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Wages of Seafarers

Legal Rights, Protections, and Remedies under the Perspectives of
International Conventions

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List of Abbreviations

BIMCO	Baltic and International Maritime Council
CBA	Collective Bargaining Agreement
DMLC	Declaration of Maritime Labour Compliance
EU	European Union
ICESCR	International Covenant on Economic, Social and Cultural Rights, 1966
ICCPR	International Covenant on Civil and Political Rights, 1966 and its Protocol
ICJ	International Court of Justice
IG P&I	International Group Protection and Indemnity
ILC	International Labour Conference
ILO	International Labour Organization
IMO	International Maritime Organization
JMC	Joint Maritime Commission
MLC	Maritime Labour Certificate
MLC 2006	Maritime Labour Convention, 2006, as amended
MoU	Memorandum of Understanding
PSC	Port State Control
SEA	Seafarers Employment Agreement
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
UNCLOS	United Nations Conventions on the Law the Sea, 1982
US	United States
USD	United States Dollar

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1 Introduction

Seafarers' wages and expenses are the components of crewing cost. Crewing cost is one of the ship operating cost elements. In 2012, the average daily operating cost is in the amount of USD6,430 for bulker, and USD8,932 for tanker.¹ The crew cost is 45% of the operating cost for bulker and 50% for tanker on average, influenced by the number of seafarers employed, the policy of the shipowner, and the nationality of the seafarers (i.e. wages of seafarers from Asia are usually lower than those from Europe). Other components, such as stores, repairs and maintenance, insurance and administration costs, vary at 5% to 19% each of the operating cost. From this, it may be seen that the crewing cost is the largest component in ship operating cost.

The high cost of seafarers' employment often causes problems in practice. Unpaid wages of the seafarers are among the most frequent complaints which have been received by seafarers' organisations until today.² The International Labour Organization ("ILO") runs a database where one can find cases of abandonment of ships, and usually the seafarers have not been paid for months in most of those cases.³ For example, in *Malaviya Seven*,⁴ the ship has been detained since October 2016 for not paying the seafarers' wages since August 2016. Some of the seafarers were still onboard until the ship was sold in December 2017. Even until the date of this thesis, this matter is still disputed and some wages remain unpaid.

Since shipping is an international industry, the seafarers' right to wages are regulated and safeguarded under laws at an international level. This thesis is intended to re-

¹ Richard Greiner, 'Ship Operating Cost' (Moore Stephens LLP, April 2013) 12-16
<<http://www.imsf.info/media/1031/operating-costs-of-differ.pdf>> accessed 20 November 2018.

² 'Non-payment of Wages' (ITF Seafarers, 2000) <<https://www.itfseafarers.org/non-payment.cfm>> accessed 20 November 2018. See also 'Unpaid Wages' (Seafarer Help) <<https://seafarerhelp.org/en/help/non-payment-of-wages>> accessed 20 November 2018.

³ 'Database on Reported Incidents of Abandonment of Seafarers' (ILO) <https://www.ilo.org/dyn/seafarers/seafarersBrowse.Home?p_lang=en> accessed 20 November 2018. See also 'Abandonment of Seafarers Database' (ILO) <https://www.ilo.org/dyn/seafarers/seafarersBrowse.list?p_lang=en> accessed 20 November 2018.

⁴ 'Malaviya Seven [disputed]' (ILO) <https://www.ilo.org/dyn/seafarers/seafarersbrowse.details?p_lang=en&p_abandonment_id=258&p_search_id=181118153045> accessed 20 November 2018.

view important aspects of the applicable laws, including the recently entered into force Maritime Labour Convention, 2006 (“**MLC 2006**”), to comprehend the legal basis for the seafarers’ right to wages, the protections and remedies for such seafarers’ right and the related complications.

This thesis is prepared using the doctrinal research method, by reviewing primary and secondary authorities of law and non-legal resources. The primary sources shall be limited mainly to international conventions. A selection of national law perspectives is used to give examples and comparison, or if the international conventions do not provide express solutions.

2 Framework of Seafarers' Rights to Wages

2.1 International Standards

Seafarers have rights under the international, regional, and national human rights law. In addition to these, they also have rights specifically obtained because they are workers. Some of the international instruments set out the rights generally for all types of workers, and some are designed particularly for workers in a specific industry or activity, such as seafarers.

2.1.1 Human Rights Standards

Seafarers, as human beings in general, have their fundamental rights and freedoms which are equal and inalienable, deriving from the inherent dignity of a person. One of the most important human rights instruments is the Universal Declaration of Human Rights (“**UDHR**”).⁵ It is an international common standard of achievement to protect human rights, which sets out that everyone is entitled to the human rights and freedoms set out in the UDHR, regardless of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other statuses.⁶ The UDHR is completed by the International Covenant on Economic, Social and Cultural Rights, 1966 (“**ICESCR**”) and the International Covenant on Civil and Political Rights, 1966 and its Protocol (“**ICCPR**”). These three instruments form the International Bill of Human Rights.

Up to date, there have been several international and regional mechanisms as means to protect human rights. Following a ratification of a human rights convention, the relevant state has the obligation to ensure that all aspects of life, including working conditions, do not violate fundamental rights of human beings.

⁵ ‘History of the Document’ (UN) <<http://www.un.org/en/sections/universal-declaration/history-document/index.html>> accessed 14 November 2018.

⁶ UDHR art 2.

2.1.2 IMO Standards

The International Maritime Organization (“**IMO**”) is the UN specialised agency with currently 174 of the 193 UN member states, having the responsibility to ensure the safety and security of shipping and to prevent pollution by ships.⁷ The IMO started to acknowledge the need for increased focus on human-related activities in the safe operation of ships, and the need to achieve and maintain high standards for safety, security, and environmental protection for the purpose of significantly reducing maritime casualties. Since the human element has an important role to achieve the IMO’s goals, the IMO Assembly has adopted the Resolution A.850 (20) on 27 November 1997. This resolution then has been replaced by the Resolution A.947 (2) on 27 November 2003 regarding vision, principles and goals for the IMO in relation to the human element in shipping. The human element now must be given due consideration by all committees and sub-committees of the IMO when developing regulations and guidelines.

The IMO has meanwhile issued numerous international instruments which are relevant to the seafarers’ interests, such as the International Convention for the Safety of Life at Sea, 1974, as amended, and its Protocols (“**SOLAS Convention**”); the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended, including the 1995 and 2010 Manila Amendments (“**STCW Convention**”); and the International Management Code for the Safe Operations of Ships and for Pollution Prevention 1993 (“**ISM Code**”) which was adopted under Chapter IX of the SOLAS Convention. Compared to the international human rights instruments and ILO treaties which provide rights to the seafarers, the IMO conventions require the member states to provide benefits to the seafarers.⁸ As can be understood from the responsibility of the IMO to ensure the safety and security of shipping and to prevent pollution by ships, no instruments issued by the IMO touch upon the seafarers’ rights to wages.

⁷ ‘Introduction to IMO’ (IMO) <<http://www.imo.org/en/About/Pages/Default.aspx>> accessed 15 November 2018.

⁸ Michael Anderson, Alexandra McDowall and Deirdre Fitzpatrick, ‘International Standards’ in Deirdre Fitzpatrick and Michael Anderson (eds), *Seafarers Rights* (OUP 2005) 48.

2.1.3 ILO Standards

The standards of the workers' rights at international level were firstly set out by the ILO. Since its establishment in 1919,⁹ the ILO has set out labour standards and developed policies to improve conditions of labour to fulfil the objectives under the ILO Constitution to focus on 'the connection between labour conditions, human rights, social justice, and international peace'.¹⁰ For such purpose, it may adopt conventions or recommendations¹¹ through the International Labour Conference ("ILC").¹² The difference between the two is that conventions are legally binding international treaties if ratified by its member states, but recommendations only serve as non-binding guidelines. In many cases, a convention lays down the basic principles to be implemented by the ratifying countries, whereas a related recommendation supplements the convention by providing more detailed guidelines on how it could be applied.¹³ Recommendations may be issued independently from a convention.

Some of the first conventions made by the ILO were related to seafarers' rights.¹⁴ In more than 80 years since its establishment, the ILO has adopted around 70 instruments consisting of Conventions and Recommendations through dedicated maritime sessions of the ILC to protect the seafarers all over the world.¹⁵

⁹ 'Origins and history' (ILO) <<https://www.ilo.org/global/about-the-ilo/lang--en/index.htm>> accessed 15 November 2018.

¹⁰ Moira L McConnell, Cleopatra Doumbia-Henry and Dominick Devlin, *The Maritime Labour Convention, 2006* (Martinus Nijhoff 2011) 15-16.

¹¹ Ibid.

¹² See further 'International Labour Conference' (ILO) <<https://www.ilo.org/global/about-the-ilo/how-the-ilo-works/international-labour-conference/lang--en/index.htm>> accessed 15 November 2018.

¹³ 'Conventions and Recommendations' (ILO) <<https://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm>> accessed 15 November 2018.

¹⁴ See e.g. ILO C007 – Minimum Age (Sea) Convention (adopted 9 July 1920, entered into force 27 September 1921); ILO C008 – Unemployment Indemnity (Shipwreck) (adopted 9 July 1920, entered into force 16 March 1923); ILO C009 – Placing of Seamen Convention (adopted 10 July 1920, entered into force 23 November 1921).

¹⁵ 'Seafarers' (ILO) 18.1-18.9 <<https://www.ilo.org/dyn/normlex/en/f?p=1000:12030:0::NO:::#Seafarers>> accessed 15 November 2018.

With the ambition to consolidate and update all existing standards under the international maritime labour (all in all 36 Conventions and 1 Protocol¹⁶ and their related Recommendations and more general fundamental principles), the MLC 2006 was adopted by the ILC at its 94th (maritime) session on 23 February 2006. It is often called a ‘charter for decent work or a “bill of rights” for the world’s maritime workers and a framework for creating a level playing field for shipowners’.¹⁷ It was also prepared with the aim to become the “fourth pillar” of the international maritime regulatory regime to complement the three IMO key conventions MARPOL, SOLAS and STCW.¹⁸

2.1.3.1 Scope of application of MLC 2006

The MLC 2006 applies to all ships, whether publicly or privately owned, ordinarily engaged in commercial activities or as pleasure crafts, which do not navigate exclusively in inland waters or waters within, or closely adjacent to, sheltered waters or areas where port regulations apply.¹⁹ However, it does not apply to ships engaged in fishing or similar pursuits, traditionally built ships such as dhows and junks, and warships or naval auxiliaries.²⁰

MLC 2006 applies to seafarers which are defined as persons who are employed or engaged or work in any capacity on board of a ship.²¹ It also sets out that in the event of doubt as to whether a category of persons is to be regarded as seafarers for the purpose of the MLC 2006, the question shall be determined by the competent authority in each state which ratified it after consultation with the shipowners’ and seafarers’ organisations concerned with this question.²² It is meant that the MLC 2006 applies not only to seafarers working in the deck department, who are in charge of the navi-

¹⁶ ‘List of the 36 Maritime Conventions and 1 Protocol Revised by the Maritime Labour Convention, 2006’ (ILO) <https://www.ilo.org/global/standards/maritime-labour-convention/text/WCMS_150389/lang--en/index.htm> last accessed 15 November 2018.

¹⁷ ILO, *Preface of Compendium of Maritime Labour Instruments* (2nd (rev) edn, ILO 2015) vii.

¹⁸ ‘Conference Guide – Maritime Session’ (ILO) <<https://www.ilo.org/public/english/standards/relm/ilc/ilc94/guide.pdf>> accessed 15 November 2018.

¹⁹ MLC 2006 art II para 1(i).

²⁰ *Ibid* para 4.

²¹ *Ibid* para 1(f).

²² *Ibid* para 3.

gation of the ship, but also those who are working in the engineering and catering department, and other workers such as entertainers and hotel crew on a cruise ship.

2.1.3.2 *MLC Structure*

According to the explanatory note of the MLC 2006, it consists of ‘three different but related parts: Articles, Regulations and Code’.²³ The Articles and the Regulations set out the core rights and principles and the basic obligation of the member states which have ratified the Convention.²⁴ The Code consists of details for implementation of the Regulations and comprises of Standards and Guidelines.²⁵ The Regulations and the Standards are mandatory, while the Guidelines are not mandatory.²⁶ Although not mandatory, member states should take into account the recommendations under the Guidelines in fulfilling their duties under the MLC 2006.²⁷

2.1.3.3 *Entry into Force and Application*

The MLC 2006 came into force twelve months after the date of ratification by at least thirty members with not less than thirty-three percent of the total world gross tonnage of ships.²⁸ It is only binding upon the ILO members whose ratifications have been registered with the Director General of ILO.²⁹ The entry-into-force requirements were achieved on 20 August 2012, even though the tonnage requirement was already met in 2009.³⁰ Consequently, the MLC 2006 came into force on 20 August 2013 and became binding as an international law for the first 30 countries which ratified it. For other countries which have ratified later, the MLC 2006 will enter into force twelve months after their ratifications were registered.³¹ So far, eighty-two states have ratified the MLC 2006.³²

²³ MLC 2006, Explanatory Note para 2.

