour conditions set out in the MLC, thus protecting American seafarers on board foreign-flagged vessels.

The most recent ILO Convention that the United States has ratified is Convention no 147, The Merchant Shipping (Minimum Standards) Convention.²⁸⁴ The purpose of the Convention is to improve the conditions of employment on merchant vessels and allow the Port States that are parties to the Convention, to take the required actions necessary to protect the health and safety of seafarers manning merchant vessels calling at those ports.²⁸⁵ The Convention aims to introduce minimum labour standards throughout the shipping industry, implementing these standards through practical Port State Control exam and reporting systems.²⁸⁶

²⁸⁰ See Michael Finch II, *Lawmakers: Repealing Jones Act Would Have a 'Harmful Effect on our Economy,'* http://www.al.com/business/index.ssf/2015/01/lawmakers_oppose_mccain_jones_act_repeal_amendment_k_eystone.html. (Accessed 25 June 2020).

²⁸¹ See Michael Finch II, *Lawmakers: Repealing Jones Act Would Have a 'Harmful Effect on our Economy,'* http://www.al.com/business/index.ssf/2015/01/lawmakers_oppose_mccain_jones_act_repeal_amendment_k_eystone.html. (Accessed 25 June 2020).

²⁸² See *McCain's Job Killing Plan to Repeal Jones Act Fails*. (showing that 400,000 U.S shipbuilding, seafaring, and supply chain jobs could potentially be lost in the maritime industry).

²⁸³ See *McCain's Job Killing Plan to Repeal Jones Act Fails*. (showing that 400,000 U.S shipbuilding, seafaring, and supply chain jobs could potentially be lost in the maritime industry).

²⁸⁴ The United States of America ratified the Convention on the 15 June 1988, and it is currently still in force. https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312292. (Accessed 10 July 2020).

²⁸⁵ https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C147. (Accessed 10 July 2020).

²⁸⁶ P Link, "One Small Step for the United States, May Be One Giant Leap for Seafarers' Rights". (2015) 33 Hofstra Lab& Emp LJ. 201.

In theory, Convention no 147 was envisioned to advance seafarers' human and labour rights; however, the Convention has fallen short in its applicability in the United States of America.²⁸⁷ This is because several of the ILO conventions have been ratified and implemented sporadically by various nations, resulting in confusion.²⁸⁸ Sadly, Convention no 147 has been no different from preceding conventions, as only 33 ILO member states have ratified it.²⁸⁹ In terms of the provisions of Convention no 147, a “clearly hazardous condition” must be present, permitting the USA to detain a vessel of another member state.²⁹⁰ For the United States Coast Guard (USCG) to have the authority to intervene, the hazardous condition “must be related to navigation, vessel safety and the protection of the marine environment”. This means there is nothing concerning labour standards that would allow the USCG to intervene.²⁹¹ This clearly indicates how difficult it is for Port State Control (PSC) in the United States of America to address substandard labour conditions in foreign-flagged vessels calling at their ports.²⁹² Adopting the MLC would create a favourable platform for PSC within the USA to enforce acceptable labour standards ensuring that crew members on board vessels that they inspect, are competent, well-trained and rested.²⁹³

Ratifying the MLC, would enable the USA to further its commitment to addressing labour deficiencies by adding this as a criterion to their list of inspections, thus clamping down on flag states and vessels that are non-compliant with basic labour standards provided for in the MLC.²⁹⁴ This would inevitably enhance the labour rights

²⁸⁷ See US Coast Guard, No 16711.12A, Commandment Instruction (1996).

https://www.uscg.mil/directives/ci/16000-16999.CI_16711_12A.pdf. (Accessed 8 August 2020).

²⁸⁸ P Link, “One Small Step for the United States, May Be One Giant Leap for Seafarers’ Rights”. (2015) 33 Hofstra Lab& Emp LJ. 201.

²⁸⁹ P Link, “One Small Step for the United States, May Be One Giant Leap for Seafarers’ Rights”. (2015) 33 Hofstra Lab& Emp LJ. 201.

²⁹⁰ Article 4 (1) states: “If a Member which has ratified this Convention and in whose port a ship calls in the normal course of its business or for operational reasons receives a complaint or obtains evidence that the ship does not conform to the standards of this Convention, after it has come into force, it may prepare a report addressed to the government of the country in which the ship is registered, with a copy to the Director-General of the International Labour Office, and may take measures necessary to rectify any conditions on board which are clearly hazardous to safety or health.” See P Link, “One Small Step for the United States, May Be One Giant Leap for Seafarers’ Rights”. (2015) 33 Hofstra Lab& Emp LJ. 201.

²⁹¹ P Link, “One Small Step for the United States, May Be One Giant Leap for Seafarers’ Rights”. (2015) 33 Hofstra Lab& Emp LJ. 201.

²⁹² P Link, “One Small Step for the United States, May Be One Giant Leap for Seafarers’ Rights”. (2015) 33 Hofstra Lab& Emp LJ. 202.

²⁹³ P Link, “One Small Step for the United States, May Be One Giant Leap for Seafarers’ Rights”. (2015) 33 Hofstra Lab& Emp LJ. 202.

²⁹⁴ P Link, “One Small Step for the United States, May Be One Giant Leap for Seafarers’ Rights”. (2015) 33 Hofstra Lab& Emp LJ. 204.

of seafarers within the maritime industry, while encouraging flag states to play an active role in promoting seafarer protection globally.²⁹⁵

4.2 The United Kingdom

The maritime industry plays an integral role in the economy of the United Kingdom. As of December 2019, it was ranked 24th in the world fleet tonnage statistics.²⁹⁶ The UK's maritime industry contributes around £14,5 billion to the country's economy annually and provides approximately 185 000 jobs to land-based employees and seafarers.²⁹⁷

England and Wales have a common law framework that consists of a combination of case law and legislation. In particular, shipping law has historically been developed by decided cases.²⁹⁸ The Merchant Shipping Act 1995, which was reformed in 1995, is a significant piece of legislation, and various statutory instruments have been enacted under it.²⁹⁹

The UK has currently ratified all major international maritime conventions, which are generally implemented through its domestic legislation.³⁰⁰ While the UK was a member of the European Union, the regulations and directives made by the European Union had an indirect or direct effect on the operations of England and Wales.³⁰¹ Following the triggering of Article 50 in March 2017, the UK left the European Union in January 2020 and went into a period of transition which ended on 31 December 2020.³⁰²

²⁹⁵P Link, "One Small Step for the United States, May Be One Giant Leap for Seafarers' Rights". (2015) 33 Hofstra Lab& Emp LJ. 204.

²⁹⁶ George Eddings, Andrew Chamberlain, Holly Colaco and Isabel Philips. "The Shipping Law Review: United Kingdom- England and Wales." (2020) <https://thelawreviews.co.uk/title/the-shipping-law-review/united-kingdom-england--wales>. (Accessed 10 January 2021).

²⁹⁷ George Eddings, Andrew Chamberlain, Holly Colaco and Isabel Philips. "The Shipping Law Review: United Kingdom- England and Wales." (2020) <https://thelawreviews.co.uk/title/the-shipping-law-review/united-kingdom-england--wales>. (Accessed 10 January 2021).

²⁹⁸ George Eddings, Andrew Chamberlain, Holly Colaco and Isabel Philips. "The Shipping Law Review: United Kingdom- England and Wales." (2020) <https://thelawreviews.co.uk/title/the-shipping-law-review/united-kingdom-england--wales>. (Accessed 10 January 2021).

²⁹⁹ George Eddings, Andrew Chamberlain, Holly Colaco and Isabel Philips. "The Shipping Law Review: United Kingdom- England and Wales." (2020) <https://thelawreviews.co.uk/title/the-shipping-law-review/united-kingdom-england--wales>. (Accessed 10 January 2021).

³⁰⁰ DC Jackson. *Enforcement of Maritime Claims*. Fourth Edition (2005). 349.

³⁰¹ George Eddings, Andrew Chamberlain, Holly Colaco and Isabel Philips. "The Shipping Law Review: United Kingdom- England and Wales." (2020) <https://thelawreviews.co.uk/title/the-shipping-law-review/united-kingdom-england--wales>. (Accessed 10 January 2021).

³⁰² George Eddings, Andrew Chamberlain, Holly Colaco and Isabel Philips. "The Shipping Law Review: United Kingdom- England and Wales." (2020) <https://thelawreviews.co.uk/title/the-shipping-law-review/united-kingdom-england--wales>. (Accessed 10 January 2021).

During the transition period, the UK continued to operate under the European Union regulations. However, after the 31st of December 2020, these regulations will not have effect unless they are expressly implemented into UK law.³⁰³ Although the UK's domestic legislation will still be in place to implement the directives, it will need to be updated to address any gaps that may have emerged.³⁰⁴ The MLC entered into force in the UK on the 14th of August 2014, with the UK being the 41st ILO member state to ratify the MLC.³⁰⁵

In the UK, the Maritime and Coastguard Agency (MCA) works to prevent the loss of life on the coast and at sea.³⁰⁶ The MCA produces legislation and guidance on maritime matters as well as provides certification to seafarers.³⁰⁷ The MCA is an executive agency that the Department of Transport sponsors.³⁰⁸

In the UK,³⁰⁹ the MLC does not apply to seafarers serving on vessels navigating inland or in sheltered waters that are subject to port regulations, such as fishing vessels, warships, naval auxiliaries and traditional ships such as dhows.³¹⁰ This is because the MLC aims to regulate rights of seafarers in merchant vessels that operate internationally. This allows states to exclusively legislate vessels that operate within their ports.