²⁴ *Ibid* para 3.

²⁵ *Ibid* para 4.

²⁶ MLC 2006, art IV para 1.

²⁷ *Ibid* art VI para 2.

²⁸ *Ibid* art VIII para 3.

²⁹ *Ibid* para 1.

³⁰ ‘Basic Facts on the MLC 2006’ (ILO) <https://www.ilo.org/global/standards/maritime-labour-convention/what-it-does/WCMS_219665/lang--en/index.htm> accessed 15 November 2018.

³¹ MLC 2006 art VIII para 4.

³² Basic Facts (n 30). See further ‘Ratifications of MLC 2006’ (ILO) <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300_INSTRUMENT_ID:312331> accessed 21 November 2018.

2.1.3.4 Amendments to MLC

The MLC 2006 has three amendments which were made in 2014, 2016, and 2018.³³ Only the Amendments of 2014 have entered into force on 18 January 2017, adding the financial security standard to implement the MLC 2006 provisions on repatriation and contractual claims related to seafarers' death or long-term disability. The Amendments of 2016 are expected to enter into force on 8 January 2019 amending some provisions related to the maritime labour certificate, and the Amendments of 2018 on 26 December 2020, providing for some rights of the seafarers when held captive as the result of piracy or armed robbery against ships.

2.2 Seafarers' Rights to Wages

Article 23 paragraph 2 of the UDHR states that 'Everyone, without any discrimination, has the right to equal pay for equal work'. Further, the ICESCR also provides that everyone has the right to '...Fair wages and equal remuneration for work of equal value without distinction of any kind ... A decent living for themselves and their families...'.³⁴

With the purpose to ensure that seafarers are adequately paid for their services, the MLC 2006 Regulation 2.2 includes the seafarers' rights to fair wages, setting out that '[a]ll seafarers shall be paid for the work regularly and in full in accordance with their employment agreements.'

2.2.1 What is Wage?

From a terminology standpoint, wage usually is differentiated from salary. While salary is the remuneration a person gets every month regardless of the number of actual hours where she or he works, wage usually is the compensation one receives for every hour where she or he performs the job or provides services.

There is no definition of wages under the MLC 2006. Several ILO conventions related to wages shall be discussed to determine the meaning of wages. Firstly, ILO C095 –

³³ 'MLC 2006, as amended' (ILO)
<https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:91:0:::P91_SECTION:MLCA_AMEND_A1> accessed 15 November 2018.

³⁴ ICESCR arts 7(a)(i)-(ii).

Protection of Wages Convention, 1949, Article 1 defines wages as ‘remuneration or earnings, however designated or calculated, capable of being expressed in terms of money’ which in the context of this paper is paid by an employer to the seafarer ‘for work done or to be done or for services rendered or to be rendered’ for the account of the ship. Secondly, in the ILO C100 – Equal Remuneration Convention, 1951, the salary and wages are included in the definition of remuneration. Thirdly, ILO C131 – Minimum Wage Fixing Convention, 1970, reflects the ILO’s effort to protect workers against overly low wages. This concept of minimum wages is intended to cover work which is done in any time period, be it an hour, a day, a week or a month.³⁵ In the light of the foregoing, ILO conventions do not differentiate between wages and salary. Therefore, for the purpose of this thesis, the term of wages shall be used instead.

The wages are ‘payable in a virtue of a written or unwritten contract of employment’.³⁶ For seafarers, the contract of employment shall be in a written form, in a so-called Seafarers Employment Agreement (“**SEA**”), to be discussed in 2.2.5.1.

The MLC 2006, Standard A2.2 prescribes that the seafarers shall receive the wages at an interval which is not longer than a month. This allows the seafarers to receive salary daily or weekly. The seafarers should also receive a monthly account for such wages, additional payments and the exchange rate used, if any.³⁷ Further, seafarers may have all or part of their earnings to be transferred to other parties, such as families, dependents or legal beneficiaries.³⁸

The seafarers’ wages shall be paid in legal tender to discharge the employers’ debts or financial obligations to the seafarers. This may be done by full payment through specific bank notes or coins as may be required under national laws or regulations. The wages may also be paid by bank transfer, bank cheque, postal cheque or money order, where appropriate.

³⁵ ILO, *Minimum Wage Policy Guide*, sec 1.8.

³⁶ ILO C095 – Protection of Wages Convention (adopted 1 July 1949, entered into force 24 September 1952), art 1.

³⁷ *Ibid* para 2.

³⁸ *Ibid* para 3.

2.2.2 Minimum Wages

ILO C131, as a specific convention intended to protect the disadvantaged group of wage earners from being paid overly low, does not specify what the definition of the minimum wage is, and which components should be considered by the member states in determining the minimum wage system. Consequently, ILO member states use different components in order to comply with this specific convention. In many cases, the components used are ‘basic pay, annual bonuses, tips, in-kind benefits, productivity and performance pay, and allowances and premiums for non-standard work hours or dangerous work’.³⁹ In practice, some states only include the basic pay for the purpose of fixing the minimum wages, while others include different other elements.

The definition and composition of minimum wages for seafarers have been clarified under specific ILO conventions since 1946.⁴⁰ Basic pay or wages of seafarers was defined as remuneration in cash which shall exclude the cost of food, overtime, premiums or any other allowances either in cash or in kind.⁴¹ The minimum basic pay or wages for a calendar month of service was at least £16 or USD64 or its equivalent in other currencies.⁴² However, if food is provided not free of charge, the basic pay or wages shall be raised to an amount stipulated under the Collective Bargaining Agreement (“**CBA**”). Under ILO C154 – Collective Bargaining Convention, 1981, Article 2, CBA is defined as all negotiations which take place between an employer, a group of employers or one employers’ organisation or more, on one hand, and one workers’ organisation or more, on the other, for (a) determining working conditions and terms of employment; and/or (b) regulating relations between employers and workers; and/or regulating relations between employers or their organisations and a workers’ organisation or workers’ organisations. If there is no CBA, these issues will be determined by the competent national authority.⁴³ Furthermore, if a shipowner

³⁹ ILO, *Minimum Wage* (n 35), sec 1.5.

⁴⁰ ILO C076 – Wages, Hours of Work and Manning (Sea) (adopted 29 June 1946, outdated instrument).

⁴¹ *Ibid* art 4 para d.

⁴² *Ibid* art 5. This basic pay in other currencies shall be adjusted if there is a change of on par value of pound sterling or USD.

⁴³ *Ibid* art 7.

employs more ratings than mandatorily required, the minimum basic wages must also be adjusted in the way previously mentioned.⁴⁴

Since 1996, the monthly minimum basic pay or wages for able seamen has been regulated to be no less than what is stipulated periodically by the Joint Maritime Commission (“**JMC**”). This is the only minimum wage rule in a specific industry issued by the ILO. Any revision to such amount will be communicated by the Director-General of ILO to the member states following a decision of the Governing Body. This tradition has been continued until now and repeated without any substantive changes under the MLC 2006. If otherwise agreed under a CBA, it shall not be prejudiced by this recommendation of the MLC 2006, provided that such terms and conditions of employment are recognised by the competent national authority.⁴⁵

The JMC’s Subcommittee on Wages of Seafarers (“**Subcommittee**”) has been established to regularly update the figure of monthly minimum basic pay or wages, using the methodology which was adopted by JMC at its 26th Session (October 1991).⁴⁶ As it is set out under Guidelines of the MLC 2006, the minimum basic pay or wages as stipulated by the JMC is not mandatory in nature. However, it influences the minimum wages of seafarers on an international level as it is referred to and used as a basis by many countries, shipowners, trade unions all over the world.⁴⁷

⁴⁴ Ibid art 6. Such adjustment shall be made to the extra number of ratings of such groups who are employed, and any increase or decrease of the shipowner’s cost due to employing such group of rating.

⁴⁵ MLC 2006 art 2 para 1(a), the competent authority is defined as ‘the minister, government department or other authority having power to issue and enforce regulations, orders or other instructions having the force of law in respect of the subject matter of the provision concerned.’

⁴⁶ This methodology recommends:

(i) that the basic pay or wage be based on the list of countries and areas that are representative of maritime nations (those with at least 2 million gross tons of shipping) and of countries and areas which are major suppliers of seafarers (those with at least 10,000 seafarers); (ii) that the formula utilize the average US dollar (US\$) exchange rate for the three most recent months in order to minimize the short-term effect of drastic fluctuations in currency exchange rates; (iii) that the period of measurement of the change in consumer prices correspond to the full period of time between adjustments; and (iv) that the formula include a weighting of one for countries and areas with fewer than 10,000 seafarers and of two for those with 10,000 or more...

See further Subcommittee on Wages of Seafarers of JMC, *Updating the Minimum Monthly Basic Pay or Wage Figure for Able Seafarers* (ILO 2018), sec 1 para 4.

⁴⁷ Desislava Nikolaeva Dimitrova, *Seafarers’ Right in the Globalized Maritime Industry* (Roger Blanpain ed, Kluwer Law International 2010), 57.

The most recent Subcommittee's meeting was convened on 6-7 April 2016. The meeting stipulated that the figure of minimum monthly basic pay for able seamen is in the amount of USD614 as of 1 January 2017, having the same figure applicable as of 1 January 2016.⁴⁸ The Subcommittee scheduled a meeting to update such figure to take effect as of 1 January 2019 initially on 20-21 June 2018, but now is postponed to 19-20 November 2018.

2.2.3 Wages Calculation

The MLC 2006, Guideline B2.2.2 specifies the calculation and payment, minimum wages and minimum monthly basic pay or wage figure for able seafarers. Seafarers' remuneration for work may be calculated separately from the compensation for overtime work. The basic pay and overtime compensation may also be consolidated, either fully or partially. Either way, since the calculation of such wages and overtime compensation will be made against the time spent by the seafarers for the account of the ship both at sea and in ports, the seafarers' right to remuneration is closely related to the seafarers' rights to a maximum number of normal working hours.

2.2.3.1 *Separated Wages*

If wages are calculated separately from overtime compensation, normal working hours in any case shall not exceed eight hours per day for the purpose of basic pay or wages calculation, and forty-eight hours per week for the purpose of overtime calculation. The rate for overtime payment is at least 1.25 times of the basic pay or wages per hour. In addition, the records of all work in excess of the normal working hours shall be maintained by the master of the ship, or another person assigned by him, and must be endorsed by the relevant seafarer at no greater than monthly intervals.

2.2.3.2 *Consolidated Wages*

The MLC 2006 Guideline B2.2.1 defines consolidated wages as 'a wage or salary which includes the basic pay and other pay related benefits', which means that it

⁴⁸ Subcommittee on Wages of Seafarers, *Final Report: Updating the Minimum Monthly Basic Pay or Wage Figure for Able Seafarers* (ILO 2016), app III.

could include seafarers' compensation for overtime work. If this is the case, SEA should clearly specify the number of working hours required from the seafarers in return of receiving the remuneration. If the seafarers are expected to work more than the agreed working hours, the seafarers' right to hourly overtime payment and the records of all excess works shall be agreed using the same rate and principle as for the calculation of separated wages.

2.2.4 Paid with Exemptions from Work

There are several situations where the seafarers are still entitled to their wages even though during such time, the relevant seafarers are not working.

2.2.4.1 Paid Leave

Since it is considered to be beneficial to their health and well-being, the seafarers are entitled to adequate paid leave. It shall be calculated using a proper calculation method under CBAs or national laws or regulations, but in any case, it should not be less than 2.5 days per month of employment.⁴⁹ This seafarers' right shall be calculated using a proper calculation method under CBAs or national laws or regulations. A paid annual leave is meant to be taken annually for an uninterrupted period. Further, it is the understanding under the MLC 2006 that the seafarers should not be required to stay on board and provide their services for more than eleven months without any leave.⁵⁰

During the paid leave, the seafarers are entitled to receive the wages at their normal level of remuneration.⁵¹ This right must be duly recorded in the SEA and may not be waived by way of any agreement, unless supported by the related government of seafarers' supplying states.⁵²

⁴⁹ Ibid reg 2.4; standard A2.4 para 2; guideline B2.4.

⁵⁰ ILO, *Maritime Labour Convention, 2006 (MLC, 2006) Frequently Asked Question* (4th edn, ILO 2015) sec C2.4.c.

⁵¹ MLC 2006 guideline B2.4.1 para 3.

⁵² Ibid standard A2.4 para 3.