4.2.1 Crew Agreements

The Convention, enacted in domestic legislation, provides that seafarers have employment contracts or crew agreements entered into between themselves and shipowners.³¹¹ The crew agreement must be made between each person employed

³⁰³ George Eddings, Andrew Chamberlain, Holly Colaco and Isabel Philips. "The Shipping Law Review: United Kingdom- England and Wales." (2020) <https://thelawreviews.co.uk/title/the-shipping-law-review/united-kingdom-england--wales>. (Accessed 10 January 2021).

³⁰⁴ DC Jackson. *Enforcement of Maritime Claims*. Fourth Edition (2005). 349.

³⁰⁵ https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102651 (Accessed 18 February 2021).

³⁰⁶ <https://www.gov.uk/government/organisations/maritime-and-coastguard-agency> (Accessed 20 February 2021)

³⁰⁷ <https://www.gov.uk/government/organisations/maritime-and-coastguard-agency> (Accessed 20 February 2021)

³⁰⁸ <https://www.gov.uk/government/organisations/maritime-and-coastguard-agency> (Accessed 20 February 2021)

³⁰⁹ The Merchant Shipping Act 1995, Section 24.

³¹⁰ Seafarer working and living rights: Maritime Labour Convention- Gov.UK, <https://www.gov.uk/seafarer-working-and-living-rights/maritime-labour-convention> (Accessed 6 March 2020).

³¹¹ Seafarer working and living rights: Maritime Labour Convention- Gov.UK, <https://www.gov.uk/seafarer-working-and-living-rights/maritime-labour-convention> (Accessed 6 March 2020).

as a seafarer on a UK vessel and the person employing him or her.³¹² Crew agreements will contain all information relating to the seafarer's employment, such as wages,³¹³ minimum age requirements,³¹⁴ and crew discharge.³¹⁵ Crew agreements must be in writing and signed by both parties,³¹⁶ and a copy of this signed agreement must be kept on board the vessel to which it relates when the ship goes out to sea.³¹⁷

The UK has passed legislation that will implement amendments to the application of the Maritime Labour Convention to all UK flagged vessels.³¹⁸ The new legislation to be implemented will protect the rights of seafarers caught up in piracy and other criminal acts onboard the vessel.³¹⁹ This legislation provides that if a seafarer is held captive on board a vessel, he/she is still entitled to be remunerated by the shipowner, and their employment contract remains in place.³²⁰

4.2.2 Wages

The UK Merchant Shipping Act provides that seafarers employed under a crew agreement must be paid their basic wages in specified intervals not exceeding a month.³²¹ Seafarers are further entitled to the full payment of any outstanding wages owed to them upon their discharge from the vessel.³²² The master of every UK flagged vessel must deliver a statement of account to every seafarer employed under a crew agreement; the statement of account must state the wages due to the seafarer as well as any deductions.³²³ In the event of a UK flagged vessel being wrecked or is lost at sea, resulting in the termination of the seafarer's employment before the date

³¹² The Merchant Shipping Act 1995, Section 25 (1).

³¹³ The Merchant Shipping Act 1995, Section 30 (1).

³¹⁴ The Merchant Shipping Act 1995, Section 55.

³¹⁵ The Merchant Shipping Act, 1995, Section 27 (2).

³¹⁶ The Merchant Shipping Act, 1995, Section 25 (1).

³¹⁷ The Merchant Shipping Act, 1995 Section 25 (4).

³¹⁸ The UK has now passed legislation which will implement amendments to the Maritime Labour Convention. This will affect all ships that enter the UK.

³¹⁹ UK Law Ensures Continued Employment Rights for Seafarers Held Captive. *The Maritime Executive*. 2 November 2020. <https://www.maritime-executive.com/corporate/uk-law-ensures-continued-employment-rights-for-seafarers-held-captive> (Accessed 16 February 2021).

³²⁰ UK Law Ensures Continued Employment Rights for Seafarers Held Captive. *The Maritime Executive*. 2 November 2020. <https://www.maritime-executive.com/corporate/uk-law-ensures-continued-employment-rights-for-seafarers-held-captive> (Accessed 16 February 2021).

³²¹ The Merchant Shipping Act, 1995 Section 30 (4).

³²² The Merchant Shipping Act, 1995 Section 30 (1).

³²³ The Merchant Shipping Act, 1995 Section 31 (1).

contemplated in the crew agreement, the seafarer will be entitled to two months wages, commencing from the date of the wreck.³²⁴

4.2.3 Obligation of the shipowner in respect of seaworthiness

In every contract of employment or crew agreement concluded between the owner of a UK flagged vessel and a seafarer employed on that vessel, there is an implied obligation that the owner, master, and any agent charged with loading, preparing the ship or sending the ship out to sea, shall use all reasonable means to ensure that the vessel is seaworthy at the time that the voyage commences and for the duration of the voyage.³²⁵ This obligation imposed on a shipowner applies notwithstanding any agreement to the contrary.³²⁶ This offers significant protection to seafarers and ensures their wellbeing because a shipowner cannot add clauses into the crew agreement that would allow him/her to contract out of their obligation of ensuring that the vessel is seaworthy.

4.2.4 Crew Accommodation

Depending on the specification and class of the vessel, the Secretary of State may make regulations relating to the standards of crew accommodation, which will be recorded in the crew agreement.³²⁷ Crew accommodation includes sleeping rooms, mess halls, sanitary accommodation, hospital accommodation and recreation accommodation provided for seafarers.³²⁸ Regulations made under this section will contain basic standards pertaining to the minimum amount of space permitted by way of sleeping accommodation and the maximum number of people that may use the sleeping accommodation.³²⁹ This section will also stipulate where crew accommodation may be located and the standards relating to the construction, equipment and furnishing of said accommodation.³³⁰ The shipowner also has a duty to maintain and repair said accommodation and ensure that the space is not used for any purposes other than crew accommodation.³³¹ By recording the requirements

³²⁴ The Merchant Shipping Act, 1995 Section 38 (1).

³²⁵ The Merchant Shipping Act, 1995 Section 42 (1).

³²⁶ The Merchant Shipping Act, 1995 Section 42(2).

³²⁷ The Merchant Shipping Act 1995, Section 43(1).

³²⁸ The Merchant Shipping Act 1995, Section 43(7).

³²⁹ The Merchant Shipping Act 1995, Section 43(2)(a).

³³⁰ The Merchant Shipping Act 1995, Section 42(2)(b).

³³¹ The Merchant Shipping Act 1995, Section 42(2)(d).

relating to accommodation in the crew agreement, seafarers are protected because they are able to hold shipowners accountable for their living conditions. It ensures seafarers have a healthy and safe environment that is utilised for the sole purpose of accommodation.

4.2.5 Medical care and expenses

Section 45 of the UK Merchant Shipping Act protects a seafarer's rights concerning receiving medical care and expenses. Suppose a seafarer is employed on a UK flagged vessel in foreign waters, and requires immediate medical or surgical treatment (including dental and optical care), the shipowner will be responsible for the reasonable costs of such medical treatment.³³² In addition, if a seafarer employed on a UK flagged vessel dies and has to be buried or cremated outside of the UK, the shipowner will be responsible for the costs thereof.³³³ When a doctor is not present on board the vessel and a seafarer requires medical attention, the master or any person appointed for this purpose, is responsible for ensuring that all arrangements securing medical attention are made.³³⁴ This ensures that seafarers have access to adequate medical care while employed outside of the UK, the reasonable costs of which will be covered by the shipowner. Thus, ensuring that seafarers are not left vulnerable without adequate medical care, and medical bills that they may not be in a position to pay.

4.2.6 Repatriation and relief

The employer must make the necessary arrangements and provisions for the return of any seafarer employed on a UK flagged vessel who is left behind in a country outside the UK or taken to another country on being shipwrecked.³³⁵ The employer must also provide for the seafarers' relief and maintenance until they return to their homeport or country.³³⁶ The provisions to be made by the employer include the repayment of expenses incurred in bringing the shipwrecked seafarer ashore and maintaining him until he is ashore, as well as the payment of burial or cremation expenses should the seafarer die before he is brought ashore.³³⁷ If the seafarer incurs

³³² The Merchant Shipping Act 1995, Section 45 (1).

³³³ The Merchant Shipping Act 1995, Section 45(2).

³³⁴ The Merchant Shipping Act 1995, Section 53.

³³⁵ The Merchant Shipping Act 1995, Section 73.

³³⁶ The Merchant Shipping Act 1995, Section 73(1).

³³⁷ The Merchant Shipping Act 1995, Section 73(2).

any expenses, he is entitled to recover these expenses from the employer unless the employer can prove that the expenses were to be borne by the seafarer under the employment contract.³³⁸

4.3 South Africa

On 20 August 2013, the MLC, which applies internationally, came into force. The MLC is described as the "Bill of Rights for Seafarers" and is a fundamental international instrument for the protection of seafarers.³³⁹ On 20 June 2013, South Africa ratified the MLC; thus bearing the obligation to bring the MLC into force in its domestic legislation within twelve months from the date on which its ratification was registered.³⁴⁰ *The Merchant Shipping Amendment Act 12 of 2015* gave domestic effect to the MLC in June 2016.³⁴¹ Under article 22 of the ILO Constitution, South Africa must report to the ILO, the measures it has implemented in order to give effect to the MLC.³⁴² The requirement of this report is part of the ILO's supervisory mechanism, which aims to ensure that full effect is given to the MLC by member states.