2.2.4.2 *Sick or Injury*

In addition to the liability to pay the cost for medical care, boarding and lodging if seafarers are away from home, the shipowner also has the obligation to pay the seafarers wages due to sickness and injury resulting in the seafarers' inability to perform their work. The injury or sickness must occur during their employment under SEA or because of the work performed by the seafarers under the SEA.⁵³

The full wages must be paid so long as the sick and injured seafarers stay on board or until their repatriation has been concluded. After the seafarers are repatriated or landed, the seafarers are entitled to receive wages wholly or partially as specified by the national laws or regulations or the CBAs until their recovery, or until they are entitled to the cash benefits if this is earlier than the recovery.⁵⁴ The national law may limit the liability of the shipowner to pay such wages to a period of no less than 16 weeks from the day when the injury or the sickness has occurred, if the seafarers no longer remain on board.⁵⁵ The shipowners' liability to pay wages in this event may be excluded under several conditions, namely if the injury is not an occupational injury, the sickness or the injury have occurred due to the wilful misconduct of the relevant seafarer, or if such illness or disability has commenced before the seafarers are being employed and has not been disclosed to the shipowner.⁵⁶

2.2.4.3 *Held Captive Resulting from Piracy or Armed Robbery against the Ship*

Expected to enter into force on 26 December 2020, the Amendments of 2018 to the MLC 2006 stipulates that the SEA shall remain valid even though the seafarers do not provide their services when they are being held as a result of the act of piracy or armed robbery against the ship.⁵⁷ Consequently, they remain entitled to the wages

⁵³ Ibid reg 4.2.

⁵⁴ Ibid standard A4.2.1 para 3.

⁵⁵ Ibid para 4.

⁵⁶ Ibid para 5.

⁵⁷ The term of piracy has the same meaning given to them by the UNCLOS, 1982 under Article 101, while the term of armed robbery is defined under the standard A2.1 para 7 of amendments of 2018 to MLC 2006 as follows:

[A]ny illegal act of violence or detention or any act of depredation, or threat thereof, other than an act of piracy, committed for private ends and directed against a ship or against persons or property on board such a ship, within a State's internal waters, archipelagic waters and territorial sea, or any act of inciting or of intentionally facilitating an act described above.

and other entitlements under the SEA, national laws and regulations, and CBAs, during the whole period of captivity until they are released and duly repatriated.⁵⁸

2.2.5 Other Relevant Rights

The following discussion refers to a selection of seafarers' rights which are arguably the most relevant and related to the seafarers' right to wages and shall not be deemed to be exhaustive.

2.2.5.1 *Right to Employment Agreement*

To ensure that the seafarers have a fair employment agreement, Regulation 2.1 of the MLC 2006 sets out that the seafarers' working terms and conditions shall be agreed in a written and legally enforceable agreement according to the standards under Standard A2.1 of the MLC 2006.⁵⁹ The SEA shall be executed by both the seafarer and the shipowner or its representative, providing a decent working and living condition to the relevant seafarer.⁶⁰ If the seafarer working on board not as an employee of the shipowner (e.g. when the person is self-employed, working as a dancer or singer in a cruise ship), there should be another evidence of contractual relationship or similar arrangement between such person and the shipowner.⁶¹ Further, the SEA shall at least contain the seafarers' full name, date of birth or age, and birthplace; the shipowner's name and address; the date and place where the SEA is entered into; the seafarers' function on board; wages; the number of paid annual leaves; termination of the SEA and its conditions, including early termination period; health and social security benefits available to the seafarers; the seafarer's right to repatriation; and reference to the CBA, if any.⁶² On top of that, the seafarers are entitled to a record of their employment on board, which should not include any information about the quality of work or the wages of the related seafarer.⁶³

⁵⁸ MLC 2006 standard A2.2 para 7. Further, if the seafarers died during captivity, this right continues until the date of their deaths.

⁵⁹ ILO provides a model format for SEA. See 'Model Format for Seafarer Employment Agreement' (ILO) <www.ilo.org/dyn/normlex/en/f?p=1000:53:::53:P53_FILE_ID:3130821> accessed 21 November 2018.

⁶⁰ MLC 2006 standard A2.1 para 1.

⁶¹ *Ibid.*

⁶² *Ibid* para 4.

⁶³ See n 70. See also para 3.

2.2.5.2 Freedom from Forced Labour

Holding anyone in slavery or servitude as well as slavery and slave trade in any forms are prohibited under the UDHR⁶⁴ and the ICCPR.⁶⁵ Furthermore, the ICCPR also prohibits forced or compulsory labour.⁶⁶

Other than those two main international instruments, internationally the forced labour is also prohibited under the Slavery Convention under which slavery is defined as ‘the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised’.⁶⁷ The transport of slaves throughout the member states’ territorial water and on board of ships flying their flags must be oppressed.⁶⁸

ILO C029 – Forced Labour Convention⁶⁹ also defines the forced or compulsory labour as ‘all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily’.⁷⁰ Several types of work are excluded from the definition of forced or compulsory labour, including without limitation, military service, civil work, conviction based on court judgment, as well as emergency work such as during wars or natural disasters.⁷¹

In the shipping business, there are conditions having essential features similar to the violation of the prohibition of forced labour, although they are not particularly regulated under international instruments.⁷² Some examples include cases where shipowners refuse to pay wages but still require the seafarers to keep working and/or refuse to repatriate the seafarers.⁷³

⁶⁴ UDHR art 4.

⁶⁵ ICCPR art 8 paras 1-2.

⁶⁶ Ibid para 3.

⁶⁷ Slavery Convention (adopted 25 September 1926, entered into force 9 March 1927) 212 UNTS 17, art 1 para 1.

⁶⁸ Ibid art 3.

⁶⁹ See also ILO C105 – Abolition of Forced Labour Convention (adopted 25 June 1957, entered into force 17 June 1959).

⁷⁰ ILO C029 art 2 para 1.

⁷¹ Ibid para 2.

⁷² Anderson, McDowall and Fitzpatrick (n 8) 55.

⁷³ Ibid.

2.2.5.3 Right to Legal Remedy and Access to Justice

The UDHR stipulates that everyone including seafarers ‘... are equal before the law and are entitled without any discrimination to equal protection of the law’.⁷⁴ Further, their rights to effective remedy by a competent court for violations of their constitutional or legal rights are guaranteed,⁷⁵ including the right to a ‘fair and public hearing by and independent and impartial tribunal’.⁷⁶

2.2.5.4 Right to Safe and Healthy Working Condition

The ICESCR Article 7 provides that:

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

... (b) Safe and healthy working conditions; ...

The ICESCR obliges the member states to guarantee that such right is well respected by other individuals or private companies when acting as employers.⁷⁷

The MLC 2006 has replaced several ILO’s conventions ensuring this seafarers’ right. The seafarers’ right to safe and healthy working conditions is preserved under the MLC 2006 by way of regulating and giving guidance related to minimum age, medical certificate, training and qualification under Regulation 1; hours of work and hours of rest, and manning levels under Regulation 2; accommodation and recreational facility, and food and catering under Regulation 3; as well as medical care on board of the ship and onshore, shipowner’s liability, health and safety protection and accident prevention under Regulation 4.

Emphasis is made to the requirements related to food and catering and prompt and adequate medical care onboard for seafarers. The MLC 2006 guarantees food and drinking water supplies for the seafarers on board. To this end, the member states

⁷⁴ UDHR art 7.

⁷⁵ Ibid art 8.

⁷⁶ Ibid art 10.

⁷⁷ Anderson, McDowall and Fitzpatrick (n 8) 66-67.

shall ensure that food and drinking water onboard meet the minimum standard.⁷⁸ They must be of appropriate quality, nutritional value and quantity to adequately cover the need of the seafarers, by taking into consideration their different cultural and religious practice, as well as the duration and nature of the relevant voyage. Not only that, seafarers must be provided with adequate, varied and nutritious meals which are prepared and served in hygienic conditions. On top of that, the catering staffs must be well trained or instructed in carrying their jobs. The MLC 2006 also mandates that the seafarers should be able to access medical care onboard without any cost.⁷⁹ These two rights are most likely imperilled when the shipowners do not pay the seafarers' wages.

2.2.5.5 Right to Repatriation

The member states have the obligation to ensure that seafarers shall be repatriated if the SEA expires while the seafarers are abroad; when the SEA is terminated, either by the shipowner or the seafarers; or when the seafarers cannot perform their duties under the SEA.⁸⁰ The MLC 2006 also recommends that the seafarers shall be repatriated, inter alia, when the shipowners are not able to continue to perform their obligations as employers due to the shipowner's insolvency or sale of ship.⁸¹ Member states are also required to stipulate in their laws, regulations or ensure to be provided for in CBAs, the maximum duration of service periods on board after the seafarers are entitled to repatriation. This period shall be less than a year.⁸² In addition, member states must also regulate the actual entitlement for repatriation, including related to the destination of repatriation, mode of transport, type of expenses to be covered and other arrangements which shall be taken care of by the shipowners.⁸³

Shipowners shall be prohibited from demanding money for repatriation cost from the seafarers before their employments begin, and also from setting off the repatriation

⁷⁸ MLC 2006 standard A3.2.

⁷⁹ Ibid reg 4.1 para 2.

⁸⁰ Ibid standard A2.5.1 para 1.

⁸¹ Ibid guideline B2.5.1 para 1(b)(iii).

⁸² Ibid standard A2.5.1 para 3.

⁸³ Ibid para 2; guideline B2.5.

cost against the seafarers' wages or other entitlements, unless the seafarers are in serious default under the SEAs.⁸⁴

⁸⁴ Ibid standard A2.5.1 para 3.

3 Protections to Seafarers' Claim of Unpaid Wages from ILO

As discussed in Chapter 2, the seafarers' right to wages is protected specifically under MLC 2006. In this chapter, the enforcement mechanism and grievance process provided for under the MLC 2006 as well as the enforcement mechanism for ILO conventions including the MLC 2006 offered under the ILO Constitution shall be discussed. The discussion shall also include the problems in those protections. Remedies under international human rights law shall not be discussed in this thesis.⁸⁵

3.1 Enforcement Mechanisms under MLC 2006

3.1.1 Inspections and Certifications by Flag States

The MLC 2006 recalled Article 94 of the United Nations Conventions on the Law of the Sea, 1982 (“**UNCLOS**”), which mandates each flag state to implement its jurisdiction and control under its national law, including but not limited to, social matters on the ships flying its flag. Further, the same provision also requires the flag state to ensure the safety at sea relating to, inter alia, the labour conditions on board, while taking the international legal instruments such as IMO and ILO conventions into consideration.

Unpaid wages may indirectly influence the fulfilment of the above flag state's specific obligation. Seafarers are working on board of the ship at sea for social and economic reasons. Due to the special living condition on board far away from their support system or families and sometimes harsh working condition, stress is inevitable for seafarers. When they are not paid, or not paid on time, or paid less than what has been agreed, it can create additional stress for the seafarers and change their satisfaction towards their jobs.⁸⁶ Further, on board of a ship trading on the High Seas they cannot just terminate the SEA and walk away, but are rather “trapped”. This may eventually affect their psychological condition. Such circumstances may have a detrimental effect on the safety awareness of the seafarers, which in the end may spoil the safety

⁸⁵ Remedies under international human rights law shall only be accessible after applying the rule of exhaustion of local remedies. See further A. A. Cançado Trindade, 'Exhaustion of Local Remedies in International Law and the Role of National Courts' (1978) *Archiv Des Völkerrechts* 17, no. 3/4, 333-70 <<http://www.jstor.org.ezproxy.uio.no/stable/40797736>> accessed 15 November 2018.

⁸⁶ Ahmed Abd El Naiem Hafez, 'Seafarers' Social Life and Its Effect on Maritime Safety with Respect to Egyptian Seafarers' (MSc Dissertation, WMU 1999) 25, 30-32.

of the ship or other people on board. Hence, it may be said that paying a fair wage to seafarers and protecting their general welfare are comparably as important as observing all other general international requirements for the purpose of safety at sea.

A flag state has the obligation to establish a system to inspect and certify the ships flying its flag, to ensure that the maritime labour conditions on the ship are meeting the requirements under the MLC 2006.⁸⁷ In fulfilling this obligation, it may delegate such functions to recognised organisations,⁸⁸ such as classification societies. One of the matters to be inspected is the payment of wages⁸⁹ which has to be in line with Regulation 2.2 of the MLC 2006.

The Maritime Labour Certificate (“**MLC**”) supplemented by a Declaration of Maritime Labour Compliance (“**DMLC**”) shall be produced following the due inspection of the ship⁹⁰ in the form as prescribed by the MLC 2006. The MLC is issued for a period of no longer than 5 (five) years. However, the requirement to have MLC and DMLC is only mandatory to ships of 500 gross tons or more engaged in international voyage and/or despite being registered with a member state, operating from or between ports in another state.⁹¹

The MLC is a *prima facie* proof that the working and living conditions on board of the relevant ship meet the requirements under national laws based on the MLC 2006.⁹² This certificate is supported by DMLC stating the national requirements for the implementation of the MLC 2006 and represents the ongoing compliance measures taken by the shipowner to ensure the conformity of the working and living conditions on the ship with the MLC 2006.⁹³ These two documents must be carried on board of the ship and maintained at all times, and visibly displayed to the seafarers.⁹⁴

⁸⁷ MLC 2006 reg 5.1.1 para 2.

⁸⁸ Ibid para 3.

⁸⁹ The full list of subject matters to be inspected by the flag States are listed in MLC 2006 app A5-1.

⁹⁰ MLC 2006 reg 5.1.1 para 4.

⁹¹ Ibid reg 5.1.3 para 1. International voyage is defined as a voyage from a country to a port outside such a country.

⁹² Ibid para 2.

⁹³ Ibid para 4; MLC 2006 standard 5.1.3 para 10.

⁹⁴ MLC 2006 standard 5.1.3 para 12.

Beside the certifications, flag states still have the responsibility to conduct regular inspections, monitoring and other control measures in order to verify the continuing fulfilment of the measures under the DMLC and the requirements under the MLC 2006 are being fulfilled.⁹⁵ In addition to that, flag states may also conduct investigations based on a complaint that a ship flying their flag is breaching the provisions of the MLC 2006.⁹⁶

Despite the obligation of the flag states to enforce the rights of seafarers under the previous international maritime instruments and now under the MLC 2006, this mechanism most of the time does not work, because sometimes ‘the flag state does not show interest in resolving the problem and enforcing legal rights over its ships or simply does not have the resources to do so’.⁹⁷ This problem may arise with the so called open registers, i.e. flag states permitting ships to be registered in the name of owners which do not have to fulfil any nationality requirement in the flag state regarding shareholding and/or directorship. A lot of ships registered with open registers never even call the ports of their flag state. This can make it more difficult for the seafarers to file a complaint to the flag states if they expect the flag states to help resolving their issues with the allegation of breaching of international maritime conventions, including the MLC 2006.

3.1.2 Port State Control

The port states have the right to conduct inspections towards foreign ships engaged in international trade and calling a port within their territories. By doing the inspection, the port states assist the implementation and enforcement of the international maritime standards to make sure that the ships are not operating below the standards required by the international conventions.

Port state control (“**PSC**”) began in 1978 when a number of western European countries signed The Hague Memorandum of Understanding (“**MoU**”) for the purpose of enforcing the living and working conditions under the ILO C147 – Merchant Shipping

⁹⁵ Ibid; standard A5.1.4 para 1.

⁹⁶ See also ibid paras 5-10.

⁹⁷ Dimitrova (n 47) 77.

(Minimum Standards).⁹⁸ In the same year, Amoco Cadiz grounded on the coast of Brittany, France.⁹⁹ Following such incident, the Paris MoU was signed in 1982 covering the PSC related to safety, prevention of pollution, as well as living and working conditions on-board, which is now regulated under the MLC 2006.

The IMO acknowledged the important contribution of the Paris MoU and decided to adopt the Resolution No. 682 (17) on Regional Co-operation in the Control of Ships and Discharges and invite the governments of its member states to enter into regional agreements for the purpose of implementing PSC in cooperation with the IMO. The Paris MoU has been used as a model to establish PSC cooperation in other regions, such as the Tokyo MoU in the Asia and Pacific Ocean region, *Acuerdo Latinoamericano de Viña del Mar* in South and Central America region, the Abuja MoU in West and Central Africa region, the Riyadh MoU in Persian Gulf region, the Black Sea MoU, the Caribbean MoU, the Mediterranean MoU, and the Indian Ocean MoU.¹⁰⁰ The United States Coast Guard maintains the PSC regime in the US region. Under those MoUs, the PSC is conducted through a harmonised and coordinated system of inspections throughout the region of the respective MoU with the purpose to coordinate inspections and 'to avoid multiple inspections'.¹⁰¹

As the MLC and DMLC are the *prima facie* evidence that a ship is in compliance with the requirements laid out under the MLC 2006, each port state has the obligation to conduct inspections limited to reviewing those two documents.¹⁰² A more detailed inspection may be conducted in certain situations, for example, if there is evidence that the wages have not been paid, or if there is a complaint that the wages have not been paid.¹⁰³ For this inspection purpose, a complaint is not only limited to a complaint from the relevant seafarers, but also covers a complaint lodged by a trade union or a workers' association.¹⁰⁴

⁹⁸ 'History' (Paris MoU) <<https://www.parismou.org/about-us/history>> accessed 22 November 2018.

⁹⁹ 'MV Amoco Cadiz' (Wrecksite 6 October 2015) <<https://www.wrecksite.eu/wreck.aspx?10339>> accessed 22 November 2018.

¹⁰⁰ 'Port State Control' (IMO) <<http://www.imo.org/en/OurWork/MSAS/Pages/PortStateControl.aspx>> accessed 22 November 2018.

¹⁰¹ Ibid.

¹⁰² MLC 2006 reg 5.2.1 para 2.

¹⁰³ See also *ibid* para 1.

¹⁰⁴ See also *ibid* para 3.

In exercising the PSC, member states to the MLC 2006 have to apply the “no more favourable treatment” rule to ships flying flags of the countries which are not members to the MLC 2006, compared to those who fly the flag of a member state to the MLC 2006.¹⁰⁵ This rule is applied so that shipowners will not just choose to conduct “flag shopping” or fly the flag of an open register with the expectation to prevent the application of recognised industry standards. To ensure that the PSC is conducted with the focus of eliminating sub-standard ships and substandard employment conditions, but at the same time minimising the possibility of unjustified detention or delay, the loss or damage suffered by the ship in the course of unjustified PSC detentions must be compensated.¹⁰⁶ There is no further information in the MLC 2006 about who should pay this compensation. Since the detentions are done by the port state, presumably, the port state should pay the compensation.

3.1.3 Inspections by Labour Supplying States

MLC 2006 introduced to the maritime industry for the first time the concept and the obligations of the labour supplying states. Any labour supplying state has the responsibility to ensure that the recruitment and placement of seafarers, who are its citizens, residents, or domiciled in its territory, are meeting the prerequisites stipulated in the MLC 2006.¹⁰⁷ In implementing this obligation, labour supplying states must guarantee that both public and private recruitment and placement services’ operation is in conformity with the MLC 2006.¹⁰⁸ This means that they have to be sure that the recruitment and placement service providers inform the seafarers about their rights under the SEA prior to and in the process of engagement, including those related to their wages.¹⁰⁹ On top of that, whenever the seafarers are to be employed on a ship flying a flag of a state which is not a member state of the MLC 2006, the labour supplying states have to inform their nationals about potential issues that they may en-

¹⁰⁵ MLC 2006 reg V para 7.

¹⁰⁶ Ibid standard A5.2.1 para 8.

¹⁰⁷ Ibid art V para 5; reg 5.3 para 1.

¹⁰⁸ Ibid standard A5.3 para 1. The recruitment and placement of seafarers are set out under MLC 2006 reg 1.4 where the seafarers are given ‘access to efficient, adequate and accountable system for finding an employment’ free of charge. Specifically, if a member State has private recruitment and placement services providers, the State has to establish a standardised system of licensing or certification of such company and implement legal proceedings for breach of its licensing and operational requirements.

¹⁰⁹ Ibid standard A1.4 para 5.

counter during their employment until they are convinced that there is a system comparable to the MLC 2006 in place in the flag state.¹¹⁰ This obligation, however, is only mandatory so long as it is practicable for the labour supplying states to do so, with the effect that the member states do not have to fulfil this responsibility if there is an adequate justification, or if it is not feasible as a practical application.

3.2 Seafarers' Grievance Process

3.2.1 On-board Complaint

Each flag state must ensure that the ships flying its flag are applying on-board procedures to handle seafarers' complaints related to a possible breach of the MLC 2006 requirements,¹¹¹ including any complaint related to payment of wages. In addition to the copy of the SEA, every seafarer must be provided with a copy of the relevant on-board complaint procedures.¹¹² The complaint may be lodged with the superior officers, head or department, or directly with the master as the representatives of the shipowner on board.¹¹³ This, however, would not be very meaningful if the wages of the master are also unpaid. The seafarers should not be victimised for filing a complaint.¹¹⁴

3.2.2 Onshore Complaint

Any seafarer having the intention to address a breach of MLC 2006 on board may also file the complaint to authorised officers at a port in any member state's territory where the ship is calling.¹¹⁵ Based on such complaint, the authority in the port state must conduct an initial investigation, although such authority must advise the complainant to seek the on-board resolution first.¹¹⁶ The ship may be detained if the in-

¹¹⁰ Ibid para 8.

¹¹¹ MLC 2006 reg 5.1.5 para 1.

¹¹² Ibid standard 5.1.5 para 4.

¹¹³ Ibid para 2.

¹¹⁴ MLC 2006 reg 5.1.5 para 2.

¹¹⁵ Ibid reg 5.2.2 para 1.

¹¹⁶ Ibid standard A5.2.2 paras 1-3. Based on guideline B5.2.2, the officer must first check if the complaint is of a general nature related to the whole crew of seafarers onboard or only related to a specific individual. A detailed inspection shall only be done when the complaint is of a general nature, while if it is a personal complaint, the officer shall examine the result of onboard complaints related to the matter to begin with. If the onboard complaint has not been made, the officer shall recommend the complainant to utilise such option first.

vestigation reveals that the ship does not conform with the requirements under the MLC 2006.¹¹⁷ If the subject of the complaint may not be categorised as non-conformity, and the complaint has not been resolved at the on-board level, the port state may inform the flag state and asking for advice and a corrective plan of action.¹¹⁸ Finally if the complaint is not resolved, the port state shall report to the Director-General of the ILO¹¹⁹ and inform the shipowners' and seafarers' representative.¹²⁰

3.3 Other Enforcement Mechanisms Offered by ILO

As the seafarers' right to wages is specifically regulated under the MLC 2006, the enforcement mechanism to be discussed in this sub-chapter shall be limited to ILO mechanisms as the relevant UN specialised agency in this matter. Under the ILO Constitution, there are two enforcement mechanisms available. The first is a representation made to the ILO by an industrial association either of the workers or of the employers regarding the failure of a relevant member state to observe the MLC 2006 in its jurisdiction to which it is a party.¹²¹ The second mechanism is a complaint by a member state about non-observance or unsatisfactory observance by another member state of certain MLC 2006 provisions.¹²² For seafarers, the first option is more practical because it is easier for them to get help from the seafarers' organisation than requesting a state to use its diplomatic rights to make a complaint about another state. The second option, on the other hand, would only end in the International Court of Justice ("ICJ") to settle the complaint and provide recommendations to the ILO. The defaulting government then shall take necessary actions to comply with the ICJ's decisions. Although this option may not lead to direct benefits for a specific claim, it could provide the seafarer to the use of indirect means of remedy,¹²³ resulting from the compliance of the defaulting government in future.

¹¹⁷ Ibid paras 4-5.

¹¹⁸ Ibid.

¹¹⁹ Any complaints that subsequently are resolved must also be informed to the Director-General of the ILO.

¹²⁰ MLC 2006 standard A5.2.2 para 6.

¹²¹ ILO Constitution arts 24-25.

¹²² Ibid art 26.

¹²³ Dimitrova (n 47) 76.

3.4 Abandonment of Seafarers

When a shipowner is facing financial difficulties, it may abandon its ship and consequently leave its seafarers without any food, fuel, and payment. One of the examples for the abandonment of seafarers under the MLC 2006 is a situation in which a shipowner unilaterally severed its tie with the seafarers and did not pay wages to the seafarers for at least two months.¹²⁴ Other examples are the shipowner's failure to pay repatriation cost of the seafarers, or leaving the seafarers without adequate food, accommodation, drinking water supplies, essential fuel and medical care.¹²⁵ If one of the foregoing situations happens, the shipowner is deemed to have abandoned its seafarers. These situations are extremely incriminating for seafarers, creating a feeling of loneliness and helplessness.

To assist the seafarers in such a situation, flag states must establish a financial security system. The financial security system could establish a social security scheme, insurance, national fund, or similar arrangements, which must be determined in consultation with the shipowners' and the seafarers' organisations.¹²⁶

The flag state shall require the ships flying its flag to provide the financial security for its seafarers.¹²⁷ The shipowner shall prove that there is financial security in place to protect the seafarers by placing a certificate or document issued by the financial security provider in English or with English translation, in a place which is clearly visible to the seafarers on board. Yet, there is no prescribed form of this certificate under the MLC 2006. It only provides for the required information to be listed in the certificate.¹²⁸

The International Group Protection and Indemnity (“**IG P&I**”) Clubs have developed standard wordings for this financial security instrument, which is called the MLC Cer-

¹²⁴ MLC 2006 standard A2.5.2 paras 2-5.