4.3.1 Crew Agreements

The master or owner of every vessel flagged in South Africa must enter into an agreement or contract with every seafarer engaged in the service of that vessel.³⁴³ The agreement concluded with seafarers must include the nature and duration of the intended voyage or period of engagement, or the maximum period of the voyage or period of employment.³⁴⁴ The crew agreement must also contain information relating to any places or parts of the world to which the voyage/engagement does not

³³⁸ The Merchant Shipping Act 1995, Section 75(2)(b).

³³⁹ Staniland H. "Admiralty Law" (2016) *Annual Survey of South African Law*. Jutastat. [http://jutastat.juta.co.za/nxt/gateway.dll/jelj/assa/3/39/42?f=templates\\$fn=default.htm](http://jutastat.juta.co.za/nxt/gateway.dll/jelj/assa/3/39/42?f=templates$fn=default.htm) (Accessed 3 March 2021).

³⁴⁰ Staniland H. "Admiralty Law" (2016) *Annual Survey of South African Law*. Jutastat. [http://jutastat.juta.co.za/nxt/gateway.dll/jelj/assa/3/39/42?f=templates\\$fn=default.htm](http://jutastat.juta.co.za/nxt/gateway.dll/jelj/assa/3/39/42?f=templates$fn=default.htm) (Accessed 3 March 2021).

³⁴¹ Staniland H. "Admiralty Law" (2016) *Annual Survey of South African Law*. Jutastat. [http://jutastat.juta.co.za/nxt/gateway.dll/jelj/assa/3/39/42?f=templates\\$fn=default.htm](http://jutastat.juta.co.za/nxt/gateway.dll/jelj/assa/3/39/42?f=templates$fn=default.htm) (Accessed 3 March 2021).

³⁴² Staniland H. "Admiralty Law" (2016) *Annual Survey of South African Law*. Jutastat. [http://jutastat.juta.co.za/nxt/gateway.dll/jelj/assa/3/39/42?f=templates\\$fn=default.htm](http://jutastat.juta.co.za/nxt/gateway.dll/jelj/assa/3/39/42?f=templates$fn=default.htm) (Accessed 3 March 2021).

³⁴³ The Merchant Shipping Act 57 of 1951, Section 103(1).

³⁴⁴ The Merchant Shipping Act 57 of 1951, Section 103 (3)(a).

extend.³⁴⁵ The crew agreement must also include details as to the number and description of the crew,³⁴⁶ the time at which the seafarer must be present onboard the vessel when calling at port and the time the seafarer must report for duty,³⁴⁷ the capacity in which the seafarer is to serve on board the vessel,³⁴⁸ the amount of wages the seafarer is to receive³⁴⁹ and the scale of provisions that the seafarer will be furnished with.³⁵⁰

Crew agreements may not be altered, or any part thereof deleted without the seafarer's consent and a written attestation of a proper officer indicating the consent of the seafarer.³⁵¹ At the beginning of every voyage, the master of a South African flagged vessel must have a legible copy of the crew agreement framed and displayed on board the vessel; the agreement must be easily accessible to the crew.³⁵² Crew agreements ensure that the rights of seafarers are sufficiently protected and ensures that seafarers are not exploited while on board the vessel. The crew agreement contains all pertinent information relating to the duties, working hours and period of the voyage which allows the crew to hold the master or shipowner accountable should there be a breach of contract.

4.3.2 Minimum Age

The employment of children on South African flagged vessels is prohibited. The owner or master of a South African flagged vessel or a vessel engaged in plying between ports in South Africa may not knowingly employ or permit any person under the age of sixteen in any capacity onboard the vessel.³⁵³

4.3.3 Wages

A seafarer employed on a South African flagged vessel shall receive his wages monthly, and any outstanding wages must be paid to the seafarer when he is

³⁴⁵ See note 81.

³⁴⁶ The Merchant Shipping Act 57 of 1951, Section 103 (3)(c).

³⁴⁷ The Merchant Shipping Act 57 of 1951, Section 103 (3)(d).

³⁴⁸ The Merchant Shipping Act 57 of 1951, Section 103 (3)(e).

³⁴⁹ The Merchant Shipping Act 57 of 1951, Section 103 (3)(f).

³⁵⁰ The Merchant Shipping Act 57 of 1951, Section 103 (3)(g).

³⁵¹ The Merchant Shipping Act 57 of 1951, Section 108.

³⁵² The Merchant Shipping Act 57 of 1951, Section 109.

³⁵³ The Merchant Shipping Act 57 of 1951, Section 110, as amended by section 8 of The Merchant Shipping Amendment Act 12 of 2015.

discharged from the vessel.³⁵⁴ The master or owner of the vessel must furnish seafarers with an account of his or her wages on a monthly basis.³⁵⁵ The master of the vessel must enter various deductions and their amounts as they happen in a record book.³⁵⁶ Deductions to a seafarer's wages will be prohibited unless they are included in the account delivered to the seafarer.³⁵⁷

The seafarers' rights to wages and provisions while employed on a South African vessel will be deemed to begin at the time work commences or according to the date specified in the crew agreement.³⁵⁸

Should the services of a seafarer be terminated before the date contemplated in the crew agreement, due to a seafarer being left behind because of incapacity, illness or injury, or because of the wreck or loss of the vessel, then the seafarer will be entitled to his/her basic wages until s/he can safely return to port.³⁵⁹

This ensures that seafarers on board South African vessels are paid their wages monthly and will not be subjected to long periods without having received their wages. In addition, recording all deductions, protects seafarers from having unauthorised amounts deducted from their wages without their knowledge. Not only will seafarers be aware of how many deductions were made, but will also be able to keep track of what the deductions were for. This allows seafarers who belong to unions or pension funds to ensure that these deductions on their wages are paid towards their pension fund and/or union and that the correct amounts are deducted.

4.3.4 Repatriation and relief

When the seafarer's service on a SA flagged vessel is terminated without the seafarer's consent or before the termination date in the agreement, the owner must make provision for the maintenance of the seafarer and for the return of that seafarer to the proper return port.³⁶⁰ If the owner or master fails to maintain and return the

³⁵⁴ The Merchant Shipping Act 57 of 1951, Section 120.

³⁵⁵ The Merchant Shipping Act 57 of 1951, Section 121 (1), as amended by section 14 of The Merchant Shipping Amendment Act 12 of 2015.

³⁵⁶ The Merchant Shipping Act 57 of 1951, Section 121(4).

³⁵⁷ The Merchant Shipping Act 57 of 1951, Section 121(3).

³⁵⁸ The Merchant Shipping Act 57 of 1951, Section 133.

³⁵⁹ The Merchant Shipping Act 57 of 1951, Section 140(1).

³⁶⁰ The Merchant Shipping Act 57 of 1951, Section 114(1), as amended by Section 11 of The Merchant Shipping Amendment Act 12 of 2015.

seafarer to the appropriate return port, the expenses borne by the seafarer will be recoverable as wages due to him.³⁶¹

In terms of Section 154(1)(a) of the Merchant Shipping Act, a distressed seafarer is described as a seafarer who has been discharged or left behind from a shipwrecked vessel and is in distress in a place outside of South Africa.³⁶² Repatriation expenses are incurred by the shipowner to return a seafarer to the proper return port and provide the seafarer with adequate clothing and maintenance until he arrives at the said port.³⁶³ In the case of a shipwrecked seafarer, it refers to the expenses incurred by the shipowner in transporting and maintaining him until he arrives at the return port.³⁶⁴

If a seafarer employed on a wrecked or lost vessel sustains a loss of any or all property, the vessel owner will be liable to compensate the seafarer for the loss of their property.³⁶⁵

4.3.5 Medical Care

The owner or master of a South African flagged vessel must ensure an adequate supply of medication and appliances to treat and prevent illnesses and injuries likely to occur at sea onboard the vessel.³⁶⁶ The shipowner will be responsible for the expenses of all medical attention and treatment given to a seafarer whilst on board the vessel.³⁶⁷

Where a seafarer onboard an SA flagged vessel is injured or suffers from any illness, resulting in the seafarer being discharged or left behind at a foreign port, the shipowner will be liable for providing the necessary medical care, treatment, medication and the expenses of maintaining the seafarer in a manner appropriate to their rank until the

³⁶¹ The Merchant Shipping Act 57 of 1951, Section 114(2).

³⁶² The Merchant Shipping Act 57 of 1951, Section 154(1)(a).

³⁶³ The Merchant Shipping Act 57 of 1951, Section 154(1)(b).

³⁶⁴ The Merchant Shipping Act 57 of 1951, Section 154(1)(b).

³⁶⁵ The Merchant Shipping Act 57 of 1951, Section 140(3).

³⁶⁶ The Merchant Shipping Act 57 of 1951, Section 167.