¹²⁵ Ibid.

¹²⁶ Ibid para 3.

¹²⁷ MLC 2006 reg 2.5 para 2.

¹²⁸ MLC 2006 app A2-1. The certificate shall include ship's name; port of registry, call sign, IMO number of the ship; name of shipowner; name and address of the financial security provider(s); contact details of persons or entity responsible for handling the seafarers' request for relief; validity period; and an attestation from the financial security provider that the financial security meets the requirements under MLC 2006 standard A2.5.2.

tificates.¹²⁹ MLC Certificates are widely accepted in member states to the MLC 2006.¹³⁰

This financial security system shall be sufficient to cover, inter alia, wages and other entitlements (e.g. overtime payment) in arrears, each for a maximum of four months.¹³¹ Indeed, the financial security only covers the wages and other entitlements when they are due and not otherwise. The financial security provider must grant assistance to the seafarers, immediately after receiving a request from the seafarers or a representative nominated by the seafarers. Such request must be supported by a justification.¹³² There is no further explanation in the MLC 2006 on what a necessary justification is. Presumably, this justification is different from one to another financial security provider.

This protection of the seafarer by financial security forms part of the Regulation 2.5, which deals with repatriation, not under Regulation 2.2, which provides for wages under the MLC 2006. Indeed, the failure of shipowners to pay wages does not necessarily mean that the seafarers are entitled to the financial security for abandonment. The entitlement of the seafarers to the assistance of the financial security is dependent on their rights of repatriation. The entitlement to repatriation occurs when the SEA expires or is terminated when the seafarer in question is abroad, or when such seafarer can no longer provide his/her services for the ship.¹³³ If the seafarers' right of repatriation has not occurred, the right to the assistance of the financial security for abandonment will not arise either.

As mentioned earlier, there are three situations in which a seafarer would be deemed abandoned by the shipowner. One of the situations is when the shipowners have

¹²⁹ Not to be confused with MLC. See further 'FAQs: Maritime Labour Convention 2006 as Amended Financial Security Requirements' (The Shipowners' Club) sec 7 <https://www.shipownersclub.com/publications/faqs-mlc-extension-clause-2006-as-amended-financial-security-requirements/#_ftn7> accessed 22 November 2018.

¹³⁰ Ibid sec 8. The MLC Certificates are issued by the IG P&I Clubs in pdf format. The shipowner then shall print it and ensure that it is carried onboard.

¹³¹ MLC 2006 standard A2.5.2 para 9.

¹³² Ibid para 8.

¹³³ MLC 2006 standard A2.5.1 para 1.

'unilaterally severed their ties with the seafarers including failure to pay contractual wages for a period of at least two months'.¹³⁴

The phrase of "sever the ties" may imply double meanings, where the shipowners are just gone and are not available to be contacted, or where the shipowners have ended their employment relationship under the SEA with the seafarers. The question then will be whether or not the meaning intended by the regulators is that when the shipowner fails to pay at least two months wages to the seafarers, then it is automatically deemed to be a termination of SEAs and the seafarers then unquestionably have the right to be repatriated. However, it would be difficult to determine when exactly the shipowners are deemed to have terminated the SEAs and when the rights of the seafarers to financial security assistance arise accordingly. Other possible interpretation would be when the seafarers have not received wages for at least two months and the shipowners are deemed to cut ties with the seafarers by not being available to be contacted. The wages keep becoming due in arrears until the seafarers terminate the SEA by contacting the financial security provider and ask for assistance. This way, it is clearer when the termination of the SEA occurs and how many months of wages remain unpaid because it is based on the seafarers' action. However, it requires the seafarers to be active and know what their rights are and how to proceed to enforce the protection.

From the above, it is clear that it is not easy to understand the intention of the regulators under the MLC 2006 on how to enforce the financial security. Only providing the seafarers with copy of MLC 2006 and certificate of financial security is not enough to help the seafarers to know how to proceed. Either the wording under MLC 2006 is to be amended, or it shall require that the seafarers be educated about how to enforce their rights in case of the abandonment of the ship.

As previously mentioned in 2.1.3.4, the Amendments of 2014 to MLC 2006 which provides for the financial security for seafarers in the event of abandonment are only applicable as of 18 January 2017. It means the financial security requirement does not apply to those cases before the application date. There have been cases where

¹³⁴ Ibid standard A2.5.2 para 2.

the ships have been abandoned before such date and it has not been resolved until now.

4 Remedies to Seafarers' Claim of Unpaid Wages under International Private Law

The rights of seafarers have little value if they cannot be enforced in practice.¹³⁵ To enforce the rights of seafarers, it is important to see what the basis of the claim is. First and foremost, wage is one of the components of the SEAs. It constitutes a contractual liability by a shipowner towards seafarers. It is also a monetary entitlement of the seafarers against the shipowner as their employer, which must be paid by the shipowners for the services provided by the seafarers. When the shipowner does not pay the agreed wages to the seafarers, the shipowner is in breach of the SEAs. In this chapter, protections according to international private law afforded to the seafarers for non-payment of wages as a breach of contractual obligation shall be discussed.

4.1 Action *in Personam*

Action *in personam* is an action against a person or several persons, which is brought before a court having jurisdiction over the person(s) defendant.¹³⁶ The court then issues an *in personam* judgment, which only binds the parties involved in the lawsuit,¹³⁷ requiring someone to do or not to do something.¹³⁸

Imagine seafarers from the Philippines who sign SEAs to work on a ship owned by a German shipowner and permanently registered in Germany. The ship then is being bareboat chartered to a Marshall Island company, thus flying the Marshallese flag. The ship is maintained and operated by a management company in Greece, providing the full range of services, including management of the crew, which is carried out through its subsidiary in Singapore, which have the seafarers supplied from several

¹³⁵ Nick Gaskell and Christopher Smith, 'Private Law Regimes Applicable to Seafarers' in Deirdre Fitzpatrick and Michael Anderson (eds), *Seafarers Rights* (OUP 2005) 170.

¹³⁶ Trevor C. Hartley, *International Commercial Litigation: Text, Cases and Materials on Private International Law* (2th edn, CUP 2015) 12.

¹³⁷ Morris E. Cohn, 'Jurisdiction in Action in Rem and in Personam' (1929) Vol 14 Issue 2 WUL Rev, 170 <https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=4958&context=law_lawreview> accessed 22 November 2018.

¹³⁸ Hartley (n 136).

manning agencies in South East Asia, including the Philippines. The ship is moving through different jurisdictions or on the High Seas on a daily basis.

It is important to identify a court to take jurisdiction *in personam*. In a very typical scenario in the maritime industry as presented earlier, there are many different jurisdictions involved and there are too many layers of employers, which makes it difficult for the seafarers to enforce their claims arising from the SEAs against the party being ultimately responsible. It is then important to observe the applicable law and jurisdiction of the SEA, and the contractual relationships involved in the employment relationship of seafarers, especially when there is an agency as a median between the shipowners and the seafarers.

4.1.1 Applicable Law and Jurisdiction

The MLC 2006 does not specify which law should be used as the governing law of the SEAs. It just requires each flag state to ensure that there are SEAs in place for all seafarers employed in the ships flying its flag. A labour supplying state, as discussed earlier, has only the obligation to make sure that its seafarers are informed about their rights, including wages, but it has little to no control over the choice of law of the SEAs, under which their citizens embark onboard ships as seafarers. From this, it appears that the governing law of the SEAs may be very diverse and hence, the existing remedies for breach of contract such as non-payment of wages will be different under contract laws in those jurisdictions.

Despite the general freedom to choose the applicable law, there are certain rules related to how to determine the governing law of contracts. These rules differ between the legal systems. For example, in the European Union (“EU”), the rules under the Regulation (EC) No. 593/2008 (“**Rome I**”)¹³⁹ shall apply to the conflict of laws in contractual obligations including commercial matters. Generally speaking, if the shipowners and seafarers have chosen a certain jurisdiction to govern the contract between them, such law will cover the relationships between them, including the payment of wages. However, Rome I stipulates that if all other relevant elements of the

¹³⁹ Rome I replaced Convention on the Law Applicable to Contractual Obligations 1980 (Rome Convention).

contractual relationship are located in a state other than agreed jurisdiction, the application of the law provisions of such other country shall not be prejudiced by the choice of the parties, and this may not be derogated by agreement.¹⁴⁰ If all other relevant elements of the contractual relationship are located in one EU member state or more, the choice of law for other than the member states shall not prejudice the application of the community law¹⁴¹ where appropriate, and this may not be derogated through agreements.¹⁴²

Specifically for contracts of employment such as the SEAs, the parties' freedom to choose the governing law shall not result in depriving the seafarers of the protection provided to them by such law.¹⁴³ However, the SEA usually does not cover governing law clauses.¹⁴⁴ When the parties have not chosen the applicable law, the SEA shall be governed by the law of the state in which or from where the seafarers habitually carry out the work.¹⁴⁵ This is problematic, since it is very common for the seafarers to conduct their work on board of the ship which is always moving between different jurisdictions. If this is not available, the law of the country, in which the company engaging the seafarers is situated, shall apply.¹⁴⁶ This stipulation could be helpful to the seafarers, especially if the labour supplying state provides for more advanced protections to their national seafarers. However, the Rome I is an EU law. Consequently, these rules do not apply to the states which are not a party to it, and in the absence of European shipowners or European seafarers in the employment relationships.

When the contract does not lay down the choice of law, it usually also does not postulate the place of the dispute resolution. In this case, the parties have to follow the

¹⁴⁰ Rome I art 3 para 3.

¹⁴¹ Community law is the law of the EU which is a legal system that generates rights and obligations for all individual in the EU. It is addressed to individuals and legal entities, different to those of traditional international laws which are mainly addressed to states. EU law prevails over national law, and courts may decide not to apply national laws if they are contrary to the EU law. See further 'Legal Order – Community Law' (European Commission 2 August 2007) <http://ec.europa.eu/civiljustice/legal_order/legal_order_ec_en.htm> accessed 22 November 2018.

¹⁴² Rome I art 3 para 4.

¹⁴³ Ibid art 8 para 1.

¹⁴⁴ MLC 2006 does not include governing law as one of the matters which should be covered in SEAs. See MLC 2006 standard A2.1 para 4.

¹⁴⁵ Rome I, Art 8 para 2.

¹⁴⁶ Ibid para 3.

provisions under the applicable law on dispute resolutions. Following the Latin legal maxim *actor sequitur forum rei*, the dispute regarding an unpaid wage claim shall be resolved by the court where the defendant is situated. It is usually possible to say that the defendant's court is the court having jurisdiction where the defendant is domiciled. As mentioned earlier, it may be problematic for the seafarers to take the action *in personam*, because sometimes the ship never calls the port where the defendant is domiciled, or the defendant's jurisdiction is very remote, for example Liberia, the Marshall Islands, Cook Islands or others.

Conversely, if a contract contains a governing law clause, it is most likely to also cover the forum, in which any dispute occurring from, based on, or related to the contract, is settled. A dispute resolution then may be conducted by the arbitrator, the mediator, or the competent court as agreed in the SEA, and the seafarers shall refer their claims to the competent forum. However, hardly any SEAs refer to alternative dispute resolutions, such as arbitration and mediation. If the parties have expressly indicated in the SEAs a court or courts in a specific country to have jurisdiction, such court(s) shall have the legal basis to have a hearing about the dispute, even if the shipowner defendant is domiciled in a different place.

4.1.2 Identifying the Defendant

Usually in the countries with a cabotage regime, or if the shipowner chooses so, the seafarers may be directly engaged with the shipowner. For example, in Mexico, the coastal trade is only allowed to be carried out by Mexican ships having Mexican national crews on board.¹⁴⁷ In this situation, it is comparably easy to decide against whom the claim of unpaid wages should be directed.

As being widely practiced in the maritime industry, the seafarers are usually hired by manning or crew agents. As illustrated above, the question of who the employer or shipowner is, is often raised. According to international maritime conventions, including the MLC 2006, the party defined as the shipowner is not limited to the owner, but also covers the manager, the agent, or the bareboat charterer of the ship. It is im-

¹⁴⁷ *Ley De Navegación Y Comercio Marítimos* (Navigation and Maritime Commerce Law) (MEX) art 40.

portant to identify the legal capacity of the agent in relation to the employment of the seafarers.