³⁶⁷ The Merchant Shipping Act 57 of 1951, Section 169 as amended by section 20(3) of The Merchant Shipping Amendment Act 12 of 2015.

seafarer is cured, dies or arrives at the proper return port.³⁶⁸ Where a seafarer dies, the shipowner will be liable for the expense of the seafarers' burial or cremation.³⁶⁹

Where a seafarer is temporarily removed from the vessel at a foreign port to prevent infection or for the convenience of the ship and later returns to duty, the shipowner will be liable for the expenses of the removal, medical treatment and maintenance of the seafarer while they were away from the vessel.³⁷⁰

Suppose any other person pays any expenses that the shipowner should have paid regarding illness or injury of a seafarer. In that case, those expenses must be repaid by the shipowner, and if not paid, will constitute a debt that the shipowner is liable for.³⁷¹

These regulations, ensure that South African seafarers have access to adequate medical care while onboard a vessel and when calling at foreign ports. It ensures that a South African seafarer who is injured or ill will not be without access to medical care due to the seafarer being unable to afford medical bills. In addition, a seafarer who takes ill and remains outside South Africa, will not be left in a vulnerable position because the shipowner is responsible for ensuring that the seafarer returns to his/her home port. It is only upon the safe return of the seafarer to his/her home port that the shipowner's duty is discharged.

4.3.6 The Merchant Shipping Bill 2020

In 2017, South Africa aimed to facilitate the growth and development of its maritime transport system as a means to improve socio-economic development in the country, whilst also making a substantial contribution to international trade, as a result of which the Comprehensive Maritime Transport Policy (CMTP) was approved.³⁷² This led to the drafting of the Merchant Shipping Bill, 2020 (the Bill).³⁷³ The purpose of the Bill is

³⁶⁸ The Merchant Shipping Act 57 of 1951, Section 169 as amended by section 20(1) of The Merchant Shipping Amendment Act 12 of 2015.

³⁶⁹ The Merchant Shipping Act 57 of 1951, Section 169 as amended by section 20(1) of The Merchant Shipping Amendment Act 12 of 2015.

³⁷⁰ The Merchant Shipping Act 57 of 1951, Section 169 as amended by section 20(2) of The Merchant Shipping Amendment Act 12 of 2015.

³⁷¹ The Merchant Shipping Act 57 of 1951, Section 170.

³⁷² I Surian 'The South African Merchant Shipping Bill, 2020' *LexisNexis* 02 July 2020

Available at: <https://www.lexisnexis.co.za/lexis-digest/legal/maritime-law/the-south-african-merchant-shipping-bill,-2020> (accessed on 10 November 2021).

³⁷³ Merchant Shipping Bill, 2020, published for comment in GN 148 in GG 43073 6 March 2020.

to allow South Africa to align itself with international standards and ratify various IMO Conventions.³⁷⁴ The Bill aligns with the shipping provisions of the CMTP. The Bill was presented and discussed by stakeholders in meetings convened nationally by the Department of Transport during 2018 and 2019. The Bill was tabled and approved by the Directors General Cluster of International Cooperation, Trade and Security Cluster and the Economic Cluster.³⁷⁵

Currently the rights of seafarers are protected under the Merchant Shipping Act 51 of 1951, that is until the new Bill is passed into law. The Merchant Shipping Bill is primarily aimed at reviving the maritime transport sector and enhancing its contribution to the growth and radical transformation of the South African economy.³⁷⁶

It is intended that the Bill will have a major impact on the rights of seafarers, greatly improving their working and living conditions. The Bill was drafted with the following objectives:³⁷⁷

- i. To make provision for the powers and duties of the Minister and the South African Maritime Safety Authority in the administration of the Bill,
- ii. To make provision for the licensing and registration of vessels in South Africa;
- iii. To make provision for the application of Labour Laws to extend to seafarers, their conditions of employment and their health and well-being whilst on board vessels;
- iv. To make provision for the safety of life at sea and to establish inspection and enforcement mechanisms including those for marine casualties and crimes committed on ships;
- v. to make provision for the regulation of marine traffic, legal proceedings and jurisdictional matters; and
- vi. to recognise and incorporate international conventions to which South Africa is bound in terms of the provisions of the Constitution.

³⁷⁴ Ibid 627.

³⁷⁵ N Smuts 'South Africa aligning its maritime industry with the globe through the Merchant Shipping Bill, 2020' *DeRebus* 01 February 2021. Available at <https://www.derebus.org.za/south-africa-aligning-its-maritime-industry-with-the-globe-through-the-merchant-shipping-bill-2020/> (Accessed on 05 December 2021)

³⁷⁶ N Smuts 'South Africa aligning its maritime industry with the globe through the Merchant Shipping Bill, 2020' *DeRebus* 01 February 2021. Available at <https://www.derebus.org.za/south-africa-aligning-its-maritime-industry-with-the-globe-through-the-merchant-shipping-bill-2020/> (Accessed on 05 December 2021)

³⁷⁷ Ibid.

Once approved, the Bill aims to effectively amend and repeal several pieces of maritime related legislation, including the following:³⁷⁸

- i. repeal the Merchant Shipping Act 57 of 1951;
- ii. repeal the Marine Traffic Act 2 of 1981;
- iii. repeal the Ship Registration Act 58 of 1998;
- iv. amend s1 of the National Ports Act 12 of 2005; and
- v. repeal Annexure 1 of the Ports Rules GN255 GG31986/6-3-2009.

Chapter 4 of the Bill is an integral chapter, aimed at improving the rights and working conditions of South African seafarers. This Chapter of the Bill incorporates existing domestic labour laws, making these applicable to seafarers. This means that in addition to the rights afforded to seafarers under the current Merchant Shipping Act and the Maritime Labour Convention, seafarers will have the added protection of the Basic Conditions of Employment Act, the Labour Relations Act, the Occupational Health and Safety Act and the Compensation for Occupational Injuries and Diseases Act.³⁷⁹ Chapter 4 of the Bill makes further provisions for the conditions of employment of seafarers,³⁸⁰ their health and general well-being;³⁸¹ rights of distressed seafarers; the rights of repatriation of seafarers; and sanctions for misconduct and offences by the Master.

It is, however, pertinent to note that The Merchant Shipping Bill 2020 is a draft bill and there is no indication of when, or if it will even come into operation. Because the Bill is still in its draft form, there is limited literature available on the Bill and the implications of its coming into operation. Therefore, an in-depth analysis of the Bill, particularly Chapter 4 of the Bill and its implications in effectively promoting the rights of seafarers, is outside the scope of this study.

³⁷⁸ N Smuts 'South Africa aligning its maritime industry with the globe through the Merchant Shipping Bill, 2020' *DeRebus* 01 February 2021. Available at <https://www.derebus.org.za/south-africa-aligning-its-maritime-industry-with-the-globe-through-the-merchant-shipping-bill-2020/> (Accessed on 05 December 2021)

³⁷⁹ Sections 73-76 of the Merchant Shipping Bill, 2020, published for comment in GN 148 in GG 43073 6 March 2020.

³⁸⁰ Sections 87-110 of the Merchant Shipping Bill, 2020, published for comment in GN 148 in GG 43073 6 March 2020.

³⁸¹ Sections 119-133 of the Merchant Shipping Bill, 2020, published for comment in GN 148 in GG 43073 6 March 2020.

The Bill is a vast document of more than 400 pages, and is likely to draw significant comment from a wide range of industry sectors ahead of the promulgation process.³⁸² Attendance was low at the sessions in Johannesburg and Cape Town where the bill was tabled for comment and discussion. Stakeholders are of the opinion that the Bill should undergo significant scrutiny and are sceptical of the Bill being passed in its present form.³⁸³

The current Merchant Shipping Act 51 of 1951 was amended in 2015 to ensure that it is in line with the Maritime Labour Convention, the new Bill once passed into law, would go even further in protecting the rights and interests of seafarers. Despite this huge step towards promoting the rights of seafarers, concerns have been raised regarding government's claims of boosting future economic growth through an inclusive maritime sector. Industry stakeholders warn that drafting maritime legislation with narrow domestic interests in mind, could have unforeseen negative consequences on several industries.³⁸⁴

The Bill states that no ship other than a South African owned ship is permitted to participate in coastwise traffic for the transportation of goods between ports in SA. It further states that those ships participating in coastal shipping will need to apply for a license to do so.³⁸⁵ If the Bill comes into effect in its current form, foreign vessels will be required to choose only one port of call in SA to offload all their cargo, irrespective of the final destination of the goods within the country.³⁸⁶ The South African government believes that this will assist with creating opportunities for local ship owners.

³⁸² N Smuts 'South Africa aligning its maritime industry with the globe through the Merchant Shipping Bill, 2020' *DeRebus* 01 February 2021. Available at <https://www.derebus.org.za/south-africa-aligning-its-maritime-industry-with-the-globe-through-the-merchant-shipping-bill-2020/> (Accessed on 05 December 2021)

³⁸³ N Smuts 'South Africa aligning its maritime industry with the globe through the Merchant Shipping Bill, 2020' *DeRebus* 01 February 2021. Available at <https://www.derebus.org.za/south-africa-aligning-its-maritime-industry-with-the-globe-through-the-merchant-shipping-bill-2020/> (Accessed on 05 December 2021)

³⁸⁴ N Smuts 'South Africa aligning its maritime industry with the globe through the Merchant Shipping Bill, 2020' *DeRebus* 01 February 2021. Available at <https://www.derebus.org.za/south-africa-aligning-its-maritime-industry-with-the-globe-through-the-merchant-shipping-bill-2020/> (Accessed on 05 December 2021)

³⁸⁵ N Smuts 'South Africa aligning its maritime industry with the globe through the Merchant Shipping Bill, 2020' *DeRebus* 01 February 2021. Available at <https://www.derebus.org.za/south-africa-aligning-its-maritime-industry-with-the-globe-through-the-merchant-shipping-bill-2020/> (Accessed on 05 December 2021)

³⁸⁶ N Smuts 'South Africa aligning its maritime industry with the globe through the Merchant Shipping Bill, 2020' *DeRebus* 01 February 2021. Available at <https://www.derebus.org.za/south-africa-aligning-its-maritime-industry-with-the-globe-through-the-merchant-shipping-bill-2020/> (Accessed on 05 December 2021)

Effectively, this means that cargo cannot be transhipped via a coastal shipping network and may end up being transported via trucks and rail for onward moving. The South African government asserts that more studies are required to gauge the implications for ports and other domestic transport logistics, and has emphasised that it would take several years for a cabotage regime to be fully implemented in South Africa.³⁸⁷

South Africa has never had a strong local ship owning industry. The South African maritime industry is heavily reliant on international trade with international vessels regularly calling into South African ports, thus South Africa has some of the busiest and well-resourced ports in Africa. Concerns are raised that the proposed changes in the Draft Bill will create unnecessary hurdles, hindering international trade, thereby negatively impacting the economy and substantially reducing port traffic and income in South Africa.³⁸⁸

Despite the Bill providing seafarers with extensive rights and protections there are concerns regarding the practicalities of seafarers outside of South Africa accessing the Commission for Conciliation, Mediation and Arbitration (CCMA) and the Labour Court, as well as their legal right to strike as specified in the draft Bill.³⁸⁹ The Bill does not provide any guidelines as to how and when these rights are to be implemented, creating room for abuse that may have serious economic implications for shipowners and the industry at large.

Should seafarers decide to go on strike when a vessel calls at a foreign port, this may result in the vessel becoming stuck in port for indefinite periods of time. This scenario would not only have huge financial implications on the shipowner who will become liable for costs such as demurrage, but will also create logistical problems in port due to a berth being occupied for an indefinite period of time. This scenario would enable

³⁸⁷ N Smuts 'South Africa aligning its maritime industry with the globe through the Merchant Shipping Bill, 2020' *DeRebus* 01 February 2021. Available at <https://www.derebus.org.za/south-africa-aligning-its-maritime-industry-with-the-globe-through-the-merchant-shipping-bill-2020/> (Accessed on 05 December 2021)

³⁸⁸ N Smuts 'South Africa aligning its maritime industry with the globe through the Merchant Shipping Bill, 2020' *DeRebus* 01 February 2021. Available at <https://www.derebus.org.za/south-africa-aligning-its-maritime-industry-with-the-globe-through-the-merchant-shipping-bill-2020/> (Accessed on 05 December 2021)

³⁸⁹ N Smuts 'South Africa aligning its maritime industry with the globe through the Merchant Shipping Bill, 2020' *DeRebus* 01 February 2021. Available at <https://www.derebus.org.za/south-africa-aligning-its-maritime-industry-with-the-globe-through-the-merchant-shipping-bill-2020/> (Accessed on 05 December 2021)

crew to force shipowners into meeting their demands because of the threat of going on strike while calling at a foreign port. This will in effect negate any form of negotiation or dispute resolution between shipowners and crew when disputes arise. While the right to strike is an important one, due to the difficulty in effectively regulating the right, it has not been included in the MLC and it is not a right afforded to American or English seafarers under their applicable laws. Should the Bill be passed, the right to strike will be a right exclusively afforded to South African seafarers

Due to the broad ambit of the Bill and the implications it will have by repealing several preceding Acts, coupled with the vague guidelines regarding seafarers' rights contained in the Bill, stakeholders in the South African maritime industry will need to mobilise effectively to ensure that the final draft of the Bill meets the needs of the South African maritime industry as a whole.³⁹⁰ Stakeholders in the maritime industry will need to ensure their concerns regarding the implementation of a seafarer's right to strike and the cabotage regime are adequately addressed to ensure that the final draft of the Bill not only meets the current needs of the South African maritime industry and economy, but also aligns with the needs and vision of the international maritime industry.³⁹¹

³⁹⁰ N Smuts 'South Africa aligning its maritime industry with the globe through the Merchant Shipping Bill, 2020' *DeRebus* 01 February 2021. Available at <https://www.derebus.org.za/south-africa-aligning-its-maritime-industry-with-the-globe-through-the-merchant-shipping-bill-2020/> (Accessed on 05 December 2021)

³⁹¹ N Smuts 'South Africa aligning its maritime industry with the globe through the Merchant Shipping Bill, 2020' *DeRebus* 01 February 2021. Available at <https://www.derebus.org.za/south-africa-aligning-its-maritime-industry-with-the-globe-through-the-merchant-shipping-bill-2020/> (Accessed on 05 December 2021)

CHAPTER FIVE: CONCLUSION

The preceding chapters of this study attempt to provide a clearer picture of the nature of MLC Convention and what it aims to achieve. It examines the position of seafarers prior to the implementation of the MLC as well as the current position of seafarers within the respective jurisdictions.

This chapter will conclude on the findings of the previous chapters and address the following research questions to determine if the MLC has been effective in protecting the rights of seafarers:

1. To what extent were seafarers' rights protected when they were injured during their employment and at what point did a shipowner's liability end when a seafarer was injured prior to the coming into operation of the MLC?
2. To what extent are seafarers' rights currently protected when they are injured during their employment and at what point does a shipowner's liability end once a seafarer has been injured after the implementation of the MLC?
3. Has the implementation of the MLC been successful in ensuring the protection of seafarer's rights when they are injured, and has the MLC clearly identified the end of a shipowner's liability?
4. Has the MLC been successful in ensuring seafarers are treated fairly and are at an equal playing field and has it created uniformity with regard to their treatment?

5.1 The Maritime Labour Convention

The MLC is a comprehensive legal instrument that contains a vast set of international standards contained in preceding labour instruments. It consolidates all but four of the preceding maritime labour conventions into one convention.³⁹² The MLC was created to address the challenges brought about by the multitude of labour conventions that countries had to ratify and implement previously, making it difficult to create a cohesive industry standard with regard to the rights of seafarers.³⁹³ In addition, many of these

³⁹² See note 47.

³⁹³ See note 64.

conventions have become outdated and do not sufficiently provide for the current living and working conditions on board modern vessels.³⁹⁴

Additionally, many of the existing conventions have achieved very low levels of ratification, often making them ineffective. Furthermore, there was a dire need to develop practical enforcement and compliance systems that could be used to effectively enforce standards of ship safety and security adopted within the IMO framework.³⁹⁵ The MLC was designed to be more effective and capable of wider ratification by consolidating and improving on preceding conventions.³⁹⁶

The “no more favourable treatment clause” contained in Article V, paragraph 7 of the MLC plays an instrumental role in protecting seafarers’ rights. This is because Article V allows for port inspections carried out on vessels calling in ports that have ratified the Convention, to include inspections related to the labour rights of seafarers.³⁹⁷

As a result, the MLC has far reaching effects because it applies indirectly even to seafarers’ working onboard vessels from non-member states when calling at ports that are member states of the Convention.³⁹⁸ As of June 2020, ninety-eight (98) States have ratified the MLC, some of which are major shipping nations, therefore, all vessels entering these States will be subject to the labour standards set in the MLC. With such a large number of states having ratified the MLC, it would be beneficial for non-member states to ensure that their national legislation is in line with the minimum requirements set out in the MLC in order to avoid unnecessary delays when calling at Ports of MLC member states.

Despite the MLC being a comprehensive Convention that protects the rights of seafarers, including those on-board vessels that are flagged in non-member states, the MLC is not above criticism. Many of the prescriptive requirements contained in preceding conventions that were problematic in relation to implementation, are set out in Part B of the MLC.³⁹⁹ Under the MLC, these provisions are set out as guidelines and are therefore not mandatory; as a result, port authorities are not strictly bound by

³⁹⁴ See note 65.

³⁹⁵ See note 67.

³⁹⁶ See note 81.

³⁹⁷ See note 135.

³⁹⁸ See note 137.

³⁹⁹ See note 74.

these guidelines. States are merely required to ensure that their national laws are “substantially equivalent” to these guidelines when implementing them.⁴⁰⁰ This leaves the interpretation of what constitutes the standard of “substantially equivalent”, to the individual States, thereby creating room for some states to apply a lower standard of the guidelines set out in the MLC.

The MLC has also been criticised for not addressing matters such as the protection of seafarers right to strike and the issuing of visas for shore leave.⁴⁰¹ The crew change crisis of the Covid-19 Pandemic clearly illustrated the vulnerability of seafarers when they are at sea and how important it is for them to have the right to strike. Despite the international “call to action” there were approximately 300 000 seafarers stuck at sea, this clearly indicated the weaknesses in labour regulatory systems.⁴⁰² Early criticism of the MLC highlighted the lack of provisions allowing seafarers to strike, and it was only through the Covid-19 Pandemic and the Crew Change Crisis that emphasized that without some enabling provisions, such as the right to strike, other rights protected by the MLC become meaningless.⁴⁰³

Nevertheless, the MLC is a great step forward in both consolidating the rights of seafarers and harmonising compliance and inspection procedures to be followed by flag states and port authorities.⁴⁰⁴

5.2 The United States of America

Seafarer’s rights to recover damages have developed extensively from the initial common law remedies that restricted shipowner liability to maintenance, cure and unearned wages.⁴⁰⁵ *The Osceola* decision was the first of its kind, where a court declared that a seafarer could recover damages for injuries sustained due to an unseaworthy vessel, or the shipowner’s failure to provide equipment.⁴⁰⁶ The court however held that a seafarer could only claim damages for injuries caused due to

⁴⁰⁰ See note 151.