In theory, the agents are supposed to be what the name suggests – acting as a middleman or conduit on behalf of the seafarers and the employer.¹⁴⁸ The employer is usually the shipowner or the bareboat charterer,¹⁴⁹ i.e. the party being responsible for the ship's operation. Normally, if the ship is hired through voyage charter¹⁵⁰ or time charter,¹⁵¹ the shipowner still manages the ship, including its crew related matters. This insinuates that the seafarers have the actual contractual employment relationships with the shipowner, and all contractual claims, such as wages, shall be made directly against the shipowner, not the agent.

In practice, it is not always that easy. The seafarers have a weaker position than a shipowner which at times could be a big corporation. Sometimes the name appearing in individual SEAs is not the name of the shipowner. The SEA standard form may state that it is made with the 'Owner/Charterer/Operator/Authorised Agent as employer (...) for employment on the ship MV [...]'.¹⁵² The inapplicable alternatives sometimes are not crossed out, or the blanks are not filled. Indeed, the MLC 2006 only requires the SEA to contain the shipowner's name and address, but does not require to specifically define the capacity of the employer in the SEA.¹⁵³ Hence, it could be assumed that the employer is the shipowner or the bareboat charterer, but again, it is not always the case since the SEA may also be entered into by the seafarers with the manning agent. In other situations, there could also be two employment agreements, one made with the manning agent, the other made directly with the shipowner.¹⁵⁴

¹⁴⁸ Gaskell and Smith (n 135) 175.

¹⁴⁹ Under a bareboat charter, the charterer has the right to hire its own master and crew.

¹⁵⁰ Under a voyage charter, a ship is hired from A to B, from a port of loading to a port of discharge.

¹⁵¹ Under a time charter, a ship is hired for a specified period of time.

¹⁵² See n 171.

¹⁵³ MLC 2006 also does not require for the SEA to cover the name of the ship where the seafarers work. Subsequently, a seafarer may work for different ships owned by the same shipowners. See further MLC 2006 standard A2.1 para 4.

¹⁵⁴ Gaskell and Smith (n 135) 176.

The legal capacity of the agent may be shown by the several agreements entered into by the agent related to the seafarers' employment. The Baltic and International Maritime Council ("**BIMCO**")¹⁵⁵ generated two standard crew management agreements, namely Crewman A – Cost Plus Fee, and Crewman B – Lump Sum. Under Crewman A, the crew managers carry out crew management services as agents for and behalf of the shipowner.¹⁵⁶ Here the employers of the seafarers are the shipowners. Under Crewman B, the crew managers are the employers of the crew and undertake the crew management services in respect of the vessel in their own names.¹⁵⁷ In this case the crew manager shall enter into SEAs with the seafarers. The crew managers are paid in a lumpsum by the shipowner, including the seafarers' wages, and have the obligation to pay the wages to the seafarers.¹⁵⁸ In the event of non-payment of wages, the crew managers then may be liable to indemnify the shipowner if it happened due to the negligence, gross negligence, or wrongful misconduct of the crew manager.¹⁵⁹ In that case, the seafarers shall have a direct claim towards the agent, instead of the shipowner, for unpaid wages.

The complicated layers of who the employer is, is compounded by the layers of agreements related to seafarers, as can be seen from the preceding paragraph. However, the situation can be even more complicated, as the case of *The Turiddu* did show.¹⁶⁰ In *The Turiddu*, the seafarers were Cuban nationals, engaged under embarkation contracts by a Malta-based company, Pius, which owned the *Turiddu*. The contracts stipulated that 30% of the seafarers' wages was in USD, to be paid to them in cash by the master. The other 70% was to be remitted by agreement to a Cuban crewing agency, Guincho, which had supplied the seafarers to Pius under a crewing contract. Guincho received a separate monthly fee per seafarer for its services. Another state-owned Cuban agency, Agemarca, supplied the seafarers to Guincho un-

¹⁵⁵ BIMCO is the world's largest international shipping association, and its products include standard contracts and clauses which are widely used in the shipping industry. See further 'About Us and Our Members' (BIMCO) <<https://www.bimco.org/about-us-and-our-members>> accessed 22 November 2018.

¹⁵⁶ Crewman A cl 3.

¹⁵⁷ Crewman B cl 3.

¹⁵⁸ Ibid cl 6.2.

¹⁵⁹ Ibid cl 10.2. However, this liability is limited to 6 (six) times of the monthly lumpsum.

¹⁶⁰ [1999] 2 Lloyd's Rep 401 (CA) [402].

der a contract of hire and it was Agemarca which paid the 70% balance of the seafarers' wages to Guncho or at Guncho's direction in Cuba in Cuban pesos. Nevertheless, it is always necessary to identify who the employer is by looking at the relevant agreements, in order to identify to whom the claim of unpaid wages should be made to.

4.2 Action *in Rem*

Action *in rem* is an action against a thing or a piece of property which is brought to a court having jurisdiction over such relevant property (the *res*).¹⁶¹ The judgment binds everyone having interest over the property in question.¹⁶² There is only one ground to bring about an action *in rem*: the presence of the property (e.g. the ship) is within the jurisdiction of a court.¹⁶³

An action *in rem* is required due to the limitations of a court's sovereignty – as one of the three governmental powers – to the boundaries of its territory.¹⁶⁴ In the common law system, the action *in rem* enables the plaintiff or claimant to enforce his right against the defendant, even when the latter is domiciled outside of the court's jurisdiction where the property in question is located at the time being.¹⁶⁵ There is even no need to locate where the *in personam* defendant is to begin the action *in rem*. In the United States, the personification doctrine is the bases for action *in rem* – the ship has the obligations and rights which is separated from its owner.¹⁶⁶ In civil law countries, the claimant in exercising action *in personam*, may add a *saisie conservatoire* in France, or *conservatoir beslag* in the Netherlands, to obtain a provisional judgement to seize the defendant's ship within the jurisdiction of the court and to force the *in personam* defendant appearance.¹⁶⁷ Without the ability to take the action *in rem*, the

¹⁶¹ Hartley (n 136) 12.

¹⁶² Ibid.

¹⁶³ Ibid, 16.

¹⁶⁴ Cohn (n 137) 172.

¹⁶⁵ Gaskell and Smith (n 135) 213.

¹⁶⁶ This theory has been criticized by judges in the US. See further Martin Davies, 'In Defence of Unpopular Virtue: Personification and Ratification' [2000] 75 Tulane LR, 337-338.

¹⁶⁷ William Tetley, *International Maritime and Admiralty Law* (International Shipping Publications 2002) 406.

defendant could avoid legal process simply by removing himself and his property from his court's jurisdiction.¹⁶⁸

A key feature to the action *in rem* is the right to arrest a ship.¹⁶⁹ Currently there are two international conventions on the arrest of ships, namely the International Convention Relating to the Arrest of Seagoing Ships 1952 ("**1952 Arrest Convention**")¹⁷⁰ and the International Convention on Arrest of Ships 1999 ("**1999 Arrest Convention**").¹⁷¹ These were negotiated to harmonise the maritime security procedures at an international level, although such objective was not reached.

Under the 1952 Arrest Convention, the arrest is defined as 'the detention of a ship by a judicial process to secure a maritime claim, but does not include the seizure of a ship in execution or satisfaction of a judgement'.¹⁷² The 1999 Arrest Convention defines the arrest as 'any detention or restriction on removal of a ship by order of a court to secure a maritime claim, but does not include the seizure of the ship in execution or satisfaction of a judgement or other enforceable instrument'.¹⁷³

The meaning of arrest under both conventions differs from seizure. The former is requested before the claim's merit is assessed by a court as a security measure,¹⁷⁴ and the latter is available after an enforceable judgment is obtained and to enforce such judgment itself.¹⁷⁵ Further, the arrest under both conventions is not meant to extend,

¹⁶⁸ Ibid.

¹⁶⁹ Gaskell and Smith (n 135) 212.

¹⁷⁰ The states which have ratified or acceded to the 1952 Arrest Convention include major maritime countries, such as Belgium, Brazil, Germany, France, Greece, the UK. See further 'UNTC Registration Number 6330 (UN) <<https://treaties.un.org/pages/showDetails.aspx?objid=08000002801338ba>> accessed 22 November 2018.

¹⁷¹ The states which have ratified or acceded to the 1999 Arrest Convention include Spain and Liberia. See further 'Chapter XII Navigation' (UN) <https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XII-8&chapter=12&clang=_en> accessed 22 November 2018.

¹⁷² 1952 Arrest Convention art 1 para 2.

¹⁷³ 1999 Arrest Convention art 1 para 2.

¹⁷⁴ Comité Maritime International, *The Travaux Préparatoires of the 1910 Collision Convention and of the 1952 Arrest Convention*, 296.

¹⁷⁵ Francesco Berlingieri, *Arrest of Ships Volume I: A Commentary on the 1952 Arrest Convention* (6th edn, Informa Law 2017) 58.

restrict, or in any way affect the right of public authorities to detain ship or prevent it to sail from their jurisdiction,¹⁷⁶ for example in conducting PSC as discussed in 3.1.2.

Similar to other conventions, the arrest conventions are only applicable to the states having ratified them. Both arrest conventions apply to any ship within the jurisdiction of the contracting state, regardless of the ship's flag.¹⁷⁷ Furthermore, the 1999 Arrest Convention does not apply to any warship, naval auxiliary, or other government-owned ship which is not operated and used for commercial services.¹⁷⁸

4.2.1 Rights of Seafarers to Arrest Ship

Both conventions enumerate the type of maritime claims, including maritime liens which shall be discussed in 4.3, giving right to arrest a ship. 1952 Arrest Convention provides that a non-payment of 'wages of Masters, Officers, or crew,' gives rise to the right to arrest a ship.¹⁷⁹ In the 1999 Arrest Convention, an even more comprehensive language is used. The right to arrest a ship occurs for non-payment of 'wages and other sums due to the masters, officers, and other members of the ship's complement in respect of their employment on the ship, including the cost of repatriation and social insurance contributions payable on their behalf'.¹⁸⁰

In addition, under the 1952 Arrest Convention, the seafarers alternatively may arrest the sister ships. Sister ships mean other ships being in the same ownership as the ship from which the claim arose, and when all the shares in such ships are owned by the same person(s).¹⁸¹ This right is extended under the 1999 Arrest Convention where the seafarers are allowed to also arrest other ships being chartered by the

¹⁷⁶ 1952 Arrest Convention art 2; 1999 Arrest Convention art 8 para 4.

¹⁷⁷ 1952 Arrest Convention art 8 para 1; 1999 Arrest Convention art 8 para 1.

¹⁷⁸ 1999 Arrest Convention art 8 para 2.

¹⁷⁹ 1952 Arrest Convention art 1 para 1(m).

¹⁸⁰ 1999 Arrest Convention art 1 para 1(o).

¹⁸¹ 1952 Arrest Convention art 3 paras 1-2. Further, based on 1952 Arrest Convention art 3 para 4, when the ship is bareboat chartered, the person who is liable to the claim the bareboat charterer alone, not the underlying owner, the arrest of sister ship may only be carried out to ships owned by the bareboat charterer, while the other ships owned by the underlying shipowner must be left out.

same bareboat charterer, time charterer, or the voyage charterer of the relevant ship.¹⁸²

The abovementioned solution to arrest a sister ship does not come without complications. It is very common in the maritime industry for a shipowning company to have one ship as its only asset, whereas the beneficial owner is very remote. This therefore limits the option of protections available to the complainant, including seafarers. South Africa, which did not ratify any arrest conventions, is one of the few jurisdictions which, based on its national legislation, additionally allows the arrest of any associated ship, rather than the arrest of merely a sister ship.¹⁸³ An associated ship is not just a sister ship. The definition of an associated ship also includes any ship 'owned, at the time when the action is commenced, by a person who controlled the company which owned the ship concerned when the maritime claim arose'¹⁸⁴, or 'owned, at the time when the action is commenced, by a company which is controlled by a person who owned the ship concerned, or controlled the company which owned the ship concerned, when the maritime claim arose'.¹⁸⁵ Further, the term "control" also covers the power to control both directly and indirectly.¹⁸⁶ Ships under the same management or which form part of the same fleet are not included in the meaning of associated ships. However, if several single-ship shipowners have the same senior executives, it is probably an indication of a common source of control, hence the ships are probably associated.¹⁸⁷

When the seafarers have arrested a ship for non-payment of wages, the same seafarers may not re-arrest the particular ship again related to the claim, or its sister ships, in the same or different jurisdictions in contracting states for the same claim.¹⁸⁸ When a seafarer assigned his right for wages to another party (e.g. wages assign-

¹⁸² 1999 Arrest Convention art 3 para 2. However, as discussed earlier, it is very uncommon for the time charterer or the voyage charterer to be liable for the wages of the seafarers.

¹⁸³ Admiralty Jurisdiction Regulation Act 105 of 1983 (SA) art 3 para 6.

¹⁸⁴ Ibid para (7)(a)(ii).

¹⁸⁵ Ibid subpara a(iii).

¹⁸⁶ Ibid subpara (b)(ii). Direct control is *de jure* power to control, while indirect control is *de facto* power to control. See also *The Heavy Metal* [1998] (4) SA 479 (C), in which the judges have different views on this matter.

¹⁸⁷ *EE Sharp & Sons Ltd v The Nefeli* [1984] (3) SA 325 (C).

¹⁸⁸ 1952 Arrest Convention art 3 para 3; 1999 Arrest Convention art 5.

ment to his creditor), such assignee shall not be deemed to be a different person than the seafarers. In an assignment from one person to another, the second person takes over the first person's rights and remedies, and therefore the second person shall be deemed entitled to these rights to the same extent as the assignor.¹⁸⁹ The prohibition of the second arrest for the same claim does not apply if the subsequent arrest is conducted in a non-contracting state. Conversely, if the second arrest is conducted in a contracting state after the first arrest in a non-contracting state, such contracting state might reject the application for re-arrest on the basis that the aim of arrest to secure a maritime claim has been achieved by the first arrest already.¹⁹⁰ If the ship is re-arrested in contracting states, it must be released, unless the bail or other security had been finally released before the subsequent arrest, or there is a good cause for maintaining the arrest.¹⁹¹

The detailed procedure and requirements to arrest a ship are different in each jurisdiction. Pursuant to the arrest conventions, they are to be determined under *lex fori*, i.e. by the rules and regulations of the jurisdiction where the arrest is applied for.¹⁹² This, for example, may include the requirement for the seafarer claimant to provide counter-security for loss or damages born by the defendant from a wrongful ship arrest. Counter-security calculation is very complicated because the basis is not the value of the ship or the value of the claim, but the probable damage that the ship-owner will suffer during an unlawful arrest. This is then determined by the court arbitrarily and usually could not be afforded by the seafarers considering its high amount. Another example is the formality related to the application of arrest (e.g. translation of documents, court and lawyers' fees) which also could be an expensive and lengthy process. These factors could lead to forum shopping, where the claimants usually prefer the jurisdictions which are simpler and faster but still providing the security that the claimant seeks. However, the seafarers usually just wait to arrest the ship until it calls a port in a jurisdiction with favourable arrest proceedings. The difference shall not be discussed in this thesis.

¹⁸⁹ 1952 Arrest Convention art 8 para 5. See also Berlingieri (n 176) 324.

¹⁹⁰ Ibid 324-325.

¹⁹¹ 1999 Arrest Convention 5 para 1 provides for the list of "good cause" which was not enumerated under 1952 Arrest Convention.

¹⁹² 1952 Arrest Convention art 6; 1999 Arrest Convention art 2 para 4.

4.2.2 Jurisdiction for the Arrest

The arrest in compliance with either of the two conventions may only be ordered against the ship under the authority of a court or of the appropriate equivalent judicial authority in the contracting states.¹⁹³ Therefore an arrest may not be ordered by an administrative authority.¹⁹⁴ To enforce the arrest, the ship must be located within the jurisdiction of the appropriate authority ordering the arrest.

The foregoing implies that both conventions do not allow an arrest of a ship based on a foreign arrest order. Within the EU, based on the Regulation (EU) No. 1215/12 (“**Brussels 1a Regulation**”),¹⁹⁵ a provisional or protective measure (e.g. arrest of ship), ordered by a member state without a prior hearing, may not be recognised and enforced in other member states.¹⁹⁶ However, a court order to arrest a ship is permissible without hearing if the judgment containing the measure is served on the defendant prior to enforcement.

If a ship is moored in a port at the time of the arrest, the court in the port where the ship is moored is competent for the arrest, as pursuant to Article 11 of UNCLOS, the port is within the relevant state’s territory. The question about the jurisdiction of a coastal state arises when a foreign ship is in the territorial water of such coastal state, either at anchorage, or moored at an offshore platform, or is sailing.¹⁹⁷ In general this is governed by the national rules of the relevant state, but if it is a member state to UNCLOS, these domestic rules shall comply with the stipulations contained in UNCLOS.

¹⁹³ 1952 Arrest Convention art 4; 1999 Arrest Convention art 2 para 1.

¹⁹⁴ Berlingieri (n 175) 61.

¹⁹⁵ Brussels 1a Regulation is the current law applicable in the EU concerning jurisdiction and enforcement of judgements in civil and commercial matters, which used to be regulated under the 1968 Convention on Jurisdiction and Enforcement of Judgements in Civil and Commercial Matters (Brussels Convention), then amended by Council Regulation No. 44/2001.

¹⁹⁶ Brussels 1a Regulation arts 2(a), 36, 39. This notion was initiated by the EC Court of Justice in Case C-125/79 *Bernard Denilauder v SNC Couchet Frères* [1980] ECR 1553, holding that recognition and enforcement of judicial decision authorizing the provisional or protection measures, would only be allowed under Brussels Convention if it was issued after the defendant having been summoned to appear and make his case.

¹⁹⁷ Berlingieri (n 175) 162.

Article 28 (2) of UNCLOS provides that the coastal state may not arrest a foreign ship for the purpose of any civil proceedings, except for obligations or liabilities assumed or incurred by the ship itself in the course of or for the purpose of its voyage through the waters of the coastal state. This will allow the arrest of such foreign ship in the territorial water of the coastal state, related to unpaid wages for the services provided by the seafarers during the voyage within its territorial sea. Even if it is argued that the coastal state does not have jurisdiction, Article 28 (3) of UNCLOS stipulates that the aforesaid rule is without prejudice to the right of the coastal state, in accordance with its laws, to arrest for the purpose of any civil proceedings, a foreign ship lying in its territorial sea, or passing through its territorial sea after leaving internal waters. This means that when a foreign ship is at anchorage or moored at an offshore platform within territorial waters, or passing through them, for example after leaving a port in the coastal state, a court in such coastal state may arrest the ship for the purpose of any civil proceedings, for example due to a maritime claim in the form of unpaid wages. However, an arrest would not be permissible if a foreign ship is sailing through the territorial water of a state, without stopping or entering a port of that state.¹⁹⁸ The arrest is also not permissible, if the ship is sailing through the contiguous zone and economic exclusive zone of such coastal state, since the sovereignty of the coastal state only extends to its territorial water.¹⁹⁹ Furthermore, under the 1952 Arrest Convention, the arrest remains permissible even though the ship is ready to sail.²⁰⁰ However, this was not included in the 1999 Arrest Convention because this provision in the 1952 Arrest Convention was historically still directed to the fairly lengthy preparation of sailing ships prior to their departure.

Both conventions do not provide an answer as to whether at the time of filing an arrest application in a contracting state and the arrest warrant is issued, the relevant ship must already be located within the jurisdiction of the court.²⁰¹ The same applies for the opposite situation, when the warrant of arrest is issued after the ship has

¹⁹⁸ Ibid.

¹⁹⁹ UNCLOS art 2 para 1.

²⁰⁰ 1952 Arrest Convention art 3 para 1.

²⁰¹ Several contracting states have different view in this matter. See further Berlingieri (n 176) 162-163.

sailed. Both matters are left to be decided under *lex fori*.²⁰² Which court is competent in a state is not exclusive, hence, the claimant may choose a different court which under *lex fori* has the jurisdiction to arrest.²⁰³

Even if the court arresting the ship has no competency to determine the merits of the case, the competent court is still permitted to arrest the ship.²⁰⁴ In such event, the court arresting the ship shall order the period of time within which the claimant must bring an *in personam* action before the court having jurisdiction for the merits of the case.²⁰⁵ Based on this, a denial of jurisdiction of the court where the ship is to be arrested is not possible on the ground of *lis pendens*, because the substance of the claim is not the same.²⁰⁶ Usually, in case the claimant does not file the *in personam* action against its debtor within the period ordered by the arresting court, the arrest will be released without any further hearing.

4.2.3 Release of Arrested Ship

4.2.3.1 Release of Ship in Subsequent Arrest

As discussed earlier, the ship related to the maritime claim or its sister ship must be released, if it has been arrested previously by the same seafarers for the same claim of unpaid wages.²⁰⁷ The burden of proof for such purpose lies with the shipowner. To counter the foregoing, the seafarer as the claimant has the burden to prove that the security has been released or there is a good cause to maintain the arrest, as discussed earlier.

²⁰² 1952 Arrest Convention art 6; 1999 Arrest Convention art 2 para 4.

²⁰³ Berlingieri (n 175) 177.

²⁰⁴ 1952 Arrest Convention art 7 para 2; 1999 Arrest Convention art 7 para 2. The *forum arresti* also does not have a jurisdiction on the merit of the claim of unpaid wages, if the choice of forum has been agreed between the shipowner and the seafarers in the SEA, even though as discussed earlier, this is rarely the case. The situations where the *forum arresti* has jurisdiction over the merit of the case are enumerated under 1952 Arrest Convention art 7 para 1, while such list does not appear under 1999 Arrest Convention.

²⁰⁵ 1952 Arrest Convention, *ibid*; 1999 Arrest Convention, Art 7 (3).

²⁰⁶ Berlingieri (n 175) 166.

²⁰⁷ 1952 Arrest Convention art 3 para 3.

4.2.3.2 Provision of Bail or Other Security

When the shipowner has provided bail or other type of security, the release of the arrested ship by the arresting court shall be permissible.²⁰⁸ The type of the security shall be determined by *lex fori*, as part of the release of ship.²⁰⁹ This is different in every jurisdiction, but usually the bail or security is in the form of bail bond, cash deposit, or bank guarantee.²¹⁰ A letter of undertaking from a IG P&I Club is sometimes accepted, but in most cases only permitted if the claimant agrees.²¹¹ The amount of the security is usually agreed between the parties, but under normal circumstances the security should at least have the same amount as the claim. If there is disagreement between the parties, the type and adequacy of such security shall be determined by the court, the value of which shall not exceed the value of the ship itself.²¹²

The arresting court who does not have the jurisdiction over the merits, may issue an order that the bail or other security is to be used as a security for the fulfilment of the judgment issued by the competent court.²¹³ Such order is usually required to be verified by the competent court, or in some jurisdictions, such as in Indonesia. Indonesian courts have to rehear the case using the arresting court's judgement as an evidence. However, if the foreign court issuing the arrest order has a bilateral or multi-lateral treaty with Indonesia for enforcement and recognition of judgments, or if the specific Indonesian law stipulates so, the rehearing may not be required.²¹⁴

²⁰⁸ 1952 Arrest Convention art 5; 1999 Arrest Convention art 4 para 1.

²⁰⁹ 1952 Arrest Convention art 6; 1999 Arrest Convention art 2 para 4.

²¹⁰ Shiparrested.com Network, *Ship Arrests in Practice* (11th edn, 2018). In some countries, like Germany, the bank guarantee must be issued by first class bank located in the EU, or Dutch bank in the Netherlands.

²¹¹ Ibid. Most countries required the P&I LOU to be first class, issued by P&I IG Club.

²¹² 1952 Arrest Convention art 6; 1999 Arrest Convention art 4 para 4.

²¹³ 1952 Arrest Convention art 7 para 2. There is no equivalent provision under 1999 Arrest Convention.

²¹⁴ *Reglement op de Burgerlijke rechtvordering* (ID) art 436. For example, related to general average, foreign court judgment may be executed directly in Indonesia, pursuant to *Kitab Undang-Undang Hukum Dagang* (Commercial Code) (ID) art 724.

4.2.3.3 *Judicial Sale*

Despite its close relation to the arrest of a ship, the judicial sale of a ship has not been regulated by a specific international convention yet.²¹⁵ Therefore, the law in different jurisdictions may vary regarding this matter. Judicial sale, which is also called forced sale, of the ship in relation to the claim from seafarers for unpaid wages, may be done on two grounds. The first ground is to execute a court's judgment in relation to enforcing a maritime lien, which shall be discussed in 4.3. The second ground is a court's order to have the ship sold *pendente lite*, or before the judgment based on the merits is obtained. This is possible in several jurisdictions, usually because the cost of keeping a ship in arrest is very high or to avoid a dramatical decrease of the ship value and to prevent the ship from not trading and, therefore, generating freight earnings.

4.2.3.4 *Insolvency of the Shipowner*

In the event of insolvency of the shipowner, usually the ship is to be gathered into the insolvent assets under the administration of the administrator or liquidator. In this event, the seafarers will be entitled to the proceeds of the sale of the ship, with the priority to be discussed in maritime liens in 4.3. The ship is sold because, as mentioned earlier, usually the ship is the only asset of the shipowner. A foreign liquidator may take possession of the ship in a cross-border insolvency, often only after recognition of the court judgment having competence to do so. However, if both courts are in the jurisdictions of EU member states, then Brussels 1a Regulation shall apply.