⁴⁰¹ See note 167.

⁴⁰² See note 170.

⁴⁰³ See note 171.

⁴⁰⁴ The Maritime Labour Convention: a review. *Lexology*. Available at <https://www.lexology.com/library/detail.aspx?g=59d3bdd3-03f1-4a58-b6cd-5692e845f0> (Accessed on 16 December 2021).

⁴⁰⁵ See note 167.

⁴⁰⁶ See note 169.

factors within the direct control of the shipowner, and not for example for injuries caused due to the negligence of the master or members of the crew.⁴⁰⁷ The USA Congress then passed the Jones Act, which aimed to extend the rights of seafarers.⁴⁰⁸ A significant change brought about by the Jones Act, is that it allowed seafarers to claim damages for injuries sustained due to the negligence of the employees of the shipowner, including the master of the vessel.⁴⁰⁹

The courts finding in *The Osceola*, rendered parts of the Seaman's Act of 1915, irrelevant.⁴¹⁰ The President of the International Seaman's Union of America suggested that Section 20 of the Seamen's Act be amended, this amendment was incorporated into Section 33 of the Jones Act of 1920 and provides as follows:

“any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located.”

In the case of *Romero v International Terminal Operating Co*, the court ultimately held that in a claim made under the Jones Act, unseaworthiness, maintenance and cure could be decided in the same suit provided that the claimant did not receive a double recovery.⁴¹¹ Therefore, it was decided that the Jones Act together with the doctrine of unseaworthiness, maintenance and cure could be regarded as a single source containing an injured seafarer's full remedies.⁴¹² As a result, under this law an injured seafarer could recover damages in the form of wages for the duration of the voyage, costs for medical care such as medication, hospitalisation and compensation for pain

⁴⁰⁷ See note 170.

⁴⁰⁸ See note 172.

⁴⁰⁹ See note 174.

⁴¹⁰ See note 179.

⁴¹¹ See note 199.

⁴¹² See note 200.

and suffering, as well as loss of future earnings due to impairment and occasionally for loss of wages.⁴¹³

The USA has been at the forefront of seafarer protection through the implementation of regulations such as the Jones Act.⁴¹⁴ However, the USA has experienced difficulty in protecting the rights of foreign seafarers that enter its ports.⁴¹⁵ The Jones Act only effectively protects American seafarers because USA Port State Control authorities cannot inspect and hold foreign flagged vessels to the standards set in the Jones Act.⁴¹⁶ The most recent ILO Convention that the United States has ratified is Convention no 147, The Merchant Shipping (Minimum Standards) Convention.⁴¹⁷ The Convention aims to improve the conditions of employment on merchant vessels and allow the Port States that are parties to the Convention to take action where necessary to protect the health and safety of seafarers manning merchant vessels calling at those ports.⁴¹⁸ The Convention aimed to introduce minimum labour standards throughout the shipping industry by implementing these standards through practical Port State Control examination and reporting systems.⁴¹⁹ In theory, Convention no 147 was designed to advance seafarers' human and labour rights, however, the Convention has fallen short in terms of its applicability.⁴²⁰ It is one of several ILO conventions that have been poorly received with only 33 formal ratifications.⁴²¹

The USA has not ratified the MLC and while the Jones Act has been constantly updated and adequately protects the rights of American seafarers, its protection only extends to American seafarers working on USA flagged vessels. At a glance, it would appear that ratifying the MLC would be of no additional benefit to American seafarers,⁴²² however, it would allow the USA to better protect the rights of all seafarers, regardless of the flag state of the vessel they are employed on. The labour regulations under the Jones Act as well as the general labour laws applicable in the USA are already in line with the provisions of the MLC thus making the ratification

⁴¹³ See note 201.

⁴¹⁴ See note 260.

⁴¹⁵ See note 261.

⁴¹⁶ See note 266.

⁴¹⁷ See note 277.

⁴¹⁸ See note 278.

⁴¹⁹ See note 279.

⁴²⁰ See note 280.

⁴²¹ See note 282.

⁴²² See note 267.

thereof relatively easy for the USA.⁴²³ Furthermore, by failing to ratify the MLC, USA flagged vessels may be subjected to enhanced scrutiny and inspection when calling at ports of member states of the MLC.⁴²⁴ While there is limited risk of any significant non-compliance being detected on USA flagged vessels, these in-depth inspections affect seafarers as they have less time available to go ashore and enjoy much needed recreational breaks.⁴²⁵

Ratifying the MLC would allow the USA to further its commitment to addressing labour deficiencies on all flagged vessels calling at its ports, thereby, clamping down on vessels non compliant with basic labour standards provided for in the MLC.⁴²⁶

Previously in the USA seafarers had very limited rights and remedies available to them the Jones Act was therefore a huge step forward in protecting the interests of seafarers.

The Jones Act and other national legislation as well as ratification of Convention no 147 has ensured that American seafarers' rights on board USA flagged vessels such as enforcing minimum working age, crew agreements, accesses to medical care, minimum wage and working hours, repatriation and maintenance. However, by not ratifying the MLC, the USA has failed to capitalise on the opportunity of further developing global standards protecting seafarers' rights, through its leading Supreme Court decisions of *The Osceola*⁴²⁷, *Chelentis v Luckenbach S.S Co*,⁴²⁸ *Panama R.R Johnson*,⁴²⁹ *Pacific S.S v Peterson*⁴³⁰ and *Romero v International Terminal Operating Co*.⁴³¹

⁴²³ See note 268.

⁴²⁴ See note 269.

⁴²⁵ See note 270.

⁴²⁶ See note 287.

⁴²⁷ See note 168.

⁴²⁸ See note 177.

⁴²⁹ See note 196.

⁴³⁰ See note 197.

⁴³¹ See note 198.

5.3 The United Kingdom

It has long been established that the basic rights of a seafarer include maintenance and cure, wages and passage back to port.⁴³² This formed part of English common law, however, in the UK the rights of seafarers are protected predominantly through statutes and case law.⁴³³ The regulatory measures to protect seafarers developed as early as the 1960's due to concerns regarding the health and safety of seafarers.⁴³⁴

One of the earliest codes protecting the rights of seafarers was established in the medieval period. The *Rules of Oleron* placed a duty on the master of a vessel to ensure the continued care and financial support of ill or injured seafarers.⁴³⁵ This has become a basic right for seafarers and is contained in several international conventions.⁴³⁶ Despite the *Rules of Oleron* placing this duty on seafarers, the British Medical Journal began exposing the poor living conditions and neglect experienced by seafarers.⁴³⁷ This ultimately led to the development of the *Merchant Shipping Act of 1867* which laid the foundation for the provisions used to protect seafarers today.⁴³⁸

After World War I seafarers were recognised as the most international group of workers resulting in the development of bodies such as the ILO aimed at enhancing the rights and wellbeing of workers in the maritime sector.⁴³⁹ As a result, several international conventions were developed in an attempt to protect the wellbeing of seafarers. English law accordingly developed, *The Merchant Shipping Act of 1995* improved on and consolidated its previous Merchant Shipping legislation, but it also drew heavily from international conventions.⁴⁴⁰ The UK implements international regulations, directive and decisions through domestic legislation, such as *The Merchant Shipping Act of 1995*.⁴⁴¹

⁴³² See note 202.

⁴³³ See note 203.

⁴³⁴ See note 204.

⁴³⁵ See note 206.

⁴³⁶ See note 207.

⁴³⁷ See note 208.

⁴³⁸ See note 211.

⁴³⁹ See note 216.

⁴⁴⁰ See note 221.

⁴⁴¹ See note 225.

To date the UK has ratified all major international maritime conventions that are implemented through its domestic legislation.⁴⁴² While the UK was a member of the European Union, the regulations made by the European Union had a direct or indirect effect on the operation of the UK.⁴⁴³ After the triggering of Article 50 in March 2017, the UK left the European Union in January 2020 and went into a period of transition that ended on 31 December 2020.⁴⁴⁴ After the 31st of December 2020, the regulations made under the European Union would not be applicable to the UK, unless these were expressly implemented into UK law.⁴⁴⁵ The UK ratified the MLC in August 2014; therefore, the provisions of the MLC have already been adopted into the UK's domestic legislation. The UK's domestic legislation gives effect to the provisions of the MLC, however, any gaps that may have emerged from it leaving the European Union will need to be addressed.⁴⁴⁶ Because the UK has ratified and adopted international conventions through its domestic legislation, it is not yet evident what gaps, if any have emerged through leaving the European Union and it is unlikely that the UK will have to make any significant changes to its legislation.

Prior to the implementation of the MLC, in the UK an injured seafarers' rights and right of recourse against a shipowner included the right to wages that are to be paid monthly.⁴⁴⁷ Further, a seafarer is entitled to wages even in instances where a ship has been wrecked or lost.⁴⁴⁸ *The Merchant Shipping Act 1995* also provides for minimum requirements to ensure satisfactory living conditions for crew.⁴⁴⁹ A seafarer is entitled to medical treatment while onboard the vessel and ashore, when outside the UK.⁴⁵⁰ In addition where a seafarer died at sea or ashore outside the UK, the shipowner would be liable for burial or cremation costs.⁴⁵¹ Seafarers are also entitled to relief, maintenance and return to the UK at the end of a voyage, or in instances of a shipwreck.⁴⁵²

⁴⁴² See note 293.

⁴⁴³ See note 294.

⁴⁴⁴ See note 295.

⁴⁴⁵ See note 296.

⁴⁴⁶ See note 297.

⁴⁴⁷ See note 226.

⁴⁴⁸ See note 227.

⁴⁴⁹ See note 228.

⁴⁵⁰ See note 229.

⁴⁵¹ See note 230.

⁴⁵² See note 231.

Once the UK ratified the MLC and implemented the provisions of the MLC it further added to the rights already afforded to seafarers through *The Merchant Shipping Act 1995*.⁴⁵³ A significant change introduced into its domestic legislation relates to the protection of seafarers caught up in piracy and other criminal acts on board a vessel.⁴⁵⁴ The new legislation provides that if a seafarers is held captive on board a vessel, s/he is still entitled to be remunerated by the shipowner and their employment contract would remain in place.⁴⁵⁵ While the implementation of the MLC in the UK, has not resulted in major changes to preceding legislation, the MLC has significantly enhanced the protection afforded to English seafarers by ensuring that their crew agreements are given effect to during an act of piracy.

5.4 South Africa

South African admiralty law has a strong link to English law, therefore South African admiralty law can never be considered without reference to the history of law in the UK.⁴⁵⁶ The origins of South African maritime law can be traced back to the laws of the first European settlers in the Cape in 1652.⁴⁵⁷ South African common law is a combination of Roman-Dutch and English law; the British established the court system and British judges presided over matters.⁴⁵⁸

Prior to enacting AJRA, English statutes relating to admiralty matters as of 1891 were applicable in South Africa, therefore South African courts were to apply English admiralty law and precedents.⁴⁵⁹ The application of s6 of AJRA has resulted in wage claims in South Africa being subject to English law as it were in 1893; however, other claims relating to employment would be subject to South African Roman-Dutch law.⁴⁶⁰ Therefore, a seafarers right to wages would have been protected under English law and applied in South Africa. Any other rights and claims of a seafarer would be protected under South African law through the *Merchant Shipping Act*.⁴⁶¹

⁴⁵³ See note 292.

⁴⁵⁴ See note 312.

⁴⁵⁵ See note 313.

⁴⁵⁶ See note 232.

⁴⁵⁷ See note 235.

⁴⁵⁸ See note 238.

⁴⁵⁹ See note 242.

⁴⁶⁰ See note 249.

⁴⁶¹ See note 250.

On the 20th of June 2013, South Africa ratified the MLC, as a result of which South Africa has an obligation to ensure that it gives effect to the provisions of the MLC through its domestic legislation.⁴⁶² *The Merchant Shipping Amendment Act 12 of 2015*, gave domestic effect to the MLC in June 2016.⁴⁶³

Prior to the implementation of the MLC, South African seafarers had the same rights and remedies as English seafarers. They were entitled to the full payment of their wages,⁴⁶⁴ repatriation expenses,⁴⁶⁵ maintenance, the provision of necessaries, accommodation⁴⁶⁶ and proper medical care.⁴⁶⁷

Since the implementation of *The Merchant Shipping Amendment Act 12 of 2015*, there has not been a significant change to the rights of seafarers, however, through the implementation of the MLC, the existing rights of seafarers have been further enhanced and developed. This is evident through the additional requirements that have been added to crew agreements and the specifications that must be followed with regard to crew accommodation. While some of these additional requirements may not be drastic in nature, they have a significant effect in improving the health, safety and overall wellbeing of the crew while onboard vessels.

Should *The Merchant Shipping Bill 2020*, come into effect this would have a significant effect on the rights and remedies available to seafarers.⁴⁶⁸ The application of the Bill would extend the provisions of the Labour Relations Act, the Occupational Health and Safety Act and the Compensation for Occupational Injuries and Diseases Act, to seafarers.⁴⁶⁹ This would place South African seafarers in a more favourable position than most of their international counterparts.

While the Bill may be a huge step towards better protecting the rights of South African seafarers, certain provisions of the Bill raises great concerns. Due to the international nature of the shipping industry, provision for seafarers to access the CCMA and Labour Court as well as enforcing the legal right to strike, will introduce significant

⁴⁶² See note 332.

⁴⁶³ See note 334.

⁴⁶⁴ See note 251.

⁴⁶⁵ See note 254.

⁴⁶⁶ See note 257.

⁴⁶⁷ See note 259.

⁴⁶⁸ See note 370.

⁴⁶⁹ See note 373.

challenges to shipowners and the industry at large.⁴⁷⁰ Affording these additional rights and remedies to seafarers would inevitably result in higher expenses and liability of shipowners registering their vessels in South Africa, thus further deterring ship registration in this country.

A further concern to the maritime industry is that should the Bill come into effect only South African owned vessels will be permitted to participate in coastwise traffic for transporting goods between South African ports.⁴⁷¹ Effectively, this means that foreign vessels will be required to call at only one port in South Africa.⁴⁷² The South African government believes that this will assist with creating opportunities for local shipbuilders, similarly to the American shipbuilding industry that operates in the same way.

While implementing a cabotage regime would appear to strengthen the South African economy and create opportunities for South African entrepreneurs, this regime could inevitably deter international markets and destroy local ports.⁴⁷³ South Africa has some of the busiest ports in Africa, if the cabotage regime is implemented most cargo will need to be transported to their final destination either by rail or road. Currently South Africa does not have the infrastructure or the economy to effectively facilitate the transportation of cargo inland. Consequently, this could result in long delays in cargo arriving at their intended destination. These added delays and costs associated with the transport of goods via truck and rail could create several market related hurdles, no longer making South African ports lucrative to the international shipping market. For the cabotage regime to be successful the South African government will need to do more studies to determine the implications on logistics and the upgrades that will need to be made to our current infrastructure.

5.5 Final remarks and observations

When examining the impact of the MLC on the rights of seafarers in the three jurisdictions discussed, it is evident that despite the USA not being a member state, seafarers in all three jurisdictions are protected and have fairly equal rights and

⁴⁷⁰ See note 382.

⁴⁷¹ See note 385.

⁴⁷² See note 386.

⁴⁷³ See note 388.

remedies available to them. However, when looking at the UK and South Africa, it is evident that while the implementation of the MLC has not created drastic changes to their national legislation, it has provided more clarity on the extent of the rights and remedies available to seafarers. The MLC expressly provides for the standards and dimensions of implementation in member states, as well as what constitutes adequate crew accommodation. The MLC further sheds clarity on the extent of medical care and services that should be provided to seafarers both while onboard the vessel and while ashore. It expressly states the requirements of the contents, accessibility and implementation of crew agreements. The MLC also provides clarity on repatriation and the extent of liability of shipowners when seafarers are stranded, or shipwrecked. These are just a few examples of how the MLC ensures that seafarers are equally protected in its member states.

While the MLC has not had a drastic effect in the abovementioned jurisdictions, it is pertinent to note that domestic legislation protecting seafarers, even prior to the implementation of the MLC in these jurisdictions, already extensively protected seafarers employed on board vessels registered in the UK and SA. The MLC will however have a substantial effect on the ability of port authorities in member states to inspect and take action against owners of substandard vessels due to the “no more favourable treatment” clause. This is because Article V of the MLC will allow member states to conduct inspections relating to labour standards and conditions when these vessels call at their ports. Through these inspections, member states will be in a position to hold these substandard vessels accountable and ensure that they adhere to the provisions in the MLC thus, effectively protecting seafarers globally, and ensuring that they are treated equally.

As discussed above, the MLC is not above criticism. The crew change crisis during the Covid-19 pandemic, highlights the shortfalls in the MLC and the potential this creates to leave seafarers vulnerable. Nevertheless, the MLC is still a great step forward in the consolidation and harmonisation of compliance and inspection procedures followed by flag states and port authorities. Furthermore, the inclusion of Article V, ensures that it is better able to protect the interest of seafarers globally, in comparison to preceding conventions.

BIBLIOGRAPHY

A. TABLE OF STATUTES

INTERNATIONAL CONVENTIONS AND CODES

Final Report : Joint Maritime Commission (29th Session), Geneva, 22-26 January 2001. 2001. Geneva: ILO.

International Convention for the Safety of Life at Sea (SOLAS) 1974

The Health Protection and Medical Care (Seafarers) Convention, 1987

The Maritime Labour Convention, 2006.

The Merchant Shipping (Minimum Standards) Convention, No 147

The Rules of Oleron, c. 1266. Available at www.admiraltylawguide.com/documents/oleron.html (accessed 11 May 2020).

The Seamen's Welfare in Ports Recommendation No 48.

Repatriation of Seafarers Convention (Revised) 1987 (No. 166)

Seafarers' Hours of Work and the Manning of Ships Convention 1996 (no. 180)

Shipowners' Liability (Sick and Injured Seamen) Convention, 1936

Unemployment Indemnity (Shipwreck) Convention, 1920 (No. 8)

United Nations Convention on the Sea Law, 1982.

SOUTH AFRICAN LEGISLATION

Admiralty Jurisdiction and Regulation Act 105 of 1983.

Merchant Shipping Act 57 of 1951.

Merchant Shipping Amendment Act 12 of 2015.