4.3 **Maritime Lien**

A maritime lien is a privileged right *in rem* against a ship, given to certain types of claims which enable the holder to enforce its right against the ship by public auction or other means of court sales as provided in different jurisdictions, granting priority over registered mortgage rights.²¹⁶ Maritime liens arise without the need to file any

²¹⁵ Henry Hai Li, 'A Brief Discussion on Judicial Sale of Ships' (CMI) <<https://comitemaritime.org/wp-content/uploads/2018/05/A-Brief-Discussion-on-Judicial-Sales-of-Ships.pdf>> accessed 22 November 2018.

²¹⁶ William Tetley, *Maritime Liens and Claims* (2nd edn, International Shipping Publications 1998) 59-60.

registration or any court action.²¹⁷ The first international convention governing maritime liens and mortgages is the International Convention for the Unification of Certain Rules of Law relating to Maritime Liens and Mortgages 1926. It came into force but later most of its member states have denounced it.²¹⁸ It was replaced by the International Convention for the Unification of Certain Rules relating to Maritime Liens and Mortgages 1967, which did not come into force. It was then replaced by the International Convention of Maritime Liens and Mortgages 1993 (“**1993 MLMC**”). Similar to arrest conventions, the purpose of MLMCs was to uniform the maritime liens and mortgages internationally. However, such aim has not been reached since only a few countries have ratified each of the MLMCs.

In this thesis, from all MLMCs, only 1993 MLMC shall be discussed. 1993 MLMC stipulates that the claims for wages, repatriation cost and social insurance contributions of the seafarers against the shipowner, charterer, manager or operator of the ship is one of the five claims giving rise to a maritime lien.²¹⁹ This maritime lien follows the ship, albeit the change to the ownership or flag of the ship.²²⁰

In some civil law countries, where the 1993 MLMC does not apply, the law usually refers to a privileged claim or a priority claim, which has an effect comparable to a maritime lien.²²¹ Through history, the “privilege” has always been in the civilian tradition.²²² None of the common law countries has ratified the 1993 MLMC.²²³ However,

²¹⁷ Ibid.

²¹⁸ John M. Kriz, ‘Ship Mortgages, Maritime Liens and Their Enforcement: The Brussels Conventions of 1926 and 1952 [1964] 1963/671 DJL, 674–675 <<https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1880&context=dlj>> accessed 22 November 2018; cf. ‘International Convention for the Unification of certain Rules relating to Maritime Liens and Mortgages (with Protocol of Signature)’ (UNTC) <<https://treaties.un.org/pages/showdetails.aspx?objid=080000028016775a>> accessed 22 November 2018. Only France and Luxembourg which are the current parties to it.

²¹⁹ 1993 MLMC art 4 para 1. Other maritime liens are claims in respect of loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the ship; claims for port, canal, and other waterway and pilotage dues; and claim based on tort arising out of physical loss or damage caused by the operation of the ship, other than loss of or damage to cargo, containers and passengers’ effects carried on the ship.

²²⁰ Ibid art 8.

²²¹ ‘Maritime Liens’ (Seafarers’ Rights International, 20 February 2015) <<https://seafarersrights.org/seafarers-fact-file-maritime-liens/>> accessed 22 November 2018.

²²² Tetley (n 216) 56.

looking into the history of maritime law in the common law countries, such as in the UK²²⁴ or the US,²²⁵ the maritime law in those countries has always been considerably influenced by the civil law orientation, including the concept of maritime liens.

4.3.1 Enforcement of Maritime Lien

To enforce the maritime lien for seafarers' wages, there is a procedure to follow. The 1993 MLC has some provisions on notice and effect of forced sale.²²⁶ Although not specifically mentioned in the 1993 MLC, the forced sale could be executed by first arresting the ship pursuant to the application of the claimant, which has been discussed in 4.2, and then applying for the auction or sale of the ship by the arresting court.

When executed, the wage claim together with other claims giving rise to maritime liens, has a higher rank compared to mortgages, hypothecations, or other registered charges on the ship.²²⁷ Between all maritime liens, it has the second rank, just after the salvage claim.²²⁸ Furthermore, if there are more than one wage claims, they shall rank *pari passu* between themselves.²²⁹ In other words, the ranking position of the unpaid wage claim has a higher priority compared to the other claims.

From the proceeds of the forced sale of the ship, all maritime liens shall be paid only after '[t]he costs and expenses arising out of the arrest and subsequent sale' of the ship,²³⁰ which is usually called *custodia regis*, but before the mortgages, hypothecations, or other registered charges are paid off. After the forced sale of the ship, all mortgages, hypothecations, or other registered charges, and all other liens, shall

²²³ 'International Convention on Maritime Liens and Mortgages, 1993' (UNTC) <https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=xi-d-4&chapter=11&clang=_en> accessed 22 November 2018.

²²⁴ Tetley (n 216) 36.

²²⁵ Ibid 39-40.

²²⁶ 1993 MLC arts 11-12.

²²⁷ Ibid art 5 para 1.

²²⁸ Ibid para 2.

²²⁹ Ibid para 3.

²³⁰ 1993 MLC art 12 para 2.

cease to be attached to the ship, except for those which are assumed by the purchaser with the consent of the holders.²³¹

4.3.2 Seafarers' Wages after Enforcing Maritime Lien

The *custodia regis*, as mentioned in 4.3.1, includes the seafarers' wages earned after the arrest because during the arrest, they are deemed to upkeep the ship with the effect that it could be sold in a good condition.²³² There have been several judgments which do not share the same view with the preceding provision, such as in *The Carolina*²³³ in the UK, or *Robinson v. SSJ Lanasa*²³⁴ in the US. It was held that when a ship is arrested for seafarers' unpaid wages, the SEAs are deemed to be terminated and seafarers' right to wages ends simultaneously even when the seafarers are waiting to be repatriated. The idea behind these judgments is that when a ship is arrested, it can no longer sail and earn money. Therefore, it has been argued that the seafarers are no longer needed, particularly because the seafarers have arrested the ship and thus have caused the standstill by themselves. This is a surprising position because it would deprive the seafarers from their wages when they are enforcing their legitimate right.

The general view under English law, however, is that if the seafarers took the action *in rem* based on the claim of unpaid wages, it is not deemed as a termination of the SEAs. It means, that the seafarers are still entitled for wages even after the ship is arrested.²³⁵ However, if the claim is made based on the repudiation of the SEAs by the shipowner, and the seafarers have terminated the SEA due to such repudiation, the claim of the seafarers would be turned from a claim for the payment of wages into a damage claim in the same amount.

²³¹ Ibid para 1.

²³² Ibid.

²³³ [1875] 3 Aps M.L.C. 141. In this case the entitlement of seafarers to wages ends when the writ of arrest is issued. However, this is not a good law and it has not been followed in any judgments.

²³⁴ 1958 AMC 1980. New SEAs entered into to hire new seafarers before the day of arrest have no value, unless the SEAs are entered into with the Marshall.

²³⁵ *The Fairport (No. 2)* [1966] 2 Lloyd's Rep 7 (PDA) [11]. This judgment mentioned all previous judgments which have been made in the past with this view. cf. *The Carolina*.

In the US, after the arrest of the ship for the unpaid wages, the seafarers may have a valid claim for wages in *custodia legis*. This is especially the case when the seafarers performed services to keep watch and preserve the ship from fire and other hazards while the ship is under arrest. However, the seafarers are not paid the same wages as before the arrest, but they are paid on the basis of *quantum meruit* for tending and caring the ship before they are discharged.²³⁶

4.3.3 Time Bar

Maritime liens for the wage claims, shall be valid for a period of one year upon the seafarers' discharge from the ship.²³⁷ It means, even when the seafarers are already repatriated and their wages remain unpaid, it is permissible for them to apply for the arrest of the ship for the purpose of enforcing the maritime lien that they have, however only within one year from the due date of the relevant claim.

4.4 Limitation of Liability of Shipowner

The IMO Convention on Limitation of Liability for Maritime Claims 1976 which has been amended by the Protocol of 1996 to Amend the Convention on Limitation of Liability for Maritime Claims 1976 (“**LLMC**”), under Article 2 (1) (c) expressly excludes the claims based on the infringement of contractual rights, having direct connection with the operation of the ship, from the claims subject to the liability limitation. In addition, pursuant to Article 3 of the LLMC, LLMC also is not applicable to the claims of the seafarers or seafarers' heirs, dependants, or other person entitled to make such claim (e.g. unpaid wages claim), if under the governing law of the SEAs the shipowner is not entitled to limit his liability. However, if the governing law of the SEAs permits the limitation of liability for the seafarers' claim, such limit should be higher than the amount stipulated by Article 6 of the LLMC.

²³⁶ *Herbert L. Rawding*, 55 F. Supp. 156, 1944 AMC 222.

²³⁷ 1993 LLMC art 9 paras 1-2. Such period shall be subject to suspension or interruption. However, time shall not run when the arrest is not permitted by law.

5 Conclusion

Seafarers' right to wages are provided under the international human rights law and labour laws, which regulate the definition, designation and calculation of wages. This right is closely related to other seafarers' rights such as rights to employment agreement, freedom of forced labour, legal remedy, safe and healthy working conditions, and repatriation. Seafarers' right to wages is protected through control and report mechanisms set out by the ILO, and international private laws and maritime laws to the seafarers through action *in personam*, action *in rem*, maritime lien and non-applicability of shipowners' liability.

Protections provided by ILO have some shortcomings, which include the followings:

- ineffectiveness of the flag states' inspection and certification, which can be a classic problem in maritime business, especially in some of the open registries;
- uncertainty about who should pay the compensation in the event of unlawful detentions on the application of PSC;
- on-board complaint mechanism which is not a lot of use when the master's wages are also unpaid;
- impracticality for the seafarers to request an MLC 2006's member states to file a complaint to the ILO for non-compliance of another member state; and
- unclarity of the seafarers' access to financial security for non-payment of wages for two months or more.

Remedy and protections under the international private law also have some deficiencies, which include the followings:

- conflict of laws and different system to determine the governing law and forum of dispute resolutions, especially when they are not specified in the SEAs;
- difficult access of the seafarers to the court having jurisdiction over the shipowner because the ship may never call on port there;

- possible uncertainty related to who the employer is under the SEAs;
- different procedures and requirements to arrest a ship despite the presence of arrest conventions;
- possibility of different rank of priority seafarers' claim of wages as a maritime lien in different jurisdictions; and
- possibility that the seafarers would not receive wages after arresting a ship in order to enforce their legitimate rights.

Some suggestions made in this thesis include amendments to the MLC 2006 especially related to abandonment, and more intensified controls from flag states, port states and labour supplying states. There may be no easy solution concerning the inadequacies to the remedy offered by the international private law. Specifically related to the action *in personam*, it is understandable that the diversities with respect to the choice of law and forum in SEAs will still be present in different legal systems in the future as it has always been, despite the international character of the maritime business. As to the action *in rem* and maritime liens, there is probably a need to negotiate new conventions on these matters. However, again, it may be a difficult and lengthy process with a lot of research and discussion to accommodate both civil and common legal systems. Even so, there is no guarantee that all maritime nations will choose to ratify the new instruments.

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Recalling the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the other relevant international instruments in the fields of human rights, humanitarian law and international criminal law, Also recalling the Declaration on the Protection of All Persons from Enforced Disappearance adopted by the General Assembly of the United Nations in its resolution 47/133 of 18 December 1992, Aware of the extreme seriousness of enforced disappearance, which constitutes a crime and, in certain circumstances defined in international law The rights and obligations of seafarers and their employers will be subject to the seafarers' employment contract and to the compulsory requirements under national laws and regulations. In... The rise of rights and protections for the disadvantaged. Article. Jan 2010. In this paper, it is argued that seafarers held hostage by pirates do not have a right to the continued payment of their wages under international conventions. Under English law it is contended that the entitlement to wages exists in some limited circumstances, but in many other circumstances is uncertain, inadequate or non-existent. The need to protect the wages of seafarers and to reform the law is therefore argued. Shipping and International Maritime Law. Alfred Popp The Treaty-Making Work of the Legal Committee of the International Maritime Organization. Eric Machum and Frank Metcalf Will Insurance Cover That? A Review of the Challenges Faced by Coastal States Seeking to Recover the Cost for Removal of Wrecks under the Nairobi Wreck Removal Convention. Sherry P. Broder and Jon M. Van Dyke The Urgency of Reducing Air Pollution from Global Shipping. A Reflection on the Maritime Labour Convention, 2006 and Other Approaches. Seafaring and Maritime Labour Law. Alastair Couper Perceptions and Attitudes of Seafarers Towards Maritime Regulations: An Historical Perspective. Sarah M. Kirby The Continuing Criminalization of Seafarers: Where to Go From Here?