The Merchant Shipping Bill, 2020.

ENGLISH LEGISLATION

Merchant Shipping Act Commencement no 1 of 1970.

Merchant Shipping (liability of shipowners and others) Act 1958.

Merchant Shipping and Maritime Security Act Of 1997

USA LEGISLATION

The Jones Act of 1920.

The Merchant Marine Act Of 1970.

B. TABLE OF CASES

SOUTH AFRICAN CASE LAW

Transol Bunker v MV Andrico Unity and Others 1989 (4) SA 325 (A).

USA CASE LAW

Chelentis v Luckenbach S.S Co, 247 U.S 372 (1918).

Pacific S.S v Peterson 264 US 375, AMC 1932 (1928).

Panama R.R Johnson 264 US 375, AMC 551 (1924).

Romero v International Terminal Operating Co 358 US 354, AMC 832 (1959).\

C. SECONDARY SOURCES

TEXTBOOKS

DC Jackson. *Enforcement of Maritime Claims*. 4th ed. (2005)

Fagan, *Roman-Dutch Law in its South African Historical Context in Southern Cross-Civil law and Common Law in South Africa* (1996).

L. Christodoulou-Varotsi and D.A Pentsov, *Maritime Work Law Fundamentals: Responsible Shipowners, Reliable Seafarers*. (2008).

T Carter. *Merchant Seamen's Health, 1860-1960: Medicine, Technology, Shipowners and the State in Britain*. (2014).

TJ Schoenbaum. *Admiralty and Maritime Law*. 5th Hornbook ed. (2001)

THESES

A Kennerley. *British Seamen's Missions and Sailors' Homes 1815-1970: voluntary welfare provision for serving seafarers*. PhD thesis. University of Plymouth, (1989).

JOURNAL ARTICLES

Admiralty. Extent of Liability to Injured Seaman. (1921) 30 (8) *The Yale Law Journal*

Fitz- Henry Smith, Jr "Liability in the Admiralty for Injuries to Seamen." (1906) 19 (1) *Harvard Law Review*.

George Eddings, Andrew Chamberlain, Holly Colaco and Isabel Philips. "The Shipping Law Review: United Kingdom- England and Wales." (2020)

George W Stumberg, 'The Jones Act. Remedies of Seamen' (1956) 17 *Ohio State Law Journal*.

Louis J Gusmano, 'Seamen's Rights to Recover for injury against Either Shipowner or Charterer' (1980-1981) 55 *Tul L Rev* 1029.

Max D Kossoris and Joseph Zisman, 'Workmen's Compensation for Seamen' (1946) 62 *Monthly Labour Review*.

Origins of Admiralty Jurisdiction & Shipping Law in South Africa: The Anglo -Dutch juxtaposition- common law in a civilian system. (2009) *Juta and Company (Pty) Ltd*.

Available at

[http://jutastat.juta.co.za/nxt/gateway.dll/ship/2/7/8?f=templates\\$fn=default.htm](http://jutastat.juta.co.za/nxt/gateway.dll/ship/2/7/8?f=templates$fn=default.htm).

(Accessed 10 June 2020).

P Link, "One Small Step for the United States, May Be One Giant Leap for Seafarers' Rights". (2015) 33 *Hofstra Lab& Emp LJ*.

Robert M Mallano, 'Seamen's Injuries: The Jones Act, Unseaworthiness, and Maintenance and Cure- The Siamese Triplets' (1963) 51 *California Law Review*.

Steven F Friedell, 'The Interplay of the Jones Act and the General Maritime Law' (2017) 48 *Journal of Maritime Law & Commerce*.

WORKING PAPERS & PROJECT REPORTS

A Mokhtari, M Lafteh, R Hematjoo "Investigation of the Maritime Labor Convention and its legal effects for countries" (2017) *Research Gate*.

Chapter 5, Master and Crew: Jurisdiction and applicable law. (2009) *Juta and Company (Pty) Ltd.* Available at [http://jutastat.juta.co.za/nxt/gateway.dll/ship/2/29/44?f=templates\\$fn=default.htm](http://jutastat.juta.co.za/nxt/gateway.dll/ship/2/29/44?f=templates$fn=default.htm). (Accessed 25 May 2020).

ILO: *Adoption of an instrument to consolidate maritime labour standards*, Report I (1A).

ILO Convention No. 147, Student Guide (2010) *Int'l Labour Org.*

I Surian 'The South African Merchant Shipping Bill, 2020' *LexisNexis* 02 July 2020

Available at: <https://www.lexisnexis.co.za/lexis-digest/legal/maritime-law/the-south-african-merchant-shipping-bill,-2020> (accessed on 10 November 2021).

Staniland H. "Admiralty Law" (2016) *Annual Survey of South African Law*. Jutastat. Available at [http://jutastat.juta.co.za/nxt/gateway.dll/jelj/assa/3/39/42?f=templates\\$fn=default.htm](http://jutastat.juta.co.za/nxt/gateway.dll/jelj/assa/3/39/42?f=templates$fn=default.htm) (Accessed 3 March 2021).

US Coast Guard, No 16711.12A, Commandment Instruction (1996). Available at https://www.uscg.mil/directives/ci/16000-16999.CI_16711_12A.pdf. (Accessed 8 August 2020).

INTERET SOURCES

A Practical Overview on Enforcement and Defence of Maritime Claims in South Africa: Including Casualties and Carriage of Goods by Sea. (2014) *Shepstone & Wylie Attorneys*. Available at <http://wylie.co.za/wp-content/uploads/Admiralty-Jurisdiction-and-Practice-in-South-Africa-05.12.2014.pdf>. (Accessed 30 May 2020).

Advantages of the Maritime Labour Convention, 2006.
https://www.ilo.org/global/standards/maritime-labour-convention/what-it-does/WCMS_153450/lang--en/index.htm. (Accessed 17 September 2020).

International Labour Organisation. *Maritime Labour Convention, 2006: Frequently asked questions.* (2012) available at <http://www.ilo.org/mlc>. (Accessed: 25 May 2020)

International Labour Organisation- available at <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:80001:0> accessed on 13 August 2022.

Labour standards: Basic facts on the Maritime Labour Convention 2006. Available at https://www.ilo.org/global/standards/maritime-labour-convention/what-it-does/WCMS_219665/lang--en/index.htm. (Accessed 22 September 2020).

Michael Finch II, *Lawmakers: Repealing Jones Act Would Have a 'Harmful Effect on our Economy,'* Available at http://www.al.com/business/index.ssf/2015/01/lawmakers_oppose_mccain_jones_act_repeal_amendment_keystone.html. (Accessed 25 June 2020).

N Smuts 'South Africa aligning its maritime industry with the globe through the Merchant Shipping Bill, 2020' *DeRebus* 01 February 2021. Available at <https://www.derebus.org.za/south-africa-aligning-its-maritime-industry-with-the-globe-through-the-merchant-shipping-bill-2020/> (Accessed on 05 December 2021)

Seafarer working and living rights: Maritime Labour Convention- Gov.UK, <https://www.gov.uk/seafarer-working-and-living-rights/maritime-labour-convention> (Accessed 6 March 2020).

The Jones Act- the Foundation of the Merchant Marine. *American Maritime Congress.* (2012). Available at <http://www.americanmaritime.org/about/jonesact.pdf>. (Accessed 5 May 2020).

The Maritime Executive. 2 November 2020. <https://www.maritime-executive.com/corporate/uk-law-ensures-continued-employment-rights-for-seafarers-held-captive> (Accessed 16 February 2021).

The Maritime Labour Convention: a review. *Lexology*. Available at <https://www.lexology.com/library/detail.aspx?g=59d3bdd3-03f1-4a58-b6cd-5692ebe845f0> (Accessed on 16 December 2021).

'Why the MLC is failing as a regulatory response to the Covid-19 pandemic' *Splash*, 27 January 2021. Available at <https://splash247.com/why-the-mlc-is-failing-as-a-regulatory-response-to-the-covid-19-global-pandemic/> (Accessed 05 January 2022).



Miss Mikaela Jauden Joseph (215002928)
School Of Law
Howard College

Dear Miss Mikaela Jauden Joseph,

Protocol reference number: 00006678

Project title: Liability for Injuries to Seafarers- a critical analysis of the extent of shipowner liability under the Maritime Labour Convention.

Exemption from Ethics Review

In response to your application received on 19 August 2021, your school has indicated that the protocol has been granted **EXEMPTION FROM ETHICS REVIEW**.

Any alteration/s to the exempted research protocol, e.g., Title of the Project, Location of the Study, Research Approach and Methods must be reviewed and approved through an amendment/modification prior to its implementation. The original exemption number must be cited.

For any changes that could result in potential risk, an ethics application including the proposed amendments must be submitted to the relevant UKZN Research Ethics Committee. The original exemption number must be cited.

In case you have further queries, please quote the above reference number.

PLEASE NOTE:

Research data should be securely stored in the discipline/department for a period of 5 years.

I take this opportunity of wishing you everything of the best with your study.

Yours sincerely,

Mr Simphiwe Peaceful Phungula
obo Academic Leader Research
School Of Law

UKZN Research Ethics Office
Westville Campus, Govan Mbeki Building
Postal Address: Private Bag X54001, Durban 4000
Website: <http://research.ukzn.ac.za/Research-Ethics/>

Founding Campuses: Edgewood Howard College Medical School Pietermaritzburg Westville

INSPIRING GREATNESS